

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



IN THE MATTER OF THE
JOINT APPLICATION FOR THE
APPROVAL OF THE ELECTRIC
POWER PURCHASE
AGREEMENT (EPPA)
ENTERED INTO BY AND
BETWEEN FIRST BUKIDNON
ELECTRIC COOPERATIVE,
INCORPORATED (FIBECO) AND
FDC MISAMIS POWER
CORPORATION (FDC
MISAMIS), WITH PRAYER FOR
THE ISSUANCE OF
PROVISIONAL AUTHORITY

ERC CASE NO. 2014-097 RC

FIRST BUKIDNON ELECTRIC
COOPERATIVE, INC. (FIBECO)
AND FDC MISAMIS POWER
CORPORATION,

Applicants.

X-----X

BOOKED
Date: JUL 08 2014
No: _____

ORDER

On June 30, 2014, First Bukidnon Electric Cooperative, Incorporated (FIBECO) and FDC Misamis Power Corporation (FDC MISAMIS) filed a joint application for approval of their Electric Power Purchase Agreement (EPPA) with prayer for the issuance of provisional authority.

In the said application, FIBECO and FDC MISAMIS alleged, among others, that:

The Nature of the Application

1. This is a joint application submitted to the Commission for its due consideration and approval of the EPPA executed by and between FIBECO and FDC MISAMIS, pursuant to Rule 20(B) of the Energy Regulatory Commission's Rules

of Practice and Procedure (ERC Rules)¹ and other pertinent rules and regulations;

The Applicants

2. FIBECO 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, FIBECO was incorporated and registered on May 15, 1972 with principal office at Anahawon, Maramag, Bukidnon. It serves the power requirements of the Municipalities of Kitaotao, Dangcagan, Don Carlos, Maramag, Quezon, San Fernando, Pangantucan, Kalilangan, Kibawe, Damulog and Kadingilan, and the City of Valencia, all in the Province of Bukidnon and the Municipality of Wao, in the Province of Lanao del Sur;
3. FDC MISAMIS is a corporation duly organized and existing under the Philippine Laws, with principal office address at the 23rd Floor, PBCom Tower, 6795 Ayala Avenue corner V.A. Rufino St., Makati City. It was formerly known and registered under the names Green Renewable Power Holdings, Incorporated and Strong Field Energy Corporation. It is wholly-owned subsidiary of FDC Utilities, Incorporated;

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 EPPA, a copy of the same (including annexes) was furnished to the respective legislative bodies of the Municipality of Maramag, Bukidnon, and the Province of Bukidnon, where FIBECO principally operates;
5. Likewise, a copy of the instant joint application (including annexes) was furnished to the City of Makati where FDC MISAMIS principally operates;
6. The entire joint application, excluding the annexes, was published in a newspaper of general circulation within the

¹ ERC Resolution No. 38, Series of 2006

franchise area or area where FIBECO and FDC MISAMIS principally operate;

FIBECO Power Situation

7. Since 2010, the Mindanao Grid has been experiencing a significant shortfall in power supply causing widespread power interruption. The existing capacity in the Island is composed of more than fifty percent (50%) hydroelectric power plant which is dependent on the availability of water and affected by weather conditions. Based on the 2012-2030 Supply – Demand Outlook issued by the Department of Energy (DOE), a total of 1,600 MW additional capacities are needed during the planning period to meet the electricity demand and the required reserve margin of the Grid;
8. FIBECO is requiring annual energy of **162,581,923 kWh** and an annual demand of **31,457 kW** for 2014. The power supply of FIBECO is currently sourced from the Power Sector Assets and Liabilities Management Corporation (PSALM), King Energy Generation, Incorporated (KEGI), and Crystal Sugar Company, Incorporated (CSCI). For 2014, it has an existing power supply agreement for 116,576,667 kWh contract energy or equivalent demand of 24,959 kW with PSALM/National Power Corporation (NPC) which will expire in August 2015. With the privatization of the PSALM/NPC generation plants and coupled with the insufficiency of supply in Mindanao, it has become increasingly difficult for PSALM to sustain the demands of its Mindanao customers. As it is, PSALM can no longer supply the electric power requirements of its existing customers, including FIBECO. PSALM confirmed that it has insufficient capacity to supply the additional power requirements of Mindanao distribution utilities (DUs) beyond the contracted energy and equivalent demand in its existing Contract for the Supply of Electric Energy (CSEE) with PSALM;
9. Based on FIBECO's actual and forecasted load data, its contract energy and demand requirements for the years 2013 to 2028 are increasing. In order for FIBECO to meet its obligations to its member-consumers (Sec. 1,

DOE Department Circular No. 2003-12-011)², and in making sure that its requirements are fully covered by supply contracts (Sec. 4.3, DOE Department Circular No. 2010-03-0003)³, FIBECO should secure a power supply agreement of about 35,000 kW;

10. Based on FIBECO's Ten (10)-Year Demand and Energy Forecast, its demand requirement is expected to grow every year, from 30 MW in 2013 to 52 MW in 2028;
11. Given its demand growth and in order to obtain a secure and adequate supply of electricity for its member-consumers during this time, FIBECO sought out other generation companies and sources of electricity in the Mindanao Grid and solicited offers and/or expressions of interest from these power suppliers to supply its growing power requirements;
12. Among the offers that FIBECO considered was one from the FDC MISAMIS which made an offer to it to supply its power requirements. FDC MISAMIS is committed to construct 405 MW Coal-Fired Power Plant in the PHIVIDEC Industrial Estate in Misamis Oriental. The power plant is scheduled to be commissioned in 2016.
13. FIBECO thoroughly evaluated all the offers/expressions of interest submitted to it and determined that the offer of FDC MISAMIS to be the one most advantageous to its member-consumers;
14. FIBECO has forecasted and simulated the effect of the inclusion of the power supplied by FDC MISAMIS on its generation costs upon the commercial operation of the power plant of FDC MISAMIS, taking into consideration the reduced supply from PSALM and the expected commercial operation of FDC MISAMIS, to wit:

² All distribution utilities must henceforth take cognizance and assume full responsibility to forecast, assure and contract for the supply of electric power in their respective areas to meet their obligations as distribution utility (Sec. 1, DOE Department Circular No. 2003-12-011)

³ Ensure that the power requirements within their franchise areas are adequately covered by supply contracts or spot purchases from the WESM at all times

	Without FDC MISAMIS	With FDC MISAMIS	Difference
Year	PhP/kWh	PhP/kWh	PhP/kWh
2014	4.7757	-	-
2017	12.7115	6.0323	(6.6792)
2018	13.0433	6.0367	(7.0066)
2019	13.3513	6.0447	(7.3066)
2020	13.6375	6.0504	(7.5871)

The EPPA

15. After extensive negotiations with FDC MISAMIS, FIBECO signed on February 4, 2013, an EPPA with FDC MISAMIS for a contracted demand of 15 MW for twenty-five (25) years. On June 21, 2013, FIBECO signed an Amendment Agreement with FDC MISAMIS, amending, among others, the contracted demand in the February 4, 2013 EPPA, from a contracted demand of 15 MW to 23 MW. On August 23, 2013, FIBECO signed an Amendment Agreement with FDC MISAMIS, amending, among others, the contracted demand in the June 21, 2013 EPPA, from a contracted demand of 23 MW to 30 MW. On January 29, 2014, FIBECO signed an Amendment Agreement with FDC MISAMIS, amending, among others, the contracted demand in the June 21, 2013 EPPA, from a contracted demand of 30 MW to 35 MW effective last quarter of 2017;

Executive Summary

16. The EPPA governs the relationship between Supplier and Customer for the sale of electric power. The electric power supply will be drawn from the 3 x 135 MW CFB Coal-fired power plant to be constructed, owned, and operated by FDC MISAMIS. During plant outage, replacement power will be sourced from other facilities of the FDC MISAMIS, or of any third party, including the Wholesale Electricity Spot Market (WESM) or its equivalent. The commencement of the obligation of FDC MISAMIS to deliver of electric power to its customers is subject to the satisfaction of conditions precedent, including the declaration of the commercial operation of the power plant. Generation Charges for pre-commercial operation and during commercial operation are computed

separately. The EPPA is subject to customer's security deposit, assignment, termination, and buy-out;

Salient Features

17. The EPPA, as amended, between FIBECO and FDC MISAMIS contains the following salient terms and conditions:

17.1 Commercial Operation Date. The target Commercial Operation Date is thirty-six (36) calendar months after all the requirements (Conditions Precedent to Commercial Operation Date) has been met;

17.2 Term. The Term of the EPPA shall be twenty-five (25) years from the Commercial Operation Date, unless extended: a) by the grant of grace period; b) due to Force Majeure; or c) by mutual written agreement by the Parties;

17.3 Service Specification. They agreed to the following service specifications:

Particulars	From Commercial Operation Date	Increase from Sept. 26, 2017	Total Beginning Sept. 26, 2017
Contracted Demand (kW)	30,000	5,000	35,000
Contracted Energy (kWh)	262,800,000	43,800,000	306,600,000
Customer Load Factor	100 %		
Customer's Minimum Demand	At least 40% of customer's Contracted Demand		
Delivery Point	Plant Gate FDC MISAMIS's Power Plant		
Voltage at the Plant Gate	138kV		

17.4 Increase in Contracted Energy, Monthly Nominated Energy or Contracted Demand. Customer may request an increase to the Contracted Energy, monthly nominated energy or Contracted Demand of a particular Billing Period by delivery of written notice at

least sixty (60) days before the date on which such adjustment is proposed to take effect, setting out the reasons therefor;

- 17.5 Premium Charge for Excess Consumption. For consumption higher than the Contracted Energy and/or monthly nominated energy, Customer shall pay the Generation Charge applicable plus a Premium Charge of ten percent (10%);
- 17.6 Replacement Power In Excess of Outage Allowance. The Supplier shall exert best efforts to procure Replacement Power beyond the Outage Allowance. Notwithstanding any provision in this Agreement to the contrary, the Supplier has the right to source Replacement Power for the Customer from other current or future facilities of the Supplier or of any third party, including the WESM or its equivalent, at the sole election of the Supplier.
- 17.7 Generation Charge. FIBECO shall pay the generation charge consisting of variable and fixed charges, subject to adjustments. The generation charges for pre-commercial operation and during commercial operation are computed based on the Base Energy Rate (BER) computation as follows:

$$BER = (FC_{base} + VC_{base})/Energy$$

$$FC_{base} = (CRF^{kW}_{base} + PHP\ O\&M^{kW}_{base} + US\ O\&M^{kW}_{base}) * CD$$

Where:

$$CRF^{kW}_{base} = \text{PhP}1,924.48/kW$$

$$PHP\ O\&M^{kW}_{base} = \text{PhP}474.75/kW$$

$$US\ O\&M^{kW}_{base} = \text{PhP}30.64/kW$$

$$VC_{\text{base}} = [DCP_{\text{base}}] * [Forex_{\text{base}}] * [MCR] * [Energy] / \text{Conversion Factor}$$

Where:

$$DCP_{\text{base}} = \text{US\$72/MT}$$

$$Forex_{\text{base}} = \text{PhP41.12/US\$}$$

$$MCR = 0.70\text{kg/kWh}$$

$$\text{Energy} = 14,600,000 \text{ kWh}$$

$$\text{Conversion Factor} = 1,000 \text{ kg/MT}$$

- 17.8 Customer Failure to Off-take Power. If the Customer off-takes power less than the Contracted Energy and/or Contracted Demand, the Customer shall still pay the full Generation Charge for the Contracted Energy and/or Contracted Demand, and all applicable fees, charges and costs;
- 17.9 Transmission Fees, Ancillary Services Charges, Line Rental Charges, and WESM Costs. The Customer shall pay for Transmission Fees, Ancillary Services Charges, Line Rental Charges, and WESM Costs. All other transmission charges and market-related fees/charges that are not part of the generation charge shall be for the account of Customer;
- 17.10 Security Deposit. The Security Deposit shall be in an amount equivalent to one hundred percent (100%) of the projected highest monthly Power Bill for the first Contract Year of the Agreement;
- 17.11 Assignment. In all cases of valid assignment, the assignee shall assume all the rights and obligations of the assignor under this Agreement; and
- 17.12 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

18. In further support of the instant application, they submit to the Commission, the following documents:

Annex	Nature of Documents
A	EPPA between FIBECO and FDC MISAMIS
A-1	EPPA Amendment No. 1, dated June 21, 2013
A-2	EPPA Amendment No. 2, dated August 23, 2013
A-3	EPPA Amendment No. 3, dated December 11, 2013
B	FIBECO's Certificate of Franchise
C	FIBECO's Certificate of Registration
D	FIBECO's Articles of Incorporation
E	FDC MISAMIS's Certificate of Registration
E-1	Green Renewable Power Holdings, Incorporated's Certificate of Incorporation
E-2	Strong Field Energy Corporation's Certificate of Filing of Amended Articles of Incorporation
F	FDC MISAMIS's General Information Sheet (GIS)
G	FDC MISAMIS's latest Audited Financial Statements (AFS)
H	Certification from the Municipality of Maramag, Bukidnon for the receipt of Joint Application (including Annexes)
H-1	Certification from the Province of Bukidnon for the receipt of Joint Application (including Annexes)
I	Certification from the City of Makati for the receipt of Joint Application (including Annexes)
J	Copy of the Affidavit of Publication
J-1	Copies of Newspaper Publication of General circulation within the franchise area or area where FIBECO and FDC MISAMIS principally operate
K	PSALM's certification of insufficient capacity to supply Mindanao DUs
L	FIBECO's Actual and Forecasted Load Data from 2013-2028
M	FIBECO's Comparison of Various Offers from Generation Companies (in a sealed envelope)
N	Rate Impact Analysis
O	FIBECO's Board Resolution No. 117, Series of 2012
O-1	FIBECO's Board Resolution No. 062, Series of 2013
O-2	FIBECO's Board Resolution No. 108, Series of 2013

O-3	FIBECO's Board Resolution No. 187-B, Series of 2013
P	Sources of Funds/Financial Plans: <ul style="list-style-type: none">▪ Debt/Equity Ratio▪ Project Cost▪ Computation of Return on Investment/WACC (in a sealed envelope)
Q	Board of Investments (BOI) Certificate of Registration
R	FDC MISAMIS's Environmental Compliance Certificate (ECC)
S	FDC MISAMIS's Fuel Procurement Process (in a sealed envelope)
T	Land Bank of the Philippines's Certification – Indicative Key Terms and Conditions (in a sealed envelope)
U	Judicial Affidavit of Mr. Roderick Z. Fernandez

19. Pursuant to ERC Resolution No. 9, Series of 2010, FDC MISAMIS shall file the necessary application for a COC no later than (3) months prior to the commercial operations date of the 3 x 135 MW CFB coal-fired power plant;

Allegations in Support of the Motion for Confidential Treatment of Information

20. The 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.⁴ FIBECO and FDC MISAMIS 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.⁵ Accordingly, they request before the Commission that **Annexes "M", "P", "S", and "T"** 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 FDC MISAMIS, including trade secrets and business calculations, assumptions, and projections;

⁴ Rule 4 - Confidential Information, ERC Rules

⁵ Article 14 of the EPPA

Allegations in Support for the Issuance of Provisional Authority

21. The financing of the construction of the 3 x 135 MW CFB Coal-fired power plant requires, among others, the Commission's approved rate. The construction is, likewise, bound by contractual milestones, including the approval of the EPPA. A provisional approval of the EPPA with indicative rate, from the Commission will sufficiently merit evaluation from financial institutions, and potential investors. The positive evaluation of the power plant financials redounds to the timely declaration of commercial operation of the 3 x 135 MW CFB coal-fired power plant for a reliable supply of electric power in time to address supply deficiency in Mindanao. The judicial affidavit Mr. Roderick Z. Fernandez, FDC MISAMIS's Senior Manager for Business Development, is attached to the application to testify on the allegations made therein in connection with the prayer for issuance of provisional authority;
22. In order to allow FDC MISAMIS to be able to deliver and FIBECO to be able to receive power from the power plant as soon as it is commissioned, a provisional authority needs to be granted for the EPPA. The issuance of the provisional authority will allow FIBECO to charge and collect the respective fees enumerated in the EPPA as well as authorize it to pass on the full amount to its member- consumers;
23. Pursuant to the ERC rules of practice and procedures, the 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 them 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; and

Prayer

25. Thus, they pray that the Commission:
 - 25.1 Approve their duly negotiated EPPA;
 - 25.2 Issue an Order: 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;
 - 25.3 Issue an Order provisionally approving their EPPA and authorizing FIBECO to pass on the full amount of the fees and charges under the said EPPA to its member-consumers; and
 - 25.4 After trial on the merits, issue a permanent approval of their EPPA, as amended, which would authorize FIBECO to charge and collect the fees under the said EPPA as well as authorize FIBECO to pass on the full amount 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 **August 8, 2014 (Friday) at nine o'clock in the morning (9:00 A.M.) at FIBECO's Main Office, Anahawon, Maramag, Bukidnon.**

FIBECO and FDC MISAMIS 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 FIBECO'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 City and Municipalities within FIBECO's franchise area and the Provincial Governors of Bukidnon and Lanao del Sur for the appropriate posting thereof on their respective bulletin boards.

FIBECO and FDC MISAMIS 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, FIBECO and FDC MISAMIS 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 Governors 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.

FIBECO and FDC MISAMIS 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 FIBECO and FDC MISAMIS 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, FIBECO and FDC MISAMIS 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, July 7, 2014.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ZENAIDA G. CRUZ-DUCUT
Chairperson *pw*

Copy Furnished:

1. **Quaison Makalintal Barot Torres Ibarra and Sison**
Counsel for FIBECO and FDC MISAMIS
21st Floor, Robinsons-Equitable Tower,
4 ADB Avenue corner Poveda Street, Pasig City 1605
2. **First Bukidnon Electric Cooperative, Inc. (FIBECO)**
Anahawon, Maramag, Bukidnon
3. **FDC Misamis Power Corporation (FDC MISAMIS)**
23rd Floor, PBCom Tower, 6795 Ayala Avenue
corner V.A. Rufino St., Makati 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 Municipal Mayor**
Maramag, Bukidnon
9. **Office of the Municipal Mayor**
Quezon , Bukidnon
10. **Office of the Municipal Mayor**
Don Carlos, Bukidnon
11. **Office of the Municipal Mayor**
Kitaotao, Bukidnon
12. **Office of the Municipal Mayor**
Dangcagan, Bukidnon

13. **Office of the Municipal Mayor**
Kibawe, Bukidnon
14. **Office of the Municipal Mayor**
Damulog, Bukidnon
15. **Office of the Municipal Mayor**
Kadingilan, Bukidnon
16. **Office of the Municipal Mayor**
Kalilangan, Bukidnon
17. **Office of the Municipal Mayor**
Pangantucan, Bukidnon
18. **Office of the City Mayor**
City of Valencia, Bukidnon
19. **Office of the Municipal Mayor**
San Fernando, Bukidnon
20. **Office of the Municipal Mayor**
Wao, Lanao del Sur
21. **Office of the Governor**
Province of Bukidnon
22. **Office of the Governor**
Province of Lanao del Sur
23. **Philippine Chamber of Commerce and Industry (PCCI)**
3rd Floor, ECC Building, Sen. Gil Puyat Ave., Makati City