

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



**IN THE MATTER OF THE
APPLICATION FOR THE APPROVAL
OF THE POWER SUPPLY
AGREEMENT BETWEEN MISAMIS
OCCIDENTAL II ELECTRIC
COOPERATIVE, INC. (MOELCI II) AND
KING ENERGY GENERATION, INC.
(KEGI) WITH MOTION FOR THE
ISSUANCE OF PROVISIONAL
AUTHORITY**

ERC CASE NO. 2014-078 RC

**MISAMIS OCCIDENTAL II ELECTRIC
COOPERATIVE, INC. (MOELCI II) AND
KING ENERGY GENERATION, INC.
(KEGI),**

Applicants.

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DOCKETED
Date: JUL 08 2014
By: *M*

ORDER

On June 6, 2014, Misamis Occidental II Electric Cooperative, Inc. (MOELCI II) filed an application for the approval of its Power Supply Agreement (PSA) with King Energy Generation, Inc. (KEGI), with motion for the issuance of provisional authority.

In the said application, MOELCI II alleged, among others, that:

1. It is a non-stock, non-profit, service oriented electric cooperative organized and existing under and by virtue of the National Electrification Administration Act (R.A. 6038), as amended by Presidential Decree No. 269, with office address at Circumferential Road, Bitoon, Ozamiz City;
2. It has an exclusive franchise to distribute electricity in its area of coverage in the Province of Misamis Occidental, which encompasses Ozamis City, Tangub City, Bonifacio, Jimenez, Sinacaban, Clarin, Panaon and Tudela;

3. KEGI is a generation company duly organized and existing under and by virtue of the laws of the Republic of the Philippines. It has its principal office at the G/F Divine Savior Building, 102 Juan Luna St., Davao City;
4. It is filing the instant Application for the approval of their PSA with a Motion for Provisional Authority pursuant to Rules 20 (B) and 14 of the ERC Rules of Practice and Procedure;

**COMPLIANCE WITH THE PRE-FILING REQUIREMENTS
RULE 6, ERC RULES**

5. In compliance with Rule 6 of the Commission's Rules of Practice and Procedure (ERCPP), it has furnished the legislative bodies of each of the local government units where it principally operates a copy of the instant application with all its annexes and accompanying documents. Proofs of receipt by the legislative bodies of Ozamis City and the Province of Misamis Occidental are attached to the instant application;
6. It caused the publication of the present application in its entirety in a newspaper of general circulation within the Franchise Area;

STATEMENT OF THE FACTS

7. The power supply environment in Mindanao, specifically within its franchise area, is in critical condition and this situation persists up to the present;
8. This predicament is expected to worsen because Republic Act No. 9136 mandates the privatization of National Power Corporation's (NPC) generation assets and prohibits NPC from investing in new generation capacity. This is the underlying cause for the failure of the Power Sector Assets and Liabilities Corporation (PSALM) to supply its additional power requirements;
9. Aggravating said dire situation, is the impending termination of the PSA it executed with TMI AND NPC/PSALM in the years 2015 and 2016, respectively. Copy of its Power Supply Outlook, Power Supply Outlook together with KEGI, Ten (10) years forecasted data and Historical Data are attached to the instant application;

10. Due to this severe shortage of power supply and to ensure the continued supply of power within its franchise area upon the expiry of its power supply contracts with NPC/PSALM and TMI, the former was constrained to secure additional power supply from available suppliers;
11. In order to create a viable demand for its additional energy it, together with MOELCI I, decided to pool their requirements. Due to this substantial demand for energy, KEGI was convinced of the viability of constructing a power plant to serve its energy need. In turn, it agreed to procure additional energy from KEGI due to its proven track record as a generation company, hence, it entry into the instant PSA;
12. The proposed PSA is consistent with the Power Development Plan (PDP) of the Department of Energy (DOE), for the "very reason that the said production capacity is within its Distribution Development Plan (DDP). Copies of the DDP and Certificate of Endorsement from the DOE are attached to the instant application;

**THE POWER SUPPLY AGREEMENT (PSA)-
MATERIAL PROVISIONS AND RELATED INFORMATION**

13. **Term.** The PSA shall remain in force for a period of ten (10) years counted from the Closing Date, defined as the date when the SUPPLIER shall commence delivery of the contracted capacity and energy to the customer;
14. **Rates Schedule.** The contract rate schedules are specified in Annex "B" of the PSA attached to the instant application;
15. The Basic Electricity Fee components are the following:

Capacity Fee (CF) = PhP1,273/kw/month
Fixed O&M Fee (FOM) = PhP188.54/kw/month
Billing Capacity (BC) = 10,000 kW
Variable O&M = PhP0.6780/kwh
Number of Hours per day= 8 hours
16. The Contract Energy Fee (CEF) shall be composed of the Fixed Charge (FC) and Variable Charge (VC).

$$CEF=FC+VC$$

$$FC= (CF+ FOM \times IFf) \times BC$$

$$VC= (VOM \times IFv +FL) \times ED$$

Where:

BC= Billing Capacity in KW

FC= Fixed charge per month in PhP

VC= Variable charge per month in PhP

ED= Energy delivered in kWh

CEF= Contract Energy Fee in PhP

VOM= Variable charge per month in PhP/kWh

CF= Capacity Fee in PhP/kW/month

FOM=Fixed O&M Fee in PhP/kW/month

IFf= Inflation factor fixed

IFv=Inflation factor variable

FL=Fuel and Lube oil in PhP/kWh (Pass through subject to heat rate schedule)

17. The basic electricity fees shall cover an operation of up to eight (8) hours per day. In excess of that, an Additional Energy Fee shall be charged.

$$\begin{aligned} \text{AEF} &= \text{AC} \times \text{BC} \times h + (\text{VOM} + \text{FL}) \times \text{EE} \\ &= 0.78 \times \text{BC} \times h + (\text{VOM} + \text{FL}) \times \text{EE} \end{aligned}$$

Where:

AEF= Additional Energy Fees in PhP

BC= Billing Capacity, as previously defined

h = Excess hours per day

VOM= Variable O&M, as previously defined

FL= Fuel and Lube oil, as previously defined (pass on to consumers)

EE= Energy delivered in excess of eight (8) hours per day

AC= Additional cost (0.78PhP/kw/h) in excess of eight (8) running hours per day

Copy of the Computation of the Additional Energy Fee in Excess of Eight (8) Running Hours per day is attached to the instant application;

18. **Plant Description.** KEGI will be constructing a 15.6 MW Power Plant in Brgy. Map-an, Panaon, Misamis Occidental which will run on two (2) 18V32 diesel engines. Copy of the General Plant Description is attached to the instant application;
19. **Return on Investment (ROI).** KEGI will be investing PhP1,326,220,069.79 with an ROI of 15.85% and Weighted Average Cost of Capital (WACC) of 15%. Copy of the Project Detailed Cost, Projected Financial and Economic Analysis, Power Plant Economic Feasibility Study and Cash Flow,

Operation and Maintenance Cost Analysis and Wartsila Proposal for Operations and Maintenance Services are attached to the instant application;

20. **Debt-Equity Ratio.** The project will be funded through loans and equity. The indicative debt-equity ratio for the project is 30:70 representing debt of PhP397,866,021 and equity of PhP928,354,049;
21. **Amortization.** The loan will be amortized at an interest rate of 9% per annum. A copy of the computation and the Banco de Oro letter is attached to the instant application;
22. **Security Deposit.** A security deposit at an amount equivalent to one month of the sum of the average monthly Capacity fee, Fixed and Variable O&M Fees and Fuel Cost Recovery Fee of the buyer shall be posted by the CUSTOMER in the form of a (1) manager's check or (2) cashier's check from a bank or other financial institutions acceptable to the SUPPLIER on or prior to the Closing Date. CUSTOMER may, if it chooses to do so, furnish a Security Deposit in the form of cash;
23. **Environmental Compliance Certificate.** The proposed power plant was issued ECC No. ECC-R10-1310-0249 on November 13, 2013. A copy of said ECC is attached to the instant application;
24. **Rate Impact.** The rate impact of the instant PSA on its blended cost would be an increase of PhP1.7383/kWh. Copy of the Sample Computation of the Purchase Power Rate and Rate Impact are attached to the instant application;

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

It re-pleads the foregoing allegations and further state that:

25. Due to the present power supply situation in Mindanao, specifically within its franchise area, there is paramount relevance and urgent need for additional energy and generating capacity;
26. To prevent delay in the implementation of the PSA, a provisional authority is prayed for considering that it is necessary to address the immediate need for additional power supply within its franchise area;

27. An affidavit of merit in support of the prayer for provisional authority is attached to the instant application;
28. Public interest therefore compels the immediate issuance of a provisional authority, subject to a final authority that may be subsequently issued by the Commission; and
29. Thus, it prays that:
 - a. Upon filing of the instant Application, and pending hearing thereon, an Order be issued: (1) granting **PROVISIONAL AUTHORITY** for the urgent implementation of the provisions of the PSA; and
 - b. After hearing on the merits, a Decision be rendered issuing a **PERMANENT APPROVAL** of the said PSA, including the rates set forth therein.

On June 10, 2014, KEGI filed a "Motion to Join King Energy Generation, Inc. as Co-applicant in the instant application for Approval of Power Supply Agreement with entry of appearance".

In the said motion, KEGI alleged, among others, the following:

- a. After MOELCI II's compliance with the publication requirements, it was informed that the Commission resolved to require that applications for approval of PSA be jointly filed by Distribution Utilities and Generation Company who entered into said PSA. MOELCI II informed KEGI of said requirement; and
- b. In deference to the said mandate of the Commission, KEGI as energy supplier/generation company resolved to be included in the instant application as joint applicant together with MOELCI II.

Finding the said motion meritorious, the same is hereby granted. Accordingly, KEGI is hereby considered as a co-applicant in the instant application.

Likewise, 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 **July 31, 2014 (Thursday) at ten o' clock in the morning (10:00 A.M.) at the MOELCI II's Principal Office, Circumferential Road, Bitoon, Ozamis City.**

MOELCI II and KEGI 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 its franchise area, by any other means available and appropriate, of the filing of the instant application, its 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 Provincial Governor of Misamis Occidental and the Mayors of the Cities and Municipalities within the franchise area of MOELCI II for the appropriate posting thereof on their respective bulletin boards.

MOELCI II and KEGI 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, MOELCI II and KEGI 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.

MOELCI II, KEGI 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 MOELCI II and KEGI 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, MOELCI II and KEGI 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, June 30, 2014.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ZENAIDA G. CRUZ-DUCUT
Chairperson

Copy Furnished:

1. **ATTY. CECILIA R. LAYUG**
Counsel for MORESCO II
Unit 2904, One San Miguel Building
San Miguel Avenue corner Shaw Boulevard
Ortigas Center, Pasig City, Metro Manila
2. **Kings Energy Generation, Inc.**
G/F Divine Savior Building, 102 Juan Luna St.,
Davao City
3. **Misamis Occidental II Electric Cooperative, Inc. (MOELCI II)**
Circumferential Road, Bitoon,
Ozamis City
4. **Office of the Solicitor General**
134 Amorsolo Street, Legaspi Village
Makati City, Metro Manila
5. **Commission on Audit**
Commonwealth Avenue
Quezon City, Metro Manila
6. **Senate Committee on Energy**
GSIS Bldg. Roxas Blvd., Pasay City
Metro Manila
7. **House Committee on Energy**
Batasan Hills, Quezon City, Metro Manila
8. **Office of the Governor**
Province of Misamis Occidental
9. **Office of the City Mayor**
Ozamis, Misamis Occidental
10. **Office of the City Mayor**
Tangub, Misamis Occidental
11. **Office of the Municipal Mayor**
Bonifacio, Misamis Occidental
12. **Office of the Municipal Mayor**
Clarin, Misamis Occidental
13. **Office of the Municipal Mayor**
Tudela, Misamis Occidental
14. **Office of the Municipal Mayor**
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15. **Office of the Municipal Mayor**
Jimenez, Misamis Occidental
16. **Office of the Municipal Mayor**
Panaon, Misamis Occidental