

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 I ELECTRIC
COOPERATIVE, INC. (MOELCI I) AND
KING ENERGY GENERATION, INC.
(KEGI) WITH MOTION FOR THE
ISSUANCE OF PROVISIONAL
AUTHORITY

ERC CASE NO. 2014-077 RC

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

Applicants.

X-----X

BOOKETED
Date: JUL 08 2014
By: *[Signature]*

ORDER

On June 6, 2014, Misamis Occidental I Electric Cooperative, Inc. (MOELCI I) 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 I, alleged, among others, that:

1. It is an electric cooperative duly organized and existing under and by virtue of Presidential Decree No. 269 (PD No. 269), as amended, otherwise known as the National Electrification Administration Decree, with principal office at Magcamiguing, Calamba, Misamis Occidental;
2. It is the exclusive franchise holder issued by the National Electrification Administration (NEA) to operate an electric light and power distribution service in the City of Oroquieta and the Municipalities of Aloran, Lopez Jaena, Plaridel, Calamba, Baliangao, Sapang Dalaga and Concepcion, all in the Province of Misamis Occidental;

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. A copy of the PSA is attached to the instant application;

**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 its principally operates a copy of the instant application with all its annexes and accompanying documents;
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. There exists a Mindanao-wide power supply shortage. This has resulted in significant power interruptions and rotating brownouts of several hours, which has been felt within its franchise area;
8. This situation is bound to worsen because of the mandate under Republic Act No. 9136 (Electric Power Industry Reform Act of 2001 or EPIRA) to privatize National Power Corporation (NPC) generation assets and to prohibit the same from investing in new generation capacity;
9. It faces an aggravated power supply deficiency situation. In the recent Contract for the Supply has Electric Energy (CSEE) with Power Sector Assets and Liabilities Management Corporation (PSALM), the latter committed significantly reduced average contract energy of 2,329 MWh/month for the period December 26 2012 to December 25, 2016. This new average contract energy is an alarming thirty percent (30%) reduction in the power supplied to it by PSALM;

10. Furthermore, PSALM had confirmed that it does not have sufficient capacity to supply its additional power requirements. PSALM cannot supply beyond the contracted energy and equivalent demand stipulated in the recent CSEE;
11. The energy requirement within its franchise area is expected to significantly increase in the future. A copy of its Historical and Forecasted Energy Purchase and Demand is attached to the instant application;
12. Its existing contracted demand from Therma Marine Inc. (TMI) is 2,000 kW. This is far from being sufficient to meet the energy requirement of its customers. A copy of its Distribution Development Plan is attached to the instant application;
13. While the power shortage continues to press in the island of Mindanao, there exists a scarcity of electricity suppliers. Accordingly, it was impelled to execute a contract for power supply with a generator of a proven track record;
14. In order to create a viable demand for additional energy, It, together with and Misamis Occidental II Electric Cooperative, Inc. MOELCI II decided to pool their requirements. The substantial demand for energy had KEGI convinced of the viability of constructing a power plant;
15. In turn, it agreed to procure additional energy from KEGI, hence the instant PSA;
16. The instant 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 the its Distribution Development Plan". A copy of the Certification is attached to the instant application;

THE POWER SUPPLY AGREEMENT MATERIAL PROVISIONS AND RELATED INFORMATION

17. **Executive Summary.** KEGI shall supply it electricity, with a contract demand of 3.76 MW. Under the PSA, KEGI has the option, to source an alternative supply from its own back-up facility and/or any third party to supply all or a part the Contract

Energy. On the other hand, it has the option to have its unused contracted energy re-marketed (sold) to other power customer. A copy of the Executive Summary 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. A copy of the General Plan Description is attached to the instant application;
19. **Term.** The PSA shall remain in force and effect for a period of ten (10) years counted from the Closing Date, defined in Schedule 1 of the PSA;
20. **Rates Schedule.** The contract rate is specified in Annex "B" of the PSA;
21. The Contract Energy Fee (CEF) shall be composed of the Fixed Charge (FC) and the Variable Charge (VC).

$$\underline{\text{CEF}} = \text{Contract Energy Fee in Php} = \text{FC} + \text{VC}$$

$$\underline{\text{FC}} = \text{Fixed Charge per month in Php} \\ = (\text{CF} + \text{FOM} \times \text{IFf}) \times \text{BC}$$

$$\begin{aligned} \text{CF} &= \text{Capacity Fee} = \text{PhP } 1,273/\text{kW}/\text{month} \\ \text{FOM} &= \text{Fixed O\&M Fee} = \text{PhP } 188.54/\text{kW}/\text{month} \\ \text{IFf} &= \text{Inflation Factor fixed} = \text{P CPI m} / \text{P CPI b} \\ \text{P CPI m} &= \text{Philippine CPI of the current billing month} \\ \text{P CPI b} &= \text{Philippine CPI of the effectivity month of the PSA} \\ \text{BC} &= \text{Billing Capacity in kW} = 3,760\text{kW} \end{aligned}$$

$$\underline{\text{VC}} = \text{Variable Charge per month in PhP} \\ = (\text{VOM} \times \text{IFv} + \text{FL}) \times \text{ED}$$

$$\begin{aligned} \text{VOM} &= \text{Variable O\&M per month} = \text{PhP } 0.6870/\text{kWh} \\ \text{IFv} &= \text{Inflation Factor Variable} \\ &= 0.0086 + 0.0129 \times (\text{PCPI m} / \text{PCPI b}) + 0.9784 \times (\text{PEX m} / \text{PEX b}) \\ \text{P CPI m} &= \text{Philippine CPI of the current billing month} \\ \text{P CPI b} &= \text{Philippine CPI of the effectivity month of the PSA} \\ \text{PEX m} &= \text{Philippine Peso to EURO exchange rate at the end of the} \\ &\quad \text{current billing month} \end{aligned}$$

- P EX b = Philippine Peso to EURO exchange rate on the effectivity month of the PSA
FL = Fuel and Lube oil in PhP/kWh (Pass through subject to heat rate schedule)
ED = Energy delivered in kWh

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

$$\text{AEF} = \text{Additional Energy Fee in PhP} \\ = AC \times BC \times h + (\text{VOM} + \text{FL}) \times \text{FEE}$$

- AC = Additional Cost = .078 PhP/kWh
BC = Billing Capacity, as defined above
h = Hours in excess of eight (8) hours
VOM = Variable O&M per month as defined above
FL = Fuel and Lube oil in PhP/kWh, as defined above
EE = Energy delivered in Excess of eight (8) hours

23. **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 shall be posted by it in the form of manager' check, cashier's check or cash;

24. **Return in Investment.** KEGI will be investing PhP1,326,220,069.79. This represents a project cost of PhP1,275,539,505.00 and working capital Php50,680,564.00. 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;

25. **Debt-Equity Ratio.** The project will be funded through loans and equity. The indicative debt-equity ratio for the Project is 70:30 representing the equity of PhP928,354,049.00 and a loan of PhP397,866,020.94;

26. **Loan Amortization.** The loan will be amortized at an interest rate of nine percent 9%;

- 27. **WACC.** The return on equity sought is 18%, giving the project a Weighted Average Cost of Capital (WACC) of 15.30%;
- 28. **Environmental Compliance Certificate (ECC).** The proposed plant was issued ECC No. ECC-R10-1310-0249 on 13 November 2013. A copy of the certificate is attached to the instant application;
- 29. **Rate Impact.** The average rate impact of the instant PSA on its blended cost results to a decrease in PhP0.25/kWh.

SCENARIO 1	SCENARIO 2	SCENARIO 3	Generation Cost Increase/Decrease	Rate Impact between Scenario
CURRENT GENERATION MIX	REDUCED NPC/PSALM & INCREASE TMI BARGE TO COVER DEFICIT	REDUCED NPC/PSALM & MAINTAIN TMI BARGE & KEGI TO COVER DEFICIT		
(PhP/kWh)	(PhP/kWh)	(PhP/kWh)	(PhP/kWh)	(PhP/kWh)
3.61	5.42	5.17	1.56	(0.25)

ALLEGATIONS IN SUPPORT OF THE PRAYER FOR PROVISIONAL AUTHORITY

It repleads the foregoing allegations and further states that:

- 30. It has an urgent and pressing need for an additional generating capacity;
- 31. The immediate implementation of the PSA will significantly benefit its customers, reducing the power interruptions and electricity rationing that they currently have to deal with;
- 32. An affidavit of merit in support of the prayer for provisional authority is attached to the instant application;
- 33. 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
- 34. 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 I'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 I informed KEGI of said requirement.
- 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 I.

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 30, 2014 (Wednesday) at ten o'clock in the morning (10:00 A.M.) at the MOELCI I's Principal Office, Magcamiguing, Calamba, Misamis Occidental.**

MOELCI I 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 MOELCI I'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 Provincial Governor of Misamis Occidental and the Mayors of the City and Municipalities within the franchise area of MOELCI I for the appropriate posting thereof on their respective bulletin boards.

MOELCI I 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 I 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 I, 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 I 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 I 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. **Misamis Occidental I Electric Cooperative, Inc. (MOELCI I)**
Magcamiguing, Calamba,
Misamis Occidental
2. **ATTY. CECILIA R. LAYUG**
Counsel for King Energy Generation, Inc. (KEGI)
Unit 2904, One San Miguel Building
San Miguel Avenue corner Shaw Boulevard
Ortigas Center, Pasig City, Metro Manila
3. **Office of the Solicitor General (OSG)**
134 Amorsolo Street, Legaspi Village,
City of Makati 1229
4. **Commission on Audit (COA)**
Commonwealth Avenue,
Quezon City 1121
5. **Senate Committee on Energy**
GSIS Building, Roxas Boulevard,
Pasay City 1300
6. **House of Representatives Committee on Energy**
Batasan Hills, Quezon City 1126
7. **The Office of the Governor**
Province of Misamis Occidental
8. **The Office of the City Mayor**
Oroquieta, Misamis Occidental
9. **The Office of the Municipal Mayor**
Aloran, Misamis Occidental
10. **The Office of the Municipal Mayor**
Lopez Jaena, Misamis Occidental
11. **The Office of the Municipal Mayor**
Plaridel, Misamis Occidental
12. **The Office of the Municipal Mayor**
Calamba, Misamis Occidental
13. **The Office of the Municipal Mayor**
Baliangao, Misamis Occidental
14. **The Office of the Municipal Mayor**
Sapang Dalaga, Misamis Occidental
15. **The Office of the Municipal Mayor**
Concepcion, Misamis Occidental