

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



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

ERC CASE NO. 2014-152 RC

BUKIDNON SECOND ELECTRIC COOPERATIVE, INCORPORATED (BUSECO) AND FDC MISAMIS POWER CORPORATION (FDC MISAMIS),

Applicants.

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DOCKETED
Date: NOV 07 2014
By: [Signature]

ORDER

On October 7, 2014, Bukidnon Second Electric Cooperative, Incorporated (BUSECO) and FDC Misamis Power Corporation (FDC MISAMIS) filed an application for approval of their Electric Power Purchase Agreement (EPPA).

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

The Nature of the Application

1. The instant application is submitted to the Commission for its due consideration and approval of the EPPA executed by and between BUSECO and FDC MISAMIS, pursuant to Rule 20(B) of the Commission's Rules of Practice and

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

The Applicants

2. BUSECO was created pursuant to the provisions of Republic Act No. 6038 [the National Electrification Administration (NEA) Act], as amended by Presidential Decree No. 269. Pursuant to this decree, it was incorporated and registered with the NEA on July 26, 1977, with principal office at Manolo Fortich, Bukidnon. It serves the power requirements of the City of Malaybalay and the Municipalities of Baungon, Cabanglasan, Impasug-ong, Lantapan, Libona, Malitbog, Manolo Fortich, Sumilao and Talakag, and in Barangay Lilingayon of Valencia City, all in the Province of Bukidnon;
3. FDC MISAMIS is a corporation duly organized and existing under the Philippine Laws, with principal office address at 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 a 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 application for approval of the EPPA, copies of the instant application (including Annexes) were furnished to the respective legislative bodies of the Municipality of Manolo Fortich, and the Province of Bukidnon, where BUSECO principally operates;
5. Likewise, a copy of the instant application (including Annexes) was furnished to the Legislative Body of the City of Makati where FDC MISAMIS principally operates;

¹ ERC Resolution No. 38, Series of 2006

6. The entire application, excluding the Annexes, was published in a newspaper of general circulation within the franchise area or area where BUSECO and FDC MISAMIS principally operate;

BUSECO 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. BUSECO currently sources bulk of its electricity requirements from the Power Sector Assets and Liabilities Management Corporation (PSALM) and the remainder from Therma Marine, Incorporated (TMI). PSALM and BUSECO executed a Contract for the Supply of Electric Energy (CSEE) which is effective from December 26, 2012 to December 25, 2016. However, PSALM confirmed that it has insufficient capacity to supply the additional power requirements of Mindanao distribution utilities beyond the contracted energy and equivalent demand in its existing CSEEs. On March 5, 2012, BUSECO entered into an Energy Supply Agreement (ESA) with TMI for the supply of 5 MW. The said ESA was approved by the commission in its Decision dated November 26, 2012 and will expire on May 17, 2015;
9. It is expected that the energy requirements of BUSECO's member-consumers will significantly increase in the next few years as demonstrated in its Actual and Forecasted Load Data and Distribution Plan;
10. Given its demand growth and in order to obtain a secure and adequate supply of electricity for its member-consumers during this time, BUSECO 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;

11. FDC MISAMIS is committed to construct a 405 MW Coal-Fired Power Plant in the PHIVIDEC Industrial Estate in Misamis Oriental. The power plant is scheduled to be commissioned in 2016;
12. BUSECO procurement was done through a competitive negotiated purchase considering that at the time of the procurement, only FDC MISAMIS submitted a tender after a notice has been served to different prospective power providers;
13. BUSECO 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, taking into consideration the reduced supply from PSALM and the expected commercial operation of FDC MISAMIS, to wit:

July 2014 with FDC MISAMIS	PhP3.9890/kWh
July 2014 without FDC MISAMIS	PhP3.5686/kWh
Rate Impact	PhP0.4204/kWh

The EPPA

14. After extensive negotiations with FDC MISAMIS, BUSECO signed on June 25, 2013, an EPPA with FDC MISAMIS for a contracted demand of 2 MW for fifteen (15) years. On November 29, 2013, BUSECO signed an Amendment Agreement with FDC MISAMIS amending, among others, the contracted demand of 2 MW to 8 MW;

Executive Summary

15. 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

16. The EPPA contains the following salient terms and conditions:

a. 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;

b. Term. The Term of the EPPA shall be fifteen (15) 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;

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

Contracted Demand	8,000 kW
Contracted Energy	70,080,000 kWh
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	138 kV

d. 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;

- e. 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%);
- f. 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;
- g. Generation Charge. BUSECO 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:

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

$$FC_{base} = (CRF_{base}^{kW} + PHP\ O\&M_{base}^{kW} + US\ O\&M_{base}^{kW}) * CD$$

Where:

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

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

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

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

Where:

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

$Forex_{base} = PHP 41.12/US\$$

$MCR = 0.70kg/kWh$

Conversion Factor = 1,000 kg/MT

- h. 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;
- i. 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;
- j. 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;
- k. Assignment. In all cases of valid assignment, the assignee shall assume all the rights and obligations of the assignor under this Agreement; and
- l. 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

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

Annex	Nature of Documents
A	EPPA between BUSECO and FDC MISAMIS dated June 25, 2013
A-1	EPPA Amendment No. 1 dated November 29, 2013
B	BUSECO Certificate of Franchise
C	BUSECO Certificate of Registration
D	BUSECO Articles of Incorporation
E	FDC MISAMIS 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 General Information Sheet (GIS)
G	FDC MISAMIS latest Audited Financial Statements (AFS)
H	Certification from the Legislative Body of the Municipality of Manolo Fortich, Province of Bukidnon for the receipt of Joint Application (including Annexes)
H-1	Certification from the Legislative Body of the Province of Bukidnon for the receipt of Joint Application (including Annexes)
I	Certification from the Legislative Body of the City of Makati for the receipt of Joint Application (including Annexes)
J	Copy of the affidavit of publication
J-1	Copies of newspaper publications of general circulation within the franchise area or area where BUSECO and FDC MISAMIS principally operate
K	PSALM certification of insufficient capacity to supply Mindanao Distribution Utilities
L	BUSECO Actual and Forecasted Load Data from 2013-2040
M	BUSECO Distribution Development Plan (DDP) for 2013

N	Rate Impact Analysis
O	BUSECO Board Resolution No. 13-08-86
O-1	BUSECO Board Resolution No. 13-11-129
P	Sources of Funds/Financial Plans; Debt/Equity Ratio; Project Cost; and Computation of Return on Investment/Weighted Average Cost of Capital (WACC) (in a sealed envelope)
Q	FDC MISAMIS Board of Investments (BOI) Certificate of Registration
R	FDC MISAMIS Environmental Compliance Certificate (ECC)
S	FDC MISAMIS Fuel Procurement Process (in a sealed envelope)
T	Land Bank of the Philippines (LBP) Certification – Indicative Key Terms and Conditions (in a sealed envelope)

18. 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

19. 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 BUSECO 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 "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; and

⁴ Rule 4 - Confidential Information, ERC Rules

⁵ Article 14 of the EPPA

Prayer

20. Thus, they pray that the Commission:

20.1 Approve their duly negotiated EPPA;

20.2 Issue an Order: a) treating Annexes and the information contained therein as confidential; b) directing their non-disclosure pursuant to Rule 4 of ERC Rules; and c) prescribing the guidelines for the protection thereof; and

20.3 After trial on the merits, issue a permanent approval of their EPPA which would authorize BUSECO to charge and collect the fees under the same as well as 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 **November 26, 2014 (Wednesday) at nine o'clock in the morning (9:00 A.M.) at BUSECO's Main Office, Manolo Fortich, Bukidnon.**

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

BUSECO 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, BUSECO 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 Governor 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.

BUSECO 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 BUSECO 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, BUSECO 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, November 3, 2014.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ZENAIDA G. CRUZ-DUCUT
Chairperson *gmc*



Copy Furnished:

1. **Quiason Makalintal Barot Torres Ibarra and Sison**
Counsel for BUSECO
21st Floor, Robinsons-Equitable Tower, 4 ADB Avenue
corner Poveda St., Ortigas Center, Pasig City
2. **Atty. Renato R. Vehemente**
Counsel for FDC MISAMIS
23rd Floor, PBCom Tower, 6795 Ayala Avenue
corner V.A. Rufino St., Makati City
3. **Bukidnon Second Electric Cooperative, Inc. (BUSECO)**
Manolo Fortich, Bukidnon
4. **FDC Misamis Power Corporation (FDC MISAMIS)**
23rd Floor, PBCom Tower, 6795 Ayala Avenue
corner 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 City Mayor**
Malaybalay City, Bukidnon
10. **Office of the City Mayor**
Valencia City, Bukidnon
11. **Office of the Municipal Mayor**
Baungon, Bukidnon

12. **Office of the Municipal Mayor**
Cabanglasan, Bukidnon
13. **Office of the Municipal Mayor**
Impasug-ong, Bukidnon
14. **Office of the Municipal Mayor**
Lantapan, Bukidnon
15. **Office of the Municipal Mayor**
Libona, Bukidnon
16. **Office of the Municipal Mayor**
Malitbog, Bukidnon
17. **Office of the Municipal Mayor**
Manolo Fortich, Bukidnon
18. **Office of the Municipal Mayor**
Sumilao, Bukidnon
19. **Office of the Municipal Mayor**
Talakag, Bukidnon
20. **Office of the Governor**
Province of Bukidnon
21. **Philippine Chamber of Commerce and Industry (PCCI)**
3rd Floor, ECC Building, Sen. Gil Puyat Ave., Makati City