

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 NEGROS OCCIDENTAL ELECTRIC COOPERATIVE, INCORPORATED (NOCECO) AND FDC UTILITIES, INCORPORATED (FDCUI), WITH PRAYER FOR THE ISSUANCE OF PROVISIONAL AUTHORITY

ERC CASE NO. 2014-176 RC

NEGROS OCCIDENTAL  
ELECTRIC COOPERATIVE,  
INCORPORATED (NOCECO) AND  
FDC UTILITIES, INCORPORATED  
(FDCUI),

Applicants.

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DOCKETED  
Date: JAN 22 2015  
By: [Signature]

## ORDER

On December 5, 2014, Negros Occidental Electric Cooperative, Incorporated (NOCECO) and FDC Utilities, Incorporated (FDCUI) 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, NOCECO and FDCUI 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 NOCECO and FDCUI, pursuant to Rule

20(B) of the ERC's Rules of Practice and Procedure (the ERC Rules)<sup>1</sup> and other pertinent rules and regulations;

### **The Applicants**

2. NOCECO was created pursuant to the provisions of Republic Act No. 6038 or the National Electrification Administration (NEA) Act, as amended by Presidential Decree No. 269. Pursuant to this Decree, it was incorporated and registered on February 25, 1978 with principal office at Kabankalan City, Negros Occidental. It serves the power requirements of the Cities of Kabankalan, La Carlota and Sipalay, and the Municipalities of Binalbagan, Candoni, Cauayan, Himamaylan, Hinigaran, Hinoba-an, Ilog, Isabela, La Castellana, Moises Padilla, Pontevedra, Pulpandan, San Enrique, and Vallodolid, all in the province of Negros Occidental (Franchsie Area). On March 22, 2010, it was registered with the Cooperative Development Authority (CDA) pursuant to Republic Act No. 9520, otherwise known as the Philippine Cooperative Code of 2008;
3. FDCUI is a corporation duly organized and existing under the Philippine Laws, with principal office address at the 23<sup>rd</sup> Floor PBCOM Tower, 6795 Ayala Avenue corner V.A. Rufino St., Makati City. It was formerly known and registered under the name ALG Renewable Energy Holdings, Incorporated. It is a wholly owned subsidiary of Filinvest Development Corporation (FDC);

### **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 joint application (including annexes) were furnished to the respective legislative bodies of the City of Kabankalan and the Province of Negros Occidental, where NOCECO principally operates;
5. Likewise, a copy of the joint application (including annexes) was furnished to the City of Makati where FDCUI principally operates;

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<sup>1</sup> ERC Resolution No. 38, Series of 2006

6. The entire joint application (excluding annexes) was published in a newspaper of general circulation within the areas where NOCECO and FDCUI principally operate

#### **NOCECO's Power Situation**

7. NOCECO currently sources bulk of its electricity requirements from Kepco-Salcon Power Corporation (KSPC), Green Core Geothermal, Incorporated (GCGI) and the Wholesale Electricity Spot Market (WESM);
8. To ensure continuous supply and security of electricity within its franchise area, NOCECO signed with FDCUI on October 28, 2014, an EPPA for a contracted demand of 4 MW for 1.5 years from December 26, 2014 to June 25, 2016. The power requirements for NOCECO shall be sourced from the Unified Leyte Geothermal Power Plant (ULGPP) Output administered by FDCUI;
9. NOCECO has forecasted and simulated the effect of the inclusion of the power supplied by FDCUI from the Output of the ULGPP, taking into consideration the reduced supply from the Power Sector Assets and Liabilities Management Corporation (PSALM), to wit:

September 2015 Rate with FDCUI – ULGPP	PhP5.0655/kWh
September 2015 without FDCUI – ULGPP	PhP5.3171/kWh
<b>Rate Impact</b>	<b>(PhP0.2516/kWh)</b>

#### **The Selection of an Independent Power Producer Administrator (IPPA) for the Strips of the ULGPP**

10. On November 7, 2013, PSALM conducted the opening of bids for the selection and appointment of IPPAs for the Strips of Energy of the ULGPP located in Tongonan, Leyte;
11. FDCUI was selected as the winning bidder for the 40 MW Strips of Energy of the ULGPP. The Notice of Award was issued by PSALM on January 29, 2014;

### The EPPA

12. After extensive negotiations with FDCUI, NOCECO signed on October 28, 2014, an EPPA from the Strips of Energy of ULGPP for a contracted demand of 4 MW for 1.5 years;

### Executive Summary

13. The EPPA governs the relationship between the Supplier and the Customer for the sale of electric power. The electric power supply will be drawn from the Output of ULGPP. During plant outage, replacement power will be sourced from present or future facilities of FDCUI or of any third party, including the WESM or its equivalent. The commencement of the obligation of FDCUI to deliver electric power to its customers is subject to the satisfaction of conditions precedent, including the issuance by PSALM of the Certificate of Effectivity of an IPPA Agreement. The Monthly Generation Charge is equal to Fixed Charge and Variable Charge. The EPPA is subject to the Customer's security deposit, assignment, termination and buy-out;

### Salient Features

14. The EPPA between NOCECO and FDCUI contains the following salient terms and conditions:

- 14.1 **Term.** The Term of the Agreement shall be one and a half (1.5) years unless extended by mutual written agreement by the Parties but in no case shall be longer than July 25, 2021;

- 14.2 **Service Specification.** They agreed to the following service specifications:

Contracted Demand	4,000 kW
Contracted Energy	35,040,000 kWh
Customer Load Factor	100%
Delivery Point	Plant Gate – ULGPP
Voltage at the Plant Gate	230 kV

**14.3 Increase in Contracted Energy, Monthly Nominated Energy or Contracted Demand.** The Customer may request an increase to the Contracted Energy of a particular Billing Period by delivery of written notice on which such adjustment is proposed to take effect, setting out the reasons therefor. Any such request shall be subject to approval by the Supplier in its sole discretion;

If applicable, the Customer shall have the obligation to secure all the necessary approvals from relevant government authorities to authorize and accommodate the increase in its power requirements;

**14.4 Outage Allowance.** The Supplier shall have an Outage Allowance of eight hundred seventy-six (876) hours per Contract Year. Unutilized Outage Allowance hours in any particular Contract Year shall not be carried forward to the succeeding Contract Year. The Customer may not cause the deferment of the Supplier's utilization of the Outage Allowance for any reason;

**14.5 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 the 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. The Supplier shall not in any case have the obligation to procure Replacement Power other than from the Grid;

**14.6 Generation Charge.** NOCECO shall pay the generation charge consisting of administrative charge, fix charge and energy charge, as follows:

**Monthly Generation Charge = Fixed Charge + Variable Charge**

*Where:*

$$\begin{aligned}
 \text{Fixed Rate} &= \text{PhP}189.841/\text{kW}/\text{month} && + \\
 &\text{Market Fees per month} \\
 &= \text{PhP}200.7994/\text{kW}/\text{month} \\
 &\text{(indicative rate)} \\
 \text{Fixed Charge} &= (\text{Fixed Rate}) * (\text{kW}) * \\
 &\text{(LCP}_1/\text{LCP}_0) \\
 \text{Variable Charge} &= \sum (\text{MQ} * \text{GP}) * I_n \\
 &\text{such that if } I_n < 1, I_n = 1
 \end{aligned}$$

*And where:*

$$\begin{aligned}
 \text{MQ} &= \text{hourly WESM Metered Quantity} \\
 \text{GP} &= \text{Generation Payment Rate} \\
 \text{GP} &= \{[\text{PhP } 5.1749/\text{kWh} / (\text{LF})] - \\
 &\text{Adjustment}_{\text{unutilized energy}}\}
 \end{aligned}$$

The detailed Generation Charge Computation is attached to the application;

**14.7 Customer's Failure to Offtake Power.** If the Customer offtakes power less than the Contracted Energy, the Customer shall still pay the full Generation Charge for the Contracted Energy, and all applicable fees, charges and costs;

**14.8 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 the Customer;

**14.9 Security Deposit.** The Customer shall post the Security Deposit immediately upon any default of payment and shall maintain and update the Security Deposit and until the end of the Agreement. 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 or the highest Monthly Power Bill of immediately preceding twelve (12) Billing Periods, whenever applicable, plus an additional of eight percent (8%) on the full charges to cover one (1) month penalties, including but not limited to an increase of Generation Charge and interest for late payments; and

**14.10 Assignment.** In all cases of valid assignment, the Assignee shall assume all the rights and obligations of the Assignor under the Agreement;

**Other Related Documents**

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

<b>Annex</b>	<b>Nature of Documents</b>
A	EPPA between NOCECO and FDCUI dated October 28, 2014
B	NOCECO's Certificate of Franchise
C	NOCECO's Certificate of Registration
D	NOCECO's Articles of Cooperation
E	ALG Renewable Energy Holdings, Incorporated's Certificate of Incorporation
E-1	FDCUI's Certificate of Filing of Amended Articles of Incorporation
F	FDCUI's General Information Sheet (GIS)
G	FDCUI's latest Audited Financial Statements (AFS)
H	Affidavit of Service of Application (including annexes) to the Legislative Body of the City of Kabankalan, Province of Negros Occidental
H-1	Affidavit of Service (including annexes) to the Legislative Body of the Province of Negros Occidental
I	Affidavit of Service (including annexes) to the Legislative Body of the City of Makati
J	Copy of the Affidavit of Publication
J-1	Copies of Newspaper Publication of General circulation within the areas where NOCECO and FDCUI principally operate

K	Letter to the PSALM requesting for certification of insufficiency of capacity to supply Visayas distribution utilities (DUs)
L	NOCECO's Actual and Forecasted Load Data from 2013-2023
M	NOCECO's Rate Impact Analysis
N	NOCECO's Board Resolution No. 117, Series of 2014
O	NOCECO Board Resolution No. 118, Series of 2014
P	Financial Runs and Payment Schedules to the PSALM (in a sealed envelope)
Q	PSALM's Notice of Award to FDCUI
R	NOCECO's Procurement Process
S	Affidavit of Engr. Roderick Z. Fernandez

**Allegations in Support of the Motion for Confidential Treatment of Information**

16. 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.<sup>2</sup> they 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.<sup>3</sup> Accordingly, they request before the Commission that **Annex "P"** not be disclosed and be treated as confidential in accordance with Rule 4 of the ERC Rules. This Annex contains confidential information critical to the business operation of FDCUI including trade secrets and business calculations, assumptions and projections;

**Allegations in Support of the Issuance of Provisional Authority**

17. The Certificate of Closing and Effectivity for the turnover of the output of the ULGPP is scheduled to be issued on December 19, 2014. FDCUI commences obligation on 00:00H of December 26, 2014 – the Effectivity Date of the

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<sup>2</sup> Rule 4 – Confidential Information, ERC Rules

<sup>3</sup> Article 14 of the EPPA



IPPA Agreement dated October 20, 2014. A provisional approval of the EPPA with indicative rate, from the Commission will allow FDCUI to perform its obligation to supply the requirements of NOCECO and for the latter to receive power from the power plant. The issuance of the provisional authority will allow NOCECO 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;

18. 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;
19. It is understood that the interim relief sought by them that may be granted by Commission shall be subject to adjustments and other conditions that may be imposed after hearing and final determination; and

#### Prayer

20. Thus, they pray, that the Commission:
  - 20.1 Approve their dully negotiated EPPA;
  - 20.2 Issue an Order: a) treating Annex "P" 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;
  - 20.3 Provisionally approve their EPPA as well as a provisional authority authorizing NOCECO to pass on the full amount of the fees and charges under the said EPPA to its member-consumers; and
  - 20.4 After trial on the merits, issue a permanent approval of their EPPA between which would authorize NOCECO to charge and collect the fees under the said EPPA as well as authorize it to pass on the full amount to its member-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 initial hearing, expository presentation, pre-trial conference and evidentiary hearing on **February 25, 2015 (Wednesday) at ten o'clock in the morning (10:00 A.M.) at NOCECO's Main Office, Kabankalan City, Negros Occidental.**

NOCECO and FDCUI 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 scheduled date of initial hearing. They are also directed to inform NOCECO's member-consumers, 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 the franchise area of NOCECO and the Provincial Governor of Negros Occidental for the appropriate posting thereof on their respective bulletin boards.

NOCECO and FDCUI 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 and pre-trial conference, NOCECO and FDCUI must submit to the Commission their written Compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidences on 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 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.

NOCECO and FDCUI 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 thereof; 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 NOCECO and FDCUI 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, NOCECO and FDCUI 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, January 20, 2015.

FOR AND BY AUTHORITY  
OF THE COMMISSION:

  
**ZENAIDA G. CRUZ-DUCUT**  
Chairperson 4

Copy Furnished:

1. **Quiason, Makalintal, Barot, Torres, Ibarra and Sison**  
**Attn: Atty. Manuel L.M. Torres**  
**Atty. Miguel K. Mathay**  
*Counsel for NOCECO*  
21<sup>st</sup> Floor, Robinsons Equitable Tower,  
4 ADB Avenue corner Poveda St., Pasig City
2. **Atty. Renato R. Vehemente**  
*Counsel for FDCUI*  
23<sup>rd</sup> Floor, PBCom Tower,  
6795 Ayala Avenue corner V.A. Rufino Street, Makati City
3. **Negros Occidental Electric Cooperative, Inc. (NOCECO)**  
Kabankalan City, Negros Occidental
4. **FDC Utilities, Incorporated (FDCUI)**  
23<sup>rd</sup> Floor, PBCom Tower,  
6795 Ayala Avenue corner V.A. Rufino St., Makati City
5. **Office of the Solicitor General**  
134 Amorsolo Street, Legaspi Village, Makati City
6. **Commission on Audit**  
Commonwealth Avenue, Quezon City
7. **Senate of the Philippines**  
**Senate Committee on Energy**  
GSIS Bldg., Roxas Blvd., Pasay City
8. **House of Representatives**  
**House of Representatives Committee on Energy**  
Batasan Hills, Quezon City
9. **Office of the Municipal Mayor**  
Binalbagan, Negros Occidental
10. **Office of the Municipal Mayor**  
Candoni, Negros Occidental
11. **Office of the Municipal Mayor**  
Cauayan, Negros Occidental
12. **Office of the Municipal Mayor**  
Himamaylan, Negros Occidental

13. **Office of the Municipal Mayor**  
Hinigaran, Negros Occidental
14. **Office of the Municipal Mayor**  
Hinoba-an, Negros Occidental
15. **Office of the Municipal Mayor**  
Ilog, Negros Occidental
16. **Office of the Municipal Mayor**  
Isabela, Negros Occidental
17. **Office of the City Mayor**  
Kabankalan City, Negros Occidental
18. **Office of the City Mayor**  
La Carlota City, Negros Occidental
19. **Office of the Municipal Mayor**  
La Castellana, Negros Occidental
20. **Office of the Municipal Mayor**  
Moises Padilla, Negros Occidental
21. **Office of the Municipal Mayor**  
Pontevedra, Negros Occidental
22. **Office of the Municipal Mayor**  
Palupandan, Negros Occidental
23. **Office of the Municipal Mayor**  
San Enrique, Negros Occidental
24. **Office of the City Mayor**  
Sipalay City, Negros Occidental
25. **Office of the Municipal Mayor**  
Valladolid, Negros Occidental
26. **Office of the Provincial Governor**  
Province of Negros Occidental
27. **Philippine Chamber of Commerce and Industry (PCCI)**  
3<sup>rd</sup> Floor, ECC Bldg., 355 Sen. Gil Puyat Ave., Makati City