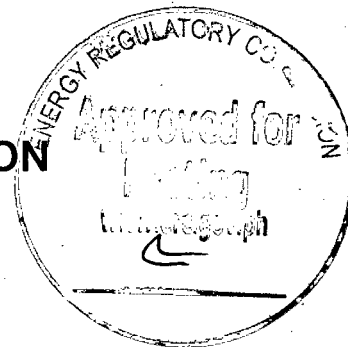


Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City



IN THE MATTER OF THE JOINT APPLICATION FOR APPROVAL OF THE ELECTRIC POWER PURCHASE AGREEMENT (EPPA) ENTERED INTO BY AND BETWEEN CENTRAL NEGROS ELECTRIC COOPERATIVE, INCORPORATED (CENECO) AND FDC UTILITIES, INCORPORATED (FDCUI), WITH PRAYER FOR THE ISSUANCE OF PROVISIONAL AUTHORITY

ERC CASE NO. 2014-190 RC

CENTRAL NEGROS ELECTRIC COOPERATIVE, INCORPORATED (CENECO) AND FDC UTILITIES, INCORPORATED (FDCUI),

Applicants.

x ----- x

DOCKETED
Date: JAN 22 2015
By: [Signature]

ORDER

On December 22, 2014, Central Negros Electric Cooperative, Incorporated (CENECO) 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, CENECO 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 CENECO and FDCUI, pursuant to Rule

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

The Applicants

2. CENECO 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 24, 1975 with principal office at Bacolod City, Negros Occidental. It serves the power requirements of the Cities of Bacolod, Bago, Silay and Talisay, and in the Municipalities of Murcia and Don Salvador Benedicto, all in the province of Negros Occidental (Franchsie Area);
3. FDCUI 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 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 Bacolod and the Province of Negros Occidental, where CENECO principally operates;
5. Likewise, a copy of the joint application (including annexes) was furnished to the City of Makati where FDCUI principally operates;
6. The entire joint application (excluding annexes) was published in a newspaper of general circulation within the areas where CENECO and FDCUI principally operate;

¹ ERC Resolution No. 38, Series of 2006

CENECO's Power Situation

7. CENECO currently sources bulk of its electricity requirements from Kepco-Salcon Power Corporation (KSPC), Green Core Geothermal, Incorporated (GCGI), Energreen Power Development and Management, Incorporated (ENERGREEN), the Power Sector Assets and Liabilities Management Corporation (PSALM) and the Wholesale Electricity Spot Market (WESM). However, on December 25, 2014, its bilateral contract with PSALM will expire;
8. To ensure continuous supply and security of electricity within its franchise area, CENECO signed with FDCUI on December 4, 2014, an EPPA for a contracted demand of 20 MW for 1.5 years from December 26, 2014 to June 25, 2016. The power requirements for CENECO shall be sourced from the Unified Leyte Geothermal Power Plant (ULGPP) Output administered by FDCUI;
9. CENECO 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 PSALM, to wit:

December 26, 2014 to June 25, 2015 with FDCUI – ULGPP	PhP6.7991/kWh
December 26, 2014 to June 25, 2015 without FDCUI – ULGPP	PhP6.7283/kWh
Rate Impact	PhP0.0708/kWh

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, CENECO signed on December 4, 2014, an EPPA from the Strips of Energy of ULGPP for a contracted demand of 20 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 CENECO 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 or from December 26, 2014 to June 25, 2016 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	20,000 kW
Contracted Energy	268,800,000 kWh, subject to adjustment
Customer Load Factor	Actual load factor for the month
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. CENECO shall pay the generation charge consisting of administrative charge, fix charge and energy charge, as follows:

Monthly Generation Charge = Fixed Charge + Variable Charge

Where:

$$\begin{aligned} \text{Fixed Rate} &= \text{PhP}189.8411/\text{kW}/\text{month} \quad * \\ &\quad (\text{LCP}_1/\text{LCP}_0) \\ \text{Variable Charge} &= \text{Market Fees}/\text{month} + [\sum(\text{BCQ} * \\ &\quad \text{GP}) * I_n] \\ &\quad \text{such that if } I_n < 1, I_n = 1 \end{aligned}$$

And where:

$$\begin{aligned} \text{Market Fees} &= \text{PhP}10.9583/\text{kWh}/\text{month} \\ &\quad (\text{indicative rate}) \\ \text{BCQ} &= \text{Hourly nomination Bilateral} \\ &\quad \text{Contract Quantity} \\ \text{GP} &= \text{Generation Payment Rate} \\ \text{GP} &= [\{\text{PhP } 5.1749/\text{kWh} / (\text{LF})\} - \\ &\quad \text{Adjustment}_{\text{unutilized energy}}] \end{aligned}$$

The detailed Generation Charge Computation is attached to the application;

14.7 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;

14.8 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. The Customer shall post the Security Deposit not later than thirty (30) prior to Effective Date; and

14.9 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:

Annex	Nature of Documents
A	EPPA between CENECO and FDCUI dated December 4, 2014
B	CENECO's Certificate of Franchise No. 057 dated April 16, 1980
C	CENECO's Certificate of Franchise No. 211 dated June 30, 3005
D	CENECO's Certificate of Registration
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 Bacolod, 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 CENECO and FDCUI principally operate
K	Letter to the PSALM requesting for certification of insufficiency of capacity to supply Visayas distribution utilities (DUs)
L	CENECO's Actual and Forecasted Load Data from 2013-2023
M	CENECO's Rate Impact Analysis
N	CENECO's Board Resolution No. 10978, Series of 2014
O	Financial Runs and Payment Schedules to the PSALM (in a sealed envelope)
P	PSALM's Notice of Award to FDCUI
Q	CENECO's Procurement Process
R	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.² 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.³ Accordingly, they request before the Commission that **Annex "O"** 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 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 CENECO and for the latter to receive power from the power plant. The issuance of the provisional authority will allow CENECO 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;

² Rule 4 – Confidential Information, ERC Rules

³ Article 14 of the EPPA

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 "O" 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 CENECO 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 CENECO 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 26, 2015 (Thursday) at nine o'clock in the morning (9:00 A.M.) at CENECO's Main Office, Bacolod City, Negros Occidental.**

CENECO 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 CENECO'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 CENECO and the Provincial Governor of Negros Occidental for the appropriate posting thereof on their respective bulletin boards.

CENECO 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, CENECO 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.

CENECO 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.

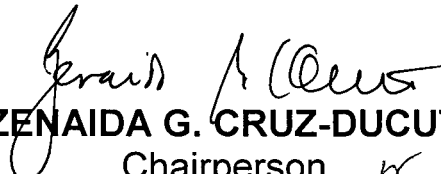
Failure of CENECO and FDCUI to submit the required Pre-trial Brief and Judicial Affidavits of their witnesses within the prescribed period shall be a ground for cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from said date of cancellation.

As part of the pre-trial conference, CENECO 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 *rc*

Copy Furnished:

1. **Quiason, Makalintal, Barot, Torres, Ibarra and Sison**
Attn: Atty. Manuel L.M. Torres
Atty. Miguel K. Mathay
Counsel for CENECO
21st Floor, Robinsons Equitable Tower,
4 ADB Avenue corner Poveda St., Pasig City
2. **Atty. Renato R. Vehemente**
Counsel for FDCUI
23rd Floor, PBCom Tower,
6795 Ayala Avenue corner V.A. Rufino Street, Makati City
3. **Central Negros Electric Cooperative, Inc. (CENECO)**
Bacolod Kabankalan City, Negros Occidental
4. **FDC Utilities, Incorporated (FDCUI)**
23rd 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 City Mayor**
Bacolod City, Negros Occidental
10. **Office of the City Mayor**
Bago City, Negros Occidental
11. **Office of the City Mayor**
Silay City, Negros Occidental
12. **Office of the City Mayor**
Talisay City, Negros Occidental

- 13. Office of the Municipal Mayor**
Murcia, Negros Occidental
- 14. Office of the Municipal Mayor**
Don Salvador Benedicto, Negros Occidental
- 15. Office of the Governor**
Province of Negros Occidental
- 16. Philippine Chamber of Commerce and Industry (PCCI)**
3rd Floor, ECC Bldg., 355 Sen. Gil Puyat Ave., Makati City