

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 (PSA)
BETWEEN ISABELA II
ELECTRIC COOPERATIVE,
INC. AND BKS GREEN
ENERGY CORP. WITH
PRAYER FOR
PROVISIONAL AUTHORITY
AND/OR INTERIM RELIEF
AND MOTION FOR
CONFIDENTIAL
TREATMENT OF
INFORMATION**

ERC CASE NO. 2021-043 RC

**ISABELA II ELECTRIC
COOPERATIVE, INC.
(ISELCO II) AND BKS
GREEN ENERGY CORP.
(BKS),**

Applicants.

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Promulgated:

June 29, 2021

NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 08 June 2021, Isabela II Electric Cooperative, Inc. (ISELCO II) and BKS Green Energy Corp. (BKS) filed a *Joint Application* dated 03 March 2021 (Application), seeking the Commission's approval of their Power Supply Agreement (PSA), with prayer for issuance of provisional authority and/or interim relief and motion for confidential treatment of information.

The pertinent allegations of the *Joint Application* are hereunder quoted as follows:

1. Applicant ISELCO II is an electric cooperative duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at Government Center, Alibagu, City of Ilagan, Isabela. Pursuant to Presidential Decree No. 269, ISELCO II holds an exclusive franchise issued by the National Electrification Commission to operate an electric light and power distribution services in the Province of Isabela, particularly in the City of Ilagan and Municipalities of Palanan, Burgos, Gamu, Aurora, San Manuel, Roxas, Maconacon, Divilacan, Mallig, Quezon, Quirino, Sta. Maria, San Pablo, Delfin Albano, Sto. Tomas, Cabagan, Tumauni, Naguilian, Benito Soliven and San Mariano (“Franchise Area”). It may be served with notices and other processes of this Honorable Commission through its counsel at the address indicated herein.

2. Applicant BKS is a renewable energy generation company duly organized and existing under the laws of the Republic of the Philippines with principal address at Barangay Limbauan, San Pablo, Isabela. It may be served with notices and other processes of this Honorable Commission through its counsel at the address indicated herein.

3. BKS shall construct, own, operate and manage the 5 MW Limbauan Solar Power Project in Barangay Limbauan, San Pablo, Isabela.

NATURE OF THE APPLICATION

4. This Application is filed pursuant to Rule 20 (B) of the Energy Regulatory Commission’s Rules of Practice and Procedures and other pertinent rules and regulations, for the Honorable Commission’s approval of the Power Supply Agreement between ISELCO II and BKS Green Energy Corp. A copy of the PSA is attached hereto as **Annex “B”**.

STATEMENT OF THE FACTS

5. At present, ISELCO II sources its power requirements from the following suppliers:

SUPPLIER	CONTRACT CAPACITY (MW)	TERM (years)	ERC APPROVAL
Anda Power Corporation	5 MW	13 years until December 1, 2030	ERC Case No. 2016-085RC
SMC Consolidated Power Corporation	18 MW	5 years until December 1, 2024	ERC Case No. 2016-121RC

6. Based on the power situation outlook for 2021 and succeeding years, ISELCO II foresees a capacity deficit in its portfolio, particularly peaking requirements due to increased demand. In fact, its 5-year power supply agreement with San Miguel Electric Corporation already expired in 01 December 2019.
7. In order to ensure continuous and reliable supply of electricity for ISELCO II's customers, there is a need for ISELCO II to source its peaking requirements through bilateral power supply contracts.
8. Under Section 45 (b) of Republic Act No. 9136 ("EPIRA"), it is provided that "Distribution Utilities may enter into bilateral power supply contracts subject to review by the ERC xxx".
9. Following the conduct of competitive selection process ("CSP"), on 10 November 2020, ISELCO II executed a PSA with BKS, for the purchase of electric energy by its Plant corresponding to 5 MW (net). The conduct of CSP by ISELCO II proceeded as follows:
 - 9.1. On 10 and 20 April 2019, ISELCO II caused the publication of an Invitation to Bid, which contained basic terms of reference, indicating a summary of the process and timelines of the CSP, and inviting power generation companies to submit an Expression of Interest on or before the deadline set out in the said invitation. At the same time, ISELCO II caused the posting thereof on its website and the Department of Energy's ("DOE") e-based portal.
 - 9.2. On 7 May 2019, a pre-bid conference was held. Detailed evaluation of bids and post-qualification evaluation were conducted from 17 to 28 June 2019.
 - 9.3. On 16 August 2019, the Third-Party Bids and Awards Committee (TPBAC) convened for the final evaluation of the bids and declared BKS' bid as the **LOWEST EVALUATED AND RESPONSIVE BID** as the same "complied with all necessary requirements and conditions of the bidding documents".
 - 9.4. On 12 November 2019, a Notice of Award was issued in favor of BKS.
 - 9.5. On 09 September 2019, ISELCO II's TPBAC wrote to National Electrification Administration ("NEA") pursuant to NEA guidelines for the review of the PSA prior to signing.
 - 9.6. On 20 July 2020, NEA issued a notice informing ISELCO II that it may proceed with the signing of the PSA with BKS Green Energy Corp.

**MATERIAL PROVISIONS AND OTHER RELEVANT
INFORMATION OF THE PSA**

10. The PSA between ISELCO II and BKS, contains the following salient features:

“Article IV. TERM AND RENEWAL

4. The Contract Term for the supply of power under this Agreement shall be for a period of Fifteen (15) Years, commencing on Commercial Operation Date (COD) of the Power Plant on 26 May 2022 to 25 May 2037 (Contract Term), subject to the approval of the Energy Regulatory Commission (ERC) and unless terminated by the Parties in accordance with this Agreement.

Notwithstanding the end of the Contract Term, the Parties agree to perform any obligations that arise prior to the end of the Contract Term, or by their nature are to be performed after the expiration of this Agreement, or which are expressed herein to survive the termination of this Agreement.

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**Article V. CONTRACTED CAPACITY AND ENERGY AND
CONTRACT RATE**

5. The Power Plant subject of this Agreement is a Solar Energy Plant with an installed capacity of 5 Mw. The Power Plant shall be embedded in the Customer’s distribution system.

5.1. On COD onwards, the Supplier shall make available at the Delivery Point, and sell to the Customer the Contracted Capacity and Energy of 5 Mw. The Supplier may make available/sell additional energy upon request of the Customer.

5.2. The Customer shall pay the Supplier for the Contracted Energy made available and delivered on a monthly basis at the Contract Rate FIVE PESOS AND FORTY CENTAVOS per Kilo-watt-hour (Php5.40/KWh). The Contracted Rate of FIVE PESOS AND FORTY CENTAVOS PER Kilo-watt-hour (Php5.40/KWh) shall be constant or no indexation over the life of this Agreement and shall decrease by TEN PERCENT (10%) if and when this Agreement is extended upon mutual agreement of the Parties and as may be approved by ERC. Hereunder is the breakdown of Php5.40/KWh, as follows:

Capital Recovery Fee	Php 3.967
Fixed O&M	1.410
Variable O&M	0.023

Php 5.400/KW

xxx

ARTICLE VI. OBLIGATION TO SUPPLY

6. The Supplier shall have the obligation to make available the Contracted Capacity and Energy during the Contract Term. However, the Supplier shall be excused from this obligation during any interruption or reduction due to: (i) an Event of Force Majeure affecting the Supplier or the Customer, (ii) any Scheduled Outage, *provided*, that, for the Contract Year in which any such outage occurs, the number of days for the Allowable Scheduled Outage are not yet exhausted for such year, or (iii) any Forced Outage, *provided*, that for the Contract Year in which such outage occurs, the number of days for the Allowed Forced Outage are not yet exhausted; or (iv) Major Maintenance Outage.

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ARTICLE XI. TAXES AND OTHER CHARGES

11. Governmental Charges. It includes all Energy Tax, and other forms of taxes as may be imposed by the Government, except the Supplier's own income taxes and Local Business Taxes which shall be for the Supplier's account, benefits to host communities under DOE ER 1-94, universal charges imposed under RA 9136, and similar taxes and charges imposed by any government authority (Governmental Charges) on or with respect to the delivery of Contracted Capacity and Energy at, before or after the Delivery Point, including taxes on fuel (including supplemental fuel) purchased by the Supplier to generate electricity pursuant to this Agreement, or the transactions contemplated by this Agreement.

11.1. Governmental Charges shall be for the account of the Customer. In the event the Supplier is required by Applicable Laws to remit or pay any such Governmental Charges, such amounts will be set forth in the Monthly Bill for the applicable Billing Period and shall be due and payable by the Customer in accordance with Article X of this Agreement.

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ARTICLE XV. FORCE MAJEURE

15.1. Instances of Force Majeure Event. Subject to the provisions of the preceding Sections, the instances of Force Majeure Event shall include, but not be limited to the following:

- a) acts of war of the public enemy whether war is declared or not;
- b) public disorder, civil disturbance, insurrection, rebellion, acts or campaigns of terrorism, piracy, embargo, sabotage, blockage, revolution, riots or violent demonstrations;

- c) explosions, fires, earthquakes, lightning, typhoon, tsunami, flood, cyclone, volcanic eruptions, landslides or other natural disasters, acts of God, epidemic, quarantine or plague;
- d) any action or aggregation of actions or failure to act by a Governmental Instrumentality, including expropriation, requisition, confiscation, nationalization or other compulsory acquisition, export or import restriction or restrictions, rationing or allocations imposed by any Governmental Instrumentality, including closure of ports or rail tracks, docks, or other installations intended for use by maritime or rail transport respectively, or in the provision of services for those activities by any Governmental Instrumentality (in each instance, occurring in the Philippines);
- e) any Change in Applicable Law in the Philippines;
- f) strikes, lockdowns or other collective or industrial action by workers or employees occurring in the Philippines, *provided that* any Party that seeks to invoke such a strike, lockout or other collective or industrial action as a Force Majeure Event must first utilize all reasonable effort to continue performance of its obligations hereunder;
- g) radioactive contamination, ionizing radiation, or toxic or chemical contamination;
- h) unavailability of power from the Philippine Grid;
- i) any system emergency or transmission failure that may affect the delivery by the Supplier, or acceptance by the Customer, of power (except if due to the act or omission of the Party seeking to claim a Force Majeure Event, unless otherwise due to a Force Majeure Event). In case of disagreement as to the existence of a transmission failure, the Parties shall secure the necessary certification from the System Operator, which certification shall bind both Parties; and
- j) appropriate actions taken in response to any orders, warnings or advice given by a Governmental Instrumentality or the System Operator for safety reasons to implement emergency shutdown (except if due to the act or omission of the Party seeking to claim a Force Majeure Event, unless otherwise due to a Force Majeure Event).

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ARTICLE XX. ASSIGNMENT

20. Either Party may assign or otherwise transfer to a third party, permanently or temporarily, all or part of its rights and obligations under this Agreement subject to prior written consent of the other Party. The Customer may assign, transfer, designate or allocate a part or all its Contracted Capacity and Energy either permanently or for a certain number of Billing Periods, subject to the prior written consent of the Supplier.”

- 11. From the foregoing and given a certain set of assumptions, the annual effective rate under the PSA is Php 5.40 per kWh (at plant gate), as shown in the rate impact analysis below:

Table 1

Impact Rate Analysis on the PSA between ISELCO II and BKS
Reference Year 2019 (Actual Data of ISELCO II)

Description	Unit	Value
Total kWhr Purchased	kWhr	266,462,770.00
Billing Determinant	kWhr	9,355,860.00
MPSA Rate	Php/kWhr	5.40
BKS Effective Rate	Php/kWhr	4.21
Mix Rate (Other Gen)	Php/kWhr	7.64
Blended Rate (without BKS)	Php/kWhr	7.71
Blended Rate (with BKS)	Php/kWhr	7.52
Total Cost (without BKS)	Php	2,055,708,198.31
Total Cost (with BKS)	Php	2,033,969,801.30
Increase/(Decrease) in Cost	Php	(51,738,397.01)
Increase/(Decrease) in Rate	Php/kWhr	(.19)

12. Member-consumers of ISELCO II will benefit from the additional supply coming from BKS since the blended generation rate will be reduced by about Php 0.19/kWhr (as seen in the rate impact above) which will result to savings to consumers of around Php 51,738,397.01.
13. The need for additional supply to captive consumers of ISELCO II and the financial closing of the project require the urgent approval for provisional authority and/or interim relief.
14. In support of this Joint Application, and the prayer for provisional authority and/or interim relief, the Judicial Affidavit of Mr. Alexander B. Subaran, Treasurer of BKS is attached as **Annex “C”**, respectively.
15. Likewise, in support of the instant Joint Application, the Applicants provide the following documents, which underwent pre-filing conference and pre-filing marking of annexes with this Honorable Commission:

DOCUMENT	ANNEX
ISELCO II’s Articles of Cooperation and By-Laws	Annex “D”
ISELCO’s Distribution Development Plan	Annex “E”
Write-up on the non-applicability of a Certification by NPC re: whether Transition Supply Contract capacity and energy is expected to be available	Annex “F”
Documents showing ISELCO II’s conduct of CSP	Annex “G series”

BKS's Certification of Incorporation & By-laws	Annex "H"
BKS's Amended Articles of Incorporation	Annex "H-1"
BKS's latest General Information Sheet	Annex "I"
Shareholders' Agreement	Annex "J"
Certificate of Registration with DOE	Annex "K"
Solar Energy Service Contract	Annex "L"
Environmental Compliance Certificate issued by DENR	Annex "M"
Connection Agreement between ISELCO II and BKS Green Energy Corp.	Annex "N"
Executive Summary of PSA	Annex "O"
Feasibility Study of Limbauan Solar Power Project	Annex "P"
Summary of Technical Parameters (all relevant technical and economic characteristics of the generation capacity: Installed capacity, Mode of Operation, Dependable Capacity, Auxiliary Load, Scheduled and Unscheduled Outages)	Annex "Q"
Financial Model; Generation Rate and Derivation; Cash Flow; Costs analysis related to generation in support of the pricing provisions of the contract	Annex "R series"
Sources of Funds	Annex "S"
Latest Financial Statement	Annex "T"
Independent Auditor's Report	Annex "T-1"
Notes to Financial Statements	Annex "T-2"
Written explanation on the non-submission of the following documents: (i) Certificate of Compliance; (ii) Certificate of Endorsement, and (iii) Certificate of Registration with Board of Investments	Annex "U"

ALLEGATIONS IN SUPPORT OF THE PRAYER FOR PROVISIONAL AUTHORITY

Applicants plead the foregoing allegations and further state that:

16. ISELCO II has an urgent and pressing need for an additional generating capacity since bulk of its supply already expired on 01 December 2019.
17. To prevent delay in the implementation of the PSA, a provisional authority is respectfully prayed for, considering that it is necessary for financial closing. Once financial closing

is accomplished, it is estimated that BKS will be able to supply power in accordance with the Effective Date of the PSA.

18. It will also help in promoting the development and utilization of renewable energy resources as tools to effectively prevent or reduce harmful emissions as avowed in Republic Act No. 9513 also known as the Renewable Energy Act of 2008.
19. Public interest as well as the declared government policy encouraging the development and utilization of renewable energy resources therefore compels the immediate issuance of a provisional authority subject to final authority that may be subsequently issued by the Honorable Commission.

**ALLEGATIONS IN SUPPORT OF THE MOTION FOR
CONFIDENTIAL TREATMENT OF INFORMATION**

20. Under Rule 4 of ERC Rules of Practice and Procedure, the Honorable Commission may, upon request of a party and determination of the existence of conditions which would warrant such remedy, treat certain information submitted to it as confidential. Pursuant to such provision, applicant BKS Green Energy Corp. respectfully prays for the issuance of a protective order declaring **Annexes “P”, “R series” and “S”** as confidential information, since the applicant BKS intends to present them as evidence in this Application.
21. **Annexes “P”, “R series” and “S”** contain certain non-public information, data and projections involving business operations and financial trade secrets reflecting BKS’s investment and business calculations. They also contain information regarding the debt or equity ratio, capital costs, weighted average cost of capital, among other information. All these information are considered classified business information by applicant BKS, which, if released to the public including its competitors, would place the latter at undue advantage against BKS. In addition, such information falls within the bounds of valuable proprietary interest under “trade secrets” which are entitled to protection under the Constitution, statutes, rules and regulations.
22. Information, which falls within the definition of a trade secret, as defined by jurisprudence is clearly information which merits the confidential treatment provided for under Rule 4 of the ERC Rules of Practice and Procedure. **Annexes “P”, “R series” and “S”** should therefore be entitled to the protection of confidential information provided under Rule 4 of the ERC Rules of Practice and Procedure.
23. The Applicants hereby submit one (1) copy of each of the foregoing confidential documents in a sealed envelope, with the envelope and each page of the document stamped with the word “Confidential”.

PRAYER

WHEREFORE, premises considered, it is respectfully prayed that the Honorable Commission:

- (i) **ISSUE** an Order treating **Annexes “P”, “R series” and “S”** as confidential information pursuant to Rule 4, Section 1 of the ERC Rules of Practice and Procedure and prescribing the guidelines for the protection thereof;
- (ii) Immediately **ISSUE** a provisional authority and/or interim relief authorizing the applicants to implement the Power Supply Agreement; and
- (iii) After hearing on the merits, render a decision **APPROVING** the Power Supply Agreement.

Other reliefs, just and equitable, are likewise prayed for.

The Commission hereby sets the same for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on the following dates and online platform for the conduct thereof, pursuant to Resolution No. 09, Series of 2020¹ dated 24 September 2020 and Resolution No. 01, Series of 2021, dated 17 December 2020 (ERC Revised Rules of Practice and Procedure):²

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¹ Entitled: *A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.*

² Entitled: *A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.*

Date and Time	Platform	Activity
12 August 2021 (Thursday) at two o'clock in the afternoon (2:00 P.M.)	Microsoft Teams	Determination of compliance with jurisdictional requirements and Expository presentation
19 August 2021 (Thursday) at two o'clock in the afternoon (2:00 P.M.)	Microsoft Teams	Pre-trial Conference and presentation of evidence

Any interested stakeholder may submit its comments and/or clarifications at least one (1) calendar day prior to the scheduled virtual hearing, via electronic mail (e-mail) at doCKET@erc.ph, copy furnish the Legal Service through legal@erc.ph. The Commission shall give priority to the stakeholders who have duly submitted their respective comments and/or clarifications, to discuss the same and propound questions during the course of the expository presentation.

Moreover, all persons who have an interest in the subject matter of the instant case may become a party by filing with the Commission via e-mail at doCKET@erc.ph, copy furnish the Legal Service through legal@erc.ph, a verified Petition to Intervene at least five (5) calendar days prior to the date of the initial virtual hearing and subject to the requirements under Rule 9 of the ERC Revised Rules of Practice and Procedure, indicating therein the docket number and title of the case and stating the following:

- 1) The petitioner's name, mailing address and e-mail address;
- 2) The nature of petitioner's interest in the subject matter of the proceeding and the way and manner in which such interest is affected by the issues involved in the proceeding; and
- 3) A statement of the relief desired.

Likewise, all other persons who may want their views known to the Commission with respect to the subject matter of the case may likewise file through e-mail at doCKET@erc.ph, copy furnish the Legal Service through legal@erc.ph, their Opposition or Comment thereon

at least five (5) calendar days prior to the initial virtual hearing and subject to the requirements under Rule 9 of the ERC Revised Rules of Practice and Procedure. No particular form of Opposition or Comment is required, but the document, letter, or writing should contain the following:

- 1) The name, mailing address and e-mail address of such person;
- 2) A concise statement of the Opposition or Comment; and
- 3) The grounds relied upon.

Any of the persons mentioned in the preceding paragraphs may access the copy of the *Application* on the Commission's official website at www.erc.gov.ph.

Finally, all interested persons may be allowed to join the scheduled initial virtual hearing by providing the Commission, thru legal.virtualhearings@erc.ph, with their respective e-mail addresses and indicating therein the case number of the instant *Joint Application*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearing.

WITNESS, the Honorable Commissioners **ALEXIS M. LUMBATAN, CATHERINE P. MACEDA, FLORESINDA G. BALDO-DIGAL** and **MARKO ROMEO L. FUENTES**, Energy Regulatory Commission, this 17th day of June 2021 in Pasig City.



AGNES VST DEVANADERA
Chairperson and CEO



LS: BJV/MCCG

