

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



IN THE MATTER OF THE
APPLICATION FOR APPROVAL
OF THE ELECTRICITY SUPPLY
AGREEMENT (ESA) BETWEEN
ORIENTAL MINDORO
ELECTRIC COOPERATIVE,
INCORPORATED (ORMECO)
AND DMCI POWER
CORPORATION (DPC), WITH
PRAYER FOR THE ISSUANCE
OF PROVISIONAL AUTHORITY

ERC CASE NO. 2014-085 RC

ORIENTAL MINDORO
ELECTRIC COOPERATIVE,
INCORPORATED (ORMECO)
AND DMCI POWER
CORPORATION (DPC),
Applicants.

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DOCK E T M E D
Date: JUL 08 2014
By:

NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on June 11, 2014, Oriental Mindoro Electric Cooperative, Incorporated (ORMECO) filed an application for approval of its Electricity Supply Agreement (ESA) with DMCI Power Corporation (DPC), with prayer for the issuance of provisional authority.

In the said application, ORMECO alleged, among others, that:

1. It is a non-stock, non-profit rural electric cooperative duly organized and existing under the Philippine laws, with principal office at Barangay Sta. Isabel, Calapan City, Oriental Mindoro;

2. It is authorized by the National Electrification Administration (NEA) to operate the electric power distribution system in the Municipalities of Baco, Bansud, Bongabong, Bulalacao, Gloria, Mansalay, Naujan, Pinamalayan, Pola, Puerto Galera, Roxas, San Teodoro, Socorro, and Victoria, and in the City of Calapan, all in the Province of Oriental Mindoro (Franchise Area). Copies of its Certificate of Franchise are attached to the application to form integral parts thereof. It operates in a National Power Corporation – Small Power Utilities Group (NPC-SPUG) area;
3. On November 11, 2013, it executed an ESA with DPC. A copy of the said ESA is, likewise, attached to the application to form an integral part thereof;
4. DPC is a corporation duly organized and existing under the Philippine laws, with principal office at the 3rd Floor, DMCI Plaza Building, 2281 Don Chino Roces Avenue, Makati City. Copies of relevant documents evidencing its due incorporation, registration, and permit to operate as a generation company are attached to the application as follows to form integral parts thereof:

Document	Annex
Articles of Incorporation and By-Laws of DPC	"C"
Securities and Exchange Commission (SEC) Certificate of Registration	"D"

5. By and pursuant to Section 25, 43 (u), and 45 (b) of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 or the EPIRA, its Implementing Rules and Regulations (IRR), Resolution No. 21, Series of 2011 or the ERC Amended Guidelines for the Setting and Approval of Electricity Generation Rates and Subsidies for Missionary Electrification Areas, and other pertinent rules and regulations, it submits the instant application to the Commission for due consideration and approval of the ESA it executed with DPC;

Statement of Facts

6. The Province of Oriental Mindoro depicts a tropical paradise which attracts tourists for its natural beauty. By reason of the economic and tourism development in the Province, it wants to ensure the adequacy and reliability of energy supply within the Franchise Area;
7. It currently sources its energy requirements predominantly from oil-based power plants, with additional supply from mini-hydro power plants. A copy of its existing power suppliers is attached to the application to form an integral part thereof;
8. Considering the impending planned full privatization and phase out of one of its suppliers, the NPC in July 2014, it deemed it essential to procure additional power which can operate at full service capacity, which mainly performs the functions of base load, peaking, regulation, load following, spinning reserve, and ancillary services;
9. In view of the aforementioned premises and consistent with the Department of Energy (DOE) Circular No. 2004-01-001¹ and ERC Resolution No. 11, Series of 2005², it passed Board Resolution No. 12-137, which approved the conduct of Competitive Selection Process (CSP) for the 15 MW – 20 MW additional power supply in its Franchise Area;
10. Upon approval of the authority to launch the aforesaid CSP by the DOE as evidenced by a letter attached to the application, the CSP was conducted as follows:
 - 10.1 It published an “Invitation to Apply for Eligibility and to Bid” in the March 27, 2013 and April 3, 2013 issues of The Philippine Daily Inquirer. Copies of the invitation to participate in the CSP are attached to the application to form integral parts thereof;

¹ Prescribing the Rules and Procedures for Private Sector Participation in Existing NPC-SPUG Areas pursuant to Rule 13 of the Implementing Rules and Regulations of the Electric Power Industry Reform Act of 2001 (EPIRA-IRR)

² Adopting the Guidelines for the Setting and Approval of Electricity Generation Rates and Subsidies for Missionary Electrification Areas

- 10.2 In response to the said invitation, fourteen (14) power providers, including DPC, expressed their interests to participate in the CSP. DPC submitted its Letter of Interest on April 8, 2013, conveying its intent to apply for eligibility and to bid. A copy of the letter is, likewise, attached to the application to form an integral part thereof;
- 10.3 From the fourteen (14) power providers, only eight (8) prospective power providers purchased the Bid Documents prepared by its Special Bids and Awards Committee (SBAC) and Technical Working Group (TWG). However, only three (3) of the said power providers submitted their respective bids;
- 10.4 On August 28, 2013, the its SBAC and TWG, jointly evaluated the Bid Documents submitted by the remaining three (3) interested power providers. The evaluation resulted in DPC being declared to be the lone qualified bidder, which has submitted the lowest calculated and responsive commercial bid. A copy of the Joint Evaluation Report is attached to the application to form an integral part thereof;
- 10.5 On even date, its Board of Directors passed Board Resolution No. 13-133, confirming and approving the Joint Evaluation Report of its SBAC and TWG; and
- 10.6 On September 27, 2013, the DOE issued a Certification to certify that a successful CSP was conducted in the selection of additional power provider as prescribed by ERC Resolution No. 21, Series of 2011 in relation to DOE Circular No. 2004-01-001. A Notice of Award was accordingly issued to DPC for the 15 MW Bunker C-Fired Diesel Power Plant;
11. In view of the foregoing, on November 11, 2013, it executed with DPC the subject ESA, which provides for the terms and conditions in the construction, operation, and maintenance of 15 MW Bunker C-Fired Diesel Power Plant in Calapan City, Oriental Mindoro;

Abstract of the ESA and Other Related Information

12. The following are the salient features of the ESA:
- 12.1 **Build-Own-Operate (BOO) Basis.** DPC shall build, own, and operate a Bunker C-Fired Diesel Power Plant with an installed capacity of 15 MW and shall be deployed and operated at Calapan City, Oriental Mindoro. It shall own all the structures, fixtures, fittings, machinery, installations, and equipment on the sites or used in connection with the Project;
 - 12.2 **Cooperation Period.** The cooperation period shall be twenty (20) years which shall take effect on commercial operation of the project, subject to an extension, in accordance with the ESA;
 - 12.3 **Supply of Electricity.** DPC shall supply it with a guaranteed dependable capacity of 15 MW Bunker C-Fired Diesel at any given time during the cooperation period;
 - 12.3.1 **Delivery Points.** The point of deliveries or metering systems shall be at the load end side of the 13.8 kV voltage line located at the NPC Substation; and
 - 12.3.2 **Planned and Unplanned Downtime.** In order to undertake the necessary overhaul, maintenance, inspection and repair, DPC shall be entitled to a period of Planned Downtime as provided in the Fourth (4th) Schedule of the ESA. However, there shall be no Planned Downtime during summer. Meanwhile, DPC shall notify ORMECO of the occurrence of any unplanned downtime provided that it shall give its best estimate of the probable duration thereof;

12.4 **Electricity Fees.** ORMECO and DPC agree on the following fees for the duration of the cooperation period:

True Cost Generation Rate (TCGR)

$$\text{TCG} = (\text{TCG}_B + \text{TCG}_R)^* (1 + \text{VAT})$$

Where:

TCG = Total True Cost of Generation

TCG_B = True Cost of Generation for the Base Load

TCG_R = True Cost of Generation for Regulation

VAT = Applicable Value-Added Tax

True Cost of Generation for Base Load (TCG_B)

$$\text{TCG}_B = \text{CRF}_B + \text{FOM}_B + \text{VOM}_B + \text{LOC}_B + \text{FC}_B$$

Where:

CRF_B = Capital Recovery Fee for the Base Load

FOM_B = Fixed Operations and Maintenance Fee

VOM_B = Variable Operations and Maintenance Fee

LOC_B = Monthly Total Cost of Lube

FC_B = Total Cost of Heavy and Light Fuel Oil

Capital Recovery Fee for Base Load (CRF_B)

CRF_B = $CF_B + E_{B1}$

Where:

CF_B = DPC Bid Rate for the Capacity Fee for Base Load of PhP3.1404/kWh

E_{B1} = Actual Energy delivered for the Base Load and for the Billing Month measured at the agreed point of delivery or the minimum monthly Energy Off-Take for Base Load of 1,800,000 kWh, whichever is higher

Fixed Operations and Maintenance Fee for Base Load (FOM_B)

FOM_B = $FOMR_B + E_{B1}$

Where:

$FOMR_B$ = Monthly Rate for Fixed Operations and Maintenance

E_{B1} = Actual Energy delivered for Base Load and for the Billing Month measured at the agreed point of delivery or the minimum monthly Energy Off-Take for Base Load of 1,800,000 kWh, whichever is higher

Fixed Operations and Maintenance for Base Load (FOM_B)

$$\text{FOMR}_B = \text{BFOMR}_B \times (\text{CPI}_C + \text{CPI}_B)$$

Where:

BFOMR_B = Base/Bid Monthly Rate for Fixed Operations and Maintenance of PhP0.5190/kWh

CPI_C = Consumer Price Index (CPI) for all Income Households in the Philippines by Commodity Group of the National Statistics Office (NSO) for the month preceding the current billing month

CPI_B = Base CPI for all Income Households in the Philippines by Commodity Group of the NSO for the month of May 2013, equivalent to 132.9

Variable Operations and Maintenance Fee for Base Load (VOM_B)

$$\text{VOM}_B = \text{VOMR}_B + E_{B2}$$

Where:

VOMR_B = Monthly Rate for Variable Operations and Maintenance for Base Load

E_{B2} = Actual Energy (kWh) delivered for Base Load and for the Billing Month measured at the agreed point of delivery

Variable Operations and Maintenance for Base Load (VOMR_B)

$$\text{VOMR}_B = \text{BVOMR}_B \times (\text{CPI}_C / \text{CPI}_B)$$

Where:

BVOMR_B = Base/Bid Monthly Rate for Variable Operations and Maintenance, equivalent to PhP0.6880/kWh

Monthly Total Cost of Lube for Base Load (LOC_B)

$$\text{LOC}_B = \text{GLOC}_B + \text{ALP} \times \text{E}_{B2}$$

Where:

GLOC_B = Guaranteed Lube Oil Consumption for Base Load of 0.0006 li/kWh

ALP = Actual Weighted Average cost of Lube expressed in PhP per liter including the cost of freight, insurance, hauling charges, and taxes (exclusive of VAT) supported by fuel suppliers'/haulers' invoices

E_{B2} = Actual Energy (kWh) delivered for Base Load and for the Billing month measured at the agreed point of delivery

Total Cost of Heavy and Light Fuel Oil for Base Load (FC_B)

$$\text{FC}_B = \text{HFO}_B + \text{LFO}_B$$

Where:

$HFO_B =$ Total Cost of Heavy Fuel Oil for Base Load and for the Billing Month

$LFO_B =$ Total Cost of Light Fuel Oil for Base Load and for the Billing Month

Total Cost of Heavy Oil for Base Load (HFO_B)

$HFO_B = GHFOC_B \times FR \times BP \times E_{B2}$

Where:

$GHFOC_B =$ Guaranteed Heavy Fuel Oil Consumption for Base Load of 0.2393 li/kWh

$FR =$ Fuel Ratio for Bunker of ninety-seven percent (97%)

$BP =$ Actual weighted average cost of Heavy Fuel Oil expressed in PhP per liter including the cost of freight, insurance, hauling charges, and taxes (exclusive of VAT) supported by fuel suppliers'/haulers' invoices

Total Cost of Light Fuel Oil for Base Load (LFO_B)

$LFO_B = GLFOC_B \times FR \times DP \times E_{B2}$

Where:

$GLFOC_B =$ Guaranteed Light Fuel Oil Consumption for Base Load of 0.2393 li/kWh

FR = Fuel Ratio for Diesel for Base Load, equivalent to three percent (3%)

DP = Actual weighted average cost of Light Fuel Oil expressed in PhP per liter including the cost of freight, insurance, hauling charges, and taxes (exclusive of VAT) supported by fuel suppliers'/haulers' invoices

True Cost of Generation for Regulation (TCGR)

$TCGR = CRF_R + FOM_R + VOM_R + LOC_R + FC_R$

Where:

CRF_R = Capital Recovery Fee for the Regulation

FOM_R = Fixed Operations and Maintenance Fee for Regulation

VOM_R = Variable Operations and Maintenance Fee for Regulation

LOC_R = Total Cost of Lube for Regulation

FC_R = Total Cost of Heavy and Light Fuel Oil for Regulation

Capital Recovery Fee for Regulation (CRF_R)

$CRF_R = CF_R \times E_{R1}$

Where:

CF_R = Bid Rate for the Capacity Fee for Regulation, equivalent to PhP3.1404/kWh

E_{R1} = Actual energy delivered by DPC for Regulation and for the Billing month measured at the agreed point of delivery or the minimum monthly Energy Off-Take for regulation, equivalent to 1,800,000kWh except for the months of April and May, where it is increased to 5,500,000kWh, whichever is higher

Fixed Operations and Maintenance Fee for Regulation (FOM_R)

FOM_R = $FOMR_R \times E_{R1}$

Where:

$FOMR_R$ = Monthly Rate for Fixed Operations and Maintenance for Regulation

Monthly Rate for Fixed Operations and Maintenance for Regulation ($FOMR_R$)

$FOMR_R$ = $BFOMR_R \times (CPI_C / CPI_B)$

Where:

$BFOMR_R$ = Base/Bid Monthly rate for Fixed Operations and Maintenance equivalent to PhP0.5190/kWh

Variable Operations and Maintenance Fee for Regulation(VOM_R)

$$VOM_R = VOMR_R \times E_{R2}$$

Where:

VOM_R = Monthly Rate for Variable Operations and Maintenance for Regulation

E_{R2} = Actual energy (kWh) delivered for Regulation and for the Billing Month measured at the agreed point of delivery

Monthly Rate for Variable Operations and Maintenance for Regulation(VOM_R)

$$VOMR_R = BVOMR_R \times (CPI_C / CPI_B)$$

Where:

BVOM_R = Base/Bid Monthly Rate for Variable Operations and Maintenance of PhP0.6880/kWh

Total Cost of Lube for Regulation (LOC_R)

$$LOC_R = GLOC_R \times ALP \times E_{R2}$$

Where:

GLOC_R = Guaranteed Lube Oil Consumption of 0.0006 li/kWh

Total Cost of Heavy and Light Fuel Oil For Regulation (FC_R)

$$FC_R = HFO_R + LFO_R$$

Where:

$HFO_R = \text{Total Cost of Heavy Fuel Oil for Regulation}$

$LFO_R = \text{Total Cost of Light Fuel Oil for Regulation}$

Total Cost of Heavy Fuel Oil for Regulation
(HFO_R)

$HFO_R = GHFOC_R \times FR \times BP \times E_{R2}$

Where:

$GHFOC_R = \text{Guaranteed Heavy Fuel Oil Consumption for Regulation equivalent to 0.2393 li/kWh}$

Total Cost of Light Fuel Oil for Regulation
(LFO_R)

$LFO_R = GLFOC_R \times FR \times DP \times E_{R2}$

Where:

$GLFOC_R = \text{Guaranteed Light Fuel Oil Consumption for Regulation, equivalent to 0.2393Li/kWh}$

12.4.1 **Recovery of the New Power Producer – True Cost of Generation Rate (NPP-TCGR).** If the TCGR is higher than the Subsidized Approved Generation Gate (SAGR), DPC shall be allowed to recover the difference between the TCGR and the SAGR from it, or from the Missionary Electrification Subsidy (ME Subsidy) which refers to the subsidy funded from the

Missionary Electrification – Universal Charge (UCME); and

- 12.4.2 **Prompt Payment Discount (PPD).** It shall be entitled to a discount at the rate of three percent (3%) of the total Capacity Fee and O&M Fee paid within ten (10) calendar days from receipt of DPC's invoice, provided that it does not have any overdue payment;

Commercial Advantage of the Generation Rate and Impact on ORMECO's Overall Rates

13. With the increasing growth of commercial establishments in the Province and the continuous expansion of residential areas, the additional power supply of 15 MW Bunker-C Fuel-Fed Facility will guarantee stable and efficient supply of electricity that will cater the increasing demand of power by the member-consumers;
14. With its expected availability and supply of power from wind and additional run-of-river hydropower plants, where energy to be produced is dependent on the availability of wind and water, there is a need for an equivalent controllable plant to provide base load and spinning reserve to assure the continuous supply of quality electricity to the system;
15. The ESA it executed with DPC is a long-term solution to the power deficiency crisis within the Province. The supply of additional power will guarantee uninterrupted power service even during the summer season where there is less generation for wind and hydropower plants therein;
16. The TCGR of DPC is fair and reasonable, having been declared as the lowest calculated and responsive commercial bid among the power suppliers which participated in the CSP. Thus, the award of the ESA to DPC will contribute to the stabilization of the power supply in the Province of Oriental Mindoro in the least cost manner;

17. More importantly, the electricity fees under the ESA will not adversely affect the existing rates which it bills to its member-consumers considering that it remains to be the approved SAGR which will be passed on to its member-consumers. The operation of DPC as a new power supplier will result in efficiency and improvement in the power supply in the Province of Oriental Mindoro. There will also be a reduction in the government's missionary subsidy representing the savings between SPUG's current costs of generation and DPC's lower true cost of generation rate;
18. Meanwhile, a sample computation of the Power Billing is attached to the application to form an integral part thereof;
19. To further support the instant application for approval of the ESA, it attached the following documents to form integral parts thereof, to wit:

Document	Annex
Its Board Resolution No. 11-115, Creation of Power Committee for the Conduct of CSP	"L"
Distribution Development Plan (DDP)	"M"
Project Scope and Specifications	"N"
Bid Documents Submitted by DPC	"O"

20. It is reserving the right to submit other documents in support of the approval of the application, either in the course of the hearing or as may be required by the Commission;

Compliance with the Pre-Filing Requirements

21. It manifests compliance with the pre-filing requirements mandated under the IRR of the EPIRA and Rule 6 of the ERC Rules of Practice and Procedure, as established by the following:
 - 21.1 Copies of the Certificate acknowledging receipt of the instant application with annexes issued by the Legislative Bodies of Calapan City and the Province of Oriental Mindoro;

21.2 Notarized Affidavit of Publication stating that the instant application had been published in a newspaper of general circulation within its Franchise Area; and

21.3 A copy of the complete newspaper issue where the application was published and appeared;

Issuance of Provisional Authority

22. All the foregoing allegations are re-pleaded by reference in support of herein prayer for the issuance of provisional authority;
23. Based on its Ten (10)-Year Forecast Data, the maximum demand of energy in year 2014 shall increase to 37.92 MW. A copy of the said Ten (10)-Year Forecast Data is attached to the application to form an integral part thereof;
24. Due to the impending phase out of the NPC in July 2014, the procurement of additional power supply from a NPP which is capable of operating at full service capacity is of the essence, to avoid looming power interruptions in the Province of Oriental Mindoro;
25. Further, the continuous load growth in the demand of energy by its member-consumers, is one of the pressing reasons for the immediate approval of herein application to accommodate any such increase;
26. The urgent need of additional supply of power is so compelling since the delivery of electric services affects a broad spectrum of intertwined economic, social, governmental, and public service activities. Significantly, the business and operations of a public utility is highly imbued with public interest;
27. The core basis by which it prays for the issuance of provisional authority or interim relief prior to final Decision is Rule 15 of the ERC Rules of Practice and Procedure, to wit:

“Section 3. Action on the Motion. – Motions for provisional authority or interim relief may be acted upon with or without hearing. The Commission shall act on the motion on the basis of the allegations of the application or petition and supporting documents and other evidences that applicant or petitioner has submitted and the comments or opposition filed by any interested person, if there be any.” [Emphasis ours];

28. To further support the grant of provisional authority, a judicial affidavit emphasizing the necessity thereof is attached to the application to form an integral part thereof;
29. In light of the foregoing and in recognition of the fact that a substantial amount of time is customarily needed to evaluate the documents submitted to support the approval of herein application, it beseeches the kind indulgence of the Commission to approve the instant application, immediately, albeit, provisionally, at the soonest opportune time;

Prayer

30. Thus, its prays that:
 - 30.1 Pending hearing on the merits, a provisional authority be duly issued for the immediate implementation of its ESA with DPC, and that after due notice and hearing, the said ESA including the electricity fees and rate structure therein, be duly approved, to retroact from the date of DPC's actual delivery of power to it; and
 - 30.2 In the event that the TCGR is higher than the SAGR, DPC be allowed to recover the difference between the TCGR and the SAGR from the ME Subsidy.

On July 4, 2014, DPC filed a "Motion to Join as Applicant with Entry of Appearance" praying, among others, for its inclusion as joint applicant in the instant proceeding.

In the said motion, DPC alleged, among others, that:

1. It entered into an ESA with ORMECO, whereby it is to construct, operate, and maintain a 15 MW Bunker C-Fired Diesel Power Plant for the supply of energy to ORMECO for a period of twenty (20) years, subject to payment to it of relevant electricity fees;
2. On June 11, 2014, ORMECO filed with the Commission the instant application;
3. As a party to the ESA which is, likewise, primarily interested in the approval by the Commission, it hereby moves that it be allowed to join as a co-applicant in the instant case; and
4. The instant motion is filed solely for the foregoing reason and shall not delay the conduct of the proceeding.

The Commission has set the application for jurisdictional hearing, pre-trial conference, expository presentation and evidentiary hearing on **July 30, 2014 (Wednesday) at nine o'clock in the morning (9:00 A.M.) at the Solidarity Hall, ORMECO Compound, Calapan City, Oriental Mindoro.**

All persons who have an interest in the subject matter of the proceeding may become a party by filing, at least five (5) days prior to the initial hearing and subject to the requirements in the ERC's Rules of Practice and Procedure, a verified petition with the Commission giving the docket number and title of the proceeding and stating: (1) the petitioner's name and 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.

All other persons who may want their views known to the Commission with respect to the subject matter of the proceeding may file their opposition to the application or comment thereon at any stage of the proceeding before the applicants conclude the presentation of their evidence. No particular form of opposition or comment is required, but the document, letter or writing should contain the name and address of such person and a concise statement of the opposition or comment and the grounds relied upon.

All such persons who may wish to have a copy of the application may request the applicants, prior to the date of the initial hearing, that they be furnished with a copy of the application. The applicants are hereby directed to furnish all those making such request with copies of the application and its attachments, subject to reimbursement of reasonable photocopying costs. Likewise, any such person may examine the application and other pertinent records filed with the Commission during the usual office hours.

WITNESS, the Honorable Chairperson, **ZENAIDA G. CRUZ-DUCUT**, and the Honorable Commissioners, **ALFREDO J. NON**, **GLORIA VICTORIA C. YAP-TARUC**, and **JOSEFINA PATRICIA A. MAGPALE-ASIRIT**, Energy Regulatory Commission, this 7th day of July, 2014 at Pasig City.

ATTY. NOEL J. SALVANERA
Director III, Legal Service