

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. 2014-162 RC

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

Applicants.

X-----X

DOCKETED
Date: NOV 07 2014
By: *[Signature]*

NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on November 5, 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), with prayer for the issuance of provisional authority.

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

¹ ERC Resolution No. 38, Series of 2006

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;
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. 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. These shall be sourced from the FDC MISAMIS Phividec Project;

10. Notwithstanding these power supply contracts, BUSECO expects that its energy requirements will significantly increase in the next few years as demonstrated in its Actual and Forecasted Load Data and Distribution Plan;
11. With the takeover of the Independent Power Producer Administrator (IPPA) of Mt. Apo 1 and 2 Geothermal Power Plants, BUSECO forecasted that its CSEE with PSALM will be reduced upon issuance of the latter's Certificate of Effectivity to FDC MISAMIS;
12. BUSECO has forecasted and simulated the effect of the inclusion of the power supplied by FDC MISAMIS from the output of Mt. Apo 1 and 2 Geothermal Power Plants, taking into consideration the reduced supply from PSALM, to wit:

September 2014 with FDC MISAMIS – Mt. Apo 1 and 2	PhP5.2820/kWh
September 2014 without FDC MISAMIS – Mt. Apo 1 and 2	PhP3.2894/kWh
Rate Impact	PhP1.9927/kWh

The Selection of IPPA for Mt. Apo 1 and 2 Geothermal Power Plants

13. On September 24, 2014, PSALM conducted the opening of bids for the Selection and Appointment of IPPA for the Output of the Mindanao I and II (Mt. Apo 1 and 2) Geothermal Power Plants located in Kidapawan City, North Cotabato;
14. FDC MISAMIS was selected as the winning bidder for the output of Mt. Apo 1 and 2 Geothermal Power Plants with its bid for the monthly payments and generation payments. The Notice of Award was issued by PSALM on October 24, 2014;

The EPPA

15. After extensive negotiations with FDC MISAMIS, BUSECO signed on October 31, 2014, an EPPA with FDC MISAMIS from the output of Mt. Apo 1 and 2 Geothermal Power Plants for a contracted demand of 10 MW for two (2) years;

Executive Summary

16. The EPPA governs the relationship between Supplier and Customer for the sale of electric power. The electric power supply will be drawn from the output of Mt. Apo 1 and 2 Geothermal Power Plants administered 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 issuance by PSALM of the Certificate of Effectivity of IPPA Agreement. Generation Charges are based on the cost payable to PSALM (i.e., monthly fees and generation fees) and a reasonable margin. The EPPA is subject to customer's security deposit, assignment, termination and buy-out;

Salient Features

17. The EPPA contains the following salient terms and conditions:
 - a. Term. The Term of the EPPA shall be two (2) years, unless extended by mutual written agreement by the Parties but in no case shall be longer than June 25, 2024;
 - b. Service Specification. They agreed to the following service specifications:

ERC Case No. 2014-162 RC
 NOTICE OF PUBLIC HEARING/November 6, 2014
 Page 6 of 12

Contracted Demand	10,000 kW		
Contracted Energy	Load Factor	Annual Contracted Energy (kWh)	Indicative Monthly Contracted Energy (kWh)*
	100%	80,400,000	6,700,000
	90%	72,360,000	6,030,000
	80%	64,320,000	5,360,000
	70%	56,280,000	4,690,000
	60%	48,240,000	4,020,000
	50%	40,200,000	3,350,000
Delivery Point	Plant Gate – Mt. Apo 1 and 2 Geothermal Power Plants		
Voltage at the Plant Gate	138 kV		

Note: * The Parties shall declare the Monthly Contracted Energy based on the number of days per month, scheduled outage of the plant, etc., at the start of the Contract Year

- c. Increase in Contracted Energy, Monthly Nominated Energy or Contracted Demand. 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;

- d. Outage Allowance. The Supplier shall have an Outage Allowance of seven hundred twenty (720) 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;
- e. 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. The Supplier shall not in any case have the obligation to procure Replacement Power other than from the Grid;

- f. Generation Charge. BUSECO shall pay the generation charge consisting of administrative charge, fixed charge and energy charge, as follows:

$$\text{Monthly Generation Charge} = \text{Administrative Charge} + \text{Fixed Charge} + \text{Energy Charge}$$

Where:

$$\text{Administration Charge} = (\text{PhP}100.64/\text{kW}/\text{month}) \times (\text{CD}) \times (\text{LCP}1/\text{LCP}0)$$

$$\text{Fixed Charge} = (\text{PhP}1,628.69/\text{kW}/\text{month}) \times (\text{CD})$$

$$\text{Energy Charge} = \sum \text{Demand}_{\text{sched}} \times \text{BER}/\text{LF} \times I_n, \text{ such that if } I_n < 1, I_n = 1$$

And where:

$$\text{Administration Charge} = (\text{PhP}100.64/\text{kW}/\text{month}) \times (\text{CD}) \times (\text{LCP}1/\text{LCP}0)$$

$$\text{CD} = \text{Contracted Demand}$$

$$\text{Demand}_{\text{sched}} = \text{Hourly Scheduled Demand, as defined under Schedule 2}$$

$$\text{BER} = \text{Base Energy Rate, PhP}3.034/\text{kWh}$$

$$\text{LF} = \text{Load Factor, } \sum \text{Demand}_{\text{nom}} / \text{Monthly Contracted Energy}$$

In = Inflation Factor for the Billing Month

- g. Customer Failure to Off-take Power. If the Customer off-takes 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;
- h. 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;
- i. 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 immediately after receipt from the Supplier of notice to make the Security Deposit, which shall be served to the Customer prior to the start of commissioning tests of the Power Plants.
- j. Assignment. In all cases of valid assignment, the assignee shall assume all the rights and obligations of the assignor under this Agreement; and
- k. Adjustments Due to Force Majeure. The Supplier shall have ninety-six (96) 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 ninety-six (96) 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

18. 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 October 31, 2014
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	Affidavit of Service of Application (including annexes) to the Legislative Body of the Municipality of Manolo Fortich, Province of Bukidnon
H-1	Affidavit of Service of Application (including annexes) to the Legislative Body of the Province of Bukidnon
I	Affidavit of Service of Application (including annexes) to the Legislative Body of the City of Makati
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	BUSECO Rate Impact Analysis
O	BUSECO Board Resolution No. 14-10-160
O-1	BUSECO Board Resolution No. 14-10-161
P	Financial Runs and Payment Schedules to PSALM (in a sealed envelope)

Q	PSALM Notice of Award to FDC MISAMIS
R	Affidavit of Engr. Roderick Z. Fernandez

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 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 FDC MISAMIS including trade secrets and business calculations, assumptions and projections;

Allegations in Support for the Issuance of Provisional Authority

20. The turnover of the output of Mt. Apo 1 and 2 Geothermal Power Plants is scheduled on December 26, 2014. FDC MISAMIS will start payment of the monthly and generation fees upon issuance of the Certificates of Closing and Effectivity on December 26, 2014. A provisional approval of the EPPA with indicative rate from the Commission will allow it to perform its obligation to supply the requirements of BUSECO and for the latter to receive power from the power plants. The issuance of the provisional authority will allow BUSECO 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;
21. Pursuant to the ERC Rules, the Commission may exercise its discretion by granting provisional authority or interim relief prior to a final Decision;

⁴ Rule 4 – Confidential Information, ERC Rules

⁵ Article 14 of the EPPA

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

Prayer

23. Thus, they pray that the Commission:
- a. Approve their duly negotiated EPPA;
 - b. 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; and
 - c. 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.

The Commission has set the application for jurisdictional hearing, expository presentation, pre-trial conference and evidentiary hearing on **November 26, 2014 (Wednesday) at ten-thirty in the morning (10:30 A.M.) at BUSECO's Main Office, Manolo Fortich, Bukidnon.**

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**, and **JOSEFINA PATRICIA A. MAGPALE-ASIRIT**, Energy Regulatory Commission, this 6th day of November, 2014 at Pasig City.


ATTY. NOEL J. SALVANERA
Director III, Legal Service