

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



IN THE MATTER OF THE APPLICATION FOR APPROVAL OF THE POWER SUPPLY CONTRACT BETWEEN NEGROS OCCIDENTAL ELECTRIC COOPERATIVE (NOCECO) AND GOOD FRIENDS HYDRO RESOURCES CORPORATION (GOOD FRIENDS) WITH PRAYER FOR PROVISIONAL AUTHORITY,

ERC CASE NO. 2016-100 RC

NEGROS OCCIDENTAL ELECTRIC COOPERATIVE (NOCECO) AND GOOD FRIENDS HYDRO RESOURCES CORPORATION (GOOD FRIENDS),

Applicants.

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D O C K E T E D
Date: MAY 04 2017
By: [Signature]

NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 29 April 2016, Applicants Negros Occidental Electric Cooperative (NOCECO) and Good Friends Hydro Resources Corporation (GOOD FRIENDS) filed an *Application* seeking the Commission's approval of the Power Supply Contract (PSC) entered into by both parties, including therein a prayer for provisional authority.

Applicants alleged the following in their *Application*:

THE APPLICANTS

1. NEGROS OCCIDENTAL ELECTRIC COOPERATIVE (NOCECO) 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 Brgy. Binicuil, Kabankalan City, Negros Occidental. It has an exclusive franchise to distribute electric service in the cities of Himamaylan, Kabankalan, and La Carlota and in the municipalities of Binalbagan, Candoni, Cauayan, Hinigiran, Hinobaan, Ilog, Isabela, La Castellana, Moises Padilla, Pontevedra, Pulupandan, San Enrique, Sipalay and Valladolid, all in the province of Negros Occidental.

2. GOOD FRIENDS HYDRO RESOURCES CORPORATION (GOOD FRIENDS) is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with principal address at 14 G.L. Lavilles St., cor. M.J. Cuenco Avenue, Tinago, Cebu City. Copies of GOOD FRIENDS' Certificate of Incorporation, Articles of Incorporation, latest General Information Sheet and latest Audited Financial Statements are attached as Annexes "A", "B", "C" and "D", respectively.

3. NOCECO and GOOD FRIENDS may be served orders and other processes through the undersigned counsel.

NATURE OF THE APPLICATION

4. The Application is filed pursuant to Rule 20 (B) of the Energy Regulatory Commission's Rules of Practice and Procedure ("ERC Rules"), and other pertinent rules and regulations, for the Honorable Commission's approval of the Power Supply Contract (PSC) executed by and between NOCECO and GOOD FRIENDS on 27 November 2015. A copy of the PSC is attached as Annex "E".

COMPLIANCE WITH PRE-FILING REQUIREMENTS

5. NOCECO and GOOD FRIENDS furnished the respective legislative bodies of the local government units where each principally operates with a copy of the Application together with all the annexes and accompanying documents. Copies of the proof of service to the Sangguniang Panlungsod of the cities of Kabankalan and Cebu, and the Sangguniang Panlalawigan of Negros Occidental are attached as Annexes "F", "G", and "H".

6. NOCECO caused the publication of the instant Application in its entirety, with the exception of annexes, in a newspaper of general circulation within its Franchise Area. Copies of the corresponding Affidavit of Publication and the newspaper are attached as Annexes "I" and "I-1".

STATEMENT OF THE FACTS

7. NOCECO previously sourced a portion of its baseload electricity requirements from Green Core Geothermal, Inc. (GCGI) under a Power Supply Agreement (PSA) for the supply of four (4) MW for a term of ten (10) years from 26 December 2010 up to 25 December 2020, pursuant to a Provisional Authority granted by the Commission in ERC Case No 2011-063 RC.

8. The PSA between NOCECO and GCGI contains a provision wherein parties may propose amendments to the

agreement not later than the First Billing Period of the 5th Year and, if parties fail to reach an agreement within the period specified therein, the PSA may be terminated by any party.

9. GCGI proposed amendments. Thereafter, NOCECO received a power supply proposal dated 28 October 2014 from the Panay Energy Development Corporation (PEDC) that was determined by NOCECO's Technical Working Group (TWG) to be economically favourable compared to the GCGI proposal. A copy of the Analysis on the Power Supply Offers to NOCECO is hereto attached as Annex "J".

10. The parties negotiated extensively, as evidenced by the correspondence between NOCECO and GCGI, a copy of which is attached as Annex "K".

11. GCGI confirmed that it could not match the cheaper generating rate of PEDC, prompting NOCECO to issue a Notice of Termination of their PSA with GCGI effective 26 December 2015. A copy of Resolution No. 83 series of 2015 issued by the Board of Directors of NOCECO that approved the Notice of Termination of the Power Supply Agreement with GCGI, is hereto attached as Annex "L".

12. Pending the execution of the replacement PSA between NOCECO and PEDC, and in line with the advice of the Legal Service of the Commission, NOCECO prudently sent out requests for proposals to five (5) other Power Suppliers as well as a follow-up inquiry to GOOD FRIENDS. Only three (3) suppliers replied with their proposals, namely:

- a. GOOD FRIENDS;
- b. Kepco SPC Power Corp.; and
- c. FDC Utilities Inc.

Copies of the letters inviting proposals sent by NOCECO and the corresponding proposals from GOOD FRIENDS, Kepco and FDC, are attached as Annexes "M" and "N", respectively.

13. Meanwhile, the ERC issued *Resolution No. 13, series of 2015*, directing all distribution utilities to conduct a competitive selection process (CSP) in the procurement of their supply to the captive market. In view of the expected implementation of the said resolution, NOCECO opted to limit the contract to six (6) months instead. As a result, all of the offers were withdrawn with the exception of that from GOOD FRIENDS.

14. At this point in time, there was barely a month left on NOCECO's existing contract with GCGI, prompting NOCECO to directly negotiate with GOOD FRIENDS. Copies of the suppliers' letters withdrawing their offer to supply or delaying the availability of the supply were attached to the letter submitted by NOCECO to the Commission on 23 December 2015, entitled "*Re: Power Supply Contract Between Negros Occidental Electric Cooperative (NOCECO) and Good Friends Hydro Resources Corp. (GFHR)*", justifying the legal basis for the action taken by NOCECO. A copy of

the said Letter dated 21 December 2015 is hereto attached as Annex "O".

15. It was necessary to replace GCGI because it supplied a substantial portion of NOCECO's base load requirement. Copies of NOCECO's Average Load Curve, Supply and Demand Scenario and Distribution Development Plan are attached as Annexes "P", "Q", and "R", respectively.

16. The Board of Directors of NOCECO issued a resolution approving the Power Supply Contract (PSC) with Good Friends Hydropower Corporation. A copy of Resolution No. 146, Series of 2015 is hereto attached as Annex "S".

17. For the future, NOCECO undertakes to submit a Demand Side Management (DSM) program for approval by the Commission and implement the same.

MATERIAL PROVISIONS AND OTHER INFORMATION
RELEVANT TO THE POWER SUPPLY CONTRACT

18. The PSC between NOCECO and GOOD FRIENDS contains the following salient terms and conditions:

18.1. Term – The term of this Contract shall be from 26 December 2015 to 25 June 2016, unless terminated earlier or extended in accordance with the terms of the contract.

18.2. Supply of Electricity – Supplier shall supply and deliver the Allowable Maximum Demand at all times and Customer shall take and pay for all electricity delivered (from the Unified Leyte Power Plants of the Power Sector Assets and Liabilities Corporation or PSALM) where the Supplier secured its power supply capacity as one of the Strip Owners of its generated output, including the Wholesale Electricity Spot Market or WESM) to the relevant Delivery Node for each Billing period, without prejudice to Section 2.5 of the PSC.¹

18.3. Reduction in Power Supply – Subject to Section 6 of the PSC (Force Majeure), in case PSALM's Unified Leyte Power Plants are unable to supply power, whether fully or partially for whatever reason, the Supplier's equivalent share of reduction in power supply from PSALM shall be proportionately shared to all of its off-takers including the Customer under this Contract. During said reduction of power supply, Customer shall automatically source its power from the WESM to meet the shortfall in Delivered energy quantities without any claim against the Supplier.²

18.4. Minimum Energy Charge – Subject to section 6.5 of the PSC, if the actual electricity drawn by Customer from

¹ Section 2.1, Power Supply Contract.

² Section 2.2, Power Supply Contract.

Supplier is below the Contract Energy, Customer shall pay Supplier the Minimum Energy Charge.³

18.5. Fees and Charges – The Electricity Retail Price shall be P5.03/kWh plus inflation factor plus all pass-through costs and charges.⁴ The inflation factor is based on PSALM's monthly inflation Factor passed on and charged to the Supplier. Customer shall be given by Supplier a discount of P0.03 per kWh (three cents per kWh) if Customer pays within five (5) business days from receipt of the Billing Statement from Supplier.⁵

19. **Rate Impact.** In order to determine the impact of the implementation of the PSC on NOCECO's blended generation costs, a comparison was conducted whereby the actual generation cost in October 2015 was compared with a projected generation cost had the supply from GOOD FRIENDS replaced that of GCGI and a portion of WESM. This resulted in an average generation rate of P5.2099/kWh with GOOD FRIENDS replacing GCGI and part of WESM, as against the actual generation cost of P5.0567/kWh in October 2015. The computation is included in the Evaluation on the Base Load Contract Offers to NOCECO, a copy of which is attached as Annex "T".

20. **Necessity for Power Supply from GOOD FRIENDS.** While exposure to WESM yields a lower rate impact, on paper, market prices are volatile such that risking the base load requirement to the market is considered imprudent.

ALLEGATIONS IN SUPPORT OF THE
THE PRAYER FOR PROVISIONAL AUTHORITY

21. In view of the expiration of NOCECO's PSC with GCGI on 26 December 2015, NOCECO's franchise area had an immediate and urgent need for a base load power supply for a short period of six (6) months. This predicament was adequately and readily addressed by the power supply contract executed by and between NOCECO and GOOD FRIENDS.

22. Considering the immediate and urgent need as well as the short term nature of the PSC, a provisional authority is respectfully prayed for. More so considering that the term of the subject PSC is only until 25 June 2016.

23. An Affidavit of Merit in support of the prayer for the provisional authority is hereto attached as Annex "U".

ALLEGATIONS IN SUPPORT OF THE MOTION FOR
CONFIDENTIAL TREATMENT OF INFORMATION

³ Section 2.5, Power Supply Contract.

⁴ Schedule III – Electricity Fees, Power Supply Contract.

⁵ Section 5.1.1, Power Supply Contract.

24. Under Rule 4 of the ERC Rules of Practice and Procedure (ERC Rules), 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.

25. GOOD FRIENDS is thus submitting a copy of its FINAL AGREEMENT with PSALM, an *Administration Agreement for the Selection and Appointment of Independent Power Producer Administrators (IPPAs) for the Strips of Energy of the Unified Leyte Geothermal Power Plant (UL GPP) located in Tongonan, Leyte, Annex "V"*, pursuant to the aforementioned Rule 4 because paragraph 25 thereof expressly provides for confidential treatment of the provisions, further providing that even where disclosure is permitted, "the Party providing the information shall ensure that the recipient of the information shall be subject to the same obligation of confidentiality contained in this Agreement."

26. The generation payments, indicated in Schedule H of the FINAL AGREEMENT, are also covered by the confidentiality clause; GOOD FRIENDS thus similarly submits the NOCECO Price Derivation, Allocations of the Monthly Fixed Administrative Fee and the Actual Power Bills sent to NOCECO from January to March 2016 as Annexes "W", "X" and "Y", respectively. These documents will establish that the bulk of the contract price will be utilized for the generation payments to PSALM and the remainder, denominated as the Fixed Administrative Fee, is insufficient to cover the actual expenses incurred by GOOD FRIENDS even if these expenses are weighted to reflect the share of the available capacity allocated for the NOCECO contract.

27. GOOD FRIENDS thus respectfully moves that Annexes "V", "W", "X" and "Y" not be disclosed and be treated as confidential in accordance with Rule 4 of the ERC Rules. Accordingly, it hereby submits one (1) copy thereof in a sealed envelope, with the envelope and each page of the document stamped with the word "Confidential".

28. GOOD FRIENDS respectfully prays that a protective order be issued by the Honorable Commission with regard to the aforementioned documents containing confidential information.

PRAYER

WHEREFORE, in view of all the foregoing, it is most respectfully prayed of this Honorable Commission that:

- 1) Upon filing of the instant Application, and pending hearing thereon, an Order be issued:
 - a. granting PROVISIONAL AUTHORITY for the immediate implementation of the provisions of the Power Supply Contract dated 27 November 2015; and

b. Treating the FINAL AGREEMENT between PSALM and GOOD FRIENDS and the other documents from GOOD FRIENDS, submitted as Annexes "V", "W", "X" and "Y", as well as the information contained therein as CONFIDENTIAL and directing its non-disclosure pursuant to Rule 4 of the ERC Rules, and prescribing the guidelines for the protection thereof.

2) After hearing thereon on the merits, a Decision be rendered issuing a PERMANENT APPROVAL of the Power Supply Contract dated 27 November 2015 between NOCECO and GOOD FRIENDS.

Other reliefs just and equitable are likewise prayed for.

The Commission has set the said *Application* for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on **15 June 2017, at ten o'clock in the morning (10:00 A.M.), at NOCECO Main Office, Barangay Binicuil, Kabankalan City, Negros Occidental.**

All persons who have an interest in the subject matter of the instant case may become a party by filing with the Commission a verified Petition to Intervene at least five (5) days prior to the initial hearing and subject to the requirements under Rule 9 of the 2006 Rules of Practice and Procedure, indicating therein the docket number and title of the case and stating the following:

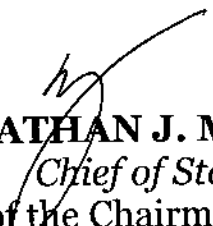
- i. The petitioner's name and address;
- ii. The nature of petitioner's interest in the subject matter of the proceeding and the way and manner in which such interest is affected by the issues involved in the proceeding; and
- iii. A statement of the relief desired.

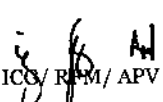
All other persons who may want their views known to the Commission with respect to the subject matter of the case may file their Opposition or Comment thereon at any stage of the proceeding before Applicants rest their case, subject to the requirements under Rule 9 of the 2006 Rules of Practice and Procedure. No particular form of Opposition or Comment is required, but the document, letter, or writing should contain the following:

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

All such persons who wish to have a copy of the *Application* may request from Applicant that they be furnished with the same, prior to the date of the initial hearing. Applicant is hereby directed to furnish all those making such request with copies of the *Application* and its attachments, subject to the reimbursement of reasonable photocopying costs. Any such person may likewise examine the *Application* and other pertinent records filed with the Commission during the standard office hours.

WITNESS, the Honorable Chairman **JOSE VICENTE B. SALAZAR**, and the Honorable Commissioners **ALFREDO J. NON**, **GLORIA VICTORIA C. YAP-TARUC**, **JOSEFINA PATRICIA A. MAGPALE-ASIRIT**, and **GERONIMO D. STA. ANA**, Energy Regulatory Commission, this 27th day of April 2017 at Pasig City.


ATTY. NATHAN J. MARASIGAN
Chief of Staff
Office of the Chairman and CEO


LS: ICC/ R/M/ APV