



IN THE MATTER OF THE APPLICATION FOR APPROVAL OF THE RENEWAL OF THE ELECTRIC POWER SUPPLY AGREEMENT BETWEEN DAVAO LIGHT AND POWER COMPANY, INC. AND HYDRO ELECTRIC DEVELOPMENT CORPORATION, WITH PRAYER FOR PROVISIONAL AUTHORITY

ERC CASE NO. 2005-001 RC

DAVAO LIGHT AND POWER COMPANY,  
INC. (DLPC),

Applicant.

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D O C K E T E D

Date: FEB 24 2006

By: *ire*

### DECISION

On January 12, 2005, Davao Light and Power Company, Inc. (DLPC), a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, filed an application for approval of the renewal of its Electric Power Supply Agreement (EPSA) with Hydro Electric Development Corporation (HEDCOR), with prayer for provisional authority.

Having found said application sufficient in form and substance with the required fees having been paid, an Order and a Notice of Public Hearing, both dated January 28, 2005, were issued setting the case for hearing on March 7, 2005.

DLPC was directed to cause the publication of the Notice of Public Hearing, at its own expense, twice (2x) for two (2) successive weeks in two (2) newspapers of

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nationwide circulation in the country, with the last date of publication to be made not later than two (2) weeks before the scheduled date of initial hearing. In compliance with the said directive, DLPC published the Notice of Public Hearing in the People's Monitor National Weekly Newspaper and Mid Day Monitor News National Weekly Newspaper on February 7 and 14, 2005.

The Office of the Solicitor General (OSG), the Commission on Audit (COA) and the Committees on Energy of both Houses of Congress were furnished with copies of the Order and the Notice of Public Hearing and were requested to have their respective duly authorized representatives present at the aforesaid initial hearing.

Likewise, the Offices of the Mayors of the City of Davao and the Municipalities of Carmen, Duhali and Sto. Tomas, all in the province of Davao del Norte, were furnished with copies of the Order and the Notice of Public Hearing for the appropriate posting thereof on their respective bulletin boards.

During the hearing on March 7, 2005, DLPC presented: (1) proofs of its compliance with the Commission's posting and publication of notice requirements; (2) its witnesses; and (3) several documents as evidence. Thereafter, on March 22, 2005, DLPC submitted its "Formal Offer of Exhibits".

On April 11, 2005, the Commission issued an Order setting this case for another hearing on April 19, 2005 at the ERC Mindanao Field Office, Mintrade Building, Davao City.

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Upon review of the documents submitted by DLPC, the Commission found that DLPC failed to comply with the requirements of Section 1(d), Article VI of the *"Guidelines for the Recovery of Costs for the Generation Component of the Distribution Utilities' Rates"*, particularly the details of the procurement process it used in selecting HEDCOR as its supplier. Hence, an Order was issued dated July 4, 2005 directing DLPC to submit the written proposals of the other generation companies that manifested their intentions to supply power to DLPC.

Prior to the expiration of the original EPSA, the Commission issued an Order dated April 26, 2005 directing DLPC and HEDCOR to continuously comply with their respective obligations under the same terms and conditions of the EPSA to prevent power outages within DLPC's franchise area until such time that the Commission has finally resolved the instant application.

On July 22, 2005, DLPC filed its "Compliance" containing the written proposals of Aggreko International Projects Limited (Aggreko) and Marubeni Energy Services Corporation (Marubeni).

## DISCUSSION

On November 27, 1999, DLPC entered into an Electric Power Supply Agreement (EPSA) with HEDCOR with a period of five (5) years reckoned from the date of the approval of the then Energy Regulatory Board (ERB) and shall be renewable for another five (5) years upon written consent of the parties. Said EPSA was approved by the then Board on April 28, 2000.

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After the expiration of the said EPSA, DLPC and HEDCOR executed a Letter of Agreement renewing the original EPSA for another five (5) years or until April 28, 2010 under the same terms and conditions.

In compliance with Section 1(d), Article VI of the "Guidelines", DLPC conducted a procurement process and received proposals from three (3) private generation companies, namely: (a) Agrekko (b) Marubeni and (c) HEDCOR.

After a thorough evaluation of the said proposals, DLPC decided to renew its contract with HEDCOR considering that its rate and services are the most cost-effective, reliable, efficient and environmentally friendly source of power and energy. DLPC rejected the proposals of Marubeni and Agrekko on the following grounds:

- A. Marubeni Geothermal proposed to supply DLPC from an expansion of the Mt. Apo Geothermal field with the capacity from 20MW to 70 MW. However, Marubeni was unable to provide any pricing, terms and timetable for power supply. Mt. Apo Geothermal field is also not embedded in the franchise area of DLPC. Thus, taking power from such source would entail higher transmission costs.
  
- B. Agrekko proposed to provide diesel generators to supplement the low voltage experienced by DLPC due to limited transmission capacity between Pulangi Substation and Davao City. Its proposal would necessarily be linked to the price of fuel which would prove to be more costly. Thus, Agrekko's proposal would only serve as an alternative source of power but not on a regular basis.

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In the said power supply agreement, HEDCOR will supply and deliver to DLPC all the electric power and energy generated by NPC Upper Talomo. On the other hand, DLPC will purchase and accept all the electric power and energy produced and generated by HEDCOR under the following conditions:

- a) Cooperation Period - Five (5) years or up to year 2010.
- b) Electricity Price - Ninety-five percent (95%) of DLPC's immediate past month's average cost of electricity procured and accepted by DLPC from the National Power Corporation (NPC) and, whenever applicable, other independent power producers other than HEDCOR, as evidenced by the monthly billings paid by DLPC of any technical and financial discounts.
- c) Late Payment Penalty - Three (3%) percent per month (fraction of a month to be considered one month)

Comparison was made with other IPPs in Mindanao using the actual power bills for the billing period July 26, 2005 to August 25, 2005, to wit:

	NPC and TRANSCO to DLPC (PhP/kWh)	HEDCOR to DLPC (PhP/kWh)	Bubunawan Power Company (BPC) to CEPALCO (PhP/kWh)	Difference (PhP/kWh)
Average rate	3.2139	3.0532	3.1897	(0.1607) (0.1365)

The above table shows that HEDCOR's rate of PhP3.0532/kWh is lower compared to the Bubunawan Power Company's (BPC) rate of PhP3.1897/kWh, which would be beneficial to DLPC's present and future consumers.

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**WHEREFORE**, premises considered, the application for the approval of the renewal of the Electric Power Supply Agreement entered into by and between Hydro Electric Development Corporation (HEDCOR) and Davao Light and Power Company, Inc. (DLPC) for a period of five (5) years or until April 28, 2010 is hereby APPROVED. However, in the event that the NPC rate is no longer applicable due to the on-going privatization of NPC, as well as the impending open access and wholesale competition, HEDCOR and DLPC may renegotiate the pricing scheme of this contract to reflect the true cost of generation subject to the approval of the Commission. The parties should take into consideration the dynamics of a competitive market place augured by the privatization of NPC's generating assets, the implementation of Open Access and Transmission Service (OATS), as well as the operation of the Wholesale Electricity Spot Market (WESM).

SO ORDERED.

Pasig City, February 13, 2006.

(On Leave)  
**RODOLFO B. ALBANO, JR.**  
Chairman

  
**OLIVER B. BUTALID**  
Commissioner

  
**JESUS N. ALCORDO**  
Commissioner

  
**RAUF A. TAN**  
Commissioner

  
**ALEJANDRO Z. BARIN**  
Commissioner