

REPUBLIC OF THE PHILIPPINES
ENERGY REGULATORY COMMISSION
PACIFIC CENTER BUILDING
SAN MIGUEL AVENUE, ORTIGAS CENTER
CITY OF PASIG

REP. 011 2010
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IN THE MATTER OF THE APPLICATION
FOR APPROVAL OF THE ELECTRIC
POWER PURCHASE AGREEMENT (EPPA)
BETWEEN AKLAN ELECTRIC
COOPERATIVE, INC. AND PANAY
ENERGY DEVELOPMENT
CORPORATION, WITH PRAYER FOR
PROVISIONAL AUTHORITY.

2010-100

ERC CASE NO. _____ RC

AKLAN ELECTRIC COOPERATIVE, INC.
AND PANAY ENERGY DEVELOPMENT
CORPORATION,

Applicants.

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APPLICATION

AKLAN ELECTRIC COOPERATIVE, INC. ("AKELCO") and PANAY
ENERGY DEVELOPMENT CORPORATION ("PEDC"), through the undersigned counsel
and unto the Honorable Commission, most respectfully state:

Parties to the Case

1. Applicant Aklan Electric Cooperative, Inc. 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 Lezo, Aklan. It is a duly franchised electric utility servicing its consumers in the Municipalities of Altavas, Balete, Banga, Batan, Buruanga, Ibajay, Kalibo, Lezo, Libacao, Madalag, Makato, Malay, Malinao, Nabas, New Washington, Numancia, Tangalan, Libertad and Pandan.

2. Panay Energy Development Corporation is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with principal office address at Brgy. Ingore, La Paz, Iloilo City. PEDC is in the process of constructing and

installing its 2 x 82 MW clean coal-fired power plant (the “Power Plant”), which it shall own, operate, and maintain, located at Brgy. Ingore, La Paz, Iloilo City.

Statement of Facts and of the Case

3. AKELCO and PEDC entered into an Electric Power Purchase Agreement (“EPPA”) on 14 May 2010, in which PEDC agreed to supply and deliver, and AKELCO agreed to take and pay for electricity supplied by PEDC, at a contracted capacity of 12 MW (the “Contracted Capacity”), with a load factor of 100%, upon the commencement of the Commercial Operation Date (i.e., the date when all Units have been completed, inspected, tested and are ready to commence operation as confirmed in a written communication from PEDC to AKELCO, which date should not be later than 26 March 2011, a “Unit” being any one of the two 82 MW generating equipment comprising of the boiler, turbine and generator, and its associated auxiliaries), at an Electricity Fee (Schedule 4 of the EPPA) computed as follows:

$$\begin{aligned}
 \text{Electricity Fees} &= \text{Energy Fees} + \text{Actual Fuel Cost} \\
 \text{Energy Fees} &= \text{Tariff Fee} \times E \\
 \text{Tariff Fee} &= \text{CRF} + \left[\text{PhpO\&M} \times \frac{\text{PhCPI}_c}{\text{PhCPI}_b} \right] + \\
 &\quad \left[\text{USDO\&M} \times \frac{\text{USCPI}_c}{\text{USCPI}_b} \times \text{Forex} \right] \\
 \text{Actual Fuel Cost} &= \left[\frac{\text{Coal Price} + \text{Transport Cost}}{1,000} \right] \times \text{Consumption Rate} \times \text{Forex} \times E \\
 \text{Coal Price} &= \text{Base Coal Price} \times \frac{\text{Current Newcastle Index}}{\text{Base Newcastle Index}}
 \end{aligned}$$

Where

CRF	=	Capital Recovery Fee	=	2.6055	Php per kWh
PhpO&M	=	Peso-based O&M Fee	=	0.4253	Php per kWh
PhCPI _c	=	Philippine Consumer Price Index (CPI) for all items for the Current Month as Published by the National Statistics Office			
PhCPI _b	=	Base Philippine CPI	=	158.80	May-09
USDO&M	=	US Dollar-based O&M Fee	=	0.0082	USD per kWh

USCPI _c	=	U.S. Consumer Price Index for the Current Month as published by the U.S. Bureau of Labor Statistics
USCPI _b	=	Base U.S. CPI = 213.856 May-09
Forex	=	Reference exchange rate (in Php per USD) on the meter reading date, as published by the Bangko Sentral ng Pilipinas, www.bsp.gov.ph
E	=	Minimum Contracted Energy or Energy Delivered, whichever is higher
Current Newcastle Index	=	Preceding quarter's average coal price for 6700kcal/kg ADB per the Global Coal Newcastle Physical Trading Index, www.globalcoal.com
Base Newcastle Index	=	\$ 63.44 per metric ton
Base Coal Price	=	\$ 53.22 per metric ton
Transport Cost	=	Actual transport cost in USD per metric ton
Consumption Rate	=	0.7kg per kWh, escalated at a rate of 1.5% per year

4. The Contracted Capacity shall be delivered to AKELCO at the delivery points as designated in the EPPA (Schedule 3 of the EPPA) at the start of the Commercial Operation Date.

5. Prior to Commercial Operations and during the testing and commissioning period, PEDC will deliver to AKELCO on a non-firm basis electric power generated by the Power Plant in the course of testing and commissioning, subject to the payment of Electricity Fees for actual energy taken by AKELCO computed as follows:

$$\begin{aligned}
 \text{Electricity Fees} &= \text{Energy Fees} + \text{Actual Fuel Cost} \\
 \text{Energy Fees} &= 50\% \times \text{Tariff Fee} \times E \\
 \text{Tariff Fee} &= \text{CRF} + \left[\text{PhpO\&M} \times \frac{\text{PhCPI}_c}{\text{PhCPI}_b} \right] + \\
 &\quad \left[\text{USDO\&M} \times \frac{\text{USCPI}_c}{\text{USCPI}_b} \times \text{Forex} \right] \\
 \text{Actual Fuel Cost} &= \left[\frac{\text{Coal Price} + \text{Transport Cost}}{1,000} \right] \times \text{Consumption Rate} \times \text{Forex} \times E \\
 \text{Coal Price} &= \text{Base Coal Price} \times \frac{\text{Current Newcastle Index}}{\text{Base Newcastle Index}}
 \end{aligned}$$

Where

CRF	=	Capital Recovery Fee	=	2.6055	Php per kWh
PhpO&M	=	Peso-based O&M Fee	=	0.4253	Php per kWh
PhCPI _c	=	Philippine Consumer Price Index (CPI) for all items for the Current Month as Published by the National Statistics Office			
PhCPI _b	=	Base Philippine CPI	=	158.80	May-09
USDO&M	=	US Dollar-based O&M Fee	=	0.0082	USD per kWh
USCPI _c	=	U.S. Consumer Price Index for the Current Month as published by the U.S. Bureau of Labor Statistics			
USCPI _b	=	Base U.S. CPI	=	213.856	May-09
Forex	=	Reference exchange rate (in Php per USD) on the meter reading date, as published by the Bangko Sentral ng Pilipinas, www.bsp.gov.ph			
E	=	Minimum Contracted Energy or Energy Delivered, whichever is higher			
Current Newcastle Index	=	Preceding quarter's average coal price for 6700kcal/kg ADB per the Global Coal Newcastle Physical Trading Index, www.globalcoal.com			
Base Newcastle Index	=	\$ 63.44			per metric ton
Base Coal Price	=	\$ 53.22			per metric ton
Transport Cost	=	Actual transport cost in USD per metric ton			
Consumption Rate	=	0.7kg per kWh, escalated at a rate of 1.5% per year			

6. Moreover, upon completion of the commissioning for the second Unit (i.e., the Pre-Commercial Operation Period), AKELCO shall take the proportionate net electrical output for the second Unit of the Power Plant delivered by PEDC on a firm basis, subject to the payment of Electricity Fees computed as follows:

$$\begin{aligned}
 \text{Electricity Fees} &= \text{Energy Fees} + \text{Actual Fuel Cost} \\
 \text{Energy Fees} &= 75\% \times \text{Tariff Fee} \times E \\
 \text{Tariff Fee} &= \text{CRF} + \left[\text{PhpO\&M} \times \frac{\text{PhCPI}_c}{\text{PhCPI}_b} \right] + \\
 &\quad \left[\text{USDO\&M} \times \frac{\text{USCPI}_c}{\text{USCPI}_b} \times \text{Forex} \right]
 \end{aligned}$$

$$\text{Actual Fuel Cost} = \left(\frac{\text{Coal Price} + \text{Transport Cost}}{1,000} \right) \times \text{Consumption Rate} \times \text{Forex} \times E$$

$$\text{Coal Price} = \text{Base Coal Price} \times \frac{\text{Current Newcastle Index}}{\text{Base Newcastle Index}}$$

Where

CRF = Capital Recovery Fee = 2.6055 Php per kWh

PhpO&M = Peso-based O&M Fee = 0.4253 Php per kWh

PhCPI_c = Philippine Consumer Price Index (CPI) for all items for the Current Month as Published by the National Statistics Office

PhpCPI_b = Base Philippine CPI = 158.80 May-09

USDO&M = US Dollar-based O&M Fee = 0.0082 USD per kWh

USCPI_c = U.S. Consumer Price Index for the Current Month as published by the U.S. Bureau of Labor Statistics

USCPI_b = Base U.S. CPI = 213.856 May-09

Forex = Reference exchange rate (in Php per USD) on the meter reading date, as published by the Bangko Sentral ng Pilipinas, www.bsp.gov.ph

E = Minimum Contracted Energy or Energy Delivered, whichever is higher

Current Newcastle Index = Preceding quarter's average coal price for 6700kcal/kg ADB per the Global Coal Newcastle Physical Trading Index, www.globalcoal.com

Base Newcastle Index = \$ 63.44 per metric ton

Base Coal Price = \$ 53.22 per metric ton

Transport Cost = Actual transport cost in USD per metric ton

Consumption Rate = 0.7kg per kWh, escalated at a rate of 1.5% per year

7. The EPPA thus proposes separate rates on the power delivered by PEDC to AKELCO, depending on the stage of the plant development (i.e., during testing and commissioning, during Pre-Commercial Operation Date, or on Commercial Operation Date).

8. The EPPA shall have a term of twenty five (25) years commencing on the Commercial Operation Date and ending on the 25th anniversary of such commencement date, unless sooner terminated pursuant to the terms thereof.

9. The foregoing agreed terms, among others, are embodied in the EPPA, a copy of which is attached to this Application as **Annex "A"** and made an integral part hereof.

10. Should the Honorable Commission approve the Electricity Fees under the EPPA, there will be an increase in generation cost of One Peso and Eighty Nine Centavos (Php1.89) on Commercial Operation Date as shown in **Annex "J"**.

Allegations in Support of the Prayer for Provisional Authority

11. Currently, AKELCO sources its electric power requirements from Green Core Geothermal, Inc. contracted capacity of 18MW from March 26, 2010 to December 25, 2010 which will be reduced to 10MW at December 26, 2010. Panay Power Corporation on the other supplies a dependable capacity of 4MW under New Washington Plant. Finally AKELCO is able to source 10MW from the Ancillary Services Procurement Agreement between NGCP and Panay Power Corporation . By December 26, 2010 Akelco has an effective contracted capacity of 24MW. Comparing this with the electricity requirement of Akelco's franchise area which has a peak demand of 36MW, there is a shortfall of 12MW.

12. Further, the supply by NPC of the power in the island of Panay is unreliable. Almost daily, AKELCO experiences manual load dropping due to problems in the generation capacity, fuel supply issues, and recent transmission problems in the Leyte-Cebu submarine cable. Added to these is the privatization of the generating plants of NPC, which has resulted in the unpredictability of the security of supply by NPC.

13. In addition, it is important to stress the problems of the quality and reliability of electric power in Panay. The quality of power in Panay, particularly during off-peak when bulk of the power requirements of the island come from Negros Island, is dependent on the submarine cable connecting Negros and Panay. The limitation in the capacity that this cable can

take in inevitably limits the supply of electric power to Panay and the transmission of electric power through such underwater facility affects the quality and reliability of the electric power transmitted to Panay. Meanwhile, NPC plants in Panay are shutdown during off-peak since it has become costly to operate them.

14. Thus, the expected additional capacity from PEDC even as early as the testing and commissioning and pre-commercial operations of the Power Plant will help alleviate this shortage of electric power in Panay and improve the quality and reliability of electric power delivered to AKELCO's customers.

15. Under the terms of the EPPA, among the conditions precedent to the performance by AKELCO and PEDC of their respective obligations thereunder is the approval by the Honorable Commission of this Application.

16. Thus, for PEDC to be able to deliver and AKELCO to be able to receive power from the former as early as the testing and commissioning and the pre-commercial operation date of the power plant, it is imperative that a provisional authority be granted for the EPPA allowing PEDC to deliver and AKELCO to receive power during the testing and commissioning of the Power Plant and the pre-commercial operation date.

17. Should the Honorable Commission grant a provisional authority for PEDC to deliver and AKELCO to receive power during the testing and commissioning period, there will be an increase in the rates of Ninety Seven Centavos (Php0.97) per kWh during this period. Should a provisional authority be given for the pre-commissioning period, there will be an increase of One Peso and Forty Three Centavos (Php1.43) per kWh during this period.

Compliance with Pre-Filing Requirements

18. Applicants manifest their compliance with the pre-filing requirements mandated under Rule 3, Section 4 (e) of the Implementing Rules and Regulations of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 or the "EPIRA", and Rule 6 of the 2006 ERC Rules of Practice and Procedure, as evidenced by the following attachments:

- a) Affidavit of Service re: service of the Application with Annexes to the Sangguniang Panlungsod of the City of Iloilo, a copy of which is attached hereto as **Annex “B”**;
- b) Affidavit of Service re: service of the Application with Annexes to the Sangguniang Bayan of Lezo, Aklan, a copy of which is attached hereto as **Annex “C”**;
- c) Affidavit of Service re: service of the Application with Annexes to the Sangguniang Panlalawigan of Aklan, a copy of which is attached hereto as **Annex “D”**;
- d) Affidavit of Publication stating that the instant Application had been published in a newspaper of general circulation, a copy of which is attached hereto as **Annex “E”**;
- e) Newspaper issue where this Application, as published, appeared, a copy of which is attached hereto as **Annex “F”**;
- f) Proof of payment of filing fees, a copy of which is attached as **Annex “G”**;
- g) A copy of the Board Resolution authorizing AKELCO to jointly file the instant Application with PEDC, which is attached as **Annex “H”**; and
- h) A copy of the Board Resolution authorizing PEDC to jointly file the instant application with AKELCO, which is attached as **Annex “I”**.

PRAYER

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

1. Upon initial review of the instant Application and pending trial on the merits, issue a provisional authority for the terms of the Electric Power Purchase Agreement between PEDC and AKELCO, thereby authorizing PEDC to charge and collect the respective Electricity Fees corresponding to the (1) Testing and Commissioning period, (2) Pre-Commercial

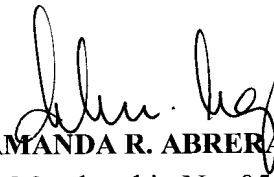
Operation Date, and (3) Commercial Operation Date, and authorizing AKELCO to pass the full amount thereof to its consumers; and

2. After trial on the merits, issue a permanent approval of the terms of the Electric Power Purchase Agreement between PEDC and AKELCO, thereby authorizing PEDC to charge and collect from AKELCO the Electricity Fees corresponding to the (1) Testing and Commissioning period, (2) Pre-Commercial Operation Date, and (3) Commercial Operation Date, and authorizing AKELCO to pass the full amount thereof to its consumers.

Other reliefs just and equitable under the premises are likewise prayed for.

Pasig City and Makati City for Pasig City, 25 August 2010.

**COUNSEL FOR APPLICANT
PANAY ENERGY DEVELOPMENT CORPORATION**



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Pearl Drive, Ortigas Center, Pasig City
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powerlawfirm@gmail.com


VERIFICATION AND CERTIFICATION

I, **JAIME T. AZURIN**, of legal age, Filipino, and with office address at the 22/F GT Tower International, 6813 Ayala Avenue, Makati City, after having been duly sworn in accordance with law, hereby depose and state that:

1. I am the Senior Vice President of Panay Energy Development Corporation (“PEDC”), one of the applicants in the above-entitled case;
2. Jointly with Applicant Aklan Electric Cooperative, Inc., I caused the preparation and filing of the instant Application;
3. I read the same and all the allegations contained therein are true and correct of my own personal knowledge and belief;
4. I certify that PEDC has not commenced any action and/or proceeding involving the same issue/s before the Supreme Court, the Court of Appeals, or any other tribunal or agency;
5. To the best of my knowledge, no such action and/or proceeding involving the same issue/s is pending before the Supreme Court, the Court of Appeals, or any other tribunal or agency; and
6. Should I thereafter learn that such action and/or proceeding is pending before the Supreme Court, the Court of Appeals, or any other tribunal or agency, I herein undertake to report such fact before the Honorable Commission within five (5) days from knowledge.

FURTHER AFFIANT SAYETH NONE.

IN WITNESS WHEREOF, I have hereunto set my hand this 6 AUG 2010 at Makati City.


JAIME T. AZURIN

SUBSCRIBED AND SWORN to before me this 26 AUG 2010, by JAIME T. AZURIN, with Community Tax Certificate No. 1951988 issued on 08 January 2010 in Manila, who has satisfactorily proven to me his identity through his Passport No. TT0247829 valid until 13 June 2011, that he is the same person who personally signed before me the foregoing Verification and Certification and acknowledged that he executed the same.


NOTARY PUBLIC

ATTY. IRSKEL D. DAVID
NOTARY PUBLIC
MAKATI CITY
UNTIL SEPTEMBER 31, 2011
ROLL NO. 97516
IBP LICENSE NO. 05499
PTR NO. 9120861M/21 MAY 2010

Doc. No. 158
Page No. 33
Book No. I
Series of 2010.

VERIFICATION AND CERTIFICATION

I, **CHITO R. PERALTA**, of legal age, Filipino, and with office address at Poblacion, Lezo, Aklan, after having been sworn to in accordance with law, hereby depose and state that:

1. I am the General Manager of Aklan Electric Cooperative, Inc. ("AKELCO"), one of the applicants in the above-entitled case;

2. Jointly with Applicant Panay Energy Development Corporation, I caused the preparation and filing of the Instant Application;

3. I read the same and all allegations contained therein are true and correct of my own personal knowledge and belief;

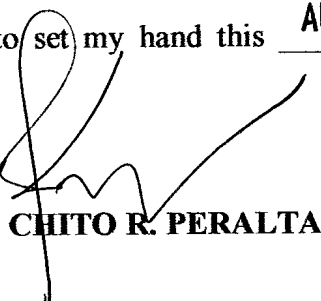
4. I certify that AKELCO has not commenced any action and/or proceeding involving the same issue/s before the Supreme Court, the Court of Appeals, or any other tribunal or agency;

5. To the best of my knowledge, no such action and/or proceeding involving the same issue/s is pending before the Supreme Court, the Court of Appeals, or any other tribunal or agency; and

6. Should I thereafter learn that such action and/or proceeding is pending before the Supreme Court, the Court of Appeals, or any other tribunal or agency, I herein undertake to report such fact before the Honorable Commission within five (5) days from knowledge.


FURTHER AFFIANT SAYETH NONE.

IN WITNESS WHEREOF, I have hereunto set my hand this AUG 25 2010 at Kalibo, Aklan.


CHITO R. PERALTA

SUBSCRIBED AND SWORN to before me this AUG 25 2010, by CHITO R. PERALTA, with Community Tax Certificate No. 25827826 issued on February 2, 2010 at New Washington, Aklan, who has satisfactorily proven to me his identity through his Non-Professional Driver's License No. F07-88-001830 valid until 2012-03-24, that he is the same person who personally signed before the foregoing Verification & Certification and acknowledged that he executed the same.

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Page No. 51;
Book No. vlll;
Series of 2010


SAYKEME E. MOLINO-MARTELINO
Notary Public for and in the Province of Aklan
Until December 31, 2010
Appointment No. 7 (2010-2011)
Carrillo Bldg., L. Barrios St., Kanuu, Aklan
Tel. No. (036) 200-2067
Roll of Attorneys No. 45595/5-21-01
PTR No. 2144912: 01-04-2010/Kalibo, Aklan
IBP Lifetime Member No. 0553A