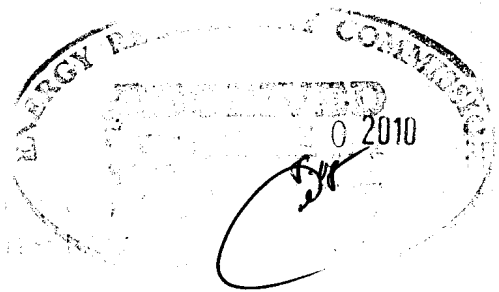


REPUBLIC OF THE PHILIPPINES
ENERGY REGULATORY COMMISSION
Pacific Center Building
San Miguel Avenue, Ortigas Center
Pasig City

IN THE MATTER OF THE APPLICATION
FOR APPROVAL OF THE
MEMORANDUM OF AGREEMENT
(MOA) FOR SALE OF GENERATED
POWER DURING COMMISSIONING
BETWEEN SMITH BELL MINI-HYDRO
CORPORATION AND NUEVA VIZCAYA
ELECTRIC COOPERATIVE, WITH
PRAYER FOR THE ISSUANCE OF
PROVISIONAL AUTHORITY.

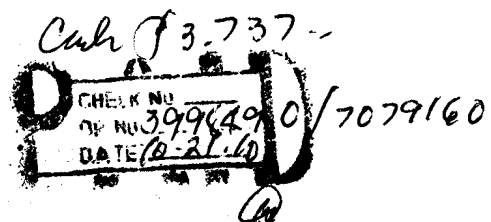


ERC CASE NO. 2010-126-re

SMITH BELL MINI-HYDRO
CORPORATION (SBMHC) AND NUEVA
VIZCAYA ELECTRIC COOPERATIVE
(NUVELCO),

Applicants.

x-----x



APPLICATION

COME NOW the applicants, SMITH BELL MINI-HYDRO CORPORATION ("SBMHC" for brevity) and NUEVA VIZCAYA ELECTRIC COOPERATIVE (hereinafter "NUVELCO"), by and through the undersigned Firm and unto this Honorable Commission, most respectfully aver: That -

1. SBMHC is a corporation organized and existing under Philippine laws to engage, own and carry on the business of power generation and hydropower plants, with principal office address at 2294 Pasong Tamo Extension, 1231 Makati City, where it may be served with summons and other legal processes.

Copies of pertinent documents evidencing SBMHC's due registration and permit to operate as a generation company are appended herein as follows:

- (a) Articles of Incorporation - Annex "A"
- (b) Securities and Exchange Commission (SEC) Certificate of Registration of said Articles - Annex "B"
- (c) General Information Sheet for Year 2010 - Annex "C"
- (d) Board of Investments Certificate of Registration - Annex "D"
- (e) Environmental Compliance Certificate - Annex "E"

2. Meanwhile, NUVELCO is a non-stock, non-profit electric cooperative, organized and existing under and by virtue of Presidential Decree No. 269 ("P.D. 269"), as amended, with principal office at Gabut, Dupax del Sur, Nueva Vizcaya, where it may be served with summons and other legal processes. It is the holder of an exclusive franchise to distribute electric service in the Municipalities of Alfonso Castañeda, Ambaguio, Aritao, Bagabag, Bambang, Bayombong, Diadi, Dupax del Sur, Dupax del Norte, Kasibu, Kayapa, Quezon, Solano, Sta. Fe, and Villaverde, all in the province of Nueva Vizcaya (hereinafter, the "Franchise Area"). A copy of Applicant NUVELCO's Certificates of Franchise are hereto attached as **Annex "F"** and **"F-1"** to form integral parts hereof;
3. SBMHC is a new generation facility and is in the process of securing a Certificate of Compliance ("COC") from the Energy Regulatory Commission as evinced by a copy of the Application for COC duly received by this Honorable Commission on 14 September 2010, hereto attached as **Annex "G"**, and by a copy of Official Receipt No. 8004778 showing payment of the required application fees, attached hereto as **Annex "G-1"**, to form integral parts hereof;
4. SBMHC is in the final stages of constructing its Commonal-Uddiawan Hydroelectric Power Plant with an installed capacity of 1800 KW located in Barangay Commonal, Solano, Nueva Vizcaya (hereinafter, the "Facility"), which is slated to undergo commissioning and testing on 22 October 2010;
5. To avoid dissipating the power generated during commissioning of the Facility, SBMHC endeavored to sell the energy thus produced;
6. Aforesaid sale of power, sans a duly issued COC, is sanctioned by the *Revised Rules for the Issuance of Certificates of Compliance ("COCs") for Generation Companies/Facilities* adopted by this Honorable Commission through *Resolution No. 09, Series of 2010*, to wit:
- "Section 2, Guiding Principles. -*
(d) x x x . For new Generation Facilities, the Generation Company may conduct Commissioning for a maximum period of two (2) months even without a COC and the sale of the generated output during Commissioning shall not be considered as Commercial Operations. x x x the recovery of the cost of power purchased by a distribution utility during Commissioning shall be governed by the Guidelines for the Recovery of Costs for Generation Component of the Distribution Utilities' Rates." [Emphasis ours];
7. Moreover, SBMHC intends to become eligible under the *Feed-in Tariff ("FIT") Rules* approved and adopted by this Honorable Commission through *Resolution No. 16, Series of 2010*, where it is qualified under the following proviso:
- "1.4. Scope.*
x x x.
RE Plants that have been in commercial operation before the FITs are established by the ERC pursuant to these Rules are not qualified for such FITs: Provided, however, that RE Plants, which have started commercial operations after the effectivity of the R.A.

No. 9513 and are not bound under any contract to supply the energy they generate to any DU or consumer, may avail of FITs from the time they are certified by ERC as eligible through an amendment of the COC issued to them and for a period of twenty (20) years less the number of years they have been in operation. x x x. [Emphasis ours];

8. As the output energy may not yet be sold and paid under the FIT System as no FITs have been established by the ERC hitherto, SBMHC, in the interim, entered into a Memorandum of Agreement with NUVELCO for the sale of energy generated during commissioning (the "MOA"), until such time when the FITs are in place and SBMHC is able to sell energy under the FIT System. The approval of the MOA is now subject of the instant Application;

9. By and pursuant to the *Implementing Rules and Regulations of R.A. No. 9136 ("EPIRA")*, Rule 7, Section 5 (a), and other pertinent rules and regulations, this *Application* is submitted to this Honorable Commission for its due consideration and approval of the *Memorandum of Agreement* for the sale of generated power during commissioning executed by and between SBMHC and NUVELCO. A copy of the subject MOA is herein appended as **Annex "H"** to form an integral part hereof;

I. ABSTRACT OF THE MOA AND OTHER RELATED INFORMATION

10. SBMHC agrees to sell to NUVELCO any and all energy that will be generated by the Facility beyond the first seventy-two (72) hours of commissioning thereof;

11. NUVELCO agrees to purchase at the rate of **P4.50/kWh** (landed cost) any and all energy thus generated and delivered to it by SBMHC;

12. The agreed selling price is reasonable and just under the circumstances, following the policy of this Honorable Commission that in the absence of an ERC-approved rate, the NPC rate or proposed rate, whichever is lower, shall be adopted. The proposed rate of P4.50/kWh is lower than the NPC Effective Rate for Luzon Grid applicable as of August 2010 which is equivalent to P5.7661/kWh;

13. The MOA shall remain binding and enforceable until the ERC establishes the FITs pursuant to the *Feed-In Tariff Rules*, and are made applicable to SBMHC;

14. Further, the MOA shall be automatically terminated on the day the FITs and all other agreements, rates and charges provided under the FIT Rules are in place and fully implemented;

15. In view of the foregoing sale of generated output during commissioning, not only will SBMHC prevent wastage of hydropower energy which shall be maximized owing to the rainy season, more so, the sale shall benefit NUVELCO and its member-consumers who shall enjoy stable and reliable electricity at a lower rate;

II. NECESSITY OF ENTERING INTO A MOA

16. Being a new generation facility which utilizes run-of-river hydroelectric power resource, and not being bound under any contract to supply energy to any distribution utility or customer, SBMHC intends to be covered by the *Feed-in Tariff Rules*;

17. After ensuring that commissioning and its eventual commercial operation will not render it ineligible under the FIT Rules as stated under the *Feed-in Tariff Rules, Section 1.4. Scope* heretofore quoted, SBMHC is now ready to conduct commissioning and testing of its Facility on 22 October 2010;

18. SBMHC intends to sell the output energy from commissioning so as not to waste electricity, for which, there is a parallel necessity among consumers and off-takers;

19. At present however, owing to the absence of FITs duly established by this Honorable Commission, the output energy may not yet be sold and paid under the FIT System;

20. In the interim, there is a need for SBMHC to enter into a memorandum of agreement with a buyer that will purchase such output energy. NUVELCO, being the holder of an exclusive franchise to distribute electric service in Nueva Vizcaya where the Facility is located, is deemed the best buyer under the circumstances;

21. Aware that NUVELCO pays at least P5.05/kWh representing average basic energy rate to its current energy provider and that the present NPC Effective Rate for Luzon Grid is equivalent to P5.7661/kWh, SBMHC offered to sell to NUVELCO the output power at a very competitive rate of **P4.50/kWh**;

22. Having agreed to the terms and conditions of sale as hereinabove related, SBMHC and NUVELCO signed the *Memorandum of Agreement* for the Sale of Generated Power during Commissioning;

23. To evince that the MOA was duly approved by both Parties' Board of Directors, a copy of Board Resolution No. 210-11 executed by SBMHC's Board of Directors is herein

appended as Annex "I", while a copy of Board Resolution No. 58, Series of 2010 executed by NUVELCO's Board is hereto attached as Annex "J", both made integral parts hereof;

24. Meanwhile, to manifest compliance with the pre-filing requirements mandated under the *Implementing Rules and Regulations of R.A. No. 9136, Rule 3, Section 4(e)*, and the *2006 ERC Rules of Practice and Procedure, Rule 6*, a Notarized Affidavit of Publication stating that the instant *Application* had been published in a newspaper of general circulation within the Franchise Area of NUVELCO shall be attached hereto as Annex "K", and a copy of the newspaper issue where the *Application* as published appeared shall be appended hereto as Annex "L", to form integral parts hereof;

25. Likewise, copies of the *Certificate* issued by the Legislative Bodies of the Municipalities representing NUVELCO's Franchise Area acknowledging receipt of a copy of the instant *Application* shall be appended as follows:

- Annex "M" - Acknowledgment Receipt of *Sangguniang Bayan ng Alfonso Castañeda*;
- Annex "M-1" - Acknowledgment Receipt of *Sangguniang Bayan ng Ambaguio*;
- Annex "M-2" - Acknowledgment Receipt of *Sangguniang Bayan ng Aritao*;
- Annex "M-3" - Acknowledgment Receipt of *Sangguniang Bayan ng Bagabag*;
- Annex "M-4" - Acknowledgment Receipt of *Sangguniang Bayan ng Bambang*;
- Annex "M-5" - Acknowledgment Receipt of *Sangguniang Bayan ng Bayombong*;
- Annex "M-6" - Acknowledgment Receipt of *Sangguniang Bayan ng Diadi*;
- Annex "M-7" - Acknowledgment Receipt of *Sangguniang Bayan ng Dupax del Norte*;
- Annex "M-8" - Acknowledgment Receipt of *Sangguniang Bayan ng Dupax del Sur*;
- Annex "M-9" - Acknowledgment Receipt of *Sangguniang Bayan ng Kasibu*;
- Annex "M-10" - Acknowledgment Receipt of *Sangguniang Bayan ng Kayapa*;
- Annex "M-11" - Acknowledgment Receipt of *Sangguniang Bayan ng Quezon*;
- Annex "M-12" - Acknowledgment Receipt of *Sangguniang Bayan ng Sta. Fe*;
- Annex "M-13" - Acknowledgment Receipt of *Sangguniang Bayan ng Solano*;
- Annex "M-14" - Acknowledgment Receipt of *Sangguniang Bayan ng Villaverde*;

26. SBMHC and NUVELCO are reserving the right to submit other documents, either in the course of the hearing or as may be required by this Honorable Commission.

III. ISSUANCE OF PROVISIONAL AUTHORITY

27. SBMHC is all set to undertake commissioning on 22 October 2010. The imprimatur of this Honorable Commission allowing SBMHC to sell generated output pursuant to the MOA, shall be necessary if SBMHC were to optimize the conduct of such commissioning or testing;

28. The duration of the MOA which shall be binding and enforceable until the ERC establishes the FITs pursuant to the *Feed-In Tariff Rules* and are made applicable to SBMHC,

is limited and short-lived. Such an interim arrangement between the Applicants calls for an immediate approval of the MOA, *provisionally* or otherwise;

29. To the advantage of all concerned, a provisional authority to implement the provisions of the MOA will not only permit SBMHC to generate its first earnings, but equally important, it shall allow the continuous and reliable supply of energy to NUVELCO consumers at a low rate, while putting to beneficial use the abundant supply of hydropower energy brought about by the rainy season.

PRAYER

WHEREFORE, in view of all the foregoing, it is most respectfully prayed for that the provisions of the subject *Memorandum of Agreement* for the Sale of Generated Power during Commissioning until FITs and all other agreements, rates and charges provided under the FIT Rules are in place and fully implemented, merit this Honorable Commission's favorable consideration, so that pending hearing, a **provisional authority** be issued to immediately implement the MOA and that after due notice and hearing, the instant **APPLICATION** be **DULY APPROVED**.

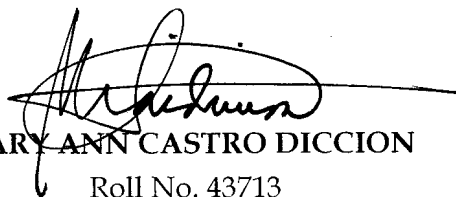
Other reliefs as may be just and equitable under the premises are likewise most respectfully prayed for.

City of Pasig, Metro Manila. 7th day of October 2010.

DICCION LAW FIRM

Unit 1912 Jollibee Plaza Building
Emerald Avenue, Ortigas Center
Pasig City, Philippines

By:



MARY ANN CASTRO DICCION

Roll No. 43713

IBP Lifetime No. 03244 / 01.02.03 / Quezon City
PTR No. 5926149 / 01.13.10 / Pasig City
MCLE Compliance No. I - 0006706, II - 0009987, III - 0004135



ANNA TRICIA PARADERO EVANGELISTA

Roll No. 58063

IBP No. 823815 / 04.06.10 / Or. Mindoro
PTR No. 6112099 / 05.06.10 / Pasig City
MCLE Compliance - Admitted to the Bar in 2010

**VERIFICATION AND CERTIFICATION
OF NON-FORUM SHOPPING**

I, **KNUD HEDEAGER** of legal age, Danish, after having been duly sworn in accordance with law, hereby depose and state that:

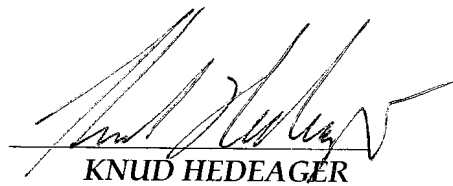
1. I am the President of Smith Bell Mini-Hydro Corporation ("**SBMHC**") and the duly authorized representative of **SBMHC**, applicant in the present *Application for the Approval of the Memorandum of Agreement between Smith Bell Mini-Hydro Corporation and Nueva Vizcaya Electric Cooperative, with Prayer for the Issuance of Provisional Authority*;

2. In coordination with Nueva Vizcaya Electric Cooperative ("**NUVELCO**"), I have caused the preparation of the foregoing *Application for the Approval of the Memorandum of Agreement*. I have read its contents and the allegations therein are true and correct, and of my personal knowledge and based on the authentic records in my possession;

3. I hereby certify that **SBMHC** has not commenced any action or filed any claim involving the same issue(s) in any court, tribunal, or quasi-judicial agency, and to the best of my knowledge, no such other action or claim is pending therein. Should I thereafter learn that the same or a similar action or claim has been filed or is pending, I shall report such fact to this Honorable Commission within five (5) days therefrom.


IN WITNESS WHEREOF, I have signed this Verification and Certification of Non-Forum-Shopping on the ___ day of _____ at **CITY OF MANILA**, Philippines.

OCT 08 2010


KNUD HEDEAGER

Republic of the Philippines)
_____) S.S.
CITY OF MANILA

SUBSCRIBED and SWORN to before me this **OCT 08 2010** day of _____ at _____, affiant exhibited to me his Passport No. 101962505 issued on June 15, 2000 in **CITY OF MANILA**


ATTY. EDITHA P. TALABOC
NOTARY PUBLIC
Until Dec. 31, 2011
PTR No. 8232256 / Jan. 04, 2010
IBP No. 796716 / Roll No. 43135
ISSUED AT CITY OF MANILA

Doc. No. 41 ;
Page No. 5 ;
Book No. 37 ;
Series of 2010.



**VERIFICATION AND CERTIFICATION
OF NON-FORUM SHOPPING**

I, **NARCISO SALUNAT**, of legal age, Filipino, after having been duly sworn in accordance with law, hereby depose and state that:

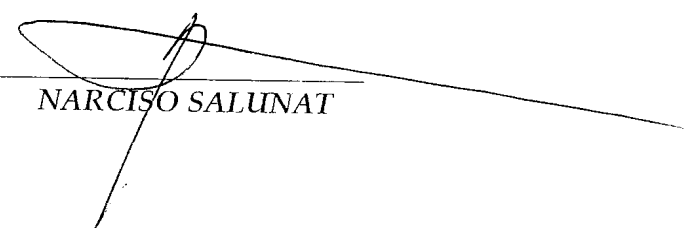
1. I am the General Manager of Nueva Vizcaya Electric Cooperative, ("NUVELCO") and the duly authorized representative of NUVELCO, applicant in the present *Application for the Approval of the Memorandum of Agreement between Smith Bell Mini-Hydro Corporation and Nueva Vizcaya Electric Cooperative, with Prayer for the Issuance of Provisional Authority*;

2. In coordination with Smith Bell Mini-Hydro Corporation ("SBMHC"), I have caused the preparation of the foregoing *Application for the Approval of the Memorandum of Agreement*. I have read its contents and the allegations therein are true and correct, and of my personal knowledge and based on the authentic records in my possession;

3. I hereby certify that NUVELCO has not commenced any action or filed any claim involving the same issue(s) in any court, tribunal, or quasi-judicial agency, and to the best of my knowledge, no such other action or claim is pending therein. Should I thereafter learn that the same or a similar action or claim has been filed or is pending, I shall report such fact to this Honorable Commission within five (5) days therefrom.

IN WITNESS WHEREOF, I have signed this Verification and Certification of Non-Forum-Shopping on the day of **CITY OF MANILA**, Philippines.


OCT 08 2010


NARCISO SALUNAT

Republic of the Philippines)
CITY OF MANILA) S.S.

OCT 08 2010

SUBSCRIBED and SWORN to before me this day of at , affiant exhibited to me his Driver's License No. BO1-01-038592 issued on ~~June 24, 2009~~ by the Land Transportation Office.


EDITHA P. TALABOC
Notary Public
Dec. 31, 2011
NOTARY PUBLIC
R.P. No. 232256 / Jan. 04, 2010
MBP No. 706716 / Roll No. 43135
ISSUED AT CITY OF MANILA

Doc. No. 42 ;
Page No. 5 ;
Book No. 37 ;
Series of 2010.

