

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

IN THE MATTER OF THE APPLICATION FOR
APPROVAL OF THE ELECTRIC POWER
SUPPLY AGREEMENT BETWEEN DAVAO
LIGHT AND POWER CO., INC. AND HEDCOR,
INC.,

ERC CASE NO. 2010-078-RC

DAVAO LIGHT AND POWER CO., INC. (DLPC)
and HEDCOR, INC. (HEDCOR),

Applicants.

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**APPLICATION FOR APPROVAL OF ELECTRIC POWER
SUPPLY AGREEMENT**

Applicants, **DAVAO LIGHT AND POWER CO., INC.** ("DLPC") and
HEDCOR, INC. ("HEDCOR"), through undersigned counsels, and unto this
Honorable Commission, most respectfully avers:

THE APPLICANTS

1. DLPC is a private corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at Aboitiz Corporate Center, Banilad, Cebu City. It is the duly authorized distribution utility serving the power requirements of the Cities of Davao and Panabo and the Municipalities of Carmen, Sto. Tomas and Braulio Dujali, all in the Province of Davao del Sur.

2. HEDCOR is a generation company duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at 214 Ambuclao Road, Obulan, Beckel, La Trinidad,

Benguet. HEDCOR owns and operates in Calinan, Davao the Upper Talomo Mini-Hydropower Plant (“Upper Talomo”), which is duly registered with the Department of Energy under Republic Act No. 9513.

STATEMENT OF FACTS

3. On October 15, 2004, DLPC and HEDC executed a Letter of Agreement renewing their Electric Power Supply Agreement (“EPSA”) for another 5 years, or from April 29, 2005 to April 28, 2010. This renewal was subsequently approved by the Honorable Commission in the Decision dated February 13, 2006 in ERC Case No. 2005-001 captioned “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”.

4. Owing to the imminent expiration on April 28, 2010 of the renewed EPSA, DLPC and HEDCOR¹ agreed to a further renewal thereof for a period of 3 months, or until such time that they are able to file an application with, and obtain approval of a new power supply agreement from, the Honorable Commission. Accordingly, in a letter dated April 22, 2010, DLPC and HEDCOR informed the Honorable Commission of the pending negotiations for a new power supply agreement between them. A copy of the letter dated April 22, 2010 of DLPC and HEDCOR, addressed to the Honorable Commission is attached as **Annex “A”** hereof.

¹ HEDCOR now operates and controls Upper Talomo, having acquired ownership thereof from HEDC.

5. On May 18, 2010, the Honorable Commission, in response thereto, directed DLPC and HEDCOR to file an application for the approval of their renegotiated agreement as soon as the same is executed. A copy of the letter dated May 18, 2010 of the Honorable Commission is attached as **Annex "B"**.

6. Thus, on June 7, 2010, DLPC and HEDCOR entered anew into an Electric Power Supply Agreement in light of the following considerations: a) power supply in Mindanao had become scarce; and b) HEDCOR offered a rate lower than that of the Sibulan Power Plant of HEDCOR -- represented to have the best new entrant price. A copy of the aforementioned EPSA is hereto attached as **Annex "C"**.

7. Applicants now come before this Honorable Commission for the approval of their EPSA, in compliance with Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" ("EPIRA") and the ERC Rules of Practice and Procedure, which provide for the review of power supply contracts by this Honorable Commission.

THE POWER SUPPLY AGREEMENT

8. **Executive Summary**

8.1 **Period.** - The PSA shall be for a period of five (5) years starting from the date of approval by this Honorable Commission unless mutually terminated by written notice at least thirty (30) days prior to date of actual termination.

The parties may renew the Agreement in writing for another five (5) years.

8.2 **Supply/Volume.** - HEDCOR shall supply and deliver all the energy generated and delivered by Upper Talomo.

8.3 **Energy Fees and Price.** - DLPC shall pay Energy Fees based on the following formula:

$$\text{Energy Fees} = \text{price} \times \text{energy delivered by HEDCOR}$$

The price per kWh to be paid by DLPC to HEDCOR shall be **PhP4.85/kWh.**

8.4 **Adjustments.** The price shall be adjusted annually based on the Philippine Consumer Price Index and using the following formula:

$$\frac{\text{CPI}_{\text{IN}}}{\text{CPI}_{\text{AP}}} \times \text{Price}$$

Where:

CPI_{IN} = Monthly Consumer Price Index for the Philippines for all Income Households (all items) as reported by the National Statistics Office (NSO) in December of every year.

CPI_{AP} = Monthly Consumer Price Index for the Philippines for all Income Households (all items) as reported by the National Statistics Office (NSO) during the month immediately before the ERC approval or ERC approval of provisional authority.

8.5 **Other fees.** The cost of ancillary services payable to NGCP or the ancillary services provider, if any, shall not be included in the

Energy Fees. The cost of ancillary services shall be reimbursed by DLPC based on actual costs and shall be due on the payment date.

8.6 **Late payment penalty.** In case DLPC fails to pay any amount when due, it shall pay a penalty fee equal to 3% of the amount due for every month of delay.

8.7 **Waiver of preferential right to purchase.** DLPC shall be deemed to have waived its preferential right to purchase energy from HEDCOR, which shall be authorized to sell its power to other entities in case of (i) non-payment by DLPC of its monthly bills within 60 calendar days from due date; or (ii) failure of DLPC to maintain its lines in good and proper condition and/or in the event the lines of DLPC cannot accept the energy generated and delivered by HEDCOR.

9. **Compliance with Rule 20(B) of the ERC Rules of Practice and Procedure [“Rule 20(B)"].** In compliance with Rule 20(B), Applicants attach the following as annexes of the Application:

- a. Articles of Incorporation (“AOI”) of HEDCOR (**Annex “D”**);
- b. Securities and Exchange Commission Certificate of Registration of the AOI of HEDCOR (**Annex “E”**);
- c. latest General Information Sheet of HEDCOR (**Annex “F”**);
- d. in lieu of the Board of Investments Certificate of Registration, Certificate of Registration As Mini-Hydroelectric Power Developer issued by the Office of the President – Office of Energy Affairs, pursuant to Republic Act No. 7156 known as “An Act

Granting Incentives to Mini-Hydroelectric Power Developers and for Other Purposes” (**Annex “G”**);

- e. in lieu of the Environmental Compliance Certificate (“ECC”) of the Department of Environment and Natural Resources (“DENR”), Certificate of Non-Coverage by the DENR exempting Upper Talomo from the requirement of an ECC (**Annex “H”**);
- f. sample computation of the purchased power rates (**Annex “I”**);
- g. Transmission Service Agreement dated April 26, 2006 by and between HEDCOR and the National Transmission Corporation [predecessor-in-interest of the National Grid Corporation of the Philippines (“NGCP”)] (**Annex “J”**);
- h. Letter dated December 4, 2009 from NGCP confirming the extension of the terms and conditions of the Transmission Service Agreement by and between DLPC and NGCP (“DLPC-NGCP TSA”) (**Annex “K”**);
- i. Certificate of Compliance dated December 7, 2006 issued to HEDCOR by the Honorable Commission (**Annex “L”**);

10. **Compliance with the “Guidelines for the Recovery of Costs for the Generation Component of the Distribution Utilities’ Rates” (the “Guidelines”).** In compliance with the Guidelines, Applicants attach the following as annexes of the Application:

- a. certification dated February 26, 2010 of the Power Sector & Liabilities Management Corporation of the inability of PSALM to guarantee the energy requirements of DLPC in

excess of the contracted energy level under its Contract for Supply of Electric Energy (**Annex “M”**);

- b. technical and economic characteristics of Upper Talomo (**Annex “N”**);
- c. load forecast projections in accordance with the latest Distribution Development Plan (DDP) of DLPC (**Annex “O”**); and
- d. latest audited financial statements of HEDCOR (**Annex “P”**).

As required by the Guidelines, the following is a comparative analysis of the rates of HEDCOR with other power suppliers:

	Upper Talomo	Hedcor-Sibulan	Mindanao Energy Systems (MINERGY)	Cebu Energy Development Corporation (CEDC)
	per PSA	as of May 2010	as of April 2010	as of May 2010
Power Cost	4.8500	4.8504	11.9500	5.1460
Total	4.8500	4.8504	11.9500	5.1460

COMPLIANCE WITH PRE-FILING REQUIREMENTS

11. In compliance with the Rules of Practice and Procedure of this Honorable Commission, Applicants have furnished each of the legislative bodies of the Cities of Davao and Panabo, the Municipalities of Carmen, Sto. Tomas and Braulio Dujali, and the Province of Davao del Sur a copy of the present Application inclusive of its annexes. Copies of the Certifications issued by the aforementioned legislative bodies attesting to the fact of service of a copy of the application and its annexes are hereto attached and marked as **Annexes “Q-1” to “Q-6”**.

12. Furthermore, Applicants have also caused the publication of the instant Application in a newspaper of general circulation within the franchise area of DLPC. Copies of the Affidavit of Publication and the newspaper issue where the said Application was published are hereto attached and marked as **Annexes "R" and "R-1"** respectively.

PRAYER

WHEREFORE, in view of all the foregoing, it is respectfully prayed that the Honorable Commission, after trial on the merits, issue an approval of the terms and conditions of the EPSA, including the rate of **PhP4.85/kWh**, as set out in paragraph 8.3 of the instant Application, subject to such adjustments as set out in paragraph 8.4 hereof.

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

Marikina City for Pasig City, Metro Manila. 03 June 2010.

**THE LAW FIRM
OF
MANJARES & MANJARES**
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-and-

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VERIFICATION/CERTIFICATION

I, **ARTURO M. MILAN**, of legal age and with office address on C. Bangoy Sr. Street, Davao City, after being duly sworn to in accordance with law hereby depose and state that:

1. I am the Chief Operating Officer of Davao Light & Power Company, Inc. (“DLPC”);
2. Jointly with Applicant Hedcor, Inc., I have caused the preparation of the foregoing Application;
3. I have read the contents thereof and the same are true and correct to the best of my knowledge and/or based on available documents;
4. I hereby certify that DLPC has not commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals or any agency or tribunal, and to the best of my knowledge, no such action or proceeding is pending in the same entities above-stated. If I should learn that a similar action or proceeding has been filed or is pending, I undertake to inform this Honorable Commission within five (5) days from knowledge thereof.

IN WITNESS WHEREOF, I have set my hand this ____ day of June 21 2010.

(sgd.) ARTURO M. MILAN
Affiant

SUBSCRIBED AND SWORN TO before me this June 21 2010 at Makati City, affiant exhibiting to me his Driver’s License No. G01-82-0559-49 which expires on June 10, 2011.

Doc. No. 378;
Page No. 76;
Book No. 40;
Series of 2010.

(sgd.) NOTARY PUBLIC

VERIFICATION/CERTIFICATION

I, **RENE B. RONQUILLO**, of legal age with office address at 110 Legazpi Street, Legaspi Village, Makati City, after being duly sworn to in accordance with law hereby depose and state that:

1. I am the President and Chief Operating Officer of Hedcor, Inc. (“Hedcor”);

2. Jointly with Applicant Davao Light and Power Company, Inc., I have caused the preparation of the foregoing Application;
3. I have read the contents thereof and the same are true and correct to the best of my knowledge and/or based on available documents;
4. I hereby certify that Hedcor has not commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals or any agency or tribunal, and to the best of my knowledge, no such action or proceeding is pending in the same entities above-stated. If I should learn that a similar action or proceeding has been filed or is pending, I undertake to inform this Honorable Commission within five (5) days from knowledge thereof.

IN WITNESS WHEREOF, I have set my hand this ____ day of June 21 2010.

(sgd.) RENE B. RONQUILLO
Affiant

SUBSCRIBED AND SWORN TO before me this June 21, 2010 at City of Makati, affiant exhibiting to me his Driver's License No. G01-85-010659 which expires on June 14, 2012.

(sgd.) NOTARY PUBLIC

Doc. No. 81;
Page No. 18;
Book No. III;
Series of 2010.