

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

IN THE MATTER OF THE
APPLICATION FOR APPROVAL OF
THE AMENDED AND RESTATED
POWER PURCHASE AGREEMENT
(AREPPA) BETWEEN PANAY
ELECTRIC COMPANY, INC. (PECO)
AND PANAY POWER CORPORATION
(PPC), WITH PRAYER FOR
PROVISIONAL AUTHORITY.

ERC CASE NO. _____ RC

PANAY ELECTRIC COMPANY, INC.
AND PANAY POWER CORPORATION,
Applicants.

X ----- X

APPLICATION

PANAY ELECTRIC COMPANY, INC. ("PECO") and PANAY POWER CORPORATION ("PPC"), through the undersigned counsel and unto the Honorable Commission, most respectfully state:

Parties to the Case

1. Applicant Panay Electric Company, Inc. is a distribution utility duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at 23 Gen. Luna St., Iloilo City. It is a duly franchised distribution utility servicing its consumers in the City of Iloilo by virtue of NEC Certificate No. 158 issued by the National Electrification Commission on 19 January 1994.

2. Applicant Panay Power 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. PPC owns and operates a 72 MW diesel-fired power plant located in Brgy. Ingore, La Paz, Iloilo City (the "Power Plant").

Statement of Facts and of the Case

3. PECO and PPC entered into a Power Purchase Agreement dated 24 January 1997, as amended by the Clarificatory Letter dated 20 June 2003 (the "Clarificatory Letter"), and the Amendment Agreement dated 04 October 2005 (the "Amendment Agreement") (together, the "PPA").

4. Under the PPA, PPC would supply the base, intermediate, and peak electric power requirements of PECO, as well as ancillary services, being a full service plant, and PECO obligated itself to take and pay a contracted capacity of 72MW from the Power Plant. The 25-year PPA will expire in 2023.

5. On 03 August 2010, PECO entered into an Electric Power Purchase Agreement ("EPPA") with Panay Energy Development Corporation ("PEDC"), the owner and operator of a coal-fired power plant located in Brgy. Ingore, La Paz, Iloilo City ("PEDC Plant"), for the supply of its base load power requirements, at a contracted capacity of 65 MW.

6. With the transfer of PECO's base load power requirements to PEDC, the supply of PPC to PECO would thus be limited to its intermediate and peak power requirements.

7. Thus, on 08 October 2010, PECO and PPC entered into an Amended and Restated Power Purchase Agreement (“AREPPA”) to amend the terms and conditions of the PPA to reflect the supply of only the intermediate and peak power requirements of PECO.

8. Under the AREPPA, upon the commencement of commercial operations of PEDC, PECO will contract a capacity of 15MW (the “Contracted Capacity”) and pay for electricity delivered by PPC at an Electricity Fee (Schedule 4 of the AREPPA) computed as follows:

$$\begin{aligned} \text{Electricity Fees} &= \text{Capacity Fees} + \text{Fuel Cost} \\ \text{Capacity Fees} &= \left\{ \text{CRF} + \left[\text{O\&M} + \frac{\text{CPI}_c}{\text{CPI}_b} \right] \right\} \times \text{Contracted Capacity} \end{aligned}$$

Where

$$\text{CRF} = \text{Capital Recovery Fee} = \text{Php } 928.88 \text{ per kW-mo}$$

$$\text{O\&M} = \text{O\&M Capacity Fee} = \text{Php } 466.58 \text{ per kW-mo}$$

$$\text{CPI}_c = \text{Philippine Consumer Price Index (CPI) for all items for the current month, as published by the National Statistical Coordination Board, www.nscb.gov.ph}$$

$$\text{CPI}_b = 163.6 \text{ December 2009.}$$

$$\text{Contracted Capacity} = \text{Capacity contracted between Buyer and Seller in kW}$$

$$\text{Fuel Cost} = \text{Actual cost of Heavy Fuel Oil, Light Fuel Oil, and Lube Oil, as consumed}$$

9. The electricity generated by PPC for PECO shall be delivered to PECO at the delivery point/s as designated in the AREPPA (Schedule 3 of the AREPPA) at the start of the commercial operation of the PEDC Plant.

10. The AREPPA shall have a term of fifteen (15) years commencing on the commercial operation of the PEDC Plant and ending on the 15th anniversary of such commencement date, unless sooner terminated pursuant to the terms thereof.

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

12. Should the Honorable Commission approve the Electricity Fees under the AREPPA, there will be a decrease in PECO's generation cost of Php1.85 per kWh.

Allegations in Support of the Prayer for Provisional Authority

13. Currently, PECO sources its electric power requirements from PPC on a firm basis under the PPA and Green Core Geothermal, Inc. ("Green Core") on a non-firm basis.

13.1. In 2006, in compliance with the Order dated March 10, 2006 of the Honorable Commission in ERC Case No. 2005-043RC entitled "*In the Matter of the Application for Approval of the Amendment Agreement to the Power Purchase Agreement between Panay Electric Company, Inc. and Panay Power Corporation with Prayer for Provisional Authority, Panay Electric Company, Inc., Applicant*", PECO connected to the Cebu-Negros-Panay Grid and entered into a contract with the National Power Corporation ("NPC") for the supply of electricity, with the end in view of lowering the electricity fees in PECO's franchise area.

13.2. On 25 June 2010, when PECO's contract with NPC was terminated due to the inability of NPC to renew their contract, PECO signed a non-firm contract with Green Core, with a capacity of 10MW, for a period of six

(6) months. However, supply by Green Core is available during off peak period only and it is mostly not available when needed. Moreover, there are issues of reliability because of distance and timeliness of available supply because they can offer only non-firm supply. At present, PECO is in negotiations with Green Core for a possible long-term firm contract; however, Green Core could not guarantee how much capacity it may allocate to PECO at this time.

14. Under the PPA, PECO has a contracted capacity of 72MW sourced from PPC's diesel-fired power plant located at Brgy. Ingore, La Paz, Iloilo City, and PPC would supply the base, intermediate, and peaking requirements of PECO as well as ancillary services.

15. Inasmuch as the cost of diesel fuel has risen in the past years, PECO decided to negotiate with PPC for the transfer of its base load power requirements to PEDC, a sister company of Applicant PPC. The plant of PEDC, being a coal-fired power plant is better suited for base load power generation. Further, this would allow PECO to enjoy a generation mix and thereby increase the reliability of supply.

16. Consequently, PECO entered into the EPPA with PEDC for the supply of PECO's base load power requirements and executed the AREPPA with PPC to amend the PPA for the supply of PECO's intermediate and peak power requirements.

16.1. Part of the agreement in negotiating for the EPPA between PEDC and PECO was the amendment of the existing PPA between PPC and PECO, the more significant part of which was the reduction of the contracted capacity from 72 MW to only 15 MW.

16.2. Together, the EPPA between PEDC and PECO and the AREPPA between PPC and PECO are expected to stabilize electric power supply in Iloilo City and bring down the cost of electricity, to the benefit of PECO's consumers.

17. It is therefore necessary that upon the start of the commercial operations of PEDC, the AREPPA between PPC and PECO be approved and enforceable to allow the consumers of PECO to immediately benefit from the lowering of the generation rates.

18. With the EPPA and the AREPPA in place, the blended rate of PECO's generation cost will be Php7.4063, or a reduction of Php1.85, to the benefit of PECO's consumers.

19. Under the terms of the AREPPA, among the conditions precedent to the performance by PECO and PPC of their respective obligations therein is the approval by the Honorable Commission of this Application.

20. Thus, for PPC to be able to deliver and PECO to meet its intermediate and peak power requirements during the commercial operation of the PEDC Plant, it is imperative that a provisional authority be granted for the AREPPA allowing PPC to deliver and PECO to receive power in accordance with its terms.

21. Should the Honorable Commission grant a provisional authority for PPC to deliver and PECO to receive power during the commercial operation of the PEDC Plant, there will be a decrease in the generation rate of PECO of Php1.85.

Compliance with Pre-Filing Requirements

22. 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 Publication stating that the instant Application had been published in a newspaper of general circulation, a copy of which is attached hereto as **Annex "C"**;

c) Newspaper issue where this Application, as published, appeared, a copy of which is attached hereto as **Annex "D"**;

d) Proof of payment of filing fees, a copy of which is attached as **Annex "E"**;

e) A copy of the Board Resolution authorizing PECO to jointly file the instant Application with PPC, which is attached as **Annex "F"**; and

f) A copy of the Board Resolution authorizing PPC to jointly file the instant application with PECO, which is attached as **Annex "G"**.

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 Amended and Restated Power Purchase Agreement between PPC and PECO, thereby authorizing PPC to charge and

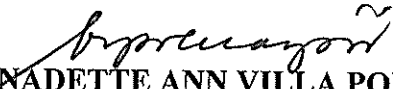
collect from PECO the Electricity Fees corresponding to the commercial operation of the PEDC Plant, and authorizing PECO to pass the full amount thereof to its consumers; and


2. After trial on the merits, issue a permanent approval of the terms of the Amended and Restated Power Purchase Agreement between PPC and PECO, thereby authorizing PPC to charge and collect from PECO the Electricity Fees corresponding to commercial operation of the PEDC Plant, and authorizing PECO to pass the full amount thereof to its consumers.

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

Iloilo City and Makati City for Pasig City, 28 December 2010.

**COUNSEL FOR APPLICANT
PANAY POWER CORPORATION**


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**COUNSEL FOR APPLICANT
PANAY ELECTRIC COMPANY, INC.**


TERESITA A. LABORTE-ILDESA

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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 Power Corporation ("PPC"), one of the applicants in the above-entitled case;
2. Jointly with Applicant Panay Electric Company, Inc., I caused the preparation and filing of the instant Application;
3. I have read the same and all the allegations contained therein are true and correct of my own personal knowledge and belief;
4. I certify that PPC 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 28 DEC 2010 at Makati City.


JAIME T. AZURIN
Affiant *MAK*

SUBSCRIBED AND SWORN to before me this 28 DEC 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.

Doc. No. 405
Page No. 82
Book No. I
Series of 2010.


ATTY. IRENE O. DAVID
NOTARY PUBLIC
MANILA CITY
UNTIL DECEMBER 31, 2011
ROLL NO. 87515
IBP LIFETIME NO. 05485
PTR NO. 9126861M/21 MAY 2010

VERIFICATION AND CERTIFICATION

I, **RANDY S. PASTOLERO**, of legal age, Filipino, and with office address at Manfred's Inn Building, Gen. Luna St., Iloilo City, after having been duly sworn in accordance with law, hereby depose and state that:

1. I am the Special Assistant to the President of Panay Electric Company, Inc. ("PECO"), one of the applicants in the above-entitled case;

2. Jointly with Applicant Panay Power Corporation, I caused the preparation and filing of the instant Application;

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

4. I certify that PECO 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
DEC 28 2010 at Iloilo City.


RANDY S. PASTOLERO
Affiant

SUBSCRIBED AND SWORN to before me this DEC 28 2010, by **RANDY PASTOLERO**, with Community Tax Certificate No. 13426419 issued on Jan, 21, 2010 in Iloilo City, who has satisfactorily proven to me his identity through his TIN ID 177170087, that he is the same person who personally signed before me the foregoing Verification and Certification and acknowledged that he executed the same.

Doc. No. 04
Page No. 02
Book No. IV
Series of 2010.


TERESITA A. LABORTE-ILDESA
Notary Public - Iloilo; Until Dec. 31, 2011
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2nd Flr. ATM Business Center
Cor. Jalandoni-Ledesma Sts., Iloilo City
Roll No. 38296; MCLE Comp. No. III - 3112
PTR No. 3594559; Jan. 13, 2010; Iloilo City
CP No. 795318; Jan. 4, 2010; Iloilo

Summary of Annexes to the Application

Description	Annex
Amended and Restated Power Purchase Agreement	A
Affidavit of Service re: the service of the Application with Annexes to the Sangguniang Panlungsod of Iloilo City	B
Affidavit of Publication issued by Francis Allan Angelo, Editor-in-Chief of <i>The Daily Guardian</i>	C
29 December 2010 issue of <i>The Daily Guardian</i> where the Application, as published, appeared	D
Proof of Payment of ERC Filing Fee	E
PECO Board Resolution authorizing the joint filing of the instant Application	F
PPC Board Resolution authorizing the joint filing of the instant Application	G
Executive Summary of the AREPPA and Rate Impact Study	H
Securities and Exchange Commission (SEC) Certificate of Registration of PPC	I
Certificate of Filing of Amended Articles of Incorporation of PPC and latest Amended Articles of Incorporation of PPC	J
2010 General Information Sheet of PPC	K
Audited Financial Statements of PPC	L
Environmental Compliance Certificate No. 0801-003-4021 issued by the Department of Environment and Natural Resources (DENR)	M
Certificate of Compliance with the ERC	N
Details of the fuel procurement process of PPC	O
Relevant technical and economic characteristics of the generation capacity, installed capacity, mode of operation, and dependable capacity of the plant, and details regarding transmission or grid connection projects complementing the generation capacity	P
Load Forecast Projection	Q
Details of the procurement process used by PECO	R