

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

**IN THE MATTER OF APPLICATION FOR  
APPROVAL OF RENEGOTIATED  
ELECTRICITY PURCHASE  
AGREEMENT (EPA)**

**ERC Case No. 2010-020RC**

**CAGAYAN ELECTRIC POWER AND  
LIGHT COMPANY (CEPALCO) and  
MINDANAO ENERGY SYSTEMS INC.  
(MINERGY),**

**Applicants.**

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**APPLICATION**

**APPLICANTS CEPALCO and MINERGY** respectfully states:

1. CEPALCO is a corporation duly organized and existing under Philippine law with principal office address at 44 Don Toribio Chaves Street, Cagayan de Oro City; franchised to construct, operate and maintain an electric distribution network within the City of Cagayan de Oro and the municipalities of Tagoloan, Villanueva and Jasaan, all in the Province of Misamis Oriental, except the barangays of Baikingon, San Simon, Pagatpat, Tagpangi, Pagalungan, Taglimao, Tuburan, Pigsag-an, Tumpagon, Bayanga, Mabuaya, Dansolihon, Tignapoloan, Besigan and a portion of Canitoan, all located in the City of Cagayan de Oro; and represented herein by its President, Consuelo G. Tion.
2. MINERGY is a corporation duly organized under Philippine law, with principal office address at 8/F STRATA 100 Building, F. Ortigas Jr. Road, Ortigas Center, Pasig City; represented herein by its Senior Vice-President, William U. Lim.

3. On 12 October 2009, the Honorable Commission rendered a Decision in the case entitled: *In The Matter Of The Application For Approval Of The Proposed Time-Of-Use (TOU) Retail Rates To End-Users*, docketed as ERC Case No. 2006-028 RC, with CEPALCO as the applicant. In page 9 of 18 of this Decision, the Commission took note of the following fact:

1. **MINERGY**

The then Energy Regulatory Board (ERB), in a Decision dated March 29, 1994, approved the Electricity Purchase Agreement (EPA) between CEPALCO and Mindanao Energy Systems, Inc. (MINERGY) for a period of fifteen (15) years from commercial operation which started in June 1995. In the said EPA, CEPALCO guarantees a minimum energy off-take of 10,700,000 kWh and a minimum demand of 15,310 kW. The same EPA provides, among others, that it shall be automatically extended by reason of curtailment other than forced outage for a period equal to the period of curtailment for the non-delivery of electricity or delivery below the contracted energy (curtailment).

4. On page 10 of 18 of the same Decision, the Commission also took judicial notice of the following fact:

The EPA, which will expire in June 2010, will be automatically extended for another twelve (12) years (equivalent to the period of curtailment). This means that CEPALCO will still be paying MINERGY the fixed cost as guaranteed in the EPA during the period of curtailment.

5. In the dispositive portion of the Decision rendered in the TOU case (ERC Case No. 2006-028 RC), the Commission, among other things, issued the following directive to CEPALCO:

Moreover, CEPALCO is further directed to:

- a) File an application for the approval of its re-negotiated EPA with MINERGY; and

6. In deference to the Commission, herein applicants complied with the aforementioned directive and renegotiated the terms and conditions of the EPA with a view to lowering the minimum energy off-take of CEPALCO from MINERGY.

7. On 1 March 2010, CEPALCO and MINERGY executed the renegotiated Electricity Purchase Agreement (copy attached as Annex "A"). A comparative matrix between the existing EPA and the renegotiated EPA are the following:

	Existing EPA	Renegotiated EPA
1. Cooperation Period	15 years	12 years
2. Review of Terms & Conditions	Every 3 years	Annual
3. Contracted Demand, MW	15,310	15,310
4. Contracted Energy, kWh	10,700,000	4,776,720
5. Base Capacity Rate		
a. Peso Component, P/kW	475.44	
b. Dollar Component, \$/kW	1.4099	
c. Current Effective Rate, P/kW	837.65	730.02
d. Escalation	<b>Peso component:</b> Actual interest rate used in servicing the Peso Loan	Fixed
e. Frequency escalation of	<b>Dollar Component:</b> Prevailing Exchange Rate Quarterly	N/A

f. Monthly Capacity Fee	If registered maximum demand is less than CD, CEPALCO shall pay the base capacity rate for every kW below the CD	If the Actual Registered Demand is lower than CD then Capacity Fee is equal to Capacity Rate x CD
6. Service (O&M) Rate, P/kWh	0.8401	1.0404
a. Escalation	70% of the percentage change in Phil. CPI	Same as existing EPA
b. Frequency of escalation	Semi-annual	Semi-annual
c. Monthly Service (O&M) Fee	If actual kWh is less than the Contracted Energy, CEPALCO shall pay the base service rate for every kWh below the CE	1. Minimum O&M Fee base on the Contracted Energy 2. 50% discount for every kWh in excess of the Contracted Energy
7. Base Energy Rate		
a. Fuel Component	P0.8499/kWh	Pass-through
b. Lube Oil Component	P0.0430/kWh	
c. Escalation	Adjusted based on the ratio of fuel and lube oil prices for the current quarter from Base Date (August 30, 1992)	Based on Heat Rate caps
8. Dump Power/Power Shortage	P0.10/kWh discount on the service fee if NPC offers dump power and CEPALCO accepts	None
9. Capacity Fee Discount	Actual registered maximum demand in excess of contracted demand shall be billed at 50% of the actual capacity rate	None
10. Energy Fee Discount	If actual fuel rate is less than 0.2131 li/kWh, 25% of the savings will be shared to CEPALCO. If actual fuel rate is more than 0.2131 li/kWh, MINERGY will pass-on the higher rate to CEPALCO, but not higher than the equivalent of 10%	None

		above 0.2131 li/kWh	
11. Extension Curtailment	during	Operation period will be automatically extended by a period equal to the period during which MINERGY was unable to deliver the CD due to the event of curtailment	None
12. Maintenance Curtailment	During	None	In case MINERGY is curtailed by CEPALCO for a period exceeding 45 days, MINERGY shall perform in advance the applicable Scheduled Maintenance works.
13. Allowed Downtime		<ol style="list-style-type: none"> <li>1. Allowed maintenance for scheduled maintenance only</li> <li>2. Unused portion of the 30-day allowed downtime maybe carried over to the following year</li> </ol>	<ol style="list-style-type: none"> <li>1. For Scheduled and Unscheduled Maintenance</li> <li>2. Unused portion will be forfeited</li> <li>3. MINERGY shall provide four (4) days prior notice to CEPALCO before Unscheduled Maintenance shall be conducted otherwise any such maintenance without notice shall not qualify as Allowed Downtime.</li> </ol>
14. Option to Buy		None	<ol style="list-style-type: none"> <li>1. In case of assignment or sale of the Plant to other entity other than CEPALCO, MINERGY shall include in the sale, transfer or assignment agreement with such entity that the buyer, transferee or assignee shall assume all rights and obligations of MINERGY under this agreement.</li> <li>2. MINERGY warrants that any sale, assignments, transfer of the Agreement shall not affect or impair</li> </ol>

		CEPALCO's rights and obligations with respect to quantity and price of electricity, incentives, bonuses, effectivity, and other terms and conditions of this Agreement.
15. Supply of Fuel	None	<ol style="list-style-type: none"> <li>1. MINERGY shall maintain fuel inventory equivalent to thirty (30) days of continuous operations.</li> <li>2. Fuel procurement for MINERGY's operation shall be subjected to a competitive bidding. CEPALCO shall be represented in the bidding process.</li> <li>3. CEPALCO reserves its right to supply the fuel for the generation facilities whenever it determines that this is advantageous to its customers or for other reasons. CEPALCO's procurement for the fuel supply shall also be through competitive bidding.</li> </ol>

8. If the tariffs of the renegotiated EPA were to be applied to CEPALCO's cost of purchased power for January 2010, CEPALCO's customers would enjoy a reduction in the generation charge and system loss charge in the total amount of P0.1184/kWh.

9. Applicants therefore submit that the approval of the renegotiated EPA would be beneficial to the customers of CEPALCO for it would not only result to lower generation and system loss charges, but also secure for CEPALCO's customers a reliable source of power supply against a backdrop of severe power supply shortages in the Mindanao grid brought about by the El Niño phenomenon.

**PRAYER**

WHEREFORE, applicants CEPALCO and MINERGY respectfully pray that the Honorable Commission, after due notice and hearing, render a Decision in the subject application approving the renegotiated Electricity Purchase Agreement.

Applicants also pray for such other relief or remedy as may be just and equitable under the circumstances.

RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of March 2010 at Pasig City.



**RANULFO M. OCAMPO**

Counsel for CEPALCO and MINERGY  
PTR No. 2758146 / 1-27-09 / Marikina City  
IBP No. 803844 / 12-27-09 / Rizal Chapter  
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REPUBLIC OF THE PHILIPPINES     )  
CAGAYAN DE ORO CITY            ) S.S.

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

I, **CONSUELO G. TION**, of legal age, married, with office address at 44 Toribio Chavez Street, Cagayan de Oro City, after having sworn in accordance with law, depose and state that:

1. I am the President of the Cagayan Electric Power & Light Company Inc. (CEPALCO).
2. In behalf of CEPALCO, I cause the preparation of the foregoing application, and I have read and understood the allegations contained therein insofar as CEPALCO is concerned; and all the facts stated therein are true and correct based on my own knowledge and the authentic records of CEPALCO.
3. I also attest that CEPALCO has not commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals, or any other tribunal or agency; that to the best of my knowledge, no such action or proceeding is pending in the Supreme Court, the Court of Appeals, or different Divisions thereof, or any other tribunal or agency, which involve issues that may somehow be related to this application; and that, if I should learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different Divisions thereof, or any other tribunal or agency, I undertake to promptly inform this Honorable Commission within five (5) days from receipt of such knowledge of such fact.

IN WITNESS WHEREOF, I hereunto affixed my signature on the date indicated below.

(orig. signed)  
**CONSUELO G. TION**  
Affiant

**JURAT**

**SUBSRIBED AND SWORN** to before me this 1<sup>st</sup> day of March 2010, affiant exhibited to her Community Tax Certificate No. 23471850, issued on January 15, 2010 at Cagayan de Oro City.

Original Signed:

Doc. No. 198;  
Page No. 40;  
Book No. VII;  
Series of 2010.

**ROEL O. CAMORRO**  
Notary Public until 31 Dec. 2011  
PTR No. 1882322, 16 Nov 2009, CdeOC  
IBP Lifetime Member No. 08495, 14 Aug 2009,  
TIN: 931-249-982, Roll No. 53085

REPUBLIC OF THE PHILIPPINES     )  
CAGAYAN DE ORO CITY            ) S.S.

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

I, **WILLIAM U. LIM**, of legal age, married, with office address at 8/F STRATA 100 F. Ortigas Jr. Road, Ortigas Center, Pasig City, after having sworn in accordance with law, depose and state that:

4. I am the Senior Vice-President of the Mindanao Energy Systems Inc. (MINERGY).
5. In behalf of MINERGY, I cause the preparation of the foregoing application, and I have read and understood the allegations contained therein insofar as MINERGY is concerned; and all the facts stated therein are true and correct based on my own knowledge and the authentic records of MINERGY.
6. I also attest that MINERGY has not commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals, or any other tribunal or agency; that to the best of my knowledge, no such action or proceeding is pending in the Supreme Court, the Court of Appeals, or different Divisions thereof, or any other tribunal or agency, which involve issues that may somehow be related to this application; and that, if I should learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different Divisions thereof, or any other tribunal or agency, I undertake to promptly inform this Honorable Commission within five (5) days from receipt of such knowledge of such fact.

IN WITNESS WHEREOF, I hereunto affixed my signature on the date indicated below.

(Orig. signed)  
**WILLIAM U. LIM**  
Affiant

**JURAT**

**SUBSRIBED AND SWORN** to before me this 2<sup>nd</sup> day of March 2010, affiant exhibited to hisr SSS/BIR TIN/Driver's License No. K02-83-009107 issued on 20 September 2008 at CDO-LTO.

Original Signed:

Doc. No. 213;

Page No. 42;

Book No. XV;

Series of 2010.

**PANFILO I. PARACUELLES**  
Notary Public until 31 Dec. 2010  
PTR No. 1882322, 01-04-2010, CdeOC  
IBP No. 08492, 01-04-2010  
Lifetime Member, Mis. Or. Chapter  
TIN 136-334-450  
Roll of Attorneys No. 41880