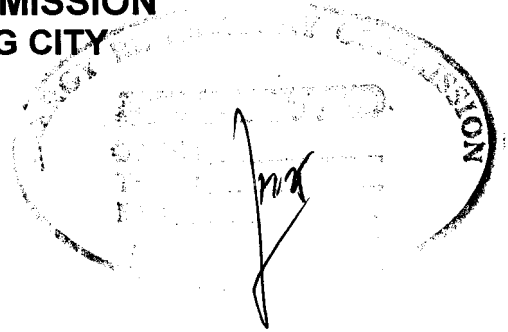


REPUBLIC OF THE PHILIPPINES
ENERGY REGULATORY COMMISSION
SAN MIGUEL AVENUE, PASIG CITY



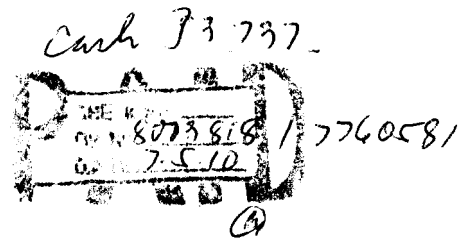
IN THE MATTER OF THE APPLICATION
FOR THE APPROVAL OF THE
AGREEMENT FOR THE SUPPLY OF
ELECTRIC POWER BETWEEN CRYSTAL
SUGAR CO. INC. (CSCI) AND FIRST
BUKIDNON ELECTRIC COOPERATIVE,
INC. (FIBECO), WITH PRAYER FOR
PROVISIONAL AUTHORITY

ERC CASE NO. 2011-00000

FIRST BUKIDNON ELECTRIC COOPERATIVE,
INC. AND CRYSTAL SUGAR CO. INC.,

X-----X
Applicants.

APPLICATION



Applicants First Bukidnon Electric Cooperative, Inc. ("FIBECO") and
CRYSTAL SUGAR CO. INC. ("CSCI"), by undersigned counsel, respectfully
state:

I. THE APPLICANTS

1. First Bukidnon Electric Cooperative, Inc. is a non-stock, non-profit electric cooperative organized and existing under and by virtue of P.D. 269, as amended, with office address at Anahawon, Maramag, Bukidnon. FIBECO has been granted a franchise by the National Electrification Administration ("NEA") to distribute electric service in the Municipalities of Maramag, Quezon, Don Carlos, Kitaotao, Danggagan, Kibawe, Damulog, Kadingilan, Kalilangan, Pangantucan, Valencia and San Fernando all in the province of Bukidnon and Wao, Lanao del Sur (the "Franchise Area").

Copies of relevant documents proving the due incorporation, registration and permit to operate of FIBECO as a distribution utility are attached herewith as follows:

Document	Annex
<i>Articles of Incorporation</i>	A
<i>By-laws</i>	B
<i>NEA Certificate of Registration</i>	C
<i>Certificate of Franchise issued by the National Electrification Commission</i>	D

2. CSCI is a corporation duly organized and existing under the laws of the Republic of the Philippines with principal office address at 10th Floor, Telecoms Plaza Building, 316 Gil Puyat Avenue, Makati City and the owner and operator of a sugar mill with renewable energy co-generation power plant with a generation capacity of 21MW and maximum export capacity of 9MW, situated in Maramag, Bukidnon.

Attached are copies of relevant documents, proving the due incorporation, registration and permit to operate of CSCI, as follows:

Document	Annex
<i>SEC Certificate of Incorporation</i>	E
<i>Board of Investments Certificate of Registration</i>	F
<i>Environmental Compliance Certificate for Sugar Mill</i>	G
<i>Certificate of Compliance ("COC")</i>	H
<i>Articles of Incorporation</i>	I
<i>General Information Sheet</i>	I-1

The Applicants may be served orders and other processes through the undersigned counsel in his address indicated herein below.

II. NATURE OF THE APPLICATION

3. This Application is submitted to the Honorable Commission for its review and approval of the Power Supply Agreement (PSA), dated June 4, 2010, executed by FIBECO and CSCI.

A copy of the PSA is attached hereto as **Annex "J"**. Likewise, copy of the Executive Summary of the said PSA is hereto attached and duly marked as **Annex "J-1"**.

Also attached herewith as Annexes "K" and "K-1" are the respective board resolutions of FIBECO and CSCI approving the execution of the PSA by the parties.

III. COMPLIANCE WITH THE PRE-FILLING REQUIREMENTS

4. In compliance with Rule 6 of the ERC Rules of Practice and Procedure, applicants have furnished the respective legislative bodies of the local government units within the Franchise Area, and the Sangguniang Panlalawigan of Bukidnon, with a copy of the instant Application, all its annexes and accompanying documents.

Certifications from the Presiding Officer or Secretary of the legislative bodies of the Franchise Area where the main office of FIBECO is operating (Municipality of Maramag) and of the Sangguniang Panlalawigan of Bukidnon, or their duly authorized representatives, attesting to the fact of such service will be attached hereto as follows:

Certification of Presiding Officer/Duly Authorized Representative	Annex
<i>Municipality of Maramag</i>	L
<i>Sangguniang Panlalawigan of Bukidnon</i>	L-1

5. Furthermore, Applicants have caused the publication of the present Application in its entirety in the Mindanao Gold Star Daily, a newspaper of general circulation in FIBECO's franchise area.

The corresponding Affidavit of Publication and the newspaper issue containing the published application will be attached hereto as follows:

Document	Annex
<i>Affidavit of Publication</i>	M
<i>Newspaper</i>	M-1

IV. STATEMENT OF FACTS

6. FIBECO is an electric cooperative engaged in the distribution of electricity, light, heat and power in the Province of Bukidnon and CSCI has recognized the electric power need of FIBECO to ensure the quality, reliability, dependability and affordability of supply of electric power to its franchise area for the better service to the member-consumers and contributes for the socio-economic development of the community it served.

ABSTRACT OF THE PSA AND RELATED INFORMATION

7. The following are the salient features of the PSA:

7.1 **Term.** The PSA shall take effect on the date of signing of the agreement and shall remain in full force and effect until such time that the Energy Regulatory Commission shall issue the Certificate of Compliance to CSCI and approval of this Power Supply Agreement.

7.2 **Volume.** Under the PSA, FIBECO agrees to pay for energy generated and produced by CSCI Power Plant on a “non-firm or as available basis” agreement and applicable during milling and off milling operation.

7.3 **Electric Energy Rate.** The price per kilowatt-hour (kwh) of electricity delivered by CSCI to FIBECO during On-milling Operations, which starts either October or November, to be advised one month before, and ends April or May, shall be at such rate based on the average monthly generation rate charged by NPC/PSALM per kilowatt hour to FIBECO and during Off-Milling season the rate shall be at P4.00 per kilowatt-hour. Ancillary Service charged by NGCP shall be added to On-Milling and Off-Milling rate.

7.4 **Billing and Statement.** CSCI shall bill FIBECO for the consumed electric energy on a monthly basis, as follows:

The total amount payable by FIBECO in respect of the fees shall be based on the daily Generation Schedule (DGS) delivered by CSCI at the Point of Delivery. Standard allowable increase of actual delivered energy as against the nominated energy shall be accepted by FIBECO:

The billing period shall cover the 1st hour of the twenty-sixth (26th) day of the previous month up to the 24th hour or 12th midnight of the twenty-fifth (25th) day of the current month.

Bills for the electric energy supplied by CSCI during a billing period and/or bills for other charges covered by the agreement due to CSCI shall be

served upon FIBECO within ten (10) calendar days after the end of the applicable billing period, and must be paid within thirty (30) calendar days from FIBECO's receipt and approval of the bills.

Bills not paid by FIBECO on or before the due date shall bear interest at the rate of twelve percent (12%) per annum, computed from the first day after it becomes due and payable. Interest on overdue accounts shall be computed based on a 360-day year.

Attached as Annex "N" is the impact on Overall Rate of FIBECO. The Summary of Financial Analysis and the Financial Internal Rate of Return of the CSCI on the sale of its electric power to FIBECO are attached and marked as Annex "N-1" and Annex "N-2" respectively. The Auditor's Report and Financial Statements for the years 2008 and 2009 are likewise attached and marked as Annex "N-3";

8. Characteristics of the power capability. The renewable energy co-generation power plant capacity is 21 MW and maximum export capacity of 9 MW.
9. The relevant technical specifications of the power plant is described in Annex "O" and the Operation and Maintenance Procedures is hereto attached and marked as Annex "O-1". A Certificate of Endorsement issued by the Department of Energy is likewise attached as Annex "O-2";

ISSUANCE OF A PROVISIONAL AUTHORITY

9. **Provisional Authority under the Rules.** Under Rule 14 of the ERC Rules of Practice and Procedures, the Honorable Commission is authorized to issue a provisional authority or interim relief prior to a final decision in the instant Application, provided that the facts and circumstances alleged warrant such remedy.

10. **Factual Grounds for issuance of Provisional Authority.** Applicants respectfully submit that the following facts and circumstances clearly warrant the issuance by the Honorable Commission of provisional authority or interim relief in the instant Application.

10.1 There is a power supply shortage in the Island of Mindanao. In order to address and relief the present power outages brought about by the prolonged drought in the Island of Mindanao, applicants are constrained to ask the Honorable Commission for a provisional approval of the instant Application pending the issuance of a final order or decision.

10.2 Inability of FIBECO to avail of incentives under the PSA without provisional approval. Pending final resolution of the pending application and without a provisional authority granted, FIBECO will be unable to avail of the advantages granted to it under its PSA with CSCI, such as:

Savings for FIBECO and its customers, as CSCI's generation rate under the PSA is affordable considering that the source of energy is renewable; and

Incentives and benefits availed under the renewable energy law by CSCI and transferred to FIBECO through the PSA.

10.3 FIBECO will be assured of quality, reliability and dependability of supply of electric power. Considering the availability of renewable source of power of CSCI, FIBECO is assured of supply of additional electric power in its franchise area.

10.4 Legal Basis for the Grant of Provisional Authority.

Applicants likewise respectfully submit that Section 3, Rule 14 of the Honorable Commission's Rules of Practice and Procedure clearly provides legal basis for the grant of provisional authority, as expressly states that "motions for provisional authority or interim relief may be acted upon with or without hearing."

The aforesaid rule further provides that the Honorable Commission shall act on the motion on the basis of the allegations of the application or petition and other evidences that the Applicants have submitted and the comments filed by any interested person, if there be any.

The authority of the Honorable Commission to grant a provisional authority has been clearly affirmed by the Supreme Court in the case of *Freedom from Debt Coalition vs. Energy Regulatory Commission (432SCRA 157)* where the Supreme Court has stressed that the Honorable Commission is endowed with the statutory authority to approve provisional rate adjustments under the aegis of Sections 44 and 80 of the Electric Power Industry Reform Act, in relation to Section 16 (c) of the Public Service Act and Section 8 of E.O. No. 172.

Verily, in the *Freedom from Debt Coalition* case, when confronted with the issue of whether the Honorable Commission exercised grave abuse of discretion in granting provisional rate adjustment, the Supreme Court emphasized that “like Section 16 (c), C.A. No. 146 and Section 8, E.O. No. 172, Section 4 (e), Rule 3 of the IRR does not require the conduct of a hearing prior to the issuance of a provisional order.”

The Supreme Court only emphasized that, as a pre-requisite to such issuance, the Honorable Commission should consider also the comments of the consumers and the local government units concerned on the application which were filed within thirty (30) days from their receipt of a copy of the application or the publication thereof. In other words, the Honorable Commission must wait for thirty (30) days from service of copies of the application on the interested parties or from the publication of such application before it can issue a provisional order.

Considering the foregoing, there is clear and sufficient basis that the issuance of a provisional authority interim relief pending the issuance of a final order or decision in the instant Application is imperative.

11. In view of all the foregoing, Applicants respectfully submit the instant Application for the approval of the Power Supply Agreement between CSCI and FIBECO for the Honorable Commission's urgent and utmost consideration.

PRAYER

WHEREFORE, premises considered, the Applicants most respectfully pray that this Honorable Commission issue an order:

Granting provisional approval/authority for the parties to implement the provisions of the PSA pending the issuance of a final resolution in the instant Application;

Allowing FIBECO to reflect the rate provided in the PSA to its end-users;
and

Approving the PSA entered into between FIBECO and CSCI.

Other reliefs just and equitable are likewise prayed for.

Cainta, Rizal for Pasig City, June 29, 2010.



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