

**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 ELECTRIC POWER PURCHASE
AGREEMENT (EPPA) BETWEEN
VISAYAN ELECTRIC COMPANY,
INC. AND CEBU ENERGY
DEVELOPMENT CORPORATION,
WITH PRAYER FOR PROVISIONAL
AUTHORITY.**

ERC CASE NO. 2009-075RC

**VISAYAN ELECTRIC COMPANY,
INC. AND CEBU ENERGY
DEVELOPMENT CORPORATION,
Applicants.**

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APPLICATION

**VISAYAN ELECTRIC COMPANY, INC. (VECO) and CEBU ENERGY
DEVELOPMENT CORPORATION (CEDC), through the undersigned counsels, and
unto this Commission, most respectfully state:**

Parties to the Case

1. Applicant Visayan Electric Company, Inc. is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at J. Panis Street, Banilad, Cebu City. It is a duly authorized distribution utility of the electric light, heat and power systems in the Municipalities of San Fernando, Minglanilla, Naga, Consolacion and Lilo-an and the Cities of Talisay, Cebu and Mandaue.

2. Cebu Energy Development Corporation is a domestic corporation duly organized and existing under Philippine law with office at Daanlungsod, Toledo City, Cebu, Philippines. It is in the process of constructing and installing its 3 x 82 MW coal-fired plant which it shall own, operate and maintain, located at Daanlungsod, Toledo City, Cebu.

Statement of Facts and of the Case

3. VECO and CEDC entered into an Electric Power Purchase Agreement (EPPA) on October 16, 2009, wherein CEDC agreed to supply and deliver, and VECO agreed to pay for electricity supplied by CEDC, at a Contracted Capacity of 105 MW (at 90% load factor) at the commencement of the Commercial Operation Date at an Electricity Fee computed as follows:

Electricity Fees at Load Factor of 90% up to less than 95%
As of May 2009

Base Price :

Capital Recovery	=	2.5615
Peso O&M Charge	=	0.4529
Dollar O&M Charge	=	0.4146
Total	=	3.4290

Price Index :

PCPIc	=	Philippine CPI for the latest month as per the Bangko Sentral ng Pilipinas, www.bsp.gov.ph
PCPIb	=	158.8
USCPIc	=	US CPI as indicated for the latest month as per the US Bureau of Labor Statistics, www.bls.gov
USCPIb	=	213.856
Current New Castle Index	=	Preceding Quarter's Average Coal Price for 6700kcal/kg ADB as per the Global Coal New Castle Physical Trading, www.globalcoal.com
Base New Castle Index	=	63.440
Electricity Fees	=	(Capital Recovery + Peso O&M Charge + Dollar O&M Charge) + Fuel Cost
Fuel Cost	=	Current Fuel Cost x Consumption Rate ¹
Current Fuel Cost	=	Coal Price + Transport Cost ²
Coal Price	=	Current Coal Price x (Current Newcastle Index/Base Newcastle Index)
Transport Cost	=	(Current Transport Price x 75%) + ((25% x Current Transport Cost x (Current Marine diesel oil price /Base Marine Diesel Oil Price))

1. Actual Consumption rate or the ceiling of 0.7kg/kwh escalated at a rate of 1.5% per year whichever is lower

2. Freight cost is capped at \$ 15.00/MT at May 2009 price levels

4. This Contracted Capacity of 105 MW will be delivered to VECO at the designated metering points in the EPPA at the start of the Commercial Operation Date, when all three Units have been completed, inspected, tested and is ready to commence operation as confirmed in a written communication from CEDC to VECO, which date should not be later than March 31, 2011.

4.1 Nonetheless, CEDC will deliver to VECO during testing and commission on a non-firm basis subject to the payment of Electricity Fees for actual energy taken by VECO, at an Electricity Fee computed as follows:

Electricity Fees at Load Factor of 90% up to less than 95%
As of May 2009

Base Price :

Capital Recovery	=	2.5615
Peso O&M Charge	=	0.4529
Dollar O&M Charge	=	0.4146
Total	=	3.4290

Price Index :

PCPIc	=	Philippine CPI for the latest month as per the Bangko Sentral ng Pilipinas, www.bsp.gov.ph
PCPIb	=	158.8
USCPIc	=	US CPI as indicated for the latest month as per the US Bureau of Labor Statistics, www.bls.gov
USCPIb	=	213.856
Current New Castle Index	=	Preceding Quarter's Average Coal Price for 6700kcal/kg ADB as per the Global Coal New Castle Physical Trading, www.globalcoal.com
Base New Castle Index	=	63.440
Electricity Fees	=	50% * (Capital Recovery + Peso O&M Charge + Dollar O&M Charge) + Fuel Cost
Fuel Cost	=	Current Fuel Cost x Consumption Rate ¹
Current Fuel Cost	=	Coal Price + Transport Cost ²
Coal Price	=	Current Coal Price x (Current Newcastle Index/Base Newcastle Index)
Transport Cost	=	(Current Transport Price x 75%) + ((25% x Current Transport Cost x (Current Marine diesel oil price /Base Marine Diesel Oil Price))

1. Actual Consumption rate or the ceiling of 0.7kg/kwh escalated at a rate of 1.5% per year whichever is lower

2. Freight cost is capped at \$ 15.00/MT at May 2009 price levels

4.2 Moreover, upon completion of the commissioning for each unit (i.e., Pre-Commercial Operation Period or pre-commissioning of the plant), VECO shall take the proportionate net electrical output for each unit of the Power Plant delivered by CEDC on a firm basis subject to the payment of Electricity Fees computed as follows:

Electricity Fees at Load Factor of 90% up to less than 95%
As of May 2009

<u>Base Price :</u>		<u>90% LF</u>	<u>95% LF</u>	<u>100% LF</u>
Capital Recovery	=	2.5615	2.4252	2.2797
Peso O&M Charge	=	0.4529	0.4288	0.4031
Dollar O&M Charge	=	0.4146	0.3926	0.3690
Total	=	3.4290	3.2466	3.0518

Price Index :

PCPIc	=	Philippine CPI for the latest month as per the Bangko Sentral ng Pilipinas, www.bsp.gov.ph
PCPIb	=	158.8
USCPIc	=	US CPI as indicated for the latest month as per the US Bureau of Labor Statistics, www.bls.gov
USCPIb	=	213.856
Current New Castle Index	=	Preceding Quarter's Average Coal Price for 6700kcal/kg ADB as per the Global Coal New Castle Physical Trading, www.globalcoal.com
Base New Castle Index	=	63.440
Electricity Fees	=	75% * (Capital Recovery + Peso O&M Charge + Dollar O&M Charge) + Fuel Cost
Fuel Cost	=	Current Fuel Cost x Consumption Rate ¹
Current Fuel Cost	=	Coal Price + Transport Cost ²
Coal Price	=	Current Coal Price x (Current Newcastle Index/Base Newcastle Index)
Transport Cost	=	(Current Transport Price x 75%) + ((25% x Current Transport Cost x (Current Marine diesel oil price /Base Marine Diesel Oil Price))

1. Actual Consumption rate or the ceiling of 0.7kg/kwh escalated at a rate of 1.5% per year whichever is lower

2. Freight cost is capped at \$ 15.00/MT at May 2009 price levels

5. Thus, the EPPA proposes separate rates on the power delivered by CEDC to VECO, depending on the stage of the plant – i.e., whether testing and commissioning, or pre-commissioning (Pre-Commercial Operation Date), or Commercial Operation Date.

6. The EPPA shall have a term of twenty five (25) years commencing on the Commercial Operation Date and ending on the 25th anniversary of such commencement date, unless sooner terminated pursuant to the terms thereof.

7. The foregoing agreed terms, among others, were embodied in the EPPA, a copy of which is attached hereto as an **Annex “A”** and made an integral part hereof.

8. Should the Commission approve the Electricity Fees under the EPPA, there will be an increase in generation cost of 35 Centavos but a decrease in transmission cost of Php0.08, resulting in a net increase of 27 Centavos upon Commercial Operation Date.

Allegations in Support of the Prayer for Provisional Authority

9. The Commission must take judicial notice of the fact that there is a shortage of supply in the Visayas grid. Thus, the expected additional capacity from CEDC even as early as the (a) testing and commissioning and (b) pre-commissioning of its plant (i.e., prior to the Commercial Operation Date) will help alleviate the shortage.

10. Under the terms of the EPPA, among the conditions precedent to the performance by the VECO and CEDC of its respective obligations thereunder is the approval of this Application.

11. Thus, for CEDC to be able to deliver and VECO to be able to receive power from the former as early as the testing and commission period of the power plant, it is imperative that a provisional authority be granted for the EPPA to allow CEDC to deliver and VECO to receive power during the (a) testing and commissioning of the plant and (b) the pre-commercial operation date.

12. Should the Commission grant a provisional authority for CEDC to deliver and VECO to receive power during the testing and commissioning period, there will be a net reduction in the rates of 1.18 Centavos per kWh during this period. Should a provisional authority be given for the pre-commissioning period, there will be a net reduction of 1.98 Centavos per kWh during this period.

Compliance with Pre-Filing Requirements

13. Applicants manifest their compliance with the pre-filing requirements mandated under Rule 3, Section 4 (e) of the Implementing Rules and Regulations of R.A. No. 9136, and Rule 6 of the 2006 ERC Rules of Practice and Procedures, as evidenced by the following attachments:

13.1 Certificate Acknowledging Receipt of the Application issued by the Sangguniang Panlungsod of the City of Toledo, a copy of which is attached as **Annex “B”**;

13.2 Affidavit of Service with Justification on the service of the Application with Annexes to the Sangguniang Panlungsod of the City of Cebu, a copy of which is attached hereto as **Annex “C”**;

13.3 Affidavit of Publication stating that the instant application had been published in a newspaper of general circulation, a copy of which is attached as **Annex “D”**;

13.4 Newspaper issue where the application as published appeared, a copy of which is attached as **Annex “E”**; and

13.5 Proof of payment of filing fees, a copy of which is attached as **Annex “F”**.

13.6 A copy of the Board Resolution authorizing VECO to jointly file the instant application with CEDC is herein attached as **Annex “G”**.

13.7 A copy of the Board Resolution authorizing CEDC to jointly file the instant application with VECO is herein attached as **Annex “H”**.

PRAYER

WHEREFORE, in view of the foregoing, it is respectfully prayed that the Commission:

1. Upon initial review of the instant Application and pending trial on the merits, issue a provisional authority for the terms of the Electric Power Purchase Agreement between CEDC and VECO, thereby authorizing CEDC to charge and collect the respective Electricity Fees corresponding to the (1) testing and commissioning period, (2) Pre-Commercial Operation Date (i.e., pre-commissioning) and (3) Commercial Operation Date, and authorizing VECO to pass full amount to its consumers; and,

2. After trial on the merits, issue a permanent approval for the terms of the Electric Power Purchase Agreement between CEDC and VECO, thereby authorizing CEDC to charge and collect from VECO the Electricity Fees corresponding to the (1) testing and commissioning period, (2) Pre-Commercial Operation Date (i.e., pre-commissioning) and (3) Commercial Operation Date, and authorizing VECO to pass full amount to its consumers.

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

Cebu City and Makati City for the City of Pasig, Metro Manila.

October 22, 2009.

ATTY. KARL JOSEF BANAG

IBP No. 754136; Cebu City, Jan. 5, 2009

PTR No. 8552345; Cebu City, Jan. 7, 2009

Roll No.51767

MCLE Compliance No. (Applied)

Counsel for Applicant Cebu Energy Development Corporation

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Cebu City

By:

ATTY. JOAN A. GIDUQUIO-BARON
IBP O.R. No. 754163; January 5, 2009; Cebu City
PTR No. 8510004; January 5, 2009, Cebu City
Roll No. 41829
MCLE Compliance No. I – 0016324
MCLE Compliance No. II – 0015874

VERIFICATION AND CERTIFICATION

I, **JESUS N. ALCORDO**, of legal age, Filipino and with office address at 10/F GT Tower International, 6813 Ayala Avenue, Makati City, after having been duly sworn to in accordance with law, depose and say:

1. I am the President of Cebu Energy Development Corp. (CEDC), the applicant-corporation in the above-entitled case;
2. I caused the preparation and filing of the instant application;
3. I read the same and that all the allegations contained therein are true and correct of my own personal knowledge and belief;
4. I certify that **CEDC** 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;
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 this Honorable Commission within five (5) days from knowledge.

FURTHER AFFIANT SAYETH NONE.

(Sgd.)
JESUS N. ALCORDO

SUBSCRIBED AND SWORN to before me this _____, affiant exhibited to me his Passport No. PP0230262, issued on October 1, 2004, valid until October 1, 2009, at Pasay City, Metro Manila.

ATTY. KARL JOSE D. BANAG
NOTARY PUBLIC
Until December 31, 2009

Doc. No. 3;
Page No. 1;
Book No. II;
Series of 2009.

VERIFICATION AND CERTIFICATION

I, **ARLO G. SARMIENTO**, of legal age, Filipino and with office address at VECO, J. Panis Street, Banilad, Cebu City, Philippines after having been duly sworn to in accordance with law, depose and say:

1. I am the Vice President – Utility Economics Group of Visayas Electric Company, Inc. (“VECO”), the applicant-corporation in the above-entitled case;

2. Jointly with Applicant Cebu Energy Development Corporation, I caused the preparation and filing of the instant Application;

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

4. I certify that **VECO** 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;

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 this Honorable Commission within five (5) days from knowledge.

FURTHER AFFIANT SAYETH NONE.

Cebu City, (for Pasig City), October 22, 2009.

(Sgd.)

ARLO A. G. SARMIENTO
Affiant

SUBSCRIBED AND SWORN TO before me this October 23, 2009 at Cebu City, affiant exhibiting to me his CTC No. 21084379 issued at Cebu City on February 4, 2009.

Doc. No. 48;
Page No. 10;
Book No. VIII;
Series of 2009.

JOAN A. GIDUQUIO-BARON
Notary Public
Until December 31, 2010
PTR No. 8510004; January 5, 2009
Cebu City