

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

**IN THE MATTER OF PETITION FOR  
APPROVAL OF THE POWER SUPPLY  
AGREEMENT BETWEEN APO  
CEMENT CORPORATION AND  
VISAYAN ELECTRIC COMPANY,  
INC. (VECO), WITH PRAYER FOR  
PROVISIONAL AUTHORITY**

**ERC CASE NO. 2009-078RC**

**VISAYAN ELECTRIC COMPANY,  
INC. (VECO) AND APO CEMENT  
CORPORATION,**

**Petitioners.**

**X-----X**

**PETITION**

PETITIONERS VISAYAN ELECTRIC COMPANY, INC. and APO CEMENT CORPORATION, through the undersigned counsels, and unto this Honorable Commission, most respectfully state; that:

1. Petitioner Visayan Electric Company, Inc. (“VECO”) is a private electric distribution utility duly enfranchised under Republic Act No. 9339 to engage in the distribution of electric energy in the Cities of Cebu, Mandaue, and Talisay and the surrounding Municipalities of Naga, Minglanilla, San Fernando, Consolacion and Liloan, all within the Province of Cebu. VECO is herein represented by its Assistant Vice President-Utility Economics Group, Lyndon C. Jayme, and may be served with legal processes through its undersigned counsel.

2. Petitioner Apo Cement Corporation (“Apocemco”) is a private domestic corporation with principal business address at APO Cement Plant Compound, Barangay Tina-an, Naga City, Cebu, Philippines. Apocemco owns and operates a cement plant and associated facilities, together with a 66MW electric power generation capacity located in Barangay Tina-an, Naga City, Cebu. As the owner and operator of the generating units, Apocemco has been issued

a Certificate of Compliance from the Honorable Commission as well as an Environmental Compliance Certificate from the Department of Environmental and Natural Resources. Apocemco is herein represented by its Vice President – Planning, Paul Vincent Arcenas, and may be served with legal processes through its undersigned counsel.

3. Apocemco is willing to sell to VECO the excess supply of its generated electric power, and VECO is willing to purchase and receive such supply in view of the shortage of power in the Visayas Grid and the extremely urgent need to locate available sources. As a matter of fact, existing generators from whom VECO may obtain additional electricity have expressly indicated that they could no longer commit to provide additional power.

3.1 In a letter dated June 17, 2009, the National Power Corporation (NPC) wrote VECO that it could no longer accommodate the request of VECO for an increase in contracted energy levels from December 26, 2008 until December 25, 2010. A photocopy of the June 17, 2009 letter from NPC is hereto attached as Annex “A” and made an integral part hereof.

3.2 Toledo Power Company also replied to VECO in a letter dated September 18, 2009 informing that it cannot provide the additional 10 MW requested by VECO. A photocopy of the letter is hereto attached as Annex “A-1” and made an integral part hereof.

4. VECO has been proactive and creative in addressing the shortage also on the demand side. It has successfully implemented an Interruptible Load Program and signed separate Interruptible Load Agreements with its large customers who have agreed to “de-load” from VECO and operate using its own generating units during peak hours. On June 1, 2009, the Honorable Commission has, in fact, granted provisional authority on this Interruptible Load Program in ERC Case No. 2009-012RC (*In the Matter of the Application for Approval of the Interruptible Load Agreement with Special Wholesale Power Customers Within the Franchise Area, with Prayer for Provisional Authority*).

5. It was in light of this urgent need for power that VECO directly negotiated a contract with Apocemco.

6. Thus, on September 8, 2009, Apocemco and VECO executed and signed a Power Supply Agreement (“PSA”) containing the following salient provisions:

3.1 From and after the Effectivity Date until the termination of the PSA, Apocemco shall guarantee the availability of ten (10) MW of capacity from 1:00 p.m. up to 9:00 p.m. per day to VECO (the “Contract Capacity”). Out of the Contract Capacity, Apocemco shall sell and deliver to VECO, and VECO shall purchase the amount of electric power in accordance with the dispatch instructions of the VECO.

3.2 VECO shall submit to Apocemco, at least forty eight (48) hours in advance, a Daily Generation Schedule indicating, on a per hour basis, the electric energy it shall require to be delivered to it by the Apocemco not exceeding the Contract Capacity.

3.3 VECO shall have the option to purchase from Apocemco additional electric power in excess of the Contract Capacity of 10 MW, up to a maximum of 25 MW, as such electric power becomes available and as may be mutually agreed upon in writing by the Parties. Nonetheless, Apocemco shall have no obligation to sell electric power to the VECO in excess of the Contract Capacity. This additional Contract Capacity shall also be subject to the Energy Fee and payment of proportionate Capacity Fee in the amount of Php1.1111 per KWH.

3.4 Should VECO wish to purchase electric power in excess of the Contract Capacity (if and when such excess power is made available), VECO shall specifically indicate the amount of additional energy it desires to purchase, on an hourly basis, in the Daily Generation Schedule to be submitted to Apocemco.

3.5 Power shall be delivered at the interconnection point at the APO Substation and as specified in the PSA Schedule. Title to and all risks associated with the delivery of the electric power from Apocemco shall pass to VECO at the Delivery Point notwithstanding VECO's failure to accept such electric power.

3.6 In the event of a Shortfall due to any event, act, or omission attributable to the Apocemco and not otherwise constituting Force Majeure, Apocemco shall reimburse VECO for all the consequential incremental generation and transmission costs actually incurred by the VECO for the replacement of the Shortfall, if any.

3.7 In the event that there is a Shortfall and VECO is unable to replace the Shortfall, either fully or partially, due to any event, act, or omission not attributable to the VECO, Apocemco shall pay VECO the amount of Php1.30 for every KWH of Shortfall, which represents the VECO's total opportunity loss for its distribution related revenues.

3.8 In consideration for the sale of electric power by Apocemco, VECO shall pay Apocemco, the following fees which shall be exclusive of charges, taxes or other fees:

3.8.1 VECO shall pay the Apocemco a Fixed Monthly Capacity Fee, which shall be equivalent to Php4,929,840.00 (subject to adjustments in Forex and Philippine inflation rates in accordance with the Formula for Adjustment as illustrated in the PSA's Schedule).

3.8.2 VECO shall also pay an Energy Fee, which shall be equivalent to Php4.9069 per KWH, subject to adjustments in MOPS and Forex in accordance with the Formula for Adjustment illustrated in PSA Schedule, and subject further to the Special Clause Adjustment Mechanism provision.

3.9 The Special Clause Adjustment Mechanism allows an adjustment in the Fixed Monthly Capacity Fee and the Energy Fee to reflect any adjustment in the actual

fuel costs incurred or to be incurred by Apocemco in using a new type of fuel other than bunker fuel oil specified in the PSA due to a change in any law, rule, regulation or policy promulgated by any Authority that results in Apocemco being disallowed from using bunker fuel oil, or otherwise prohibiting Apocemco from using bunker fuel oil.

3.10 In case of any delay in payment by VECO of the invoice from Apocemco which is due ten (10) calendar days from VECO's receipt of Apocemco's written invoice or bill, Apocemco shall have the right to assess and collect a surcharge at a rate per annum equal to the sum of the then current rate on Philippine Government ninety one (91) day treasury bills, and interest at the rate of four percent (4%) on the amount of outstanding and undisputed billing. Apocemco may effect service disconnection upon at least 15 days prior notice to the VECO, and without prejudice to Apocemco's rights under a VECO's Event of Default.

3.11 All applicable charges, fees and/or taxes which may be imposed on the Electricity Fees, including but not limited to VAT shall be borne by VECO.

3.12 In the event that a change in circumstance occurs, as a result of any law or regulation of the Republic of the Philippines or any regional or municipal authority coming into effect after the execution of this Agreement, or as a result of the amendment, modification or repeal of any such law or regulation (including any official interpretation thereof) in force at the effectivity of this Agreement, and such circumstance will be detrimental to the interest of either or both parties, the Parties hereby agree to meet and endeavor to amend this Agreement for the purpose of restoring such interests to their status prior to the occurrence of the change in circumstance, within 14 days from receipt of a written notice by one party from the other, advising of such change in circumstance. Provided, that if the Parties do not arrive at a mutually acceptable amended Agreement within 90 days from the start of negotiation, this Agreement shall be effectively terminated.

7. The PSA shall have a term of only one (1) year from the Effectivity Date, i.e. the start of the applicable billing cycle immediately following the date the Honorable Commission provisionally or permanently approves the same, whichever comes first. *Provided*, that in the event the provisional approval is obtained after sixty (60) days from the date of execution of this Agreement, Apocemco shall have the option to move the Effectivity Date of this Agreement to the 25<sup>th</sup> of the month coinciding with its Plant's annual maintenance shutdown. In the event the ERC does not permanently approve this PSA due to any cause not attributable to either party by the time of said annual maintenance shutdown, then this PSA shall be deemed terminated as of the date of finality of the order or resolution by the ERC permanently disapproving or withdrawing the provisional approval of this PSA, if any, without prejudice to any liabilities or obligations incurred by the parties prior to such date, unless the termination is extended by mutual agreement of the parties.

8. In the event that the PSA is approved by the Honorable Commission, its financial impact will be an increase of Php 0.0387 per kWh to its customers. This amount is based on a simulation performed by VECO under certain assumptions. A copy of the financial simulation is attached hereto as Annex "B" and made an integral part hereof.

9. All documents required under the applicable rules and regulations of the Honorable Commission relating to the Petition, including but not limited to the PSA, are hereto attached as Schedules and made integral parts hereof.

#### Allegations in Support of the Prayer for Provisional Authority

10. The Honorable Commission must take judicial knowledge of the current power supply shortage in the Visayas Grid. Moreover, all additional capacity from independent power producers will not be expected until mid-2010, at the earliest. On the other hand, Apocemco is an immediate source of power supply that is ready to be tapped once the instant Petition is approved.

11. The parties have agreed in the PSA that its Effectivity Date shall be reckoned from the provisional or permanent approval hereof.

12. Thus, it is necessary that for VECO to immediately avail of the much needed 10 MW capacity from Apocemco and help alleviate the current power shortage in the Visayas, the PSA must be approved provisionally.

#### Compliance with Pre-Filing Requirements

13. Petitioners 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:

a. The Affidavit of Service as proof of service of the instant Petition with Annexes to the Sangguniang Panlungsod of the City of Cebu, the place where VECO principally operates, attached as Annex "C", together with a copy of the first page of the instant Petition with a stamp of receipt from the Sanggunian;

b. The Certificate acknowledging receipt of the instant Petition with Annexes issued by the Sangguniang Bayan of the Municipality of Naga, the place where Petitioner APOCEMCO principally operates, attached as Annex "D", together with a copy of the first page of the instant Petition;

c. Notarized Affidavit of Publication stating that the instant Petition had been published in a newspaper of general circulation within its franchise area or area where it principally operates, a copy of which is attached as Annex "E";

d. A copy of the newspaper issue where the Petition as published appeared, a copy of which is attached as Annex "F";

e. A copy of the Board Resolution authorizing VECO to jointly file the instant Petition with APOCEMCO, herein attached as Annex “G”; and

f. A copy of the Board Resolution authorizing APOCEMCO to jointly file the instant Petition with VECO, 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 Petition and pending trial on the merits, issue a provisional authority for the terms of the PSA between Apocemco and VECO, which contains, but not limited to, the Energy Fee, Fixed Monthly Capacity Fee, which shall be subject to the Special Adjustment Mechanism and the Formula for Adjustment in Schedule 3 of the PSA, thereby provisionally authorizing Apocemco to charge and collect from VECO said Fees and authorizing VECO to pass the same to its consumers; and,

2. After trial on the merits, issue a permanent approval for the terms of the PSA, thereby permanently authorizing Apocemco to charge and collect from VECO the Energy Fee, Fixed Monthly Capacity Fee, which shall be subject to the Special Adjustment Mechanism and the Formula for Adjustment in Schedule 3 of the PSA, permanently authorizing VECO to pass the adjustment 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 15, 2009.

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**VERIFICATION/CERTIFICATION**

REPUBLIC OF THE PHILIPPINES }  
CEBU CITY/PROVINCE }s.s.

I, LYNDON C. JAYME, of legal age and resident of Cebu City, after being duly sworn to in accordance with law hereby depose and say that:

I am the Assistant Vice President – Utility Economics Group of one of the Petitioners, Visayan Electric Company, Inc.;

Jointly with Petitioner Apo Cement Corporation, I have caused the preparation of the foregoing Petition;

I have read the contents thereof and that the same are true and correct to the best of my knowledge and information;

I have not cause commenced any other action or proceeding involving the same issue 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 pending before said court, agency or tribunal, I undertake to inform this Honorable Commission within 5 days from knowledge thereof.

Cebu City, (for Pasig City), October 15, 2009.

**LYNDON C. JAYME**  
*Affiant*

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ at Cebu City, affiant exhibiting to me his Driver’s License No. G01-83-012687 which expires on July 23, 2012.

Doc. No. \_\_\_\_  
Page No. \_\_\_\_  
Book No. \_\_\_\_  
Series of 2009.

**VERIFICATION/CERTIFICATION**

REPUBLIC OF THE PHILIPPINES }  
}s.s.

I, PAUL VINCENT ARCENAS, of legal age with business address at 8th Floor Petron Mega Plaza, 358 Sen. Gil J. Puyat Avenue, Makati City, after being duly sworn to in accordance with law hereby depose and say that:

I am the Vice President-Planning of one of the Petitioners, Apo Cement Corporation;

Jointly with Petitioner Visayan Electric Company, Inc., I have caused the preparation of the foregoing Petition;

I have read the contents thereof and that the same are true and correct to the best of my knowledge and information;

I have not cause commenced any other action or proceeding involving the same issue 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 pending before said court, agency or tribunal, I undertake to inform this Honorable Commission within 5 days from knowledge thereof.

Makati City, (for Pasig City), October 15, 2009.

**PAUL VINCENT ARCENAS**

*Affiant*

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ at \_\_\_\_\_, affiant exhibiting to me his Driver's License No. N03-84-017247, expiring on July 18, 2011.

Doc. No. \_\_\_\_  
Page No. \_\_\_\_  
Book No. \_\_\_\_  
Series of 2009.