

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

**IN THE MATTER OF THE APPLICATION
FOR APPROVAL OF THE POWER SUPPLY
AGREEMENT BETWEEN SORSOGON I
ELECTRIC COOPERATIVE, INC. AND AP
RENEWABLES, INC., WITH PRAYER FOR
PROVISIONAL AUTHORITY.**

ERC CASE NO. 2009-140RC

**SORSOGON I ELECTRIC COOPERATIVE,
INC. AND AP RENEWABLES, INC.**

Applicants.

X-----X

**APPLICATION
FOR APPROVAL OF POWER SUPPLY AGREEMENT**

Applicants SORSOGON I ELECTRIC COOPERATIVE, INC. ("SORECO I") and AP RENEWABLES, INC. ("APRI"), by their respective counsels, respectfully state:

THE APPLICANTS

1. SORECO I is a non-stock, non-profit electric cooperative organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address in Gulang-gulang, Irosin, Sorsogon. SORECO I has been granted a franchise by the National Electrification Administration to provide power distribution services in the municipalities of Bulan, Matnog, Sta. Magdalena, Irosin, Bulusan, Juban, Casiguran and Magallanes in the Province of Sorsogon (the "Franchise Area"). Copies of SORECO I's Articles of Cooperation and Certificate of Franchise are attached as **Annexes "A"** and **"B"** hereof, respectively.

2. APRI is a generation company duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at 110 Legazpi Street, Legaspi Village, Makati City, Metro Manila. Copies of APRI's Certificate of Incorporation, latest amended Articles of Incorporation, latest General Information Sheet, latest audited financial statements, list of shareholders and Board of Investments Certificate of Registration are attached as **Annexes "C", "D", "E", "F", "G" and "H"**, respectively.

3. The Applicants may be served the orders and other processes of this Honorable Commission through their respective undersigned counsels.

STATEMENT OF FACTS

4. SORECO I has an existing Contract for Supply of Electric Energy ("CSEE") with the National Power Corporation ("NPC") for the supply of 31,000,000 kWh per year of power, at rates based on NPC Time of Use ("TOU"). This CSEE is soon to expire on December 25, 2009.

5. There is an expectation that the rates of NPC will increase based on recent rate applications it filed with this Honorable Commission. Accordingly, in line with its mandate to ensure the affordability of electric power to its end consumers, SORECO I sought an alternative supplier that could offer rates lower than the NPC rates and that is located near the Franchise Area.

6. APRI was such alternative supplier which offered rates lower than the NPC rates and with a power plant situated near the Franchise Area.

6.1 APRI owns, operates and maintains the 747 megawatt (MW) Tiwi and Mak-Ban Geothermal Power Plants ("Power Plants"), located in

Tiwi, Albay and Mount Makiling, Mak-Ban, Laguna, respectively. Information on the relevant technical and economic characteristics of the Power Plants is attached as **Annex “I”** hereof.

6.2 The Power Plants were awarded to APRI on May 26, 2009 under a competitive bidding process undertaken by the Private Sector Assets and Liabilities Management Corporation (“PSALM”) pursuant to Section 47 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (the “EPIRA”). Copies of the Certificates of Compliance and Environmental Compliance Certificates (“ECCs”) issued to NPC for the operation of the Power Plants are attached as **Annexes “J”, “K”, “L” and “M”** hereof. The ECCs have been approved by the Department of Environment and Natural Resources (“DENR”) for transfer from NPC to APRI, as evidenced by the DENR letters of approval attached as **Annexes “N” and “O”** hereof.

7. The consideration of APRI as a possible supplier came about by a combination of factors, to wit: (a) APRI’s rates are lower than those of NPC; (b) the sale of power by APRI will be subject to a Value-Added Tax rate of zero percent (0%) since the power will be sourced from APRI’s geothermal Power Plants; (c) the expiration of the CSEE between SORECO I and NPC is imminent, and NPC, as a result of the privatization of its assets, appears not to have the capacity to continue to supply SORECO I’s power requirements; and (d) line rental costs will be lower because of the proximity of one of APRI’s Power Plants to the Franchise Area. Hence, SORECO I negotiated and concluded on October 15, 2009 a Power Supply Agreement (“PSA”) with APRI. A copy of the PSA is attached as **Annex “P”** hereof.

8. Applicants come now to this Honorable Commission for the approval of their PSA, in compliance with the EPIRA, which provides for the review of power supply contracts by the Honorable Commission, and the ERC Rules of Practice and Procedure, which outlines the procedure for the instant Application.

**ABSTRACT OF THE POWER SUPPLY AGREEMENT
AND RELATED INFORMATION**

9. ***Executive Summary.*** Under the PSA, APRI shall supply power to SORECO I for a term of 2 years, from December 26, 2009 to December 25, 2011. The volume of Contract Energy¹ is fixed on a yearly basis, broken down into 12 monthly Contract Energy nominations, as shown in Annex “A” of the PSA. Each monthly Contract Energy nomination is further translated to equivalent hourly volumes in accordance with the nomination procedure provided in Annex “H” of the PSA. On the other hand, the base price per kilowatt-hour of the Contract Energy is fixed as, and broken down into, hourly rates that vary based on time of use, as shown in Annex “C” of the PSA.

10. ***Salient Features of the PSA.***

10.1 ***Term.*** APRI shall commence the supply and delivery of power to SORECO I on December 26, 2009 until December 25, 2011, subject to the satisfaction of the conditions precedent listed in Article 3.2 of the PSA, which include, among others, the approval of the instant Application by this Honorable Commission. The parties may renew the PSA by a written agreement signed not later than 30 days prior to the expiration of the PSA, provided that a written notice of a party’s intent to renew is delivered not later than 6 months prior to the expiration of the PSA.

¹ Capitalized terms not otherwise defined herein shall have the respective meanings ascribed to them in the PSA.

10.2 **Power Supply.** The Contract Energy to be supplied by APRI shall be 58,020,000 kWh for two years. Pursuant to the nomination procedure provided in Annex "H" of the PSA, SORECO I shall furnish APRI its annual Contract Energy nomination broken down into 12 monthly Contract Energy nominations. Each of the 12 monthly Contract Energy nominations shall be the basis for the hourly energy quantities to be supplied by APRI.

For a particular billing period, SORECO I may request an adjustment to the Contract Energy, subject to the approval of APRI and subject to the procedure prescribed in the PSA.

For the succeeding contract year, any proposed adjustment to the Maximum Contract Energy as a result of an increase or decrease in SORECO I's energy requirements shall be negotiated in good faith. If the parties are unable to agree, the Contract Energy for the immediately preceding 12 months shall be deemed the Maximum Contract Energy for the next succeeding 12 months.

In case SORECO I reduces its Minimum Contract Energy, SORECO I shall pay APRI a buy-out charge in an amount equivalent to PhP2.00/kWh of the foregone Contract Energy for the remainder of the term of the PSA.

10.3 **Purchased Power Rate.** The fees to be paid by SORECO I for the purchase of power during the term of the PSA are broken down into hourly rates that vary based on TOU, as follows:

A.

Rate Schedule for the First Year (December 26, 2009 – December 25, 2010)

HOUR	JAN – JUN		JUL - DEC	
	MON - SAT	SUN & HOL	MON - SAT	SUN & HOL
0100	2.3192	2.4772	2.3192	2.3192
0200	2.3192	2.3192	2.3192	2.3192
0300	2.3192	2.3192	2.3192	2.3192
0400	2.3192	2.3192	2.3192	1.8463
0500	2.3192	2.3192	2.3192	1.8463
0600	2.3192	2.3192	2.3192	1.8463
0700	2.3192	2.3192	2.3192	1.8463
0800	2.5993	2.3192	2.4772	2.3192
0900	5.7212	2.3192	2.5993	2.3192
1000	6.4630	2.4772	5.9273	2.4772
1100	6.4630	2.4772	6.4630	2.4772
1200	6.4630	2.4772	5.9273	2.4772
1300	6.4630	2.4772	5.9273	2.4772
1400	6.4630	2.4772	6.4630	2.4772
1500	6.4630	2.4772	5.9273	2.4772
1600	6.4630	2.4772	5.7212	2.4772
1700	5.9273	2.4772	5.4926	2.4772
1800	5.9273	2.4772	5.9273	2.5993
1900	6.4630	5.7212	6.4630	5.4926
2000	6.4630	5.7212	5.9273	5.4926
2100	5.9273	3.2268	5.7212	2.5993
2200	3.2268	2.5993	2.5993	2.4772
2300	2.5993	2.4772	2.4772	2.3192
2400	2.4772	2.3192	2.3192	2.3192

B.

Rate Schedule for the Second Year (December 26, 2010 – December 25, 2011)

HOUR	JAN – JUN		JUL - DEC	
	MON - SAT	SUN & HOL	MON - SAT	SUN & HOL
0100	2.3717	2.5333	2.3717	2.3717
0200	2.3717	2.3717	2.3717	2.3717
0300	2.3717	2.3717	2.3717	2.3717
0400	2.3717	2.3717	2.3717	1.8881
0500	2.3717	2.3717	2.3717	1.8881
0600	2.3717	2.3717	2.3717	1.8881
0700	2.3717	2.3717	2.3717	1.8881
0800	2.6582	2.3717	2.5333	2.3717
0900	5.8508	2.3717	2.6582	2.3717
1000	6.6094	2.5333	6.0615	2.5333
1100	6.6094	2.5333	6.6094	2.5333
1200	6.6094	2.5333	6.0615	2.5333
1300	6.6094	2.5333	6.0615	2.5333
1400	6.6094	2.5333	6.6094	2.5333
1500	6.6094	2.5333	6.0615	2.5333
1600	6.6094	2.5333	5.8508	2.5333
1700	6.0615	2.5333	5.6170	2.5333
1800	6.0615	2.5333	6.0615	2.6582
1900	6.6094	5.8508	6.6094	5.6170
2000	6.6094	5.8508	6.0615	5.6170
2100	6.0615	3.2999	5.8508	2.6582
2200	3.2999	2.6582	2.6582	2.5333
2300	2.6582	2.5333	2.5333	2.3717
2400	2.5333	2.3717	2.3717	2.3717

The foregoing rates are based on discounted NPC TOU rates. A discussion on the basis or rationale of the purchased power rates is attached as **Annex “Q”** hereof.

(a) *Indexation.* Thirty percent (30%) of the Electricity Fees is subject to monthly adjustment based on the Philippine Peso-US Dollar Exchange Rate of PhP46.589–USD1.00.

(b) *Discount/Penalty.* If SORECO I pays the full amount of the Electricity Fees not later than the 18th day of a Payment Month, it shall be entitled to a discount equivalent to 0.5% of the said Electricity Fees due. If SORECO I fails to pay the Electricity Fees or any other amount payable under the PSA on the due date, it shall pay a penalty of 1.5 % per month (a fraction of a month to be considered one month) on the amount due, from the due date until such date that the amount is received in full by APRI.

(c) *Back-Up Power and Replacement Power Charges.* During the Allowable Downtime of APRI, it shall supply replacement power from an alternative source to SORECO I for which SORECO I shall pay the corresponding Replacement Power Charge equivalent to the price per kWh for the relevant interval, as indicated in Annex “C” of the PSA.

In case of *force majeure* or of the unscheduled outage of the Power Plants, APRI shall deliver back-up power to SORECO I from an alternative source for which SORECO I shall pay the actual cost of the alternative power.

During the Allowable Downtime of SORECO I, it shall be entitled to a Maintenance Service Adjustment, which is a proportionate adjustment to the Contract Energy.

(d) *Additional Energy Charge.* In case of consumption by SORECO I of Additional Energy, and the amount of Additional Energy Charge is not stipulated in Annex “C” of the PSA, SORECO I shall pay to APRI the amount equivalent to: (i) the market *ex ante* Nodal Energy Price for the hour during which the Additional Energy was supplied at the Receiving Node, or (ii) contract price for the hour during which the Additional Energy was supplied at the Receiving Node, whichever is higher, including all incidental charges attendant to transactions in the Wholesale Electricity Spot Market.

(e) *Energy Consumption Shortfalls.* In case of shortfalls in its consumption, SORECO I shall pay the Minimum Energy Charge on the difference between the Minimum Contract Energy and the actual energy consumed. For interruption or curtailment to a level below the Minimum Contract Energy as a result of a failure by the Transmission System to transmit energy, SORECO I may claim a Service Interruption Adjustment to the Minimum Contract Energy.

(f) *Sample Computation of Power Rates with Supporting Information on the Assumptions Taken.* A sample computation of the Electricity Fees is provided in **Annex “R”** hereof.

10.4 Transmission and Delivery. APRI shall supply the Contract Energy at the high-voltage side of the transformer at the Tiwi Power Plant (or at the Mak-Ban Power Plant, during outages at the Tiwi

Power Plant) (Delivery Points), as designated in Annex “B” of the PSA. Line rental charges and transmission fees for delivery and transmission of the Contract Energy shall be for the account of SORECO I.

A copy of the Transmission Service Agreement between SORECO I and the National Transmission Corporation (now assigned to the National Grid Corporation of the Philippines [“NGCP”]) is attached as **Annex “S”** hereof. The Transmission Service Agreement between APRI and NGCP is currently being negotiated, as evidenced by the certification issued by NGCP, a copy of which is attached as **Annex “T”** hereof.

10.5 Security Deposit. SORECO I is required to post and maintain a Security Deposit in an amount equivalent to the product of the highest of the projected monthly maximum consumption quantities for the succeeding 12-month period and the projected customer load weighted average APRI rate. If SORECO I fails to post on or before the deadline, or fails to maintain the amount of the Security Deposit, it shall be subject to a penalty of 2% per month. In addition, APRI shall have the right to draw against the Security Deposit, temporarily suspend its obligation to generate and sell electric power to SORECO I, rescind or terminate the PSA, and/or declare fees and charges for the current billing period and such other unbilled periods as due and payable.

After the first year of the PSA, the Security Deposit shall be adjusted as provided in Annex “G” of the PSA. In the event that APRI draws on the Security Deposit, SORECO I shall replenish the same to restore its value to the original amount. Where SORECO I does not so replenish within the time prescribed, APRI shall have the right: (a) to increase the Basic Energy Charge by an additional PhP0.10/kWh until such time that SORECO I shall have satisfactorily replenished the Security

Deposit; or (b) to terminate the PSA, with SORECO I liable to pay the Termination Fee.

Where the Security Deposit is, at all times, up to date and compliant with the terms of the PSA, SORECO I shall be entitled to an additional 2% discount on the Electricity Fees for the succeeding billing periods.

11. **Sources of Funds.** A discussion on APRI’s sources of funds/financial plans, including information related thereto, is attached as **Annex “U”** hereof.

12. **Comparative Analysis.** A comparison between the cost of power delivered by NPC and the cost of power to be delivered by APRI is presented below, with the resulting impact on SORECO I of the transition from NPC to APRI, as new supplier:

	APRI		NPC	
	Rate	Amount	Rate	Amount
Basic Energy Charge (TOU Rate)	4.029	10,581,273.11	4.0697	10,644,973.11
Franchise Benefits to Host Communities	0	0	0.0245	63,700.000
Deferred Accounting Adjustment (DAA)	0	0	-0.3622	(941,720.00)
WESM Line Rental		2,266.20		173,169.79
VAT	0		9%	958,047.58
TOTAL AMOUNT		10,319,007.48		10,898,170.48
TOTAL SAVINGS				2.97%

*Assuming a monthly consumption of 2,600,000 kWh.

As shown in the comparison table above, the rate offered by APRI shall be more favorable to the consumers of SORECO I.

ALLEGATIONS IN SUPPORT OF A PROVISIONAL AUTHORITY

13. Under Rule 14 of the ERC Rules of Practice and Procedure, this Honorable Commission is authorized to issue provisional authority or interim

relief prior to a final decision, provided that the facts and the circumstances alleged warrant such remedy.

14. The facts and the circumstances of this Application warrant the issuance by this Honorable Commission of the provisional authority prayed for. The CSEE between NPC and SORECO I is set to expire on December 25, 2009. Further, it appears that NPC will be unable to commit to the supply of electricity in the Franchise Area for the period December 26, 2009 to December 25, 2009, which is the term of the PSA, owing to the continuing privatization of its assets. For the purpose of this Application, APRI has sent a letter to PSALM to request for a certification on the said inability of NPC to supply power. A copy of this letter is attached as **Annex “V”** hereof. As to the certification of PSALM, Applicants hereby undertake to submit it to this Honorable Commission as soon as practicable.

15. A provisional authority is, thus, respectfully prayed for to prevent any delay in the implementation of the PSA. Clearly, there is an urgent necessity for its approval to address the electricity requirements of SORECO I and its consumers and to avoid power interruptions after the term of the CSEE ends on December 25, 2009.

COMPLIANCE WITH PRE-FILING REQUIREMENTS

16. In compliance with the ERC Rules of Practice and Procedure, Applicants have furnished the legislative bodies of the cities and municipalities in the Franchise Area a copy of the present Application with all its annexes and accompanying documents.

16.1 Copies of the certifications from the Presiding Officer or Secretary of the legislative bodies of the province of Sorsogon and the municipalities of Bulan, Matnog, Sta. Magdalena, Irosin, Bulusan, Juban,

Casiguran and Magallanes, or from their duly authorized representatives, attesting to the fact of service are attached hereto as **Annexes “W”** and **“W-1”** to **“W-8”**, respectively.

17. Applicants have also caused the publication of the present Application in a newspaper of general circulation within the Franchise Area. Copies of the newspaper publication and the corresponding Affidavit of Publication are attached hereto as **Annexes “X”** and **“Y”**, respectively.

PRAYER

WHEREFORE, in view of all the foregoing, the Applicants most respectfully pray that this Honorable Commission:

- 1) upon initial review of the instant Application and pending trial on the merits, issue an order granting provisional approval/authority for the parties to immediately implement the provisions of the PSA, pending the issuance of a final decision in the instant Application; and
- 2) after trial on the merits, issue a permanent approval of the subject PSA, including the rates set forth in 10.3 of this Application.

Other reliefs just and equitable are likewise prayed for.

Makati City for Pasig City, November 3, 2009.

DECHAVEZ SAGAYO & LERIOS-AMBOY

Counsel for SORECO I

Units 1609-1610, 16th Floor Tycoon Centre
Condominium, Pearl Drive, Ortigas Centre
Pasig City

By:

(Sgd.) **CARLOS R.L. UYBARRETA**

PTR No. 5152986/January 20, 2009/Pasig City
IBP Lifetime No. 01482/Rizal Chapter
MCLE Certificate of Compliance No. II-0007174
Roll No. 39013

(Sgd.) **KATRINA M. PLATON**

Counsel for APRI

110 Legazpi Street,
Legaspi Village, Makati City
PTR No. 2025065/October 14, 2009/Makati City
IBP Lifetime No. 706864/Makati City
MCLE Certificate of Compliance No. II-0006215
Roll No. 38338

(Sgd.) **MA. CONSOLACION C. MERCADO**

Counsel for APRI

110 Legazpi Street,
Legaspi Village, Makati City
PTR No. 1574396/January 9, 2009/Makati City
IBP No. 767115/January 7, 2009/Makati City
MCLE Certificate of Compliance No. II-0008112
Roll No. 52578

VERIFICATION/CERTIFICATION

I, ROBERTO F. FORTES, of legal age and resident of Irosin, Sorsogon, after being duly sworn to in accordance with law hereby depose and state:

1. I am the General Manager and the duly authorized representative of SORSOGON I ELECTRIC COOPERATIVE, INC.;

2. Jointly with Applicant AP RENEWABLES, INC., I have caused the preparation of the foregoing Application;

3. I have read the contents thereof and the same are true and correct to the best of my knowledge and information or based on available documents;

4. I hereby certify that SORSOGON I ELECTRIC COOPERATIVE, INC. has not commenced any other action or proceeding involving the same issues 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 is pending, I undertake to inform this Honorable Commission within five (5) days from knowledge thereof.

IN WITNESS WHEREOF, I have set my hand this ____ day of Nov 05 2009.

(Sgd.) **ROBERTO F. FORTES**
Name of Affiant

SUBSCRIBED AND SWORN TO before me this NOV 05 2009 at CITY OF SORSOGON, affiant exhibiting to me his Community Tax Certificate No. 05123546, which was issued on January 8, 2009 at Irosin, Sorsogon.

Doc. No. 08;
Page No. 3;
Book No. 136;
Series of 2009.

(Sgd.) ATTY. DOMINGO D. GAMIS
NOTARY PUBLIC
UNTIL DECEMBER 31, 2010
PTR#-0186429-CY 2009
IBP # - 707541 – CY 2009
ATTORNEY'S ROLL # -9611

VERIFICATION/CERTIFICATION

I, NESTOR F. ALIMAN, of legal age with business address at 110 Legazpi Street, Legaspi Village, Makati City, after being duly sworn to in accordance with law hereby depose and state:

1. I am the BCQ Manager of APRI and the duly authorized representative of AP RENEWABLES, INC.;

2. Jointly with Applicant SORSOGON I ELECTRIC COOPERATIVE, INC., I have caused the preparation of the foregoing Application;

3. I have read the contents thereof and the same are true and correct to the best of my knowledge and information or based on available documents;

4. I hereby certify that AP RENEWABLES, INC. has not commenced any other action or proceeding involving the same issues 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 is pending, I undertake to inform this Honorable Commission within five (5) days from knowledge thereof.

IN WITNESS WHEREOF, I have set my hand this ____ day of NOV 04 2009.

(Sgd.) **NESTOR F. ALIMAN**
Name of Affiant

SUBSCRIBED AND SWORN TO before me this NOV 04 2009 at Makati City, affiant exhibiting to me his Driver's License No. _____ which expires on _____.

(Sgd.) ANTHONY RAYMOND A. GOQUINGCO
Notary Public
UNTIL DECEMBER 31, 2009
PTR No. 1576215
January 12, 2009, Makati City
Lifetime IBP No. 04551, March 5, 2003
Roll No. 48052, IBP-Makati Chapter

Doc. No. 387;
Page No. 79;
Book No. 1;
Series of 2009.