

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



IN THE MATTER OF THE JOINT APPLICATION FOR APPROVAL OF THE POWER SUPPLY AGREEMENT (PSA) ENTERED INTO BY AND BETWEEN SAMAR I ELECTRIC COOPERATIVE, INCORPORATED (SAMELCO I) AND FDC UTILITIES, INCORPORATED (FDCUI), WITH PRAYER FOR THE ISSUANCE OF PROVISIONAL AUTHORITY

ERC CASE NO. 2015-020 RC

SAMAR I ELECTRIC COOPERATIVE, INCORPORATED (SAMELCO I) AND FDC UTILITIES, INCORPORATED (FDCUI),

Applicants.

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DOCKETED

Date: MAR 24 2015

By: *[Signature]*

ORDER

On February 17, 2015, Samar I Electric Cooperative, Incorporated (SAMELCO I) and FDC Utilities, Incorporated (FDCUI) filed a joint application for approval of their Power Supply Agreement (PSA), with prayer for the issuance of provisional authority.

In the said application, SAMELCO I and FDCUI alleged, among others, that:

The Nature of the Application

1. This is a joint application submitted to the Commission for its due consideration and approval of the PSA executed by and between SAMELCO I and FDCUI, pursuant to Rule 20(B) of the ERC's Rules of Practice and Procedure (the ERC Rules)¹ and other pertinent rules and regulations;

¹ ERC Resolution No. 38, Series of 2006

The Applicants

2. SAMELCO I was created pursuant to the provisions of Republic Act No. 6038 or the National Electrification Administration (NEA) Act, as amended by Presidential Decree No. 269. Pursuant to this Decree, it was incorporated and registered on February 27, 1974 with principal office at Barangay Carayman, Calbayog City. It serves the power requirements of Almagro, Calbayog City, Gandara, Matuguinao, Pagsanghan, San Jorge, Santa Margarita, Santo Niño, Tagapul-an and Tarangnan, all in the Province of Samar;
3. FDCUI is a corporation duly organized and existing under the Philippine Laws, with principal office address at the 23rd Floor PBCom Tower, 6795 Ayala Avenue corner V.A. Rufino St., Makati City. It was formerly known and registered under the name ALG Renewable Energy Holdings, Incorporated. It is a wholly owned subsidiary of Filinvest Development Corporation (FDC);

Compliance with Pre-filing Requirements

4. In compliance with Rule 6 of the ERC Rules and in support of the instant application for approval of the PSA, copies of the joint application (including annexes) were furnished to the respective legislative bodies of Calbayog City and the Province of Samar, where SAMELCO I principally operates;
5. Likewise, a copy of the joint application (including annexes) was furnished to the City of Makati where FDCUI principally operates;
6. The entire joint application (excluding annexes) was published in a newspaper of general circulation within the areas where SAMELCO I and FDCUI principally operate;

SAMELCO I's Power Situation

7. SAMELCO I currently sources bulk of its electricity requirements from the Power Sector Assets and Liabilities Management Corporation (PSALM) and the Wholesale Electricity Spot Market (WESM). However, on December 25, 2014, its bilateral contract with PSALM expired;
8. To ensure continuous supply and security of electricity within its franchise area, SAMELCO I signed with FDCUI on December 22, 2014, a PSA for a contracted demand of 4 MW for two (2) years from December 26, 2014 to December 25, 2016. The power requirements for SAMELCO I shall be sourced from the Unified Leyte Geothermal Power Plant (ULGPP) Output administered by FDCUI;
9. SAMELCO I has forecasted and simulated the effect of the inclusion of the power supplied by FDCUI from the Output of the ULGPP, taking into consideration the reduced supply from the PSALM, to wit:

With FDCUI – ULGPP	PhP6.3900/kWh
Without FDCUI – ULGPP	PhP6.3941/kWh
Rate Impact	(PhP0.0041/kWh)

The Selection of an Independent Power Producer Administrator (IPPA) for the Strips of the ULGPP

10. On November 7, 2013, PSALM conducted the opening of bids for the selection and appointment of IPPAs for the Strips of Energy of the ULGPP located in Tongonan, Leyte;
11. FDCUI was selected as the winning bidder for the 40 MW Strips of Energy of the ULGPP. The Notice of Award was issued by PSALM on January 29, 2014;

The Region VIII electric cooperatives (R8 ECs) have undertaken a competitive selection process (CSP) in September 2014 inviting power suppliers to participate in the Joint Competitive Power Supply Procurement (JCPSP) process for the short-term supply of power of the

eleven Region 8 member-ECs for the Contract Years 2015 to 2018. Qualified bidders which signified interest to participate in the bidding process were provided with the Instructions to Bidders, Checklist of Eligibility and Bid Requirements, which include the legal, technical and financial requirements and Information Memorandum on the R8 JCPSP and member ECs;

As part of the bidding procedures, the eligibility and bid requirements submitted by each bidder were assessed while the technical and financial proposal (Bid Form) were separately and independently evaluated by calculating and comparing the effective price (PhP/kWh) of the power supply offered from the perspective of member-consumers of the ECs (i.e., net passed-through generation rates);

The Bid with the lowest calculated effective price in a contract year was considered the Lowest Calculated Bid (LCB) and was subjected to post-qualification;

For the bidder/s that has/have passed the post-qualification, its/their Bid/s was/were declared as the Lowest Calculated Responsive Bid(s). The ECs then awarded the PSAs to the Bidder/s whose Bid/s has/have been determined to be the Lowest Calculated Responsive Bid(s);

12. For the JCPSP process for the short-term supply of power of the Region 8 member ECs for the Contract Years 2015 to 2018, below is the Transaction Schedule indicating the activities conducted and the corresponding timetable:

Activities	Date
Publication and Invitation to Bid	September 24, 2014
Payment of Bid Participation Fee and Issuance of Bidding Documents	October 7-10, 2014
Pre-Bid Conference 1	October 13, 2014
Deadline of Submission of Comments on Bidding Documents	October 17, 2014
Pre-Bid Conference 2	October 23, 2014
Issuance of Final Instructions to Bidders	October 27, 2014
Submission and Opening of Bids	November 7, 2014

Declaration of Winning Bidders	November 14, 2014
Signing of Power Supply Agreements	December 2014

The PSA

13. After extensive negotiations with FDCUI, SAMELCO I signed on December 22, 2014, a PSA from the Strips of Energy of ULGPP for a contracted demand of 4 MW for two (2) years;

Executive Summary

14. The PSA governs the relationship between the Supplier and the Customer for the sale of electric power. The electric power supply will be drawn from the Output of ULGPP. The Monthly Generation Charge is equal to Fixed Monthly Charge and Energy Charge. The PSA is subject to the Customer's security deposit, assignment and termination;

Salient Features

15. The PSA between SAMELCO I and FDCUI contains the following salient terms and conditions:
- a. **Term.** The PSA shall have a term of two (2) years or from December 26, 2014 to December 25, 2016;
 - b. **Service Specification.** They agreed to the following service specifications:

Contract Year	Duration	Contracted Capacity
2015	December 26, 2014 to December 25, 2015	2,000
2016	December 26, 2015 to December 25, 2016	2,000

Unutilized Contracted Capacity. The unutilized Contracted Capacity of the Buyer may be made available for utilization of other Region 8 ECs or sold to WESM in accordance with its Rules, and Scheduling and Dispatch Protocol of the PSA;

Reallocation of Contracted Capacities Among Region 8. In order to maximize capacity utilization, the Buyer may, from time to time, reallocate other load nodes, its Contracted Capacities in accordance with the WESM, and Scheduling and Dispatch Protocol, provided, that the Buyer shall still be solely and exclusively responsible for the settlement and payment of the Contracted Capacities. All charges against any Parties, related to the reallocation of the contracted capacities such as but not limited to, Value-Added Tax (VAT), Local Business Tax, WESM Charges, Line Rentals and such other incidental or regulatory charges or penalties as may be imposed shall be for the account of the Buyer;

- c. **Reduced Generation Output.** Should the Contracted Capacity delivered for the Seller by the ULGPP be interrupted or curtailed to a level below its allocated Strips of 40 MW, for the period, due to the fault or lack of generation capacity of the operator of the ULGPP, the Contracted Capacity of the Buyer shall be adjusted proportionately with the other customers of the Seller;

The Total Customers' Contracted Capacity shall be the sum of the Contracted Capacity of the Seller's Customers under a valid and binding power supply contract with the Seller, but not to exceed 40 MW. For this purpose, the Seller shall update the Buyer of its Total Customers' Contracted Capacity;

- d. **Replacement Power.** In case of reduced Generation Output of the ULGPP, the Buyer shall procure Replacement Power at its own costs. The Seller shall cooperate to arrange for Replacement Power from the WESM;

- e. **Contract Price and Total Monthly Charge.** The total monthly charge, before taxes, for a billing shall be computed according to the following:

Total Monthly Charge = Fixed Monthly Charge + Variable Charge

Fixed Monthly Charge:

$$\text{Fixed Monthly Charge} = \text{FMF}_{\text{CY}} * \sum(\text{CAP}_{\text{Sched}} * H_n)$$

Where:

Fixed Monthly Charge = Fixed Monthly Payment for Contracted Capacity (CC) in PhP. Expanded VAT (EVAT) of twelve percent (12%) shall be applied to this Fixed Monthly Charge

FMF_{CY} = Fixed Monthly Fee at a given Contract Year (CY) in Php/kWh. FMF_{CY} values are given in the table below

CAP_{Sched} = Scheduled Capacity in kW For Hour n
= CC except during interruption or curtailment as provided under Section 1.2

H_n = Specific Hour during the billing period

Energy Charge:

$$\text{Energy Charge} = \text{EF}_{\text{CY}} * \sum(\text{CAP}_{\text{Sched}} * H_n)$$

Where:

Energy Charge	= Monthly Payment for actual Energy delivered by the Seller to Buyer in Php. ZERO E-VAT shall be applied to this Energy Charge
CAP_{Sched}	= Scheduled Capacity in kW For Hour n
	= CC except during interruption or curtailment as provided under Section 1.2
EF_{CY}	= Energy Fee at Contract Year (CY= 2015 or CY= 2016) in Php/kWh
H_n	= Specific Hour during the billing period

The detailed Generation Charge Computation is attached to the application; and

- f. **Security Deposit.** The Buyer shall establish a Security Deposit not later than thirty (30) Business Days after the Effective Date. The Security Deposit shall be equivalent to one hundred percent (100%) of the projected highest monthly Power Bill for the first Contract Year of the Agreement;

RENAGMEC Security Fund. The RENAGMEC Power Corporation (RPC) has established a fund exclusively for the R8 JCPSP Transaction Sellers as an additional security for the amounts payable by the Buyer to the Seller;

If the Security Deposit is insufficient for the amount payable by the Buyer to the Seller, the Seller is entitled to draw the balance from the RENAGMEC

Security Fund subject to drawing procedures to be agreed upon by the Parties;

Other Related Documents

16. In further support of the instant application, they submit to the Commission the following documents:

Annex	Nature of Documents
A	PSA between SAMELCO I and FDCUI dated December 22, 2014
B	SAMELCO I's Certificate of Franchise No. 051 dated January 9, 1980
C	SAMELCO I's Certificate of Registration dated February 27, 1974
D	ALG Renewable Energy Holdings, Incorporated's Certificate of Incorporation
E	FDCUI's Certificate of Filing of Amended Articles of Incorporation
F	FDCUI's General Information Sheet (GIS)
G	FDCUI's latest Audited Financial Statements (AFS)
H	Affidavit of Service of Application (including annexes) to the Legislative Body of the City of Calbayog, Province of Samar
H-1	Affidavit of Service (including annexes) to the Legislative Body of the Province of Samar
I	Affidavit of Service (including annexes) to the Legislative Body of the City of Makati
J	Copy of the Affidavit of Publication
J-1	Copies of newspaper publication of general circulation within the areas where SAMELCO I and FDCUI principally operate
K	Letter to the PSALM requesting for certification of insufficiency of capacity to supply Visayas distribution utilities (DUs)
L	SAMELCO I's Actual and Forecasted Load Data
M	SAMELCO I's Rate Impact Analysis
N	SAMELCO I's Board Resolution No. 11-S2015
O	Financial Runs and Payment Schedules to the PSALM (in a sealed envelope)
P	PSALM's Notice of Award to FDCUI
Q	Affidavit of Engr. Roderick Z. Fernandez

Allegations in Support of the Motion for Confidential Treatment of Information

17. The Commission may, upon request of a party and determining that the disclosure of information requested to be treated as confidential information is justified, treat certain information submitted to it as confidential.² They are bound by confidentiality agreement prohibiting the disclosure of any business, technical, marketing, operational, organizational, financial or other information and trade secrets and other confidential documents, papers and information.³ Accordingly, they request before the Commission that **Annex "O"** not be disclosed and be treated as confidential in accordance with Rule 4 of the ERC Rules. This Annex contains confidential information critical to the business operation of FDCUI including trade secrets and business calculations, assumptions and projections;

Allegations in Support of the Issuance of Provisional Authority

18. The Certificate of Closing and Effectivity for the turnover of the output of the ULGPP is scheduled to be issued on December 19, 2014. FDCUI commences obligation on 00:00H of December 26, 2014 – the Effectivity Date of the IPPA Agreement dated October 20, 2014. A provisional approval of the PSA with indicative rate, from the Commission will allow FDCUI to perform its obligation to supply the requirements of SAMELCO I and for the latter to receive power from the power plant. The issuance of the provisional authority will allow SAMELCO I to charge and collect the respective fees enumerated in the PSA as well as authorize it to pass on the full amount to its member-consumers;
19. Pursuant to the ERC Rules of Practice and Procedures, the Commission may exercise its discretion by granting provisional authority or interim relief prior to a final Decision;

² Rule 4 – Confidential Information, ERC Rules

³ Article 12.4 of the PSA

20. It is understood that the interim relief sought by them that may be granted by Commission shall be subject to adjustments and other conditions that may be imposed after hearing and final determination; and

Prayer

21. Thus, they pray, that the Commission:

20.1 Approve their dully negotiated PSA;

20.2 Issue an Order: a) treating Annex "O" and the information contained therein as confidential; b) directing their non-disclosure pursuant to Rule 4 of the ERC Rules; and c) prescribing the guidelines for the protection thereof;

20.3 Provisionally approve their PSA as well as a provisional authority authorizing SAMELCO I to pass on the full amount of the fees and charges under the said PSA to its member-consumers; and

20.4 After trial on the merits, issue a permanent approval of their PSA between which would authorize SAMELCO I to charge and collect the fees under the said PSA as well as authorize it to pass on the full amount to its member-consumers.

Finding the said application to be sufficient in form and in substance with the required fees having been paid, the same is hereby set for initial hearing, expository presentation, pre-trial conference and evidentiary hearing on **April 14, 2015 (Tuesday) at ten o'clock in the morning (10:00 A.M.) at SAMELCO I's Main Office, Barangay Carayman, Calbayog City, Samar.**

SAMELCO I and FDCUI are hereby directed to cause the publication of the attached Notice of Public Hearing, at their own expense, twice (2x) for two (2) successive weeks in two (2) newspapers of general circulation in the Philippines, with the date of the last publication to be made not later than ten (10) days before the scheduled date of initial hearing. They are also directed to inform SAMELCO I's member-consumers, by any other means available and

appropriate, of the filing of the instant application, their reasons therefor, and of the scheduled hearing thereon.

Let copies of the application, this Order and the attached Notice of Public Hearing be furnished the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress. They are hereby requested, if they so desire, to send their duly authorized representatives at the scheduled hearing.

Likewise, let copies of this Order and the attached Notice of Public Hearing be furnished the Offices of the Mayors of the City and Municipalities within the franchise area of SAMELCO I and the Provincial Governor of Samar for the appropriate posting thereof on their respective bulletin boards.

SAMELCO I and FDCUI are hereby directed to furnish all those making requests therefor with copies of the application and its attachments, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing and pre-trial conference, SAMELCO I and FDCUI must submit to the Commission their written Compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidences on the actual posting and publication of the Notice of Public Hearing consisting of certifications issued to that effect, signed by the afore-mentioned Mayors and Governor or their duly authorized representatives, bearing the seals of their offices, and the affidavits of the Editors or Business Managers of the newspapers where the said Notice of Public Hearing were published together with the complete issues of the said newspapers, and such other proofs of compliance with the requirements of the Commission.

SAMELCO I and FDCUI and all interested parties are directed to submit, at least five (5) days before the date of initial hearing and pre-trial conference, their respective Pre-trial Briefs containing, among others:

- (a) a summary of admitted facts and proposed stipulation of facts;
- (b) the issues to be tried or resolved;

- (c) the documents or exhibits to be presented, stating the purposes and proposed markings thereof; and
- (d) the number and names of the witnesses, with their written testimonies in an individual affidavit form, to be attached to the Pre-trial Brief.

Failure of SAMELCO I and FDCUI to submit the required Pre-trial Brief and Judicial Affidavits of their witnesses within the prescribed period shall be a ground for cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from said date of cancellation.

As part of the pre-trial conference, SAMELCO I and FDCUI must also be prepared to make an expository presentation of their application, aided by whatever communication medium that they may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the member-consumers and other concerned parties, what the application is all about and the reasons and justifications being cited in support thereof.

SO ORDERED.

Pasig City, March 16, 2015.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ZENAIDA G. CRUZ-DUCUT
Chairperson *per H*

Copy Furnished:

1. **Quiason, Makalintal, Barot, Torres, Ibarra and Sison**
Attn: Atty. Manuel L.M. Torres
Atty. Miguel K. Mathay
Counsel for SAMELCO I
21st Floor, Robinsons Equitable Tower,
4 ADB Avenue corner Poveda St., Pasig City
2. **Atty. Renato R. Vehemente**
Counsel for FDCUI
23rd Floor, PBCom Tower,
6795 Ayala Avenue corner V.A. Rufino Street, Makati City
3. **Samar I Electric Cooperative, Inc. (SAMELCO I)**
Barangay Carayman, Calbayog City, Samar
4. **FDC Utilities, Incorporated (FDCUI)**
23rd Floor, PBCom Tower,
6795 Ayala Avenue corner V.A. Rufino St., Makati City
5. **Office of the Solicitor General**
134 Amorsolo Street, Legaspi Village, Makati City
6. **Commission on Audit**
Commonwealth Avenue, Quezon City
7. **Senate of the Philippines**
Senate Committee on Energy
GSIS Bldg., Roxas Blvd., Pasay City
8. **House of Representatives**
House of Representatives Committee on Energy
Batasan Hills, Quezon City
9. **Office of the City Mayor**
Calbayog City, Samar
10. **Office of the Municipal Mayor**
Almagro, Samar

- 11. Office of the Municipal Mayor**
Ganadara, Samar
- 12. Office of the Municipal Mayor**
Matuguinao, Samar
- 13. Office of the Municipal Mayor**
Pagsanghan, Samar
- 14. Office of the Municipal Mayor**
San Jorge, Samar
- 15. Office of the Municipal Mayor**
Santa Margarita, Samar
- 16. Office of the Municipal Mayor**
Santo Niño, Samar
- 17. Office of the Municipal Mayor**
Tagapul-an, Samar
- 18. Office of the Municipal Mayor**
Tarangnan, Samar
- 19. Office of the Governor**
Province of Samar
- 20. Philippine Chamber of Commerce and Industry (PCCI)**
3rd Floor, Chamber and Industry Plaza (CIP),
1030 Campus Avenue corner Park Avenue,
McKinley Town Center, Fort Bonifacio, Taguig City