

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 LEYTE III
ELECTRIC COOPERATIVE, INC.,
AND TRANS-ASIA OIL AND
ENERGY DEVELOPMENT
CORPORATION, WITH MOTION
FOR PROVISIONAL AUTHORITY
AND MOTION FOR
CONFIDENTIAL TREATMENT**

ERC CASE NO. 2015-056 RC

**LEYTE III ELECTRIC
COOPERATIVE, INC. (LEYECO III)
AND TRANS-ASIA OIL AND
ENERGY DEVELOPMENT
CORPORATION (TRANS-ASIA),
Applicants.**

DOCKETED
Date: **JUN 11 2015**
By: *W*

x-----x

ORDER

On March 30, 2015, Leyte III Electric Cooperative, Inc. (LEYECO III) and Trans-Asia Oil and Energy Development Corporation (TRANS-ASIA) filed a joint application for the approval of their Power Supply Agreement (PSA), with prayer for provisional authority and motion for confidential treatment.

In the said application, LEYECO III and TRANS-ASIA alleged, among others, the following:

1. LEYECO III is a non-stock, non-profit electric cooperative organized and existing under Presidential Decree No. 269 (P.D. 269), as amended, with principal office at Barangay San Roque, Tunga, Leyte. It has a franchise to distribute

electricity in the municipalities of Alang-alang, Barugo, Capoocan, Carigara, Jaro, Pastrana, San Miguel, Sta. Fe and Tunga all within the Province of Leyte;

2. TRANS-ASIA is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal address at Level 11, PHINMA Plaza, 39 Plaza Drive, Rockwell Center, Makati City;
3. Pursuant to Rule 20 (B) of the Commission's Rules of Practice and Procedure, the instant application is submitted to the Commission for its review and approval of the PSA dated December 20, 2014 executed by and between LEYECO III and TRANS-ASIA;
4. In compliance with Rule 6 of the Commission's Rules of Practice and Procedure, a copy of the Joint Application with all its annexes and accompanying documents were furnished to the legislative bodies of the cities or municipalities where LEYECO III principally operates. The copies of the corresponding proofs of receipt are attached to the application as Annex "C-1" and series;
5. Furthermore, they have caused the publication of the present Joint Application in its entirety, excluding its annexes, in a newspaper of general circulation within LEYECO III's franchise area. The copies of the newspaper and the corresponding affidavit of publication are attached as Annexes "C-2" and "C-3," respectively;
6. TRANS-ASIA was selected as a winning bidder after the Power Sector Assets and Liabilities Management Corporation (PSALM) conducted a bidding for the selection and appointment of Independent Power Producer Administrator (IPPA) for the Strips of Energy of the Unified Leyte Geothermal Power Plant (ULGPP) pursuant to Section 51(c) of Republic Act No. 9136 (R.A. 9136), otherwise known as the *Electric Power Industry Reform Act* of 2001 (EPIRA). TRANS-ASIA was issued a *Notice of Award* by PSALM for the right to 40 MW Strips of Energy from the ULGPP. A copy of the *Notice of Award* is attached to the application as Annex "D";

7. **Power Supply.** At present, LEYECO III sources its electricity requirements from different power suppliers. However, due to increasing energy demand and volatility of Wholesale Electricity Spot Market (WESM) prices, LEYECO III deemed it necessary to look for additional capacity to address its electricity requirements, aggregate with other Region 8 ECs to ensure bargaining power in negotiating with potential power suppliers;
8. **Regretfully,** sometime on November 2013, Typhoon Yolanda severely hit the region which resulted to loss of lives, total shutdown of basic services, commercial establishments, tourism, agriculture, infrastructure, telecommunication, transportation, financial services, and hospitals, among others. Rehabilitation efforts and restoration of reliable electric services is essential for the economic recovery of the region;
9. **Competitive Procurement Process.** In view of the power supply and demand situation in the region and due to the damage brought about by Typhoon Yolanda, the eleven (11) electric cooperatives of Region 8 composed of Don Orestes Romualdez Electric Cooperative, Inc., Leyte II Electric Cooperative Inc., Leyte III Electric Cooperative Inc., Leyte IV Electric Cooperative Inc., Leyte V Electric Cooperative Inc., Southern Leyte Electric Cooperative Inc., Biliran Electric Cooperative, Inc., Samar I Electric Cooperative, Inc., Samar II Electric Cooperative Inc., Eastern Samar Electric Cooperative, Inc., (the "Region 8 ECs") agreed through a Memorandum of Agreement (MOA) to conduct a joint procurement of their short-term aggregated baseload requirement. A Bids and Awards Committee was created to conduct the "R8 Joint Competitive Power Supply Procurement" (R8 JCPSP). A copy of the MOA is attached to the application as Annex "E";
 - 9.1. The Region 8 ECs initially prepared their respective least-cost power supply plans and subsequently their aggregated demand for competitive bidding;
 - 9.2. The competitive tender was published and announced in the franchise areas of the Region 8 ECs. In addition, prospective Bidders (GENCOs,

IPP Administrators and Wholesale Aggregators) were invited;

- 9.3. Scope of the Bid. The capacity offered by the winning bidder shall be allocated among the eleven (11) Region 8 ECs in proportion to their declared demand. A bidder may offer to supply capacity that is less than or equal to the aggregated baseload requirement in any or all of the contract years in increments of 1 MW. In the event that some winning bidders offered less than 11 MW, the loads shall be optimally allocated in such a way that the blended price from the R8 JCPSP is almost the same. In the event multiple bidders are declared winners for any contract year, all winning bidders shall enter into individual power supply agreements with each of the 11 ECs;
- 9.4. Bidders who signified their intention to join by buying the Bidding Documents attended Pre-Bid Conferences where they gave their comments and sought clarification on the bidding requirements and process. The BAC issued Bid Bulletins and the Final Instruction to Bidders;
- 9.5. The process followed the 2-envelope system, the legal requirements and proof of financial and technical capability in the first and the commercial offer in the second. Bids were evaluated based on an Evaluation Framework released to the bidders; and
- 9.6. After evaluating the bids of each supplier, on November 14, 2014, the BAC issued a Notice of Award declaring TRANS-ASIA as a winning bidder of 40 MW for Contract Year 2015 with a Lowest Calculated Responsive Bid Effective Price of PhP5.5489/kWh and an Offered Capacity of 20 MW for 2016 with a Lowest Calculated Responsive Bid Effective Price of PhP5.611/kWh;

Abstract of the Power Supply Agreement and Related Information

10. The PSA between LEYECO III and TRANS-ASIA is the result of a joint procurement process for the short-term aggregated baseload power supply for 2015-2018 of Region 8 ECs;

Salient Features

11. The PSA, between LEYECO III and TRANS-ASIA contains the following salient terms and conditions:
 - 11.1. Term. The PSA shall have a term of two (2) years beginning December 26, 2014 to December 25, 2016. Commencement of supply of the Contracted Capacity shall be subject to the fulfillment of certain Conditions Precedent as provided in the PSA;
 - 11.2. Contracted Capacity. The Contracted Capacity for LEYECO III for contract year 2015 is 1 MW;
 - 11.3. Delivery Points. TRANS-ASIA shall supply the Contracted Capacity at the Market Trading Nodes of the ULGPP or from TRANS-ASIA's other electricity supply sources in case of Replacement Power;
 - 11.4. Unutilized Capacity and Exchange of Contracted Capacities. The unutilized capacity, if any, of LEYECO III may be used by other Region 8 ECs or sold to the WESM;
 - 11.5. Replacement Power on Scheduled and/or Unscheduled Outages of ULGPP. In the event that TRANS-ASIA is unable to deliver, or cause to be delivered, the Contracted Capacity, or a portion thereof, from the ULGPP for reasons not constituting a Force Majeure Event, TRANS-ASIA shall deliver, or cause to be delivered, said Contracted Capacity, or a portion thereof, at the Delivery Point from other generation or supply

sources, including the WESM, at the Electricity Fees as provided in PSA;

- 11.6. Electricity Fees. The BUYER shall purchase the electricity supplied by the TRANS-ASIA at a monthly Electricity Fee (EF), in PhP, computed as follows:

$$EF = CC \cdot H_T \cdot \left[LPC \cdot \left(0.7003 \cdot \frac{LCPI_n}{LCPI_r} + 0.2997 \right) + FPC \cdot FX_n \cdot \left(0.4497 \cdot \frac{FCPI_n}{FCPI_r} + 0.5503 \right) \right]$$

Where:

Electricity Fee	=	Electricity Fee, in PhP
CC	=	Contracted Capacity
HT	=	Total number of hours in the Billing Period
LPC	=	Local Price Component; PhP1.7465/kWh
LCPI _n	=	Philippine Consumer Price Index of the calendar month corresponding the billing period, for All Income Households – All Items (2006=100), as published by the Philippine National Statistics Coordination Board (or its substitute or replacement agency, as the case may be)
LCPI _r	=	September 2014 Philippine Consumer Price Index for All Income Households – All Items (2006=100), as published by the Philippine National Statistics Coordination Board (or its substitute or replacement agency, as the case may be)
FPC	=	Foreign Price Component; USD 0.0812 per kWh

FXn	=	Philippine Peso vs. US Dollar Reference Rate as published by the Bangko Sentral ng Pilipinas at the last working day of the Billing Period
FCPI _n	=	US Consumer Price Index, All Items, International Financial Statistics (2010=100) for the calendar month corresponding the Billing Period
FCPI _r	=	US Consumer Price Index, All Items, International Financial Statistics (2010=100) for the month of September 2014

Should the published indices be unavailable for the corresponding billing month, the most recent available published indices shall be used subject to adjustments in subsequent billings as soon as published indices become available.

Should publication of any or all of the required indices be discontinued for a reasonable period of time, the parties shall mutually agree on a new Inflation Factor. Pending the new Inflation Factor, the last prevailing Inflation Factor shall be used until the new Inflation Factor is agreed between the parties and subject to retroactive adjustment.

- 11.7. *Charges for the account of LEYECO III.* All WESM Charges for the delivery of the Contracted Capacity charged by the WESM trader of ULGPP, and other regulatory charges including all corresponding cost recoveries of ancillary services in the Reserve Market imposed upon the generators, shall be for the account of LEYECO III. Value Added Tax (VAT) shall be charged and passed on to the LEYECO III in accordance with applicable law. All other charges, fees, taxes and liabilities which may be imposed on, charged to, or incurred by TRANS-ASIA relative to the delivery of electricity to LEYECO III shall be for the account of LEYECO III;

Advantages of TRANS-ASIA's Supply and Rate Impact

12. The EPIRA established a new policy, legal structure and regulatory framework for the restructuring of the electric power industry to stimulate and create points of competition. As economic growth is interdependent with power intensive activities, the necessity of a free, open and competitive system in electricity supply in a regime of transparent and reasonable prices of electricity is necessary. Low power rates, sufficient capacity and an environment protective of investors and consumers are the end goals of the EPIRA;
13. Competition can be the best form of market regulation, it is premised on electricity suppliers ensuring that they give the best offer, advantage over competitors in terms of pricing, value-added benefits, quality of service ultimately resulting to consumers getting the best price for reliable supply of electricity;
14. The process adopted by the Region 8 ECs in choosing its power supplier ensures that LEYECO III and its member consumers achieve least cost supply of power through joint power supply planning and competitive procurement process;
15. The Electricity Fees as provided in the PSA is advantageous to LEYECO III's consumers given that the Region 8 ECs set simplified parameters to be followed by the bidders during the JCPSP;
 - 15.1. The market-based rate of Trans-Asia is the lowest compared to other generation companies who participated in the R8 JCPSP; and
 - 15.2. The indexation in the Electricity Fee is intended to provide for fair and transparent adjustment in fees to reflect specific and verifiable fluctuations in inflation and foreign exchange for the duration of the PSA;

16. LEYECO III has simulated and forecasted the effect of the inclusion of TRANS-ASIA's supply from the ULGPP:

Simulation of Generation Mix Rate with TRANS-ASIA for the year 2015:

Supplier	Forecasted 2015 Quantity (kWh)	Percent Share	2015 Average Rate (PhP/kWh)	Weighted Average Rate
1	26,280,000.00	80.97%	5.2342	5.8368
TRANS-ASIA	8,760,000.00	26.99%	5.5489	
WESM	(2,582,391.08)	-7.96%	-1.2727	
Total	32,457,608.92	100%		

Simulation of Generation Mix Rate without TRANS-ASIA for the year 2015:

Supplier	Forecasted 2015 Quantity (kWh)	Percent Share	2015 Average Rate (PhP/kWh)	Weighted Average Rate
1	26,280,000.00	80.97%	5.2342	5.8755
TRANS-ASIA	0.00			
WESM	6,177,608.92	19.03%	8.6039	
Total	32,457,608.92	100%		

Generation Rate Impact: -0.0387

17. Clearly, entering into a PSA with TRANS-ASIA would significantly reduce LEYECO III's exposure to volatilities in the WESM considering and result to more stable electricity prices which will redound to the benefit of the member consumers;

Allegations in Support of the Motion for Provisional Authority

18. The provisional approval of the instant Application, including the rate structure as embodied in the PSA, which will facilitate the timely implementation of the PSA, is imperative and warranted;

19. It will facilitate TRANS ASIA's supply of additional capacity to LEYECO III at the soonest possible time;
 - 19.1. LEYECO III needs such additional capacity not only to address the shortage of its power supply, but also to secure a more stable, reliable and efficient source of power supply;
 - 19.2. Considering the continuous recovery efforts of the local government within LEYECO III's franchise area, the necessity of stable, continuous, reliable supply of electricity is imperative to ensure that rehabilitation plans brought about by the damage due to Typhoon Yolanda are not discontinued or impeded. More importantly, reliable, uninterrupted and continuous electric supply will sustain, alleviate and boost the economic, financial and social development in the area; and
 - 19.3. Further, the supply of energy by TRANS-ASIA constitutes 26.99% of LEYECO III's electricity requirements, pending hearing and in the absence of any provisional authority, LEYECO III, its member-consumers and the local government will gravely suffer as there is uncertainty in the supply of electricity. Likewise, the provisional approval of the instant application will allow LEYECO III to avail of the advantages of low power cost. The additional capacity will not only address LEYECO III's needs but the ECs' power requirements;
20. Significantly, the immediate implementation of the PSA will benefit all the electricity consumers;
21. The provisional approval of the instant application at the rate structure as provided in the PSA is also necessary for TRANS-ASIA to allow it operate at sustainable and viable levels necessary for TRANS-ASIA to fully pay all its contractual obligations and costs under its IPPA Agreement with PSALM. It will also allow Applicant LEYECO III to charge and collect the respective electricity fees as provided in the PSA from its member consumers;

22. They pray for the provisional approval of the instant application pursuant to Rule 14 of the Commission's Rules of Practice and Procedure;

Allegations in Support of the Motion for Confidential Treatment of Annex "N"

23. Pursuant to Rule 4, Section 1 of the Rules of Practice and Procedure, they move for the confidential treatment of Annex "N" as they contain data, information, calculations, assumptions, formula which constitute trade secrets and which the TRANS-ASIA has the sole proprietary interest thereof. TRANS-ASIA will stand to be unduly prejudiced should it be disclosed to the public;
24. As ruled in *Air Philippines Corporation vs. Pennswell, Inc.*,¹ a trade secret may consist of any formula, pattern, device or compilation of information that is used in one's business and gives the employer an opportunity to obtain an advantage over competitors who do not possess the information. It is indubitable that trade secrets constitute proprietary rights and jurisprudence has consistently acknowledged the private character of trade secrets;
25. They submitted one (1) copy of Annex "N" in a sealed envelope, with the envelope and each page thereof stamped with the word "Confidential"; and
26. They pray that the Commission:
- a. Pending hearing, immediately issue an Order provisionally approving the PSA and authorizing the rate structure as embodied therein. Further, that such rate structure as applied be allowed retroactive implementation starting December 26, 2014 so as to authorize LEYECO III to pass on the full amount of the fees and charges under the PSA to its consumers;

¹ GR No. 172835, December 19, 2007.

- b. After due hearing, a final authority be issued authorizing the PSA including the rate structure as applied and finally approving retroactive implementation of the rate structure starting December 26, 2014 so as to authorize LEYECO III to pass on the full amount of the fees and charges under the PSA to its consumers; and
- c. An Order be issued granting the motion for confidential treatment of Annex "N", directing their non-disclosure pursuant to Rule 4 of the Rules of Procedure and prescribing the guidelines for the protection thereof.

Finding the said application to be sufficient in form and substance with the required fees having been paid, the same is hereby set for jurisdictional hearing, expository presentation, pre-trial conference and evidentiary hearing on the following dates and venues:

Date	Venue	Particulars
June 30, 2015 (Tuesday) at ten o'clock in the morning (10:00 A.M.)	ERC Hearing Room, 15 th Floor, Pacific Center Building, San Miguel Avenue, Ortigas Center, Pasig City	Jurisdictional Hearing
July 30, 2015 (Thursday) at nine o'clock in the morning (9:00 A.M.)	LEYECO III's Main Office, Brgy. San Roque, Tunga, Leyte	Jurisdictional Hearing (Confirmation of Jurisdictional Compliance), Expository Presentation, Pre-Trial Conference and Evidentiary Hearing

LEYECO III and TRANS-ASIA 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 date of the scheduled initial hearing. They are also directed to inform the consumers within LEYECO III's franchise area, 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 hearings.

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

LEYECO III and TRANS-ASIA 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, LEYECO III and TRANS-ASIA must submit to the Commission their written Compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidences of the actual posting and publication of the Notice of Public Hearing consisting of certifications issued to that effect, signed by the afore-mentioned Governor and Mayors or their duly authorized representatives, bearing the seals of their offices, and the affidavits of the Editors or Business Managers of the newspapers where 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.

LEYECO III, TRANS-ASIA 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 thereof and proposed markings therefore; 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 LEYECO III and TRANS-ASIA 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, LEYECO III and TRANS-ASIA 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 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, June 1, 2015.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ZENAIDA G. CRUZ-DUCUT
Chairperson *per H*

Copy Furnished:

1. Atty. Maria Concepcion O. Ojeda
Counsel for Applicants
Delos Angeles Aguirre Olaquer
Salomon Fabro and Ojeda
240 J. P. Rizal, Sta. Elena, Marikina City
2. The General Manager
Leyte III Electric Cooperative, Inc.
San Roque, Tunga, Leyte
3. The President
Trans-Asia Oil and Energy Development Corporation
Level 11, PHINMA Plaza, 39 Plaza Drive, Rockwell Center, Makati City
4. The Office of the Solicitor General
134 Amorsolo Street, Legaspi Village, Makati City
Metro Manila
5. The Commission on Audit
Don Mariano Marcos Avenue
Diliman, Quezon City
6. The Senate Committee on Energy
Senate of the Philippines
GSIS Building, Roxas Blvd., Pasay City
7. The House Committee on Energy
House of Representatives
Batasan Hills, Quezon City
8. The Municipal Mayor
Alang-alang, Leyte
9. The Municipal Mayor
Barugo, Leyte
10. The Municipal Mayor
Capoocan, Leyte
11. The Municipal Mayor
Carigara, Leyte
12. The Municipal Mayor
Jaro, Leyte
13. The Municipal Mayor
Pastrana, Leyte
14. The Municipal Mayor
San Miguel, Leyte

15. The Municipal Mayor
Sta. Fe, Leyte
16. The Municipal Mayor
Tunga, Leyte
17. The Provincial Governor
Province of Leyte
18. Mr. Pete L. Ilagan
President
National Association of Electricity Consumers for Reforms, Inc.
(NASECORE)
No. 1 Beta Bayview Homes
San Jose, Tacloban City