

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



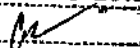
IN THE MATTER OF THE JOINT APPLICATION FOR APPROVAL OF THE ELECTRIC POWER PURCHASE AGREEMENT (EPPA) ENTERED INTO BY AND BETWEEN DAVAO DEL NORTE ELECTRIC COOPERATIVE, INCORPORATED (DANECO) AND FDC MISAMIS POWER CORPORATION (FDC MISAMIS), WITH PRAYER FOR THE ISSUANCE OF PROVISIONAL AUTHORITY

ERC CASE NO. 2015-073 RC

DAVAO DEL NORTE ELECTRIC COOPERATIVE, INCORPORATED (DANECO) AND FDC MISAMIS POWER CORPORATION (FDC MISAMIS),

Applicants.

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DOCKETED
Date: JUN 11 2015
By: 

ORDER

On April 24, 2015, Davao del Norte Electric Cooperative, Incorporated (DANECO) and FDC Misamis Power Corporation (FDC MISAMIS) filed an application for approval of their Electric Power Purchase Agreement (EPPA), with prayer for the issuance of provisional authority.

In the said application, DANECO and FDC MISAMIS alleged, among others, that:

The Nature of the Application

1. The instant application is submitted to the Commission for its due consideration and approval of the EPPA executed by and between DANECO and FDC MISAMIS, pursuant to Rule 20(B) of the Commission's Rules of Practice and Procedure (ERC Rules)¹ and other pertinent rules and regulations;

The Applicants

2. DANECO was created pursuant to the provisions of the National Electrification Administration Act (R.A. 6038), as amended by Presidential Decree No. 269. Pursuant to this decree, it was incorporated and registered on September 24, 1971 with principal office at Montevista, Compostela Valley. It serves the power requirements of Tagum City, Island Garden City of Samal, Asuncion, Kapalong, New Corella, San Isidro and Talaingod, all in the Province of Davao del Norte, and Compostela, Laak, Mabini, Maco, Maragusan, Mawab, Monkayo, Montevista, Nabunturan, New Bataan and Pantukan, all in the Province of Compostela Valley;
3. FDC MISAMIS is a corporation duly organized and existing under the Philippine Laws, with principal office address at 23rd Floor, PBCom Tower, 6795 Ayala Avenue corner V.A. Rufino St., Makati City. It was formerly known and registered under the names Green Renewable Power Holdings, Incorporated and Strong Field Energy Corporation. It is a wholly-owned subsidiary of FDC Utilities, Incorporated;

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 EPPA, copies of the instant application (including Annexes) were furnished to the respective legislative

¹ ERC Resolution No. 38, Series of 2006

bodies of the Municipality of Montevista, and the Province of Compostela Valley, where DANECO principally operates;

5. Likewise, a copy of the instant application (including Annexes) was furnished to the Legislative Body of the City of Makati where FDC MISAMIS principally operates;
6. The entire application, excluding the Annexes, was published in a newspaper of general circulation within the franchise area or area where DANECO and FDC MISAMIS principally operate;

DANECO Power Situation

7. Since 2010, the Mindanao Grid has been experiencing a significant shortfall in power supply causing widespread power interruption. The existing capacity in the Island is composed of more than fifty percent (50%) hydroelectric power plant which is dependent on the availability of water and affected by weather conditions. Based on the 2012-2030 Supply – Demand Outlook issued by the Department of Energy (DOE), a total of 1,600 MW additional capacities are needed during the planning period to meet the electricity demand and the required reserve margin of the grid;
8. DANECO currently sources bulk of its electricity requirements from the Power Sector Assets and Liabilities Management Corporation (PSALM) and the remainder from Therma South, Incorporated (TSI), EEI Power Corporation (EEI Power). PSALM has an existing Contract for the Supply of Electric Energy (CSEE) with DANECO for an average contracted demand of 30 MW which is effective from 2013-2016. However, PSALM confirmed that it has insufficient capacity to supply the additional power requirements of Mindanao distribution utilities beyond the contracted energy and equivalent demand in its existing CSEEs. On December 22, 2014, DANECO entered into an EPPA with FDC MISAMIS for the supply of 10 MW;
9. Notwithstanding these power supply contracts, DANECO expects that its energy requirements will significantly

increase in the next few years, as demonstrated in its 2014-2024 Annual Demand and Energy Forecast;

10. With the takeover of the Independent Power Producer Administrator (IPPA) of Mt. Apo 1 and 2 Geothermal Power Plants, DANECO forecasted that its CSEE with PSALM will be reduced upon issuance of the latter's Certificate of Effectivity to FDC MISAMIS;
11. DANECO has forecasted and simulated the effect of the inclusion of the power supplied by FDC MISAMIS from the output of Mt. Apo 1 and 2 Geothermal Power Plants, taking into consideration the reduced supply from PSALM, to wit:

Without FDC MISAMIS (Mt. Apo)	PhP5.56/kWh
With FDC MISAMIS (Mt. Apo)	PhP5.23/kWh
Savings with FDC MISAMIS (Mt. Apo) per kWh	PhP0.33/kWh

The Selection of IPPA for Mt. Apo 1 and 2 Geothermal Power Plants

12. On September 24, 2014, PSALM conducted the opening of bids for the Selection and Appointment of IPPA for the Output of the Mindanao I and II (Mt. Apo 1 and 2) Geothermal Power Plants located in Kidapawan City, North Cotabato;
13. FDC MISAMIS was selected as the winning bidder for the output of Mt. Apo 1 and 2 Geothermal Power Plants with its bid for the monthly payments and generation payments. The Notice of Award was issued by PSALM on October 24, 2014;

The EPPA

14. After extensive negotiations with FDC MISAMIS, DANECO signed on December 22, 2014, an EPPA with FDC MISAMIS from the output of Mt. Apo 1 and 2 Geothermal Power Plants for a contracted demand of 10 MW for nine (9) years;

Executive Summary

15. The EPPA governs the relationship between Supplier and Customer for the sale of electric power. The electric power supply will be drawn from the output of Mt. Apo 1 and 2 Geothermal Power Plants administered by FDC MISAMIS. During plant outage, replacement power will be sourced from other facilities of the FDC MISAMIS, or of any third party, including the Wholesale Electricity Spot Market (WESM) or its equivalent. The commencement of the obligation of FDC MISAMIS to deliver of electric power to its customers is subject to the satisfaction of conditions precedent, including the issuance by PSALM of the Certificate of Effectivity of IPPA Agreement. Generation Charges are based on the cost payable to PSALM (i.e., monthly fees and generation fees) and a reasonable margin. The EPPA is subject to customer's security deposit, assignment, termination and buy-out;

Salient Features

16. The EPPA contains the following salient terms and conditions:
- a. Term. The Term of the EPPA shall be nine (2) years, unless extended by mutual written agreement by the Parties but in no case shall be longer than June 25, 2024;
- b. Service Specification. They agreed to the following service specifications:

Contracted Demand	10,000 kW
Contracted Energy	80,400,000 kWh
Customer Load Factor	100%
Delivery Point	Plant Gate – Mt. Apo 1 and 2 Geothermal Power Plants
Voltage at the Plant Gate	138 kV

- c. Outage Allowance. The Supplier shall have an Outage Allowance of seven hundred twenty (720) hours per Contract Year. Unutilized Outage Allowance hours in any particular Contract Year shall not be carried

forward to the succeeding Contract Year. The Customer may not cause the deferment of the Supplier's utilization of the Outage Allowance for any reason;

d. Replacement Power In Excess of Outage Allowance.

The Supplier shall exert best efforts to procure Replacement Power beyond the Outage Allowance. Notwithstanding any provision in this Agreement to the contrary, the Supplier has the right to source Replacement Power for the Customer from other current or future facilities of the Supplier or of any third party, including the WESM or its equivalent, at the sole election of the Supplier. The Supplier shall not in any case have the obligation to procure Replacement Power other than from the Grid;

e. Generation Charge. DANECO shall pay the generation charge consisting of administrative charge, fixed charge and energy charge, as follows:

$$\text{Monthly Generation Charge} = \text{Administrative Charge} + \text{Fixed Charge} + \text{Energy Charge}$$

Where:

$$\text{Administration Charge} = (\text{PhP}100.64/\text{kW}/\text{month}) \times (\text{CD}) \times (\text{LCP}1/\text{LCP}0)$$

$$\text{Fixed Charge} = (\text{PhP}1,628.69/\text{kW}/\text{month}) \times (\text{CD})$$

$$\text{Energy Charge} = \sum \text{Demand}_{\text{sched}} \times \text{BER}/\text{LF} \times I_n, \text{ such that if } I_n < 1, I_n = 1$$

And where:

$$\text{Administration Charge} = (\text{PhP}100.64/\text{kW}/\text{month}) \times (\text{CD}) \times (\text{LCP}1/\text{LCP}0)$$

$$\text{CD} = \text{Contracted Demand}$$

Demand_{sched} = Hourly Scheduled Demand,
as defined under Schedule 2

BER = Base Energy Rate,
PhP3.034/kWh

LF = Load Factor, $\sum \text{Demand}_{\text{nom}} /$
Monthly Contracted Energy

In = Inflation Factor for the Billing
Month

- f. Customer Failure to Off-take Power. If the Customer off-takes power less than the Contracted Energy, the Customer shall still pay the full Generation Charge for the Contracted Energy and all applicable fees, charges and costs;
- g. Transmission Fees, Ancillary Services Charges, Line Rental Charges, and WESM Costs. The Customer shall pay for Transmission Fees, Ancillary Services Charges, Line Rental Charges, and WESM Costs. All other transmission charges and market related fees/charges that are not part of the generation charge shall be for the account of Customer;
- h. Security Deposit. The Security Deposit shall be in an amount equivalent to one hundred percent (100%) of the projected highest monthly Power Bill for the first Contract Year of the Agreement. The Customer shall post the Security Deposit immediately after receipt from the Supplier of notice to make the Security Deposit, which shall be served to the Customer prior to the start of commissioning tests of the Power Plants;
- i. Assignment. In all cases of valid assignment, the assignee shall assume all the rights and obligations of the assignor under this Agreement; and
- j. Adjustments Due to Force Majeure. The Supplier shall have ninety-six (96) hours to restore interrupted supply counted from the time a Force Majeure Event prevented it from supplying electric power to the

Customer. The Customer shall not be entitled to interruption adjustment during such period. On the other hand, the Customer shall have ninety-six (96) hours to resume taking electric power counted from the time a Force Majeure Event prevented it from fully taking its Contracted Energy;

Other Related Documents

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

Annex	Nature of Documents
A	EPPA between DANECO and FDC MISAMIS dated December 22, 2014
B	DANECO Certificate of Franchise No. 017
C	DANECO Certificate of Franchise No. 103
D	DANECO Certificate of Registration
E	FDC MISAMIS Certificate of Registration
E-1	Green Renewable Power Holdings, Incorporated's Certificate of Incorporation
E-2	Strong Field Energy Corporation's Certificate of Filing of Amended Articles of Incorporation
F	FDC MISAMIS General Information Sheet (GIS)
G	FDC MISAMIS latest Audited Financial Statements (AFS)
H	Certification from the Office of the Legislative Body of the Municipality of Montevista, Province of Compostela Valley for the receipt of instant joint application (including annexes)
H-1	Certification from the Office of the Legislative Body of the Province of Compostela Valley for the receipt of instant joint application (including annexes)
I	Certification from the Office of the Legislative Body of the City of Makati for the receipt of instant joint application (including annexes)
J	Copy of the Affidavit of Publication
J-1	Copies of newspaper publications of general circulation within the franchise area or area where DANECO and FDC MISAMIS principally operate
K	PSALM certification of insufficient capacity to supply Mindanao Distribution Utilities
L	DANECO Actual and Forecasted Load Date

M	DANECO Rate Impact Analysis (for Mt. Apo)
N	DANECO Board Resolution No. 249, Series of 2014
O	Financial Runs and Payment Schedules to PSALM (in a sealed envelope)
P	PSALM Notice of Award to FDC MISAMIS
Q	Affidavit of Engr. Roderick Z. Fernandez

Allegations in Support of the Motion for Confidential Treatment of Information

18. 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 DANECO and FDC MISAMIS 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 FDC MISAMIS including trade secrets and business calculations, assumptions and projections;

Allegations in Support for the Issuance of Provisional Authority

19. The turnover of the output of Mt. Apo 1 and 2 Geothermal Power Plants is scheduled on December 26, 2014. FDC MISAMIS will start payment of the monthly and generation fees upon issuance of the Certificates of Closing and Effectivity on December 26, 2014. A provisional approval of the EPPA with indicative rate from the Commission will allow it to perform its obligation to supply the requirements of DANECO and for the latter to receive power from the power plants. The issuance of the provisional authority will allow DANECO to charge and collect the respective fees enumerated in the EPPA as

² Rule 4 – Confidential Information, ERC Rules

³ Article 14 of the EPPA

well as authorize it to pass on the full amount to its member-consumers;

20. Pursuant to the ERC Rules, the Commission may exercise its discretion by granting provisional authority or interim relief prior to a final Decision;
21. It is understood that the interim relief sought by them that may be granted by the Commission, shall be subject to adjustments and other conditions that the Commission may impose after hearing and final determination; and

Prayer

22. Thus, they pray that the Commission:
 - a. Approve their duly negotiated EPPA;
 - b. Issue an Order: i) treating Annex "O" and the information contained therein as confidential; ii) directing their non-disclosure pursuant to Rule 4 of the ERC Rules; and iii) prescribing the guidelines for the protection thereof;
 - c. Provisionally approve their EPPA thereby authorizing DANECO to pass-on the full amount of the fees and charges contained therein to its member-consumers; and
 - d. After trial on the merits, issue a permanent approval of their EPPA, as amended, which would authorize DANECO to charge and collect the fees contained therein 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 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 **June 30, 2015 (Tuesday) at nine-thirty in the morning (9:30 A.M.) at DANECO's Principal Office, Montevista, Compostela Valley.**

DANECO and FDC MISAMIS 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 customers within DANECO'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 hearing.

Likewise, let copies of this Order and the attached Notice of Public Hearing be furnished the Offices of the Mayors of the Cities and Municipalities within DANECO's franchise area and the Provincial Governors of Davao del Norte and Compostela Valley for the appropriate posting thereof on their respective bulletin boards.

DANECO and FDC MISAMIS 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, DANECO and FDC MISAMIS 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 Mayors and Governors 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.

DANECO and FDC MISAMIS 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 DANECO and FDC MISAMIS 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, DANECO and FDC MISAMIS 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, June 8, 2015.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ZENNAIDA G. CRUZ-DUCUT
Chairperson *pu 4*

Copy Furnished:

1. **Quiason Makalintal Barot Torres Ibarra and Sison**
Counsel for DANECO
21st Floor, Robinsons-Equitable Tower, 4 ADB Avenue
corner Poveda St., Ortigas Center, Pasig City
2. **Atty. Renato R. Vehemente**
Counsel for FDC MISAMIS
23rd Floor, PBCom Tower, 6795 Ayala Avenue
corner V.A. Rufino St., Makati City
3. **Davao del Norte Electric Cooperative, Inc. (DANECO)**
Montevista, Compostela Valley
4. **FDC Misamis Power Corporation (FDC MISAMIS)**
23rd Floor, PBCom Tower, 6795 Ayala Avenue
corner V.A. Rufino St., Makati City
5. **Office of the Solicitor General (OSG)**
134 Amorsolo Street, Legaspi Village, City of Makati 1229
6. **Commission on Audit (COA)**
Commonwealth Avenue, Quezon City 1121
7. **Senate Committee on Energy**
GSIS Building, Roxas Boulevard, Pasay City 1300
8. **House of Representatives Committee on Energy**
Batasan Hills, Quezon City 1126
9. **Office of the City Mayor**
Tagum City, Davao del Norte
10. **Office of the City Mayor**
Island Garden City of Samal, Davao del Norte
11. **Office of the Municipal Mayor**
Asuncion, Davao del Norte
12. **Office of the Municipal Mayor**
Kapalong, Davao del Norte
13. **Office of the Municipal Mayor**
New Corella, Davao del Norte

14. **Office of the Municipal Mayor**
San Isidro, Davao del Norte
15. **Office of the Municipal Mayor**
Talaingod, Davao del Norte
16. **Office of the Municipal Mayor**
Compostela, Compostela Valley
17. **Office of the Municipal Mayor**
Mabini, Compostela Valley
18. **Office of the Municipal Mayor**
Maco, Compostela Valley
19. **Office of the Municipal Mayor**
Maragusan, Compostela Valley
20. **Office of the Municipal Mayor**
Mawab, Compostela Valley
21. **Office of the Municipal Mayor**
Monkayo, Davao del Norte
22. **Office of the Municipal Mayor**
Montevista, Compostela Valley
23. **Office of the Municipal Mayor**
Nabunturan, Compostela Valley
24. **Office of the Municipal Mayor**
New Bataan, Compostela Valley
25. **Office of the Municipal Mayor**
Pantukan, Davao del Norte
26. **Office of the Governor**
Province of Davao del Norte
27. **Office of the Governor**
Province of Compostela Valley
28. **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