

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



IN THE MATTER OF THE
APPLICATION FOR THE
APPROVAL OF THE ELECTRIC
POWER PURCHASE
AGREEMENT BETWEEN
CENTRAL NEGROS
ELECTRIC COOPERATIVE,
INC. (CENECO) AND PALM
CONCEPCION POWER
CORPORATION (PCPC)

ERC CASE NO. 2015-142 RC

CENTRAL NEGROS
ELECTRIC COOPERATIVE,
INC. (CENECO) AND PALM
CONCEPCION POWER
CORPORATION (PCPC),
Applicants.

x-----x

DOCKETED
Date: SEP 14 2015
By: *[Signature]*

ORDER

On July 27, 2015, Central Negros Electric Cooperative, Inc. (CENECO) and Palm Concepcion Power Corporation (PCPC) filed an application for the approval of their Electric Power Purchase Agreement (EPPA).

In the said application, CENECO and PCPC alleged, among others, that:

1. CENECO is an electric cooperative duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at Gonzaga cor. Mabini Street, Bacolod City, Negros Occidental. It has an exclusive franchise to distribute electric service in the cities of Bacolod, Silay, Talisay, Bago and Murcia and the municipality of Salvador Benedicto, all in the Province of Negros Occidental;

2. PCPC is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with principal office address at Brgy. Nipa, Municipality of Concepcion, Province of Iloilo. Copies of the following documents were submitted as part of the application:
 - a. PCPC's Certificate of Registration, Articles of Incorporation, latest General Information Sheet, latest Audited Financial Statements and Board of Investments Certificate of Registration for the Concepcion Power Plant Project;
 - b. A summary of the relevant technical characteristics of the Power Plant; and
 - c. A summary of the transmission projects or grid connection projects necessary to complement the Power Plant;

NATURE OF THE APPLICATION

3. Pursuant to Rule 20 (B) of the Commission's Rules of Practice and Procedure (ERCPP) and other pertinent rules and regulations, the application is being submitted to the Commission for the approval of their EPPA;

COMPLIANCE WITH PRE-FILING REQUIREMENTS

4. In compliance with the pre-filing requirements mandated under Rule 3, Section 4 (e) of the Implementing Rules and Regulations (IRR) of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 or the EPIRA, and Rule 6 of the 2006 ERC Rules of Practice and Procedure, they have furnished the local legislative Bodies of the local government units where they principally operate with a copy of the application together with all the annexes and accompanying documents. Copies of the affidavits of Service of the Presiding Officer or Secretary or their duly authorized representatives of the legislative bodies of the Provinces of Negros Occidental and Iloilo and the City of

Kabankalan, Negros Occidental and the Municipality of Concepcion, Iloilo where PCPC principally operates are attached to the application;

5. They have caused the publication of the application in its entirety in a newspaper of general circulation within the franchise area of CENECO. Copies of the corresponding Affidavit of Publication and the newspaper are attached to the application;

Statement of Facts and of the Case

6. PCPC sent a letter to the Board of Directors of CENECO offering to supply a portion of its power requirements from the PCPC Power Plant by 2016. The representatives of PCPC thereafter made a presentation to the Board of Directors of CENECO for the supply of power from the PCPC Power Plant;
7. They, thereafter, commenced negotiations for the execution of the EPPA. CENECO considered the need to address the security of the long term power supply requirements of the consumers in its franchise area which is projected to increase yearly up to 2016 and onwards and which shall be adversely affected by the expiration of the Transition Supply Contract/Contract for the Supply of Electric Energy (TSC/CSEE) with the National Power Corporation/Power Sector Assets and Liabilities Management Corp. (NPC/PSALM);

CENECO DEMAND-SUPPLY PROJECTIONS

8. The franchise area of CENECO had a total peak power demand of 132 MW in the year 2014. Currently, CENECO sources its electric power requirements from the following suppliers:
 - a) 64 MW from the KEPCO-SPC Power Corp., (KSPC) under a Power Supply Contract until February 25, 2021;

- b) 20 MW from the Green Core Geothermal Inc. (GCGI) under a Power Supply Agreement until December 25, 2020;
 - c) 18.9 MW from the Energreen Power Development and Management Inc.;
 - d) 20 MW from the FILINVEST Development Corporation Utilities Inc. (FDCUI) under an Electric Power Purchase Agreement until 25 June 2016; and
 - e) 4 to 6 MW balance is sourced from the Wholesale Electricity Spot Market (WESM);
9. The Distribution Development Plan (DDP) of CENECO shows that the coincident peak demand within its franchise area is projected to grow by 3.57% a year from 2015 to 2019. Thus, by 2016, CENECO would have needed an additional 15.286 MW of power supply. However, by 2016, the coincident peak demand in the CENECO franchise area is already projected to reach 159.088 MW due to the additional spot loads that were not factored in to the DDP of CENECO. Further, new developments, such as the expansion of the SM City Bacolod Mall, the Ayala development of the PNB property at the Provincial Capitol Site, the new Gaisano Mall, the expansion of the Riverside Medical Center and other new hospitals are expected to add an additional 20.194 MW to the total demand of the CENECO franchise area. Thus, by 2016, CENECO will need an additional 35 MW of power supply to meet the supply gap that will be caused by its load growth. CENECO seeks to supply this demand growth through the 35 MW contracted capacity under the EPPA with PCPC. This is consistent with the DDP of CENECO within its franchise area and is projected to grow by 4% a year from 2013. As can be seen above, the power supply contracts of CENECO with NPC/PSALM and SIPC will also expire by 2014 and 2015, respectively. Thus, by 2016, CENECO will need an additional 22 MW of power supply to meet the supply gap that will be caused by its load growth and by these expiring contracts. CENECO seeks to supply a portion of this demand growth and the supply gap brought about by

the expiration of the NPC/PSALM and SIPC contracts through the 10 MW contracted capacity under the EPPA with PCPC;

10. The Department of Energy (DOE) has projected that the Visayas Grid will need an additional 100 MW of generating capacity by 2015. A copy of the supply demand-scenario for 2012 to 2030 as projected by the DOE in the 2012 Supply-Demand Outlook, as available in http://www2.doe.gov.ph/news/2013_Supply-Demand_Outlook.pdf is attached to the application;
11. In the attached 2012 DOE Supply-Demand Outlook, it is clearly indicated that the DOE has programmed the first 135 MW unit of PCPC in Concepcion, Iloilo to address the additional generating capacity requirements of the Visayas Grid by 2016;
12. As stated above, the supply by NPC/PSALM of power to CENECO under the TSC/CSEE will only be until December 2014 and will not be renewed thereafter, further urging CENECO to explore contracting its power requirements from other power suppliers in the Visayas;
13. A copy of the Certification from NPC/PSALM to CENECO that NPC/PSALM has insufficient capacity to supply the additional requirements of CENECO beyond the current contracted energy and equivalent demand under its TSC/CSEE is attached to the application;

Details on the Procurement Process undertaken by CENECO

14. As stated earlier, PCPC sent a letter to CENECO offering to supply base load power from its Power Plant beginning in 2016. This was the most advantageous offer that CENECO received for the supply of its additional power requirements by 2016 from a brand new power plant that would add new additional generating capacity in the Visayas;

15. CENECO learned that, at that time:
 - a) The PCPC Power Plant was the only new power plant project in the Visayas that already has an Environmental Clearance Certificate (ECC) from the Department of Environment and Natural Resources (DENR); and
 - b) The PCPC project is the only new power plant classified as committed to come on line by 2016 by the DOE in the Power Development Plan;
16. Thus, at the time of the execution of the EPPA, CENECO determined that the PCPC power plant will be the only new base load generating capacity that will be available and on line to meet its additional load requirements by 2016;
17. Copies of ECC No. 0606-006-402 for the Power Plant issued by the DENR on 27 May 2007 and the approved amendments thereto dated 12 October 2012 are attached to the application;
18. A Copy of the Certification from the DOE dated January 3, 2014 certifying that the PCPC Power Plant Project is consistent with the DOE Power Development Plan (PDP) is attached to the application;
19. With the completion and coming in of the PCPC power plant, it will eventually address the growing requirements of CENECO's consumers and will prevent a shortage of power supply in its franchise area as well as for the whole Visayas Grid. In addition, sourcing power from the PCPC Power Plant will insulate CENECO consumers from the potential volatility of prices in the spot market. Furthermore, since the PCPC Power Plant will be coal-fired, the electricity it will generate will be much less expensive than other available capacities in the Visayas which utilize bunker or diesel;

20. Since the PCPC Power Plant is located in Panay Island in the Western Visayas, the power that it will supply to CENECO will pass through the submarine cable from Panay Island to Negros Island which has traditionally been free from line congestion charges;
21. Furthermore, they were informed that the Commission in ERC Case No. 2013-024 RC has already approved the application of NGCP for the early implementation of its planned upgrading/uprating of the submarine cable which is included in Phase 1 of NGCP's planned Cebu-Negros-Panay 230 kV backbone project;
22. Given that there was no other new base-load power plant with an ECC that was programmed and committed to come on line in the Visayas by 2016, CENECO entered into the subject EPPA with PCPC on March 11, 2013 to ensure the security, affordability and reliability of its supply of power to its consumers and to avoid the potential exposure to spot market price volatility;
23. On July 16, 2013, they executed a letter entitled "Proposed Amendments to the EPPA" which amended the Initial Delivery Date by moving it from March 26, 2016 to June 26, 2016 and the coal costs formula in the Electricity Fees (Schedule 4, 5a and 5b) of the EPPA. A copy of this Letter is attached as Annex "I-1" to the application;
24. On January 22, 2014, they executed another Letter of Amendment for an increase in the Contracted Capacity in the EPPA by an additional 10 MW. A copy of this Letter is attached as Annex "I-2" of the application;
25. On July 24, 2014, they executed another Letter of Agreement/Supplemental Agreement for a further increase in the Contracted Capacity in the EPPA by an additional 2.4 MW. A copy of this Letter is attached as Annex "I-3" to the application;

26. As will be explained further, the tariff agreed in the EPPA between them is load factor based whereby the tariff will vary depending on the load factor of CENECO for the given Billing Month. Since the Parties had agreed to increase the Contracted Capacity of CENECO from 22.6 MW in the EPPA to a total of 35 MW under the above mentioned Letters of Agreement/Supplemental Agreement, the Parties subsequently agreed to update Schedule 4a of the EPPA on the "Table of Energy Consumption, Equivalent Load Factors and Applicable Tariff Components." They executed a Letter of Clarification dated November 10, 2014 that amended Schedule 4a of the EPPA to reflect the increase in the Contracted Capacity to a total of 35 MW. A copy of this Letter is attached as Annex "I-4" to the application. The Letters of Agreement marked as Annexes "I-1" to "I-4" are hereinafter collectively referred to as the "LOA's";

EXECUTIVE SUMMARY AND ABSTRACT OF THE ELECTRIC POWER PURCHASE AGREEMENT

27. **Executive Summary.** Under the EPPA as amended by the LOA's, PCPC agreed to supply and deliver, and CENECO agreed to take and pay for electricity supplied by PCPC, at a total contracted capacity of 35 MW (the "Contracted Capacity"), to be delivered in accordance with the Daily Generation Schedule (DGS) which is fixed on a daily and hourly basis in accordance with the EPPA. In all Intervals as provided under the EPPA, CENECO shall nominate no less than 50% of its Contracted Capacity;
28. **Monthly Contracted Capacity and Energy.** As previously stated, the agreed monthly contracted capacity and contracted energy under the EPPA as amended by the LOA's between PCPC and CENECO is 35 MW. The energy consumed shall be based on the total of the DGS submitted by CENECO for a given billing period. This total shall then be matched against the table in Schedule 4a of the EPPA as amended by the LOA's to determine the equivalent tariff components particularly the equivalent CRF and O&M fees for the load factor of CENECO for the given billing period. These equivalent

tariff components shall then be applied to Schedule 4 of the EPPA on the Electricity Fees. When CENECO is unable to take the Contract Energy or a portion thereof for reasons other than Force Majeure, the nominated quantity under the DGS is deemed taken by CENECO and it shall settle for the entire nominated quantity in accordance with the terms of the EPPA. CENECO shall, in accordance with the WESM Rules, claim any proceeds on such shortfall from the Market Operator;

29. **Delivery Point.** The Contracted Capacity and electricity shall be delivered by PCPC to CENECO at the delivery point which is the High Voltage side of the transformer at the Power Plant as designated in the EPPA (Schedule 3) on the Initial Delivery Date. PCPC shall deliver or cause the delivery of such electricity in accordance with good utility practice and in compliance with appropriate rules and regulations such as the Grid Code and the Distribution Code, the WESM Rules and the Open Access Transmission Service Rules;
30. **Initial Delivery Date.** As stated earlier, the Initial Delivery Date in the EPPA as amended by the LOA's shall not be later than 26 June 2016 or such earlier date as may be agreed upon by the Parties;
31. **Electricity Fees.** The Electricity Fees under the EPPA as amended by the LOA's are as follows:

**SCHEDULE 4
ELECTRICITY FEES**

(Commercial Operations)

At Load Factor of 100%

Rate Components: (As of August 2012)

Capacity Recovery Fee	=	PhP 2.550/kwh
O & M Fee (PhP)	=	0.364/kwh
O & M Fee (USD)	=	0.386/kwh
<u>Fuel</u>	=	<u>2.310/kwh</u>
TOTAL	=	PhP 5.610/kwh

ERC CASE NO. 2015-142 RC

Order/September 1, 2015

Page 10 of 24

Formula:

Electricity Fees = Energy Fees + Actual Fuel Cost

Energy Fees = Tariff Fees x E

Tariff Fees = CRF + O&M Fees

$$\text{O\&M Fees} = \left(\text{PhPO\&M} \times \frac{\text{PhCPI}_c}{\text{PhCPI}_b} \right) + \left(\text{USDO\&M} \times \frac{\text{USCPI}_c}{\text{USCPI}_b} \times \text{Forex} \right)$$

Actual Fuel Cost = Fuel Cost x E

$$\text{Fuel Cost} = \left[\frac{(\text{Current Fuel Cost} + \text{Transport Cost}) (\text{Forex}) + \text{Import Duties, Fees \& Taxes}}{1,000} \right] \left[\text{Consumption Rate} \right]$$

$$\text{Current Fuel Cost} = \left[\text{New C Price Index} \times \frac{5400 \text{ kcal/kg GAD}}{6700 \text{ kcal/kg GAD}} \right] \times (100\% - 17\% \text{ discount rate})$$

Where:

CRF = Capacity Recovery Fee = Php 2.55/kWh

PhPO&M = Peso-based O&M Fee = Php 0.375/kWh

PhCPI_c = Philippine CPI for the current month for all items as published by the NSO

PhCPI_b = Base Philippine CPI = 131.5 (August 2012)

USDO&M = U.S. Dollar-based O&M Fee = USD 0.0090/kWh

USCPI_c = U.S. CPI for the current month for all items as published by the U.S. Bureau of Labor Statistics (USBLS)

USCPI_b = Base U.S. CPI = 230.379 (August 2012)

Forex = Reference exchange rate (in PhP per US\$) on the meter reading date, as published by the Bangko Sentral ng Pilipinas (BSP), www.bsp.gov.ph

E = Minimum Contract Energy or Energy Delivered, whichever is higher

New C Price = Running average of the preceding three-month weekly Reference price for thermal coals delivered on an FOB basis at Newcastle port for 6700kcal/kg coal as per the Global Coal Newcastle Physical Trading as published www.globalcoal.com

Transport Cost = Actual Transport Price per MT unit

Consumption Rate = Actual consumption rate or the ceiling of 0.647kg/kWh
whichever is lower escalated at a rate of 1.5% per year

32. Load Factor Based Tariff. The applicable tariff components for the different load factors and equivalent energy which shall be applied to the Electricity Fee Formula above as agreed by the CENECO and PCPC is contained in Schedule 4a of the EPPA as updated by the LOA attached as "Annex I-4" of the Application as follows:

SCHEDULE 4a

TABLE OF ENERGY CONSUMPTION, EQUIVALENT LOAD FACTORS AND APPLICABLE TARIFF COMPONENTS

Equivalent kWh's* consumed for the month based on 35MW (total DGS)	Load Factor	CRF	Peso O&M (PhP)	U.S. Dollar O&M (U.S.\$)
25,550,000	100%	2.55	0.375	0.0090
25,294,500	99%	2.58	0.379	0.0091
25,039,000	98%	2.60	0.383	0.0092
24,783,500	97%	2.63	0.387	0.0093
24,528,000	96%	2.66	0.391	0.0094
24,272,500	95%	2.68	0.395	0.0095
24,017,000	94%	2.71	0.399	0.0096
23,761,500	93%	2.74	0.403	0.0097
23,506,000	92%	2.77	0.408	0.0098
23,250,500	91%	2.80	0.412	0.0099
22,995,000	90%	2.83	0.417	0.0100
22,739,500	89%	2.87	0.421	0.0101
22,484,000	88%	2.90	0.426	0.0102
22,228,500	87%	2.93	0.431	0.0103
21,973,000	86%	2.97	0.436	0.0105
21,717,500	85%	3.00	0.441	0.0106
21,462,000	84%	3.04	0.446	0.0107
21,206,500	83%	3.07	0.452	0.0108
20,951,000	82%	3.11	0.457	0.0109
20,695,500	81%	3.15	0.463	0.0111
20,440,000	80%	3.19	0.469	0.0113
20,184,500	79%	3.23	0.475	0.0114
19,929,000	78%	3.27	0.481	0.0115

ERC CASE NO. 2015-142 RC

Order/September 1, 2015

Page 12 of 24

19,673,500	77%	3.31	0.487	0.0117
19,418,000	76%	3.36	0.493	0.0118
19,162,500	75%	3.40	0.500	0.0120
18,907,000	74%	3.45	0.507	0.0122
18,651,500	73%	3.49	0.514	0.0123
18,396,000	72%	3.54	0.521	0.0125
18,140,500	71%	3.59	0.528	0.0127
17,885,000	70%	3.64	0.536	0.0129
17,629,500	69%	3.70	0.543	0.0130
17,374,000	68%	3.75	0.551	0.0132
17,118,500	67%	3.81	0.560	0.0134
16,863,000	66%	3.86	0.568	0.0136
16,607,500	65%	3.92	0.577	0.0138
16,352,000	64%	3.98	0.586	0.0141
16,096,500	63%	4.05	0.595	0.0143
15,841,000	62%	4.11	0.605	0.0145
15,585,500	61%	4.18	0.615	0.0148
15,330,000	60%	4.25	0.625	0.0150
15,074,500	59%	4.32	0.636	0.0153
14,819,000	58%	4.40	0.647	0.0155
14,563,500	57%	4.47	0.658	0.0158
14,308,000	56%	4.55	0.670	0.0161
14,052,500	55%	4.64	0.682	0.0164
13,797,000	54%	4.72	0.694	0.0167
13,541,500	53%	4.81	0.708	0.0170
13,286,000	52%	4.90	0.721	0.0173
13,030,500	51%	5.00	0.735	0.0176
12,775,000	50%	5.10	0.750	0.0180

* Subject to adjustments during Commercial Operations of the Power Plant for Allowed Outages and the actual number of days in the Billing Period.

Further in case the total DGS submitted by CENECO for a Billing Period is less than the lowest equivalent energy in the table above, (equivalent to 50% load factor), this lowest equivalent energy shall be considered as the Minimum Contracted Energy and shall be the basis for Settlement for the given Billing Period;

33. **Price Formula for Coal.** The new coal supply contract of PCPC with P.T. Pevensey had a different price formula than the one with Semirara Coal Corporation which was reflected in the original Schedules 4, 5a and 5b of the EPPA thus necessitating an amendment of the said schedules which was also done via the execution of the

LOA between PCPC and CENECO. The agreed coal price formula in the coal supply contract of PCPC with P.T. Pevensey is reflected in the Schedules 4, 5a and 5b of the EPPA as amended by the LOA as describe above, in accordance with the established policy of the Commission that fuel costs are on a pure pass-through basis;

34. **Details of the Fuel Procurement.** The details for the fuel procurement of PCPC for the Coal requirements of the Power Plant are attached to the application;
35. **Terms.** The EPPA shall have a term of ten (10) years commencing on the Initial Delivery Date and ending on the tenth (10th) anniversary of such commencement date, unless sooner terminated pursuant to the terms of the EPPA. The Initial Delivery Date is the date of the commencement of PCPC's obligation to deliver to CENECO, and for CENECO, to purchase, the Contract Capacity and Contract Energy, provided the Commission has approved the EPPA;
36. **Allowed Schedule of Outage.** Under the EPPA, PCPC is allowed a Scheduled Outage which shall not exceed thirty (30) days a year and an Allowed Unscheduled Outage period of fifteen (15) days per calendar year. Any unutilized Allowed Scheduled Outage periods may be used for Allowed Unscheduled Outages and vice versa but any unutilized Allowed Scheduled and Unscheduled Outage allowances within a calendar year will not be accumulated for use during the succeeding years of the Cooperation Period;
37. **Reduction in the Contracted Capacity Due to Open Access.** CENECO may reduce its Contracted Capacity only at the outset of each phase of Retail Competition and Open Access (RCOA) and shall be limited only to the demand of the contestable customers of CENECO qualified as such under each phase upon at least forty (45) days prior notice to PCPC and provided further that:
 - (i) the reduction shall not be more than the pro-rata share of the Contracted Capacity and Associated Energy of PCPC vis-a-vis the contracted capacities and energy quantities of CENECO from all of its other power

suppliers, (ii) No reduction shall be allowed under this provision if a contestable customer of CENECO migrates to its own local RES, (iii) CENECO shall only be allowed to reduce the Contracted Capacity under the provisions of this section only if its contestable customer migrates to a RES that is not its Local RES or a RES of any of the other power suppliers of CENECO and further only if all the other power suppliers of the CENECO agree to a pro-rata reduction of their respective contracted capacities and energy, (iv) CENECO may reduce the full demand of any of its contestable customers that shall transfer to the RES of PCPC. (v) Any such reductions of the Contract Capacity shall be made only at the outset of each phase of the RCOA and shall be limited only to the demand of the contestable customers of CENECO qualified as such under each phase, and (vi) during the Cooperation period, CENECO shall give PCPC first priority to serve any additional load/energy requirements of the Captive Customers of the CENECO to the extent that the Contracted Capacity may have been reduced due to the implementation of RCOA;

38. **Increase in Contracted Capacity.** Under the EPPA, PCPC as Seller is not obligated to supply more than the Contracted Capacity and CENECO as Buyer is not obligated to purchase more than the Contracted Capacity. However, upon mutual agreement of the Parties, PCPC may supply and CENECO may purchase more than the Contracted Capacity under substantially the same terms and conditions agreed to by the Parties in the EPPA as amended by the LOA's subject to the availability of generating capacity from the PCPC Power Plant;
39. **Billing Month.** A Billing Month under the EPPA means the period commencing on the first hour of the twenty sixth (26th) day of a calendar month and ending on the last hour of the twenty fifth (25th) day of the next calendar month. Within ten (10) working days after the end of each Billing Month, PCPC shall deliver to CENECO an invoice in respect of Electricity Fees payable for the previous Billing Month. The due dates for such invoice shall be fifteen (15) calendar days after receipt of such billing;

40. **Prompt Payment Discount.** In the event that the full and proper payment for the Electricity is made by CENECO within seven (7) days from receipt of the invoice, PCPC shall grant to CENECO a prompt payment discount equivalent to one percent (1%) of the CRF portion of the Electricity Fees (exclusive of, O&M fees, fuel cost and any applicable charges and taxes), corresponding to the energy billed for such Billing Month. All payments under the EPPA shall be made in Pesos. Further, CENECO is not required to post any Security Deposit under EPPA;

41. **Charges, Expenses and Taxes.** In relation to the supply of electricity by PCPC to CENECO, any charges, costs, expenses, and fees that may be charged to, incurred and/or assumed by PCPC or otherwise imposed by NGCP, any Governmental Authority, or any other third party, for transmission and/or Ancillary Services and other related services in connection with the delivery of electricity under the EPPA shall be paid by CENECO;

42. **Causes For Termination.** In the event that the EPPA is terminated by PCPC on the grounds of (a) the failure of CENECO to pay the Electricity Fee or any other amounts payable under the EPPA; (b) breach by CENECO of any of the provisions of the EPPA and its failure to cure the breach within the prescribed period; and (d) termination by PCPC of the EPPA upon the occurrence of any events of default under the EPPA, CENECO shall be liable to pay liquidated damages in the form of a termination penalty amounting to capital recovery fees for the remainder of the Cooperation Period but not to exceed three (3) years. Upon the termination of the EPPA in bad faith by PCPC, it shall pay CENECO liquidated damages in the form of a termination penalty amounting to the capital recovery fees as approved by the Commission for the remainder of the Cooperation Period but not to exceed three (3) years;

STAGES OF SUPPLY

43. The Electricity Fees correspond to the different stages of supply of the Power Plant computed in accordance with Schedules 4, 5a and 5b of the EPPA;
44. **Testing and Commissioning.** During the testing and commissioning period, PCPC will deliver to CENECO on a non-firm basis, the electric power generated by the Power Plant in the course of testing and commissioning, subject to the payment of Electricity Fees for actual energy taken by CENECO computed in accordance with the formula specified in the EPPA with the exception that PCPC shall only charge fifty percent (50%) of the CRF and the Electricity Fees shall be based only on the Actual Energy Delivered by PCPC to CENECO for the duration of the testing and commissioning period of the Power Plant, as stated in the amended Schedule 5a of the EPPA;
45. However, in accordance with the Decision of the Commission in ERC Case No. 2013-205 RC, PCPC shall only charge, during the testing, commissioning and pre-commercial operations period the approved Variable O&M Fee of PhP0.1426/kWh and pass on fuel costs for electricity actually delivered during the said periods;
46. **Commercial Operation.** During the commercial operations period which shall commence on the Initial Delivery Date, PCPC will deliver to CENECO on a firm basis, the Contracted Capacity and Minimum Contracted Energy from the Power Plant, subject to the payment of Electricity Fees by CENECO computed in accordance with the formula specified in the amended Schedule 4 and Schedule 4a of the EPPA which Fees are based on the rates as approved by the Commission in ERC Case No. 2013-205RC;
47. The EPPA thus proposes separate rates on the power delivered by PCPC to CENECO, depending on the stage of the operations of the Power Plant development (i.e., during testing and commissioning, during Pre-Commercial Operation Period, or on Commercial Operations);

IMPACT OF EPPA ON CENECO GENERATION COSTS

48. Should the Commission approve the Electricity Fees under the EPPA, there will be a projected decrease in generation cost of Twelve Centavos (PhP0.12) per kWh on the Initial Delivery Date in 2016, upon commercial operations of the Power Plant;
49. Should the Commission approve the Electricity Fees under the EPPA the decrease in the generation costs of CENECO in 2017 will be Thirty Centavos (PhP0.30) per kWh. A copy of the simulation on the impact of the proposed rates of Applicant PCPC on the generation cost of CENECO is attached to the application;
50. The expected additional capacity from PCPC even as early as the testing and commissioning and pre-commercial operations of the Power Plant will contribute greatly to the improvement of the quality, reliability and affordability of electric power delivered to the consumers of CENECO and the security of supply and stability of the Visayas power grid;
51. Under the terms of the EPPA, among the conditions precedent to the performance by CENECO and PCPC of their respective obligations thereunder is the approval by the Commission of the application;
52. Thus, for PCPC to be able to deliver and CENECO to be able to receive power from the former as early as the testing and commissioning and the pre-commercial operations of the Power Plant, it is imperative that the Commission approve the EPPA;
53. Considering that the PCPC power plant is still to be constructed, it currently does not yet have a Certificate of Compliance (COC) from the Commission. Pursuant to ERC Resolution No.9, Series of 2010, PCPC undertakes that shall it shall file the necessary application for a COC not later than three (3) months prior to the commencement of commercial operations of the Power Plant;

54. **Project Cost.** A summary of the relevant information on the project cost for the 135 MW coal-fired power generation facility of PCPC is provided in the Summary of Project Cost attached to the application;
55. **Funding Sources of Funds, Cash Flow and Basis for the Purchased Power Rate.** The Project shall be funded through loans from financial institutions and equity from the shareholders. Summaries of the relevant information on PCPC's sources of funds for the Power Plant, cash flow and basis for the purchased power rate in the EPPA are attached to the application;
56. **Bank Certification.** A Certification from the BDO Capital and Investments, Inc., the Lead Arranger of the financing of the Project, on the principal amortization, term and interest of the respective loan agreements for the Project is attached to the application;
57. **Rates Schedule.** The Electricity Fee is computed and specified in Schedules 4, 5a and 5b of the EPPA;
58. **Capital Recovery Fee of PhP2.55/kWh.** The project cost for the Power Plant would yield a higher Capital Recovery Fee (CRF). However, PCPC decided not to adopt an increased CRF since it already had a contractual commitment to CENECO under the EPPA and further for the Power Plant to remain competitive in the Visayas Grid. The purchased power rate for the PCPC Power Plant including the Capital Recovery Fee and its other components, upon Commercial Operations of the said plant as stipulated in the EPPA between them, is exactly the same as the rates approved by the Commission for the PCPC Power Plant in ERC Case No. 2013-205 RC. This approved Capital Recovery Fee was the basis used in deriving the CRF at the various load factors agreed to by the Parties in Schedule 4a of the EPPA as amended by the LOA's;

59. **WESM Membership.** CENECO is already a member of the WESM. PCPC undertakes that it shall become a member of the WESM prior to the testing and commissioning of the Power Plant in accordance with the WESM Rules;

60. **Agreement on Grid Connection.** The PCPC is connected to the Visayas grid through the National Grid Corporation of the Philippines (NGCP). PCPC has already executed a Connection Agreement (CA) with NGCP. It shall enter into a Transmission Service Agreement (TSA) and Metering Service Agreement (MSA) with NGCP prior to the time that the Power Plant will require feedback power from the grid;

61. **Board Resolutions.** A copy of the Board Resolution adopted by the Board of Directors of PCPC authorizing the joint filing of the application with CENECO and authorizing the counsel to file said application for and on behalf of PCPC; Board Resolution No. 10270, Series of 2013 passed by the Board of Directors CENECO dated March 8, 2013 approving the execution of the EPPA with PCPC; Board Resolution No. 10667, Series of 2014 passed by the Board of Directors CENECO dated January 21, 2014 approving the execution of the Letter of Agreement with PCPC for an additional supply of 10MW under the EPPA; Board Resolution No. 10849, Series of 2014 passed by the Board of Directors CENECO dated July 22, 2014 approving the execution of the Letter of Agreement with PCPC confirming the availment of the reserved capacity of 7.6 MW under the EPPA and availing an additional supply of 2.4MW also under the same terms and conditions of the EPPA; Board Resolution No. 10926, Series of 2014 passed by the Board of Directors CENECO dated October 13, 2014 authorizing the filing before the Commission of the application for the approval of the EPPA and subsequent Letters-Agreement and Supplemental Agreement between CENECO and PCPC and further authorizing undersigned counsel to file the said application for and on behalf of CENECO are all attached to the application;

**ALLEGATIONS IN SUPPORT OF
MOTION FOR NON-DISCLOSURE OF CONFIDENTIAL
INFORMATION**

62. Under Article 10 of the EPPA, they agreed to keep in strict confidence all "Confidential Information" of PCPC, to ensure that no Confidential Information of PCPC is disclosed to third parties and that they shall use utmost efforts to prevent any unauthorized disclosure of Confidential Information. Such Confidential Information includes any information relating to the operations, businesses, technology, practices, products, marketing, sales, services, finances or legal affairs of PCPC, as well as actual or prospective customers, business partners, market opportunities, business, sales, marketing, technical, financial and legal plans, proposals and projections, product information, know-how, design rights, trade secrets, concepts, techniques, processes, methods, systems, designs, programs, codes, formula, research, experimental works and works in progress;
63. They request that pursuant to their agreement to maintain in strict confidence all confidential information of PCPC, Annexes "Q", "R", "S", "T", "U", "V" and "W" which contain certain non-public information, data and calculations involving business operations and financial trade secrets reflecting PCPC's investment and business calculations, be treated as confidential documents;
64. Under Rule 4 of the Commission's Rules, the Commission may, upon request of a party and the determination of the existence of conditions which would warrant such remedy, treat certain information submitted before the Commission as confidential. Pursuant to such provision, they respectfully request for the issuance of a protective order declaring the foregoing information, data and calculations contained in Annexes "Q", "R", "S", "T", "U", "V" and "W" as confidential information;
65. Further, in accordance with Section 1(b), Rule 4 of the Commission's Rules, they are submitting one (1) copy of

Annexes "Q", "R", "S", "T", "U", "V" and "W" in a sealed envelope, with the envelope and each page of the document stamped with the word "Confidential"; and

66. Thus, they pray that:

- a) An Order be issued treating Annexes "Annexes "Q", "R", "S", "T", "U", "V" and "W" of the application, as confidential documents and the information contained therein as confidential and directing its non-disclosure pursuant to Rule 4, Section 1 of the Commission's Rules of Practice and Procedure and prescribing the guidelines for the protection thereof; and
- b) After full proceedings on the merits, issue a Decision approving the terms of the EPPA between them, thereby authorizing PCPC to charge and collect from CENECO the Electricity Fees corresponding to the (1) Testing and Commissioning Period, (2) Pre-Commercial Operation Period, and (3) Commercial Operations Date as contained in the EPPA, and authorizing CENECO to pass the full amount thereof to its 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 jurisdictional hearing, expository presentation, pre-trial conference and evidentiary hearing on **October 2, 2015 (Friday) at nine o'clock in the morning (9:00 A.M.) at the CENECO's Main Office, Mabini corner Gonzaga Streets, Bacolod City, Negros Occidental.**

CENECO and PCPC 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 CENECO's franchise area, by any other means available and appropriate, of the filing of the 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 Governor of Negros Occidental and the Mayors of the Cities and Municipalities within the franchise area of CENECO for the appropriate posting thereof on their respective bulletin boards.

CENECO and PCPC 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, CENECO and PCPC 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.

CENECO, PCPC 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 CENECO and PCPC 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.

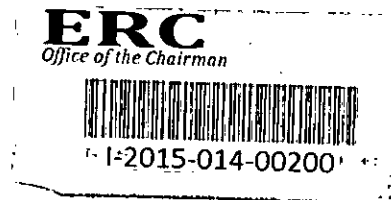
As part of the pre-trial conference, CENECO and PCPC must also be prepared to make an expository presentation of their application, aided by whatever communication medium that they may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other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

SO ORDERED.

Pasig City, September 1, 2015.

FOR AND BY AUTHORITY
OF THE COMMISSION:


JOSE VICENTE B. SALAZAR
Chairman



Copy furnished:

1. ATTY. CYRIL DEL CALLAR
ATTY. FERDINAND V. MENGUITO
Counsel for Applicants CENECO and PCPC
Unit 9D Belvedere Tower, San Miguel Avenue,
Ortigas, Pasig City
2. Palm Concepcion Power Corporation
Brgy. Nipa, Municipality of Concepcion,
Province of Iloilo.
3. Office of the Solicitor General
134 Amorsolo Street, Legaspi Village, Makati City
4. Commission on Audit
Commonwealth Avenue, Quezon City MM
5. Senate Committee on Energy
GSIS Bldg., Roxas Blvd., Pasay City, MM
6. House Committee on Energy
Batasan Hills, Quezon City
7. The City Mayor
Bacolod City, Negros Occidental
8. The City Mayor
Bago City, Negros Occidental
9. The City Mayor
Silay, Negros Occidental
10. The City Mayor
Talisay City, Negros Occidental
11. The Municipal Mayor
Murcia, Negros Occidental
12. The Municipal Mayor
Don Salvador, Negros Occidental