

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 (PSA) BETWEEN
CAGAYAN ELECTRIC POWER
AND LIGHT COMPANY,
INCOPORATED (CEPALCO)
AND LIBERTY SOLAR ENERGY
CORPORATION (LSEC), WITH
PRAYER FOR THE ISSUANCE
OF PROVISIONAL AUTHORITY**

ERC CASE NO. 2015-151 RC

**CAGAYAN ELECTRIC POWER
AND LIGHT COMPANY,
INCOPORATED (CEPALCO)
AND LIBERTY SOLAR ENERGY
CORPORATION (LSEC),
Applicants.**

D O C K E T E D
Date: SEP 18 2015
By: [Signature]

X ----- X

ORDER

On August 11, 2015, Cagayan Electric Power and Light Company, Incorporated (CEPALCO) and Liberty Solar Energy Corporation (LSEC) filed an application for approval of their Power Supply Agreement (PSA), with prayer for the issuance of provisional authority.

In the said application, CEPALCO and LSEC alleged, among others, that:

1. CEPALCO is a privately-owned electric distribution utility, with principal office address at Masterson Avenue, Upper Balulang, Cagayan de Oro City. It operates a legislative franchise to maintain an electric distribution system in the City of Cagayan de Oro and the Municipalities of Tagoloan, Villanueva and Jasaan, all in the Province of Misamis Oriental. A copy of Republic Act No. 9284

granting CEPALCO its franchise is attached to the application as Annex "A" to form an integral part thereof;

2. LSEC is a corporation duly organized and existing under the Philippine laws, with office address at 6th Floor, Twin Cities Building, 110 Legaspi St., Legaspi Village, Makati City. It is engaged in the business of developing renewable energy resources such as solar photovoltaic power. It is also involved in the construction and operation of solar-electric generating plants, among others. Copies of relevant documents showing its due incorporation and registration as a generation company are, likewise, attached to the application to form integral parts thereof:

Annex	Document
"B"	Certificate of Incorporation with the Securities and Exchange Commission (SEC)
"C"	Articles of Incorporation
"D"	By-Laws
"E"	Stockholders' Information

3. On June 29, 2015, they executed a twenty-five (25)-year PSA for the purchase and sale of electricity generated by the 16 MW AC Liberty Solar Power Project, which shall be constructed, owned and maintained by LSEC. A copy of the said PSA is attached to the application as Annex "F" to form an integral part thereof;
4. By and pursuant to *Sections 25, 43 (u) and 45 (b) of Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA) and its Implementing Rules and Regulations*, and other pertinent rules and regulations, they submit the instant application to the Commission for its due consideration and approval of their PSA;

Statement of Facts

5. Historical data shows that the demand for power in Mindanao has been continuously increasing for the past years. CEPALCO, which is located within the Mindanao area, forecasts an average power demand growth of five percent (5%) per year;

6. The increasing demand for power within CEPALCO's franchise area is largely caused by the economic development in the area with increased service connection applications from commercial and industrial customers. Based on projections of available supply from its existing suppliers, CEPALCO is expected to experience power deficit of at least ten percent (10%)¹ of its peak demand by year 2016. A copy of its Supply-Demand Scenario showing historical data from 2013 to 2014 and forecasted data from 2015 to 2020 are, likewise, attached to the application as Annex "G" to form an integral part thereof;
7. Meanwhile, the National Power Corporation – Power Sector Assets and Liabilities Management Corporation (NPC-PSALM), one of CEPALCO's power suppliers has confirmed in its letter dated August 20, 2014 that it has insufficient capacity to satisfy CEPALCO's increased energy requirements which is beyond its existing contracted energy. A copy of the said letter dated August 20, 2014 is attached to the application as Annex "H" to form an integral part thereof;
8. In view of this, CEPALCO saw the pressing need to execute a new PSA for its peaking power requirements by year 2016;
9. The existing suppliers of the peaking power requirements of CEPALCO run on either bunker-C or diesel fuel, which require high generation cost. In its selection of a new power provider, CEPALCO factored in the need to mitigate its generation cost component by displacing some of the generation of bunker/diesel power plants, particularly, during day-time peak, with a cheaper supply from Solar PV power plants;
10. In relation thereto, LSEC submitted an offer to CEPALCO for the engineering, procurement, construction, commissioning, financing, ownership and operation of Solar Photovoltaic Electric Power Generation Facilities with an installed capacity of 16 MW AC;

¹ Assuming without supply from LSEC

11. Hence, on June 29, 2015, following the due evaluation and deliberation of LSEC's offer and taking into account its competitive rate, clean and renewable source of power and the good reputation and proven track record of LSEC's parent company, Solar Pacific Energy Corporation, among others, they executed a PSA for the delivery to CEPALCO of its peaking power requirements which shall be generated from Liberty Solar Power Project with a net capacity of 16 MW AC starting year 2016. A narrative on the factors considered by CEPALCO in the selection of LSEC as its new power provider is, likewise, attached to the application as Annex "I" to form an integral part thereof;

Abstract of the PSA and Other Related Information

12. The following are the salient features of the PSA:
 - 12.1 **Cooperation Period.** CEPALCO shall receive from LSEC and the latter shall deliver to the former, electricity for a term of twenty-five (25) years beginning on the date of Commercial Operations, expected to be on November 30, 2016;
 - 12.2 **Energy Delivery.** During the Cooperation Period and subject to the terms and conditions of the PSA, LSEC shall deliver 28,000,000 kWh of electricity to CEPALCO for the first year of operations, while for the succeeding years, LSEC guarantees to deliver ninety-nine percent (99%) of the energy for the previous year, pursuant to Section 2.02 of the PSA.

LSEC guarantees that during the twelve (12)-month period, in no event shall it deliver less than seventy-five percent (75%) of the Expected Energy Amount for the said twelve (12)-month period (Guaranteed Energy), as specified in Schedule 6 of the PSA;

- 12.3 **Must-Take as Available Plant/Declared Capacity.** CEPALCO shall take the electricity generated by LSEC's Solar Power Project at any time, notwithstanding the declared capacity of 16 MW, hence, has no minimum off-take. LSEC shall not be obligated to ensure the dependable availability of the Declared Capacity per month at all times;
- 12.4 **Contract Price.** For electricity drawn by CEPALCO, LSEC shall charge a rate of PhP8.50/kWh, subject to adjustment according to the Feed-in Tariff (FIT) Rules;
- 12.5 **Prompt Payment Discount (PPD).** LSEC shall give CEPALCO a PPD of one percent (1%) for bills paid on or before the due date;
- 12.6 **Allowed Downtime.** CEPALCO shall allow LSEC a total of fifteen (15) days per year as Allowed Downtime to conduct the necessary Scheduled Maintenance and for Unscheduled Maintenance on its Plant, subject to the terms and conditions provided in Section 4.15 of the PSA;
- 12.7 **Interconnection to CEPALCO's Distribution Grid.** The cost of the interconnection to CEPALCO's distribution grid, including right-of-way acquisition shall be for the account of LSEC. The connection point will be at CEPALCO's 69 kV substation located in Opol, Misamis Oriental. The interconnection scheme detail is attached to the application as Annex "J" to form an integral part thereof;
- 12.8 **Excess Capacity/Right of First Refusal.** Whenever LSEC generates capacity, it grants CEPALCO the right of first refusal for the purchase of such excess capacity based on the contracted price, subject to the terms provided in Section 5.03 of the PSA; and

12.9 **Extensions.** The PSA may be renewed based on prevailing power needs, renewals or replacements of the plant facilities upon mutual consent of CEPALCO and LSEC;

**Commercial Advantage of the Proposed Generation Rate
 and Impact on CEPALCO's Overall Rates**

13. CEPALCO desires an adequate supply of peaking power at a reasonable rate, hence, it entered into the subject PSA with LSEC, capitalizing on the cheaper electricity rate that solar PV plants can offer;

14. The following table shows a comparison on the impact to the generation component of CEPALCO's retail rate, resulting from the inclusion and exclusion of LSEC's proposed rate:

Suppliers	Without LSEC			With LSEC			Rate Impact, PhP/kWh
	MWh	Cost, PhP'000	PhP/kWh	MWh	Cost, PhP'000	PhP/kWh	
Existing Suppliers	85,346	480,339	5.63	83,294	461,955	5.55	
LSEC	-	-	-	2,052	17,422	8.50	
Total	85,346	480,339	5.63	85,346	479,397	5.62	(0.01)

Assumptions:

- a. Generation costs, excluding fuel, of existing suppliers were based on actual, as-billed, cost for June 2015 billing period;
- b. Fuel costs are based on the forecasted price as of 2016 of Bunker-C Fuel at PhP25.80/liter and Lube Oil at PhP153.81/liter;
- c. Peso to US\$ Exchange rate at 45; and
- d. Cost of fossil-fuel based power suppliers (Diesel, Bunker-C and Coal) are inclusive of twelve percent (12%) value-added tax (VAT)

15. The foregoing illustrates that with the expected entry of LSEC as a new power provider for CEPALCO by November 2016, the latter's end-users can anticipate a reduction in the generation cost component of its retail rate. Such lower generation cost is achieved since LSEC, as compared to other power suppliers, can provide a cheaper peaking supply during day-time peak period;
16. Likewise, LSEC's 16 MW AC Liberty Solar Power Project will be embedded within CEPALCO's distribution system, as such, it will effectively reduce its exposure to power delivery service cost levied by the National Grid Corporation of the Philippines (NGCP). The grant of a PPD under the PSA will also redound to the benefit of CEPALCO's customers;
17. To further support the instant application, they attached the following documents to form integral parts thereof:

Annex	Document
"K"	Executive Summary of the PSA
"L"	Comprehensive Data on Sources of Funds/Financial Plans (includes debt-equity ratio, capital costs and computation of Weighted Average Cost of Capital or WACC), Purchased Power Rates (includes operating cost, capital cost estimates and O&M cost estimates) and Cash Flow Projections
"M"	CEPALCO's Distribution Development Plan (DDP)
"N"	Application with the Department of Environment and Natural Resources (DENR) for the issuance of an Environmental Compliance Certificate (ECC)
"O"	LSEC's letter to the Department of Energy (DOE) for a Certification that its proposed Solar PV plant is consistent with the DOE's Philippine Development Plan (PDP)
"P"	Rate impact computation
"P-1"	Rate impact derivation showing the computation of generation charges of CEPALCO's suppliers
"Q"	CEPALCO's Average Daily Load Curve
"Q-1"	CEPALCO's Forecasted Load Curve (2016)
"R"	Plant Description of LSEC's 16 MW AC Solar Power Project

"S"	CEPALCO's Secretary's Certificate attesting to the resolution of its Board of Directors to authorize the execution of a PSA with LSEC, the filing of an application with the Commission for the approval of the PSA, the designation of representatives to effect the foregoing acts, and the representation by Diccion Law Firm as its counsel before the Commission
"T"	LSEC's Secretary's Certificate attesting to LSEC's Board Resolution authorizing the execution of a PSA with CEPALCO, the filing of an application with the Commission for the approval of the said PSA, the designation of LSEC's representatives to effect the foregoing and the engagement of the services of Diccion Law Firm as LSEC's counsel before the Commission

Compliance with the Pre-filing Requirements

18. They manifest compliance with the pre-filing requirements mandated under the *Implementing Rules and Regulations of the EPIRA* and *Rule 6 of the ERC Rules of Practice and Procedure*, as established by the following:
 - 18.1 Certifications acknowledging receipt of the application with annexes issued by the Legislative Bodies of Cagayan de Oro City and Makati City, appended as Annexes "U" and "V", respectively;
 - 18.2 Notarized Affidavit of Publication stating that the application was published in a newspaper of general circulation within their franchise area or area where they principally operate, appended as Annex "W"; and
 - 18.3 Complete newspaper issue where the application was published and the relevant page thereof where the said application appeared, appended as Annexes "X" and "X-1";

Issuance for Provisional Authority

19. All the foregoing allegations are re-pleaded by reference in support of the instant prayer for the issuance of provisional authority;
20. The basis of their prayer for the issuance provisional authority or interim relief prior to final Decision is *Rule 14* of the *ERC Rules of Practice and Procedure*, to wit:

“Section 3. Action on the Motion. – Motions for provisional authority or interim relief may be acted upon with or without hearing. The Commission shall act on the motion on the basis of the allegations of the application or petition and supporting documents and other evidences that applicant or petitioner has submitted and the comments or opposition filed by any interested person, if there be any.” [Emphasis ours];

21. Due to the inability of PSALM to supply the growing power requirements of CEPALCO's customers, it is noteworthy to look for other suppliers to secure reliable and continuous supply of power;
22. The urgent need for additional power suppliers is in line with the directive of the DOE to address the power deficit in Mindanao. Hence, LSEC's entry as such is necessary to ensure uninterrupted power supply, thereby minimizing the effects of power shortages;
23. Meantime, the judicious and opportune commissioning of the 16 MW AC Liberty Solar Power Project and the eventual delivery of power generated therefrom depend greatly on continuous project construction and uninterrupted financing. Seventy percent (70%) of the total project cost will be funded from long term loan secured by LSEC from the banks/financial institutions which require, among others, a provisionally approved PSA to effect financial close. Thus, the Commission's provisional approval is benevolently sought to ensure timely Financial Closing. As such, the first financial drawdown will be timely set and the uninterrupted project

construction is ensured, allowing LSEC to achieve its target commercial operations date by 2016;

24. Further, to emphasize the necessity of a provisional approval of the application, a judicial affidavit to support the prayer for provisional authority is attached to the application as Annex "Y" to form an integral part thereof;
25. In light of the foregoing and in recognition of the fact that a substantial amount of time is customarily needed to evaluate the documents submitted to support the approval of the application, they beseech the kind indulgence of the Commission to approve the instant application, immediately, albeit, provisionally, at the soonest opportune time; and

Prayer

26. Thus, they pray that the Commission: a) pending hearing on the merits, a provisional authority be duly issued authorizing the immediate implementation of the subject PSA, including the rate structure therein, as applied; b) after due notice and hearing, the application, the PSA and the rate structure contained therein be duly approved; and c) in the event that a final authority shall be issued after LSEC starts actual delivery of power to CEPALCO under the terms of the subject PSA, said final authority be retroactively applied to the date of such actual delivery.

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 21, 2015 (Wednesday) at nine o'clock in the morning (9:00 A.M.) at CEPALCO's Conference Room, 33 Toribio Chaves Street, Cagayan de Oro City.**

CEPALCO and LSEC 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 CEPALCO'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 Office of the Governor of the Province of Misamis Oriental and the Offices of the Mayors of the City and Municipalities within CEPALCO's franchise area for the appropriate posting thereof on their respective bulletin boards.

CEPALCO and LSEC 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, CEPALCO and LSEC must submit to the Commission their written Compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidence on the actual posting and publication of the Notice of Public Hearing consisting of certifications issued to that effect, signed by the aforementioned 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 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.

CEPALCO and LSEC 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 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 CEPALCO and LSEC 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.

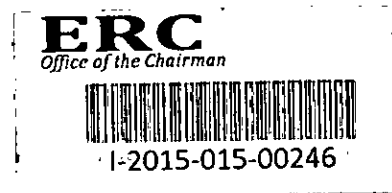
As part of the pre-trial conference, CEPALCO and LSEC must also be prepared to make an expository presentation of their application, aided by whatever communication medium that they may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the customers and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

SO ORDERED.

Pasig City, September 8, 2015.

FOR AND BY AUTHORITY OF
THE COMMISSION:


JOSE VICENTE B. SALAZAR
Chairman



Copy Furnished:

1. **Diccion Law Firm**
Counsel for CEPALCO and LSEC
Unit 1912 Jollibee Plaza Building,
Emerald Avenue, Pasig City
2. **Cagayan Electric Power and Light Co., Inc. (CEPALCO)**
33 Toribio Chaves St., Cagayan de Oro City
3. **Liberty Solar Energy Corporation (LSEC)**
6th Floor, Twin Cities Building, 110 Legaspi St.,
Legaspi Village, Makati City
4. **Office of the Solicitor General (OSG)**
134 Amorsolo Street, Legaspi Village, Makati City
5. **Commission on Audit (COA)**
Commonwealth Avenue, Quezon City
6. **Senate Committee on Energy**
GSIS Bldg., Roxas Boulevard, Pasay City
7. **House Committee on Energy**
Batasan Hills, Quezon City
8. **Office of the City Mayor**
Cagayan de Oro City, Misamis Oriental
9. **Office of the Municipal Mayor**
Jasaan, Misamis Oriental
10. **Office of the Municipal Mayor**
Tagoloan, Misamis Oriental
11. **Office of the Municipal Mayor**
Villanueva, Misamis Oriental
12. **Office of the Provincial Governor**
Province of Misamis Oriental
13. **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