

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 KIRAHON TWO SOLAR
ENERGY CORPORATION
(KTEC), WITH PRAYER FOR
THE ISSUANCE OF
PROVISIONAL AUTHORITY

ERC CASE NO. 2015-152 RC

CAGAYAN ELECTRIC POWER
AND LIGHT COMPANY,
INCOPORATED (CEPALCO)
AND KIRAHON TWO ENERGY
CORPORATION (KTEC),
Applicants.

DOCKETED
Date: SEP 18 2015
By: [Signature]

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ORDER

On August 11, 2015, Cagayan Electric Power and Light Company, Incorporated (CEPALCO) and Kirahon Two Energy Corporation (KTEC) 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 KTEC 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. KTEC is a domestic corporation with office address at Minergy Business Park, PHIVIDEC Industrial Estate, Iligan-Cagayan de Oro-Butuan Road, Sitio Kirahon, Barangay San Martin, Villanueva, Misamis Oriental. It is engaged in the business of developing renewable energy resources such as solar photovoltaic power, and in the construction and operation of solar-electric generating plants. 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 26, 2015, they entered into a twenty-five (25)-year PSA for the purchase and sale of electricity generated by the 10 MW AC Kirahon Solar Power Project Phase Two. 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. Based on historical data, CEPALCO's energy demand grows at an average of five percent (5%) per year. Starting 2015, its projects a substantial addition to its demand requirement due to a number of commercial and industrial customers who applied for service connection;

6. By 2016, or the year when KTEC is expected to commence commercial operations, CEPALCO projects that with its existing suppliers, it is able to satisfy only eighty-five percent (85%)¹ of its peak demand. 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) confirmed in its letter dated August 20, 2014 that it has no additional capacity to provide for CEPALCO's increased energy requirements on top of its existing contracted demand under its Contract for the Supply of Electric Energy (CSEE), which was then set to expire on March 25, 2015. A copy of the said letter is attached to the application as Annex "H" to form an integral part thereof;
8. Thus, there is an urgent need for CEPALCO to enter into a new PSA for its peak power requirements starting year 2016;
9. CEPALCO's peak power requirements are currently being supplied from generating facilities that run on either bunker-C or diesel fuel, which require high generation costs. In its selection of a new power provider, CEPALCO endeavored to mitigate its generation costs by displacing some of the generation of bunker/diesel power plants, particularly during day-time peak, with cheaper supply from solar PV power plants;
10. KTEC 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 net capacity of 10 MW AC to supply the former's electric power requirements beginning 2016. KTEC's parent company, Solar Pacific Energy Corporation, has a proven track record and real direct experience in completing projects within CEPALCO's distribution system. A narrative on the factors considered by CEPALCO in

¹ Assuming without supply from KTEC

selecting a new power provider is, likewise, attached to the application as Annex "I" to form an integral part thereof;

11. On June 26, 2015, after a judicious evaluation of KTEC's offer, taking into account the advantages thereof, CEPALCO executed the subject PSA with KTEC, which will supply its peaking requirement for a period of twenty-five (25) years from the 10 MW AC Kirahon Solar Power Project Phase Two;

Abstract of the PSA and Other Related Information

12. The following are the salient features of the PSA:
 - 12.1 **Plant Description.** KTEC shall finance, develop, construct, test, commission, own, operate and maintain a Solar Photovoltaic (PV) Electric Power Generation Facility with 10 MW AC net installed capacity or a gross installed capacity of 12.5 MW DC, located within the franchise area of CEPALCO, particularly, in Villanueva, Misamis Oriental. The Technical Details of the Project is attached to the application as Annex "J" to form an integral part thereof;
 - 12.2 **Cooperation Period.** CEPALCO shall receive from KTEC 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 June 30, 2016.

The Parties may, by mutual consent, renew the PSA based on prevailing power needs, renewals or replacements of the plant facilities. Further, the PSA shall become effective only upon the date of Financial Close pursuant to Section 4.17 of the PSA;

- 12.3 **Energy Delivery.** KTEC guarantees to deliver 18,000,000 kWh of electricity to CEPALCO for the first year of operations, while for each year thereafter, it guarantees to deliver ninety-nine

percent (99%) of the energy for the previous year, pursuant to Section 2.02 of the PSA.

KTEC guarantees that during any 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;

12.4 Contract Price. For electricity drawn by CEPALCO, KTEC shall charge a rate of PhP8.75/kWh, subject to adjustment every twelve (12) months from commencement of operations, according to the Feed-in Tariff (FIT) Rules;

12.5 Prompt Payment Discount (PPD). KTEC shall give CEPALCO a PPD of one percent (1%) for bills paid on or before the due date;

12.6 Must-Take as Available Plant/Declared Capacity. They agree that the Plant is a Must-Take as Available Plant, hence, has no minimum off-take. Accordingly, KTEC shall not be obligated to ensure the dependable availability of the Declared Capacity per month at all times;

12.7 Interconnection to CEPALCO's Distribution Grid. The cost of the interconnection to CEPALCO grid shall be for the account of KTEC. The Plant will be connected to the 69 kV sub-transmission system of CEPALCO through Kirahon 69 kV Switchyard at Kirahon, Villanueva, Misamis Oriental. The details of the interconnection is attached to the application as Annex "K" to form an integral part thereof;

12.8 Allowed Downtime. KTEC is allowed a total of fifteen (15) days per year as Allowed Downtime to conduct the necessary Scheduled Maintenance and for Unscheduled Maintenance on its Plant. Unspent Allowed Downtime shall be carried-over, provided that, it is not more than ten (10) days per year and not more than fifteen (15) accumulated days; and

12.9 **Expansion.** They may, by mutual consent, increase the net installed generating capacity of the Plant up to a maximum of 20.0 MW AC, provided that, the Energy Fee for such additional capacity shall not exceed the Commission-approved Energy Fee in the PSA. The contract term for any such additional capacity shall be for a period of twenty-five (25) years from the start of commercial operations;

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

13. CEPALCO entered into the subject PSA with KTEC, in its bid to lessen the cost of peaking power by displacing some of its day-time peak supply from diesel plants with cheaper electricity from solar PV plants;
14. With KTEC's expected supply beginning June 2016, the end-users within CEPALCO's franchise area can expect a reduction in the generation cost component of its retail rate. Compared to other power suppliers, KTEC can provide cheaper peaking supply during day-time peak period. The table below shows a comparison of the generation cost component of CEPALCO's retail rate in two scenarios, i.e., with and without supply from KTEC:

Suppliers	Without KTEC			With KTEC			Rate Impact, PhP/kWh
	MWh	Cost, PhP'000	PhP/kWh	MWh	Cost, PhP'000	PhP/kWh	
Existing Suppliers	95,634	512,007	5.35	94,358	499,889	5.30	
KTEC	-	-	-	1,276	11,165	8.75	
Total	95,634	512,007	5.35	95,634	511,054	5.34	(0.0100)

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; and
- c. Peso to US\$ Exchange rate at 45

15. Further, KTEC's 10 MW AC Kirahon Solar Power Project Phase Two will be embedded to the distribution system of CEPALCO, thereby avoiding any additional power delivery service cost imposed by the National Grid Corporation of the Philippines (NGCP). KTEC's grant of a PPD under the provisions of the PSA will also redound to the benefit of CEPALCO's customers;

Compliance with the Pre-filing Requirements

16. 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:

16.1 Certifications acknowledging receipt of the application with annexes issued by the Legislative Bodies of Cagayan de Oro City, Municipality of Villanueva and the Province of Misamis Oriental, appended as Annexes "L", "M" and "N", respectively;

16.2 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 "O"; and

16.3 Complete newspaper issue where the application was published and the relevant page thereof where the said application appeared, appended as Annexes "O" and "O-1";

17. In support of the application for approval of the PSA, they further attached the following documents to form integral parts thereof:

Annex	Document
"P"	CEPALCO's Average Daily Load Curves and Forecasted Load Curve
"Q"	Rate Impact Derivation

"R"	Executive Summary of the PSA
"S"	Comprehensive Data on Sources of Funds/Financial Plans [includes debt-equity ratio, capital costs and computation of Internal Rate of Return (IRR)/Weighted Average Cost of Capital (WACC)], Purchased Power Rates (includes breakdown of base prices – Capacity Fee, O&M Fee, Energy Fee) and Cash Flow Projections
"T"	CEPALCO's Distribution Development Plan (DDP)
"U"	KTEC's Application with the Department of Environment and Natural Resources (DENR) for the issuance of an Environmental Compliance Certificate (ECC)
"V"	KTEC'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)
"W"	CEPALCO's Secretary's Certificate attesting to the resolution of its Board of Directors to authorize the execution of a PSA with KTEC, the filing of an application with the Commission for 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
"X"	KTEC's Secretary's Certificate attesting to the resolution of its Board of Directors authorizing the execution of a PSA with CEPALCO, the filing of an application with the Commission for approval of said PSA, the designation of KTEC's authorized representatives to effect the foregoing, and the engagement of the services of Diccion Law Firm as KTEC's counsel before the Commission

Issuance for Provisional Authority

18. All the foregoing are re-pleaded by reference in support of the instant prayer for the issuance of provisional authority;

19. The basis by which they 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];

20. At present, due to limited supply of electricity available to CEPALCO while the demand of its customers increases yearly, there is a necessity to secure additional supply through a bilateral contract, such as the subject PSA, following NPC-PSALM's confirmation that it has no available capacity to satisfy its peak load requirement in 2015 and base load requirement starting 2016 and onwards²;
21. However, while the PSA entered into by CEPALCO with KTEC will enable the former to address its power needs, particularly, its peak requirements, the same shall only become effective upon the date of Financial Close, consistent with Section 4.17 of the said PSA;
22. The banks/financial institutions that will provide a large portion of the funds to cover the capital costs of KTEC's 10 MW AC Kirahon Solar Power Project Phase Two, require at least the Commission's provisional approval of the PSA, among other conditions precedent to Financial Closing. Hence, a provisional authority from the Commission is imperative for the PSA to take effect;
23. Further, other than marking the effectivity of the PSA, a timely Financial Close would also ensure uninterrupted project construction since seventy percent (70%) of

² Annex "H" of the application

KTEC's capital costs will be funded by loans from said banks/financial institution. The continuous financing and construction of the project will, in turn, ensure that KTEC can achieve its target commercial operations date by 2016, to the benefit of CEPALCO's customers in terms of sufficient and reliable power supply;

24. 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 view thereof, 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 seek the kind consideration 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 KTEC 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 23, 2015 (Friday) 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 KTEC 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 KTEC 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 KTEC 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 KTEC 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 KTEC 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 KTEC 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


r/m/CEPALCO&KTEC/PSA/2015-152RC/initial order

ERC
Office of the Chairman


I-2015-015-00382

Copy Furnished:

1. **Diccion Law Firm**
Counsel for CEPALCO and KTEC
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. **Kirahon Two Energy Corporation (KTEC)**
Minergy Business Park, PHIVIDEC Industrial Estate,
Iligan-Cagayan de Oro-Butuan Road, Sitio Kirahon,
Barangay San Martin, Villanueva, Misamis Oriental
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