

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,
INCORPORATED (CEPALCO)
AND MINERGY POWER
CORPORATION (MPC), WITH
PRAYER FOR PROVISIONAL
AUTHORITY**

ERC CASE NO. 2015-138 RC

**CAGAYAN ELECTRIC POWER
AND LIGHT COMPANY,
INCORPORATED (CEPALCO)
AND MINERGY POWER
CORPORATION (MPC),
Applicants.**

X ----- X

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

ORDER

On July 22, 2015, Cagayan Electric Power and Light Company, Incorporated (CEPALCO) and Minergy Power Corporation (MPC) filed an application for approval of their Power Supply Agreement (PSA), with prayer for provisional authority.

In the said application, CEPALCO and MPC 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. MPC is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at Mandangoa, Balingasag, Misamis Oriental. It is engaged in the business of constructing, operating and maintaining power plants, among others. Copies of relevant documents showing its due incorporation, registration and permit to operate as a generation company are, likewise, attached to the application to form integral parts thereof:

Annex	Document
"B"	Amended Articles of Incorporation
"C"	Amended By-Laws
"D"	General Information Sheet (GIS) for year 2015
"E"	Certificate of Registration with the Bureau of Investments (BOI)
"F"	Environmental Compliance Certificate (ECC) from the Department of Environment and Natural Resources (DENR)

3. On October 9, 2014, CEPALCO and MPC (formerly, Minergy Coal Corporation) executed a PSA for the provision of 50 MW additional capacity to CEPALCO. A copy of the said PSA is attached to the application as Annex "G" 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. On May 20, 2013, CEPALCO executed a twenty-five (25)-year Power Supply Agreement (1st PSA) with MPC after evaluating the latter's offer as the least cost among the prospective suppliers capable of delivering power within its franchise area;

6. Meanwhile, CEPALCO's Contract for the Supply of Electric Energy (CSEE) with the National Power Corporation – Power Sector Assets and Liabilities Management Corporation (NPC-PSALM), which supplied about ninety percent (90%) of its power requirements, was then set to expire in March 2015, while its peak demand grows at an average rate of five percent (5%) per annum;
7. CEPALCO sought to source its additional power requirements from NPC-PSALM but the latter informed it that there is no available capacity to supply its increased energy requirements on top of the contracted demand under the CSEE. Thus, NPC-PSALM has no available capacity to supply CEPALCO's additional peak load requirement in 2015 and base load requirement starting 2016 and onwards. A copy of NPC-PSALM's letter dated August 20, 2014 is, likewise, attached as Annex "H" to form an integral part thereof;
8. Based on projections of available supply from CEPALCO's existing suppliers vis-à-vis its forecasted capacity requirements due to additional incoming loads and upon the expiration of its CSEE with NPC-PSALM, the power situation within its franchise area will be problematic due to insufficient supply starting 2015. Copies of its Supply-Demand Scenario, Historical Growth in Peak Demand and List of Incoming Loads are appended as Annexes "I" and series to form integral parts thereof;
9. Thus, there is an urgent need for CEPALCO to augment its power supply beyond the year 2015. As early as March 2014, it has been negotiating with MPC for the delivery of additional power within its franchise area to avert any power interruptions that could result from shortage of energy;
10. On October 9, 2014, they executed the subject PSA, providing the terms and conditions for the installation of an additional coal-fired generating plant at Barangay Mandangoa, Balingasag, Misamis Oriental (the Plant) and the supply of electricity by MPC, to assure the adequate provision of power to CEPALCO's franchise area;

**Salient Features of the PSA
and Other Related Information**

11. The following are the salient features of the PSA:
- 11.1 **Cooperation Period.** CEPALCO shall receive from MPC and the latter shall deliver electricity to it for a period of twenty-five (25) years to commence from the start of Commercial Operation;
- 11.2 **Commercial Operation.** Commercial Operation shall start after all of the following conditions shall have been satisfied:
- a. Approval by the Commission of the subject PSA;
 - b. The Commission's issuance of the Certificate of Compliance (COC) to MPC;
 - c. MPC's written communication to CEPALCO informing that the Plant has been completed, inspected and duly tested and commissioned; and
 - d. CEPALCO's issuance of Certificate of Acceptance certifying MPC's compliance with the requirements specified in Schedules 2 and 3 of the PSA, hence, is cleared to proceed with Commercial Operation;
- 11.3 **Energy Delivery.** During the Cooperation Period, MPC guarantees to deliver to CEPALCO 31,025 GWh (Minimum Energy Off-take or MEOT), per month, and 50 MW (Declared Capacity), per month, starting from the Commercial Operation of the Plant, provided that, during the testing and commissioning of the Plant, they agree that MPC shall deliver to CEPALCO and the latter accepts the energy generated during such testing and commissioning at a price equal to the weighted average generation cost of CEPALCO from its existing power suppliers;

- a. The Declared Capacity may be increased up to 110 MW power, upon expansion of the Plant and based on the power requirements of CEPALCO. The MEOT shall be increased pro rata based on such increase in Declared Capacity;

11.4 **Rates.** For the capacity drawn by CEPALCO from MPC, the latter shall charge it with a Capital Recovery Fee, O&M Fees and Energy Fee computed according to the following formula provided under Schedule 1 of the PSA:

- a. **Capital Recovery Fee (CRF)**

$$\text{CRF} = \text{CRR} \times \text{AKWH}$$

Where:

CRF = Capital Recovery Fee in PhP

CRR = Capital Recovery Rate in PhP/kWh

AKWH = Actual Delivered Energy in kWh

The Base Capital Recovery Rate (CRR_{BASE}) shall be at PhP3.000 per kWh, which shall be subject to review as provided under Section 5.1 of the PSA

If the Actual Delivered Energy is less than the MEOT, the AKWH shall be set equal to MEOT

To cover the effect of foreign exchange fluctuations to the Total Project Costs during construction, the CRR shall be subjected to a foreign exchange (FOREX) adjustment according to the formula:

$$\text{CRR}_{\text{COMM}} = \text{CRR}_{\text{BASE}} \times (\text{FOREX}_{\text{WTD}} / \text{FOREX}_{\text{BASE}})$$

Where:

CRR_{COMM} = the CRR effective and fixed throughout the Cooperation Period

CRR_{BASE} = the CRR based on the FOREX of PhP45/US\$
= PhP3.000/kWh

$FOREX_{WTD}$ = the average PhP to the US Dollar FOREX during the construction period, weighted according to the actual EPC cost disbursements

$FOREX_{BASE}$ = PhP45/USD

b. Operation and Maintenance (O&M) Fee

The O&M Fee shall be composed of: (i) Fixed Peso O&M Fee, which shall recover the fixed local costs components of the O&M costs; (ii) Variable Peso O&M Fee, which shall recover the variable local costs components of the O&M costs; and (iii) Variable Dollar O&M Fee, which shall recover the variable dollar-denominated components of the O&M costs:

(i) Fixed Peso O&M Fee (FPOMF)

$FPOMF = FPOMR \times AKWH$

Where:

$FPOMF$ = Fixed O&M Fee in Philippine Peso

$FPOMR$ = Fixed Peso O&M Rate in PhP/kWh

AKWH = Actual Delivered Energy in kWh

The Base Fixed Peso O&M Rate, $FPOMR_{BASE}$, is **PhP0.4575 per kWh** and shall be escalated corresponding to the changes in the Philippine Consumer Price Index (PCPI) according to formula:

$$FPOMR = FPOMR_{BASE} \times (PCPI_{CURRENT}/PCPI_{BASE})$$

Where:

$PCPI_{CURRENT}$ = the Philippine CPI for the current month as published by the National Statistics Office (NSO) in its website, www.census.gov.ph

$PCPI_{BASE}$ = 140.90 (as of October 2014)

If the Actual Delivered Energy is less than the MEOT, the AKWH shall be set equal to MEOT

(ii) **Variable Peso O&M Fee (VPOMF)**

$$VPOMF = VPOMR \times AKWH$$

Where:

VPOMF = Variable Peso O&M Fee in Philippine Peso

VPOMR = Variable Peso O&M Rate in PhP/kWh

AKWH = Actual Delivered Energy in kWh

The Base Peso O&M Rate, $POMR_{BASE}$, is **PhP0.1790 per kWh** and shall be escalated corresponding to the changes in the Philippine Consumer Price Index (PCPI) according to formula:

$$POMR = POMR_{BASE} \times (PCPI_{CURRENT}/PCPI_{BASE})$$

Where:

$PCPI_{CURRENT}$ = the Philippine CPI for the current month as published by the NSO in its website, www.census.gov.ph

$PCPI_{BASE}$ = 140.90 (as of October 2014)

(iii) **Variable Dollar O&M Fee (VDMF)**

$$VDMF = VDOMR \times AKWH$$

Where:

VDMF = Variable Dollar O&M Fee in Philippine Peso

VDOMR = Variable Dollar O&M Rate in PhP/kWh

AKWH = Actual Delivered Energy in kWh

The Base Variable Dollar O&M Rate, $DOMR_{BASE}$, is **PhP0.1635 per kWh** and shall be escalated corresponding to the changes in the United States (US) CPI of the Philippines and adjusted for the changes in the exchange rate of the Philippine Peso against the US Dollar, according to the formula:

$$\text{VDMR} = \text{VDMR}_{\text{BASE}} \times (\text{FOREX}_{\text{CURRENT}}/\text{FOREX}_{\text{BASE}}) \\ \times (\text{USCPI}_{\text{CURRENT}}/\text{USCPI}_{\text{BASE}})$$

Where:

$\text{FOREX}_{\text{CURRENT}}$ = the Average Philippine Peso to US Dollar exchange rate as published by the *Bangko Sentral ng Pilipinas* (BSP) in its website, www.bsp.gov.ph

$\text{FOREX}_{\text{BASE}}$ = PhP45/USD

$\text{USCPI}_{\text{CURRENT}}$ = the current US CPI as published by the US Bureau of Labor Statistics (USBLS) in its website, www.bls.gov

$\text{USCPI}_{\text{BASE}}$ = 237.43 (as of October 2014)

c. **Energy Fee (EF)**

The EF shall be a pass through cost and shall comprise of: (i) Coal FOB and transport and related costs; (ii) startup charges; and (iii) limestone allowance. The Total Energy Fee is the sum of (i), (ii) and (iii):

(i) **Coal Component (CC)**

$$\text{CC} = \text{FR} \times \text{AKWH}$$

Where:

AKWH = Actual energy delivered in kWh

FR = Fuel Rate
 = $\frac{[(CFP + CTC)/1000]}{\text{Consumption Rate}} \times \text{FOREX}_{\text{CURRENT}}$

CFP = Actual Coal Purchase Price (FOB Source) in USD/MT

CTC = Actual Coal Transport Costs to Site in USD/MT Consumption

Rate = the Plant Average Coal Consumption, in kg/kWh, or 0.60 kg/kWh, whichever is lower; the ceiling of 0.60 kg/kWh shall be escalated at an annual rate of one percent (1%)

$\text{FOREX}_{\text{CURRENT}}$ = the Philippine Peso to US Dollar exchange rate effective at the time of purchase

(ii) **Startup Charges**

Particulars	Cold Start	Hot Start
Duration (h)	5	3
Diesel Consumption Per Hour (L/h)	3,100	3,100
Diesel Consumption Per Start (L)	15,500	9,300
Estimated Number of Starts per Year	6	3
Annual Consumption	93,000	27,900
Estimated Annual Cost at PhP35/L	3,255,000	976,500

(iii) **Limestone Allowance.** Actual Consumption with a maximum of 1MT/hour. Estimated cost of Limestone is PhP1,500.00/MT;

- d. **Ancillary and Distribution Connection Service-related Charges.** Charges related to the conveyance of the electricity generated by the Plant as may be imposed by the Transmission and/or Distribution System Operator to MPC, including but not limited to distribution wheeling and ancillary services charges, shall be a full pass-through cost to CEPALCO;

- e. **Guaranteed Heat Rate and Fuel Consumption Rate.** MPC shall ensure that the Plant Consumption Rate shall not exceed the cap of 0.60 kg/kWh, which will be escalated at a rate of one percent (1%) per year and a guaranteed heat rate of 2,735 kcal/kWh. Any fuel consumption above the cap shall be for the account of MPC; and

- f. **Allowed Downtime.** MPC shall be allowed an aggregate of fifty-four (54) days per unit per year of scheduled and unscheduled downtime (Allowed Downtime) for which MPC is excused from its obligation to deliver electricity under the pricing terms of the PSA. If MPC exceeds the fifty-four (54) days Allowed Downtime for the current year, it shall be allowed to utilize the unused Planned Maintenance accumulated for the prior year. CEPALCO shall allow MPC an additional Allowed Downtime of thirty (30) days per unit every five (5) years of operations for the major overhaul on the plant major equipment;

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

- 12. CEPALCO needs to address any insufficiency in its power supply due to the expiration of its CSEE with NPC-PSALM and the growing demand within its franchise area;

13. Additional power supply from MPC's coal-fired generating plant would aid in augmenting supply to address the increasing demand within CEPALCO's franchise area, with provision of stable and adequate electricity;
14. The implementation of the PSA will be beneficial in lowering the total cost of power for CEPALCO to an estimated PhP6.3267/kWh compared to a total power cost of about PhP6.4623/kWh without the additional supply from MPC, or resulting in a total reduction of power cost amounting to an estimated PhP0.1356/kWh. A copy of CEPALCO's Rate Impact Computation is attached to the application as Annex "J" to form an integral part thereof;
15. In addition, CEPALCO will have lower generation cost since it will not have to pay the Power Delivery Service (PDS) charge of the National Grid Corporation of the Philippines (NGCP) for power sourced from MPC's power plant, which is embedded to the CEPALCO's distribution system;
16. Meantime, in compliance with *Rule 20 of ERC Rules of Practice and Procedure* relative to the submission of supporting documents and information for approval of the PSA and the rate structure embodied therein, they, likewise, attached the following documents to the application to form integral parts thereof:

Annex	Document
"K"	Description of the Power Plant
"L"	The Department of Energy's (DOE) Certificate of Endorsement for MPC's Power Plant
"M"	CEPALCO's List of Current Suppliers
"N"	MPC's 2014 Audited Financial Statement (AFS)
"O"	CEPALCO's 2015 Distribution Development Plan (DDP)
"P"	Executive Summary of the PSA
"Q"	Sources of Funds/Financial Plans indicating Total Project Cost, Debt-Equity Ratio, Project Internal Rate of Return (IRR) and Equity IRR
"R"	Terms and Conditions of Loan per Term Sheet from Bank/Lending Institutions
"S"	Breakdown of the Purchase Power Rate/Base Prices

"T"	Sample Computation of Power Rates
"U"	Cash Flow (Initial Costs, Breakdown of O&M Expenses and MEOT)
"V"	CEPALCO's Secretary's Certificate attesting to the resolution of its Board of Directors to enter into the subject PSA with MPC designating signatories thereto, to file an application with the Commission for approval of the PSA, and to engage the services of Diccion Law Firm
"W"	MPC's Secretary's Certificate attesting to the resolution of the Board to execute the subject PSA with CEPALCO designating signatories thereto, to file an application with the Commission for approval of the PSA, and to engage the services of Diccion Law Firm

17. They are reserving their right to submit other documents, either in the course of the hearing or as may be required by the Commission;

Compliance with 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, Municipality of Balingasag, and the Province of Misamis Oriental, appended as Annexes "X", "Y" and "Z", respectively;
 - 18.2 Notarized Affidavit of Publication stating that the application was published in a newspaper of general circulation within CEPALCO's franchise area, appended as Annex "AA"; and
 - 18.3 Complete newspaper issue where the application was published and the relevant page thereof where the said application appeared, appended as Annexes "AA-1" and "AA-2");

Prayer for Provisional Authority

19. All the foregoing allegations are re-pleaded by reference in support of their prayer for the issuance of provisional authority to implement the subject PSA;
20. They pray for the issuance of a provisional authority or interim relief prior to final Decision pursuant to *Rule 15* 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.”;

21. The CSEE between CEPALCO and NPC-PSALM, which supplied ninety percent (90%) of the former's power requirements, expired on March 25, 2015. Meanwhile, the steady growth of CEPALCO's peak demand cannot be sufficiently addressed by its existing contracted supply only. Additional supply from MPC is, indeed, needed to ensure continuous and uninterrupted power supply to CEPALCO's franchise area;
22. However, the timely commercial operations of MPC's Plant and the consequent delivery of power to CEPALCO depend greatly on uninterrupted financing and project construction. MPC will source a substantial portion of the funds to be used in the construction of the Plant from long term loans from banks/financial institutions, which require at least a provisional authority/rate from the Commission to effect financial closing;
23. To further support the prayer for provisional authority, a judicial affidavit emphasizing the necessity thereof is attached to the application as Annex "BB" to form an integral part thereof;

24. 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 seek the kind consideration of the Commission to approve the instant application, immediately, albeit, provisionally, at the soonest opportune time; and

Prayer

25. 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 MPC 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 22, 2015 (Thursday) 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 MPC 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 MPC 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 MPC 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 MPC 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 MPC 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.

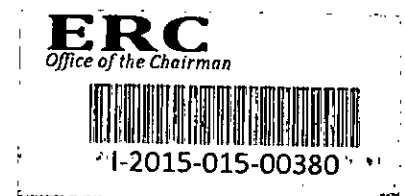
As part of the pre-trial conference, CEPALCO and MPC must also be prepared to make an expository presentation of their application, aided by whatever communication medium that they may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the customers and other 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 MPC
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. **Minergy Power Corporation (MPC)**
Mandangao, Balingasag, 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