

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 FIRST
BUKIDNON ELECTRIC
COOPERATIVE, INC.
(FIBECO) AND BUKIDNON
POWER CORPORATON
(BPC) WITH MOTION FOR
ISSUANCE OF
PROVISIONAL AUTHORITY,**

ERC CASE NO. 2015-194 RC

**FIRST BUKIDNON
ELECTRIC COOPERATIVE,
INC. (FIBECO) AND
BUKIDNON POWER
CORPORATION (BPC),**

D O C K E T E D
Date: MAR 17 2016
By: [Signature]

Applicants.

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ORDER

On 6 November 2015, First Bukidnon Electric Cooperative, Inc. (FIBECO) and Bukidnon Power Corporation (BPC) filed an Application for approval of their Electricity Supply Agreement (ESA), with prayer for provisional authority.

In the said application, FIBECO and BPC alleged, among others, that:

THE APPLICANTS

1. FIBECO is a non-stock, non-profit electric cooperative, organized and existing under and by virtue of Presidential Decree No. 269, as amended, otherwise known as the National Electrification Administration Decree, with principal office address

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at Anahawon, Maramag, Bukidnon. It operates an electric light and power distribution service in the municipalities of Don Carlos, Kalilangan, Kibawe, Kitaotao, Maramag, Pangantucan, San Fernando, Quezon, Danggagan, Damulog, Kadingilan, and the City of Valencia, all in the Province of Bukidnon, and the municipality of Wao in the Province of Lanao del Sur. Copies of FIBECO's Certificate of Franchise, and Articles of Incorporation and By-Laws are attached as Annexes "A" and "B", respectively.

2. BPC is a stock corporation duly organized and existing under the laws of the Republic of the Philippines with principal address at National Highway, Barangay Barandias, Municipality of Pangantucan, Province of Bukidnon. Copies of BPC's Certificate of Registration, Amended Articles of Incorporation and By-Laws and latest General Information Sheet are attached as Annexes "C," "D" and "E," respectively.

BPC is joining FIBECO as co-applicant in this case for the approval of the terms and conditions provided in the Power Supply Agreement dated 24 July 2015 ("PSA") between BPC and FIBECO.

3. FIBECO and BPC may be served with pleadings, papers, notices and other processes through their respective counsels at the addresses indicated below.

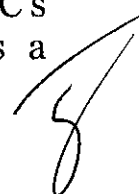
NATURE OF THE APPLICATION

4. Pursuant to Rule 20 (B) of this Honorable Commission's Rules of Practice and Procedure ("ERC Rules"), and other pertinent rules and regulations, this Application is being submitted to this Honorable Commission for its due consideration and approval of the PSA executed by and between FIBECO and BPC. A copy of the PSA is attached as Annex "F".



STATEMENT OF THE FACTS

5. FIBECO currently sources the bulk of its electricity requirements from the Power Sector Assets & Liabilities Management Corporation (“PSALM”) and the remainder from King Energy Generation, Inc. (“KEGI”), Crystal Sugar Company, Inc. (“CSCI”), and BPC’s Barandias Power Plant.
 - a. On August 26, 2005, PSALM and FIBECO executed a Contract for the Supply of Electric Energy (“CSEE”) to be in force for a period of ten (10) years. The CSEE has already expired last August 26, 2015. However, the projected renewal is below 36% of existing contracted energy for contract year 2016 to 2018. PSALM has also confirmed that it has insufficient capacity to supply the additional power requirements of the Mindanao distribution utilities beyond the contracted energy and equivalent demand in its existing CSEEs.
 - b. To avoid power curtailment, FIBECO entered into (a) a power supply agreement with KEGI for 3 MW for a term of ten (10) years from 2011-2021, and (b) a non-firm power supply agreement with CSCI for an average power of 4 MW from 6 September 2010 until such time that CSCI’s facility becomes a FIT-eligible renewable energy plant.
 - c. On 16 October 2014, FIBECO also entered into a Power Supply Agreement with BPC, for the supply of 4.4 MW from BPC’s 2x2.4 MW Fuel Power Plant located at Barangay Barandias, Pangantucan, Bukidnon (“Barandias Power Plant”), for a term of fifteen (15) years counted from the Closing Date of the said Power Supply Agreement. On 3 August 2015, this Honorable Commission granted the parties’ prayer for provisional authority to implement the said Agreement.
6. FIBECO’s load requirements at present is, on average, 31.54 MW on a monthly basis. With 24 MW supplied by the PSALM, KEGI, CSCI, BPC’s Barandias Power Plant, FIBECO currently has a



supply deficiency of 4 MW to 6 MW on a monthly basis resulting in rotating brown-outs in FIBECO's franchise area. This deficiency in supply persists in the entire island of Mindanao and has been recognized by the Department of Energy ("DOE"), prompting the DOE to issue various department circulars to address the critical supply situation in Mindanao including DC2010-03-0003 and DC2012-03-0004 which calls for distribution utilities to ensure that the power requirements within their franchise areas are adequately covered by supply contracts.

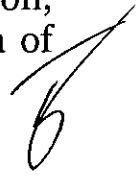
7. In addition to the supply deficiency to meet the current demand in FIBECO's franchise area, the energy requirement of FIBECO customers is expected to increase in the next few years as demonstrated by FIBECO's Actual and Forecasted Load Data and Distribution Development Plan, copies of which are attached as Annexes "G" and "H", respectively.
8. The expiration of the PSALM CSEE in 2015 and the projected 36% decrease of existing contracted energy for contract year 2016 to 2018, coupled with the projected increase in the energy requirements of FIBECO customers are expected to intensify this existing shortage of the energy available to FIBECO's customers.
9. The current power crisis in Mindanao underscores the need for FIBECO to enter into a bilateral agreement with generation companies with other sources of power to augment its supply.
10. Cognizant of the impending shortfall, FIBECO again negotiated with BPC to supply 2 MW of capacity now to be sourced from BPC's 2.5MW Fuel Power Plant located at Barangay Mabuhay, San Fernando, Bukidnon ("Mabuhay Power Plant").
11. The execution of the PSA subject of the present application between FIBECO and BPC is attractive to FIBECO for the following reasons:
 - a) BPC is committed to construct Mabuhay Power Plant;



- b) The Facility will address the impending energy shortage faced by FIBECO and its Franchise Area brought about by the expiration of the PSALM CSEE and the expected increase in the energy requirements of FIBECO's customers; and
 - c) BPC has committed to build the Mabuhay Power Plant in the shortest possible period and, in fact, has already ordered the diesel engine generators for the said facility from its supplier.
12. On 24 July 2015, FIBECO and BPC signed and executed the PSA subject of the instant Application. A copy of the Board Resolution attesting to the authority of FIBECO and its authorized representatives to enter into the PSA with BPC is attached as Annex "I".

**ABSTRACT OF THE POWER SUPPLY AGREEMENT
AND OTHER RELEVANT INFORMATION**

13. In order to supply power to FIBECO under the PSA, BPC shall construct, own, operate, manage and maintain the Mabuhay Power Plant.
14. Salient Features of the PSA. The PSA between FIBECO and BPC contains the following salient terms and conditions:
- a) Term. The PSA has a term or contract period of fifteen (15) years commencing from Closing Date, automatically renewable for another fifteen (15) years, unless written notice is served by the duly authorized representative of one party to the other not later than ninety (90) days prior to the expiration of the Term. The Term shall likewise be extended, day for day, for the duration of any Force Majeure Event.
 - b) The Closing Date shall be on 15 April 2016 or on such date after 15 April 2016 when BPC issues a waiver, or in its sole discretion, provide a grace period for, the satisfaction of



the following conditions: (a) receipt by BPC of a certificate executed by the corporate secretary of FIBECO attesting that the Board of Directors of FIBECO has adopted resolutions: (i) authorizing FIBECO to execute, enter into, deliver the PSA and the performance of its obligations thereunder, and (ii) designating the person authorized to execute the PSA on behalf of FIBECO; (b) FIBECO's submission of the Security Deposit to BPC.

c) All of such conditions precedent have either been achieved or are in the process of being finalized except for the provisional or final approval by this Honorable Commission of the PSA.

d) Contract Energy. BPC offers all electricity generated exclusively to FIBECO and FIBECO shall take and pay for all electricity generated by the Mabuhay Power Plant. The Mabuhay Power Plant is expected to produce up to 2500kW.

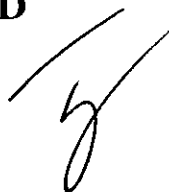
e) Commercial Operations. During the term of this Agreement, fees for each Billing Period shall be calculated using a fixed rate as indicated below. The Contract Energy Fee (CEF) for every month is projected to be 5.4834Php/Kwh subject to the escalation factors.

A. Electricity Rates

Capacity Fee (CF) = Php 804/kw/month
Fixed O&M (FOM) = Php 418/kw/month
Variable O&M Fee (VOM)= Php 1.049/kWh
Billing Capacity (BC) = 2,000 kW

B. Contract Energy Fee per Month

**CEF=(CF C)+(FOMxIFfxBC)+(VOMxIFvxED)+
FLxED**



Where:

BC = Billing Capacity in kW
CEF = Contract Energy Fee in Php
CF = Capacity Fee in Php/kW/Month
ED = Energy Delivered in kWh
FOM = Fixed O&M fee in Php/kW/month
FL = Fuel and Lube Oil
IFf = Inflation Factor Fixed
IFv = Inflation Factor Variable
VOM = Variable Charge per Month in Php/kW

C. Computation of Power Purchased

GENSET INPUT

General Terminal Output at site conditions (kW/unit)
= 2,000
Generator Total Output at site condition in kW
= 2,500
Heat Rate 1/kWh = 0.26

PLANT OPERATION OUTPUT


Capacity Factor = 100%
Hours/Day = 6
Days/year = 350
Total = 2100 Hrs.
Average Demand kW = 2,000kW
Energy Consumption per Year kWh/yr
= 4,200,000
Energy Consumption per Month kWh/month
= 350,000

CONTRACT ENERGY FEES

CEF =
 $CF \times BC + (FOM \times IFf \times BC) + (VOM \times IFv \times ED) + (FL \times ED)$

Capacity Fee (CF) = 804 Php/kW/month
= Php 1,607,899 per month
= Php 4.594 per kWh

Billing Capacity (BC) = 2,000 kW



Fixed O&M (FOM) = 418 Php/kW/month
 = Php 835,173 per month
 = Php 2.386 per kWh

Inflation Factor Fixed
 (IFf) = 1
 Variable O&M (VOM) = 1.0489 Php/kWh
 = Php 367,128 per month
 = Php 1.049 per kWh

Inflation Factor Variable (IFv) = 1

Energy Delivered = 350,000 kWh

Total Contract Energy Fee¹ = Php 2,810,200 per month
 = Php 8.0291 per kWh

15. **Rate Implication.** An analysis was conducted to determine the impact of the implementation of the PSA on FIBECO's generation costs when the Mabuhay Power Plant commences commercial operation in 2016 vis-à-vis FIBECO procuring power from other sources. A detailed discussion of the rate impact analysis is attached as Annex "J", summary of which is illustrated in the following table:

	With BPC	Without BPC	Difference
Year	Php/kWh	Php/kWh	Php/kWh
Oct., 2015	5.0651		
2016	6.7186	6.4628	0.2558
2017	6.8479	6.7167	0.1312
2018	6.7620	6.5666	0.1954
2019	6.7616	6.5767	0.1850
2020	6.7201	6.5448	0.1753
2021	6.9329	6.7666	0.1663
2022	6.8633	6.7053	0.1580
2023	6.7991	6.6489	0.1502

¹ Excluding fuel cost. Fuel and lube oil cost is passed on to consumers.

Average increase in generation rates with BPC:Php 0.1772

Assumptions:

- FIBECO NPC/PSALM TSC expired on August 2015, and the projected renewal is below 36% of existing contracted energy for contract year 2016 to 2018.

- Average Rate Impact is Computed based on Forecasted Sales for the Period

- Contract Cost with Existing suppliers are considered

- All existing Contracts are considered in the computation

- The rate being computed is the Generation Mix rate only

16. The benefits that will redound to FIBECO's consumers are immediate and tangible due to the significant decrease in rotating brownouts in the Franchise Area, which will improve the living conditions of residential customers and bolster the local economy as well as attract additional investments in the area.

17. In support of the instant Application, the Applicants are providing the Honorable Commission with the following documents, in addition to the Annexes specified above:

Description of Document	Annex
BPC's Sources of Funds/Financial Plans	K
Summary of BPC's Project Cost	L
BPC's cash flow	M
Basis for purchased power rate	N
Soft copy of financial model of project	O
BPC's Fuel Supply Agreement	P
Technical Description of the Plant	Q
BPC Environmental Compliance Certificate	R
Sworn Statement of Procurement Process	S

notice of PSALM's EPIRA-mandated efforts to privatize the assets of the National Power Corporation ("NPC") in Mindanao, including the ongoing privatization activity for the Mt. Apo geothermal facilities, which are providing significant capacities to NPC and the privatization of which is expected to accelerate the reduction of PSALM's supply to FIBECO under the CSEE.

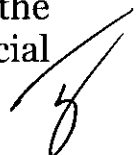
- c) Continuing demand growth. As illustrated in its Distribution Development Plan, FIBECO is expecting a growth in the total demand of its end-users so that, coupled with insufficiency of the PSALM capacity, there is a wide supply gap that urgently needs to be filled. Without the PSA with BPC, FIBECO will be incapable of satisfying the electricity requirements of its end-users who must be forced to suffer brownouts resulting from the curtailment of FIBECO.
21. In view of the foregoing, the Applicants respectfully request the Honorable Commission for the provisional approval of the PSA so that the obligation of BPC to supply energy under the Agreement may commence, which will enable the PSA to achieve Commercial Operation Date within 2015 when FIBECO's supply gap becomes critical. This will minimize and possibly avoid the power interruptions which have caused irreversible losses upon the economic productivity within FIBECO's franchise area. An Affidavit in support of the prayer for the issuance of Provisional Authority is attached hereto as Annex "T".
22. Furthermore, considering that under Article 8 of the PSA, each party undertook to keep in strict confidence and not disclose to any third party the terms or conditions of the PSA and all confidential Information of the other party, the Applicants have agreed which information, in particular, they deem sensitive considering that these documents contain certain non-public information, data and calculations involving business operations and



18. Certificate of Compliance (“COC”). Pursuant to ERC Resolution No. 9, series of 2010, BPC shall file the necessary application for a COC no later than three (3) months prior to the commencement of commercial operations.
19. DOE Certificate of Endorsement. BPC is in the process of securing a Certificate of Endorsement from the DOE and undertakes to provide the Honorable Commission and interested intervenors with a copy of the same during the course of the hearing on the instant Application.

**MOTIONS FOR PROVISIONAL AUTHORITY
AND CONFIDENTIAL TREATMENT OF
INFORMATION**

20. The Applicants move for the issuance of a provisional approval of the PSA pending trial on the merits thereof, upon the following reasons:
 - a) Mindanao power crisis. The power shortage in Mindanao has remained a critical problem for FIBECO which continues to suffer rotating brownouts. A bilateral agreement, such as the PSA, will significantly aid FIBECO in minimizing or even eliminating the rotating brownouts in its franchise area, which has had a debilitating impact upon the local economy. The PSA is also among the measures taken by FIBECO to comply with the DOE’s directives under DC2010-03-0003 and DC2012-03-0004 which calls for distribution utilities to ensure that the power requirements within their franchise areas are adequately covered by supply contracts.
 - b) Insufficiency of PSALM supply. The insufficient capacity under the PSALM CSEE makes imperative an additional influx of bilateral supply to answer for the supply deficiency, lest FIBECO be compelled to resort to the unpredictable and expectedly higher prices in the IMEM or, worse, be curtailed for insufficient contracted capacity. The Applicants respectfully request the Honorable Commission to take official



financial trade secrets reflecting BPC's investment and business strategy.

23. Thus, for the foregoing reasons, pursuant to Rule 4 of the ERC Rules, which provides that this Honorable Commission may, upon request of a party and determination of the existence of conditions that warrant such remedy, treat certain information submitted to it as confidential, Applicants respectfully move that Annexes "K", "L", "M", "N", "O" and "P" not be disclosed and be treated as confidential documents in accordance with Rule 4 of the ERC Rules.
24. The Applicants hereby submits one (1) copy of Annexes "K", "L", "M", "N", "O" and "P" in a sealed envelope, with the envelope and each page of the documents stamped with the word "Confidential".

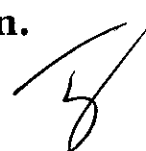
PRAYER

WHEREFORE, in view of all the foregoing, it is most respectfully prayed that this Honorable Commission:

- a. Issue an Order treating Annexes "K", "L", "M", "N", "O" and "P" and the information contained therein as confidential and directing their non-disclosure pursuant to Rule 4 of the ERC Rules of Practice and Procedure as well as prescribing guidelines for the protection thereof;
- b. Pending trial on the merits, provisionally approve the PSA; and
- c. After trial on the merits, approve, with finality, the Power Supply Agreement dated 24 July 2015 between FIBECO and BPC.

Other reliefs just and equitable are likewise prayed for.

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 **12 April 2016 (Tuesday) at ten o'clock in the morning (10:00 A.M.) at FIBECO's Principal Office, Anahawon, Maramag, Bukidnon.**



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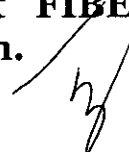
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FIBECO and BPC are hereby directed to cause the publication of the attached Notice of Public Hearing, at their own expense, twice (2x) for two (2) successive weeks in two (2) newspapers of general circulation in the Philippines, with the date of the 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 FIBECO's franchise area, by any other means available and appropriate, of the filing of the instant Application, their reasons therefor, and of the scheduled hearing thereon.

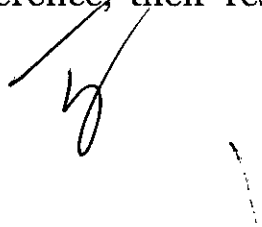
Let copies of the Application, this Order and the attached Notice of Public Hearing be furnished the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress. They are hereby requested, if they so desire, to send their duly authorized representatives at the scheduled hearing.

Likewise, let copies of this Order and the attached Notice of Public Hearing be furnished the Offices of the Governor of the Province of Bukidnon and the Offices of the Mayors of the Cities and Municipalities within FIBECO's franchise area for the appropriate posting thereof on their respective bulletin boards.

FIBECO and BPC 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, FIBECO and BPC 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.

FIBECO and BPC 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:



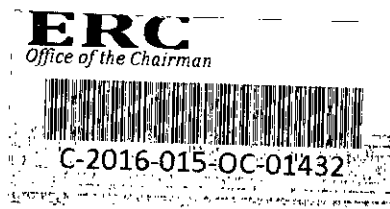
- a) A summary of admitted facts and proposed stipulation of facts;
- b) The issues to be tried or resolved;
- c) The documents or exhibits to be presented, stating the purposes and proposed markings therefore; and
- d) The number and names of the witnesses, with their written testimonies in an individual affidavit form, to be attached to the Pre-trial Brief.

Failure of FIBECO and BPC 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, FIBECO and BPC 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.

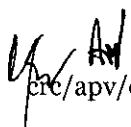
SO ORDERED.

Pasig City, 11 March 2016.



FOR AND BY AUTHORITY OF
THE COMMISSION:


JOSE VICENTE B. SALAZAR
Chairman


erc/apv/ord.2015-194 RC-FIBECO-BPC/PSA

Copy Furnished:

1. **PUYAT JACINTO & SANTOS**
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Hidalgo cor. Plaza Drive
Rockwell Center, Makati City 1200
2. **Atty. Arnido O. Inumberable**
405 Elisa St. U.E. Village, Cainta
Rizal 1900
3. **First Bukidnon Electric Cooperative, Inc.**
(FIBECO)
Anahawon, Maramag, Bukidnon
4. **Bukidnon Power Corporation (BPC)**
National Highway, Barangay Barandias
Municipality of Pangantucan
Bukidnon
5. **Office of the Solicitor General (OSG)**
134 Amorsolo Street, Legaspi Village, Makati City
6. **Commission on Audit (COA)**
Commonwealth Avenue, Quezon City
7. **Senate Committee on Energy**
GSIS Bldg., Roxas Boulevard, Pasay City
8. **House Committee on Energy**
Batasan Hills, Quezon City
9. **Office of the City Mayor**
Valencia City, Bukidnon
10. **Office of the Municipal Mayor**
Don Carlos, Bukidnon
11. **Office of the Municipal Mayor**
Kalilangan, Bukidnon
12. **Office of the Municipal Mayor**
Kibawe, Bukidnon
13. **Office of the Municipal Mayor**
Kitaotao, Bukidnon



- 14. Office of the Municipal Mayor**
Maramag, Bukidnon
- 15. Office of the Municipal Mayor**
Pangantucan, Bukidnon
- 16. Office of the Municipal Mayor**
San Fernando, Bukidnon
- 17. Office of the Municipal Mayor**
Quezon, Bukidnon
- 18. Office of the Municipal Mayor**
Dangcagan, Bukidnon
- 19. Office of the Municipal Mayor**
Damulog, Bukidnon
- 20. Office of the Municipal Mayor**
Kadingilan, Bukidnon
- 21. Office of the Provincial Governor**
Province of Bukidnon
- 22. Office of the Municipal Mayor**
Wao, Lanao del Sur
- 23. Office of the Provincial Governor**
Province of Lanao del Sur
- 24. 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

