

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



**IN THE MATTER OF THE
APPLICATION FOR
APPROVAL OF
APPLICANT'S (1) BUSINESS
SEPARATION AND
UNBUNDLING PLAN (BSUP)
AND (2) ACCOUNTING COST
ALLOCATION MANUAL
(ACAM) IN COMPLIANCE
WITH REPUBLIC ACT NO.
9136 AND ITS
IMPLEMENTING RULES
AND REGULATIONS**

ERC CASE NO. 2017-010 MC

**BAC-MAN GEOTHERMAL
INC. (BGI),**

Applicant.

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DOCKETED
Date: APR 24 2018
By: M

ORDER

On 22 June 2017, an *Application* dated 21 June 2017 was filed by applicant Bac-Man Geothermal Inc. (BGI) seeking the Commission's approval of its Business Separation and Unbundling Plan (BSUP) and Accounting Cost Allocation Manual (ACAM) in compliance with Republic Act No. 9136 and its implementing rules and regulations.

BGI alleged the following in its Application:

1. The Applicant is a corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at One Corporate Centre, Julia Vargas Avenue corner Meralco Avenue, Ortigas Center, Pasig City 1605, where it may be served with summons and other legal processes.

2. BGI is a wholly-owned subsidiary of EDC Geothermal Corporation, which is in turn wholly-owned by Energy Development Corporation ("EDC"). BGI is in the business of power generation, owning and operating the 140-MW Bacon-Manito Geothermal Power Plant located in the Provinces of Albay and Sorsogon.

Handwritten initials/signature

3. On February 14, 2017, the Honorable Commission issued to BGI a Retail Electricity Supplier's ("RES") License, with RES License No. RES-02-2017-004 authorizing the corporation to engage in the retail electricity supply business.

4. Section 36 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (the "EPIRA", for brevity), and Rule 10 of the Implementing Rules and Regulations ("IRR") of the EPIRA, require Electric Power Industry Participants to structurally and functionally unbundle their business activities.

Accordingly, Rule 10, Section 3(b) of the IRR requires the submission of a Business Separation and Unbundling Plan ("BSUP") for approval by the Honorable Commission. Accordingly, the Honorable Commission issued ERC Resolution No. 49, Series of 2006 which promulgated the guidelines for business separation and structural and functional unbundling of the business activities of Electric Power Industry Participants, otherwise known as the ERC Business Separation Guidelines ("BSG"), as amended.

5. In compliance with the aforesaid provisions of the EPIRA and the IRR, as well as the ERC Business Separation Guidelines, as amended, Applicant proposes to adopt, and hereby applies for approval, of its BSUP, which is attached hereto as Annex "A", and its Accounting and Cost Allocation Manual ("ACAM"), which is attached hereto as Annex "B".

6. BGI's proposed BSUP is composed of the following sections:

- I. Introduction
- II. Details of Current Structure
- III. Details of Business Segments
- IV. Description of Separation
- V. Milestones and Highlights
- VI. Programs for Code of Conduct
- VII. Other Information

Salient Features of the BSUP

Current Structure

BGI is a wholly-owned subsidiary of EDC Geothermal Corporation which, in turn, is wholly-owned by EDC. The Company is registered with the Securities and Exchange Commission ("SEC") since 07 April 2010 with Company Registration No. CS201005556. Its principal office is located at One Corporate Centre, Ortigas Center, Pasig City.

The Company is mainly in the business of generating electric power from geothermal energy resources. It is now also venturing into retail electricity supply after obtaining a RES License from the ERC on 14 February 2017.

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Business Segments

Generation Business Segment

BGI operates the 140-MW Bac-Man Geothermal Power Plants located in Manito, Albay and Sorsogon City, Sorsogon on the strength of a 25-year Geothermal Operating Contract with the Department of Energy ("DOE", under GOC No. 2012-04-027, issued on 8 May 2012) and a Certificate of Compliance from the ERC (with COC No. 16-03-M-00286jL, issued on 1 March 2016 and valid until October 20, 2020).

Supply Services Business Segment

With the advent of the Retail Competition and Open Access ("RCOA") which aims to empower customers in choosing their source of electricity, BGI is participating in the retail electricity supply business to directly provide clean and renewable energy and offer innovative solutions beyond traditional power supply contracts to contestable customers. The Company secured its RES License (License No. RES-02-2017-004) from the ERC on 14 February 2017.

Description of Separation

As of the filing of this application, BGI remains a single entity and shall be unbundled mainly through the separation of power plant operations and retail electricity services business segments. Separation shall be undertaken through evaluation of functions, job descriptions, qualifications, workloads, and usage in the case of fixed assets. Operating units shall be allocated to the appropriate business segment. However, for units with unattributable costs, allocation factors shall be utilized as prescribed in the ACAM.

Milestone and Highlights

BGI shall prioritize the following activities within one (1) year from the approval of the BSUP:

Activity	Time Frame	Highlights/Target Output
Finalize RES business organization	6-12 months	Management approval of: <ul style="list-style-type: none"> • Table of Organization • Staffing
Set up accounting and business-to-business communications and transactions systems	6-12 months	Fully operational accounting and B2B systems
Register as a Direct WESM Member (RES Category)	3 months	Direct WESM Membership
Secure Distribution Wheeling Services	3-6 months	Negotiations for DWSAs with at least three (3) distribution

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Agreements with target distribution utilities		utilities
Develop programs for Code of Conduct	1-3 months	<ul style="list-style-type: none"> • Drafting of Corporate Compliance Policy and Internal Guidelines & Procedures • Management approval
Develop and execute Power Procurement and Marketing Plans	2-3 months	<ul style="list-style-type: none"> • Retail Supply Contracts • Bilateral Contracts (for power to be sourced from non-affiliate GenCos)

Programs for Code of Conduct

It is a business principle of BGI to conduct its activities with the highest standard of ethical conduct and in compliance with all applicable laws and regulations, notably the Code of Conduct for Competitive Retail Market Participants and Competition Rules and Complaint Procedure as promulgated by the ERC.

The Company is cognizant of the objectives of the Code, particularly in: 1) protecting consumers and promoting consumer confidence in retail electricity through the establishment of standards of behavior for marketing electricity; and 2) promoting honesty, fairness, and transparency in the disclosure of information to customers. Toward these ends, BGI shall undertake these initiatives within one (1) year from the approval of the Plan:

- a) Promulgate a Corporate Compliance Policy;
- b) Develop internal guidelines and procedures to operationalize the provisions of Article II (Responsibilities and Conduct of Competitive Retail Market Participants) of the Code; and
- c) Orient and capacitate BGI officers and staff on the Corporate Compliance Policy and on the ensuing internal guidelines and processes.

7. BGI's proposed ACAM compiles the guidelines, policies, and procedures of BGI with the intent of ensuring uniformity and consistency in the implementation and/or preparation of such guidelines, policies and procedures for Accounting Separation Statements in accordance with the BSG.

The Manual includes the following:

- a) Allocation methodologies used to allocate expenses to and between Business Segments; and
- b) Allocation methodologies used to allocate assets, liabilities and capital to and between Business Segments.

8. In support of the instant application, Applicant most respectfully submits to the Honorable Commission, the following documents:

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ANNEX	NATURE OF DOCUMENTS
A	Business Separation and Unbundling Plan (BSUP)
B	Accounting and Cost Allocation Manual (ACAM)
	OTHER DOCUMENTS
C	SEC Certificate of Incorporation and Amended Articles of Incorporation
D	Latest General Information Sheet
E	2016 Audited Financial Statements
F	Retail Electricity Supplier's License (RES-02-2017-004)
G	RES Information Sheet (RES Form 2)
H	2017 Business Permit - Pasig City
I	2017 Mayor's Permit - Municipality of Manito, Albay
J	2017 Mayor's Permit - Sorsogon City, Sorsogon
K	BGI-RES Technical and Managerial Requirements
L	BGI-RES Five-Year Business Plan
M	Affidavit - Compliance with Articles II, III, IV of the ERC Business Separation Guidelines
N	Affidavit - Compliance with Article V of the ERC Business Separation Guidelines and Section 5, Article II of the Revised RES License Rules
O	Undertaking - Compliance with Code of Conduct for Competitive Retail Market Participants
P	Secretary's Certificate - Board Resolution No. 7, S. 2015

PRAYER

WHEREFORE, Applicant respectfully prays that after due notice and hearing, BGI's Business Separation and Unbundling Plan ("BSUP") and Accounting and Cost Allocation Manual ("ACAM") be approved accordingly.

Applicant likewise prays for such other and further relief as may be deemed just and equitable under the premises.

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 determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on **16 May 2018 at two o'clock in the afternoon (2:00 P.M.), at the ERC Hearing Room, 15th Floor, Pacific Center Building, San Miguel Avenue, Pasig City.**

Accordingly, BGI is hereby directed to:

- 1) Cause the publication of the attached Notice of Public Hearing once (1x) in a newspaper of nationwide circulation in the Philippines at its own expense, the date of the publication to be made not later than ten (10) days before the scheduled initial hearing;

- 2) Furnish with copies of this Order and the attached Notice of Public Hearing the Offices of the Provincial Governor, City Mayor, and the Local Government Unit (LGU) legislative bodies within the franchise area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform of the filing of the Application, its reasons therefor, and of the scheduled hearing thereon, the consumers within the affected franchise area, by any other means available and appropriate;
- 4) Furnish with copies of this Order and the attached Notice of Public Hearing, 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; and
- 5) Furnish with copies of the Application and its attachments all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing, Applicant must submit to the Commission its written compliance with the aforementioned jurisdictional requirements attaching therewith, methodically arranged and duly marked the following:

- 1) The evidence of publication of the attached Notice of Public Hearing consisting of affidavit of the Editor or Business Manager of the newspaper where the said Notice of Public Hearing was published, and the complete issue of the said newspaper;
- 2) The evidence of actual posting of this Order and the attached Notice of Public Hearing consisting of certifications issued to that effect, signed by the aforementioned Governors, Mayors, and LGU legislative bodies or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by Applicant to inform of the filing of the Application, its reasons therefore, and of the scheduled hearing thereon, the consumers within the affected franchise area;

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- 4) The evidence of receipt of copies of this Order and the attached Notice of Public Hearing by the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress;
- 5) The evidence of receipt of copies of the Application and its attachments by all those making requests therefor, if any; and
- 6) Such other proofs of compliance with the requirements of the Commission.

Applicant and all interested parties are also required to submit, at least five (5) days before the date of the initial hearing and Pre-trial Conference, their respective Pre-trial Briefs containing, among others:

- 1) A summary of admitted facts and proposed stipulation of facts;
- 2) The issues to be tried or resolved;
- 3) The documents or exhibits to be presented, stating the purposes and proposed markings therefore; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-trial Brief.

Failure of Applicant to comply with the above requirements 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 the said date of cancellation.

(Intentionally left blank)

BGI must also be prepared to make an expository presentation of the instant Application, aided by whatever communication medium that it may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties, what the Application is all about and the reasons and justifications being cited in support thereof.

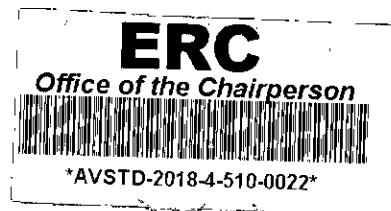
SO ORDERED.

Pasig City, 21 March 2018.

FOR AND BY AUTHORITY
OF THE COMMISSION:


AGNES VST DEVANADERA
Chairperson and CEO


LS:SLAN/KFB/APV



COPY FURNISHED:

1. Bac-Man Geothermal Inc. (BGI)
Applicant
One Corporate Centre, Julia Vargas Avenue corner Meralco Avenue,
Ortigas Center, Pasig City 1605
2. Atty. Miguel K. Mathay and Atty. Gianna Maria C. Comsti
Counsel for Applicant BGI
QUIASON MAKALINTAL BAROT TORRES IBARRA & SISON
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1605 Ortigas Center, Pasig City
3. Office of the Mayor
City of Pasig
4. Office of the LGU legislative body
City of Pasig
5. Office of the Mayor
Manito, Albay
6. Office of the LGU legislative body
Manito, Albay
7. Office of the Governor
Province of Albay
8. Office of the LGU legislative body
Province of Albay
9. Office of the Mayor
City of Sorsogon

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10. Office of the LGU legislative body
City of Sorsogon
11. Office of the Governor
Province of Sorsogon
12. Office of the LGU legislative body
Province of Sorsogon
13. Office of the Solicitor General
134 Amorsolo Street, Legaspi Village, Makati City
14. Commission on Audit (COA)
Commonwealth Avenue, Quezon City
15. Senate Committee on Energy
GSIS Bldg. Roxas Blvd., Pasay City
16. House Committee on Energy
Batasan Hills, Quezon City
17. 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
18. Regulatory Operations Service (ROS)
[Tariffs and Rates Division (TRD)]
17th Floor, Pacific Center Bldg., San Miguel Avenue, Pasig City

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