

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 CO., INC., (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 CO., INC.,
(CEPALCO) AND KIRAHON
TWO SOLAR ENERGY
CORPORATION (KTEC),
Applicants.**

D O C K E T E D
Date: APR 25 2018
By: [Signature]

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ORDER

On 12 August 2015, the applicants Cagayan Electric Power and Light Co., Inc. (CEPALCO) and Kirahon Two Solar Energy Corporation (KTEC) filed an *Application* dated 20 July 2015 for the approval of their Power Supply Agreement (PSA), with prayer for provisional authority.

In the said *Application*, CEPALCO and KTEC alleged the following:

Applicants **CAGAYAN ELECTRIC POWER AND LIGHT CO., INC. (CEPALCO)**, and **KIRAHON TWO ENERGY CORPORATION (KTEC)**, by and through the undersigned firm, unto this Honorable Commission, most respectfully aver: That –

1. Applicant CEPALCO is a privately-owned distribution utility, duly organized and existing under and by virtue of the laws of the Republic of the Philippines. Its principal office address is at Masterson Avenue, Upper Balulang, Cagayan De Oro City.

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It is a grantee of a legislative franchise to operate and maintain an electric distribution system for the end-users in the City of Cagayan De Oro and the Municipalities of Tagoloan, Villanueva, and Jasaan, all in Misamis Oriental. A copy of Republic Act No. 9284 granting CEPALCO its franchise is herewith attached to form an integral part hereof as **Annex "A"**;

2. Applicant 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;
3. KTEC 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 KTEC's due incorporation and registration as a generation company are hereto attached to form integral parts hereof, as follows:

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

4. Applicants may be served with orders, notices, and other legal process of this Honorable Commission through the address of the undersigned Firm;
5. On 26 June 2015, CEPALCO and KTEC entered into a 25-year Power Supply Agreement (PSA) for the purchase and sale of electricity generated by the 10MW AC Kirahon Solar Power Project Phase Two. A copy of the PSA is herewith attached to form an integral part hereof as **Annex "F"**;
6. By and pursuant to *Sections 25, 43 (u) and 45 (b) of Republic Act No. 9136*, otherwise known as the *Electric Power Industry Reform Act of 2001 (EPIRA)* and its *Implementing Rules and Regulations*, the instant *Application* is submitted to the Honorable Commission for its due consideration and approval of the PSA executed by and between Applicants CEPALCO and KTEC;

I. STATEMENT OF FACTS

7. Based on historical data, CEPALCO's energy demand grows at an average of 5% per year. Starting 2015, CEPALCO projects a substantial addition to its demand requirement due to a number of commercial and industrial customers who applied for service connection;

8. 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 85%¹ of its peak demand. A copy of CEPALCO's Supply-Demand Scenario showing historical data for the period 2013-2014 and projections for the period 2015-2020 is herewith attached to form an integral part hereof as **Annex "G"**;
9. Meanwhile, the National Power Corporation - Power Sector Assets and Liabilities Management (NPC-PSALM) confirmed in a letter dated 20 August 2014 that it has no additional capacity to provide for CEPALCO's increased energy requirement on top of its existing contracted demand under its Contract for the Supply of Electric Energy (CSEE), which was then set to expire on 25 March 2015. A copy of NPC-PSALM's letter is herewith attached to form an integral part hereof as **Annex "H"**;
10. Thus, there is an urgent need for CEPALCO to enter into a new power supply agreement for its peak power requirements starting year 2016;
11. 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;
12. 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 10MW AC to supply CEPALCO'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 selecting a new power provider is herewith attached and made an integral part hereof as **Annex "I"**;
13. On 26 June 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 CEPALCO's peaking requirement for a period of twenty-five (25) years from its 10MW AC Kirahon Solar Power Project Phase Two.

¹ Assuming without supply from KTEC.

II. ABSTRACT OF THE PSA AND OTHER RELATED INFORMATION

14. The following are the salient features of the PSA:

A. **Plant Description.** KTEC shall finance, develop, construct, test, commission, own, operate and maintain a Solar Photovoltaic (PV) Electric Power Generation Facility with 10MW AC net installed capacity or a gross installed capacity of 12.5MW DC, located within the franchise area of CEPALCO, particularly in Villanueva, Misamis Oriental. The Technical Details of the Project is provided in herein **Annex "J"**, herewith attached to form an integral part hereof;

B. **Cooperation Period.** CEPALCO shall receive from KTEC and KTEC shall deliver to CEPALCO, electricity for a term of twenty-five (25) years from 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.

C. **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 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 75% of the Energy Expected Amount for the twelve (12) month period (Guaranteed Energy), as specified in Schedule 6 of the PSA.

D. **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.

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

F. **Must-Take as Available Plant/Declared Capacity.** CEPALCO and KTEC 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.

G. Interconnection to CEPALCO's Distribution Grid.

The cost of the interconnection to the 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 interconnection is provided in herein Annex "K", herewith attached to form an integral part hereof.

H. 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.

I. Expansion.

CEPALCO and KTEC may, by mutual consent, increase the net installed generating capacity of the Plant up to a maximum of 20.0MW AC, provided that the energy fee for such additional capacity shall not exceed the ERC-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.

III. COMMERCIAL ADVANTAGES OF THE PROPOSED CONTRACT PRICE AND IMPACT ON CEPALCO'S OVERALL RATES

15. 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;

16. 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 CEPALCO's 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, to wit:

Suppliers	Without KTEC			With KTEC			Rate Impact, P/kWh
	MWh	Cost, P'000	P/kWh	MWh	Cost, P'000	P/kWh	
1. Existing Suppliers	95,634	512,007	5.35	94,358	499,889	5.30	
2. KTEC Solar	-	-	-	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 of June 2015 billing period;

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- 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.

17. Further, KTEC's 10MW 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 Prompt Payment Discount under the provisions of the PSA will also redound to the benefit of CEPALCO's customers.

IV. COMPLIANCE WITH PRE-FILING REQUIREMENT

18. Applicants 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*, to be established by the following:

- a. Certifications acknowledging receipt of the *Application* with annexes to be issued by the Legislative Bodies of Cagayan de Oro City, Municipality of Villanueva, and the Province of Misamis Oriental, to be appended as **Annexes "L", "M" and "N"**, respectively;
- b. Notarized Affidavit of Publication stating that the *Application* was published in a newspaper of general circulation within Applicants' Franchise Area or area where it principally operates, to be appended herein as **Annex "O"**; and
- c. Complete newspaper issue where the *Application* was published, to be appended herein as **Annex "O-1"**, and the relevant page thereof where the *Application* appears, as **Annex "O-2"**;

19. In support of the instant *Application* for the approval of the PSA, Applicants further attach the following documents to form integral parts hereof, to wit:

ANNEX	DOCUMENTS
"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 IRR/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
"U"	KTEC's Application with the Department of Environment and Natural Resources (DENR) for the issuance of an Environmental Compliance Certificate (ECC)

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"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 ERC 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 ERC
"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 ERC for the 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 ERC

IV. ISSUANCE OF PROVISIONAL AUTHORITY

20. All the foregoing are herein repleaded by reference in support of the instant *Prayer* for the issuance of provisional authority;
21. The basis by which Applicants CEPALCO and KTEC pray for the issuance of a Provisional Authority or interim relief prior to final decision is *Rule 17* of the *ERC Rules of Practice and Procedure*:

"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]

22. 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 CEPALCO's peak load requirement in 2015 and base load requirement starting 2016 and onwards²;
23. However, while the subject PSA entered into by CEPALCO with KTEC will enable the former to address its power needs, particularly its peak requirements, the PSA shall only become effective upon the date of Financial Close, consistent with Section 4.17 of the PSA;
24. The banks/financial institutions that will provide a large portion of the funds to cover the capital costs of KTEC's 10MW AC Kirahon Solar Power Project Phase Two, require at

² Annex "H" hereof.

least the Honorable Commission's provisional approval of the PSA, among other conditions precedent to financial closing. Hence, a Provisional Authority from the Honorable Commission is imperative for the PSA to take effect;

25. Further, other than marking the effectivity of the PSA, a timely Financial Close would also ensure uninterrupted project construction since 70% of 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;
26. To emphasize the necessity of a provisional approval of herein *Application*, a Judicial Affidavit to support the prayer for provisional authority will be attached herewith to form an integral part hereof as **Annex "Y"**;
27. 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 herein *Application*, Applicants CEPALCO and KTEC respectfully seek the kind consideration of the Honorable Commission to approve the instant *Application*, immediately, albeit, provisionally, at the soonest opportune time.

PRAYER

WHEREFORE, premises considered, it is most respectfully prayed for of the Honorable Commission that pending hearing on the merits, a Provisional Authority be **DULY ISSUED** authorizing the immediate implementation of the subject *Power Supply Agreement* between Applicants CEPALCO and KTEC, including the rate structure therein, as applied; and that after due notice and hearing, the instant *Application*, the *Power Supply Agreement* and the rate structure contained therein be **DULY APPROVED**. Further, in the event that a Final Authority shall be issued after KTEC starts the actual delivery of power to CEPALCO under the terms of the subject PSA, said Final Authority shall be retroactively applied to the date of such actual delivery.

Other reliefs as may be just and equitable under the premises are, likewise, most respectfully prayed for.

An *Order* with attached *Notice of Public Hearing*, both dated 08 September 2015, was issued by the Commission setting the instant case for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on 23 October 2015.

However, on 07 October 2015, Applicants filed a *Motion to Reset Hearing* on the ground that their main witness is not available on 23 October 2015.

Thus, the Commission issued another *Order* with attached *Notice of Public Hearing*, both dated 21 October 2015, setting the case for hearing on 16 November 2015.

On 12 November 2015, CEPALCO and KTEC filed a *Manifestation with Motion* praying that the hearing scheduled on 16 November 2015 be reset on the ground that they will not be able to comply with the jurisdictional requirements, particularly the publication requirement, due to insufficiency of time from the date when the *Order* was received by their counsel.

The Commission, in its *Order* dated 13 November 2015, granted the said Motion of the Applicants and cancelled the hearing on 16 November 2015.

Now, therefore, the instant *Application* is set for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on **28 June 2018 at ten o'clock in the morning (10:00 A.M.), at CEPALCO's Main Office, Fr. Masterson Avenue, Upper Balulang, Cagayan de Oro City.**

Accordingly, CEPALCO and KTEC are hereby directed to:

- 1) Cause the publication of the attached Notice of Public Hearing in two (2) newspapers of nationwide circulation in the Philippines at their own expense, twice (2x) within two (2) successive weeks, the dates of publication not being less than seven (7) days apart, and the date of the last publication to be made not later than ten (10) days before the date of the scheduled initial hearing;
- 2) Furnish with copies of this Order and the attached Notice of Public Hearing the Offices of the Provincial Governor, the City and Municipal Mayors, and the Local Government Unit (LGU) legislative body within the affected franchise area for the appropriate posting thereof on their respective bulletin boards;

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- 3) Inform the consumers within the affected franchise area of the filing of the *Application*, its reasons therefor, and of the scheduled hearing thereon, 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, Applicants must submit to the Commission their 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 affidavits of the Editors or Business Managers of the newspapers where the said Notice of Public Hearing was published, and the complete issues of the said newspapers;
- 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 Governor, Mayors, and LGU legislative body or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by Applicants to inform the consumers within the affected franchise area of the filing of the *Application*, its reasons therefor, and of the scheduled hearing thereon;

- 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 proof of compliance with the requirements of the Commission.

Applicants 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 therefor; 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 Applicants 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.


CEPALCO and KTEC must also be prepared to make an expository presentation of the instant *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 consumers and other concerned parties, what the *Application* is all about and the reasons and justifications being cited in support thereof.

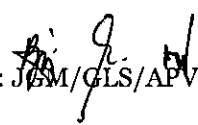
Considering that the instant *Application* has been set for hearing twice, and in both instances were deferred upon motion of the Applicants, CEPALCO and KTEC are hereby given a warning that their failure to appear on the 28 June 2018 hearing will be deemed a lack of interest on their part to proceed with the instant case, which may be a ground for its dismissal.

SO ORDERED.

Pasig City, 18 April 2018.

FOR AND BY AUTHORITY
OF THE COMMISSION:


AGNES VST DEVANADERA
Chairperson and CEO

LS: JSM/GLS/APV




COPY FURNISHED:

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Applicant
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Brgy. San Martin, Villanueva, Misamis Oriental
- Office of the Solicitor General**
134 Amorsolo Street, Legaspi Village, Makati City
- Commission on Audit**
Commonwealth Avenue, Quezon City
- Senate Committee on Energy**
GSIS Bldg. Roxas Blvd., Pasay City

7. **House Committee on Energy**
Batasan Hills, Quezon City
8. **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
9. **Office of the Governor**
Province of Misamis Oriental
10. **Local Government Unit (LGU) legislative body**
Province of Misamis Oriental
11. **Office of the City Mayor**
Cagayan de Oro, Misamis Oriental
12. **Office of the LGU legislative body**
Cagayan de Oro, Misamis Oriental
13. **Office of the Municipal Mayor**
Tagoloan, Misamis Oriental
14. **Office of the LGU legislative body**
Tagoloan, Misamis Oriental
15. **Office of the Municipal Mayor**
Villanueva, Misamis Oriental
16. **Office of the LGU legislative body**
Villanueva, Misamis Oriental
17. **Office of the Municipal Mayor**
Jasaan, Misamis Oriental
18. **Office of the LGU legislative body**
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