

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
BETWEEN FIRST BAY POWER
CORPORATION AND AP
RENEWABLES, INC.

ERC CASE NO. 2013-031 RC

FIRST BAY POWER
CORPORATION (FBPC) AND
APRI RENEWABLES, INC.
(APRI),

Applicants.

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DOCKETED
Date: SEP 03 2014
By: [Signature]

ORDER

On March 1, 2013, First Bay Power Corporation (FBPC) filed an application for the approval of its Power Supply Agreement (PSA) with AP Renewables, Inc. (APRI).

In the said application, FBPC alleged, among others, that:

1. It is a private distribution company duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at Kapitan Ponso Extension, Poblacion 2, Bauan, Batangas. It is the successor-in-interest of Bauan Electric Light System (BELS), which has been granted a franchise by the National Electrification Administration (NEA) to operate an electric system in the Municipality of Bauan in the Province of Batangas (Franchise Area). Copies of the Certificate of Franchise and the letter of NEA dated August 28, 2009 confirming the transfer of the franchise to FBPC are attached to the application as Annexes "A" and "B", respectively;

2. APRI is a generation company duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at 110 Legazpi Street, Legaspi Village, Makati City, Metro Manila;
3. APRI owns, operates and maintains the 747 megawatt (MW) TIWI and MAKBAN Geothermal Power Plants (Power Plants), located in Tiwi, Albay and Mount Makiling, Makban, Laguna, respectively. The Power Plants were awarded to APRI on May 26, 2009 under a competitive bidding process undertaken by the Private Sector Assets and Liabilities Management Corporation (PSALM) pursuant to Section 47 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA). Copies of the Environmental Compliance Certificates (ECCs) and Certificates of Compliance (COCs) issued to NPC for the operation of the Power Plants are attached to the application as Annexes "H", "I", and "J". The ECCs have been approved by the Department of Environment and Natural Resources (DENR) for transfer from NPC to APRI, as evidenced by the DENR letters of approval attached to the application as Annexes "K" and "L";
4. On November 24, 2009, it filed an application for approval of the Power Supply Agreement docketed as ERC Case No. 2009-169 RC. Said application was approved by the Commission on January 24, 2011;
5. In view of the expiration of the said PSA, FBPC invited various suppliers to propose and negotiate for power supply agreements. It engaged in discussion with four (4) suppliers to meet its minimum proposals of three (3) bidders for an application for a bilateral power supply contract. After deliberation and evaluation of terms, it has deemed that the offer of APRI is the most advantageous for its consumers, and therefore executed a new PSA on December 20, 2012;

6. It comes now to this Commission for the approval of the PSA, in compliance with the EPIRA and rules and guidelines issued by the Commission;

**ABSTRACT OF THE POWER SUPPLY AGREEMENT
AND RELATED INFORMATION**

7. **Executive Summary.** Under the PSA, APRI shall supply power to FBPC for a term of seven (7) years, from January 26, 2013 to January 25, 2020. The volume of Contract Energy¹ is fixed on a yearly basis, broken down into twelve (12) monthly Contract Energy nominations.

- a. **Term.** APRI shall supply and deliver power to FBPC from January 26, 2013 until January 25, 2020, subject to the satisfaction of the conditions precedent listed in Article 3.2 of the PSA, which include, among others, the approval of the instant application by the Commission. The parties may renew the PSA by a written agreement signed not later than thirty (30) days prior to the expiration of the PSA, provided that a written notice of a party's intent to renew is delivered not later than 6 months prior to the expiration of the PSA.

- b. **Power Supply.** For each Contract Year, APRI shall supply the following volume of energy:

Year	Minimum Contract Energy (kWh/Year)	Maximum Contract Energy (Kwh/Year)
2013	46,680,000	56,016,000
2014	49,330,000	59,196,000
2015	52,120,000	62,544,000
2016	55,040,000	66,048,000
2017	58,160,000	69,792,000
2018	61,420,000	73,704,000
2019	64,880,000	77,856,000
2020	68,510,000	82,212,000

¹ Capitalized terms not otherwise defined herein shall have the respective meanings ascribed to them in the PSA.

- 7.3 For a particular billing period, FBPC may request an adjustment to the Maximum Contract Energy or Minimum Contract Energy, subject to the approval of APRI and subject to the procedure prescribed in the PSA. Any proposed adjustment to the Maximum Contract Energy which shall apply to the succeeding Contract Year as a result of an increase or decrease in FBPC's energy requirements shall be negotiated in good faith. If the parties are not able to agree on the adjustment to the Maximum Contract Energy within the prescribed period under the PSA, the Contract Energy for the immediately preceding twelve (12) months shall be deemed the Maximum Contract Energy for the next succeeding twelve (12) months.

In case FBPC reduces its Minimum Contract Energy, FBPC shall pay APRI a buy-out charge in an amount equivalent to PhP2.50/kWh of the foregone Contract Energy for the remainder of the term of the PSA.

If FBPC at any point becomes a Direct WESM member, self-generates, or sources energy from an additional source and there is a resulting reduction in the Minimum Contract Energy, APRI shall fix FBPC's volume of Contract Energy based on APRI's projection on FBPC's monthly consumption for the remaining term of the PSA, based on the following: (a) average historical monthly consumption of FBPC for the past twelve (12) month period for existing consumers; or (b) projected monthly consumption of FBPC for the next twelve (12) month period for new customers. If FBPC consumes more than such fixed volume of Contract Energy, it shall pay the corresponding Additional Energy Charge for the excess energy consumed. If FBPC consumes less than the fixed volume of Contract Energy, it shall pay the Minimum Energy Charge.

7.4 **Purchased Power Rate.** The fees to be paid by FBPC for the purchase of power during the term of the PSA are broken down, as follows:

TIME-OF-USE RATES

INTERVAL	MON-SAT	SUN-HOL
1	3.6492	3.7574
2	3.6492	3.6492
3	3.6492	3.6492
4	3.6492	3.6492
5	3.6492	3.6492
6	3.6492	3.6492
7	3.6492	3.6492
8	3.8411	3.6492
9	5.9804	3.6492
10	6.4886	3.7574
11	6.4886	3.7574
12	6.4886	3.7574
13	6.4886	3.7574
14	6.4886	3.7574
15	6.4886	3.7574
16	6.4886	3.7574
17	6.1215	3.7574
18	6.1215	3.7574
19	6.4886	5.9804
20	6.4886	5.9804
21	6.1215	4.2711
22	4.2711	3.8411
23	3.8411	3.7574
24	3.7574	3.6492

Table 2: ENERGY-BASED FORMULA

$$\text{Electricity Fees} = \sum_{i=1}^{24} \text{Basic Energy Charge}_{i,j} * \text{Energy Delivered}_{i,j}$$

All computations on payments to Supplier shall not be rounded off, except for the final PHP amount, which shall be rounded off to the nearest Philippine centavo.

$$\text{Basic Energy Charge}_{i,j} = \left\{ \left[(0.85 * CF) + \left(0.15 * CF * \frac{FX_m}{FX_0} \right) + \left(OM * \frac{RPCPI_m}{RPCPI_0} \right) \right] * tf_{i,j} \right\} + \text{Fuel Costs}$$

Where:

CF = PhP2.0737/kWh

OM = PhP0.8121/kWh

FX₀ = the PHP/USD exchange rate of 42

RPCPI₀ = the Philippine Consumer Price Index for All Income Households in the Philippines. All Items (2006=100) of 127.8

$$\text{Fuel Costs} = \text{Base Fuel fee} * \frac{N_m}{N_0} * \frac{FX_m}{FX_0}$$

Base Fuel fee = PhP2.0600/kWh

N₀ = the Newcastle index of USD100/MT

N_m = the average Newcastle index (USD/MT) for the last three calendar months prior to the Billing Period for which the Invoice is being prepared, as posted by globalCOAL on the website www.globalcoal.com or its successor or, if globalCOAL ceases to report the Newcastle Index, an agreed upon replacement source that reports the Newcastle Index shall be adopted by the Parties

FX_m = the PHP/USD exchange rate as published in the Bangko Sentral ng Pilipinas website on the 25th of the calendar month; provided that if such day falls on a non-Business Day, the PHP/USD exchange rate on the immediately preceding Business Day shall be used

$RPCPI_m$ = the Philippine Consumer Price Index for All Income Households in the Philippines. All Items (2006=100) published as of the current Billing Period for which the Invoice is being prepared

In the event that revisions are made on the above indices, including any shift made in the base year and other adjustments to such index made by the relevant authorized entity, its successor-in-interest, there shall be a corresponding change in the base index such that the use of the revised index will yield the equivalent values as the use of the original base index.

In the event that the index (a) becomes unavailable, (b) is replaced by a new benchmark rate as determined by the relevant authorized entity, its successor in interest, or (c) ceases to exist, or (d) in the reasonable determination of either Party, fails to reflect the real costs and forms an integral part of this price mechanism, the Parties shall agree to adopt a new price index.

Energy Delivered $_{i,j}$ = the total energy delivered (in kWh) at Trading Interval i and day j .

$tf_{i,j}$ = The time factor at Trading Interval i and day j .

8. **Security Deposit.** It is required to post and maintain a Security Deposit in such form as prescribed in the PSA, and in an amount equivalent to the product of the highest of the projected monthly maximum consumption quantities for the succeeding twelve (12) month period and the projected FBPC load weighted average APRI rate;

9. Prior to the commencement of the 2nd Contract Year and each Contract Year thereafter, the value of Security Deposit shall be adjusted as provided in Schedule 7.2.1 of the PSA. In the event that APRI draws on the Security Deposit, FBPC shall replenish the same to restore its value to the original amount. Where FBPC does not so replenish within the time prescribed, APRI shall have the right: (a) to impose a surcharge of PhP0.20/kWh until such time that FBPC shall have satisfactorily replenished the Security Deposit; (b) suspend the supply and delivery of energy; or (c) terminate the PSA, with FBPC liable to pay the Termination Fee;

10. Compliance with the "Guidelines for the Recovery of Costs for the Generation Component of the Distribution Utilities' Rates" (the Guidelines). In compliance with the Guidelines, copies of the following are attached as annexes of the application:
 - a. Letter-request of FBPC to PSALM for a certification as to the inability of NPC to commit to the continued supply of electricity within FBPC's franchise area for the period covered by the PSA (Annex "M");
 - b. Technical and economic characteristics of the Power Plants (Annexes "N" and "O");
 - c. Load forecast projections in accordance with the latest Distribution Development Plan (DDP) of FBPC (Annex "P");
 - d. Latest Audited Financial Statements (AFS) of APRI (Annex "Q"); and
 - e. Transmission Service Agreement (TSA) between NGCP and APRI (Annexes "R" and "S").

11. **Rate Impact.** A comparison between the expiring PSA of FBPC and APRI and the newly signed PSA with FBPC and APRI is presented below:

	New Contract	Old Contract	Difference
Average Price Per kWh	4.9309	4.3005	0.6304
VAT	0	0	0
Total	4.9309	4.3005	0.6304

Test period is the billing period: November 26, 2012 to December 25, 2012

12. In compliance with the Commission's Rules of Practice and Procedure, FBPC furnished the local legislative bodies of the cities and municipalities within its franchise area copies of the present application and all its annexes and accompanying documents. Copies of the certifications from the Presiding Officer or Secretary of the legislative bodies of the Province of Batangas and the Municipality of Bauan, or from their duly authorized representatives, attesting to the fact of service are attached to the application as Annexes "T" and "U", respectively;
13. It also caused the publication of the instant application in a newspaper of general circulation within the franchise area. Copies of the newspaper publication and the corresponding Affidavit of Publication are attached to the instant application as Annexes "V" and "W", respectively;

**REQUEST FOR CONFIDENTIAL TREATMENT
OF INFORMATION**

14. FBPC moved requests that the information contained in the documents attached to the instant application in a sealed envelope and marked as Annexes X to X-5, respectively, and enumerated herein below, be treated as confidential in nature pursuant to the confidentiality provisions contained in Article 13 of the subject PSA. APRI treats said data and calculations as not generally available to the public on a non-confidential basis, as the same involves trade secrets reflecting APRI's investment and business calculations, to wit:

ANNEX	NATURE OF DOCUMENT
X	Details of the PSA - Executive Summary (in sealed envelope)
X-1	APRI's Sources of Funds (in sealed envelope)
X-2	APRI's Cash Flow (in sealed envelope)
X-3	APRI's Purchased Power Rate (in sealed envelope)
X-4	APRI's Procurement Process of Fuel (in sealed envelope)
O-5	APRI's Sample Billing to FBPCI (in sealed envelope)

This request is likewise being made by virtue of Section 1(b), Rule 4 of the ERC Rules of Practice and Procedure under which the Commission may, upon request of a party and determination of the existence of conditions which would warrant such remedy, treat certain information submitted to it as confidential; and

15. It pray that after due notice and hearing, the PSA be approved and authorize the parties to implement said PSA including the rates set forth in Article 7.4 of the instant application.

On August 22, 2014, APRI filed a "*Motion to be Admitted as Co-Applicant with Entry of Appearance*", alleging, among others, that:

1. It is a generation company duly organized and existing under the laws of the Republic of the Philippines with principal office address at NAC Tower, 32nd Street, Bonifacio Global City, Taguig, Metro Manila;
2. It owns and operates two (2) geothermal power plants in Southern Luzon: (a) the Mak-ban Geothermal Power Plant in Mt. Makiling, Makban, Laguna, and (b) Tiwi Geothermal Power Plant in Tiwi, Albay (Power Plants). It was awarded these Power Plants under a competitive bidding process undertaken by the Power Sector Assets and Liabilities Management Corporation (PSALM) pursuant to Section 47 of Republic Act No. 9136 (R.A. 9136) or the Electric Power Industry Reform Act of 2001 (EPIRA);
3. On December 20, 2012, FBPC entered into a PSA with APRI for the supply of electricity for a term of seven (7) years, from the Effective Date until January 25, 2020.² Under the subject PSA, APRI is obligated to supply and deliver, and FBPC to purchase, energy at the volumes and rates therein indicated³;

² See Article 4.1 in relation to Schedule 3.1 (b).

³ See Article 6.1.

4. On March 1, 2013, FBPC filed the instant application praying for the provisional and permanent approval of the subject PSA;
5. Considering that it is a party to the subject PSA and thus, has an interest in the subject matter and outcome of this case, it is submitting said motion to be admitted as a co-applicant. Indeed, it is in its interest that the reliefs prayed for by FBPC in the instant application are granted, so that FBPC's ability to comply with its financial obligations to APRI under the subject PSA is, and continues to remain, unimpaired. To be sure, if FBPC's application is not granted, FBPC may not have the sufficient funds to comply with its financial obligations to APRI as set forth in the subject PSA;
6. Its participation in these proceedings will also allow it to actively provide inputs on the terms of the subject PSA. It is in a position to provide pertinent information and evidence required by the Commission particularly on matters relating to the rates to be charged by APRI under the subject PSA. These inputs and information could assist the Commission in its evaluation and proper resolution of the Application;
7. Its participation in this case will not unduly broaden the issues involved nor hinder or delay the Commission's resolution of the instant application;
8. In view of the foregoing, it prays requests to be admitted as a co-applicant in this case; and
9. It prays that that the Commission: (a) grant leave for APRI to participate in the instant application and to be admitted as a co-applicant and that it be provided with or permitted to obtain copies of the record of this case or portions thereof; (b) note undersigned counsel's entry of appearance; and (c) orders that all notices, orders and other issuances in relation to this case be served upon APRI through the undersigned counsel at its address indicated below.

APRI's motion being meritorious, the same is hereby **GRANTED**. Accordingly, APRI is hereby considered as a co-applicant in the instant application.

Finding the said application 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 **September 23, 2014 (Tuesday) at nine-thirty in the morning (9:30 A.M.)**, at the **FBPC Main Office, Kapitan Ponso Street Extension, Bauan, Province of Batangas**.

FBPC and APRI 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 consumers within FBPC's franchise area, by any other means available and appropriate, of the filing of the instant application, their reasons therefor and of the scheduled hearings 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 hearings.

Likewise, let copies of this Order and the attached Notice of Public Hearing be furnished the Offices of the Governor of Batangas and the Mayor of the Municipality of Bauan for the appropriate posting thereof on their respective bulletin boards.

FBPC and APRI 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, FBPC and APRI must submit to the Commission their written Compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidences of the actual posting and publication of the Notice of Public Hearing consisting of certifications issued to that effect, signed by the afore-mentioned Governor and Mayor or their duly authorized representatives, bearing the seals of their offices, and the affidavits of the Editors or Business Managers of the newspapers where 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.

FBPC and APRI 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 thereof 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 FBPC and APRI 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.

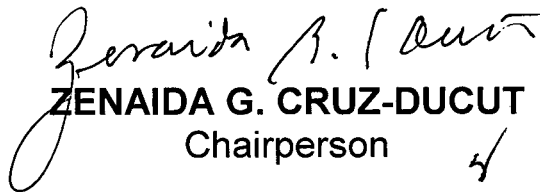
As part of the pre-trial conference, FBPC and APRI must also be prepared to make an expository presentation of their application, aided by whatever communication medium that they may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties, what

the application is all about and the reasons and justifications being cited in support thereof.

SO ORDERED.

Pasig City, September 2, 2014.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ZENAIDA G. CRUZ-DUCUT
Chairperson

Copy Furnished:

1. **ATTY. ARNIDO O. INUMERABLE**
405 Elisa Street, U.E. Village, Cainta, Rizal
2. **ATTYS. BEN DOMINIC R. YAP, VLADI MIGUEL S. LAZARO AND ANDREA E. KATIPUNAN**
Counsels for co-applicant APRI
GATMAYTAN YAP PATACSIL GUTIERREZ AND PROTACIO LAW OFFICES
30th Floor, 88 Corporate Center Sedeño corner Valero Streets
Salcedo Village, Makati City 1227
3. **FIRST BAY POWER CORPORATION (FBPC)**
Kapitan Ponso Street Extension, Bauan, Batangas
4. **AP RENEWABLES, INC. (APRI)**
110 Legazpi Street, Legaspi Village
Makati City, Metro Manila
5. **The Office of the Solicitor General**
134 Amorsolo Street, Legaspi Village, Makati City
Metro Manila
6. **The Commission on Audit**
Don Mariano Marcos Avenue
Diliman, Quezon City, Metro Manila
7. **The Committee on Energy**
Senate of the Philippines
GSIS Building, Roxas Blvd., Pasay City, Metro Manila
8. **The Committee on Energy**
House of Representatives
Batasan Hills, Quezon City, Metro Manila
9. **Office of the President of PCCI**
Philippine Chamber of Commerce and Industry (PCCI)
3rd Floor, ECC Building, Sen. Gil Puyat Avenue
Makati City
10. **Office of the Provincial Governor**
Province of Batangas
11. **Office of the Municipal Mayor**
Bauan, Batangas