

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 AP
RENEWABLES, INC. (APRI),
Applicants.**

X-----X

D O C K E T E D
Date: SEP 03 2014
By: *W*

NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that 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 Kapitán 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.

7.1 **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.

7.2 **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.

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

Where:

- CF = PhP2.0737/kWh
 OM = PhP0.8121/kWh
 FX_o = the PHP/USD exchange rate of 42
 RPCPI_o = the Philippine Consumer Price Index for All Income Households in the Philippines. All Items (2006=100) of 127.8

$$\text{Fuel Costs} = \text{Base Fuel fee} * \frac{N_m}{N_o} * \frac{FX_m}{FX_o}$$

Base Fuel fee = PhP2.0600/kWh

N_o = 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, AP Renewables, Inc. (APRI) filed a "*Motion to be Admitted as Co-Applicant with Entry of Appearance*".

The Commission has set the instant application 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.**

All persons who have an interest in the subject matter of the proceeding may become a party by filing, at least five (5) days prior to the initial hearing and subject to the requirements in the ERC's Rules of Practice and Procedure, a verified petition with the Commission giving the docket number and title of the proceeding and stating: (1) the petitioner's name and address; (2) the nature of petitioner's interest in the subject matter of the proceeding, and the way and manner in which such interest is affected by the issues involved in the proceeding; and (3) a statement of the relief desired.

All other persons who may want their views known to the Commission with respect to the subject matter of the proceeding may file their opposition to the application or comment thereon at any stage of the proceeding before the applicants conclude the presentation of their evidences. No particular form of opposition or comment is required, but the document, letter or writing should contain the name and address of such person and a concise statement of the opposition or comment and the grounds relied upon.

All such persons who may wish to have a copy of the application may request the applicants, prior to the date of the initial hearing, that they be furnished with a copy of the application. The applicants are hereby directed to furnish all those making a request

with copies of the application and its attachments, subject to reimbursement of reasonable photocopying costs. Likewise, any such person may examine the application and other pertinent records filed with the Commission during the usual office hours.

WITNESS, the Honorable Chairperson, **ZENAIDA G. CRUZ-DUCUT**, and the Honorable Commissioners, **ALFREDO J. NON**, **GLORIA VICTORIA C. YAP-TARUC**, and **JOSEFINA PATRICIA A. MAGPALE-ASIRIT**, Energy Regulatory Commission, this 2nd day of September 2014 at Pasig City.



ATTY. FRANCIS SATURNINO C. JUAN
Executive Director III