

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.

X-----X

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

NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that 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.

Applicants CEPALCO and KTEC alleged the following in their *Application*:

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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. 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;

or

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"**;

¹ Assuming without supply from KTEC.

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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.

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.

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- 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:

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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;
 - 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)
"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 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.

² Annex "H" hereof.

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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.

The Commission has set the *Application* 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**.

All persons who have an interest in the subject matter of the instant case may become a party by filing with the Commission a verified Petition to Intervene at least five (5) days prior to the initial hearing and subject to the requirements under Rule 9 of the 2006 ERC Rules of Practice and Procedure, indicating therein the docket number and title of the case and stating the following:

- 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.

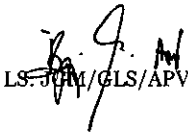
All other persons who may want their views known to the Commission with respect to the subject matter of the case may file their Opposition or Comment thereon at any stage of the proceeding before Applicants rest their case, subject to the requirements under Rule 9 of the 2006 ERC Rules of Practice and Procedure. No particular form of Opposition or Comment is required, but the document, letter, or writing should contain the following:

- 1) The name and address of such person;
- 2) A concise statement of the Opposition or Comment; and
- 3) The grounds relied upon.

All such persons who wish to have a copy of the *Application* may request from Applicants that they be furnished with the same, prior to the date of the initial hearing. Applicants are hereby directed to furnish all those making such request with copies of the *Application* and its attachments, subject to the reimbursement of reasonable photocopying costs. Any such person may likewise examine the *Application* and other pertinent records filed with the Commission during the standard office hours.

WITNESS, the Honorable Chairperson and CEO **AGNES VST DEVANADERA**, and the Honorable Commissioners **ALFREDO J. NON**, **GLORIA VICTORIA C. YAP-TARUC**, and **GERONIMO D. STA. ANA**, Energy Regulatory Commission, this 18th day of April 2018 in Pasig City.


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Oversight Commissioner for Legal


LS-JAM/GLS/APV