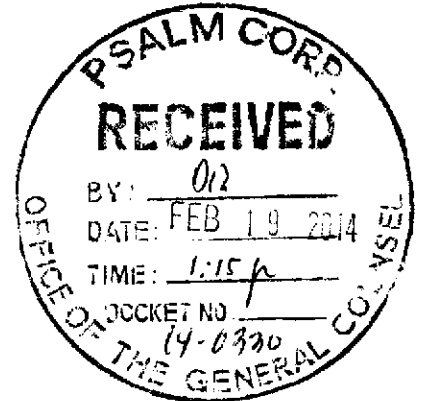


Republic of the Philippines
REGULATORY COMMISSION ENERGY
San Miguel Avenue, Pasig City

IN THE MATTER OF THE APPLICATION FOR THE APPROVAL OF THE CONTRACTS FOR THE SUPPLY OF ELECTRIC ENERGY (CSEEs) AND LETTER OF AGREEMENT (LOA) ENTERED INTO WITH DISTRIBUTION UTILITIES (DUs) LOCATED IN THE MINDANAO GRID WITH PRAYER FOR THE ISSUANCE OF PROVISIONAL AUTHORITY (PA)



ERC CASE No. 2013-218 RC

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION (PSALM),

Applicant.

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DOCKETED
Date: FEB 18 2014
By: *M*

ORDER

On December 2, 2013, the Power Sector Assets and Liabilities Management Corporation (PSALM) filed an application for approval of the Contracts for the Supply of Electric Energy (CSEEs) and Letter of Agreement (LOA) it entered into with Distribution Utilities (DUs) in the Mindanao Grid, with prayer for the issuance of provisional authority.

In the said application, PSALM alleged, among others, the following:

1. It filed an application for the approval of the terms and conditions of the CSEEs and LOA it entered into with various DUs located in the Mindanao Grid pursuant to Section 67 of Republic Act No. 9136 (R.A. 9136) or the "Electric Power Industry Reform Act of 2001" (EPIRA);

2. Previously, it filed similar Applications in 2011 and 2012 for the approval of the terms and conditions of CSEEs effective August 26, 2011 to December 25, 2012 and December 26, 2011 to December 25, 2012, respectively;
3. It is a government-owned and controlled corporation created by virtue of R.A. 9136, with principal office address at 7/F Bankmer Building, 6756 Ayala Avenue, Makati City;
4. Pursuant to Section 49 of R.A. 9136 and the consequent assignment on May 11, 2009 by NPC of all power supply contracts to it, NPC assigned and transferred to it all of its rights and obligations in, to and under its CSEE and other similarly or substantially equivalent power supply contracts with NPC power customers (collectively referred to as Power Supply Contracts [PSCs]);
5. On and from May 11, 2009, the PSCs are deemed amended as follows: (i) all references to NPC in the supply contracts shall be treated as references to PSALM; (ii) PSALM shall be deemed the SUPPLIER under the PSCs; and (iii) the rights and obligations of the parties shall be governed by and construed in accordance with the PSCs, as amended by the May 11, 2009 Letter of Agreement (LOA);
6. The CSEEs having expired, it filed a new Application for the Approval of the terms and conditions of the CSEEs entered into by and between PSALM and the twenty-three (23) DUs located in the Mindanao Grid on April 1, 2013 (ERC Case No. 2013-055 RC), which was provisionally approved by the Commission on July 3, 2013. Said filing was the first of two (2) batches of new CSEEs for Mindanao DUs;
7. Meanwhile, a LOA is executed between the parties in cases of change in the provision of the CSEE other than the terms and conditions appearing in the template for the TSC, as approved by the Commission in Resolution No. 08, Series of 2005. The LOA covers the change in Annex I of the CSEE;
8. Hence, this Application for the second set of CSEEs entered into by and between PSALM and four (4) DUs, and LOA for the increase of contract energy with one (1) DU, in the Mindanao Grid, with prayer for provisional authority;

**Terms and conditions of the
CSEE under ERC Case
No. 2013-055 RC**

9. On July 7, 2005, the Commission issued Resolution No. 08, Series of 2005 approving and adopting the template for the Transition Supply Contract (TSC). On August 9, 2005, said template for the TSC was later on amended by the Commission in its Resolution No. 15, Series of 2005;
10. In Resolution No.33, Series of 2006, "Resolution Clarifying the Purpose of the Adoption of the TSC Template", the ERC clarified that the said template should serve as a mere guide for the DUs and NPC and should not be construed as the contract contemplated under Section 67 of the EPIRA;
11. In ERC Case No. 2013-055 RC, it introduced the following revisions¹ to the CSEEs executed with the DUs in the Mindanao Grid, which were submitted before this Commission:

11.1 CONTRACT DURATION² – This Contract consisting of the Transition Supply Contract shall remain in full force and effect for a period of *four (4) years from 26 December 2012 to 25 December 2016* or one year after the declaration of open access in Mindanao by the DOE, whichever comes first. xxx.³

11.2 CONTRACT ENERGY - Contract Energy *and Equivalent Demand* as indicated in Annex I *and Annex Ia* may be changed by SUPPLIER *annually due to a change in the projected available capacity of SUPPLIER's power plants and at any time during the duration of the Contract due to the privatization of any of the assets of SUPPLIER pursuant to the EPIRA.*⁴

¹ Italicized for ease of reference.

² NOTE: 1) DLPC's CSEE will expire on December 25, 2015. Its application is only for the approval of the LOA for the increase in its contract energy; 2)The contract duration of LASURECO and MAGELCO's CSEEs are for the period of only six (6) months, from June 26, 2013 to December 25, 2013 as approved by the PSALM Board; and 3) The contract duration of SOCOTECO-I is from August 26, 2013 to December 25, 2016.

³ Section 3.1 CSEE.

⁴ Section 4.1, *ibid.*

11.3 AVAILABILITY OF SUPPLY - xxx Supply of energy shall be available except for interruption or reduction due to: a) causes beyond the control of SUPPLIER despite the exercise of due care, *including but not limited to the conditions stated in Section 4.1 of this Contract*; xxx *In case of excess in the generation capacity of the SUPPLIER, CUSTOMER shall be informed of the excess and allocation of the excess available to the equivalent contract demand as provided for in this Contract. The CUSTOMER can increase its energy consumption up but not more than 100% of the allocated excess supply.*⁵

11.4 CONSUMPTION IN EXCESS OF CONTRACT ENERGY- Whenever available, in accordance with good utility practice, SUPPLIER may, but shall not be obliged to provide electricity to CUSTOMER in excess of Contract Energy.⁶

11.5 ASSIGNABILITY - *When a CUSTOMER has been assigned by the SUPPLIER to a Successor Generating Company (SGC) by virtue of the privatization of the PSALM Generating Plant pursuant to the EPIRA, the SGC has the option to renegotiate this Contract with the CUSTOMER within six (6) months from the actual transfer of the CUSTOMER to the SGC. If the CUSTOMER and the SGC fail to reach an agreement, either Party shall have the right to terminate this Contract.*⁷

11.6 CUSTOMER may assign, sell or transfer a part or all of its Contract Energy and/or Equivalent Demand either permanently or for a certain number of billing periods, xxx a) *CUSTOMER has obtained certification from NGCP, that the transmission, sub- transmission, substation and other facilities can accommodate the increase in the power requirements of the assignee/transferee.*⁸

⁵ Section 4.2, id.

⁶ Section 4.3, id.

⁷ Section 4.8, id.

⁸ Section 4.9, id.

11.7 BASIC ENERGY CHARGE - The ERC-approved generation rates, which are attached as Annex III and other charges exclusive of penalties, bonuses, shall be applied to the CUSTOMER's contracted monthly or hourly energy consumption. *Prior to the commercial operation of the WESM, the basic energy charge to be applied shall be the prevailing ERG approved rate and other adjustments.* Upon the commercial operation of the WESM, the basic energy charge to be applied to the contracted energy shall be in accordance with Section 8.1 of this Contract.⁹

11.8 SERVICE INTERRUPTION ADJUSTMENT - xxx the Contract Energy shall be adjusted to actual off- take below contract level for all hours when service was curtailed or interrupted based on declaration of power curtailment issued by the NGCP. xxx¹⁰

11.9 OVERDUE ACCOUNT - If the account of the CUSTOMER is overdue for more than six (6) months, xxx a restructuring agreement of the overdue account shall be executed by the CUSTOMER, with the following salient terms and conditions, xxx *Section 6.17.4 Non-renewal of contract for failure to pay the monthly amortization, current bill and other charges.* xxx¹¹

12. The above revisions to the CSEEs were introduced in consultation with the Department of Energy (DOE) and the National Electrification Administration (NEA) and with the approval of the DUs in the Mindanao Grid. The revisions addressed apparent issues that may not have been considered in 2005. Likewise, the amendments were proposed to clarify recurring issues frequently subject of dispute;

⁹ Section 6.1, id.

¹⁰ Section 6.4, id.

¹¹ Section 6.17, id.

**The CSEEs and LOA of the
Distribution Utilities located in
the Mindanao Grid**

13. Pursuant to Section 5, Article III of the Commission's Guidelines for the Recovery of Costs for the Generation Component of the Distribution Utilities' Rates, it filed the instant application for the approval of CSEEs duly negotiated and executed with the following DUs in the Mindanao Grid:
 - 13.1 Davao del Norte Electric Cooperative, Inc. (DANECO);
 - 13.2 Lanao del Sur Electric Cooperative, Inc. (LASURECO);
 - 13.3 Maguindanao Electric Cooperative, Inc. (MAGELCO); and
 - 13.4 South Cotabato I Electric Cooperative, Inc. (SOCOTECO I);
14. The said CSEEs were executed based on the template approved by the Commission Resolution No. 8, Series of 2005 as amended by Resolution No. 15, Series of 2005. Likewise, the CSEEs incorporated some changes previously proposed by it and approved by the DUs, which changes were contained in the CSEEs provisionally approved by Commission in its Application in ERC Case No. 2013-055 RC;
15. DANECO's CSEE was belatedly executed because of a dispute between its National Electrification Administration (NEA)- appointed Board of Directors and the Cooperative Development Authority (CDA)-appointed Board of Directors. There was a problem as to which Board had the authority to sign the CSEE in behalf of DANECO. The dispute was ultimately resolved in favor of the NEA-appointed Board and the same executed the CSEE. The new CSEE of DANECO is for the period December 26, 2012 to December 25, 2016;
16. MAGELCO had a previous CSEE for the period December 26, 2012 up to June 25, 2013 which was included in ERC Case No. 2013-055 RC and provisionally approved by the Commission. Its Board approved an extension for MAGELCO's CSEE for the same six-month period, which

is one of the CSEEs included in this filing. The new CSEE is for the period June 26, 2013 up to December 25, 2013. The contract extension is subject to the same condition as the first one which is for MAGELCO to improve its payment performance;

17. In the case of LASURECO, in December 2012, it forwarded to LASURECO its CSEE covering the six-month period from December 26, 2012 to June 25, 2013 for signing and notarization. However, LASURECO did not return to it the signed and notarized CSEE for reasons known only to LASURECO, thus, was not included in its first filing on April 1, 2013. The second CSEE of LASURECO covering the period of June 26, 2013 to December 25, 2013, which is included in this filing, was also forwarded to LASURECO for signing and notarization. However, same with the previous CSEE, LASURECO did not sign the second CSEE. LASURECO only signed the second CSEE when the DOE required to do so or else it will be exposed to the Interim Mindanao Electricity Market (IMEM) price when the IMEM is implemented in Mindanao. Hence, the late filing of the said second CSEE;
18. Meanwhile, SOCOTECO I's CSEE just expired last August 25, 2013 and was renewed, thus, the inclusion of SOCOTECO I's CSEE in this filing. The new CSEE is for the period August 26, 2013 to December 25, 2016;
19. Likewise in the instant Application, a LOA was executed to increase the contract energy of Davao Light and Power Company Inc.'s (DLPC) CSEE as a result of its assumption of the responsibility to supply the energy requirements of Holcim Philippines Inc. (HPI) – Davao Plant, when HPI's CSEE with PSALM expired on September 26, 2013. DLPC is the grantee of the franchise for the distribution of electric power in Davao City where HPI-Davao Plant is directly connected. The LOA covers the change in Annex I of the DLPC's CSEE covering the period from September 26, 2013 to December 25, 2015;
20. Finally, in compliance with Section 4(e), Rule 3 of the Implementing Rules and Regulations of the EPIRA and ERC Resolution No. 38-2006, and in support of the instant Application for the approval of the CSEEs and LOA, a copy of the instant Application (including Annexes) was furnished to the *Sangguniang Panlungsod* of Makati

- City. The Application (excluding Annexes) was also published in a newspaper of general circulation;
21. It acknowledges that the continued operation of the DUs is indispensable to the economic efficiency of the franchise areas they served, not to mention the ripple effect of that efficiency to the economic growth of the entire country. In order for the DUs to continue sourcing electricity from the grid, it is imperative that they enter into a CSEE with a Supplier;
 22. The CSEEs of the four (4) DUs expired on: i) December 25, 2012 for DANECO; ii) June 25, 2013 for LASURECO and MAGELCO; and iii) August 25, 2013 for SCOTECO I. Despite the expiration, it continued to supply electricity to said DU's in order not to disrupt essential public service. Accordingly, a grant of provisional authority to execute the CSEEs effective December 26, 2012, June 26, 2013, and August 26, 2013, respectively, and the LOA effective September 26, 2013, will benefit the DUs and will ultimately redound to the benefit of the end consumers;
 23. Pursuant to the Commission's Rules of Practice and Procedures, it may exercise its discretion by granting provisional authority or interim relief prior to a Decision;
 24. The interim relief it sought that may be granted by the Commission shall be subject to adjustments and other conditions that it may impose after hearing and final determination of the instant application; and
 25. Thus, it prays that the Commission approves the duly negotiated CSEE with the four (4) DUs in the Mindanao Grid and the duly negotiated LOA in one (1) Mindanao DU for the increase in contract energy. It likewise prays that a provisional authority be issued authorizing it to implement the subject LOA and CSEEs with the concerned DUs in the Mindanao Grid effective September 26, 2013, December 26, 2012, June 26, 2013, and August 26, 2013, respectively.

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 jurisdictional hearing, expository presentation, pre-trial conference and evidentiary hearing on **March 12, 2014 (Wednesday) at two o'clock in the afternoon (2:00 P.M.) at the ERC Mindanao Field Office, Mintrade Building, Monteverde Avenue corner Sales St., Davao City.**

PSALM is hereby directed to cause the publication of the attached Notice of Public Hearing, at its 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. It is also directed to inform the consumers, by any means available and appropriate, of the filing of the instant application, its reasons therefor and of the scheduled hearing 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 Mayors of Makati City and Quezon City as well as the Offices of the Mayors of the Cities and Municipalities within the franchise area of DANECO, LASURECO, MAGELCO, and SOCOTECO and the Governors of the Provinces of Compostela Valley, Lanao del Sur, Maguindanao, North Cotabato, Sultan Kudarat, and South Cotabato for the appropriate posting thereof on their respective bulletin boards.

On the date of the initial hearing, PSALM must submit to the Commission its written Compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidence on the actual posting and publication of the Notice of Public Hearing consisting of certifications issued to that effect, signed by the aforementioned Mayors or their duly authorized representatives, bearing the seals of their offices and the affidavits of the Editors or Business Managers of the newspapers where the 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.

PSALM and all other interested parties are directed 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:

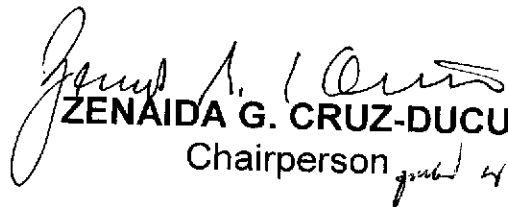
- (a) a summary of admitted facts and proposed stipulation of facts;
- (b) the issues to be tried or resolved;
- (c) the documents or exhibits to be presented, stating the purposes thereof and proposed markings therefore; and
- (d) the number and names of the witnesses, with their written testimonies in an individual affidavit form, to be attached to the Pre-trial Brief.

As part of the pre-trial conference, PSALM must also be prepared to make an expository presentation of its 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, February 13, 2014.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ZENAIDA G. CRUZ-DUCUT
Chairperson *gubel 4*


LBB/NJS

Copy furnished:

1. Atty. Frederico P. Quevedo
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4. Senate Committee on Energy
GSIS Bldg., Roxas Blvd.
Pasay City
5. Committee on Energy House of Representatives
Batasan Hills, Quezon City
6. Davao del Norte Electric Cooperative (DANECO)
Km. 100, Montevista, Compostela Valley Province
Davao del Norte
7. Lanao del Sur Electric Cooperative (LASURECO)
Maliwag, Marawi City
8. Maguindanao Electric Cooperative, Inc. (MAGELCO)
Awang, Dimdig, Maguindanao
9. South Cotabato I Electric Cooperative, Inc. (SOCOTECO I)
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