

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

PSALM CORP	
OFFICE OF THE GENERAL COUNSEL	
RECEIVED	
BY:	R. ANDAN
DATE:	OCT 24 2011
TIME:	9.45 am
CONTROL NO.	11-2787
AT ERC DOCKET	

IN THE MATTER OF THE APPLICATION FOR THE APPROVAL OF THE CONTRACTS FOR THE SUPPLY OF ELECTRIC ENERGY (CSEE) ENTERED INTO WITH DISTRIBUTION UTILITIES (DUs) LOCATED IN THE MINDANAO GRID, WITH PRAYER FOR THE ISSUANCE OF PROVISIONAL AUTHORITY (PA)

ERC CASE NO. 2011-139 RC

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION (PSALM),

Applicant.

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DOCKETED
Date: OCT 24 2011
By: *W*

ORDER

On October 7, 2011, the Power Sector Assets and Liabilities Management Corporation (PSALM) filed an application for approval of the Contracts for the Supply of Electric Energy (CSEE) it entered into with the Distribution Utilities (DUs) located in the Mindanao Grid, with prayer for the issuance of a 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 Contracts for the Supply of Electric Energy (CSEE) it entered into with two (2) electric cooperatives (ECs) located in the Mindanao Grid pursuant to Section 67 of Republic Act No. 9136 (R.A. 9136);
2. On September 19, 2011, PSALM filed a similar application dated September 14, 2011 for the approval of the terms and conditions of CSEE of twenty one (21) DUs located in the Mindanao Grid, all effective August 26, 2011 until December 25, 2012;
3. 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, the said template for

the TSC was amended by the Commission in its Resolution No. 15, Series of 2005;

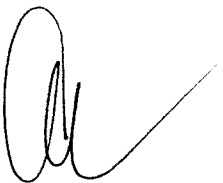
4. On separate dates, the National Power Corporation (NPC) filed several applications for approval of the CSEE/TSC for the Mindanao Grids, which were correspondingly approved on October 19, 2006. On April 8, 2009, NPC filed another set of TSCs which were approved by the Commission on August 3, 2009;
5. It is a government-owned and controlled corporation created by virtue of R.A. 9136 or the "Electric Power Industry Reform Act of 2001" (EPIRA), with principal office address at 7/F Bankmer Building, 6756 Ayala Avenue, Makati City;
6. 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]);
7. 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);

***The CSEEs of the Distribution
Utilities Located in the Mindanao Grid***

8. 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 CSEE duly negotiated and executed with the following DUs located in the Mindanao Grid:
 - 8.1 Bukidnon Second Electric Cooperative, Inc. (BUSECO); *and*
 - 8.2 Lanao del Norte Electric Cooperative, Inc. (LANECO).

***Highlighted Terms and Conditions of
the CSEE***

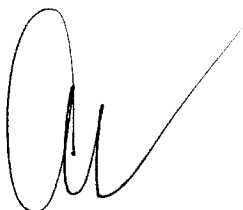
9. The said CSEE were executed based on the template approved by the Commission under Resolution No. 8, Series of 2005 as amended by Resolution No. 15, Series of 2005. The above CSEE provide, among others, the following terms and conditions:



- 9.1 **Contract Duration** - This Contract shall remain in full force and effect from August 26, 2011 to December 25, 2012 or one (1) year after the declaration of open access in Mindanao by the Department of Energy (DOE), whichever comes first. Unless otherwise provided, the applicable provisions of this Contract shall be deemed modified by the applicable Wholesale Electricity Spot Market (WESM) Rules, upon commercial operation of the WESM, as declared by the DOE;
- 9.2 **Contract Energy** - The Contract Energy shall not be changed by either party except in cases as provided for in the contract;
- 9.3 **Availability of Supply** - Supplier shall supply the Contract Energy in accordance with good utility practice and in compliance with appropriate rules and regulations such as the Philippine Grid Code (PGC) and Open Access Transmission Service (OATS). 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 privatization of the assets of the NPC pursuant to EPIRA*; b) transmission failure; and c) maintenance to ensure system stability and safety reasons as may be provided by laws, rules or regulations. In case of shortage in the generation capacity of the Supplier, the Customer shall be informed of the deficiency and allocation of the available supply of electricity to the Customer shall be proportionate to the contracted energy as provided for in this Contract;
- 9.4 **Buy-out** - Customer shall be entitled to a reduction in its Contract Energy only upon written application to Supplier and payment of the corresponding buy-out fee at least sixty (60) days prior to the effectivity of the buy-out;
- 9.5 **Security Deposit** - The Security Deposit shall be equivalent to 100% of the estimated average monthly power bill during the first year of the Contract and shall be updated annually;
- 9.6 **Assignability** - Supplier may assign or transfer part or all of its rights and obligations in the supply of Contract Energy provided that prior written notice is given to Customer thirty (30) days before the actual transfer;
- 9.7 **Basic Energy Charge** - The Commission-approved generation rates and other charges exclusive of penalties and bonuses shall be applied to the Customer's contracted monthly or hourly energy consumption. Upon commercial operation of the WESM, the basic energy charge to be applied to the contracted energy shall be in accordance with price settlement mechanism during the WESM operation (Section 8.1 of the CSEE);



- 9.8 **Bandwidth** - For consumption higher than one hundred twenty percent (120%) of the contracted level prior to commercial operation of the WESM, the basic energy charge to be applied shall be the prevailing Commission-approved rate and other adjustments plus ten percent (10%) of such rate for the incremental increase beyond the one hundred twenty percent (120%) of Contract Energy;
- 9.9 **Maintenance Service Adjustment** - Customer may avail of the service adjustment during the scheduled maintenance of its facilities, not to exceed two (2) billing periods in one year;
- 9.10 **Minimum Charge** - Customer shall pay the minimum charge based on the Contract Energy per billing period as indicated in Section 4.1 of the CSEE using the basic energy charge if Customer has not fully taken or failed to consume the Contract Energy, subject to deductions and adjustments as expressly provided in the Contract;
- 9.11 **Prompt Payment Discount** - Subject to the Commission's approval, the Prompt Payment Discount (PPD) prior to the commercial operation of the WESM shall be in accordance with PSALM's credit and collection policies duly approved by the PSALM Board. Upon commercial operation of the WESM, as declared by the DOE, the PPD shall no longer be applicable;
- 9.12 **Overdue Account** - In the event that a power bill remains unpaid within five (5) days after its due date, Supplier has the option to call on or draw against the Security Deposit as provided for under Section 5 (Security Deposit) of the Contract; and
- 9.13 **Contract Termination** - Either party will have the right to terminate the Contract upon failure of the other to perform its obligation under the Contract.
10. In compliance with Section 4(e) of Rule 3 of the EPIRA-IRR and ERC Resolution No. 38, Series of 2006, and in support of the instant application for the approval of the LOAs, 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.

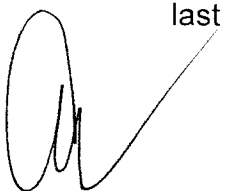


***Allegations in Support for the
Issuance of Provisional Authority***

11. It acknowledges that the continued operation of the DUs is indispensable to the economic efficiency of the franchise areas they service, not to mention the ripple effect of that efficiency to the economic growth of the entire country. In order for these DUs to continue lawfully drawing electricity from the grid, it is imperative that they enter into an agreement with it as Supplier, a contract of sale for electricity, hence the respective CSEE;
12. The CSEE of the above listed DUs expired on August 25, 2011. Accordingly, a grant of provisional authority to execute the CSEE effective August 26, 2011 will benefit the DUs and ultimately redounds to the benefit of the end consumers;
13. 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 final decision;
14. It is understood that 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
15. Thus, it prays that the Commission approves the duly negotiated CSEE with various DUs in the Mindanao Grid and that a provisional authority (PA) be issued authorizing it to implement the subject CSEE with the concerned DUs in the Mindanao Grid effective August 26, 2011.

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 **November 11, 2011 (Friday) at ten o' clock in the morning (10:00 A.M.) at the ERC Mindanao Field Office, Mintrade Bldg., Monteverde Ave. 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

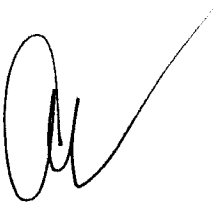


scheduled initial hearing. It is also directed to inform the consumers, by any other means available and appropriate, of the filing of the instant application, its reasons therefor and of the scheduled hearing thereon.

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 hearing.

Likewise, let copies of this Order and the attached Notice of Public Hearing be furnished the Offices of the Mayors of Makati City, Quezon City and Davao City 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.

A handwritten signature in black ink, consisting of a stylized, cursive 'A' followed by a long, sweeping horizontal stroke that extends to the right.

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, October 19, 2011.

FOR AND BY AUTHORITY
OF THE COMMISSION:


MARIA TERESA A.R. CASTAÑEDA
Commissioner

Copy furnished:

1. Atty. Maria Luz L. Caminero
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Atty. Liberty Z. Dumlao
Atty. David I.B. Ocampo
Atty. Arlene B. Evangelio
Atty. Pia Zobel Z. Ruiz- San Diego
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Makati City
3. Commission on Audit
Commonwealth Avenue
Quezon City
4. Senate Committee on Energy
GSIS Bldg., Roxas Blvd.
Pasay City
5. Committee on Energy House of Representatives
Batasan Hills, Quezon City
6. All Distribution Utility in Mindanao
7. ASSOCIATION OF MINDANAO ELECTRIC COOPERATIVE, INC.
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