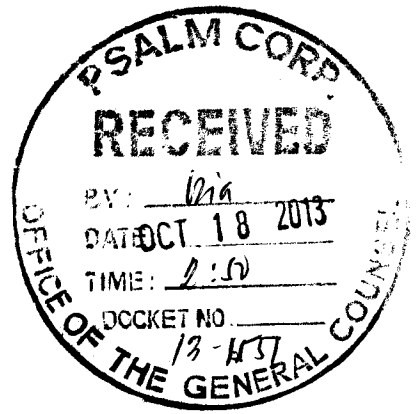


Republic of the Philippines
Energy Regulatory Commission
San Miguel Avenue, Pasig City



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

ERC CASE NO. 2013-169 RC

POWER SECTOR ASSETS AND
LIABILITIES MANAGEMENT
CORPORATION (PSALM),
Applicant.

D O C K E T E D
Date: OCT 17 2013
By: [Signature]

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NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on August 6, 2013, the Power Sector Assets and Liabilities Management Corporation (PSALM) filed an application for approval of the Letters of Agreement (LOA) it entered into with distribution utilities (DUs) in the Visayas 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 CSEE it entered into with various DUs located in the Mindanao Grid pursuant to Section 67 of Republic Act No. 9136 (R.A. 9136);

2. It filed similar a similar applications in 2011 and 2012 for the approval of the terms and conditions of the CSEE effective December 26, 2010 to December 25, 2011 and December 26, 2011 to December 25, 2012;
3. On March 21, 2013, it filed an application for approval of the LOA it entered into with Distribution Utilities (DUs) in the Visayas Grid to extend the duration of the CSEE as requested by the various DUs in the Visayas Grid for the period December 26, 2012 to June 25, 2013;
4. The LOAs extended the duration of the DUs respective CSEEs only to June 25, 2013 due to the scheduled bidding for the privatization of the Independent Power Producer (IPP) contract of the Unified Leyte Geothermal Power Plant (Unified Leyte) in September 2012 and the expected turn over date to the IPP Administrators in March 2013;
5. However, the planned privatization of the IPP contract of Unified Leyte in September 2012 did not push through. Consequently, the bidding was rescheduled to the last quarter of 2013, subject to the approval by PSALM's Board of Directors;
6. It is a government-owned and controlled corporation created by virtue of Republic Act No. 9136 (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;
7. Pursuant to Section 49 of R.A. 9136, the National Power Corporation (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 (PSCs) with NPC power customers (collectively referred to as Power Supply Contracts [PSCs]);
8. 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 LOA;

**Terms and conditions of the
CSEE under ERC Case No.
2012-008**

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, the said template for the TSC was amended by the Commission in its Resolution No. 15, Series of 2005;
10. In Commission's Resolution No. 33, Series of 2006, "Resolution Clarifying the Purpose of the Adoption of the TSC Template", it clarified that the TSC 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. 2012-008 RC, it introduced the following revisions to the CSEEs executed with the DUs in the Visayas Grid, which CSEEs were submitted before the Commission, to wit:

(i) **CONTRACT DURATION**

"3.1 This Contract consisting of the Transition Supply Contract shall remain in full force and effect from 26 December 2011 to 25 December 2012 or one year after the declaration of open access by the DOE, whichever comes first. Unless otherwise provided, the applicable provisions of this Contract shall be deemed modified by the applicable WESM Rules.

(ii) Insertion of a new provision under **CONTRACT ENERGY**

4.1.1 *The CUSTOMER shall nominate month-ahead its hourly and daily energy quantity requirements three (3) days before the start of the next billing period. On a day to day transaction the CUSTOMER shall confirm the schedule of hourly energy requirements to PSALM on the day ahead. PSALM shall declare to WESM the schedule of hourly energy requirements delivered to customers immediately on the day after.*

(iii) **AVAILABILITY OF SUPPLY**

4.2 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, 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 National Power Corporation pursuant to the EPIRA. xxx;

(iv) Deletion of Sections 4.6 and 4.7 on BUY-OUT, which was replaced by:

APPLICATION FOR DECREASE IN CONTRACT ENERGY

4.6 CUSTOMER shall be entitled to a reduction in its Contract Energy only upon written application to SUPPLIER at least sixty (60) days prior to the effectivity of the reduction in Contracted Energy, subject to the approval by the SUPPLIER.

4.7 CUSTOMER may be allowed to reduce its Contract Energy with the following conditions:

x x x

4.7.3 The reduction is due to self-generation or transfer to another power supplier. The CUSTOMER must notify the SUPPLIER at least sixty (60) days prior to the effectivity of the reduction in the Contracted Energy.

(v) **ASSIGNABILITY**

4.8 x x x The assignee shall, by written instrument, assume the rights and obligations of SUPPLIER to CUSTOMER.

When a CUSTOMER has been assigned by the SUPPLIER to a Successor Generating Company (SGC) or Independent Power Producer Administrator (IPPA) by virtue of the privatization pursuant to the EPIRA, the CUSTOMER has the obligation to settle in full its overdue obligation, excluding those accounts already restructured, within thirty (30) days of the assignment. In the event the CUSTOMER fails to settle in full within the given period above, the CUSTOMER may opt to settle its overdue obligation by entering into a restructuring agreement with previous SUPPLIER (in this case, PSALM) based on DOE Circular No. DC 2010-05-0006 and No. DC 2010-08-0010 within forty-five (45) days, provided that CUSTOMER has shown proof it has tried its best to fully settle said obligation, excluding those accounts already restructured. Failure to restructure within the prescribed period will allow the previous SUPPLIER to resort to remedies as provided for in the aforementioned DOE Circulars.

(vi) **BASIC ENERGY CHARGE (for Indirect WESM Members)**

6.1 The Basic Energy Charge (BEC) applied to the CUSTOMER's hourly energy consumption shall be the ERC-approved NPC/PSALM's Time of Use (TOU) generation rates, which is attached as Annex III, plus adjustments in the tariff such as, but not limited to Deferred Accounting Adjustments (DAAs) and the Incremental Currency Exchange Rate Adjustments (ICERA), the RA 9136 Mandatory Rate Reduction Adjustments; and upon commercial operation of the WESM, an adjustment to reflect the WESM line rental cost plus the Site Specific Loss Adjustment (SSLA) added in the meter data on an hourly basis. For energy consumption higher than one hundred twenty percent (120%) of the contracted level (applicable to CUSTOMERS who are Indirect WESM members), the basic energy charge to be applied shall be the prevailing ERC 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. 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.

6.1.1 *The BEC shall be applied to the CUSTOMER's hourly energy consumption based on the hourly nominated energy quantity mentioned in Section 4.1.1. For energy consumption higher than one hundred twenty percent (120%) of the CUSTOMER's hourly nominated quantity (applicable for CUSTOMERS who are Indirect WESM members), the rate to be applied shall be the BEC or the WESM Ex Post Nodal price, whichever is higher.*

(vii) **BASIC ENERGY CHARGE (for Direct WESM Members)**

6.1 *The Basic Energy Charge (BEC) applied to the CUSTOMER's hourly energy consumption shall be the ERC-approved NPC/PSALM's Time of Use (TOU) generation rates, which is attached as Annex III, plus adjustments in the tariff such as, but not limited to Deferred Accounting Adjustments (DAAs) and the Incremental Currency Exchange Rate Adjustments (ICERA), the RA 9136 Mandatory Rate Reduction Adjustments.* Upon 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.

Energy consumption higher than the contracted level (applicable to CUSTOMERS who are Direct WESM members), shall be sourced by the Customer from the Wholesale Electricity Spot Market at the Wholesale Electricity Spot Market rate and paid directly to the Philippine Electricity Market Corporation (PEMC).

6.1.1 *The BEC shall be applied to the CUSTOMER's hourly energy consumption based on the hourly nominated energy quantity mentioned in Section 4.1.1."*

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 Visayas 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;
13. The Commission in an Order dated March 12, 2012, provisionally approved the CSEEs with the DUs in the Visayas Grid in ERC Case No. 2012-008 RC. Subsequently, in a Decision dated February 25, 2013, the Commission approved the application it filed in ERC Case No. 2012-008 RC and consequently, the provisional authority granted were made permanent;

The CSEEs of the Distribution Utilities Located in the Visayas Grid

14. Pursuant to Section 5, Article III of the Commission's Guidelines for the Recovery of Costs for the Generation Component of the Distribution Utilities' Rate, it filed the instant application for the approval of CSEEs duly negotiated and executed with the following DUs in the Visayas Grid:
 - a. Antique Electric Cooperative, Inc. (ANTECO);
 - b. Biliran Electric Cooperative, Inc. (BILECO)
 - c. Cebu I Electric Cooperative, Inc. (CEBECO I);
 - d. Cebu II Electric Cooperative, Inc. (CEBECO II);
 - e. Central Negros Electric Cooperative, Inc. (CENECO);
 - f. Don Orestes Romualdez Electric Cooperative, Inc. (DORELCO);
 - g. Eastern Samar Electric Cooperative, Inc. (ESAMELCO);
 - h. Iloilo II Electric Cooperative, Inc. (ILECO II);
 - i. Iloilo III Electric Cooperative, Inc. (ILECO III);
 - j. Leyte II Electric Cooperative, Inc. (LEYECO II);
 - k. Leyte III Electric Cooperative, Inc. (LEYECO III);
 - l. Leyte IV Electric Cooperative, Inc. (LEYECO IV);
 - m. Leyte V Electric Cooperative, Inc. (LEYECO V);
 - n. Negros Occidental Electric Cooperative, Inc. (NOCECO);

- o. Negros Oriental I Electric Cooperative, Inc. (NORECO I);
 - p. Northern Samar Electric Cooperative, Inc. (NORSAMELCO);
 - q. Samar I Electric Cooperative, Inc. (SAMELCO I);
 - r. Samar II Electric Cooperative, Inc. (SAMELCO II);
 - s. Visayan Electric Company, Inc. (VECO); and
 - t. VMC-Rural Electric Cooperative, Inc. (VRESKO);
15. The said CSEEs, which have a duration from June 26, 2013 to December 25, 2013, 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. Likewise, the CSEEs incorporated the minor changes it previously proposed and approved by the DUs, which changes were contained in the CSEEs approved by the Commission in its application in ERC Case No. 2012-008 RC;
16. The only revision made in the CSEEs under the instant application is found in Section 4.1.1 on the provision on **CONTRACT ENERGY**, to wit:
- “4.1.1 The CUSTOMER shall nominate month-ahead its hourly and daily energy quantity requirements three (3) days before the start of the next billing period based on its Daily Load Profile as reflected in Annex 1a. On a day to day transaction the CUSTOMER shall confirm the schedule of hourly energy requirements to PSALM on the day ahead. The deviation between the month-ahead nomination and day ahead confirmation, if any, shall be within the tolerance limit of $\pm 10\%$. PSALM shall declare to WESM the schedule of hourly energy requirements delivered to customers immediately on the day after.”
17. Notably, in order to optimize the utilization of the available capacity of its power plants in the Visayas, the contracted energy of the customers were increased to at least 80% Load Factor for Direct WESM Members and at least 75% Load Factor for Indirect WESM Members Visayas Customers;

18. Finally, in compliance with Section 4(e) of Rule 3 of the EPIRA IRR and Commission's Resolution No. 38, Series of 2006, and in support of the instant Application for the approval of the CSEEs, 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**

19. It acknowledges that the continued operation of the DUs is indispensable to the economic efficiency of the franchise area 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 PSALM as Supplier for the supply of electricity;
20. The CSEEs of the above-listed DUs expired on June 25, 2013. Accordingly, a grant of provisional authority on the CSEEs effective June 26, 2013 will benefit the DUs and will ultimately redound to the benefit of the end consumers;
21. Pursuant to its Rules of Practice and Procedures, the Commission may exercise its discretion by granting provisional authority or interim relief prior to a Decision;
22. It is understood that the interim relief sought may be granted by the Commission, subject to adjustments and other conditions that it may impose after hearing and final determination of the instant application; and
23. It prays that the Commission approve the duly negotiated CSEEs with various DUs in the Visayas Grid covering the period June 26, 2013 to December 25, 2013. It is, likewise, prayed that a provisional authority be issued authorizing it to implement the subject CSEEs with the concerned DUs in the Visayas Grid.

The Commission has set the application for initial hearing, expository presentation, pre-trial conference and evidentiary hearing **on November 5, 2013 (Tuesday) at ten-thirty in the morning (10:30 A.M.) at the ERC Visayas Field Office, Ground Floor, Machay Building, Gorordo Avenue, Cebu City.**

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 Commission'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 applicant concludes the presentation of its evidence. 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 applicant, prior to the date of the initial hearing, that they be furnished with a copy of the application. The applicant is hereby directed to furnish all those making such 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 PARTICIA A. MAGPALE-ASIRIT**, Energy Regulatory Commission, this 10th day of October, 2013 at Pasig City.

ATTY. NOEL J. SALVANERA
Director III