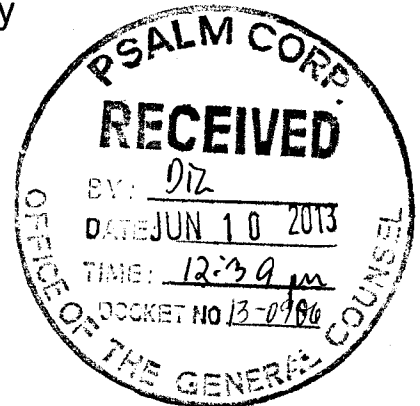


Republic of the Philippines  
ENERGY REGULATORY COMMISSION  
San Miguel Avenue, Pasig City

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



ERC CASE No. 2013-055 RC

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

D O C K E T E D  
Date: JUN 10 2013  
By: *[Signature]*

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**ORDER**

On April 1, 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) 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 Contracts for the Supply of Electric Energy (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. 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;

3. On separate dates, the National Power Corporation (NPC) filed several applications for approval of the CSEE/TSC for the Visayas Grid which were correspondingly approved on October 19, 2006 and September 22, 2008;
4. 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;
5. 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]);
6. 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);
7. PSALM previously filed two (2) similar applications for the approval of the terms and conditions of CSEEs of the DUs located in the Mindanao Grid. The first was on September 19, 2011 for the twenty-one (21) CSEEs effective August 26, 2011 until December 12, 2012, which was provisionally approved by the Commission on December 12, 2012. The second filing, on January 20, 2012, for the CSEEs of Lanao del Sur Electric Cooperative (LASURECO) and Zamboanga City Electric Cooperative (ZAMCELCO) effective December 26, 2011 until December 12, 2012, which was likewise provisionally approved by the Commission on March 12, 2012.
8. The previous CSEEs having expired, new CSEEs were subsequently executed. As agreed upon by the contracting

parties, PSALM shall file the necessary application for the approval of the new CSEEs. Thus, the instant application;

9. 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 twenty-three (23) DUs located in the Mindanao Grid:

- a. Agusan del Norte Electric Cooperative, Inc. (ANECO);
- b. Agusan del Sur Electric Cooperative, Inc. (ASELCO);
- c. Bukidnon Second Electric Cooperative, Inc. (BUSECO);
- d. Camiguin Electric Cooperative, Inc. (CAMELCO);
- e. Cotabato Electric Cooperative, Inc. (COTELCO);
- f. Davao del Sur Electric Cooperative, Inc. (DASURECO);
- g. Davao Oriental Electric Cooperative, Inc. (DORECO);
- h. Iligan Light and Power, Inc. (ILPI);
- i. Lanao del Norte Electric Cooperative, Inc. (LANECO);
- j. Maguindanao Electric Cooperative, Inc. (MAGELCO);
- k. Misamis Occidental I Electric Cooperative, Inc. (MOELCI-I);
- l. Misamis Occidental II Electric Cooperative, Inc. (MOELCI-II);
- m. Misamis Oriental II Rural Electric Service Cooperative, Inc. (MORESCO II);
- n. Siargao Electric Cooperative, Inc. (SIARELCO);
- o. South Cotabato II Electric Cooperative, Inc. (SOCOTECO II);
- p. Sultan Kudarat Electric Cooperative, Inc. (SUKELCO);
- q. Surigao del Norte Electric Cooperative, Inc. (SURNECO);
- r. Surigao del Sur I Electric Cooperative, Inc. (SURSECO I);
- s. Surigao del Sur II Electric Cooperative, Inc. (SURSECO II);

- t. Zamboanga del Norte Electric Cooperative, Inc. (ZANECO);
- u. Zamboanga del Sur I Electric Cooperative, Inc. (ZAMSURECO I);
- v. Zamboanga del Sur II Electric Cooperative, Inc. (ZAMSURECO II); and
- w. Zamboanga City Electric Cooperative, Inc. (ZAMCELCO).

10. 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:

10.1 CONTRACT DURATION<sup>1</sup> - This Contract consisting of the Transition Supply Contract shall remain in full force and effect for a period of four (4) years from December 26, 2012 to December 25, 2016 or one year after the declaration of open access in Mindanao by the DOE, whichever comes first. xxx.<sup>2</sup>

10.2 CONTRACT ENERGY - Contract Energy and Equivalent Demand as indicated in Annex I and Annex I-a attached in the instant application, 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.<sup>3</sup>

10.3 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

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<sup>1</sup> **NOTE:** MAGELCO's CSEE was renewed only for six (6) months, covering the period of December 26, 2012 to June 25, 2013, due to the MAGELCO's inability to pay its outstanding obligations with PSALM and that further extension of the duration of its CSEE is contingent on MAGELCO's entering into an acceptable restructuring agreement with PSALM and an indication of improvement in MAGELCO's payment of its obligations with PSALM.

<sup>2</sup> Section 3.1 of the CSEE.

<sup>3</sup> Section 4.1, *ibid.*

the excess and allocation of the excess available supply of electricity to the CUSTOMER shall be proportionate to the equivalent contract demand as provided for in this Contract. The CUSTOMER can increase its energy consumption up to but not more than 100% of the allocated excess supply.<sup>4</sup>

10.4 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.<sup>5</sup>

10.5 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.<sup>6</sup>

10.6 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.<sup>7</sup>

10.7 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 ERC approved

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<sup>4</sup> Section 4.2, *id.*  
<sup>5</sup> Section 4.3, *id.*  
<sup>6</sup> Section 4.8, *id.*  
<sup>7</sup> Section 4.9, *id.*

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.<sup>8</sup>

10.8 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.xxx<sup>9</sup>

10.9 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.xxx<sup>10</sup>

11. In compliance with Section 4(e) of Rule 3 of the EPIRA-IRR and Commission's Resolution No. 38, Series of 2006, 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;
12. 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;
13. The CSEE of the above listed DUs expired on December 25, 2012. Accordingly, a grant of provisional authority to execute the CSEE effective December 26, 2012 will benefit the DUs and ultimately redound to the benefit of their consumers;

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<sup>8</sup> Section 6.1, *id.*  
<sup>9</sup> Section 6.4, *id.*  
<sup>10</sup> Section 6.17, *id.*

14. 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;
15. 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
16. Thus, it prays that the Commission approves the duly negotiated CSEE with various DUs in the Mindanao Grid and that a provisional authority be issued authorizing it to implement the subject CSEE with the concerned DUs in the Mindanao Grid effective December 26, 2012.

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 **July 3, 2013 (Wednesday) at nine o'clock in the morning (9:00 A.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 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, June 3, 2013.

FOR AND BY AUTHORITY  
OF THE COMMISSION:

  
ZENAIDA G. CRUZ-DUCUT  
Chairperson  
*msd 4*

  
REM/LO/N/16



Copy furnished:

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4. Senate Committee on Energy  
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5. Committee on Energy House of Representatives  
Batasan Hills, Quezon City
6. All Distribution Utility in Mindanao
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