

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

PSALM CORP.	
OFFICE OF THE GENERAL COUNSEL	
RECEIVED	
BY: <u>Dik</u>	
DATE: <u>FEB 29 2012</u>	
TIME: <u>1:17 pm</u>	
CONTROL NO. <u>12-0768</u>	

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 VISAYAS GRID,
WITH PRAYER FOR THE ISSUANCE
OF PROVISIONAL AUTHORITY

ERC CASE NO. 2012-008 RC

POWER SECTOR ASSETS AND
LIABILITIES MANAGEMENT
CORPORATION (PSALM),

Applicant.

x----- x

DOCKETED

Date: FEB 29 2012

By: Dik

ORDER

On January 20, 2012, 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 Visayas 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 Visayas Grid pursuant to Section 67 of Republic Act No. 9136 (R.A. 9136);
2. It filed similar applications in 2011 for the approval of the terms and conditions of CSEEs effective December 26, 2010 until December 25, 2011;

3. 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;
4. Pursuant to Section 49 of R.A. No. 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);

The CSEEs of the Distribution Utilities Located in the Visayas Grid

6. 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 the CSEE duly negotiated and executed by the following DUs located 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. Eastern Samar Electric Cooperative, Inc. (ESAMELCO);
 - g. Iloilo II Electric Cooperative, Inc. (ILECO II);
 - h. Iloilo III Electric Cooperative, Inc. (ILECO III);
 - i. Leyte I Electric Cooperative, Inc. (LEYECO I);
 - 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 (VECO); and
- t. VMC Rural Electric Service Cooperative, Inc. (VRESKO);

Highlighted Terms and Conditions of the CSEE

- 7. 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 later on amended by the Commission in its Resolution No. 15, Series of 2005;
- 8. In the Commission's Resolution No. 33, Series of 2006 or a "Resolution Clarifying the Purpose of the Adoption of the TSC Template", the Commission clarified that the TSC Template should serve as a guide for DUs and NPC and should not be construed as the contract contemplated under Section 67 of the EPIRA;
- 9. Accordingly, in consultation with the Department of Energy (DOE) and the National Electrification Administration (NEA) and the approval of the DUs in the Visayas Grid, PSALM has proposed revisions of the TSC Template. The revisions aim to address apparent issues that may not have been considered in 2005. Likewise, the amendments are proposed to clarify recurring issues frequently subject of dispute;
- 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*** - This Contract shall remain in full force and effect from December 26, 2011 to December 25, 2012 or until one (1) year after the declaration of open access by the Commission, 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;

- 10.2 Contract Energy** – The Contract Energy shall not be changed by either party except in cases as provided for in the contract. Upon commercial operation of the WESM, the Customer shall nominate a month-ahead energy quantity with the hourly and daily 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 the hourly energy requirement on a day ahead. It shall declare to the WESM the schedule of the hourly nominated energy requirements delivered to Customer on the day after;
- 10.3 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 and 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;
- 10.4 Application for Decrease in Contract Energy** – 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 subject to the approval of the Supplier. Customer may be allowed to reduce its Contract Energy with the following conditions: xxx 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;
- 10.5 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;
- 10.6 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. xxx 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 structured, 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 the DOE Circular No. DC 2010-05-0006 and 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 the aforementioned DOE Circulars;

- 10.7 Basic Energy Charge** – The Basic Energy Charge (BEC) applied to the Customer's hourly energy consumption shall be the Commission-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), R.A. 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 for Customers who are Indirect WESM members), 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. 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. 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;
- 10.8 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;
- 10.9 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 if Customer has not fully taken or failed to consume the Contract Energy, subject to deductions and adjustments as expressly provided in the Contract;
- 10.10 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;

10.11 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

10.12 Contract Termination – Either party will have the right to terminate the Contract upon failure of the other to perform its obligation under the Contract

11. 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 LOA, a copy of the instant application (including Annexes) was furnished to the Sangguniang Panlungsod of Makati City. The instant application (excluding Annexes) was also published in a newspaper of general circulation;

Allegations in Support for the Issuance of Provisional Authority

12. 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 of electricity, hence the respective CSEE;
13. The CSEE of the above listed DUs expired on December 25, 2011. Accordingly, a grant of provisional authority to execute the CSEE effective December 26, 2011 will benefit DUs and ultimately redounds to the benefit of the end consumers;
14. Pursuant to the Commission's Rule of Practice and Procedures, it may exercise its discretion by granting provisional authority or interim relief prior to a final decision;
15. 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
16. It prays that the Commission approves the duly negotiated CSEE with various DUs in the Visayas Grid and that a provisional authority be issued authorizing it to implement the subject CSEE with the connected DUs in the Visayas Grid effective December 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 **March 22, 2012 (Thursday) at nine o'clock in the morning (9:00 A.M.), at the ERC Visayas Field Office, Machay Building, Gorordo Avenue, Lahug, Cebu 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 scheduled date of initial hearing. PSALM 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 Offices of the Mayors of Makati City, Quezon City and Cebu City and the Provincial Governors of the Provinces of Antique, Biliran, Cebu, Eastern Samar, Northern Samar, Iloilo, Leyte, Southern Leyte, Negros Oriental, Negros Occidental for the appropriate posting thereof on their respective bulletin boards.

PSALM is hereby directed to furnish all those making requests therefor with copies of the application and its attachments, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing and pre-trial conference, PSALM must submit to the Commission its written Compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidences on the actual posting and publication of the Notice of Public Hearing consisting of certifications issued to that effect, signed by the afore-mentioned Mayors and Governors or their duly authorized representatives, bearing the seals of their offices, and the affidavits of the Editor 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 interested parties are directed to submit, at least five (5) days before the date of 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.

Failure of PSALM to submit the required Pre-Trial Brief and Judicial Affidavits of its witnesses within the prescribed period shall be a ground for


cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from said date of cancellation.

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 20, 2012.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ZENAIDA G. CRUZ-DUCUT
Chairperson
gdc

Copy Furnished:

1. **ATTYS. MARIA LUZ L. CAMINERO, CECILIO B. GELLADA, JR., LIBERTY Z. DUMLAO, CAROLINE V. BALO-ATENCIA and RENATO R. VEHEMENTE**
Counsels for Applicant PSALM
Power Sector Assets and Liabilities Management Corporation (PSALM)
7th Floor, Bankmer Building, 6756 Ayala Avenue, Makati City

2. **ANTIQUÉ ELECTRIC COOPERATIVE, INC. (ANTECO)**
Attention: **MR. VICENTE M. PAINAGA, JR.**
Board President
Barangay Funda, San Jose de Buenavista
Province of Antique

3. **BILIRAN ELECTRIC COOPERATIVE, INC. (BILECO)**
Attention: **ENGR. MELCHOR C. DURANGO, JR.**
Board President
Barangay Caray Caray, Naval, Biliran

4. **CEBU I ELECTRIC COOPERATIVE, INC. (CEBECO I)**
Attention: **MR. MARLOU M. RENDON**
General Manager
Barangay Bito-on, Dumanjug, Cebu

5. **CEBU II ELECTRIC COOPERATIVE, INC. (CEBECO II)**
Attention: **MR. PETER B. SEÑERES**
General Manager
Corner Patria de Cebu Building
P. Burgos Street, Cebu City

6. **CENTRAL NEGROS ELECTRIC COOPERATIVE, INC. (CENECO)**
Attention: **ATTY. ARNEL LAPORE**
Board President
Mabini Corner Gonzaga Streets, Bacolod City

7. **EASTERN SAMAR ELECTRIC COOPERATIVE, INC. (ESAMELCO)**
Attention: **ATTY. DIOGENES D. INCISO, JR.**
Board President
Barangay Cabong, Borongan, Eastern Samar

8. **ILOILO II ELECTRIC COOPERATIVE, INC. (ILECO II)**
Attention: **MR. REYNALDO L. PAMA**
Board President
Barangay Cauayan, Pototan, Iloilo

9. **ILOILO III ELECTRIC COOPERATIVE, INC. (ILECO III)**
Attention: **MR. APOLOJANDRO M. SICAD**
Board President
Barangay Preciosa, Sara, Iloilo
10. **LEYTE I ELECTRIC COOPERATIVE, INC. (LEYECO I)**
Attention: **ATTY. EMMANUEL P. SAÑO**
General Manager
National Highway, San Roque, Tolosa, Leyte
11. **LEYTE II ELECTRIC COOPERATIVE, INC. (LEYECO II)**
Attention: **DIR. ROLANDO G. HIDALGO**
Board President
Real Street, Sagcahan District, Tacloban City
12. **LEYTE III ELECTRIC COOPERATIVE, INC. (LEYECO IV)**
Attention: **MR. CORNELIO Q. BRAZIL**
Board President
Barangay Balire, Tunga, Leyte
13. **LEYTE IV ELECTRIC COOPERATIVE, INC. (LEYECO IV)**
Attention: **DIR. CARLITO P. SUBA-AN**
Member, Board of Directors
Hilongos, Leyte
14. **LEYTE V ELECTRIC COOPERATIVE, INC. (LEYECO V)**
Attention: **MR. JUANITO E. JORDA, JR.**
General Manager
Barangay San Pablo, Simangan, Ormoc City
15. **NEGROS OCCIDENTAL ELECTRIC COOPERATIVE, INC. (NOCECO)**
Attention: **MR. CORNELIO L. SOMODIO, JR.**
General Manager
Kabankalan City, Negros Occidental
16. **NEGROS ORIENTAL I ELECTRIC COOPERATIVE, INC. (NORECO I)**
Attention: **ENGR. ANITO A. MERCADO**
Board President
Barangay Bindoy, Negros Oriental
17. **NORTHERN SAMAR ELECTRIC COOPERATIVE, INC. (NORSAMELCO)**
Attention: **MR. SALVADOR G. HERNANDEZ**
General Manager
Barangay Magsaysay, Bobon, Northern Samar
18. **SAMAR I ELECTRIC COOPERATIVE, INC. (SAMELCO I)**
Attention: **MR. REYNALDO A. LIM**
Board President
Barangay Carayman, Calbayog City

19. **SAMAR II ELECTRIC COOPERATIVE, INC. (SAMELCO II)**
Attention: **MS. OLIVIA D. CABALIZA**
OIC-General Manager
Barangay Arado, Paranas, Samar
20. **VISAYAN ELECTRIC COMPANY (VECO)**
Attention: **MR. JAIME JOSE Y. ABOITIZ**
Executive Vice President and Chief Operating Officer
(COO)
Aboitiz Corporate Center, Banilad, Cebu City
21. **VMC RURAL ELECTRIC SERVICE COOPERATIVE, INC. (VRESCO)**
Attention: **MR. TEOTIMO A. BALLESTEROS, JR.**
Board President
Barangay Tortosa, Manapla, Negros Occidental
22. **The Office of the Solicitor General (OSG)**
134 Amorsolo Street, Legaspi Village
Makati City
23. **The Commission on Audit (COA)**
Commonwealth Avenue
Quezon City 1121
24. **The Senate Committee on Energy**
GSIS Building, Roxas Boulevard
Pasay City 1307
25. **The House Committee on Energy**
Batasan Hills, Quezon City 1126
26. **Office of the President of PCCI**
Philippine Chamber of Commerce and Industry (PCCI)
3rd Floor, ECC Building, Sen. Gil Puyat Avenue
Makati City
27. **Office of the City Mayor**
Makati City
28. **Office of the City Mayor**
Quezon City
29. **Office of the City Mayor**
Cebu City
30. **Office of the Provincial Governor**
Province of Antique
31. **Office of the Provincial Governor**
Province of Biliran
32. **Office of the Provincial Governor**
Province of Cebu

33. **Office of the Provincial Governor**
Province of Negros Occidental
34. **Office of the Provincial Governor**
Province of Negros Oriental
35. **Office of the Provincial Governor**
Province of Eastern Samar
36. **Office of the Provincial Governor**
Province of Northern Samar
37. **Office of the Provincial Governor**
Province of Iloilo
38. **Office of the Provincial Governor**
Province of Leyte
39. **All Distribution Utility in Visayas**

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

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Applicant.

x-----x

NOTICE OF PUBLIC HEARING

DOCKETED
Date: FEB 29 2012
By: *aw*

TO ALL INTERESTED PARTIES:

Notice is hereby given that on January 20, 2012, 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 Visayas Grid, with prayer for the issuance of a provisional authority.

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

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- 10.5 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;
- 10.6 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. xxx 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 structured, 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 the DOE Circular No. DC 2010-05-0006 and 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 the aforementioned DOE Circulars;

- 10.7 Basic Energy Charge** – The Basic Energy Charge (BEC) applied to the Customer's hourly energy consumption shall be the Commission-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), R.A. 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 for Customers who are Indirect WESM members), 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. 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. 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;
- 10.8 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;
- 10.9 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 if Customer has not fully taken or failed to consume the Contract Energy, subject to deductions and adjustments as expressly provided in the Contract;
- 10.10 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;

10.11 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

10.12 Contract Termination – Either party will have the right to terminate the Contract upon failure of the other to perform its obligation under the Contract

11. 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 LOA, a copy of the instant application (including Annexes) was furnished to the Sangguniang Panlungsod of Makati City. The instant application (excluding Annexes) was also published in a newspaper of general circulation;

Allegations in Support for the Issuance of Provisional Authority

12. 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 of electricity, hence the respective CSEE;
13. The CSEE of the above listed DUs expired on December 25, 2011. Accordingly, a grant of provisional authority to execute the CSEE effective December 26, 2011 will benefit DUs and ultimately redounds to the benefit of the end consumers;
14. Pursuant to the Commission's Rule of Practice and Procedures, it may exercise its discretion by granting provisional authority or interim relief prior to a final decision;
15. 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
16. It prays that the Commission approves the duly negotiated CSEE with various DUs in the Visayas Grid and that a provisional authority be issued authorizing it to implement the subject CSEE with the connected DUs in the Visayas Grid effective December 26, 2011.

The Commission has set the application for jurisdictional hearing, expository presentation, pre-trial conference and evidentiary hearing on **March 22, 2012 (Thursday) at nine o'clock in the morning (9:00 A.M.), at the ERC Visayas Field Office, Machay Building, Gorordo Avenue, Lahug, 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 ERC'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, **MARIA TERESA A.R. CASTAÑEDA**, **JOSE C. REYES**, **ALFREDO J. NON** and **GLORIA VICTORIA C. YAP-TARUC**, Energy Regulatory Commission, this 20th day of February 2012 at Pasig City.


ATTY. FRANCIS SATURNINO C. JUAN
Executive Director III