

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

<b>PSALM CORP</b>	
OFFICE OF THE GENERAL COUNSEL	
<b>RECEIVED</b>	
BY: <i>Di</i>	<b>FEB 29 2012</b>
DATE:	
TIME: <i>1:17 pm</i>	
CONTROL NO. <i>12-0769</i>	

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

ERC CASE NO. 2012-007 RC

**POWER SECTOR ASSETS AND  
LIABILITIES MANAGEMENT  
CORPORATION (PSALM),**

**Applicant.**

x-----x

**D O C K E T E D**

Date: **FEB 29 2012**

By: *Di*

**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 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. It filed a similar application dated March 2, 2011 for the approval of the terms and conditions of CSEE of two (2) DUs located in the Mindanao Grid, all effective December 26, 2010 until December 25, 2011;

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. 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. 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]);
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);

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

7. 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 Mindanao Grid:
  - 7.1 Lanao del Sur Electric Cooperative, Inc. (LASURECO); and
  - 7.2 Zamboanga City Electric Cooperative, Inc. (ZAMCELCO)

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

8. 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:

- 8.1 **Contract Duration** - This Contract shall remain in full force and effect from December 26, 2011 to December 25, 2012. Unless otherwise provided, the applicable provisions of this Contract shall be deemed modified by the applicable Wholesale Wholesale Electricity Spot Market (WESM) Rules, upon commercial operation of the WESM, as declared by the DOE;
- 8.2 **Contract Energy** – The Contract Energy shall not be changed by either party except in cases as provided for in the contract;
- 8.3 **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;
- 8.4 **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;
- 8.5 **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;
- 8.6 **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;
- 8.7 **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);

- 8.8 Bandwith** – 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;
- 8.9 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;
- 8.10 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 if Customer has not fully taken or failed to consume the Contract Energy, subject to deductions and adjustments as expressly provided in the Contract;
- 8.11 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;
- 8.12 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
- 8.13 Contract Termination** – Either party will have the right to terminate the Contract upon failure of the other to perform its obligation under the Contract;
9. 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***

10. 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;

11. 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;
12. 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;
13. 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
14. 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 connected DUs in the Mindanao 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 29, 2012 (Thursday) at nine o'clock in the morning (9:00 A.M.), at the ERC Mindanao Field Office, Mintrade Building, Monteverde Avenue corner Sales Streets, 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 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 the Offices of the Mayors of Makati City and Zamboanga City and the Provincial Governor of Lanao del Sur 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 Governor and Mayors 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  
*for*

  
XEROX COPY/ERC CASE NO. 2012-007-RC-Order

**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)  
7<sup>th</sup> Floor, Bankmer Building, 6756 Ayala Avenue, Makati City
  
2. **LANAO DEL SUR ELECTRIC COOPERATIVE, INC. (LASURECO)**  
Attention: **MR. ASHARY P. MAONGCO**  
General Manager  
Avatar Park, Gadongon, Marawi City
  
3. **ZAMBOANGA CITY ELECTRIC COOPERATIVE, INC. (ZAMCELCO)**  
Attention: **MR. REINERIO R. RAMOS**  
General Manager  
Zamboanga City
  
4. **The Office of the Solicitor General (OSG)**  
134 Amorsolo Street, Legaspi Village  
Makati City
  
5. **The Commission on Audit (COA)**  
Commonwealth Avenue  
Quezon City 1121
  
6. **The Senate Committee on Energy**  
GSIS Building, Roxas Boulevard  
Pasay City 1307
  
7. **The House Committee on Energy**  
Batasan Hills, Quezon City 1126
  
8. **Office of the Provincial Governor**  
Province of Lanao del Sur
  
9. **All Distribution Utility in Mindanao**
  
10. **ASSOCIATION OF MINDANAO ELECTRIC COOPERATIVE, INC. (AMRECO)**  
Attention: **MR. CLINT DJANGO PACANA**  
Executive Director  
Door #5, RS Building, Macajalar Street  
Barangay Camaman-an, Cagayan de Oro City 9000



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**ENERGY REGULATORY COMMISSION**  
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D O C K E T E D

Date: FEB 29 2012

By: *[Signature]*

**NOTICE OF PUBLIC HEARING**

**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 Mindanao Grid, with prayer for the issuance of a provisional authority.

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

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12. 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;
13. 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
14. 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 connected DUs in the Mindanao Grid effective December 26, 2011.

The Commission has set the application for jurisdictional hearing, expository presentation, pre-trial conference and evidentiary hearing on **March 29, 2012 (Thursday) at nine o'clock in the morning (9:00 A.M.), at the ERC Mindanao Field Office, Mintrade Building, Monteverde Avenue corner Sales Streets, Davao 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 20<sup>th</sup> day of February 2012 at Pasig City.

  
**ATTY. FRANCIS SATURNINO C. JUAN**  
Executive Director III