

REPUBLIC OF THE PHILIPPINES
ENERGY REGULATORY BOARD
San Miguel Avenue, Pasig City

IN THE MATTER OF THE APPLICATION
FOR THE APPROVAL OF THE POWER
PURCHASE AGREEMENT FOR THE
PURCHASE OF ELECTRIC POWER AND
ENERGY BY APPLICANT FROM PANAY
POWER CORPORATION

PANAY ELECTRIC COMPANY, INC.,
Applicant
X-----X

ERB Case No. 98-30

D O C K E T E D
Date: 3/27/98
By: M. M. M. M.

D E C I S I O N

On April 22, 1998. Panay Electric Company, Inc. (PECO), a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, filed an application for approval of the power purchase agreement for the purchase of electric power and energy by applicant from Panay Power Corporation (PPC) with prayer for provisional authority.

In its application, applicant averred, among others, that it is authorized to operate electric light, heat and power system in the City of Iloilo in the Island of Panay; that in furtherance of the policies pertaining to electric power generation as embodied in Executive Order No. 215, the applicant herein and PPC executed on January 24, 1997 a Power Purchase Agreement (PPA) for the purchase of electricity; that under the said Power Sales Agreement, the applicant shall purchase from PPC the electricity to be produced by a diesel power generating facility with a minimum net aggregate output of 50 megawatts, to be located in Barrio Ingore, Iloilo City; that the agreement shall be under a long term power off-take arrangement for a period of twenty-five (25) years beginning from the commencement of commercial operation of the power plant by PPC which is expected to be in the first quarter of 1999; that the rates set forth in the agreement were designed to be competitive with those of other bulk power producers in the grid, such as the National Power Corporation (NPC) or its successor; that finally, the agreement has been entered into by applicant in order to assure itself of sufficient and continuous supply of power at reasonable cost following the spirit of Executive Order No. 215.

Having found the said application sufficient in form and substance and the required fees having been paid, the Board issued an Order and a Notice of Public Hearing both dated May 8, 1998 setting the same for hearing on June 18 and 19, 1998. The same Order carried a directive for the applicant to publish at its own expense, the Notice of Public Hearing, twice in two (2) newspapers of general circulation in the Philippines, including one locally published in and of general circulation in the City of Iloilo, Island of

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Panay, the date of publication to be not later than two (2) weeks before the date of initial hearing.

The City Mayor of Iloilo City was furnished copies of the Order and the attached Notice of Public Hearing for the appropriate posting thereof on the Bulletin Board of the City Hall of said city. The Commission on Audit (COA), the Office of the Solicitor General (OSG) and the Committees on Energy of both Houses of Congress, which were also furnished copies of the same Order and Notice of Public Hearing, were requested to be represented at the hearing.

For lack of quorum at the scheduled hearing on June 18, 1998, said applicant submitted its "Compliance" of even date and later on August 24, 1998, consisting of its compliance with the Board's posting and publication of notice requirements. On August 27, 1998, it filed a "Manifestation" dated August 25, 1998, informing the Board that it would start drawing power from PPC as an alternative power supplier as the NPC has been experiencing power interruptions throughout the whole Island of Panay.

During the initial hearing of this case on October 21, 1998, no oppositor appeared despite notice. Applicant presented its proofs of compliance with the notice requirements duly marked as Exhibits "A" to "C-1", inclusive. Thereafter, the counsel for applicant presented Mr. Enrico Hidalgo, PECO's Assistant Vice President, Project Officer. In the course of the direct examination of said witness, various documents were presented and marked as Exhibits "D" to "K-13", inclusive. Another witness, Atty. Jerry Opinion, PECO's General Manager, was then presented for direct examination, in the course of which a document in support of the application was presented and marked as Exhibit "L".

On November 19, 1998, applicant submitted its "Formal Offer of Exhibits".

On February 4, 1999, the Environmentalist Consumers Network, Inc. (ECN) filed an "Intervention" on behalf of the consumers of Iloilo City. Relative thereto, in its Order dated March 31, 1999, the Board directed applicant to submit its comment thereon.

On March 30, 1999, applicant submitted its "Comment on Intervention".

On May 5, 1999, the Board issued an Order provisionally approving the Power Purchase Agreement dated January 24, 1997 entered into by applicant and PPC. In the same Order, applicant was directed to submit the following documents:

- a) Copies of the Articles of Incorporation of PPC;
- b) SEC Certificate of Registration of PPC;
- c) BOI Certificate of Registration of PPC;
- d) List of Stockholders of PPC;
- e) Executive Summary of the Project;
- f) Financial Plan and Sources of Funds;
- g) Location Plan of Panay Power plant; and
- h) Certificate of Accreditation from the Department of Energy.

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On June 18, 1999, applicant submitted its "Compliance" with the aforesaid directive.

In the meantime, the Board takes note of the following pleadings: 1) ECN's "Motion to Consolidate" dated July 9, 1999, seeking to consolidate ERB Case Nos. 89-373 and the instant case; 2) ECN's "Manifestation" of even date; and 3) PECO's "Notice of Change of Address" dated July 26, 1999.

Acting now on the said motion to consolidate, the same is hereby DENIED for lack of merit. The Board finds no merit therein as the instant case has already been submitted for resolution whereas ERB Case No. 89-373 has been decided by the Board last December 18, 1990. Furthermore, the two cases involve different subject matters, one was about a claim for refund (ERB Case No. 89-373) while the other is about a power purchase agreement (ERB Case No. 98-30). Moreover, a similar motion was denied by the Board in an Order dated September 22, 1999 in ERB Case No. 89-373.


Thus, finding the documents submitted by the herein applicant PECO to be in order, in compliance with the Board's directives in its Order dated May 5, 1999, and considering further that ECN has already manifested that it would no longer present any evidence or witness to substantiate its opposition, the Board hereby reiterates its findings and conclusions in the aforesaid Order of May 5, 1999.

WHEREFORE, premises considered, the provisional authority granted by the Board in its Order dated May 5, 1999 is hereby made permanent.

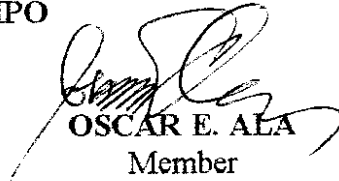
Let copies of this Decision be served on all interested parties.

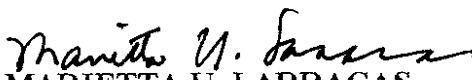
SO ORDERED.
Pasig City, March 20, 2000.

(ON OFFICIAL TRAVEL)
MELINDA L. OCAMPO
Chairman


ALBERTO D. DOSAYLA
Member


NICOMEDES B. DEYNATA
Member


OSCAR E. ALA
Member


MARIETTA U. LARRACAS
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CCC/

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6. The Senate Committee on Energy
GSIS Building, Roxas Boulevard
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7. The City Mayor
Iloilo City
8. ERB - Energy Pricing Branch