

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

IN THE MATTER OF THE  
APPLICATION OF THE  
APPROVAL OF THE POWER  
PURCHASE AGREEMENT FOR  
PURCHASE OF ELECTRIC

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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 Panay Power which is expected to be in by 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 or its successor; and 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.

By way of petition for immediate and provisional approval of the application, PECO alleged that under the terms of the PPA, the initial operation date of the power plant shall commence in April, 1998 and that there is an urgent need for immediate and provisional approval of the application.

Finding the said application sufficient in form and substance and the required fees having been paid, the Board issued an Order dated May 8, 1998 setting the same for hearing on June 18 and 19, 1998 at the ERB Hearing Room. The same Order carried a directive for the applicant to publish at its own expense, the Notice of Public Hearing issued to that effect, twice in two (2) newspapers of general circulation in the Philippines, including one (1) locally published in and of general circulation in the City of Iloilo, Island of Panay, and the date of publication to be not later than two (2) weeks before the date of initial hearing.

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Due to the absence of a quorum on the scheduled date of hearing on June 18, 1998, the applicant submitted its "Compliance" of even date with the following documents: 1) Affidavit of Paquito J. Estandarte, Jr., Publisher/Editor of the Visayan Tribune; 2) May 14-20, 1998 issue of the Visayan Tribune; 3) Notice of Public Hearing appearing in page 5 of the said issue; 4) May 21-27 issue of the same paper; 5) Notice of Hearing appearing in page 5 of the latter issue; and 6) Certification of posting of Notice of Hearing and on August 26, 1998 the following documents as additional compliance: 1) Affidavit of Bess Zamora, Advertising Manager of Today; 2) May 30, 1998 issue of Today; 3) Notice of Hearing appearing on page 15 of the aforementioned issue; 4) May 31, 1998 issue of Today; and 5) Notice of Hearing appearing on page 7 of the latter issue. On August 27, 1998, applicant filed a "Manifestation" dated August 25, 1998, informing the Board that it will start drawing power from Panay Power as an alternative power supplier as the National Power Corporation 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. The herein applicant presented its proofs of compliance with the notice requirements duly marked as Exhibits "A", "A-1", "A-1-a", "A-2", "A-2-a", "B", "B-1", "B-1-a", "B-2", "B-2-a", "C" and "C-1". Thereafter, the applicant presented its first witness, Mr. Enrico Hidalgo, Asst. Vice President, Project Officer of PECO, testified on his participation in the Panay Power Plant Project of the applicant. In the course of the testimony of Mr. Hidalgo, documents were marked as Exhibits "D" to "K-13", inclusive. He testified that he got involved in the Panay Power Project when PECO started negotiations with Panay Power assisting their Executive Vice President Ernesto Pantranco and this included the search and acquisition of the land, awarding of the contract to the building contractors and various sub-contractors and presently supervising these contractors. Applicant's second witness, Atty. Jerry Opinion, Vice President, Adm. & Finance of applicant, was then presented and in the course of his testimony Exhibit "L" was marked, to support the application. Atty. Opinion testified

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that he reviewed the PPA on instructions of their General Manager and made recommendations on the same.

On November 19, 1998, applicant PECO submitted its "Formal Offer of Exhibits". Finding the said exhibits to be relevant and material to this application, the same are hereby admitted.

On February 4, 1999, the Environmentalist Consumers Network Inc. (ECN) filed an "Intervention" dated January 18, 1999 seeking to intervene in behalf of the consumers of Iloilo City.

In the Board's Order dated March 31, 1999, applicant herein was directed to comment on the said intervention filed by ECN.

The applicant in its "Comment on Intervention" dated March 26, 1999, alleged, among other things, that ECN's intervention has no basis even granting that the two corporations, i.e., Panay Power Corporation and Panay Electric Company, are interrelated as there is no prohibition on cross-ownership between a utility and a power supplier; and that the relief was sought long after the case was rested for resolution last November 19, 1998.

The subject Power Purchase Agreement will be for a period of 25 years with commercial operation of the plant commencing by the first quarter of 1999. During the period, Panay Power guarantees to deliver 203,497,000 kwh to PECO.

The plant shall be operated using bunker-C fuel as its primary energy source. If technically and economically feasible, Panay Power may use a mutually acceptable alternate fuel.

The agreement was entered into by PECO to assure itself of sufficient and continuous supply of power at reasonable cost. PECO believes that it will encourage efficiency in power generation aside from the foreign exchange and budgetary savings it will be able to generate for the

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government. It also will promote public interest in a suitable and adequate manner.

With regards to pricing, PECO shall pay Panay Power each calendar month a monthly payment consisting of the following components: (1) Monthly Capacity Charge, (2) Monthly Energy Charge and (3) Fuel Charge. Monthly Capacity Charge is determined by multiplying the Capacity Fee by the amount equal to the actual kwh delivered by Panay Power for such month. Capacity fees are the rates mutually agreed upon by the parties. The monthly capacity fee is a fixed rate in \$/kW per month converted to pesos at the exchange rate prevailing at the time of the billing. The equivalent capacity fee as indicated in Schedule C of the PPA is based on a foreign exchange rate of P26.00/\$ and may be adjusted. It is expressed in P/kwh and is pegged on the forecasted energy output of the plant. From the initial year 1999 the capacity fee of P0.3965/kwh will be gradually reduced by a yearly average of P0.0221/kwh. Starting year 2005 up to the termination of the contract, however, the capacity fee is fixed at P0.2367/kwh.

The formula used to compute for the monthly capacity charge is shown below:

$$\text{Capacity Charge} = C \times S$$

where C = capacity fee equivalent to P0.3965/kwh

S = total energy sold to PECO in one month (kwh)

Monthly Energy Charge is computed by taking into consideration the actual energy consumption of PECO for the subject month and on the basis of the formula provided in the agreement.

The energy fee is a variable rate in P/kwh. This fee may change every month depending on factors such as the inflation index. The monthly energy

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charge is determined by multiplying the energy fee by the energy (kwh) exported by Panay Power. The formula used in computing for the energy charge is as follows:

$$\text{Energy Charge} = e \times S \times af$$

where:  $e$  = energy fee in peso per kwh

$S$  = total energy sold to PECO in one month (kwh)

$af$  = inflation index =  $\frac{PIC}{PIB}$

where PIC = the Philippine Index (NEDA Consumer Price Index for all items in Metro Manila) as at the first day of every six month period commencing from the completion date, immediately preceding the current date

PIB = the Philippine Index as of date of signing of the Agreement

Finally, Monthly Fuel Charge is computed by multiplying the fuel fee in P/kWh by the total energy sold to PECO in one (1) month.

The formula used in computing for the fuel charge is as follows:

$$\text{Fuel Charge} = f \times s$$

Where:

$f$  = fuel fee in P/kWh

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s = total energy (kWh) sold to PECO in one month

The fuel fee is a variable rate in P/kwh. This fee is obtained monthly by dividing the actual fuel costs for the month by the total energy exported by Panay Power for the same period. The total fuel costs are thus passed on to PECO through the fuel fee. The established Heat Rate is equal to 8,250 BTU/kwh for the first year. The heat rate determines the amount of heat energy necessary to generate a kilowatt hour of electricity.

Throughout the term of the Agreement, Panay Power's rates to applicant shall be equal to or less than the rates offered by bulk power producers in the grid, such as NPC or its successor companies, provided that in the event that Panay Power's rates are no longer competitive with other bulk power producers, the parties agree to conduct mutual discussions to resolve or minimize the effects of Panay Power's non-competitiveness. Said agreements, shall however be subject to the ERB's approval.

In connection with its commercial provisions, the agreement provides for the usual practices as accepted among electric utilities worldwide.

Panay Power shall deliver to PECO which shall take and pay for, in each Contract Year, the following minimum number of kwhs of Net Electrical Output:

<u>Contract Year</u>	<u>Minimum Guaranteed Electrical Quantity (kwhs)</u>
1	313,584,000
2	341,807,000
3	372,570,000
4	406,101,000
5	442,650,000
6	482,488,000
7 - 25	511,560,000

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The take or pay amount covers all components of the charges.

The parties agreed that the Minimum Guaranteed Electrical Quantity for each contract year will be confirmed by Panay Power or amended by the parties on or before the commercial operations date, provided, however, that both parties may mutually agree to adjust the Minimum Guaranteed Electrical Quantity. The plant will run at all times as a base load plant, which cannot be reduced in load or disconnected by PECO except when delivery of power is suspended by Panay Power.

In case, PECO fails to take the full Minimum Guaranteed Electrical Quantity due to causes not attributable to Panay Power including, but not limited to, lack of demand for such output by PECO's ratepayers, PECO shall be liable for the payment of the full Minimum Guaranteed Electrical Quantity as provided in the agreement, unless excused by any natural or political force majeure event.

PECO's acceptance of deliveries of Net Electrical Output delivered by Panay Power may be suspended by PECO for any period of time during which it is physically precluded from accepting such deliveries due to: (a) System Emergency; or (b) PECO's performance of required repairs or maintenance of its transmission lines, upon thirty (30) days prior notice to and agreement of Panay Power, which shall not be unreasonably withheld; or (c) an event of force majeure.

PECO is stipulated in the agreement to have access to the plans and specifications for the Plant and access to the Plant and the site upon reasonable prior notice during regular business hours to inspect and observe the operation of the same.

Panay Power agrees to take all reasonable measures to avoid the effect and to mitigate the consequences of a Fuel Supply Force Majeure as follows: (1) it shall maintain fuel storage facilities on Site to mitigate the effect of short term fuel supply interruptions; and (2) it shall endeavor to negotiate, if available on commercially reasonable terms in the domestic or international

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fuel market, as applicable, remedies in the Fuel Supply and Transportation Contracts that will compensate Panay Power for the unexcused non-delivery of fuel equal to the difference between the then current market price of fuel and the price payable for fuel under the applicable fuel contract.

In the event of force majeure, both parties shall discuss the basis and terms upon which the agreement may be continued. Either party has the option to terminate said agreement if it lasts for more than thirty (30) days. The parties shall take all reasonable steps to ensure resumption of normal performance under this agreement.

In the event that Panay Power fails to deliver the Monthly Delivery Obligation in any month due solely to its fault or negligence and in breach of its obligations, Panay Power shall pay PECO an amount equal to the difference in cost of energy purchased from NPC and, in the event PECO is unable to purchase replacement power from NPC or an alternative source, Panay Power shall pay PECO the amount of kwhs constituting such shortfall.

With regards to risks, the provisions are those as accepted by good utility practice as standard.

After a thorough evaluation and consideration of the records of this case, the Board finds that indeed PECO is in urgent need of an alternative source of power which reality was highlighted by the recent power interruptions not only in applicant's franchise area but the whole Island of Panay (TSN, October 21, 1998, pp. 70-73).

The Board, likewise, finds the agreement advantageous to applicant PECO and its consumers considering that the same would be able to provide a reliable, adequate, efficient and continuous electric service in the applicant's franchise area. The agreement was entered into in order to assure PECO of sufficient and continuous supply of electric power at reasonable cost. It is believed that with the coming-in of a new alternative source of

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power supply, efficiency in power generation will be encouraged aside from the foreign exchange and budgetary savings that the government will be able to generate. Hence, the approval of the power purchase agreement will promote public interest in a suitable and adequate manner.

Panay Power presently supplies 100% of the power requirements of PECO. As such, it is assumed that the selling price covers power delivery and ancillary services among others. In the future event of interconnection with NPC, Panay Power has agreed to pay NPC for firm load following and frequency regulation and spinning reserve ancillary services for up to 12 MW of Panay Power's load only, and for non-firm back-up power. The balance of ancillary services will be provided by Panay Power. The estimated monthly capacity payment is about 20% as compared to the estimated monthly energy and fuel payment which is about 31% and 49%, respectively. It must be noted that the abovementioned computations are based on forecasted parameters such as fuel price, inflation index, energy sales, etc. The plant capacity factor is forecasted to be about 50% initially, gradually increasing to 90%. The plant availability factor is 92%.

Throughout the term of the Agreement, Panay Power's selling rate shall be adjusted such that Panay Power's rate to applicant shall always be competitive with the rate offered by NPC or its successor company. In the event that Panay Power's rates are no longer competitive with other bulk power producers, such as NPC, the parties have agreed to conduct mutual consultations to resolve or minimize the effect of Panay Power's non-competitiveness. The presence of other safety nets in the Agreement is more than advantageous to applicant herein and its customers in terms of reasonableness of price throughout the conclusion of the contract period.

A comparison of Panay Power Corporation's actual rate to PECO and the contract price at the time of the commencement of commercial

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operation reveals that the selling rate for the energy generated is 5% to 10% lower than the effective rate of NPC to applicant.

We have taken note of intervenor ECN's concern regarding "the ownership of the stocks of the Panay Electric Company and of the Panay Power Corporation as well as the identity of the corporate officers of the said two (2) corporations". As a matter of fact, applicant's witness, Mr. Enrico Hidalgo, responding to a query from this Board at the hearing of this case on October 21, 1998, stated that "Panay Power is owned by Panay Electric Company to the extent of 30%" and that "Panay Electric has three board seats in the Panay Power Board" out of the seven (7) total number of directors in the Panay Power Board (TSN, October 21, 1998, pp. 58-60). However, this Board is unable to see any ill-effects of such cross-ownership insofar as the power purchase agreement in question is concerned since, as pointed out in the foregoing, the said agreement is beneficial to applicant's customers in terms of lower rates and more efficient and reliable supply of electricity.

Furthermore, the Board took note of the favorable written endorsements of the project by various government officials in the area, both national and local, as follows: (a) Letter of Congressman Raul M. Gonzales of the Lone District of Iloilo City (Exhibit "K"); (b) Letter of Governor Arthur D. Defensor of the Province of Iloilo (Exhibit "K-1"); (c) Letter of Mayor Mansueto A. Malabor of Iloilo City (Exhibit "K-2"); (d) Excerpts from the Minutes of the regular session of Barangay Council of Barangay Incore, La Paz, Iloilo City, where the power plant is located (Exhibit "K-4"); (e) Excerpts from the Minutes of the regular session of the Sangguniang Barangay of Ticud, La Paz, Iloilo City (Exhibit "K-5"); (f) Certification of Cesar M. Roldan, Barangay Captain of Barangay Ticud, Iloilo City (Exhibit "K-6"); (g) Certification executed by Ms. Lydia N. Juele, Barangay Captain of Barangay Hinactacan, Iloilo City (Exhibit "K-7"); (h) Certification of Wilfredo Jurilla, Barangay Captain of San Isidro, Iloilo City (Exhibit "K-8"); (i) Certification of Fermin M. Juntado, Sr., Barangay Captain of Barangay Balabago, Jaro, Iloilo City (Exhibit "K-9"); (j) Certification of Rodolfo Firmeza, Barangay Captain of Caingin, La Paz, Iloilo City (Exhibit "K-10");



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(k) Certification of Jose Militar, Barangay Captain of Banuyao, La Paz, Iloilo City (Exhibit "K-11"); (l) Certification of Julianito V. Silvederio, Barangay Captain of Tabuc Suba, Jaro, Iloilo City (Exhibit "K-12"); and (m) Endorsement from Andres B. Jerbadan, Sr., Barangay Captain of Baldoza, La Paz, Iloilo City (Exhibit "K-13").

**WHEREFORE**, premises considered, and in accordance with Section 8 of Executive Order No. 172, as amended, and the applicable provisions of the Public Service Act, as amended, and Executive Order No. 215 and its implementing rules and regulations, this Board hereby approves provisionally the Power Purchase Agreement dated January 24, 1997 entered into by the applicant Panay Electric Company, Inc. with Panay Power Corporation.

Applicant PECO is hereby directed to submit the following documents, within ten (10) days from receipt hereof:

- a) Copies of the Articles of Incorporation of Panay Power;
- b) SEC Certificate of Registration of Panay Power;
- c) BOI Certificate of Registration of Panay Power;
- d) List of Shareholders of Panay Power;
- e) Executive Summary of the Project;
- f) Financial plan and sources of funds;
- g) Location plan of the Panay Power plant; and
- h) Certificate of Accreditation from the Department of Energy.

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To enable intervenor ECN to present evidence in support of its opposition to the herein application, this case is hereby set for hearing on June 7, 1999 at the ERB Hearing Room, 15th Floor, Pacific Center Building, San Miguel Avenue, Pasig City at two o'clock (2:00 p.m.) in the afternoon.

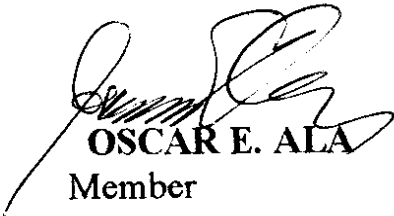
Let copies of this Order be furnished all parties concerned.

SO ORDERED.

Pasig City, May 5, 1999.

  
**MELINDA L. OCAMPO**  
Chairman

  
**ALBERTO D. DOSAYLA**  
Member

  
**OSCAR E. ALA**  
Member

  
**NICOMEDES B. DEYNATA**  
Member

  
**MARIETTA U. LARRACAS**  
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CCC/

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