

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



**IN THE MATTER OF THE
JOINT APPLICATION FOR
APPROVAL OF THE POWER
SUPPLY AGREEMENT (PSA)
ENTERED INTO BY AND
BETWEEN BOHOL I
ELECTRIC COOPERATIVE,
INC. (BOHECO I) AND SAN
MIGUEL ENERGY
CORPORATION (SMEC),
WITH PRAYER FOR
PROVISIONAL AUTHORITY
AND CONFIDENTIAL
TREATMENT OF
INFORMATION**

ERC CASE NO. 2019-020 RC

**BOHOL I ELECTRIC
COOPERATIVE, INC.
(BOHECO I) AND SAN
MIGUEL ENERGY
CORPORATION (SMEC),
Applicants.**

Promulgated:
APR 12 2019

X-----X

ORDER

On 07 March 2019, the Bohol I Electric Cooperative, Inc. (BOHECO I) and San Miguel Energy Corporation (SMEC) filed an *Application* (Application) dated 02 January 2019, seeking the approval of their Power Supply Agreement (PSA) with prayers for the issuance of provisional authority and confidential treatment of information.

In their *Application*, BOHECO I and SMEC alleged the following:

The Joint Applicants

1. BOHECO I is an electric cooperative duly registered with the National Electrification Administration (“NEA”) pursuant to Presidential Decree No. 269, as amended, with principal office address at Brgy. Cabulijan, Tubigon, 6329 Bohol. It holds a franchise to operate light and power services in the Municipalities of Alburquerque, Anterquera, Baclayon, Balilihan, Batuan, Bilar, Calape, Carmen, Catigbian, Clarin, Corella, Cortes, Daus, Dimiao, Inabanga, Lila, Loay, Loboc, Loon, Maribojoc, Panglao, Sagbayan, San Isidro, Sevilla, Sikatuna, and Tubigon, all in the Province of Bohol (collectively, the Franchise Area).
2. SMEC is a domestic corporation organized and existing under the Philippine laws, with office addresses at the 2nd Floor, 808 Building, MERALCO Avenue Corner Gen. Lim Street, Barangay San Antonio, Pasig City. It is the Independent Power Producer (IPP) Administrator of the 1,000 MW Net Contracted Capacity of the Sual Coal-Fired Thermal Power Plant located in Barangay Pangascasan, Sual, Pangasinan.
3. The Joint Applicants may be served with orders, notices and other processes of the Honorable Commission through their respective undersigned counsel at the addresses indicated herein.

Nature of the Application

4. This Joint Application for approval of the Power Supply Agreement (PSA) dated 12 December 2018 entered into by and between BOHECO I and SMEC is being submitted to the Honorable Commission for its review and approval pursuant to Sections 25 and 45 (b) of Republic Act No. 9136, otherwise known as the *Electric Power Industry Reform Act of 2001* or the EPIRA, Rules 5, Sections 4 (e) and 11, Section 5 of its Implementing Rules and Regulations (IRR), Rule 20 (B) of its Rules of Practice and Procedure, and other pertinent rules and regulations.

Statement of Facts

5. BOHECO I conducted a Competitive Selection Process (CSP) through Comparative Proposals for 1.2 MW Baseload Power Supply for Medium-Term (CY2018-2023), as follows:

On 28 April 2017, BOHECO I received an unsolicited proposal from Sta. Clara Power Corporation (SCPC), its existing supplier, to supply its additional medium term power requirements.

BOHECO I accepted the unsolicited proposal of SCPC and declared it a status of “Original Proponent” of an Unsolicited

Proposal which shall be subject to a CSP through Comparative Proposals (also known as Swiss Challenge).

BOHECO I then caused the publication of the *“Invitation for Comparative Proposals”* in the 07 January 2018 and 16 January 2018 issues of the Philippine Daily Inquirer.

BOHECO I also invited Generation Companies to participate in the bidding through written invitation letters sent to their mailing addresses of listed in the Department of Energy (“DOE”) website.

On 26 January 2018, BOHECO I sent an *“Invitation to a Transaction Conference”* to the Original Proponent and Comparative Proponents to discuss the bidding process, rules and evaluation methodology. It also invited the Energy Regulatory Commission (“ERC”), DOE, and NEA.

On 09 February 2018, BOHECO I’s Bids and Awards Committee (BAC) conducted a Transaction Conference which was attended by SMEC, First Gen Corporation, 1590 Energy Corporation, and Solar Phils.

On 06 April 2018, the above four (4) generation companies submitted their respective Comparative Proposals and thereafter, the same were opened. SMEC’s proposal was the Lowest Calculated Price (LCP).

From 09 April until 13 April, 2018, BOHECO I’s Technical Working Group (TWG) conducted post qualification, verification of value-added services and evaluation of technical proposal of SMEC and thereafter, issued a Report on the post qualification process. After the post-qualification and detailed evaluation, BOHECO I accepted SMEC’s Comparative Proposal and declared SMEC as the Qualified Comparative Proponent or Challenger whose proposal shall be matched by the Original Proponent, SCPC.

On 13 April 2018, BOHECO I issued to SCPC a Notice for a Right to Match the proposal of SMEC.

On 26 April 2018, SCPC declined the opportunity to match the price submitted by SMEC.

On even date, the Board of Directors of BOHECO I issued *Board Resolution No. 51-2018*, entitled *“A Resolution Approving the Recommendation of BOHECO I CPSP BAC on the Results of the BOHECO I Competitive Selection Process (CSP) through Comparative Proposals for Medium-Term (CY2018-2023) on 1.2 MW Baseload Power Supply and the Declaration of SMEC as the Winning Proponent and for Other Purposes”*.

On 02 May 2018, BOHECO I issued a Notice of Award to SMEC which was acknowledged by SMEC on 07 May 2018.

The full details of the foregoing CSP activities are shown in the documents attached to the Application.

6. Salient Features of the PSA.

6.1 Contracted Capacity.

Under the PSA, SMEC shall, during the entire term of the PSA, make available, sell and deliver, or cause to be delivered to BOHECO I the Contracted Capacity and Associated Energy in accordance with *Schedule 1 of the PSA* at the Point of Delivery, whether sourced from the SMEC's Plant, or from other electricity generators, including the Wholesale Electricity Spot Market (WESM).

The Contracted Capacity in 1.1 of Schedule 1 is as follows:

Contract Year (CY)	Duration	Contracted Capacity
2018-2023	June 26, 2018 to December 25, 2023, subject to the terms and conditions of the PSA	1.2 MW

BOHECO I shall nominate in every trading interval from a minimum of seventy percent (70%) to a maximum of one hundred percent (100%) Capacity Utilization Factor (CUF) of the Contracted Capacity. The Associated Energy to be used shall be the higher of (a) actual energy delivered or (b) energy equivalent to a seventy percent (70%) CUF for the billing period. Item (b) shall be the basis for the Minimum Charge as defined in Section 1.1 of the PSA, except during Events of Force Majeure.

The protocol for the delivery and receipt of the Contracted Capacity by the hour is attached as *Schedule 3 of the PSA*.

6.2 Contract Term. The PSA shall take effect between the Parties immediately from Effective Date and shall remain in force and effect until December 25, 2023. In the event BOHECO I intends to extend the Agreement, it shall send a written notice to SMEC no later than June 25, 2023.

6.3 Capacity and Energy Fees. Under the PSA, BOHECO I shall pay the following Capacity and Energy Fees to SMEC:

Basic Energy Charge

The Basic Energy Charge shall be equal to:

$$BEC = (CRF_{ALF} + FOM_{ALF} + VOMF + Energy\ Fee) * AE$$

Where:

CRF_{ALF} is the Capital Recovery Fee and FOM_{ALF} is the Fixed Operation and Maintenance Fee with values for different Capacity Utilization Factors (CUF) or Applicable Load Factors (ALF), effective until December 25, 2023. The Capital Recovery Fees tabulated below shall be fixed throughout the term of the Agreement. However, the Fixed Operation and Maintenance Fee is subject to escalation as illustrated in equation for FOMF below:

Capacity and O&M Fees for Specific Capacity Utilization Factors

Capacity Utilization Factor (%)	Capacity Fee (USD /kWh)	O&M Fee (Php /kWh)
99.50-100.00%	0.0143	0.1640
98.50-99.49%	0.0145	0.1657
97.50-98.49%	0.0146	0.1673
96.50-97.49%	0.0148	0.1691
95.50-96.49%	0.0149	0.1708
94.50-95.49%	0.0151	0.1726
93.50-94.49%	0.0152	0.1745
92.50-93.49%	0.0154	0.1763
91.50-92.49%	0.0156	0.1783
90.50-91.49%	0.0157	0.1802
89.50-90.49%	0.0159	0.1822
88.50-89.49%	0.0161	0.1843
87.50-88.49%	0.0163	0.1864
86.50-87.49%	0.0164	0.1885
85.50-86.49%	0.0166	0.1907
84.50-85.49%	0.0168	0.1929
83.50-84.49%	0.0170	0.1952
82.50-83.49%	0.0172	0.1976
81.50-82.49%	0.0175	0.2000
80.50-81.49%	0.0177	0.2025
79.50-80.49%	0.0179	0.2050
78.50-79.49%	0.0181	0.2076
77.50-78.49%	0.0183	0.2103
76.50-77.49%	0.0186	0.2130
75.50-76.49%	0.0188	0.2158
74.50-75.49%	0.0191	0.2187
73.50-74.49%	0.0193	0.2216
72.50-73.49%	0.0196	0.2247
71.50-72.49%	0.0199	0.2278
70.50-71.49%	0.0202	0.2310
70.00-70.49%	0.0204	0.2343

$$CRF_{ALF} = CRF_{ALF} \times FOREX$$

$$FOMF_{ALF} = FOMF_{ALF} \times \left[\frac{PHCPI_n}{PHCPI_0} \right]$$

Where:

- CRF_{ALF} - is the Capital Recovery Fee in PHP/kWh
- FOMF_{ALF} - is the Fixed Operation and Maintenance Fee in PHP/kWh
- PHCPI_n - Philippine Consumer Price Index of the calendar month within which the start of the current Billing Period occurs (Source: Philippine Statistics Authority)
- PHCPI₀ - Base Philippine Consumer Price Index, 111.00 (May 2017; 2012=100)
- FOREX - Monthly Average of daily Philippine Peso to US Dollars Foreign Exchange rate for the calendar month within which the start of the current Billing Period occurs (Source: Bangko Sentral ng Pilipinas)
- ACUF - is the Applicable Capacity Utilization Factor between 70% and 100%, provided that if the actual CUF is below 70% (the “Minimum Capacity Utilization Factor”), the Capacity Price shall be calculated based on the Capacity Fee and quantity associated with the Minimum Capacity Utilization Factor

The Applicable Capacity Utilization Factor (CUF) shall be computed as follows:

$$ACUF = \max \left\{ 70\%, \frac{AE}{CC * [H_T - EH_{T0}]} \right\}$$

Where:

- AE - Associated Energy as defined in Section 1.1 of the Agreement
- CC - Contracted Capacity, in kW, as set forth in Schedule 1

H_T - Total number of hours in such Billing Period

EH_{TO} - the sum of the duration, in Equivalent Hours, of Force Majeure in such Billing Period

For example:

AE = 714,000 kWh
 CC = 1,200 kW
 H_T = 720 hours
 H_{TO} = 0 hours

$$ALF = \frac{714,000 \text{ kWh}}{1,200 \text{ kW} * 720 \text{ Hours}}$$

$$= \frac{714,000 \text{ kWh}}{864,000 \text{ kWh}}$$

$$= 82.64\%$$

Energy Fee

$$VOMF = IVOM_{LOCAL} \times \left[\frac{PHCPI_n}{PHCPI_0} \right] + IVOM_{FOREIGN} \times \left[\frac{USCPI_n}{USCPI_0} \right]$$

$$\times FOREX$$

$$Energy \text{ Fee} = IEF \times \left[\frac{CIF_n}{CIF_0} \right] \times FOREX$$

Where:

- VOMF - Variable Operation and Maintenance Fee, PhP/kWh
- IVOMLOCAL - Initial Local Component of Variable O&M Fee, PhP 0.0191/ kWh
- IVOMFOREIGN - Initial Foreign Component of Variable O&M Fee, USD 0.0012/ kWh
- USCPI_n - Current US Consumer Price Index, Billing Period
- USCPI₀ - Base US Consumer Price Index, 244.733 (May 2017)
- IEF - Initial Energy Fee, USD 0.0408/kWh

- CIF_n - CIF Cost of Fuel for Billing Period n
- CIF₀ - Base CIF Cost of Fuel equal to \$74.7/MT

6.4 Other Charges.

- 6.4.1 All existing and future taxes and duties, charges, including but not limited to value-added tax (VAT) and incremental taxes under Republic Act No. 10963 (TRAIN Law), shall be for the account of BOHECO I. Each Party shall bear its own costs and expenses necessary, incidental to, or in connection with, this PSA, including legal and professional fees, if any.
- 6.4.2 All WESM charges, including but not limited to Line Rental, Must Run Unit charges and imbalances, shall be for the account of the BOHECO I.
- 6.4.3 The DOE Fee per ER No. 1-94 shall be for the account of the SMEC.

6.5 Availability of Capacity.

Supply of Contracted Capacity shall be available at all times except for the interruption and/or reduction due to: (a) any Event of Force Majeure; or (b) other causes, including safety, as may be provided by law, rule or regulation or order of a competent authority. For the avoidance of doubt, the SMEC shall supply Contracted Capacity during Planned Outage and/or Forced Outage.

Rate Impact on BOHECO I's Overall Generation Rate

7. The indicative rate impact on BOHECO I's overall generation rate with the supply from SMEC is as follows:

BOHOL I ELECTRIC COOPERATIVE, INC.
 Cabulijan, Tubigon, Bohol
 Generation Rate Impact

Simulation of Generation Mix Rate without SMEC

Power Supplier	Forecasted 2019-2023 Quantity (kWh)	Amount (PhP)	Percent Share (%)	Resulting Utilization Capacity Factor (%)	Average Rate (P/kWh)	Weighted Average Rate (P/kWh)
CEDC	465,375,000	3,102,692,902	47.26%	75.89%	6.6671	5.3360
BSMHP	43,077,185	182,875,573	2.79%	39.34%	4.2453	
JMHP	66,922,100	249,318,284	3.80%	30.56%	3.7255	
SPUG	2,864,732	20,677,816	0.31%	21.80%	7.2181	
SMEC	0	0	0.00%	0.00%	0.0000	
GNPD	509,770,179	1,742,567,529	26.54%	96.99%	3.4183	

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WESM	245,558,957	1,266,483,793	19.29%		5.1576	
TOTAL	1,333,568,152	6,564,615,897	100.00%			

Simulation of Generation Mix Rate with SMEC

Power Supplier	Forecasted 2018-2023 Quantity (kWh)	Amount (PhP)	Percent Share (%)	Resulting Utilization Capacity Factor (%)	Average Rate (₱/kWh)	Weighted Average Rate (₱/kWh)
CEDC	465,375,000	3,102,692,902	47.50%	75.89%	6.6671	5.3251
BSMHP	43,077,185	182,875,573	2.80%	39.34%	4.2453	
JMHP	66,922,100	249,318,284	3.82%	30.56%	3.7255	
SPUG	2,864,732	20,677,816	0.32%	21.80%	7.2181	
SMEC	43,877,088	143,305,458	2.19%	83.48%	3.2661	
GMPD	501,304,075	1,725,903,854	26.42%	95.38%	3.4428	
WESM	210,147,972	1,107,168,131	16.95%		5.2685	
TOTAL	1,333,568,152	6,531,942,018	100.00%			

*Generation Rate Impact -0.0109

Assumptions:

1. Analysis and simulations is based on BOHECO I's forecasted 2019 to 2023 hourly load profile.
2. WESM hourly Prices are inflated from actual prices (with proxy removing outliers) of 2016 at the rate of 3.43%
3. SMEC rate is based on the (i) Capacity Fee of the average resulting CUF; (ii) FOREX is based on the reference rate provided during evaluation of bid proposal; (iii) Energy Fee is based on the submitted fuel cost of SMEC's bid proposal during evaluation; (iv) CPI is based on the reference rate provided during evaluation of proposal
4. CEDC/SPUG prices are inflated at the rate of PH CPI of 3.43%
5. Actual Prices of Existing Power Suppliers on September 2015 was used in the simulation.

8. Environmental Compliance Certificate (ECC). On 8 November 2004, the Department of Environment and Natural Resources ("DENR") issued an ECC with Reference No. 9406-003-206 to Pangasinan Electric Corporation for the 1,200 MW Sual Coal-fired Power Project located at Sitios Bangayao, Buyog and Pao of Barangay Pangascasan, Sual, Pangasinan covering 280 hectares land area.

9. Board of Investments (BOI) Certificate. On 26 January 2011, the Power Plant Project was registered with the BOI which issued Certificate of Registration No. 2011-024.

10. Certificate of Compliance (COC). On 20 April 2009, the Honorable Commission issued a COC registered under the name of Team Sual for its 1,294 MW Coal-Fired Thermal Power Plant. The said COC was a renewal of the previously issued COC on 17 December 2003 under the name of the power plant's former owner, Mirant Sual Corporation.

COMPLIANCE WITH THE PRE-FILING REQUIREMENTS

11. Copies of the following documents and/or information are attached to the Joint Application as annexes and made integral parts hereof:

Annex	Documents/Information
"A"	Articles of Incorporation of BOHECO I.
"A-1"	Amended By-Laws of BOHECO I.
"B"	List of the Board of Directors of BOHECO I.
"C"	Articles of Incorporation and By-Laws of SMEC.
"C-1"	Amended Articles of Incorporation of SMEC.
"D"	Certification Stating the Applicability or Non-Applicability of a Shareholders' Agreement of SMEC.
"E" to "E-1"	Certificate of Registration of SMEC issued by the Securities and Exchange Commission.
"F"	Latest General Information Sheet of SMEC.
"G"	Corporate Structure of SMC Global Power and its subsidiaries.
"H"	BOI Certificate of Registration of SMEC.
"I"	ECC issued by the DENR to the Sual Coal-Fired Thermal Power Plant.
"J"	COC issued by the Energy Regulatory Commission in favor of SMEC.
"K"	Certification of the Non-Applicability of Renewable Energy Service/Operating Contract from the Department of Energy ("DOE");
"K-1"	Certification of the Non-Applicability of Certificate of Registration or Certification of Commerciality by an RE Developer and after due Confirmation by the DOE; and
"K-2"	Certification stating the Consistency/Inconsistency of the Sual Coal Fired Power Station with the DOE's Philippine Development Plan (PDP).
"L"	Certification on the Demand Side Management ("DSM") Program of BOHECO I.
"M"	Contract for the Supply of Electric Energy ("CSEE") between BOHECO I and National Power Corporation ("NPC").
"N"	Historical and Forecasted Supply and Demand Scenario, and Daily Load Curve of BOHECO I.
"O" and Series	CSP Documents of BOHECO I.
"P"	PSA dated 12 December 2018 entered into by and between BOHECO I and SMEC.
"Q"	Transmission Service Agreement between NGCP and BOHECO I
"Q-1"	Metering Service Agreement between NGCP and BOHECO I
"R"	Write-up on the IPPA Project of SMEC.
"S"	Write-up on the details regarding the Transmission Projects or Grid Connection Projects of SMEC
"T"	Executive Summary of the BOHECO I and SMEC PSA.

"U"	Details of the Power Rate Calculations and Financial Model of SMEC (<i>Confidential</i>).
"V"	Rate Impact Analysis of BOHECO I.
"W"	Details of the Fuel Procurement Process of SMEC. (<i>Confidential</i>).
"W-1"	Affidavit of Competitive Procurement Process of SMEC.
"X"	Relevant technical and economic characteristics of the generation capacity, installed capacity, mode of operation, dependable capacity, scheduled outage allowance, major maintenance outage, and forced outage allowance of SMEC.
"Y"	Cost Analysis of the Proposed Pricing Provisions of the PSA.
"Z"	Latest Audited Financial Statements (AFS), Balance Sheet, Income Statement, and Statement of Cash Flows of SMEC;
"Z-1"	Certification from the engine manufacturer of SMEC on the net heat rate in liters per kWh;
"Z-2"	Explanation on the Non-Applicability of Potential Cost of Ancillary Services; and
"Z-3"	Explanation on the Applicability of the Minimum Energy Off-Take (MEOT) provision on the BOHECO I and SMEC Contract
"AA" and Series	Proof of Service to the Sanggunian within the franchise area of BOHECO I and Sangguniang Panlungsod of Pasig City, of copies of the Joint Application including annexes.
"BB" and Series	Affidavit of Publication and complete issue of the newspapers where the Joint Application was published.
"CC"	Judicial Affidavit of Mr. Alberto B. Reyes III in support of the Motion for Provisional Authority.
"DD"	Secretary Certificate of SMEC on the authorized personnel to sign and deliver contracts, agreements, instruments and/or securities.
"DD-1"	Secretary Certificate of SMEC on the authority of the authorized representatives to appoint and designate representative to prosecute, defend, arbitrate, settle and/or collect in behalf of the company.
"EE"	Board Resolution No. 122-2018 dated December 8, 2018, duly signed by Ms. Christine N. Maluenda, Board Secretary of BOHECO I and attested by Mr. Marcial P. Degamo, Board President/Presiding Officer, on authorizing Atty. Elmer Salus B. Pozon as the legal counsel of BOHECO I, to file for the application of the PSA between BOHECO I and SMEC.
"EE-1"	Board Resolution No. 123-2018 dated December 8, 2018, duly signed by Ms. Christine N. Maluenda, Board Secretary of BOHECO I and attested by Mr. Marcial P. Degamo, Board President/Presiding Officer, on authorizing BOHECO I to execute verification and certification against forum shopping in apropos to the PSA between BOHECO I and SMEC and further authorizing Engr. Dino Nicolas T.

	Roxas to sign for and on behalf of BOHECO I to any pertinent documents related to the application.
"FF" and Series	Additional Documentary Requirements in relation to the 16 October 2018 letter of the ERC directing the Distribution Utilities to submit the following: <ul style="list-style-type: none">- List of power suppliers per month from January 2015 to September 2018.- Annual historical and forecasted demand-supply scenario from years 2009 to 2028.- Approved generation charges.- Average daily load curve per month from January 2018 to September 2018.

12. Furthermore, the Joint Application is consistent and in accordance with the first (1st) and fifth (5th) "Whereas clauses" of the DOE Circular No. 2003-12-11 which are respectfully quoted hereunder, to wit:

"WHEREAS, Section 2 of Republic Act No. 9136, also known as the Electric Power Industry Reform Act of 2001 or EPIRA, declared as a policy of the State, among others, [to ensure the quality, reliability, security and affordability of the supply of electric power;] (Underscoring supplied)

"WHEREAS, pursuant to Section 23 of EPIRA, all distribution utilities, as defined in the law, SHALL HAVE THE OBLIGATION TO SUPPLY ELECTRICITY IN THE LEAST COST MANNER TO ITS CAPTIVE MARKET subject to the collection of retail rate duly approved by the Energy Regulatory Commission." (Underscoring supplied)

13. The Joint Application is, likewise, consistent with Section 1 of the same Department Circular which declares as State policy, that:

"All distribution utilities must henceforth take cognizance and assume full responsibility to forecast, assure and contract for the supply of electric power in the respective franchise areas to meet their obligations as a distribution utility." (Underscoring supplied)

14. By way of emphasis, Resolution No. 21, Series of 2005 of the Honorable Commission dated 19 October 2005 had directed all distribution utilities "to enter into future bilateral power supply contract with power producers to be subjected to a review by the Commission." (Underscoring supplied)

15. The PSC was entered into by BOHECO I and SMEC to ensure the continuous supply of power to BOHECO I's franchise area. SMEC's competitive pricing structure and other favorable terms in the PSA will redound to the benefit of BOHECO I and its member-consumers in terms of reliable and affordable power supply.

Allegations in Support of the Prayer for
Provisional Authority

16. BOHECO I and SMEC replead the foregoing allegations in support of their prayer for the immediate issuance of provisional authority, anchored on the following grounds:
- 16.1 Considering the current limitations on the available capacity in the Luzon Grid, BOHECO I must source additional power from SMEC immediately to avoid power outage in its franchise area;
- 16.2 BOHECO I is undergoing a significant increase and is expecting a further increase in its energy requirements due to a growth in the total demand of its member-consumers; and
- 16.3 Without the supply of SMEC, BOHECO I will be exposed to the unpredictable and expectedly higher prices in the WESM or worse, be unable to supply the required additional energy to its franchise area resulting in total blackout.
17. In the interest of the public, there is a necessity for the immediate and provisional approval of the Joint Application in order that there will be no undue disruption in the power supply to BOHECO I's member-consumers.
18. It bears stressing that pursuant to Rule 14, Section 3 of the Honorable Commission's Rules of Practice and Procedure, the Honorable Commission may issue a provisional authority pending approval of the Joint Application, to wit:

*"Section 3. Action on the Motion. –
Motions for provisional authority or interim relief may be acted upon with or without hearing. The Commission shall act on the motion on the basis of the allegations of the application or petition and supporting documents and other evidences that applicant or petitioner has submitted and the comments or opposition filed by any interested person, if there be any."
(Emphasis provided)*

19. To emphasize the necessity of the foregoing allegations, a judicial affidavit in support of the motion for provisional

authority is attached to the Joint Application and made an integral part hereof.

Allegations in Support of the Confidential Treatment
of Annex "U" and Annex "W"

20. *Rule 4 of the Honorable Commission's Rules of Practice and Procedure* provides that BOHECO I and SMEC may request that information may not be disclosed.
21. SMEC prays for the confidential treatment of the information contained in the following annexes, and not disclosed except to the officers and staff of the Honorable Commission:

Annex	Documents and/or Information
"U"	Details of the Power Rate Calculations and Financial Model (<i>Confidential</i>).
"W"	Details of the SMEC's Fuel Procurement Process. (<i>Confidential</i>).

22. Annex "U" and "W" contain the details of the power rate calculations and financial model of SMEC as well as the manner by which these were derived. These information is proprietary in nature and should be protected as trade secrets as contemplated by law and jurisprudence. In the case of *Air Philippines Corporation vs. Pennswell, Inc.*², the Supreme Court defined a trade secret, as follows:

"A trade secret may consist of any formula, pattern, device, or compilation of information that: (1) is used in one's business; and (2) gives the employer an opportunity to obtain an advantage over competitors who do not possess the information. Generally, a trade secret is a process or device intended for continuous use in the operation of the business, for example, a machine or formula, but can be a price list or catalogue or specialized customer list. It is indubitable that trade secrets constitute proprietary rights. The inventor, discoverer, or possessor of a trade secret or similar innovation has rights therein which may be treated as property, and ordinarily an injunction will be granted to prevent the disclosure of the trade secret by one who obtained the information "in confidence" or through a "confidential relationship". American jurisprudence has utilized the following factors to determine if an information is a trade secret, to wit:

² G.R. No. 172835, December 13, 2007

- (1) the extent to which the information is known outside of the employer's business;
 - (2) the extent to which the information is known by employees and others involved in the business;
 - (3) the extent of measures taken by the employer to guard the secrecy of the information;
 - (4) the value of the information to the employer and to competitors;
 - (5) the amount of effort or money expended by the company in developing the information; and
 - (6) the extent to which the information could be easily or readily obtained through an independent source.”
(citations omitted, emphasis supplied)
23. The interest of the consuming public is sufficiently protected by the review and evaluation of the rates under the PSA by the Honorable Commission, without the need to disclose the contents of Annex “U”. The reasonableness and transparency of the prices of electricity is to be assured by the Honorable Commission through its own review and verification of SMEC’s operating costs and expenses.
24. More importantly, competitors of SMEC, should they obtain the information in Annexes “U” and Annex “W”, will gain undue advantage thereon and have the opportunity to use the same in their operations. The negotiating power of SMEC with parties it plans to contract with or who it is currently doing business with, will clearly be thwarted if it is compelled to disclose such information.
25. Accordingly, BOHECO I and SMEC submit one (1) copy of Annexes “U” and Annex “W”, in a sealed envelope, with the said envelope and each page of the documents and/or information stamped with the word “Confidential”.
26. BOHECO I and SMEC pray of this Commission that, after due notice and hearing:
- a. Pending hearing, ISSUE an Order provisionally approving the Joint Application and the PSA thereby authorizing BOHECO I and SMEC to immediately implement the rate structures therein;
 - b. ISSUE an Order treating Annexes “U” and Annex “W”, and all the information contained therein as

confidential, directing their non-disclosure to persons other than the officers and staff of the Honorable Commission, continuously protecting the said information from public disclosure by maintaining the same separate and apart from the records of the case, and ensuring that these are not divulged to unauthorized persons, pursuant to Rule 4 of its Rules of Practice and Procedure; and

- c. After due notice and hearing, ISSUE a Decision approving the Joint Application and the PSA between BOHECO I and SMEC, and authorizing BOHECO I to charge and collect the fees therein from its member-consumers.

BOHECO I and SMEC pray for other relief deemed just and equitable under the premises.

Accordingly, finding the said *Application* to be sufficient in form and in substance with the required fees having been paid, the Commission hereby sets the instant *Application* for the determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and evidentiary hearing on **04 July 2019 (Thursday) at ten o'clock in the morning (10:00 AM) at BOHECO I's Principal Office at Brgy. Cabulijan, Tubigon, 6329 Bohol.**

BOHECO I and SMEC are hereby directed to:

- 1) Cause the publication of the attached Notice of Public Hearing in two (2) newspapers of nationwide circulation in the Philippines at their own expense, twice (2x) within two (2) successive weeks, the dates of publication not being less than seven (7) days apart, and the date of the last publication to be made not later than ten (10) days before the date of the scheduled initial hearing;
- 2) Furnish with copies of this *Order* and the attached *Notice of Public Hearing* the Offices of the Provincial Governor, the City and Municipal Mayors, and Local Government Unit (LGU) legislative bodies within the affected franchise area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within the franchise area of the filing of the *Application*, its reasons therefor, and of the scheduled hearing thereon, by any other means available and appropriate;

- 4) Furnish with copies of this Order and the attached Notice of Public Hearing 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; and
- 5) Furnish with copies of the *Application* and its attachments all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing, Applicants BOHECO I and SMEC must submit to the Commission their written compliance with the aforementioned jurisdictional requirements attaching therewith, methodically arranged and duly marked the following:

- 1) The evidence of publication of the attached Notice of Public Hearing consisting of affidavits of the Editors or Business Managers of the newspapers where the said Notice of Public Hearing was published, and the complete issues of the said newspapers;
- 2) The evidence of actual posting of this Order and the attached Notice of Public Hearing consisting of certifications issued to that effect, signed by the aforementioned Governor, Mayors and LGU legislative bodies or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by Applicants BOHECO I and SMEC to inform the consumers within the affected franchise area of the filing of the *Application*, its reasons therefor, and of the scheduled hearing thereon;
- 4) The evidence of receipt of copies of this Order and the attached Notice of Public Hearing by the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress;
- 5) The evidence of receipt of copies of the *Application* and its attachments by all those making requests therefor, if any; and
- 6) Such other proof of compliance with the requirements of the Commission.

Applicants BOHECO I and SMEC and all interested parties are also required 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:

- 1) A summary of admitted facts and proposed stipulation of facts;
- 2) The issues to be tried or resolved;
- 3) The documents or exhibits to be presented, stating the purposes and proposed markings therefor; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-trial Brief.

Failure of BOHECO I and SMEC to comply with the above requirements 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 the said date of cancellation.

BOHECO I and SMEC must also be prepared to make an expository presentation of the instant *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, the nature of the *Application*, with relevant information and pertinent details substantiating the reasons and justifications being cited in support thereof.

SO ORDERED.

Pasig City, 08 April 2019.

FOR AND BY AUTHORITY
OF THE COMMISSION:


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner *mf*

Copy Furnished:

1. Atty. Elmer Salus B. Pozon, R.E.E.
Counsel for Joint Applicant BOHECO I
315 Jose Dual St., Pooc Or., Tubigon, Bohol
2. Bohol I Electric Cooperative, Inc. (BOHECO I)
Applicant
Brgy. Cabulijan, Tubigon, 6329 Bohol
3. Attys. Jupiter M. Cabaguio and Avelino G. Cedo, III
Counsels for Joint Applicant SMEC
23rd Floor, San Miguel Properties Centre,
No. 7 St. Francis Street, Mandaluyong City
4. San Miguel Energy Corporation (SMEC)
2ND Floor, 808 Building, MERALCO Avenue corner Gen. Lim Street,
Barangay San Antonio, Pasig City
5. The Office of the Solicitor General
234 Amorsolo Street, Legaspi Village, Makati City
Metro Manila
6. The Commission on Audit
Don Mariano Marcos Avenue
Diliman, Quezon City, Metro Manila
7. The Committee on Energy
Senate of the Philippines
GSIS Building, Roxas Blvd., Pasay City, Metro Manila
8. The Committee on Energy
House of Representatives
Batasan Hills, Quezon City, Metro Manila
9. Philippine Chamber of Commerce and Industry (PCCI)
3rd Floor, Chamber and Industry Plaza (CIP)
1030 Campus Avenue corner Park Avenue
McKinley Town Center, Fort Bonifacio, Taguig City
10. Office of the Governor
Province of Bohol
11. Office of the LGU Legislative Body
Province of Bohol
12. Office of the Mayor
Alburquerque, Bohol
13. Office of the LGU Legislative Body
Alburquerque, Bohol
14. Office of the Mayor
Anterquera, Bohol
15. Office of the LGU Legislative Body
Anterquera, Bohol
16. Office of the Mayor
Baclayon, Bohol
17. Office of the Legislative Body
Baclayon, Bohol
18. Office of the Mayor
Balilihan, Bohol

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50. Office of the Mayor
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51. Office of the LGU Legislative Body
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52. Office of the Mayor
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54. Office of the Mayor
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60. Office of the Mayor
Sikatuna, Bohol
61. Office of the LGU Legislative Body
Sikatuna, Bohol
62. Office of the Mayor
Tubigon, Bohol

63. Office of the LGU Legislative Body
Tubigon, Bohol

64. Regulatory Operations Service (ROS)
Energy Regulatory Commission
17th Floor, Pacific Center Building, San Miguel Ave., Pasig City