

REPUBLIC OF THE PHILIPPINES
ENERGY REGULATORY COMMISSION
SAN MIGUEL AVENUE, PASIG CITY

IN THE MATTER OF THE APPLICATION
FOR THE APPROVAL OF THE
COMMISSIONING POWER SALES
CONTRACT BETWEEN KEPCO SPC
POWER CORPORATION (KSPC) AND
NEGROS ORIENTAL II ELECTRIC
COOPERATIVE, INC. (NORECO II), WITH
MOTION FOR THE ISSUANCE OF
PROVISIONAL AUTHORITY.

ERC Case No. 2010-141RC

KEPCO SPC POWER CORPORATION
(KSPC) AND NEGROS ORIENTAL II
ELECTRIC COOPERATIVE, INC.
(NORECO II),

Applicants.

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**APPLICATION FOR THE APPROVAL OF
COMMISSIONING POWER SALES CONTRACT
WITH
MOTION FOR THE ISSUANCE OF
PROVISIONAL AUTHORITY**

Applicants KEPCO SPC Power Corporation (“KSPC” for brevity) and Negros
Oriental II Electric Cooperative (NORECO II), by counsel, respectfully state:

THE APPLICANTS

1. KSPC is a duly authorized generation company and existing under and by
virtue of the laws of the Republic of the Philippines, with principal address at 7th Floor,
Cebu Holdings Center, Cebu Business Park, Cebu City. Copies of KSPC’s Certificate of
Registration, Articles of Incorporation, its latest General Information Sheet and Board of
Investments Certificate of Registration dated 2 August 2005 are attached hereto as
Annexes “A,” “B,” “C,” and “D,” respectively

Moreover, copies of applicant KSPC's latest audited financial statements are attached hereto as **Annex "E"**.

2. Applicant NORECO II is a non stock, non-profit electric cooperative organized and existing under and by virtue of P.D. 269 as amended with office address at Real St., Dumaguete City. NORECO II has been granted a franchise by the National Electrification Commission to distribute electric service in Dumaguete, Amlan, Bacong, Basay, Bayawan, Dauin, Pamplona, San Jose, Siaton, Sibulan, Sta. Catalina, Tanjay, Valencia, and Zamboanguita, all in the province of Negros Oriental (the "Franchise Area"). Copies of NORECO II's Articles of Cooperation and CDA Certificate of Registration are attached hereto as **Annexes "F" and "F-1"**.

3. The Parties may be served with orders and other processes through the undersigned counsel.

NATURE OF THE APPLICATION

4. Pursuant to Rule 20 (B) of the ERC Rules of Practice and Procedure, approved by this Honorable Commission on 22 June 2006 in Resolution No. 38, Series of 2006, this Application is submitted to the Honorable Commission for the approval of applicants' Commissioning Power Sales Contract ("CPSC" for brevity). A copy of the CPSC is attached hereto as **Annex "G"**.

5. Moreover, Applicants' Motion for the Issuance of Provisional Authority is made pursuant to Rule 14 of the same Rules of Practice and Procedure mentioned above.

COMPLIANCE WITH PRE-FILING REQUIREMENTS

6. In compliance with Rule 6 of the ERC Rules of Practice and Procedure, approved by this Honorable Commission on 22 June 2006 in Resolution No. 38. Series

of 2006, applicants have furnished the respective legislative bodies of the Local Government Units of all the cities and municipalities of NORECO II's franchise area with a copy of the present application with all its annexes.

7. Copies of the certificates of postings from the Presiding Officer or authorized representative of the legislative bodies of Dumaguete, Amlan, Bacong, Basay, Bayawan, Dauin, Pamplona, San Jose, Siaton, Sibulan, Sta. Catalina, Tanjay, Valencia, and Zamboanguita, as well as the Province of Negros Oriental, are attached hereto as **Annexes "H, H-1 and H-14,"** respectively.

8. Furthermore, applicants have caused the publication of the present application in its entirety in the Cebu Daily News, a newspaper of general circulation within the franchise area of NORECO II. Copies of the corresponding Affidavit of Publication and the newspaper are attached as **Annexes "I" and "I-1,"** respectively.

STATEMENT OF FACTS

9. On August 18, 2006, to address the looming power shortage in the Visayas, the National Power Corporation ("NPC"), Power Sector Assets and Liabilities Management Corporation ("PSALM"), KEPCO Philippines Corporation ("KEPHILCO"), Salcon Power Corporation ("SPC") and the National Transmission Corporation (now the National Grid Corporation of the Philippines or NGCP), executed a Memorandum of Agreement ("MOA"), which provides that KEPHILCO and SPC will build a 2x100 MV Circulating Fluidized Bed Combustor Boiler Coal-Fired base load power plant (the "Cebu Power Plant") in Naga, Cebu. The Cebu Power Plant is expected to meet the growing power needs of the Visayas area and to provide a stable and reliable supply.

10. KEPHILCO and SPC thereafter incorporated KSPC as the joint venture entity which shall undertake the construction, ownership, operation, management and maintenance of the Cebu Power Plant.

11. NPC and KSPC subsequently executed a Joint Sales Agreement (“JSA”) dated 16 November 2006, which outlines the various duties and obligations of NPC and KSPC relative to the construction and continued operation of the Cebu Power Plant.

12. Pursuant to the JSA, KSPC entered into Power Sales Contracts with various DUs: Central Negros Electric Cooperative, Inc. (CENECO), Cebu I Electric Cooperative, Inc. (CEBECO I), Cebu II Electric Cooperative, Inc. (CEBECO II), Negros Oriental I Electric Cooperative, Inc. (NORECO I), Negros Oriental II Electric Cooperative, Inc. (NORECO II), VMC Rural Electric Service Cooperative, Inc. (VRESKO), Mactan Electric Company (MECO), and NOCECO.

13. On various dates, applicant KSPC applied for the approval of its PSCs with the DUs mentioned above with this honorable Commission.

ERC DECISION ON THE KSPC RATE

14. This honorable Commission approved the various PSCs of applicant KSPC with the DUs with a KSPC Rate of PhP4.2511/kWh in its Decisions dated: August 21, 2008 for NOCECO, December 16, 2008 for CEBECO I, December 16, 2008 for CEBECO II, December 16, 2008 for NORECO I, December 16, 2008 for NORECO II, December 16, 2008 for VRESKO and September 10, 2009 for MECO.

15. Applicants hereby quote and adopt the relevant portion of the Decisions of this honorable Commission in the above-mentioned Applications to form part of the instant Application, thus:

(From the KSPC-NORECO II Decision dated December 16, 2008 – ERC Case No. 2008-040 RC)

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DISCUSSION

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B. THE KSPC CEBU POWER PLANT

Under the PSC and other similar contracts, KSPC will build, own and operate a 2x100 MW CFBC Boiler Coal-Fired based load power generation facility to be located in the City of Naga, Provide of Cebu, for the purpose of supplying power to its contracted customers. The construction of the Power Plant, however, is yet to commence and will

depend on the approval of the instant application and its amendments. Upon the commercial operation of the power plant, KSPC is expected to deliver energy to its customers by 2011.

The energy contracted quantity meets NORECO II's 2006 kWh requirements and its projected demand by 2011. The annual contract quantity shall be 147,383,116 kWh/year comprising of 105,120,000 kWh/year from KSPC and 42,263,116 kWh/year to be sourced by KSPC from NPC.

At present, NORECO II buys most of its power requirements from NPC.

C. The PSC and its Amendments

Due to the foregoing changes in the circumstances affecting the original agreement or the first PSC of September 16, 2007, the parties agreed to amend the terms of the PSC and execute a document called Amendment to Power Sales Contract on June 18, 2008 which amended the PSC and now the subject of this application.

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D. KSPC's Pricing Structure

NORECO II shall pay electricity fee to KSPC each billing month during the cooperation period based on the following formula:

$$GC_{month} = K + N + R + AE$$

Where:

- GC_{month} = the generation charge or Monthly Payment
- K = KSPC Generation Charge for the Month
- N = NPC Generation Charge for the Month
- R = Replacement Power Charge for the Month
- AE = Alternate Energy Charge for the Month.

KSPC Base Price - Php4.2798/kWh
 NPC TOU Rate - Php4.30/kWh (daily average)

The KSPC Base Price and the NPC price shall be subject to adjustments based on fuel cost, foreign exchange and local and foreign consumer price indices.

The KSPC Base Price was determined using the LRAC. The average LRAC rate is the sum of the weighted return on capital, fixed operating and maintenance costs, variable operating expenses, and fuel costs divided by the number of kilowatt-hours generated by the plant.

The KSPC Base Price of Php4.2798/kWh is broken down as follows:

Fixed	Capital Recovery Fee (CRF)	PhP2.3245
	Operations and Maintenance (Fixed)	0.4944
Variable	Operations and Maintenance (Variable)	0.1648
	Fuel	1.2961
	Total	PhP4.2798

E. Comparison of the Original and Amended Contract Price

The Commission simulated the rates in the original and the amended PSCs to show the increase/(decrease) of the KSPC rate component as of January 2008, to wit:

Cost Component	Original PSC (PhP/kWh)	Amended PSC (PhP/kWh)	Difference
Capital Fee	2.1281	2.3245	0.1964
Foreign O&M Fee	0.2837	0.2782	(0.0055)
Local O&M Fee	0.4792	0.3809	(0.0983)
Fuel Fee	0.8785	1.2962	0.4177
Total KSPC Price	3.7695	4.2798	0.5103

The above table shows that the KSPC price under the amended PSC is higher by PhP0.5103 compared to the original KSPC price. The increase was caused by the adjustment of the Capacity Fee and Fuel Fee in the amount of PhP0.1964/kWh and PhP0.4177/kWh, respectively. In the original PSC, the adjustment in Fuel Fee is limited only to a 30% increase. As such, if the actual fuel cost increases by 100%, only 30% will be allowed to be passed on to KSPC's customer. However, in the amended PSC, the total fuel cost adjustment is passed-on to KSPC's customer.

F. Capital Recovery Fee (CRF)

There are two (2) fixed cost components in the derivation of the KSPC CRF: a) the capital cost associated with the construction of the power plant (Project Cost); and b) the WACC. This fixed rate covers costs which are incurred independent from electricity generation.

F.1. KSPC Amended Contract Price Evaluation

F.1.1 Total Capital Cost and Determination of KSPC's Capital Fee

The total capital cost of the project was derived by taking into account the following: a) engineering, procurement and construction cost; b) the interest during construction; c) total site cost; d) Advisory Fee; e) project cost; and f) contingency fees.

The table below shows the capital cost component of the original PSC and the proposed amendment to the PSC, to wit:

Cost Component	Original PSC (US\$'000)	Amended PSC (US\$'000)	Increase (US\$'000)
EPC Cost	272,314	312,304	39,990
Interest During Construction (IDC)	102,956	120,057	17,099
Site Cost	4,104	4,886	782
Advisory Fee	3,000	13,000	10,000
Project Cost	45,062	56,683	11,621
Contingency Fees	10,893	12,492	1,599
Total Capital Cost (TCC)	438,329	519,422	81,092

The total cost used in determining the Capacity Fee is increased by US\$81.092 Million

F.1.1.1 Engineering Procurement and Construction (EPC) Cost

The EPC is for the design, engineering, procurement, construction, erection, commissioning, testing and related services of the two (2) unit coal fired power plants. The EPC contract was procured by KSPC through international bidding. Having undergone the proper international bidding, the Commission may consider the EPC Price as the best available cost that KSPC could obtain in the international market.

The original Capacity Fee was determined using the Engineering, Procurement and Construction ("EPC") Contract

price of US\$272,314 Million procured by KSPC through international public bidding. After the bid validity period on April 20, 2007, KSPC has agreed to enter into an EPC Contract amendments and accepted final re-quotations of the bid price at an EPC Price of US\$312.304 Million due to the sharp increase of prices affecting the EPC cost.

F.1.1.2 Interest During Construction (IDC)

The IDC is the cost of capital incurred during the construction of the power plant and usually capitalized as part of the power plant cost. The project construction is four (4) years which started in the last quarter of 2007.

F.1.1.3 Site Cost

The land lease (site cost) is the same with the original project cost. The project cost will be paid through local currency. The variance of the site cost from the original contract to be amended is due to the use of exchange rate in converting the site cost in Philippine Peso to US Dollar.

F.1.1.4 Advisory Fee

The Advisory Fee stands for the financing advisory fees and other related expenses. The project requires an Advisory and Consulting Service due to more complicated negotiations. Moreover, in order for KSPC to be able to encourage Export Credit Agencies (ECAs) to accept its proposal for funding, higher level of representations and documentation by qualified financial advisors should be made which translates to higher advisory fees. KSPC will also have to pay for the advisory fee for the lenders.

KSPC submitted and made reference to the advisory fee of the previously approved KEPCO-Ilijan Project Case which showed that the total legal advisory fee is about 5% of the total project cost equivalent to US\$24Million.

KEPCO-SPC proposed to set an advisory fee of US\$13Million which is equivalent to 2.5% of the TCC of US\$519Million based on its previous experience on the Ilijan Project, which was funded through project finance and in conformity with the requirements of potential financial arranger to secure the viability and feasibility of the project.

However, the Commission disallowed a portion of the proposed advisory fee equivalent to US\$4.357 Million for being excessive and allowed only an advisory fee of US\$8.643Million or about 2.5% of the 245.751 (70% of the TCC) excluding contingency fee. The 70% of the TCC is the amount to be funded through borrowings.

F.1.1.5 Project Cost

The project cost includes soft costs such as Insurance during construction, cash related cost, financing fee and working capital. The working capital represents Operation and Maintenance (O&M) cost and fuel cost which will be used for operating the plant until the first collection of power sales from the customers. The main reason for the adjustment is the increase in fuel cost representing a major portion of the project cost.

The Commission believes that the working capital for O&M and fuel cost should be removed from the capital recovery fee (recovery of cost) because such cost is already incorporated in the O&M Fee and Fuel Fee. However, the cost of money of the working capital should be allowed to be recovered considering that it is tied up in the inventory and/or the company's need to raise money to finance its initial operations.

F.1.1.6 Contingency Fees

The Commission disallowed the proposed increase in the Contingency Fee amounting to US\$1.599 Million as it has already allowed the proposed increase in the other components of the project cost that may cover any increase in contingency fee.

F.2. The Weighted Average Cost of Capital (WACC)

In the original application, KSPC used a WACC of 14.5625% in computing the interest of the investment. In deriving the WACC of 14.5625%, KSPC considered a cost of debt of 6.51% and cost of equity of 18.78%. The seventy percent (70%) of the total capital cost was assumed to be funded through debt financing while the remaining thirty percent (30%) will be sourced from equity invested by KSPC. However, KSPC decreased its WACC from 14.56% (original) to 13.27% (amended to mitigate the rate impact due to price increases).

The Commission believes that the WACC of 13.27% of KSPC, as amended, is fair and reasonable considering the attendant business risk involved and competitive forces in the generation sector.

Derivation of the Amended Capacity Fee

The proposed annual recovery of the TCC including return was derived after considering the time value of money. The computed annuity for the required recovery on the capital cost was US\$72,132,413.23 using a rate of return of 13.27% (WACC) and 25-year recovery period.

To determine the PHP/kWh for the annual capital recovery, a billing determinant should be established. Billing determinant is the number of kWh that a power plant can produce and sell to its customers. The billing determinant used by KSPC was 1,261,440,000 kWh. This was derived by multiplying the 80% (plant capacity factor) to the 180 MW generation capacity, net of auxiliary load, and multiplied further by 8,760 hours.

The net generation used was only 180MW instead of the 200MW capacity of the plant because 10% of the 200MW plant capacity will be used as an auxiliary load. The auxiliary load is the portion of the gross generating capacity (200MW) representing the in-house consumption of the power plant for its auxiliary components when the power plant is dispatched at full load. Thus, KSPC cannot contract for the 20 MW allocated for its in-house consumption because such is not available for sale.

The proposed capital recovery rate of US\$.0572/kWh was computed using the annual required capital recovery of US\$72,132,413.23 divided by the annual generation of 1,261,440,000 kWh. This was then converted to PHP2.3245/kWh using the exchange rate of PHP40.65 is to 1 US\$.

The Commission recomputed the Capacity Fee considering the adjustment made on the Advisory Fee and the disallowance on the proposed increase in contingency fee which resulted to a Capacity Fee of Php2.2958/kWh.

The table below shows the breakdown and comparison of the proposed KSPC Capacity Fee and the Commission's computation, to wit:

Cost Component	Amended PSC (US\$'000)	Commission's Final Adjustment (US\$'000)
EPC Cost	312,304	312,304
IDC	120,057	120,057
Site Cost	4,886	4,886
Advisory Fee	13,000	8,643
Other Project Cost	56,843	56,843
Contingency Fee	12,492	10,893
Total Capital Cost	519,422	513,466

As shown below, the adjustment to the Advisory Fee and disallowance of the proposed Contingency Fee resulted to a Capacity Fee of Php2.2958/kWh or a difference of Php0.0287/kWh equivalent to Php36,203,328.00 per year.

	Per KSPC	Per the Commission	Difference
Total Capacity Cost, US\$	519,422,000	513,466,000	5,956,000
Capacity Fee (Php/kWh)	2.3245	2.2958	0.0287

F.3 Operation and Maintenance (O&M) Fee

The O&M fee of KSPC was classified into two: Fixed O&M and Variable O&M. Fixed O&M covers 75% of the annual O&M while variable O&M covers 25% of the annual O&M. The annual O&M of KSPC includes maintenance and labor cost, general and administrative expense and taxes.

The Commission noted that the proposed amended O&M Fee is decreased from the original O&M Fee of Php0.7629/kWh to an O&M Fee of Php0.6591/kWh.

One of the major amendments in the O&M cost is the removal of the JSA Fee. The said JSA Fee was intended to cover NPC's costs and lost of revenue as a result of its obligation to reserve capacity to service the peak and intermediate requirements of NORECO II and other customers of KSPC and for replacement power during planned outage of KSPC.

The Commission commends NPC's decision to remove the JSA Fee to maintain the competitiveness of the KSPC's price and to minimize the increase in the price of power that shall be delivered from the Cebu Power Plant of KSPC due to the increase in the EPC and coal cost. With the removal of the JSA Fee, KSPC is expected to pass-on the benefit to NORECO II's customers.

Although NPC is no longer firmly committed to supply the peaking and intermediate requirements of NORECO II with the removal of the JSA Fee, it is still obligated to supply the balance of the power requirements. Since the renewal/extension of the Transition Supply Contract (TSC) is at the sole discretion of NORECO II, it may source its peak and intermediate requirements from other Independent Power Producers (IPPs). NPC, however,

signified that it may renew/extend the TSC even beyond 2011 to cover for the intermediate and peak requirements of NORECO II.

Below is the comparison between the original and amended O & M costs, to wit:

Particulars	O & M Cost (PhP'000)
Original O & M	963,393*
Amended O & M	831,505
Difference	130,888

* Cost as of 2008, derived from the original O & M cost of PhP1,003 Million as of 2006 and adjustment based on the adjustment factor provided in the PSC in order to be comparable to the amended O&M.

The amended O&M Fee of PhP0.6591/kWh was derived by dividing the O&M Cost of PhP831,505,000 to the annual generation of 1,261,440,000kWh.

Thus, the Commission adopted the amended O&M Fee of PhP0.6591/kWh which decreased from the original O& M Fee of PhP0.7629/kWh due mainly to the removal of the JSA Fee.

F.4. Fuel Cost

The 2006 LRAC Price in the PSC was determined using a coal price of US\$31.12/ton. The initial Base Index Price (globalCOAL FOB Newcastle) to be used in the price adjustment mechanism was pegged at US\$47.62/ton (3rd Quarter average, 2005). Under the original PSC, it provides for maximum allowable adjustments to the base price of +/- 30% initially and +/- 10% for subsequent adjustments. However, after the execution of the original PSC, global coal prices increased. As of the last quarter of 2007, global coal price index reached US\$83.23/ton which is almost twice the initial US\$47.62/ton. (The globalCOAL physical index, FOB Newcastle, is the reference for the Base Index Price in the PSC).

Also, marine diesel oil prices have risen sharply since the execution of the PSC. The price of marine diesel oil significantly affects the cost of coal, particularly the transport cost. In the first PSC, changes in the price of marine diesel oil affected only fifteen percent (15%) of the adjustment of the Transportation Base Price.

Further, the initial Bunker Basis Price was pegged at US\$53.30 cents/liter (3rd Quarter, 2005). However, as of the 4th Quarter, 2007, the price index of marine diesel oil increased to US80.18 cents/liter.

For the initial computation of Transportation Base Price (TBP), which takes into account fixed and variable costs of fuel prices as part of total freight costs, only 15% was allotted for the variable portion of the fuel costs out of the total costs with a cap of 10% adjustment or limit for the TBP. But due to the recent unprecedented increase in oil prices, this 15% variable portion was increase to almost 51%. However, despite the removal of the allowable adjustment to Base price ceiling for the recovery of fuel cost, KSPC decided to reflect only 25% to account for the adjustment in oil prices.

KSPC procured two (2) Coal Supply Contracts through international public bidding, one for 420,000 metric tons annually and the other for 180 metric tons annually, for a period of ten (10) years. Due to the drastic increase of fuel cost and the limitation to recover only up to 30% of such increase, KSPC's coal supplier for

420,000 metric tons terminated the contract. Thus, KSPC was forced to conduct another international public bidding for additional supply. The prices of the new supplier (US\$51.90/ton) and that of the earlier remaining supplier (US\$54.76/ton) have a weighted coal price of US\$52.57/ton, about twice the price of US\$31.12/ton used in determining the 2006 LRAC price. This new coal price is incorporated in the determination of the new KSPC price in the Amended PSC.

The Commission concurs that the actual fuel cost utilized in generating electricity should be passed on to the customers. There should be no cap on the fuel cost to be passed on to the customers as long as within the efficiency set by the Commission. Thus, any inefficiency in the coal quality and plant heat rate (2,526/kcal/kg) previously approved by the Commission shall not be passed on to the customers.

The fuel cost shall also be subject to adjustment to account for its upward/downward changes as well as transportation cost.

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WHEREFORE, the foregoing premises considered, the application filed by Negros Oriental II Electric Cooperative, Inc. (NORECO II) and KEPCO-SPC Power Corporation (KSPC) on July 8, 2008 for the approval of their Power Supply Contract (PSC) with Amendments is hereby **APPROVED WITH MODIFICATION**.

Accordingly, the amended Power Supply Contract shall be subject to the following base rate:

Cost Component	(PhP/kWh)
Capacity Fee ¹	2.2958
Foreign O & M Fee ²	0.2782
Local O & M Fee ³	0.3809
Fuel Fee ⁴	1.2962
Total KSPC Price	4.2511

¹Not subject to indexation but subject to foreign exchange fluctuation

²Subject to US CPI, PPI and foreign exchange fluctuation

³Subject to Philippine CPI and GWPI adjustments

⁴Subject to Fuel cost indexation and foreign exchange fluctuation

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16. Applicant KSPC hereby adopts all documentary evidence submitted to this honorable Commission in support of the previous applications with the DUs as part of the instant application in so far as the documents relates to KSPC. Applicant KSPC respectfully submits that this honorable Commission may take judicial notice of all documents submitted in the previous application to warrant and prevent unnecessary duplications of documentary evidence.

COMMISSIONING OF THE KSPC CEBU POWER PLANT

17. Applicant KSPC's power plant is a 2x100 MV Circulating Fluidized Bed Combustor Boiler Coal-Fired base load power plant located in Naga, Cebu. KSPC's Cebu Power Plant is expected to meet the growing power needs of the Visayas area and to provide a stable and reliable supply. A copy of the power plant Technical Specification Summary indicating the **Operation Condition, Performance Guarantee, Boiler and Auxiliaries descriptions, Draft System, Ash Handling System, Coal Handling System, Turbine and Generator specification**, etc, is attached hereto as **Annex "J"**.

18. Applicant KSPC will undertake the commissioning of its Cebu Power Plant beginning October 8, 2010 and ending a day before the Commercial Operations Date.

19. Pursuant to the expected generation of electricity brought about by the commissioning of KSPC's Cebu Power Plant, herein applicants entered into a Memorandum of Agreement ("MOA") on August 10, 2010 for the sale of the Commissioning Power and the execution of a Commissioning Power Sales Contract for the purpose. A copy of the MOA is attached hereto as **Annex "K"**.

ABSTRACT OF THE COMMISSIONING POWER SUPPLY CONTRACT AND RELATED INFORMATION

20. **Executive Summary (ANNEX "L")**. The CPSC between applicants is a "non-firm" contract. KSPC shall allocate its Commissioning Power Quantity (CPQ) to its buyers (DUs) in a proportionate method depending on the Buyer's percentage share on the total capacity cap stated in the PSCs of all the Buyers. A copy of the distribution scheme for KSPC's Commissioning Power is attached hereto as **Annex "M"**.

21. **Term**. The CPSC shall become valid and binding upon the date of its execution until the Commercial Operations Date of the Cebu Power Plant. If the Commercial Operations Date of Unit 1 has occurred and Unit 2 is in its Commissioning

Period, the power during Commercial Operations Date of Unit 1 will be sold first to the DUs before the Commissioning Power produced by Unit 2.

22. **Delivery of Commissioning Power.** KSPC will submit to the DU the allocated quantity on or before 9:00 AM two (2) days before the trading day. The DU shall then confirm acceptance of such allocated quantity and submit such confirmation to KSPC on or before 10:00 AM of the same day.

23. **Connection and Grid Projects/Agreements.** Attached to the instant application as **Annex "N"** is the Project Layout/Scheme on KSPC's Commissioning Power Requirements showing the connection points and the temporary 138kV Line. Also, a copy of the project cost estimate, Transmission Line Agreement, Memorandum of Agreement between KSPC and NGCP, Memorandum of Understanding between KSPC and NGCP and supporting documents are attached hereto as **Annex "O"**.

24. **Procurement and Acquisition Procedure.** The procurement and acquisition procedure for the engineering projects for the Commissioning of the KSPC Power Plant went through the standard bidding and procurement process of KEPCO Philippines, a copy of which is attached hereto as **Annex "P"**

25. For NORECO II, the procurement process for the KSPC Commissioning Power is not the same as its procurement process for a regular PSC since the CPSC is a non-firm contract and for a limited time only (commissioning period). NORECO II's purchase of KSPC's Commissioning Power is only to address the potential power supply deficiency in the Visayas and the fact that the KSPC Commissioning Power rate is lower than that of NPC/PSALM.

26. **KSPC Commissioning Power Rate (Annex "Q").** Each delivery of Commissioning Power shall be subject to the rate set forth in Annex "A" of the CPSC, which is composed of the Testing and Commissioning Power Rate and the Pre-

Commercial Operate Rate, both of which shall in no case above the ERC-approved NPC Visayas TOU rate. The KSPC Commissioning TOU Rate is as follows:

KSPC Commissioning Power TOU Rate			NPC-Visayas TOU Rate	
Period	Test & Commissioning Power Rate (TCP_{kj})	Pre-Commercial Operation Rate (PCP_{kj})	Period	TOU Rate
1:00	1.6861	2.1920	1:00	2.6158
2:00	1.4298	1.8587	2:00	2.2181
3:00	1.4298	1.8587	3:00	2.2181
4:00	1.4298	1.8587	4:00	2.2181
5:00	1.4298	1.8587	5:00	2.2181
6:00	1.4298	1.8587	6:00	2.2181
7:00	1.4298	1.8587	7:00	2.2181
8:00	1.8912	2.4586	8:00	2.9340
9:00	2.2017	2.8623	9:00	3.4157
10:00	2.3413	3.0437	10:00	3.6322
11:00	2.3413	3.0437	11:00	3.6322
12:00	2.3413	3.0437	12:00	3.6322
13:00	2.3413	3.0437	13:00	3.6322
14:00	2.3413	3.0437	14:00	3.6322
15:00	2.3413	3.0437	15:00	3.6322
16:00	2.3413	3.0437	16:00	3.6322
17:00	2.2775	2.9607	17:00	3.5332
18:00	4.1741	5.4263	18:00	6.4755
19:00	4.1741	5.4263	19:00	6.4755
20:00	4.1741	5.4263	20:00	6.4755
21:00	4.1741	5.4263	21:00	6.4755
22:00	2.3413	3.0437	22:00	3.6322
23:00	1.9670	2.5571	23:00	3.0516
24:00	1.8912	2.4586	24:00	2.9340
Average	2.330	3.029		3.614

NOTE: NPC TOU Rate is exclusive of all the adjustments namely GRAM, ICERA and ACA. If all the adjustments are included in the NPC TOU Rate then the Average will be approximately 4.1113 ₱/kWh.

In support of the foregoing Commissioning Power Rate, attached hereto as **Annex “Q”** is the KSPC Commissioning Power Rate Computation and as **Annex “Q-1”** is KSPC’s Coal Supply Plan describing the various coal supply agreements entered into for the KSPC power plant.

27. If in any case that the current price of coal goes up over ten percent (10%) of the base price then the Commissioning Power Rate will be adjusted according to the formula set out in Annex "C" of the CPSC.

28. **Delivery Point.** The DU shall take delivery of the Final Hourly CPQ at the high voltage side of the main transformer of the Cebu Power Plant at 138 KV ("Receiving Point"). Any line rental such as transmission line losses, congestion charges and other transmission charges from the Receiving Point to the DU's substation shall be for the account of the DU.

29. **Payment.** Commencing on the Scheduled Commissioning Date, the Buyer shall pay to the Seller an amount (the "Monthly Payment") calculated in accordance with formula set out in Annex "B", exclusive of value added taxes and any other applicable taxes, fees and charges. The billings shall be based on the total CPQ for the Billing Month.

COMPUTATION OF MONTHLY PAYMENTS

$$GC_{Month} = \sum_{i=26}^{n25} \sum_{j=1}^{24} \{ (CPQ_{ij} * TCP_{kj}) + (CPQ_{ij} * PCP_{kj}) \} * K_{adj}$$

Where:

GC_{Month} = the generation charge or Monthly Payment; in Peso.

CPQ_{ij} = Final Hourly CPQ for the relevant day i and relevant hour j of the Billing Month, kWh.

K_{adj} = Adjustment factor of the Seller for the Billing Month.

TCP_{kj} = KSPC Testing and Commissioning Power Rates for the relevant hour j of the Billing Month, P/kWh.

PCP_{kj} = KSPC Pre-Commercial Operation Power Rates for the relevant hour j of the Billing Month, P/kWh.

i = represents the relevant day of the Billing Month.

j = represents the relevant hour of the Billing Month.

30. **Potential Cost of Ancillary Services as and when the IPP or the DU is connection to the main grid.** NGCP confirmed with KSPC that the former will not charge any Ancillary Services (imbalance and over-generation) during the

Commissioning Period because at this time the generation supply is not yet stable and reliable. NGCP, however, will charge KSPC for the metering services.

31. There will also be no additional cost of ancillary service for NORECO II since it is already paying the same to NGCP.

32. **Environmental Compliance Certificate.** On December 5, 2005, the Department of Environment and Natural Resources granted applicant KSPC's application for an Environmental Compliance Certificate (ECC), a copy of which is attached hereto as **Annex "R"**.

33. **NORECO II's Supply Demand Forecast.** In support of applicant NORECO II's energy requirements, applicants attached hereto NORECO II's Load Forecast Projection from 2010 to 2020 as **Annex "S"**.

34. **NORECO II's Board Approval of the CPSC and MOA.** Herein Commissioning Power Sales Contract and Memorandum of Agreement have been approved by the board of directors of applicant NORECO II. A copy of the Secretary's Certificate on the approval of the CPSC and MOA is attached hereto as **Annex "T"**.

35. **DOE Certificate of Endorsement.** The KSPC Cebu Power Plant is consistent with the Power Development Plan (PDP) of the government pursuant to the implementing Rules and Regulations of RA 9136. A copy of the DOE certification is attached hereto as **Annex "U"**.

RATE IMPACT ON NORECO II'S GENERATION RATES

36. The KSPC Commissioning Power Rate is lower than the approved KSPC Rate and lower than the ERC-approved NPC Visayas TOU Rate. The computation of the rate impact on NORECO II's Generation Rate is attached hereto as **Annex "V"**.

MOTION FOR THE ISSUANCE OF PROVISIONAL AUTHORITY

37. On February 10, 2010, the Department of Energy (DOE) presented in Cebu City, the “Visayas Power Situation” a 2009 Update on the Philippine Energy Plan, where the Visayas Power Supply and Demand Outlook is already critical since 2009. It showed that the Visayas Grid needs a total additional capacity of 2,150MW from 2009 to 2030. A copy of the DOE presentation is attached hereto as **Annex “W”**.

38. Latest reports from the newspapers in the Visayas region showed that more brownouts are happening due to short supply of electricity. Copies of news report from the internet are attached hereto as **Annex “X”**.

39. The latest System Alert Notice from NGCP, attached hereto as **Annex “Y”**, showed the “Red Alert” status of the Visayas Grid due to limited generation capacity. Thus, there is an urgent need to secure a provisional authority to enable NORECO II to purchase the commissioning power of KSPC.

40. The CPSC between the applicants will serve to mitigate the energy problem in the franchise area of NORECO II during the times when the KSPC Commissioning Power is available. However, this temporary and minor solution requires immediate implementation. Thus, applicants are constrained to ask for a provisional authority from this honorable Commission to allow the parties to buy and sell electricity at the KSPC Commissioning rate agreed upon in their CPSCA.

41. In support of the request for the issuance of provisional authority, applicant NORECO II respectfully submits the affidavit of its Engineering Services Department Manager, Mr. Chito s. Lozano as **Annex “Z”**.

REQUEST FOR THE RETROACTIVE APPLICATION OF THE PROVISIONAL AUTHORITY THAT MAY BE GRANTED BY THIS HONORABLE COMMISSION

42. As mentioned above, the Cebu Power Plant already started its commissioning last October 8, 2010. Accordingly, applicant KSPC was constrained to request from this honorable Commission the authority to sell its commissioning power to the DUs pending the filing or during the pendency of its applications. A copy of KSPC's letter to Executive Director Atty. Francis Saturnino C. Juan is attached hereto as **Annex "AA"**.

43. On October 8, 2010, applicant KSPC received the letter-reply of Executive Director Juan allowing KSPC to sell such commissioning power pending the processing of the necessary applications and actions thereon by this honorable Commission, subject to the existing policies of the commission on the purchase by distribution utilities of electricity under unapproved supply contracts and on the pricing of commissioning power. A copy of the letter-reply is attached hereto as **Annex "BB"**.

NPC CERTIFICATION ON THE AVAILABILITY OF ENERGY FOR NORECO II

44. On July 16, 2008, the National Power Corporation (NPC) issued a certification that it cannot commit to the availability of capacity to supply any energy requirements of NORECO II for the period 2011 to 2020 due to the on-going privatization of its assets. A copy of the Certification is attached hereto as **Annex "CC"**.

PRAYER

WHEREFORE, in view of all the foregoing, it is most respectfully prayed of this Honorable Commission that:

1. Applicants' Motion for the Issuance of Provisional Authority be approved prior to the hearing; and
2. The Commissioning Power Sales Contract and Memorandum of Agreement between KEPCO SPC Power Corporation and NORECO II be approved.

Other reliefs just and equitable are likewise prayed for.

Makati City for Pasig City, October 27, 2010

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By:

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PTR No. 2087785/1-4-10/Makati City
MCLE Compliance No. III-0005179

Copy furnished by registered mail:

NATIONAL POWER CORPORATION

NPC Building Complex,
BIR Road corner Quezon Ave,
Diliman, Quezon City

EXPLANATION

Due to lack of messengerial services and distance, a copy of the foregoing pleading was served upon the National Power Corporation through registered mail instead of the preferred mode of personal service.

RUSSEL S. ALABADO

**VERIFICATION &
CERTIFICATION AGAINST FORUM SHOPPING**

I, Mr. Bag Woon Choi, of legal age, and with office address at 7th Floor, Cebu Holdings Center, Cebu Business Park, Cebu City, after having been duly sworn in accordance with law, hereby deposes and states that:

1. I am the General Manager of Applicant KEPCO SPC Power Corporation (KSPC);

2. I caused the preparation and have read the foregoing pleading, the factual allegations of which are true and correct of my own personal knowledge and based on authentic records;

3. I hereby certify that KSPC have not commenced any other action or proceeding involving the same issues and parties before this Honorable Commission, or any other tribunal or agency of the government; to the best of my knowledge, there is no such action or proceeding pending in this Honorable Commission, or any other tribunal or agency, including any Regional Trial Court, the Court of Appeals and the Supreme Court; that if I will hereafter learn that a similar action or proceeding has been filed or is pending before this Honorable Commission, or any other tribunal or agency, I undertake to inform this Honorable Commission of such fact within five (5) days therefrom.

Affiant further says none.

BAG WOON CHOI
General Manager

SUBSCRIBED AND SWORN to before me, in the City of _____,
this ____ day of _____ 2010, affiant exhibiting to me his Passport with
No. M84068418, issued on June 9, 2009 and expiring on June 9, 2019.

Doc. No. ____;
Page No. ____;
Book No. ____;
Series of 2010.