

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

**IN THE MATTER OF THE
APPLICATION FOR APPROVAL OF
THE ENERGY SUPPLY CONTRACT
(ESC) BETWEEN PANGASINAN-III
ELECTRIC COOPERATIVE, INC., AND
SAN MIGUEL ENERGY CORPORATION
(WITH PRAYER FOR PROVISIONAL
AUTHORITY),**

ERC CASE NO. 2010-143 RC

**PANGASINAN-III ELECTRIC
COOPERATIVE, INC., AND SAN
MIGUEL ENERGY CORPORATION,**
Applicants
x ----- x

APPLICATION

Applicants PANGASINAN-III ELECTRIC COOPERATIVE, INC.,
("PANELCO III") and SAN MIGUEL ENERGY CORPORATION ("SMEC")
(the "Applicants"), by counsel, most respectfully state:

I.

The Applicants

1.1 Applicant Pangasinan-III Electric Cooperative, Inc., is an electric cooperative duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office address at Brgy. Nancayasan, Urdaneta City, Pangasinan. It holds a franchise to operate a light and power service in the municipalities of Asingan, Balungao, Binalonan, Laoac, Mapandan, Natividad, Pozorrubio, Rosales, Sta. Maria, San Manuel, San Nicolas, San Quintin, Sto. Tomas, Tayug,

Umingan, Urdaneta, Villasis and part of Manaoag all in the province of Pangasinan (“the Franchise Area”);

1.2 Applicant San Miguel Energy Corporation (SMEC), is a domestic corporation organized and existing under the laws of the Philippines, and is primarily engaged in the generation of electricity, with principal office address at 2F 808 Building, Meralco Avenue corner General Lim St., San Antonio Village, Pasig City;

1.3 Applicants may be served with orders and other processes of this Honorable Commission through their undersigned counsel at his address stated herein below;

II. Statement of Facts

2.1 On 30 September 2008, the National Power Corporation (NPC) and PANELCO III executed a Contract for the Supply of Electric Energy (CSEE). This Contract which was assigned to SMEC by the Power Sector Assets and Liabilities Management Corporation (PSALM) expired on 25 December 2009;

2.2 In view of the forthcoming expiration of the foregoing CSEE, PANELCO III conducted, through its Pre-Bids and Awards Committee (PBAC), a selection process for the purpose of selecting a power generator that can supply the electricity requirements of PANELCO III at the lowest electricity rates and other favorable contractual provisions that would benefit its end-consumers;

2.3 Upon evaluation of the offers of various interested suppliers, SMEC's proposal was considered the most favorable to PANELCO III and its consumer members, thus, on 23 December 2009, the parties executed an Energy Supply Contract (ESC), a copy of which is hereto attached as **Annex "A"**;

2.4 The Contract is for a term of one (1) year and shall be effective on the next billing month following the date of approval by the Honorable Commission;

2.5 Prior to the expiration of the original CSEE and the execution of the ESC, PANELCO III requested SMEC, as PSALM's assignee of the CSEE, for a four -month extension of the NPC-PANELCO III CSEE from 26 December 2009 to 25 April 2010. Attached as Annex "G-1" is a copy of PANELCO III's letter-request dated 20 November 2009;

2.6 Pursuant to the Letter of Agreement (LOA) dated 27 November 2009 hereto attached as Annex "G-2", the parties agreed to extend the term of the CSEE for an additional period of four (4) months from date of expiration;

2.7 Prior to the expiration of the 4-month extension, PANELCO III requested SMEC for an advance implementation of the ESC prior to the filing and approval of the ESC by this Honorable Commission as the implementation of the same would be beneficial to its end-consumers. Attached as Annex "A-1" is a copy of PANELCO III's letter request dated 3 March 2010;

2.8 The parties, through a LOA dated 10 March 2010 (copy attached as Annex “A-2”), implemented the ESC and the electricity pricing structure contained therein starting from the April 2010 billing month which covers the billing period from 26 March 2010 to 25 April 2010;

2.9 Under the ESC, SMEC shall impose the agreed Basic Energy Rate in four (4) sets of Time-of-Use (TOU) hourly rates (in P/kWh) as provided in the table below which is also found in Annex III of the ESC:

**San Miguel Energy Corporation (SMEC)
Time-of-Use (TOU) Rate Schedules, P/kWh**

| PERIOD | (JANUARY - JUNE) | | (JULY - DECEMBER) | |
|-------------------------|------------------|---------|-------------------|---------|
| | MON-SAT | SUN/HOL | MON-SAT | SUN/HOL |
| 1:00:00 AM (0000-0100) | 2.1426 | 2.3022 | 2.1426 | 2.1426 |
| 2:00:00 AM (0100-0200) | 2.1426 | 2.1426 | 2.1426 | 2.1426 |
| 3:00:00 AM (0200-0300) | 2.1426 | 2.1426 | 2.1426 | 2.1426 |
| 4:00:00 AM (0300-0400) | 2.1426 | 2.1426 | 2.1426 | 1.6649 |
| 5:00:00 AM (0400-0500) | 2.1426 | 2.1426 | 2.1426 | 1.6649 |
| 6:00:00 AM (0500-0600) | 2.1426 | 2.1426 | 2.1426 | 1.6649 |
| 7:00:00 AM (0600-0700) | 2.1426 | 2.1426 | 2.1426 | 1.6649 |
| 8:00:00 AM (0700-0800) | 2.4256 | 2.1426 | 2.3022 | 2.1426 |
| 9:00:00 AM (0800-0900) | 5.5790 | 2.1426 | 2.4256 | 2.1426 |
| 10:00:00 AM (0900-1000) | 6.3283 | 2.3022 | 5.7872 | 2.3022 |
| 11:00:00 AM (1000-1100) | 6.3283 | 2.3022 | 6.3283 | 2.3022 |
| 12:00:00 PM (1100-1200) | 6.3283 | 2.3022 | 5.7872 | 2.3022 |
| 1:00:00 PM (1200-1300) | 6.3283 | 2.3022 | 5.7872 | 2.3022 |
| 2:00:00 PM (1300-1400) | 6.3283 | 2.3022 | 6.3283 | 2.3022 |
| 3:00:00 PM (1400-1500) | 6.3283 | 2.3022 | 5.7872 | 2.3022 |
| 4:00:00 PM (1500-1600) | 6.3283 | 2.3022 | 5.5790 | 2.3022 |
| 5:00:00 PM (1600-1700) | 5.7872 | 2.3022 | 5.3481 | 2.3022 |
| 6:00:00 PM (1700-1800) | 5.7872 | 2.3022 | 5.7872 | 2.4256 |
| 7:00:00 PM (1800-1900) | 6.3283 | 5.5790 | 6.3283 | 5.3481 |
| 8:00:00 PM (1900-2000) | 6.3283 | 5.5790 | 5.7872 | 5.3481 |
| 9:00:00 PM (2000-2100) | 5.7872 | 3.0594 | 5.5790 | 2.4256 |
| 10:00:00 PM (2100-2200) | 3.0594 | 2.4256 | 2.4256 | 2.3022 |
| 11:00:00 PM (2200-2300) | 2.4256 | 2.3022 | 2.3022 | 2.1426 |
| 12:00:00 AM (2300-0000) | 2.3022 | 2.1426 | 2.1426 | 2.1426 |

2.10 The above-stated TOU Rates, which are similar in structure with the ERC-approved TOU Rates of NPC prevailing at the time of

negotiations and execution of the ESC as shown below, are lower by P0.20/kWh for each hourly interval.

**National Power Corporation (NPC)
Time-of-Use (TOU) Rate Schedules, P/kWh**

| PERIOD | (JANUARY - JUNE) | | (JULY - DECEMBER) | |
|-------------------------|------------------|---------|-------------------|---------|
| | MON-SAT | SUN/HOL | MON-SAT | SUN/HOL |
| 1:00:00 AM (0000-0100) | 2.3426 | 2.5022 | 2.3426 | 2.3426 |
| 2:00:00 AM (0100-0200) | 2.3426 | 2.3426 | 2.3426 | 2.3426 |
| 3:00:00 AM (0200-0300) | 2.3426 | 2.3426 | 2.3426 | 2.3426 |
| 4:00:00 AM (0300-0400) | 2.3426 | 2.3426 | 2.3426 | 1.8649 |
| 5:00:00 AM (0400-0500) | 2.3426 | 2.3426 | 2.3426 | 1.8649 |
| 6:00:00 AM (0500-0600) | 2.3426 | 2.3426 | 2.3426 | 1.8649 |
| 7:00:00 AM (0600-0700) | 2.3426 | 2.3426 | 2.3426 | 1.8649 |
| 8:00:00 AM (0700-0800) | 2.6256 | 2.3426 | 2.5022 | 2.3426 |
| 9:00:00 AM (0800-0900) | 5.7790 | 2.3426 | 2.6256 | 2.3426 |
| 10:00:00 AM (0900-1000) | 6.5283 | 2.5022 | 5.9872 | 2.5022 |
| 11:00:00 AM (1000-1100) | 6.5283 | 2.5022 | 6.5283 | 2.5022 |
| 12:00:00 PM (1100-1200) | 6.5283 | 2.5022 | 5.9872 | 2.5022 |
| 1:00:00 PM (1200-1300) | 6.5283 | 2.5022 | 5.9872 | 2.5022 |
| 2:00:00 PM (1300-1400) | 6.5283 | 2.5022 | 6.5283 | 2.5022 |
| 3:00:00 PM (1400-1500) | 6.5283 | 2.5022 | 5.9872 | 2.5022 |
| 4:00:00 PM (1500-1600) | 6.5283 | 2.5022 | 5.7790 | 2.5022 |
| 5:00:00 PM (1600-1700) | 5.9872 | 2.5022 | 5.5481 | 2.5022 |
| 6:00:00 PM (1700-1800) | 5.9872 | 2.5022 | 5.9872 | 2.6256 |
| 7:00:00 PM (1800-1900) | 6.5283 | 5.7790 | 6.5283 | 5.5481 |
| 8:00:00 PM (1900-2000) | 6.5283 | 5.7790 | 5.9872 | 5.5481 |
| 9:00:00 PM (2000-2100) | 5.9872 | 3.2594 | 5.7790 | 2.6256 |
| 10:00:00 PM (2100-2200) | 3.2594 | 2.6256 | 2.6256 | 2.5022 |
| 11:00:00 PM (2200-2300) | 2.6256 | 2.5022 | 2.5022 | 2.3426 |
| 12:00:00 AM (2300-0000) | 2.5022 | 2.3426 | 2.3426 | 2.3426 |

2.11 The SMEC TOU Rates shall remain constant over the entire duration of the contract regardless of any adjustments in the NPC TOU Rates by virtue of future approvals by the Honorable Commission giving PANELCO III and its end-consumers a competitive BER;

2.12 The ESC likewise provides for a cost adjustment mechanism that shall determine a reasonable level of adjustment to be implemented prospectively by SMEC on a monthly basis to reflect approximate movements in SMEC's cost of generation in consideration of the effects of changes in fuel prices, particularly coal, the Philippine Peso to US Dollar

Exchange Rate fluctuations, and effects of inflation, as changes in these factors are beyond SMEC's control;

2.13 Basic Energy Rate Adjustment Factor (BERAF) formula which is attached as Annex IV of the ESC is as follows:

BASIC ENERGY RATE ADJUSTMENT FACTOR (BERAF) FORMULA

$$\text{BERAF} = A \times \left\{ \frac{\text{FCI}_C}{\text{FCI}_B} \right\} \times \left\{ \frac{\text{FX}_C}{\text{FX}_B} \right\} + B \times \left\{ \frac{\text{USCPI}_C}{\text{USCPI}_B} \right\} \times \left\{ \frac{\text{FX}_C}{\text{FX}_B} \right\} + C \times \left\{ \frac{\text{PhilCPI}_C}{\text{PhilCPI}_B} \right\}$$

WHERE:

BERA = Basic Energy Rate Adjustment is the required adjustment of the weighted average BER-TOU to recovery increase in costs or refund savings, if any, calculated using the BER Adjustment Factor (BERAF) formula.

BERAF = Basic Energy Rate Adjustment Factor that shall be applied to the weighted average BER-TOU to determine the required adjustment. Factor can be either >100% or <100% depending on the movement of the current indices or equal to 100% should the current indices are equal to the base indices

FCI_C = Fuel Cost Index stated in US\$/MT based on Global Coal Newcastle posting representing the average index for the calendar month prior to the current billing month.

FCI_B = Fuel Cost Index stated in US\$/MT based on Global Coal Newcastle posting representing the average index for the calendar month December 2009

FX_C = Average exchange rate of the Philippine Peso to the US Dollar for the previous billing month based on the daily rate bulletin published by the Treasury Department of the Bangko Sentral ng Pilipinas

FX_B = Average exchange rate of the Philippine Peso to the US Dollar for December 2009 billing month based on the daily rate bulletin published by the Treasury Department of the Bangko Sentral ng Pilipinas

USCPI_C = US Consumer Price Index, City Average for All Urban Consumers - All Items (1982-84 = 100) for the calendar month prior to the current billing month

USCPI_B = US Consumer Price Index, City Average for All Urban Consumers - All Items (1982-84 = 100) for the calendar month of December 2009

PhilCPI_C = Consumer Price Index for All Income Households in the Philippines - All Items (2000 = 100) for the calendar month prior to the current billing month

PhilCPI_B = Consumer Price Index for All Income Households in the Philippines - All Items (2000 = 100) for the calendar month of December 2009

Coefficients:

A = 50.0%
B = 15.0%
C = 35.0%

2.14 Under the ESC, PANELCO III may avail of a prompt payment discount (PPD) equivalent to three percent (3%) of the power bill provided that the same power bill is paid in full within ten (10) days upon receipt of the power bill, but not to extend beyond the 15th day of the month following the billing month, provided further, that PANELCO III has no

outstanding obligation arising from previous power bills. This 3% PPD privilege shall be available to PANELCO III whether or not if NPC, under its current rate structure, decides to discontinue the granting of the 3% PPD to its remaining customers;

2.15 PANELCO III may be also granted with an efficiency discount applicable to its entire electricity consumption, subject to compliance of the required collection efficiency levels to be supported by financial statements submitted to National Electrification Administration, provided further, that PANELCO III has no outstanding obligation arising from the previous power bill. The table below (also attached as Annex “V” of the ESC) contains the required collection efficiency levels of PANELCO III from its end-consumers and the levels of discount (in P/kWh) that may be granted by SMEC:

| Collection Efficiency Level | Discount (PhP/kWh) |
|-----------------------------|--------------------|
| Below 75% | None |
| 75%-80% | (0.1000) |
| 81%-85% | (0.1500) |
| 86%-90% | (0.2000) |
| 91%-95% | (0.2500) |
| 96% and above | (0.3000) |

2.16 Consistent with the implementation of the previous contract (CSEE) between NPC and Applicant PANELCO III, wherein fifty percent (50%) of the Prompt Payment Discount availed under the CSEE were passed-on to the end-consumers, Applicant PANELCO III, under the ESC, similarly intends to pass-on fifty percent (50%) of the Collection Efficiency Discount granted by SMEC.

2.17 **Compliance with Rule 20 B, Section 2 of the ERC Rules of Practice.** In compliance with Rule 20B of the Rules of Practice and Procedure, copies of the foregoing are attached as annexes to the instant Application:

| Annex | Description |
|-------|---|
| A | Energy Supply Contract (ESC) between SMEC and PANELCO III |
| A-1 | PANELCO III's letter dated 3 March 2010 requesting early |

| | |
|-----|--|
| | implementation of ESC |
| A-2 | Letter of Agreement (LOA) dated 10 March 2010 for the implementation of the ESC commencing from 26 March 2010 to 25 April 2010 billing period |
| B | Articles of Incorporation of SMEC |
| C | Certificate of Registration of SMEC issued by the Securities and Exchange Commission (SEC) |
| D | Latest General Information Sheet of SMEC |
| E | SMEC's Application for registration with the Board of Investment (BOI) |
| F | Environmental Compliance Certificate issued by the Department of Environment and Natural Resources to the Sual Coal Fired Power Project of the Pangasinan Electric Corporation |
| G | Contract for the Supply of Electric Energy (CSEE) between PANELCO III and NPC |
| G-1 | PANELCO III's letter dated 20 November 2009 requesting for the extension of the CSEE for three (3) months |
| G-2 | Letter of Agreement (LOA) between SMEC and PANELCO III dated 27 November 2009 on the extension of the CSEE from 26 December 2009 to 25 March 2010 |
| H | Details of ESC-Executive Summary |
| I | PANELCO III's Sources of funds |
| J | Purchased power rates; Sample computation |
| K | SMEC's Cash flow indicating initial costs and operating and maintenance expenses (sealed and attached to copies of Application for filing with the ERC) |
| L | Details of procurement process of fuel |
| M | Transmission Service Agreement (TSA) between PANELCO III and NGCP |
| N | Certificate of Compliance (COC) issued by ERC |
| O | Certification issued by the Local Government Unit Legislative Body of the City of _____ |
| P | Newspaper where the Application was published |
| P1 | Affidavit of Publication |

2.18 Compliance with Article VI, Section 1 and 2 of the ERC Guidelines for the Recovery of Costs for the Generation Component of the Distribution Utilities' (DU) Rates:

| | |
|---|--|
| Q | NPC certification dated 09 June 2010 that its right and obligations under its contract with PANELCO III has been assigned to SMEC. |
| R | Relevant technical and economic characteristic of the generation capacity of SMEC |
| S | SMEC's Cost analysis related to generation support of the proposed |

| | |
|----|---|
| | pricing provision of the ESC (Sealed and attached to copies of the Application for filing with ERC) |
| T | Proposal of SMEC to PANELCO III dated 03 December 2009 |
| U | Recommendation from the Pre-qualification, Bids and Awards Committee for award of the contract to SMEC dated 16 December 2009 |
| V | Notice of Award to SMEC dated 22 December 2009 |
| W | PANELCO III Board Resolution approving the Energy Supply Contract (ESC) with SMEC |
| X | PANELCO III Board Resolution approving the filing for approval of the ESC with the Energy Regulatory Commission (ERC) |
| Y | SMEC Board Resolution approving the Energy Supply Contract (ESC) with PANELCO III |
| Z | Details regarding the transmission projects or grid connection projects |
| AA | Statement of Consistencies between the existing generation capacity and the DOE's Philippine Power Development Plan |
| BB | PANELCO III load forecast projections for Calendar Year 2010 |
| CC | PANELCO III's Demand Side Management Program |
| DD | PANELCO III's latest audited financial statement, balance sheet and cash flow |
| EE | SMEC's latest audited financial statement, balance sheet and cash flow |

III

Allegations in support for the Prayer for Provisional Authority

3.1 Applicants replead the above allegations in support of their prayer for the immediate issuance of the provisional authority;

3.2 The CSEE of PANELCO III and NPC which was previously approved by this Honorable Commission has expired on December 25, 2009;

3.3 The instant application is likewise being filed by Applicants in line with the first (1st) and fifth (5th) "whereas clauses" of the Department of Energy Circular No. 2003-12-11 which are quoted hereunder:

“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, [t]o ensure the quality, reliability, security and affordability of the supply of electric power;” (*first “whereas clause”, Department of Energy Circular No. 2003-12-11. 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;” (*fifth “whereas clause”, ibid. Underscoring supplied.*)

3.4 Moreover, Section 1 of the same Department Circular 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.*)

3.5 By way of emphasis, Resolution No. 21, Series of 2005 of this Honorable Commission dated 19 October 2005 had directed all DUs “to enter into future bilateral power supply contract with power producers to be subjected to a review by the Commission.” (*Underscoring supplied*)

3.6 In the interest of the public, there is a necessity for the immediate and provisional approval of the instant APPLICATION in order that there will be no undue disruption in the power supply and the customers of PANELCO III shall, at the soonest possible time, benefit from the lower generation cost as can be gleaned from the proposal of SMEC.;

3.7 Notwithstanding the suspension of the Amendment to the ERC Guidelines on the Recovery of Costs for the Generation Component of the Distribution Utilities’ (DUs) Rates in 2004 by virtue of ERC

Resolution No. 21, Series of 2006 dated May 10, 2006 which has not been lifted up to the present, PANELCO III still conducted a selection process that resulted to the awarding of the supply contract to SMEC containing competitive pricing structure and other favorable provisions that would benefit PANELCO III and its end-consumers.

3.8 Moreover, ERC Resolution No. 16, Series of 2008, dated December 15, 2008, more particularly Sections 2 and 5 thereof allow the parties to a Transition Supply Contract (TSC), prior to the expiration of the TSC which has been assigned and transferred, to negotiate for and enter into a new bilateral power supply contract that should govern the transactions between the parties. That was what PANELCO III and SMEC did in the instant case, prior to the expiration of the CSEE of PANELCO III and NPC which was assigned by PSALM to SMEC.

IV

Request for Confidential Treatment

4.1 Invoking the provisions of Rule 4 of the ERC Rules of Practice and Procedure, SMEC most respectfully prays for the confidential treatment of the information contained in the following documents, to wit:

| ANNEX | NATURE OF DOCUMENT |
|-------|--|
| K | SMEC's Cash Flow indicating initial costs and operating and maintenance expenses |
| S | SMEC's Cost analysis related to the generation in support of the proposed pricing provisions of the ESC; |

4.2 SMEC has valuable proprietary interest in securing the confidentiality of the foregoing information particularly from existing and potential competitors in the power generation sector. Public exposure of these sensitive information/data, particularly the full details thereof, could give these parties a competitive advantage over SMEC as they would have the opportunity and ability to utilize the ingenuity involved in

the computations in arriving at the data/information sought to be protected.

PRAYER

WHEREFORE, premises considered, it most respectfully prayed of this Honorable Commission that:

1. Upon initial review of the instant Application and pending trial on the merits, this Honorable Commission issue an Order granting provisional authority for the Applicants to implement the foregoing ESC and its amendments;
2. Further to such any provisional approval for the implementation of the ESC, for this Honorable Commission to authorize Applicant PANELCO III to pass on to its end-consumers fifty percent (50%) of the Collection Efficiency Discount availed from SMEC; and
3. After trial on the merits, the Honorable Commission to issue a permanent approval of the ESC, as amended, which is the subject of the instant petition, including its annexes as well as the prayer to pass on fifty percent (50%) of the Collection Efficiency Discount availed from SMEC.

Other reliefs, just and equitable under the premises are likewise prayed for.

Pasig City, 20 October 2010.

By:

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