

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

**IN THE MATTER OF THE APPLICATION FOR THE APPROVAL OF THE CONTRACT FOR THE SUPPLY OF ELECTRIC ENERGY BETWEEN MASINLOC POWER PARTNERS CO. LTD. AND TARLAC I ELECTRIC COOPERATIVE, INC., WITH PRAYER FOR PROVISIONAL AUTHORITY**

ERC CASE NO. \_\_\_\_\_

**TARLAC I ELECTRIC COOPERATIVE, INC. AND MASINLOC POWER PARTNERS CO. LTD.**

***Applicants.***

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**APPLICATION**

Applicants Tarlac I Electric Cooperative, Inc. ("TARELCO I") and Masinloc Power Partners Co. Ltd. ("MPPCL"), by undersigned counsels, respectfully state:

**I. THE APPLICANTS**

1. Tarlac I Electric Cooperative, Inc. is a non-stock non-profit electric cooperative which is registered under Presidential Decree No. 269, as amended, with office address at Amacalan, Gerona, Tarlac. TARELCO I has been granted a franchise or authority to distribute electric service in parts of Tarlac City, the municipalities of Anao, Camiling, Gerona, Mayantoc, Moncada, Paniqui, Pura, Ramos, San Jose, San Clemente, San Manuel, Sta. Ignacia, and Victoria, all in the province of Tarlac; the municipalities of Cuyapo, Nampicuan, and parts of Licab, all in the province of Nueva Ecija; and parts of the municipality of Mangatarem in the province of Pangasinan (the "Franchise Area").

Copies of relevant documents proving the due incorporation, registration and permit to operate of TARELCO I as a distribution utility are attached herewith as follows:

<b>Document</b>	<b>Annex</b>
<i>Articles of Incorporation</i>	A
<i>Amended By-laws</i>	B
<i>Certificate of Registration with the National Electrification Administration</i>	C

<i>Certificate of Franchise</i> issued by the National Electrification Commission	D
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2. MPPCL is a limited partnership established in the Philippines to invest in, acquire, finance, complete, construct, develop, improve, operate, maintain, and hold power production and electric generating facilities in the country, with principal office address at Barangay Bani, Masinloc, Zambales.

MPPCL is a subsidiary of The AES Corporation, a global power generation and power distribution company with assets in twenty-eight (28) countries in Asia, North America, South America, Europe, and Africa.

3. MPPCL recently acquired and took over the operations of the Masinloc Coal-Fired Thermal Power Plant (“Masinloc Power Plant”), a six hundred megawatt (600 MW) power plant located in Masinloc, Zambales, through a competitive bidding process managed by the Power Sector Assets and Liabilities Management Corporation (“PSALM”).

Attached are copies of relevant documents proving the due registration and permit to operate of MPPCL as a generation company, as follows:

<b>Document</b>	<b>Annex</b>
<i>Amended Articles of Limited Partnership</i>	E
<i>Board of Investments Certificate of Registration</i> dated 3 March 2008	F
<i>Environmental Compliance Certificate (“ECC”)</i> No. 9009-049-206C for the Masinloc Power Plant	G
<i>Letter</i> from the Department of Environment and Natural Resources dated 23 July 2008 approving transfer of ownership of the ECC to MPPCL	H
<i>Certificate of Compliance (“COC”)</i>	I

4. The Applicants may be served orders and other processes through the undersigned counsels at their addresses indicated herein below.

## **II. NATURE OF THE APPLICATION**

5. Pursuant to Rule 20 (B) of the ERC Rules of Practice and Procedure, approved by the Honorable Commission on 22 June 2006 in Resolution No. 38, Series of 2006, this Application is submitted to the Honorable Commission for its review and approval of the

Contract for the Supply of Electric Energy (“CSEE”), dated 28 July 2009, executed by TARELCO I and MPPCL.

A copy of the CSEE is attached hereto as **Annex “J”**. A summary of the relevant terms of the CSEE is likewise attached as **Annex “J-1”**.

Also attached herewith as **Annexes “K”** and **“K-1”** are the respective board and partner’s resolutions of TARELCO I and MPPCL approving the execution of the CSEE by the parties.

### **III. COMPLIANCE WITH PRE-FILING REQUIREMENTS**

6. In compliance with Rule 6 of the ERC Rules of Practice and Procedure, Applicants have furnished the respective legislative bodies of the local government units within the Franchise Area, and the *Sangguniang Panlalawigan* of Tarlac, Nueva Ecija, and Pangasinan, with a copy of the instant Application and accompanying documents.

Certifications from the Presiding Officer or Secretary of the legislative bodies of the Franchise Area and of the *Sangguniang Panlalawigan* of Tarlac, Nueva Ecija, and Pangasinan, or their duly authorized representatives, attesting to the fact of such service will be attached hereto as follows:

<b>Certification of Presiding Officer/Duly Authorized Representative</b>	<b>Annex</b>	<b>Certification of Presiding Officer/Duly Authorized Representative</b>	<b>Annex</b>
Anao	L	San Manuel	L-10
Camiling	L-1	Sta. Ignacia	L-11
Gerona	L-2	Victoria	L-12
Mayantoc	L-3	Tarlac City	L-13
Moncada	L-4	<i>Sangguniang Panlalawigan</i> of Tarlac	L-14
Paniqui	L-5	Cuyapo	L-15
Pura	L-6	Nampicuan	L-16
Ramos	L-7	Licab	L-17
San Jose	L-8	<i>Sangguniang Panlalawigan</i> of Nueva Ecija	L-18
San Clemente	L-9	Mangatarem	L-19
		<i>Sangguniang Panlalawigan</i> of Pangasinan	L-20

7. Furthermore, Applicants have caused the publication of the present Application in its entirety in a newspaper of general circulation in TARELCO I's Franchise Area.

The Affidavit of Publication and the newspaper issue containing the published Application will be attached hereto as follows:

<b>Document</b>	<b>Annex</b>
Affidavit of Publication	M
Copy of Newspaper	M-1

#### **IV. STATEMENT OF FACTS**

8. The provisions of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 ("EPIRA"), called for the privatization of the power generation assets of the National Power Corporation ("NPC") in order to promote competition in the power sector and to reduce the price of electricity in the Philippines. The Masinloc Power Plant was one of the power generation assets of the NPC that was already privatized.

9. MPPCL acquired the Masinloc Power Plant as it was the winning bidder in the competitive bidding process managed by PSALM. The acquisition was perfected through an Asset Purchase Agreement ("APA") dated 26 July 2007.

10. TARELCO I has an existing transition supply contract with NPC ("NPC TSC"). TARELCO I currently sources approximately ninety percent (90%) of its electricity requirements from NPC under the NPC TSC, and the remaining ten percent (10%) from the Wholesale Electricity Spot Market ("WESM").

11. As the TSC between NPC and TARELCO I is set to expire on 25 September 2009, TARELCO I previously entered into a Power Purchase and Sale Agreement ("PPSA") with GNPOWER Limited Company ("GNPOWER") whereby the latter is expected to deliver the power requirements of TARELCO I upon the expiration of the NPC TSC. Said PPSA was approved by the Honorable Commission under ERC Case No. 2007-121 RC.

12. As the applicants have indicated in ERC Case No. 2007-121 RC, GNPOWER will commence providing the power requirements of its customer distribution utilities, including TARELCO I, in late 2010 or 2011. The latest feedback of TARELCO I from GNPOWER, however, indicates that the commercial operation of GNPOWER's power plant will be delayed and

GNPOWER may only be able to commence operation in the middle of 2012, or after the expiry of the NPC TSC.

13. As such, to ensure the security of power supply in TARELCO I's Franchise Area upon the expiry of the NPC TSC, and at the same time, further reduce the generation charge being paid by its customers, TARELCO I entered into the CSEE with MPPCL for the supply of electric energy to commence from the approval by the Honorable Commission of the CSEE, or issuance of a provisional authority thereof, until such time that the plant of GNPOWER will commence its commercial operations.

**Commercial advantage of MPPCL's generation rate**

14. Under TARELCO I's existing power supply arrangement discussed in paragraph 10, a simulation using a whole year of energy data indicates that, even a conservative strategy of procuring only ten percent (10%) of its requirements from the WESM during the trading hours of 4 p.m. and 5 p.m., where NPC time of use rates are high and the WESM prices are low, and at 6 a.m., where the WESM price is low and the relative off-peak demand is higher, TARELCO I and its customers are able to realize savings of about PhP 11.39 million annually, or approximately PhP.0843/kWh.

The table below illustrates the savings of TARELCO I under its existing power supply arrangement:

Composite	Volume, kWh	% Share	Rate, PhP/kWh
WESM	13,514,582	10%	3.4517
NPC Residual	121,630,834	90%	4.2682
Total	135,145,416	100%	4.1865
All NPC	135,145,416	100%	4.2708
Savings		in P/kWh	0.0843
		in P Millions	11.39

15. To minimize the adverse consequences of a projected delay in the commencement of the commercial operation of GNPOWER's power plant, and to further lower the generation charge passed on to its customers, TARELCO I entered into discussions with MPPCL for the latter to supply TARELCO I's power requirements for a twenty-four (24) month period. Such supply is intended to commence from the approval of the CSEE or issuance of

provisional approval thereof until the commencement of GNPOWER plant’s commercial operations, at a price which provides additional savings vis-à-vis its current strategy of procuring ninety percent (90%) of its energy from NPC and ten percent (10%) from the WESM.

16. TARELCO I concluded that adopting a strategy of allocating its bilateral power supply requirements between NPC and an NPC successor generating company will redound to the best interest of its consumers. Hence, TARELCO I entered into the CSEE with MPPCL not only as risk mitigation measure and provide certainty of supply in the event of GNPOWER delay but, more importantly, as this will further increase savings for its consumers.

16.1. A summary of the impact on TARELCO I’s generation charges of allocating TARELCO I’s bilateral power supply between NPC and MPPCL vis-à-vis the NPC TOU rate is shown below. By sourcing a portion of its power supply requirements from MPPCL, TARELCO I will generate additional savings for its customers, as follows:

<b>Composite</b>	Volume, kWh	% Share	Rate, PhP/kWh
MPPCL Deliveries	60,815,437	45%	4.2353
WESM	13,514,336	10%	4.1148
NPC Residual	60,815,643	45%	4.1509
<b>Total</b>	<b>135,145,416</b>	<b>100%</b>	<b>4.1853</b>

  

<b>All NPC</b>	135,145,416	100%	4.2708
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<b>Savings</b>	in P/kWh	0.0855
	in P Millions	11.56

16.2. Moreover, by securing 45% of its power supply from MPPCL, TARELCO I reduces its risk for future positive DAAs as the regime for positive adjustments in DAA is already imminent as gleaned from recent NPC applications.

16.3. TARELCO I cannot rely on NPC to continue supplying TARELCO I’s power requirements in the event of GNPOWER’s delay, after the expiration of the NPC TSC, due to the anticipated insufficient supply of power in 2010 as projected by the Department of Energy (“DOE”) and the privatization of NPC’s generating assets. Even assuming that NPC is able to supply the power requirements of TARELCO I, the same cannot be made at rates lower than MPPCL’s considering that the power plants remaining with NPC, after the privatization of its assets, are plants which are less efficient and thus more expensive to run. At the time of the signing of the CSEE on 28

July 2009, NPC's basic rates for Luzon of PhP 4.3648/kWh was already higher compared to MPPCL's basic energy rate.

16.4. NPC already confirmed by way of a certification dated 3 August 2009 that given the privatization schedule of PSALM, NPC cannot commit to supply at economical rates the electric power requirements of TARELCO I after the expiration of the existing NPC TSC.

A copy of the NPC Certification is attached hereto as **Annex "N"**.

16.5. In the Certification, NPC likewise expressed that it intended that the TSC and the power requirements of TARELCO I will be served by the winning IPP Administrator for the Sual Coal-fired Power Plant or other NPC successor generating company upon expiry of the original term of the TSC.

17. Considering the urgency of the situation, with the NPC TSC expiring on 25 September 2009, a looming capacity shortfall in the Luzon grid, and further aggravated by the projected delay in the commercial operation of GNPOWER to supply TARELCO I's energy requirements, TARELCO I decided to enter into a CSEE with MPPCL, rather than risk having power supply shortfall. More importantly, with the entry of MPPCL as a power supplier, TARELCO I will be able to significantly reduce the generation rate passed on to its customers.

18. The foregoing commercial advantages considered, on 28 July 2009, the parties entered into the CSEE, which is the subject of the instant Application.

#### **V. ABSTRACT OF THE CSEE AND RELATED INFORMATION**

19. The following are the salient features of the CSEE:

19.1. **Term.** The CSEE shall have a term of twenty-four (24) Billing Periods counted from the Operations Effectivity Date and shall be automatically renewed and shall continue until the lapse of another twenty-four (24) Billing Periods or until the start of the supply of power from GNPOWER, whichever comes earlier, unless earlier terminated in accordance with the CSEE. Under the CSEE, the Operations Effectivity

Date occurs on the next immediate twenty-sixth (26<sup>th</sup>) day of the month after the conditions in Section 2.2<sup>1</sup> of the CSEE have been satisfied.

19.2. **Volume.** Under the CSEE, MPPCL shall supply TARELCO I a minimum 60,909,570 kWh of Contract Energy per year for the whole term of the CSEE. Details regarding the volume of Contract Energy and Allowable Maximum Demand on a monthly basis are provided for under Annex I of the CSEE.

a. MPPCL shall commence with its obligation to supply power to TARELCO I starting on the Operations Effectivity Date.

b. An Allowable Maximum Demand (“AMD”) is made available which, together with the NPC supply, TARELCO I will dispatch to meet its Bilateral Contract Quantities (“BCQ”) in a manner that would allow TARELCO I to comply with the requirements of Section 45 (c) of EPIRA, i.e., securing ninety percent (90%) power supply from bilateral supply contracts and ten percent (10%) from the WESM.

c. The Contract Energy shall be used to determine the amount that TARELCO I shall pay as minimum charges.

d. The latest energy and demand forecast of TARELCO I, as embodied in its latest Distribution Development Plan and the variability of the forecast over the proposed contractual period, including the estimation of the potential for a reduction in load, is attached hereto as **Annex “O”**.

19.3. **Total Energy Charge Rate.** For electricity supplied by MPPCL, TARELCO I shall pay MPPCL a Monthly Power Bill which is composed of the Total Energy Charge,

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<sup>1</sup> The conditions are as follows:

- a. Approval by the Honorable Commission of the CSEE, provided that a provisional authority granted by the Honorable Commission shall be considered as a satisfaction of this condition;
- b. Receipt of and written approval by MPPCL of the Security Deposit required to be provided by TARELCO I;
- c. Execution by TARELCO I of an escrow agreement;
- d. Written confirmation from the Escrow Account Bank that TARELCO I has established and funded an escrow account;
- e. Written confirmation from PEMC that TARELCO I is a direct trading member of WESM; and
- f. Receipt by MPPCL of TARELCO I’s list of customers belonging to the Contestable Market.

Transco Service Charge, Generation Service Charge, and Value Added Tax applicable to the transaction, and calculated according to the methodology set out in Annex III of the CSEE. The Total Energy Charge is composed of the MPPCL Time-of-Use (“TOU”) Tariff, as indicated in the table below, and may be adjusted from time to time in accordance with Section 3, Annex III of the CSEE, multiplied by the Actual Energy (based on the Daily BCQ Nominations of TARELCO I), and by a Rate Adjustment Index, plus the Allowable Contract Reimbursable.

Period	January - June		July - December	
	Monday - Saturday	Sunday & Holiday	Monday - Saturday	Sunday & Holiday
1:00:00 AM	2.3250	2.3250	2.3250	2.3250
2:00:00 AM	2.3250	2.3250	2.3250	2.3250
3:00:00 AM	2.3250	2.3250	2.3250	2.3250
4:00:00 AM	2.3250	2.3250	2.3250	2.3250
5:00:00 AM	2.3250	2.3250	2.3250	2.3250
6:00:00 AM	2.3250	2.3250	2.3250	2.3250
7:00:00 AM	2.3250	2.3250	2.3250	2.3250
8:00:00 AM	2.3250	2.3250	2.3250	2.3250
9:00:00 AM	6.4000	2.3250	2.3250	2.3250
10:00:00 AM	6.4000	2.3250	6.0500	2.3250
11:00:00 AM	6.4000	2.3250	6.0500	2.3250
12:00:00 PM	6.4000	2.3250	6.0500	2.3250
1:00:00 PM	6.4000	2.3250	6.0500	2.3250
2:00:00 PM	6.4000	2.3250	6.0500	2.3250
3:00:00 PM	6.4000	2.3250	6.0500	2.3250
4:00:00 PM	6.4000	2.3250	6.0500	2.3250
5:00:00 PM	6.4000	2.3250	6.0500	2.3250
6:00:00 PM	6.4000	2.3250	6.0500	2.3250
7:00:00 PM	6.4000	6.2500	6.0500	5.9000
8:00:00 PM	6.4000	6.2500	6.0500	5.9000
9:00:00 PM	6.4000	2.3250	6.0500	2.3250
10:00:00 PM	2.3250	2.3250	2.3250	2.3250
11:00:00 PM	2.3250	2.3250	2.3250	2.3250
12:00:00 AM	2.3250	2.3250	2.3250	2.3250

Attached as **Annex “P”** is a summary of the methodology used by MPPCL to arrive at the MPPCL TOU Tariff and the determination of the Total Energy Charge under the CSEE. It also contains information regarding the fuel cost, among other information.

a. **MPPCL Time-of-Use Tariff Rate.** The MPPCL TOU Tariff Rate may be adjusted in accordance with Section 3, Annex III of the CSEE, as follows:

(i) Should the Honorable Commission approve an increase in NPC’s Basic Generation Rate as of 26 May 2009 (the “NPC Reference

Rate”), MPPCL shall be allowed to adjust the TOU Tariff in the same amount as NPC’s rate increase. The adjustment shall be made by increasing all elements of the TOU Tariff, above, by the same amount as NPC’s rate increase (the “TOU Adjustment”), provided that the TOU Adjustment shall not exceed a cumulative total of PhP 0.40/kWh. Only positive adjustments shall apply, except when the NPC Test Period(s) used by the ERC in its determination of a negative Basic Generation Rate adjustment cover periods after the date hereof.

(ii) If by 26 September 2010, the cumulative increases in NPC Basic Generation Rate reckoned from the NPC Reference Rate have not reached a total of PhP 0.20/kWh, the TOU Tariff shall have a TOU Adjustment of PhP 0.20/kWh.

(iii) If by 26 September 2011, the cumulative increases in NPC Basic Generation Rate reckoned from the NPC Reference Rate have not reached a total of PhP 0.40/kWh, the TOU Tariff shall have a TOU Adjustment of PhP 0.40/kWh.

b. **Rate Adjustment Index.** The Total Energy Charge shall be subject to adjustments in the Rate Adjustment Index (“RAI”) to reflect changes in foreign exchange, consumer price, and fuel cost, calculated using the formula below as further defined in Section 1, Annex III of the CSEE:

$$RAI = \{A \times (FCPI_n/FCPI_o) + B \times (FCI_n/FCI_o)\} \times (FXR_n/FXR_o)$$

Where:

Up to 25 September 2010:	A = 65%	B = 35%
From 26 September 2010 to 25 September 2011:	A = 67%	B = 33%
From 26 September 2011 onwards	A = 68%	B = 32%

- FCP<sub>n</sub> - The average of the U.S. Consumer Price Index for Capital Equipment (line 63, International Financial Statistics) for the period of the calendar quarter immediately prior to the billing month.
- FCP<sub>o</sub> - U.S. Consumer Price Index for Capital Equipment, line 63, International Financial Statistics as of December 2008.
- FXR<sub>n</sub> - The average of the exchange rate of the Philippine Peso to the US Dollar as published by the *Bangko Sentral ng Pilipinas* for the period of the calendar quarter immediately prior to the billing month.
- FXR<sub>o</sub> - PhP 48.00; provided, that when FXR<sub>n</sub> / FXR<sub>o</sub> < 1, it shall be deemed to be 1.0000

- FCIn - Fuel Cost Index stated in \$/Million Kcal as determined using the average of the Argus/McCloskey Coal Price Index Report for “API 6 (fob Newcastle)” for the period of the calendar quarter immediately prior to the billing month.
- FClo - US\$ 9.70 per Million kcal

c. The Allowable Contract Reimbursable. This component includes the following:

(i) MPPCL’s actual cost higher than ninety percent (90%) of the MPPCL TOU Tariff multiplied by the Rate Adjustment Index for the Billing Period in any WESM trading interval when the Backup Power or Replacement Power is being supplied; and

(ii) any congestion charges borne by the MPPCL in supplying the BCQ of TARELCO I.

d. **Discounts.** Provided that TARELCO I has no overdue obligation to MPPCL, MPPCL shall grant TARELCO I the following discounts: (i) Prompt Payment Discount, (ii) Performance Discount, and (iii) Payment Security Discount, all in accordance with Section 2, Annex III of the CSEE.

20. **Characteristics of the power capability and connection facility.** The Masinloc Power Plant is rated at 600-MW Gross and installed (as opposed to rated) capacity.

The relevant technical specifications of the transmission and delivery facilities are likewise specifically described in **Annex “Q”**.

As the Masinloc Power Plant is already an existing facility, Applicants have no longer provided a certification from the DOE that the generating capacity is consistent with DOE’s Philippine Development Plan. Applicants understand that said DOE certification is required in cases of new and proposed generation capacities.

21. **Details of the Applicants’ Transmission/Connection Facilities.** MPPCL is connected to the Luzon grid via a double circuit 230 KV line to the Kadampat EHV Substation of TRANSCO. TARELCO I is likewise connected to the Luzon grid.

As such, Applicants will not incur costs in developing or constructing anew a transmission or grid connection project to complement Masinloc Power Plant’s capacity, as it is already connected to the grid. It should also be noted that MPPCL is currently not paying costs of ancillary services based on the OATS rules. If it were made to pay ancillary services, MPPCL will charge TARELCO I its ancillary services costs on a pass-through basis.

22. Attached herewith are copies of the Transmission Service Agreement, Metering Services Agreement and Connection Agreement of the Applicants with the National Transmission Corporation, as follows:

<b>Document</b>	<b>Annex</b>
Transmission Service Agreement between TRANSCO and TARELCO I	R
Transmission Service Agreement between TRANSCO and MPPCL	R-1
Metering Services Agreement between TRANSCO and MPPCL	S
Connection Agreement between TRANSCO and MPPCL	T

23. **Details of the procurement process of fuel.** As earlier stated, MPPCL’s Power Plant primarily runs on coal. Attached hereto as **Annex “U”** is a certification on the availability of coal supply for MPPCL, salient terms of its coal supply contracts, and the process conducted by MPPCL for its procurement.

24. In compliance with the ERC Rules of Practice and Procedure, the following documents are likewise submitted:

<b>Document</b>	<b>Annex</b>
Audited Financial Statements for 2008	V
Certification on the heat rate of generating units	W
Certification on long-term loans	X

## **VI. TREATMENT OF DISCOUNTS**

25. Pursuant to the policy of the Honorable Commission allowing the distribution utilities to pass on to their customers fifty percent (50%) of the prompt payment discount received from NPC in ERC Resolution No. 12, series of 2005<sup>2</sup>, Applicants respectfully request for the approval of a similar treatment for all discounts available to TARELCO I under the CSEE. As earlier mentioned, these discounts include the Prompt Payment Discount, Performance Discount, and Payment Security Discount.

<sup>2</sup> A Resolution Approving a New Policy on the Treatment of the Prompt Payment Discount

26. In the event that TARELCO I meets the criteria set forth in Section 2, Annex III of the CSEE which entitles it to these discounts, TARELCO I should be allowed to reflect at least one-half of the discounts as rate reduction to its end-users and that it may use the balance for operating and capital expenditure purposes.

27. The discounts which TARELCO I would be allowed to keep constitute a substantial capital inflow for its operations. TARELCO I's only assured source of capital to finance the expansion, rehabilitation, and upgrading of its power distribution system is the five percent (5%) Reinvestment Fund allowed by the Honorable Commission to be allocated from its gross revenues. It cannot be denied however that the Reinvestment Fund is not enough to sustain the repairs, upgrades, and expansion of electric power system of TARELCO I. If TARELCO I is not allowed to retain fifty percent (50%) of the discounts granted by MPPCL, it will have substantial difficulty to raise capital either from additional contributions from its members or from debt financing. Thus, by this arrangement, TARELCO I will have access to an assured capital source to enable it to maintain a sustainable operation by ensuring low systems loss and high productivity.

28. Additionally, in using the balance of the discount for operating purpose, TARELCO I may acquire maintenance and repair tools and equipment, as well as software, to further improve its efficiency, productivity, and reliability. TARELCO I will likewise have funds for the remuneration of its officers and employees that is contingent upon and that rewards them for their achievement of efficiency and productivity.

## **VII. ISSUANCE OF A PROVISIONAL AUTHORITY**

29. **Provisional Authority under the Rules.** Under Rule 14 of the ERC Rules of Practice and Procedure, the Honorable Commission is authorized to issue a provisional authority or interim relief prior to a final decision in the instant Application, provided that the facts and circumstances alleged warrant such remedy.

30. **Factual Grounds for issuance of Provisional Authority.** Applicants respectfully submit that the following facts and circumstances clearly warrant the issuance by the Honorable Commission of provisional authority or interim relief in the instant Application.

**30.1. Impending expiration of the term of the NPC TSC compounded by delay in the commencement of commercial operations of GNPOWER's plant.** As earlier

discussed, considering the nearing expiration of the term of the NPC TSC between NPC and TARELCO I, compounded by the unforeseen delay in the commencement of the PPSA of TARELCO I with GNPOWER, TARELCO I and MPPCL are constrained to ask the Honorable Commission for a provisional approval of the instant Application pending the issuance of a final order or decision in order to ensure reliable and steady power supply in TARELCO I's franchise area.

**30.2. Provisional approval allows immediate availment by TARELCO I of incentives under the MPPCL CSEE.** A provisional authority granted in the instant Application will further enable TARELCO I to avail of the commercial advantages granted to it under its CSEE with MPPCL, such as:

a. savings for TARELCO I and its customers, as the resulting combined generation charge with the entry of MPPCL as a power supplier under the CSEE compares favorably vis-à-vis the existing power supply arrangements of TARELCO I with NPC and WESM; and

b. unique discounts offered by MPPCL under the CSEE, which further makes MPPCL's offer under the CSEE more competitive and advantageous for TARELCO I and its customers.

**30.3. Provisional approval gives TARELCO I a protection against price fluctuation in a volatile spot market.** If, as a result of the NPC TSC expiration and delay in the commercial operations of GNPOWER, TARELCO I will be constrained to source its power supply or additional requirements from NPC, it may be required to pay NPC at the Default Wholesale Supplier rate which is ten percent (10%) higher than the NPC basic rate for Luzon or WESM Ex Post Nodal Energy Price, whichever is higher. In the alternative, should it resort to directly buy from the WESM its entire energy requirements, TARELCO I and its customers will be exposed to a bigger risk of the volatility of the rates in the WESM, to the detriment and prejudice of TARELCO I's consumers.

**30.4. NPC certified that it will no longer be able to economically supply TARELCO I's power requirements.** Likewise noteworthy is the certification issued by NPC dated 3 August 2009, that due to the ongoing privatization of the NPC generating assets in the Luzon Grid, NPC cannot commit to supply the electric power requirements

of TARELCO I for the Term of the CSEE as it would not be economical for NPC to serve this customer from its remaining generation assets.

31. **Legal Basis for the Grant of Provisional Authority.** Applicants likewise respectfully submit that Section 3, Rule 14 of the Honorable Commission's Rules of Practice and Procedure clearly provides legal basis for the grant of provisional authority, as it expressly states that "motions for provisional authority or interim relief may be acted upon with or without hearing."

31.1. The aforesaid rule further provides that the Honorable Commission shall act on the motion on the basis of the allegations of the application or petition and other pieces of evidence that the Applicants have submitted and the comments filed by any interested person, if there be any.

31.2. The authority of the Honorable Commission to grant a provisional authority has been clearly affirmed by the Supreme Court in the case of *Freedom from Debt Coalition vs. Energy Regulatory Commission* (432 SCRA 157) where the Supreme Court has stressed that the Honorable Commission is endowed with the statutory authority to approve provisional rate adjustments under the aegis of Sections 44 and 80 of the Electric Power Industry Reform Act, in relation to Section 16 (c) of the Public Service Act and Section 8 of E.O. No. 172.

31.3. Verily, in the *Freedom from Debt Coalition* case, when confronted with the issue of whether the Honorable Commission exercised grave abuse of discretion in granting provisional rate adjustment, the Supreme Court emphasized that "like Section 16 (c), C.A. No. 146 and Section 8, E.O. No. 172, Section 4 (e), Rule 3 of the IRR does not require the conduct of a hearing prior to the issuance of a provisional order."

31.4. Considering the foregoing, there is clear and sufficient basis that the issuance of a provisional authority or interim relief pending the issuance of a final order or decision in the instant Application is imperative.

32. In view of all the foregoing, Applicants respectfully submit the instant Application for the approval of the Contract for the Supply of Electric Energy between MPPCL and TARELCO I for the Honorable Commission's urgent and utmost consideration.

## **PRAYER**

WHEREFORE, premises considered, the Applicants most respectfully pray that this Honorable Commission issue an order:

1. granting provisional approval/authority for the parties to implement the provisions of the CSEE pending the issuance of a final resolution in the instant Application;
2. allowing TARELCO I to reflect as rate reduction to its end-users at least one-half of the discounts it will receive from MPPCL and authorizing TARELCO I to keep the balance of the discounts for operating and capital expenditure purposes; and
3. approving the CSEE dated 28 July 2009 entered into between TARELCO I and MPPCL.

Other reliefs just and equitable are likewise prayed for.

Makati City for Pasig City, 20 August 2009.

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