

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



**IN THE MATTER OF THE  
APPLICATION FOR THE  
APPROVAL OF THE POWER  
SUPPLY AGREEMENT  
BETWEEN MASINLOC  
POWER PARTNERS CO. LTD.  
AND CAMARINES SUR II  
ELECTRIC COOPERATIVE,  
WITH PRAYER FOR  
CONFIDENTIAL TREATMENT  
OF INFORMATION**

**ERC CASE NO. 2015-192 RC**

**CAMARINES SUR II  
ELECTRIC COOPERATIVE  
(CASURECO II) AND  
MASINLOC POWER  
PARTNERS CO. LTD (MPPCL),  
Applicants.**

**D U C K E T E D**  
Date: **AUG 31 2016**  
By: **[Signature]**

**X ----- X**

**ORDER**

On 05 November 2015, Camarines Sur II Electric Cooperative (“CASURECO II”) and Masinloc Power Partners Co. Ltd. (“MPPCL”) filed an Application for the Approval of the Power Supply Agreement (PSA) with Prayer for Confidential Treatment of Information.

Likewise, on 05 February 2016, CASURECO II and MPPCL filed their “*Compliance*” pursuant to the Commission’s directives to submit additional documents and information which are necessary for the evaluation of the instant Application.

In their Application, CASURECO II and MPPCL alleged the following:

**I. THE APPLICANTS**

1. CASURECO II is a non-stock non-profit electric cooperative which is registered under Presidential Decree No. 269, as

**[Handwritten mark]**

amended, with principal office address at Del Rosario, Naga City, Camarines Sur. CASURECO II has been granted a franchise or authority to distribute electric service in the municipalities of Bombon, Calabanga, Canaman, Magarao, Milaor, Minabalac, Naga City, Pili, Siruma and Tinambac, all in the province of Camarines Sur (collectively, the "**Franchise Area**").

Copies of relevant documents proving the due incorporation, registration, and permit to operate of CASURECO II as a distribution utility are attached hereto as follows:

<b>Document</b>	<b>Annex</b>
<i>Articles of Incorporation</i>	A
<i>By-laws</i>	B
<i>Certificate of Provisional Registration with the Cooperative Development Authority</i>	C
<i>Certificate of Franchise issued by the National Electrification Commission</i>	D

2. MPPCL is a limited partnership established in the Philippines to construct, develop, improve, operate, maintain, and hold power production and electric generating facilities in the country, for the production and sale of electricity. MPPCL's principal office address is located at the Masinloc Coal-Fired Thermal Power Plant, Bani, Masinloc, Zambales.
3. MPPCL is in the process of expanding its existing power generating facility in Zambales through the construction, operation, management and maintenance of a new 300 MW coal-fired power generating facility (the "**Plant**") to supply, among others, the load requirement of CASURECO II.

Attached are copies of relevant documents proving MPPCL's due registration as a generation company, relevant permits to operate the Plant and audited financial statements, as follows:

<b>Document</b>	<b>Annex</b>
<i>Amended Articles of Limited Partnership</i>	E
<i>Certificate of Registration with the Securities and Exchange Commission</i>	F
<i>Board of Investments ("BOI") Certificate of Registration as a Pioneer Enterprise No. BOI 2012-221 dated 12 October 2012</i>	G
<i>Environmental Compliance Certificate ("ECC") No. 1111-020, as amended on 23 April 2012, for the Masinloc Power Plant</i>	H
<i>Certificate of Endorsement No. DOE COE 2011-09-01 issued by the Department of Energy ("DOE") on 8 August 2011</i>	I
<i>Latest Audited Financial Statements</i>	J

4. As the Plant will still be constructed, MPPCL has yet to obtain the Certificate of Compliance (“COC”) from this Honorable Commission, which covers the same. MPPCL undertakes to apply for and obtain the COC prior to the Plant’s commercial operations.
5. The Applicants may be served with copies of orders and other processes through their respective undersigned counsels at their addresses indicated herein below.

**II. NATURE OF THE APPLICATION**

6. Pursuant to Sections 23, 25 and 45 (b) of Republic Act No. 9136 or the "Electric Power Industry Reform Act of 2001" (“EPIRA”) in relation 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 Power Supply Agreement (“PSA”), dated 23 September 2015, executed by CASURECO II and MPPCL.

A copy of the PSA is hereto attached and made an integral part hereof as **Annex “K”**.

Also attached hereto as **Annexes “L”** and **“L-1”** are the respective board and partner’s resolutions of CASURECO II and MPPCL approving the execution of the PSA by the parties.

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

7. In compliance with Rule 3, Section 4 (e) of the Implementing Rules and Regulations of the EPIRA and 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 Camarines Sur with copies of the instant Application and its accompanying documents.

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

Certification of Presiding Officer/Duly Authorized Representative	Annex	Certification of Presiding Officer/Duly Authorized Representative	Annex
Bombon	M	Naga City	M -6

Calabanga	M-1	Pili	M -7
Canaman	M-2	Siruma	M -8
Magarao	M-3	Tinambac	M -9
Milaor	M-4	Sangguniang Panlalawigan of Camarines Sur	M -10
Minabalac	M-5		

8. Furthermore, Applicants have caused the publication of the present Application in its entirety in a newspaper of general circulation in CASURECO II's Franchise Area.

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

Document	Annex
Affidavit of Publication	N
Copy of Newspaper	N-1

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

9. The EPIRA mandates that a distribution utility 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 this Honorable Commission.<sup>1</sup> Towards this end, the EPIRA expressly allows distribution utilities to enter into bilateral power supply contracts, subject to review by this Honorable Commission.<sup>2</sup>
10. In furtherance of the State policy to ensure the quality, reliability, security and affordability of the supply of electric power and to protect public interest affected by the rates and services of the electric utilities and other providers of electric power, this Honorable Commission issued Resolution No. 21, Series of 2005 which directed all distribution utilities to enter into future bilateral power supply contract with power producers to be subjected to a review by the ERC.
11. Consistent with these policies and regulations, CASURECO II undertook a search for a suitable generation company to supply its 10-year long term power requirements (subject to a 10-year extension) in the least cost manner. In the course of its search for a supplier of reliable, efficient and stable electric power, CASURECO II learned about MPPCL's winning bid offer to supply the aggregated contract capacity of the electric cooperatives in Region 1 and Cordillera Autonomous Region

<sup>1</sup> Cf. EPIRA, Sec. 23, par. 3.

<sup>2</sup> Cf. EPIRA, Sec. 45(b).

*3*

("R1+CAR ECs")<sup>3</sup> following a successful competitive selection process ("R1+CAR ECs CSP").

- 11.1. CASURECO II learned that the joint procurement of the R1+CAR ECs' aggregated long-term uncontracted base load power supply requirement was pursued in accordance with Section 23<sup>4</sup> of the EPIRA, through the conduct of a transparent, clear and fair competitive selection process, with the assistance of transaction advisors engaged by the R1+CAR ECs.
- 11.2. It was also informed that several generation companies, including MPPCL, GN Power Ltd. Co., SoEnergy International Philippines, Inc., Global Business Power Corporation, MERALCO PowerGen Corporation, Trans-Asia Oil and Energy Development Corporation and First Gen Corporation, expressed their interest, and qualified to participate in the bid conducted by the R1 + CAR ECs.
- 11.3. After thorough evaluation of the bids, the R1+CAR EC declared MPPCL as having submitted the Lowest Calculated Bid for the R1+CAR ECs CSP, with a base price of **PhP 3.7495/kWh** and with a long-term levelized price of **PhP 5.4967/kWh**.
- 11.4. On 25 May 2015, CASURECO II learned that the R1+CAR ECs issued a Notice of Award to MPPCL, informing MPPCL of its selection as the winning bidder for the supply of power to R1+CAR ECs.

Attached are copies of the relevant documents proving MPPCL's selection and qualification as the winning bidder in the joint competitive selection process undertaken by R1+CAR ECs for the supply of their aggregated base load demand for the contract year 2019 up to 2038.

<b>Document</b>	<b>Annex</b>
Notice of Lowest Calculated Bid dated 11 May 2015	O
Notice of Award of Contract dated 25 May 2015	O-1

<sup>3</sup> Electric cooperatives in Region 1 and the CAR, namely: Abra Electric Cooperative Inc. ("ABRECO"), Benguet Electric Cooperative Inc. ("BENECO"), Ilocos Norte Electric Cooperative Inc. ("INEC"), Ilocos Sur Electric Cooperative Inc. ("ISECO"), Kalinga - Apayao Electric Cooperative Inc. ("KAELCO"), La Union Electric Cooperative Inc. ("LUELCO"), Mountain Province Electric Cooperative Inc. ("MOPRECO") and Pangasinan III Electric Cooperative Inc. ("PANELCO III").

<sup>4</sup> Section 23 provides that "(t)o achieve economies of scale in utility operations, distribution utilities may, after due notice and public hearing, pursue structural and operational reforms such as but not limited to, joint actions between or among the distribution utilities, subject to the guidelines issued by the ERC. Such joint actions shall result in improved efficiencies, reliability of service, reduction of costs and compliance to the performance standards prescribed in the IRR of this Act."

12. It bears stressing that the R1+CAR ECs CSP was well-structured, fair, and transparent, and thus resulted in a highly attractive price for the R1+CAR ECs. In Department Circular No. DC2015-06-008, the Department of Energy (“DOE”) cited with approval, the results of the R1+CAR ECs’ competitive bidding process as evidence for achieving greater efficiencies through the conduct of competitive selection process in the aggregation of the uncontracted demand of distribution utilities.
13. Not long thereafter, MPPCL offered to supply CASURECO II’s 10-year long term power supply requirements at the same contract price, which MPPCL offered to the R1+CAR ECs. After careful and thorough evaluation of MPPCL’s offered rate, CASURECO II has determined that MPPCL’s offered rate will redound to the benefit of its consumers as it will not only assure a continuous, reliable and efficient power supply, but it will also provide the most affordable power supply to CASURECO II’s consumers in the long-term as MPPCL’s rate offers the lowest generation rate available in the market as confirmed by the R1+CAR ECs’ recently concluded competitive selection process.
14. Thus, on 23 September 2015, MPPCL and CASURECO II executed the subject PSA, under the same contract price and substantially similar terms and conditions of the PSAs executed by MPPCL with each of the R1+CAR ECs.
15. It is also worthy to note that the transparent competitive selection process led to good faith negotiations between MPPCL and the R1+CAR ECs for the terms and conditions of the PSAs. All actions taken by MPPCL and CASURECO II leading to and in connection with the execution of the CASURECO II PSA are compliant with all applicable laws, including the U.S. Foreign Corrupt Practices Act and the Philippine Anti-Graft and Corrupt Practices Act. CASURECO II and MPPCL hereby certify that they, or their respective employees, officers, directors, affiliates, agents and representatives did not, at any time, directly or indirectly offer, give, make, promise, pay or authorize the payment of any money, gift or anything of value to any employee, officer or director of the other party to induce such other party to sign or enter into the CASURECO II PSA.

**V. ABSTRACT OF THE PSA AND RELATED INFORMATION**

16. The following are the salient features of the CASURECO II PSA:
  - 16.1. **Term.** The PSA shall commence on the date of signing of the PSA by MPPCL and CASURECO II and shall expire at 24:00 hours on the final Day of the 120<sup>th</sup> Billing Period

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after the Start of Supply Delivery<sup>5</sup>, subject to an extension of 120 Billing Periods of such term and other extensions pursuant to the PSA provisions governing Excused Delay Event<sup>6</sup> and Force Majeure during Supply Delivery,<sup>7</sup> unless earlier terminated upon the occurrence of certain conditions for Termination Date.<sup>8</sup>

- 16.2. **Volume.** Under the PSA, MPPCL shall supply CASURECO II a Contract Capacity of 10,000 kW which shall be the maximum kW demand that CASURECO II may nominate as Bilateral Contract Quantity in a Wholesale Electricity Spot Market Trading Interval.
- 16.3. **Commissioning Energy.** During Commissioning prior to the Start of Supply Delivery, MPPCL may offer to sell to CASURECO II the Commissioning Energy at a rate equivalent to the Contract Price and Associated Charges less the Capital Recovery Fee and Fixed O&M Fees.
- 16.4. **Outages.** The supply obligation of MPPCL shall be subject to an Outage Allowance of Twenty-One (21) days for Scheduled Outages and Fifteen (15) days for Forced Outages per Contract Year. During Scheduled and Forced Outages, MPPCL may provide reduced or no supply of the Contract Capacity to CASURECO II, provided that MPPCL has not exceeded the relevant Outage Allowance for a given Contract Year.
- 16.5. **Contract Price.** For electricity supplied by MPPCL, CASURECO II shall pay MPPCL a Monthly Power Bill which is composed of the Contract Price, the Associated Charges<sup>9</sup> and necessary adjustments resulting from foreign currency conversion of the Dollar Payables component of the Contract Price to Philippine Peso, if any.

16.5.1. The Contract Price shall be composed of the sum of the Capacity Payment and the Energy Payment.

16.5.1.1. The **Capacity Payment** shall be composed of the Capital Recovery Charge, the Dollar Fixed O&M Charge and the Peso Fixed O&M Charge.

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<sup>5</sup> Under the PSA, the Start of Supply Delivery or the obligation of MPPCL to supply CASURECO II the Contract Capacity and Associated Energy and provisions related thereto shall commence not later than the start of a Billing Period thirty six (36) months from the Commencement Date, unless extended in accordance with the PSA, *provided* that the Buyer shall have posted the Security Deposit required under Section 9.5.1 of the PSA.

<sup>6</sup> Cf. Section 2.6 of Annex "K," hereof.

<sup>7</sup> *Ibid.*, Section 13.3.2(b).

<sup>8</sup> *Ibid.* Section 14.10.

<sup>9</sup> Means the Governmental Charges, WESM Charges, and NGCP and Ancillary Services Charges identified in the PSA.

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- a. **Capital Recovery Charge:** The Capital Recovery Charge shall be calculated as the product of the Capital Recovery Fee and the Associated Energy for the Billing Period.

The Capital Recovery Fee shall be determined using the tariff schedule below:

Capacity Utilization Factor	Capital Recovery Fee US\$/kWh
100%	0.0393
99%	0.0396
98%	0.0400
97%	0.0404
96%	0.0408
95%	0.0412
94%	0.0416
93%	0.0420
92%	0.0424
91%	0.0429
90%	0.0433
89%	0.0437
88%	0.0442
87%	0.0447
86%	0.0452
85%	0.0457
84%	0.0462
83%	0.0467
82%	0.0472
81%	0.0478
80%	0.0483
79%	0.0489
78%	0.0495
77%	0.0501
76%	0.0507
75%	0.0514
74%	0.0520
73%	0.0527
72%	0.0534
71%	0.0541
70%	0.0548

The Capacity Utilization Factor shall be calculated in accordance with the formula below:

$$CUF = AE / \{ CC \times (H_T - EH_{TO}) \}$$



Where

CUF Capacity Utilization Factor

AE Associated Energy, which shall be the sum of the Bilateral Contract Quantities declared by the Seller for the Buyer in the WESM during the Billing Period, *provided that* the Associated Energy shall not be less than the quantity which is 70% multiplied by the Contract Capacity multiplied by the factor  $(H_T - EH_{TO})$ .

CC Contract Capacity, stated in kW

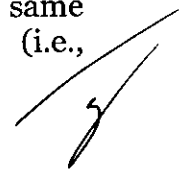
$H_T$  Total number of hours in the Billing Period

$EH_{TO}$  The Equivalent Hours of Scheduled Outages and Forced Outages in such Billing Period

The CUF shall be calculated up to the 4<sup>th</sup> decimal place. When the calculation results in a CUF lower than 70%, the CUF shall be deemed to equal 70%. When the CUF calculation does not result in a whole percentage point, the corresponding Capital Recovery Fee shall be determined using the formula below:

$$CRF = 0.0608 \times CUF^2 - 0.1547 \times CUF + 0.1332$$

If the Commencement Date occurs later than December 26, 2015, the Seller shall have the right to increase the Capital Recovery Fee in the foregoing table based on the percentage increase, if any, in the United States Producers Prices Capital Equipment Index [2010=100] reported in the International Financial Statistics published by the International Monetary Fund immediately before the Commencement Date vis a vis the same index published on April 2015 (i.e., 106.982)



- b. **Dollar Fixed O&M Charge:** The Dollar Fixed O&M Charge shall be calculated as the product of the Dollar Fixed O&M Fee and the Associated Energy for the Billing Period.

The Dollar Fixed O&M Fee shall be determined using the formula below:

$$\text{Dollar FOM} = \text{US\$ } 0.0021/\text{kWh} \times \text{USIndex} / \text{CUF}$$

Where,

Dollar FOM      Dollar Fixed O&M Fee

CUF    as defined above

$$\text{USIndex} = \text{USCPI}_n / \text{USCPI}_0$$

$\text{USCPI}_n$  the average US Consumer Price Index City Average for All Urban Consumers – All Items for the last three calendar months prior to the start of the Billing Period for which the invoice is being prepared.

$\text{USCPI}_0$  the US Consumer Price Index City Average for All Urban Consumers – All Items (1982-84=100) for September 2014 as published by the US Bureau of Labor Statistics.

- c. **Peso Fixed O&M Charge:** The Peso Fixed O&M Charge shall be calculated as the product of the Peso Fixed O&M Fee and the Associated Energy for the Billing Period.

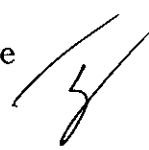
The Peso Fixed O&M Fee shall be determined using the formula below:

$$\text{Peso FOM} = \text{PhP } 0.2330/\text{kWh} \times \text{RPIndex} / \text{CUF}$$

Where,

Peso FOM      Peso Fixed O&M Fee

CUF    as defined above



$$\text{RPIndex} = \text{RPCPI}_n / \text{RPCPI}_o$$

$\text{RPCPI}_n$  the average Philippine Consumer Price Index for All Income Households in the Philippines – All Items for the last three calendar months prior to the start of the Billing Period for which the invoice is being prepared.

$\text{RPCPI}_o$  the Philippine Consumer Price Index for All Income Households in the Philippines – All Items (2006=100) for September 2014 as published by the Bangko Sentral ng Pilipinas.

16.5.1.2. The **Energy Payment** shall consist of the Dollar Variable O&M Charge and Fuel Charge.

a. **Dollar Variable O&M Charge:** The Dollar Variable O&M Charge shall be calculated as the product of the Dollar Variable O&M Fee, and the Associated Energy for the Billing Period.

The Dollar Variable O&M Fee shall be determined using the formula below:

$$\text{Dollar VOM} = \text{US\$ } 0.0018/\text{kWh} \times \text{USIndex}$$

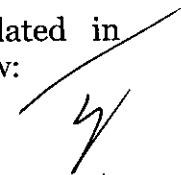
Where,

Dollar VOM      Dollar Variable O&M Fee

USIndex as defined above

b. **Fuel Charge.** Fuel Charge shall be calculated as the product of the Fuel Rate and the Associated Energy for the Billing Period.

The Fuel Rate shall be calculated in accordance with the formula below:



The Fuel Rate shall be calculated in accordance with the formula below:

$$FR = \text{US\$ } 0.0271/\text{kWh} \times \text{FuelIndex}$$

Where

$$\text{FuelIndex} = \text{CIF}_n / \text{CIF}_o$$

$\text{CIF}_n$  CIF Cost of Fuel for the Billing Period

$\text{CIF}_o$  Base CIF Cost of Fuel equal to US\$ 11.0617/Million kcal

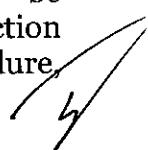
17. MPPCL's foregoing Contract Price was the Lowest Calculated Bid with a base price of **PhP 3.7495/kWh** based on the parameters of the R1+CAR EC's competitive procurement process. The Contract Price calculated above does not yet include the relevant Value-Added Tax ("VAT"), and CASURECO II undertakes to pay in full the invoiced VAT and any applicable local government unit Tax on the Contract Price, except real property tax.

It bears stressing that the Contract Price discovered by the successful R1+CAR EC's CSP is lower than those in all the other PSAs with newbuild generators filed with the Honorable Commission in the recent past. Attached as **Annex "P"** is a comparison of these power rates.

Also attached as **Annex "Q"** hereof is a summary of the methodology used by MPPCL to arrive at the Contract Price under the PSA. It also contains information regarding the debt or equity ratio, capital costs, weighted average cost of capital, and fuel cost, among other information.

Moreover, attached as **Annex "Q-1"** hereof is a certification by MPPCL regarding the principal amortization, term and interest of its long-term loans.

Considering the confidential nature of **Annexes "Q" and "Q-1"** as the numbers, methodology, and calculations contained therein would provide valuable information reflecting the bidding strategy of MPPCL, not only for distribution utilities undertaking competitive process for their power supply requirements, but also for MPPCL's trading in the WESM, MPPCL respectfully requests that **Annexes "Q" and "Q-1"** be treated as confidential documents. In accordance with Section 1(b), Rule 4 of the ERC Rules of Practice and Procedure,



Applicant MPPCL hereby submits one (1) copy of **Annexes “Q”** and **“Q-1”** in a sealed envelope, with each page of the document stamped with the word “Confidential.”

18. **Characteristics of the power capability and connection facility.** The Plant will be a coal-fired power generating facility with a capacity of 300 MW. The Plant’s generation capacity is consistent with the DOE’s Philippine Development Plan as shown by Certificate of Endorsement No. DOE COE 2011-09-01 issued by the DOE on 8 August 2011.<sup>10</sup>

MPPCL will expand or modify its existing switchyard to connect the Plant to the 230kV grid system of the National Grid Corporation of the Philippines (“NGCP”). CASURECO II is likewise connected to the Luzon grid.

All relevant technical and economic characteristics of the Plant are described in **Annex “R”**. The relevant technical specifications of the transmission and delivery facilities are likewise specifically described in **Annex “R-1.”**

19. **Rate Impact.** An analysis was conducted to determine the impact of the implementation of the PSA on CASURECO II’s generation costs once the PSA is approved. Without the PSA, CASURECO II may be exposed to the WESM, whose average price in 2014 was PhP 4.6051/kWh. The PSA Contract Price enables CASURECO II to save about PhP 1.2740/kWh from what otherwise would be its exposure in the WESM without the PSA.

CASURECO II	Amount	Rate
	PhP	P/P/kWh
Contract Price <sup>11</sup>	291,942,458	3.3327
WESM Exposure <sup>12</sup>	403,546,423	4.6067
<b>Savings</b>	<b>111,603,965</b>	<b>1.2740</b>
<i>PSA Associated Energy</i>	<i>87,600,000</i>	<i>kWh</i>

A copy of the foregoing analysis is attached hereto and made an integral part hereof as Annex “S.”

20. **Other Documents.** In compliance with the ERC Rules of Practice and Procedure, the following documents are likewise submitted:

Document	Annex
Transmission Service Agreement between NGCP	T

<sup>10</sup> Cf. Annex “I,” hereof.

<sup>11</sup> Calculated using Base Price.

<sup>12</sup> Calculated using 2014 Hourly Luzon *Ex-Ante* LWAP.

and CASURECO II	
Procurement process of coal	U
Distribution Development Plan of CASURECO II	V

MPPCL and NGCP are in the process of negotiating their Connection Agreement, Transmission Services Agreement and Metering Services Agreement for the Plant. MPPCL undertakes to submit copies of these documents once it has signed these agreements with NGCP.

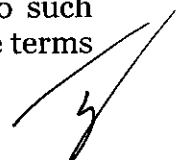
**VI. CONFIDENTIAL TREATMENT OF ANNEX "Q" and "Q-1"**

21. As earlier mentioned, **Annex "Q"** contains numbers, methodology, and calculations which provide valuable information and insight on how MPPCL arrives at the Contract Price and would accordingly reflect MPPCL's bidding strategy for distribution utilities undertaking competitive process for the selection of their power suppliers and MPPCL's trading in the WESM.

Pursuant to MPPCL's agreement with its lenders, **Annex "Q-1"** likewise contains certain non-public information involving its lenders' financial trade secrets. The information contained in **Annex "Q-1"**, when disclosed together with **Annex "Q"** would provide an indication of MPPCL's bidding strategy for distribution utilities undertaking competitive process for the selection of their power suppliers and MPPCL's trading in the WESM.

It is submitted therefore that **Annexes "Q" and "Q-1"** fall within the bounds of proprietary "trade secrets" which are entitled to protection under the Constitution, statutes, and rules and regulations of this Honorable Commission.

22. Under Rule 4 of the ERC Rules of Practice and Procedure, the Honorable Commission may, upon request of a party and determination of the existence of conditions, which would warrant such remedy, treat certain information submitted to it as confidential. Pursuant to such provision, Applicant MPPCL respectfully requests for the issuance of a protective order declaring **Annexes "Q" and "Q-1"** as confidential information, as the Applicants intend to present them as evidence in the instant Application.
23. Even though these Annexes will be treated as confidential documents and a protective order will be issued, the rules do not preclude the parties of record or their lawyers access to such confidential information after agreeing to be bound by the terms of the protective order.



24. The data contained in Annexes "Q" and "Q-1" constitute "trade secrets" of Applicant MPPCL; thus, MPPCL has actual and valuable proprietary interest to protect with respect to such information. The Supreme Court, in the recent case of *Air Philippines Corporation vs. Pennswell, Inc.*<sup>13</sup>, had the opportunity to discuss the definition of "trade secrets" and the great extent to which the same are protected under our laws. In other instances, the Supreme Court has held that the confidential nature of trade secrets protects such from disclosure even in the face of the right of inspection given to stockholders<sup>14</sup> or the constitutional right to information<sup>15</sup>.
25. In ERC Case No 2008-030, the National Power Corporation's ("NPC") application for revised basic generation rates, the Honorable Commission had an occasion to rule on the confidentiality of NPC's results of operation per power plant for calendar years 2005 to 2007. The Honorable Commission declared such information as confidential, in this wise:

"Upon review of the documents submitted by NPC, the Commission found that the results of operation per plant of NPC for years 2005 to 2007 contain vital information necessary in the calculation of its production costs in P/kWh per plant and the corresponding revenues. This information will serve as initial inputs to NPC's decision-making. As such, disclosure of this information will give the other parties, particularly the other generation companies (Gencos) and the distribution utilities (DUs) with Genco counterparts, undue advantage in the pricing of electricity in the market over NPC and other Gencos by using its production costs as benchmark. Thus, the Commission deems the information as confidential, which may not be made public, as it may affect adversely the competitive position of NPC and other generation companies."

26. Information which falls within the definition of a trade secret as defined by jurisprudence is clearly information which merits the confidential treatment provided for under Rule 4 of the ERC Rules of Practice and Procedure. Annexes "Q" and "Q-1" should therefore be entitled to the protection of confidential information provided under Rule 4 of the ERC Rules of Practice and Procedure.
27. In view of all the foregoing, Applicants respectfully submit the instant Application for the approval of the Power Supply Agreement between MPPCL and CASURECO II for the Honorable Commission's urgent and utmost consideration.

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<sup>13</sup> 540 SCRA 215 [2007].

<sup>14</sup> *Philpotts vs. Philippine Manufacturing Company*, 40 Phil. 471 (1919).

<sup>15</sup> *Garcia vs. Board of Investments*, G.R. 88637 (1989).

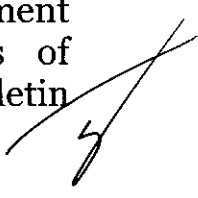
28. CASURECO II and MPPCL prayed that the Commission will:
- a. Issue an Order treating **Annexes "Q" and "Q-1"** as confidential information pursuant to Rule 4, Section 1 of the ERC Rules of Practice and Procedure and prescribing the guidelines for the protection thereof; and
  - b. After, due notice and hearing, issue a final approval of the PSA dated 23 September 2015 entered into between CASURECO II and MPPCL.
  - c. Grant such other just and equitable reliefs.

Finding the said Application and the "*Compliance*" sufficient in form and substance with the required fees having been paid, the instant Application is hereby set for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on **29 September 2016 (Thursday) at one o'clock in the afternoon (1:00 P.M.) at CASURECO II's Principal Office at Del Rosario, Naga City, Camarines Sur.**

CASURECO II and MPPCL are hereby directed to cause the publication of the attached Notice of Public Hearing, at their own expense, twice (2x) for two (2) successive weeks in two (2) newspapers of nationwide circulation in the Philippines, the dates of publication not being less than seven (7) days apart, with the date of last publication made not later than ten (10) days before the date of the scheduled initial hearing. They are also directed to inform the consumers within their respective franchise area, by any other means available and appropriate, of the filing of the instant Application, its reasons therefor, and of the scheduled hearing thereon.

Let copies of the application, this Order and the attached Notice of Public Hearing be furnished the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress. They are hereby requested, if they so desire, to send their duly authorized representatives at the scheduled hearing.

Likewise, let copies of this Order and the attached Notice of Public Hearing be furnished the Offices of the Governor, the Mayors of the respective cities or municipalities and the Local Government Unit (LGU) Legislative Bodies within the franchise areas of CASURECO II for the appropriate posting thereof on their bulletin boards.





CASURECO II and MPPCL are hereby directed to furnish all those making requests therefor with copies of the Application and its attachments, subject to reimbursement of reasonable photocopying costs.

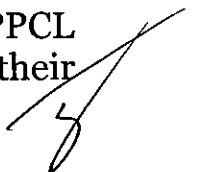
On the date of the initial hearing CASURECO II and MPPCL must submit to the Commission their written *Compliance* with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidences on the actual posting and publication of the Notice of Public Hearing consisting of certifications issued to that effect, signed by the aforementioned Governor, Mayors, and LGU Legislative Bodies or their duly authorized representatives, bearing the seals of their offices, and the affidavits of the Editors or Business Managers of the newspapers where the said Notice of Public Hearing were published together with the complete issues of the said newspapers, and such other proofs of compliance with the requirements of the Commission.

CASURECO II and MPPCL and all interested parties are directed to submit, at least five (5) days before the date of initial hearing and Pre-trial Conference, their respective Pre-trial Briefs containing, among others:

- a. A summary of admitted facts and proposed stipulation of facts;
- b. The issues to be tried or resolved;
- c. The documents or exhibits to be presented, stating the purposes and proposed markings therefore; and
- d. The number and names of the witnesses, with their written testimonies in an individual affidavit form, to be attached to the Pre-trial Brief.

Failure of CASURECO II and MPPCL to submit the required Pre-trial Brief and Judicial Affidavits of their witnesses within the prescribed period shall be a ground for cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from said date of cancellation.

As part of the Pre-trial Conference, CASURECO II and MPPCL must also be prepared to make an expository presentation of their



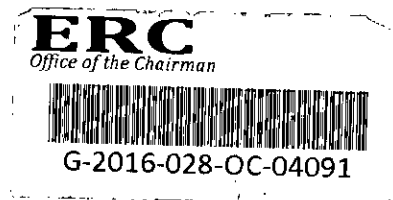
Application, aided by whatever communication medium that they may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties, what the Application is all about and the reasons and justifications being cited in support thereof.

SO ORDERED.

Pasig City, 22 July 2016.

FOR AND BY AUTHORITY  
OF THE COMMISSION:

  
**JOSE VICENTE B. SALAZAR**  
*Chairman and CEO*



**COPY FURNISHED:**

1. **Atty. VERONICA A. CUYO-AVILA**  
*Counsel for Applicant CASURECO II*  
Room 303, PNB Building, Naga City
2. **Attys. Luther D. Ramos, Fidel T. Valeros Jr., Pancho A. Vasquez, Kristianne S. Magat**  
PUYAT JACINTO & SANTOS  
*Counsels for Applicant MPPCL*  
10F, 8 Rockwell, Hidalgo cor. Plaza Drive  
Rockwell Center, Makati City
3. **Camarines Sur II Electric Cooperative (CASURECO II)**  
Del Rosario, Naga City, Camarines Sur
4. **Masinloc Power Partners Co. Ltd. (MPPCL)**  
Masinloc Coal-Fired Thermal Power Plant  
Bani, Masinloc, Zambales
5. **Office of the Solicitor General**  
134 Amorsolo Street, Legaspi Village  
Makati City, Metro Manila
6. **Commission on Audit**  
Commonwealth Avenue  
Quezon City, Metro Manila
7. **Senate Committee on Energy**  
GSIS Bldg. Roxas Blvd., Pasay City  
Metro Manila
8. **House Committee on Energy**  
Batasan Hills, Quezon City, Metro Manila
9. **Office of the President**  
**Philippine Chamber of Commerce and Industry (PCCI)**  
3<sup>rd</sup> Floor, Chamber and Industry Plaza (CIP)  
1030 Campus Avenue corner Park Avenue  
McKinley Town Center, Fort Bonifacio, Taguig City
10. **Office of the Governor and the**  
**Office of the Sangguniang Panlalawigan**  
Province of Camarines Sur
11. **Office of the City Mayor and the**  
**Office of the Sangguniang Panglungsod**  
Naga City, Camarines Sur
12. **Office of the Municipal Mayor and the**  
**Office of the Sangguniang Bayan**  
Bombon, Camarines Sur

- 13. Office of the Municipal Mayor and the  
Office of the Sangguniang Bayan**  
Calabanga, Camarines Sur
- 14. Office of the Municipal Mayor and the  
Office of the Sangguniang Bayan**  
Canaman, Camarines Sur
- 15. Office of the Municipal Mayor and the  
Office of the Sangguniang Bayan**  
Magarao, Camarines Sur
- 16. Office of the Municipal Mayor and the  
Office of the Sangguniang Bayan**  
Milaor, Camarines Sur
- 17. Office of the Municipal Mayor and the  
Office of the Sangguniang Bayan**  
Minabalac, Camarines Sur
- 18. Office of the Municipal Mayor and the  
Office of the Sangguniang Bayan**  
Pili, Camarines Sur
- 19. Office of the Municipal Mayor and the  
Office of the Sangguniang Bayan**  
Siruma, Camarines Sur
- 20. Office of the Municipal Mayor and the  
Office of the Sangguniang Bayan**  
Tinambac, Camarines Sur
- 21. PSA TWG 1**  
14<sup>th</sup> floor, Pacific Center, San Miguel Avenue, Pasig City

