

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



**IN THE MATTER OF THE
JOINT APPLICATION FOR
APPROVAL OF THE POWER
SUPPLY CONTRACT (PSC)
ENTERED INTO BY AND
BETWEEN PENINSULA
ELECTRIC COOPERATIVE,
INC. (PENELCO) AND SAN
MIGUEL ENERGY
CORPORATION (SMEC),
WITH PRAYER FOR
PROVISIONAL AUTHORITY
AND CONFIDENTIAL
TREATMENT OF
INFORMATION**

ERC CASE NO. 2016-129 RC

**PENINSULA ELECTRIC
COOPERATIVE, INC.
(PENELCO) AND SAN
MIGUEL ENERGY
CORPORATION (SMEC),
Applicants.**

DOCKED
Date: **SEP 09 2016**
By: _____

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ORDER

On 29 April 2016, the Peninsula Electric Cooperative, Inc. (PENELCO) and San Miguel Energy Corporation (SMEC) filed a Joint Application with Prayer for Provisional Authority and Confidential Treatment of Information (Joint Application) for approval of the Power Supply Contract (PSC) dated 04 April 2016 entered into by and between them.

In the said Joint Application, PENELCO and SMEC alleged the following:

1. PENELCO is an electric cooperative duly registered with the National Electrification Administration (NEA) pursuant to Presidential Decree No. 269, as amended, with principal office address at Roman Superhighway,

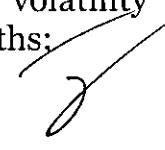
Tuyo, Balanga City, Bataan. It holds a franchise to operate light and power services in the City of Balanga and in the Municipalities of Abucay, Bagac, Dinalupihan, Hermosa, Limay, Mariveles, Morong, Orani, Orion, Pilar, and Samal, all in the Province of Bataan (Franchise Area). It shall also be herein referred to as the "Buyer";

2. SMEC is a domestic corporation organized and existing under the Philippine laws, with office addresses at the 2nd Floor, 808 Building, MERALCO Avenue corner Gen. Lim Street, Barangay San Antonio, Pasig City. It is the Independent Power Producer (IPP) Administrator of the 1,000 Net Contracted Capacity of the Sual Coal-Fired Thermal Power Plant located in Barangay Pangascasan, Sual, Pangasinan. It shall also be herein referred to as the "Seller";
3. The Joint Applicants may be served with the orders, notices and other processes of the Honorable Commission through their respective undersigned counsels at the addresses indicated herein;

Nature of the Application

4. The Joint Application for approval of the Power Supply Contract (PSC) dated 22 August 2014 entered into by and between PENELCO and SMEC, is being submitted to the Honorable Commission for its review and approval pursuant to Sections 25 and 45(b) of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 or the EPIRA, Rules 5, Section 4(e) and 11, Section 5 of its Implementing Rules and Regulations (IRR), Rule 20(B) of its Rules of Practice and Procedure, and other pertinent rules and regulations;

Statement of Facts

5. **Competitive Selection Process (CSP).** After a continuous assessment of its power requirements, PENELCO determined that there is a need to contract for additional base and peaking supply. In doing so, it resorted into extensive forecasting methods and performed optimization models and analyses for the rate impact thereof. The need for additional supply is also necessary to forestall too much exposure from the spot market and avoid the price volatility thereof, particularly, during the summer months;
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- 5.1 On 6 April 2015, PENELCO and SCPC executed a PSC with a Contract Capacity of 20,000 kW for the supply of its base load requirements; and
- 5.2 However, since SCPC will still be at the testing and commissioning stage by the time PENELCO requires the additional supply, its Pre/Post Bids and Awards Committee (PBAC) concluded that an interim power supply from SMEC is, likewise, necessary to bridge the gap until such time that SCPC commences commercial operations;

6. Salient Features of the PSC.

- 6.1 **Contract Capacity.** The Contracted Capacity for the duration of the PSC shall be 5,000 kW for the Billing Period 26 December 2013 to 25 March 2014 and 10,000 kW for the Billing Period 26 March 2014 until the Commercial Operations Date (COD) of SCPC. The Buyer shall maintain a minimum hourly nomination of at least thirty-five percent (35%) of the Contract Capacity for the duration of the said PSC. The Contract Capacity shall be subject to a separate Nomination Protocol;
- 6.2 **Contract Term.** The PSC shall take effect between the Parties on the date of signing (Execution Date) and shall remain effective until the COD of SCPC's Power Plant in Limay, Bataan;
- 6.3 **Capacity and Energy Fees.** Under the PSC, PENELCO shall pay the following Capacity and Energy Fees to SMEC:

Period Covered			Capacity Fees (Php/kW-month)			Energy Fees (Php/kWh)		
Contract Year 2014			Dollar Portion	Local Portion	Fixed O&M	Fuel Rate	Variable O&M (Dollar)	Variable O&M (Local)
From		To	A1	A2	B	C	D1	D2
26-Dec-13	-	25-Jan-14	359.9256	894.0620	106.3830	2.0372	0.0626	0.0083
26-Jan-14	-	25-Feb-14	360.6783	895.4344	106.3830	2.0372	0.0626	0.0083
26-Feb-14	-	25-Mar-14	361.4334	879.4701	106.3830	2.0372	0.0626	0.0083
26-Mar-14	-	25-Apr-14	362.1909	898.1943	106.3830	2.0372	0.0626	0.0083
26-Apr-14	-	25-May-14	362.9510	893.8008	106.3830	2.0372	0.0626	0.0083
26-May-14	-	25-Jun-14	363.7136	900.9737	106.3830	2.0372	0.0626	0.0083
26-Jun-14	-	25-Jul-14	364.4788	896.5885	106.3830	2.0372	0.0626	0.0083
26-Jul-14	-	25-Aug-14	365.2465	903.7727	106.3830	2.0372	0.0626	0.0083
26-Aug-14	-	25-Sep-14	366.0167	905.1779	106.3830	2.0372	0.0626	0.0083
26-Sep-14	-	25-Oct-14	366.7896	900.8052	106.3830	2.0372	0.0626	0.0083
26-Oct-14	-	25-Nov-14	367.5650	908.0036	106.3830	2.0372	0.0626	0.0083
26-Nov-14	-	25-Dec-14	368.3430	903.6412	106.3830	2.0372	0.0626	0.0083
Contract Year 2015								
26-Dec-14	-	25-Jan-15	435.7443	1,030.7261	106.3830	1.9943	0.0626	0.0083
26-Jan-15	-	25-Feb-15	436.5275	1,032.1557	106.3830	1.9943	0.0626	0.0083
26-Feb-15	-	25-Mar-15	437.3133	1,016.4105	106.3830	1.9943	0.0626	0.0083
26-Mar-15	-	25-Apr-15	438.1017	1,035.0286	106.3830	1.9943	0.0626	0.0083
26-Apr-15	-	25-May-15	438.8928	1,030.7446	106.3830	1.9943	0.0626	0.0083
26-May-15	-	25-Jun-15	439.6864	1,037.9197	106.3830	1.9943	0.0626	0.0083
26-Jun-15	-	25-Jul-15	440.4828	1,033.6480	106.3830	1.9943	0.0626	0.0083

26-Jul-15	-	25-Aug-15	441.2818	1,040.8312	106.3830	1.9943	0.0626	0.0083
26-Aug-15	-	25-Sep-15	442.0834	1,042.2948	106.3830	1.9943	0.0626	0.0083
26-Sep-15	-	25-Oct-15	442.8877	1,038.0360	106.3830	1.9943	0.0626	0.0083
26-Oct-15	-	25-Nov-15	443.6947	1,045.2361	106.3830	1.9943	0.0626	0.0083
26-Nov-15	-	25-Dec-15	444.5044	1,040.9858	106.3830	1.9943	0.0626	0.0083
Contract Year 2016								
26-Dec-15	-	25-Jan-16	445.3168	1,048.7765	106.3830	2.0145	0.0626	0.0083
26-Jan-16	-	25-Feb-16	446.1319	1,050.2653	106.3830	2.0145	0.0626	0.0083
26-Feb-16	-	25-Mar-16	446.9497	1,040.2622	106.3830	2.0145	0.0626	0.0083
26-Mar-16	-	25-Apr-16	447.7703	1,053.2533	106.3830	2.0145	0.0626	0.0083
26-Apr-16	-	25-May-16	448.5935	1,049.0088	106.3830	2.0145	0.0626	0.0083
26-May-16	-	25-Jun-16	449.4195	1,056.2642	106.3830	2.0145	0.0626	0.0083
26-Jun-16	-	25-Jul-16	450.2484	1,052.0284	106.3830	2.0145	0.0626	0.0083
26-Jul-16	-	25-Aug-16	451.0799	1,059.2942	106.3830	2.0145	0.0626	0.0083
26-Aug-16	-	25-Sep-16	451.9142	1,060.8165	106.3830	2.0145	0.0626	0.0083
26-Sep-16	-	25-Oct-16	452.7512	1,056.5957	106.3830	2.0145	0.0626	0.0083
26-Oct-16	-	25-Nov-16	453.5912	1,063.8756	106.3830	2.0145	0.0626	0.0083
26-Nov-16	-	25-Dec-16	454.4338	1,059.6655	106.3830	2.0145	0.0626	0.0083

6.4 **Adjustment Formula.** The Capacity and Energy Fees are subject to monthly adjustments based on the following formula and indices (Annex II-A of the PSC):

Capacity Fees

Monthly Capacity Payment (Dollar Portion converted to PhP):

$$\text{PhP/kW-month} \quad \times \quad \frac{\text{FOREX}_c}{\text{FOREX}_B}$$

Where:

FOREX_c = Average of the daily exchange rate of the Philippine Peso to the US Dollar, as posted by the *Bangko Sentral ng Pilipinas* (BSP) for the calendar month within which the start of the current Billing Period occurs

FOREX_B = 41.749 PhP/USD

Monthly Capacity Payment (Local Portion in PhP):

$$\text{PhP/kW-Month} \quad = \quad \text{No Indexation}$$

Monthly Fixed Operations and Maintenance:

$$\text{PhP/kW-month} \quad \times \quad \frac{\text{PHIL CPI}_c}{\text{PHIL CPI}_B}$$

Where:

PHIL CPI_c = Consumer Price Index (CPI) for All Income Households in the

Philippines – All Items (2006 = 100), as posted by the Philippine National Statistics Office (NSO) for the calendar month within which the start of the current Billing Period occurs

$$\text{PHIL CPI}_B = 131.40$$

Energy Fees

Fuel Rate:

$$\text{PhP/kWh} \times \frac{\text{Global Coal Newcastle}_c}{\text{Global Coal Newcastle}_B} \times \frac{\text{FOREX}_c}{\text{FOREX}_B}$$

Where:

Global Coal Newcastle_c = Fuel Cost Index in USD/MT based on the Global Coal Newcastle posting representing the average index for the calendar month within which the start of the current billing Period occurs

Global Newcastle_B = 89.41 USD/MT

FOREX_c = Average of the daily exchange rate of the Philippine Peso to the US Dollar, as posted by the BSP for the calendar month within which the start of the current Billing Period occurs

FOREX_B = 41.749 PhP/USD

Variable O&M (Dollar Portion):

$$\text{PhP/kWh} \times \frac{\text{FOREX}_c}{\text{FOREX}_B} \times \text{EPI}_{AVE}$$


Where:

FOREX_C = Average of the daily exchange rate of the Philippine Peso to the US Dollar, as posted by the BSP for the calendar month within which the start of the current Billing Period occurs

FOREX_B = 41.749 PhP/USD

EP_{IAVE} = Average Export Price Index (EPI) for US, Japan and Europe

$$= \frac{J_{Ic}}{J_{Ib}} + \frac{USI_{Ic}}{USI_{Ib}} + \frac{EI_{Ic}}{EI_{Ib}} \Big/ 3$$

Where:

J_{Ic} = Japan EPI six (6) months immediately preceding the adjustment date, taken from the International Financial Statistics (IFS) published by the International Monetary Fund (IMF)

J_{Ib} = 93.93

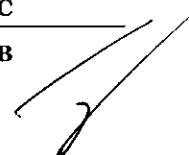
USI_{Ic} = US EPI six (6) months immediately preceding the adjustment date, taken from the IFS published by the IMF

USI_{Ib} = 91.70

EI_{Ic} = EPI of a European country agreed between the IPP Counter Party and the IPP and notified to the Administrator six (6) months immediately preceding the adjustment date, taken from the IFS published by the IMF

EI_{Ib} = 120.57

Variable O&M (Local Portion):

$$\text{PhP/kWh} \quad \times \quad \frac{\text{RPI}_C}{\text{RPI}_B}$$


Where:

RPI_C = Retail Price Index for All Items (2000=100) in Metropolitan Manila six (6) months immediately preceding the adjustment date, as published by the NSO

RPI_B = 75.90

Base Indices:

Particulars	September 2012	
Global Coal Newcastle Price Index	USD/MT	89.41
FOREX Rate	PhP/USD	41.749
US CPI (1982-84=100)	Fixed	231.407
Philippine CPI (2006=100)	Fixed	131.40
	January 1994	
Japan EPI (2010=100)	Fixed	93.93
US EPI (2010=100)	Fixed	91.70
Europe EPI (2005=100)	Fixed	120.57
Retail Price Index – Metro Manila (2000=100)	Fixed	75.90

6.5 **Other Charges.** The Buyer shall bear all other costs and charges including but not limited to transmission line losses, line rental, site specific loss adjustments, and adjustments for must-run units, among others;

6.6 **Discounts.** The Seller provides for both Prompt Payment Discount (PPD) and Collection Efficiency Discount (CED);

a) **PPD.** The Buyer may avail of the PPD equivalent to three percent (3%) of the total of the Capacity and Energy Fees components of the current power bill, provided that:

i. The Buyer has no arrears from previous power billings including the Security Deposit or any unpaid charges or penalties including VAT;

ii. The Buyer has submitted all necessary Bureau of Internal Revenue (BIR) Tax Certificates for all taxes withheld;

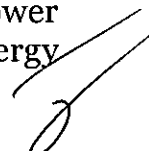
- iii. The Buyer pays the power bill in full on or before the 10th day of the calendar month following the current Billing Period; and
 - iv. The Buyer complies with other policies and procedures as may be required by the Seller, subject to prior notification by the Seller to the Buyer;
- b) **CED.** The Buyer shall be entitled to the following CED:

Collection Efficiency Levels	Discount, PhP/kWh
Below 65%	None
66% to 75%	0.05
76% to 85%	0.10
86% to 95%	0.15
96% and above	0.20

In order for the Buyer to avail of the CED, it must comply with the following conditions:

- i. The Buyer has no outstanding obligations to the Seller from previous power bills including VAT; and
 - ii. The Buyer shall submit to the Seller: a copy of its Monthly Financial and Statistical Report (MFSR)/Collection Efficiency Report signed by its Finance Manager and General Manager, stamped "received" by the NEA; Audited Financial Statements (AFS) stamped "received" by the BIR (to be submitted to the Seller within three (3) calendar days from receipt of the BIR; zero (0)-rated VAT certificates as updated monthly; and a duly accomplished CED Availment Form; and
- 6.7 **Outages.** The Seller shall not be obligated to deliver energy from the Power Plant during the Annual Outage Allowance of one thousand six hundred eighty (1,680) cumulative outage hours;

The Seller shall be allowed an additional Major Maintenance Outage Allowance of seven hundred twenty (720) cumulative outage hours once every five (5) years reckoned from the most recent Major Maintenance of each Unit of the Power Plant. The Seller is not obligated to deliver energy



from the said Power Plant during the said Major Maintenance Outage;

Unutilized Outage Allowance or Major Maintenance Outage hours shall not be carried forward to any subsequent Contract Year; and

- 6.8 **Replacement Power.** To ensure the uninterrupted supply of energy to the Buyer during the Annual Outage Allowance or Major Maintenance Outage hours, the Seller may procure replacement energy from other sources, the cost of which shall be passed-on to the Buyer;

Rate Impact on PENELCO's Overall Generation Rate

7. The indicative rate impact on PENELCO's overall generation rate with and without the supply from SMEC are as follows:

Simulation of Generation Mix Rate WITH SMEC (Sual) for the Year 2014

Supplier	Contracted Capacity, MW	Forecasted Quantity, kWh	Amount, PhP	Percentage Share	Resulting Capacity Factor	GRNet, PhP/kWh	Weighted Average Rate, PhP/kWh (VATex)	VAT, PhP/kWh	Rate, PhP/kWh	Weighted Average Rate, PhP/kWh (VATin)
GMCP	58	244,795,956.25	1,177,943,664.64	59.50%	48%	4.2974	4.4535	0.5145	4.8119	4.9116
SMEC	10	67,450,283.00	292,247,225.64	16.39%	88%	3.8686		0.4642	4.3328	
WESM		99,172,240.00	550,524,052.21	24.01%		5.2365		0.3147	5.5512	
Total		411,418,479.25	2,020,714,942.50	100.00%					4.9116	

Simulation of Generation Mix Rate WITHOUT SMEC (Sual) for the Year 2014

Supplier	Contracted Capacity, MW	Forecasted Quantity, kWh	Amount, PhP	Percentage Share	Resulting Capacity Factor	GRNet, PhP/kWh	Weighted Average Rate, PhP/kWh (VATex)	VAT, PhP/kWh	Rate, PhP/kWh	Weighted Average Rate, PhP/kWh (VATin)
GMCP	58	244,795,956.25	1,177,943,664.64	59.50%	48%	4.2974	5.1183	0.5145	4.8119	5.5841
SMEC	10	-	-	0.00%	0%	0.0000		0.0000	0.0000	
WESM		166,622,523.00	1,119,449,452.11	49.50%		6.3243		0.3942	6.7185	
Total		411,418,479.25	2,297,393,116.75	100.00%					5.5841	

Generation Rate Impact, PhP/kWh

(0.6648)

(0.6725)

8. **Environmental Compliance Certificate (ECC).** On 8 November 2004, the Department of Environment and Natural Resources (DENR) issued an ECC with Reference No. 9406-003-206 to Pangasinan Electric Corporation (PEC) for the 1,200 MW Sual Coal-fired Power Project located at Sitios Bangayao, Buyog and Pao of Barangay Pangascasan, Sual, Pangasinan covering 280 hectares land area;
9. **Board of Investments (BOI) Certificate.** On 26 January 2011, the Power Plant Project was registered with the BOI which issued Certificate of Registration No. 2011-024;
10. **Certificate of Compliance (COC).** On 20 April 2009, the Honorable Commission issued a COC registered under the name of Team Sual for its 1,294 MW Coal-Fired Thermal Power Plant. The said COC

was a renewal of the previously issued COC on 17 December 2003 under the name of the power plant's former owner, Mirant Sual Corporation.

Compliance with the Pre-filing Requirements

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

Annex	Documents/Information
A	SMEC's Articles of Incorporation
B	SMEC's Certificate of Registration issued by the Securities and Exchange Commission (SEC)
C	SMEC's Latest General Information Sheet (GIS)
D	SMEC's Certificate of Registration with the BOI
E	ECC issued by the DENR for the Sual Coal-Fired Thermal Power Plant
F	PSC entered into by and between PENELCO and SMEC
G and Series	<p>Details of the PSC:</p> <ul style="list-style-type: none"> a. Executive Summary b. Sources of Funds/Financial Plans <ul style="list-style-type: none"> ▪ Debt/Equity Ratio ▪ Project Cost ▪ Computation of Return on Investment (ROI)/Weighted Average Cost of Capital (WACC) ▪ Certification from the Bank/Lending Institution specifying the principal amortization, term and interest during the cooperation period of the loan agreement c. Purchased Power Rate <ul style="list-style-type: none"> ▪ Breakdown of the base prices ▪ Sample Computation of Power Rates with the supporting documents on the assumptions taken ▪ Rate Impact Study/Simulation ▪ Statement of impact on the overall rates of PENELCO once the contract is approved ▪ Basis/Rationale of indexation and

	level of indexation d. Cash Flow <ul style="list-style-type: none"> ▪ Initial Costs ▪ Breakdown of Operating and Maintenance expenses ▪ Minimum Energy Off-take (MEOT)
H	Details of the Power Rate Calculations and Financial Model (Confidential)
I, I-1 and I-2	Contracts for the Supply, Construction and Supervision for the Power Plant (Confidential)
J	Details of the Fuel Procurement Process
K	Transmission Service Agreement (TSA) between the National Grid Corporation of the Philippines (NGCP) and PENELCO
L and Series	Acknowledgment receipts by the Sangguniang Panlalawigan of Bataan, and the Sangguniang Panlungsod of Balanga City and Mandaluyong City, of copies of the Joint Application (including annexes)

12. Further, in compliance with Article VI, Sections 1 and 2 of the Honorable Commission's *Guidelines for the Recovery of Costs for the Generation Component of the Distribution Utilities' (DU) Rates*, copies of the foregoing are, likewise, attached to the Joint Application as annexes and made integral parts hereof:

Annex	Documents/Information
N	Relevant technical and economic characteristics of the generation capacity, installed capacity, mode of operation, and dependable capacity
O	Costs analysis of the proposed pricing provisions of the PSC
P and Series	Details of the Competitive Selection Process (CSP) undertaken by PENELCO leading to the selection of SMEC as its supplier, including invitations to participate and submit proposals, Terms of Reference (TOR), proposals and/or tender offers received by PENELCO, PENELCO's Special Bids and Awards Committee (SBAC) Evaluation Report; PENELCO's Board Resolution confirming the said SBAC Evaluation Report, and the Notice of Award to SMEC
Q and Series	Details of the interconnection facility of the Sual Coal-Fired Thermal Power Plant
R	PENELCO's latest Distribution Development

	Plan (DDP) and Load Forecast Projections
S	Demand Side Management (DSM) Program that could be implemented by PENELCO if approved by the Honorable Commission
T	SMEC's latest Audited Financial Statements (AFS), Balance Sheet, Income Statement, and Statement of Cash Flows
T-1	Bank Certification of Long-term Loans, including Schedule of Original Loan (principal amount, interest payable and term of the loan) and Updated Balances (principal amount, interest payable and penalties, if any and remaining term of the loan)
T-2	Operating Expenses for the Power Plant and General and Administrative Expense
T-3	Certification from the engine manufacturer or SMEC of the net heat rate in liters per kWh
T-4	Simulation on the number of operating units necessary to meet the MEOT and/or additional energy/demand requirements of PENELCO
T-5	Potential Cost (absolute amounts and PhP/kWh) of Ancillary Services as and when SMEC or PENELCO is connected to the main grid
U	Judicial Affidavit in support of the motion for provisional authority

13. Furthermore, the Joint Application is consistent and in accordance with the first (1st) and fifth (5th) "Whereas clauses" of the Department of Energy (DOE) 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, [to 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.*)

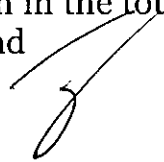
14. The Joint Application is, likewise, consistent with Section 1 of the same Department Circular which declares as State policy, that:

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

15. By way of emphasis, Resolution No. 21, Series of 2005 of the Honorable Commission dated 19 October 2005 had directed all Distribution Utilities (DUs) “to enter into future bilateral power supply contract with power producers to be subjected to a review by the Commission.” (*Underscoring supplied.*)
16. The PSC with SMEC was made to ensure the continuous supply of power to PENELCO and due to the former’s competitive pricing structure and other favorable terms of its contract, which will redound to the benefit of the latter and its end-consumers in terms of reliable and affordable power supply;

Allegations in Support of the Motion for Provisional Authority

17. PENELCO and SMEC replead the foregoing allegations in support of their prayer for the immediate issuance of provisional authority, anchored on the following grounds:
- 17.1 Considering the current limitations on the available capacity in the Luzon Grid, PENELCO must source power from SMEC immediately to avoid power outage in its franchise area. As such, it was constrained to implement the PSC under the belief that it will redound to the benefit of its member-consumers considering that the rates therein are lower than the Commission-approved National Power Corporation – Time-of-Use (NPC-TOU) rates;
- 17.2 Per its Actual/Forecasted Load Data and DDP, PENELCO is undergoing a significant increase and is expecting a further increase in its energy requirements due to a growth in the total demand of its member-consumers; and



- 17.3 Without the supply of SMEC, PENELCO will be exposed to the unpredictable and expectedly higher prices in the WESM or worse, be unable to supply the required energy to its franchise area resulting in total blackout;
18. In the interest of the public, there is a necessity for the immediate and provisional approval of the Joint Application in order that there will be no undue disruption in the power supply to PENELCO's member-consumers;
19. It bears stressing that pursuant to Rule 14, Section 3 of the Honorable Commission's Rules of Practice and Procedure, the Honorable Commission may issue a provisional authority pending approval of the Joint Application, to wit:

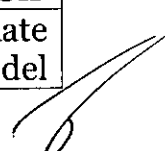
"Section 3. Action on the Motion. – Motions for provisional authority or interim relief may be acted upon with or without hearing. The Commission shall act on the motion on the basis of the allegations of the application or petition and supporting documents and other evidences that applicant or petitioner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

20. To emphasize the necessity of the foregoing allegations, a judicial affidavit in support of the motion for provisional authority is attached to the Joint Application as Annex "U" and made an integral part hereof;

Allegations in Support of the Confidential Treatment of Annexes "H", and "I", "I-1", and "I-2"

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

Annex	Documents and/or Information
H	Details of the Power Rate Calculations and Financial Model



	(Confidential)
I, I-1 and I-2	Contracts for the Supply, Construction and Supervision for the Power Plant (Confidential)

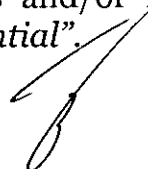
23. **Annex "H"** contains the details of SMEC's power rate calculations and financial model as well as the manner by which these were derived. These information are proprietary in nature and should be protected as trade secrets as contemplated by law and jurisprudence. In the case of *Air Philippines Corporation vs. Pennswell, Inc.*¹, the Supreme Court defined a trade secret, as follows:

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

- (1) the extent to which the information is known outside of the employer's business;
- (2) the extent to which the information is known by employees and others involved in the business;
- (3) the extent of measures taken by the employer to guard the secrecy of the information;

¹ G.R. No. 172835, December 13, 2007

- (4) the value of the information to the employer and to competitors;
 - (5) the amount of effort or money expended by the company in developing the information; and
 - (6) the extent to which the information could be easily or readily obtained through an independent source.”(citations omitted, emphasis supplied)
24. The interest of the consuming public is sufficiently protected by the review and evaluation of the rates under the PSC by the Honorable Commission, without the need to disclose the contents of **Annex “H”**. The reasonableness and transparency of the prices of electricity is to be assured by the Honorable Commission through its own review and verification of SMEC’s operating costs and expenses;
25. More importantly, SMEC’s competitors, should they obtain the information in **Annex “H”**, will gain undue advantage thereon and have the opportunity to use the same in their operations. The negotiating power of SMEC with parties it plans to contract with or who it is currently doing business with, will clearly be thwarted if it is compelled to disclose such information;
26. Further, **Annexes “I”, “I-1”, and “I-2”** pertain to the Supply, Construction, and Supervision Contracts, respectively, for the Power Plant. These contracts have counter-parties who are not parties to the Joint Application. They contain highly technical designs, drawings and other information which are the intellectual property and trade secrets of the counter-parties, and therefore should not be disclosed to the public. PENELCO and SMEC, likewise, pray for the confidential treatment of **Annexes “I”, “I-1”, and “I-2”**, under the same premises above; and
27. Accordingly, PENELCO and SMEC submit one (1) copy each of **Annexes “H”, “I”, “I-1”, and “I-2”**, in a sealed envelope, with the said envelope and each page of the documents and/or information stamped with the word “*Confidential*”.



Prayer

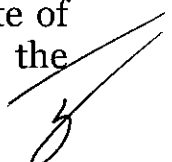
WHEREFORE, the foregoing premises considered, the Joint Applicants Peninsula Electric Cooperative, Incorporated (PENELCO) and San Miguel Energy Corporation (SMEC) most respectfully pray that the Honorable Commission:

1. Pending hearing, **ISSUE** an Order provisionally approving the Joint Application and the PSC thereby authorizing PENELCO and SMEC to immediately implement the rate structures therein;
2. **ISSUE** an Order treating **Annexes "H", "I", "I-1", and "I-2"**, and all the information contained therein as confidential, directing their non-disclosure to persons other than the officers and staff of the Honorable Commission, **continuously protecting the said information from public disclosure by maintaining the same separate and apart from the records of the case**, and ensuring that these are not divulged to unauthorized persons, pursuant to Rule 4 of its Rules of Practice and Procedure; and
3. After due notice and hearing, **ISSUE** a Decision approving the Joint Application and the PSC between PENELCO and SMEC, and authorizing PENELCO to charge and collect the fees therein from its member-consumers.

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

Finding the said Joint Application to be sufficient in form and substance with the required fees having been paid, the same is hereby set for determination of compliance with the jurisdictional requirements, Expository Presentation, Pre-trial Conference, and presentation of evidence on **10 November 2016 (Thursday) at one o'clock in the afternoon (1:00 P.M.) at the PENELCO's Principal Office, Roman Superhighway, Tuyó, Balanga City, Bataan.**

PENELCO and SMEC are hereby directed to cause the publication of the attached Notice of Public Hearing in two (2) newspapers of general circulation in the Philippines at their own expense, twice (2x) within two (2) successive weeks, the dates of publication not being less than seven (7) days apart, 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 the franchise area of PENELCO, 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 Joint 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.

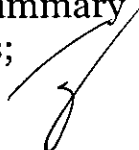
Likewise, let copies of this Order and the attached Notice of Public Hearing be furnished the Offices of the Provincial Governor, the City and Municipal Mayors, and the Local Government Legislative Bodies within PENELCO's franchise area for the appropriate posting thereof on their respective bulletin boards.

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

On the date of the initial hearing and Pre-trial Conference, PENELCO and SMEC must submit to the Commission their written Compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidence of 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 Local Government Legislative Bodies, or their duly authorized representatives, bearing the seals of their offices, and the affidavit of the Editors or Business Managers of the newspapers where said Notice of Public Hearing was published, together with the complete issues of the said newspapers, and such other proofs of compliance with the requirements of the Commission.

PENELCO, SMEC, 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 therefor; 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 PENELCO and SMEC 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, PENELCO and SMEC must also be prepared to make an Expository Presentation of their Joint Application, aided by whatever communication medium 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 Joint Application is all about and the reasons and justifications being cited in support thereof.

SO ORDERED.

Pasig City, 25 August 2016.


FOR AND BY AUTHORITY
OF THE COMMISSION:



JOSE VICENTE B. SALAZAR
Chairman and CEO

LS: 
ARG/CVB/APV

Copy furnished:

1. **Dechavez & Evangelista Law Offices**
Counsel for Applicant PENELCO
Unit 1609-1610, Tycoon Centre
Pearl Drive, Ortigas Center, Pasig City
 2. **Atty. Jupiter M. Cabaguio and Atty. Avelino G. Cedo III**
Counsels for Applicant SMEC
23rd Floor, San Miguel Properties Centre
No. 7 St. Francis Street, Mandaluyong City
 3. **Penelco Electric Cooperative, Inc. (PENELCO)**
Roman Super Highway, Tuyo
Balanga City, Bataan
 4. **San Miguel Energy Corporation (SMEC)**
2nd Floor, 808 Building
MERALCO Avenue corner Gen. Lim Street
Barangay San Antonio, Pasig City
 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 Building, Roxas Boulevard
Pasay City, Metro Manila
 8. **House Committee on Energy**
Batasan Hills
Quezon City, Metro Manila
 9. **President**
Philippine Chamber of Commerce and Industry (PCCI)
McKinley Hill, Fort Bonifacio
Taguig
 10. **Office of the Provincial Governor**
Province of Bataan
 11. **Office of the Local Government Legislative Body**
Province of Bataan
 12. **Office of the City Mayor**
Pasig City
 13. **Office of the Local Government Legislative Body**
Pasig City
- 

14. **Office of the City Mayor**
Balanga, Bataan
15. **Office of the Local Government Legislative Body**
Balanga, Bataan
16. **Office of the Municipal Mayor**
Abucay, Bataan
17. **Office of the Local Government Legislative Body**
Abucay, Bataan
18. **Office of the Municipal Mayor**
Bagac, Bataan
19. **Office of the Local Government Legislative Body**
Bagac, Bataan
20. **Office of the Municipal Mayor**
Dinalupihan, Bataan
21. **Office of the Local Government Legislative Body**
Dinalupihan, Bataan
22. **Office of the Municipal Mayor**
Hermosa, Bataan
23. **Office of the Local Government Legislative Body**
Hermosa, Bataan
24. **Office of the Municipal Mayor**
Limay, Bataan
25. **Office of the Local Government Legislative Body**
Limay, Bataan
26. **Office of the Municipal Mayor**
Mariveles, Bataan
27. **Office of the Local Government Legislative Body**
Mariveles, Bataan
28. **Office of the Municipal Mayor**
Morong, Bataan
29. **Office of the Local Government Legislative Body**
Morong, Bataan
30. **Office of the Municipal Mayor**
Orani, Bataan
31. **Office of the Local Government Legislative Body**
Orani, Bataan

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32. **Office of the Municipal Mayor**
Orion, Bataan
33. **Office of the Local Government Legislative Body**
Orion, Bataan
34. **Office of the Municipal Mayor**
Pilar, Bataan
35. **Office of the Local Government Legislative Body**
Pilar, Bataan
36. **Office of the Municipal Mayor**
Samal, Bataan
37. **Office of the Local Government Legislative Body**
Samal, Bataan
38. **PSA-TWG Group 2**
Energy Regulatory Commission
17th Floor, Pacific Center Building
San Miguel Avenue, Pasig City

