

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



**IN THE MATTER OF THE  
JOINT APPLICATION FOR  
APPROVAL OF THE INTERIM  
SUPPLY CONTRACT (ISC)  
ENTERED INTO BY AND  
BETWEEN ILOCOS SUR  
ELECTRIC COOPERATIVE,  
INC. (ISECO) AND SAN  
MIGUEL ENERGY  
CORPORATION (SMEC),  
WITH PRAYER FOR  
PROVISIONAL AUTHORITY  
AND CONFIDENTIAL  
TREATMENT OF  
INFORMATION**

**ERC CASE NO. 2016-105 RC**

**ILOCOS SUR ELECTRIC  
COOPERATIVE, INC. (ISECO)  
AND SAN MIGUEL ENERGY  
CORPORATION (SMEC),  
Applicants.**

X ----- X

**D O C K E T E D**  
Date: **SEP 23 2016**  
By: \_\_\_\_\_

**ORDER**

On 29 April 2015, Ilocos Sur Electric Cooperative, Incorporated (ISECO) and San Miguel Energy Corporation (SMEC) filed a *Joint Application with Prayer for Provisional Authority and Confidential Treatment of Information* seeking the Commission's approval of the Interim Supply Contract (ISC) that both parties entered into.

In its *Joint Application*, ISECO and SMEC alleged the following:

**The Joint Applicants**

1. ISECO 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 Santiago, Ilocos Sur. It holds a franchise to operate light and power services in the Cities of Candon and Vigan, and in the

Municipalities of Alilem, Banayoyo, Bantay, Burgos, Cabugao, Caoayan, Cervantes, Gregorio Del Pilar, Galimuyod, Lidlidda, Magsingal, Nagbukel, Narvacan, Quirino, Salcedo, San Ildefonso, San Juan, San Emilio, San Esteban, San Vicente, Santa, Sta. Catalina, Sta. Cruz, Santiago, Sigay, Sinait, Sta. Lucia, Sta. Maria, Sto. Domingo, Sugpon, Suyo and Tagudin, all in the Province of Ilocos Sur (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 address at the 2<sup>nd</sup> 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;

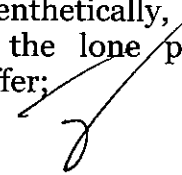
#### **Nature of the Application**

4. The Joint Application for approval of the Interim Supply Contract (ISC) dated 22 August 2014 entered into by and between ISECO 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, ISECO 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. ISECO initially requested from its current power supplier, GNPowder Mariveles Coal Plant Ltd. Company (GMCP), to provide the additional power requirements but the latter could not accommodate such request because it was already fully contracted;

Having established the details, ISECO, through a letter, in informed the Honorable Commission of its intent to conduct a CSP. Aside from the publications of its "Invitation to Bid", ISECO also personally invited several generation companies through phone calls to participate in the bidding process. Parenthetically, SMC Consolidated Power Corporation (SCPC) was the lone power supplier who responded and presented a formal offer;



After a comprehensive study, ISECO's Technical Working Committee concluded that SCPC's offer is favorable to the distribution utility's requirements primarily taking into consideration the exigency of additional supply. It further concluded that since SCPC will still be at the testing and commissioning stage by the time ISECO requires the additional supply, an interim power supply from SMEC is, likewise, necessary to bridge the gap until such time that SCPC commences commercial operations;

Thus, on 22 August 2014, it executed an ISC with SMEC, subject of the Joint Application;

**6. Salient Features of the ISC.**

**6.1 Contract Capacity.** The Contracted Capacity for the duration of the ISC shall be 5,000 kW. 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 ISC. The Contract Capacity shall be subject to a separate Nomination Protocol;

**6.2 Contract Term.** The ISC shall take effect between the Parties on the date of signing (Execution Date) and shall remain effective until the Commercial Operations Date (COD) of SCPC's Power Plant in Limay, Bataan;

**6.3 Capacity and Energy Fees.** Under the ISC, ISECO shall pay the following Capacity and Energy Fees to SMEC:



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		25-Jul-13	25-Aug-13	25-Sep-13	25-Oct-13	25-Nov-13	25-Dec-13	25-Jan-14	25-Feb-14	25-Mar-14	25-Apr-14	25-May-14	25-Jun-14	25-Jul-14	25-Aug-14	25-Sep-14	25-Oct-14	25-Nov-14	25-Dec-14	
<b>Capacity Fees</b>																				
A1	Monthly Capacity Payment (Dollar Portion)	PhP/kW-Mo	359,9258	350,6783	361,4334	362,1809	362,9510	363,7136	364,4788	365,2455	366,0137	366,7834	367,5546	368,3273	369,1015	369,8772	370,6544	371,4331	372,2133	372,9950
A2	Monthly Capacity Payment (Local Portion)	PhP/kW-Mo	894,0520	895,4344	899,4701	893,1943	893,6008	900,9737	895,5823	903,7727	905,1779	900,8262	908,0036	908,0036	908,0036	908,0036	908,0036	908,0036	908,0036	908,0036
B	Monthly Fixed Operation and Maintenance	PhP/kW-Mo	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830
			1,360,3708	1,362,4957	1,367,2865	1,356,7682	1,363,1348	1,371,0703	1,367,4503	1,375,4022	1,377,5776	1,373,9728	1,382,7602	1,382,7602	1,382,7602	1,382,7602	1,382,7602	1,382,7602	1,382,7602	1,382,7602
<b>Energy Fees</b>																				
C	Fuel Rate	PhP/kWh	2.0372	2.0372	2.0372	2.0372	2.0372	2.0372	2.0372	2.0372	2.0372	2.0372	2.0372	2.0372	2.0372	2.0372	2.0372	2.0372	2.0372	2.0372
D1	Variable O&M (Dollar Portion)	PhP/kWh	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626
D2	Variable O&M (Local Portion)	PhP/kWh	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083
			2.1081	2.1081	2.1081	2.1081	2.1081	2.1081	2.1081	2.1081	2.1081	2.1081	2.1081	2.1081	2.1081	2.1081	2.1081	2.1081	2.1081	2.1081

		25-Jul-15	25-Aug-15	25-Sep-15	25-Oct-15	25-Nov-15	25-Dec-15	25-Jan-16	25-Feb-16	25-Mar-16	25-Apr-16	25-May-16	25-Jun-16	25-Jul-16	25-Aug-16	25-Sep-16	25-Oct-16	25-Nov-16	25-Dec-16	
<b>Capacity Fees</b>																				
A1	Monthly Capacity Payment (Dollar Portion)	PhP/kW-Mo	435,7443	435,5275	437,3133	438,1017	438,8928	439,6854	440,4804	441,2780	442,0784	442,8816	443,6876	444,4964	445,3080	446,1224	446,9396	447,7596	448,5832	449,4104
A2	Monthly Capacity Payment (Local Portion)	PhP/kW-Mo	1,030,7261	1,032,1557	1,016,4195	1,035,0285	1,030,2445	1,037,9197	1,033,6420	1,040,8312	1,042,2848	1,038,0360	1,045,2361	1,040,9558	1,048,1619	1,049,6325	1,045,3031	1,052,4747	1,048,1453	1,055,3169
B	Monthly Fixed Operation and Maintenance	PhP/kW-Mo	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830
			1,572,8534	1,573,0662	1,560,1158	1,579,5133	1,576,8104	1,583,9291	1,580,7054	1,588,0452	1,590,7612	1,587,3067	1,595,3138	1,591,8732	1,600,1672	1,601,0507	1,597,0161	1,605,3242	1,601,6743	1,610,0203
<b>Energy Fees</b>																				
C	Fuel Rate	PhP/kWh	1.9943	1.9943	1.9943	1.9943	1.9943	1.9943	1.9943	1.9943	1.9943	1.9943	1.9943	1.9943	1.9943	1.9943	1.9943	1.9943	1.9943	1.9943
D1	Variable O&M (Dollar Portion)	PhP/kWh	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626
D2	Variable O&M (Local Portion)	PhP/kWh	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083
			2.0652	2.0652	2.0652	2.0652	2.0652	2.0652	2.0652	2.0652	2.0652	2.0652	2.0652	2.0652	2.0652	2.0652	2.0652	2.0652	2.0652	2.0652

**BASE PRICES:**

		September 2012
Global Coal New Castle Price Index	USD/MT	89.41
FOREX Rate	PhP/USD	41.749
US Consumer Price Index (1982=100)	Fixed	231.407
Philippine Consumer Price Index (2005=100)	Fixed	131.40
		January 1994
Bryan Export Price Index	Fixed	91.93
US Export Price Index	Fixed	91.70
Europe Export Price Index	Fixed	120.57
Retail Price Index - Metro Manila (2000=100)	Fixed	75.90

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		25-Jul-13	25-Aug-13	25-Sep-13	25-Oct-13	25-Nov-13	25-Dec-13	25-Jan-14	25-Feb-14	25-Mar-14	25-Apr-14	25-May-14	25-Jun-14	25-Jul-14	25-Aug-14	25-Sep-14	25-Oct-14	25-Nov-14	25-Dec-14	
<b>Capacity Fees</b>																				
A1	Monthly Capacity Payment (Dollar Portion)	PhP/kW-Mo	445,3168	445,1319	445,9457	447,7703	448,5955	449,4195	450,2434	451,0799	451,9182	452,7582	453,5999	454,4433	455,2884	456,1352	456,9836	457,8336	458,6852	459,5384
A2	Monthly Capacity Payment (Local Portion)	PhP/kW-Mo	1,045,7765	1,048,2533	1,049,2622	1,053,2533	1,049,0028	1,056,2642	1,052,8294	1,059,2942	1,060,2165	1,056,5957	1,063,8756	1,059,5555	1,066,8354	1,067,7177	1,064,0000	1,071,2800	1,067,0000	1,074,2800
B	Monthly Fixed Operation and Maintenance	PhP/kW-Mo	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830
			1,600,4763	1,602,7822	1,599,5949	1,607,4266	1,603,9653	1,612,8657	1,609,0394	1,616,7571	1,618,1137	1,615,7759	1,623,8441	1,620,4440	1,628,5122	1,629,8007	1,626,4166	1,634,6400	1,630,8000	1,639,0244
<b>Energy Fees</b>																				
C	Fuel Rate	PhP/kWh	2.0145	2.0145	2.0145	2.0145	2.0145	2.0145	2.0145	2.0145	2.0145	2.0145	2.0145	2.0145	2.0145	2.0145	2.0145	2.0145	2.0145	2.0145
D1	Variable O&M (Dollar Portion)	PhP/kWh	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626
D2	Variable O&M (Local Portion)	PhP/kWh	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083
			2.0854	2.0854	2.0854	2.0854	2.0854	2.0854	2.0854	2.0854	2.0854	2.0854	2.0854	2.0854	2.0854	2.0854	2.0854	2.0854	2.0854	2.0854

**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 ISC):

**Capacity Fees**

**Monthly Capacity Payment (Dollar Portion converted to PhP):**

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

Where:

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FOREX<sub>C</sub> = 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<sub>B</sub> = 41.749 PhP/USD

**Monthly Capacity Payment (Local Portion in PhP):**

**PhP/kW-Month = No Indexation**

**Monthly Fixed Operations and Maintenance:**

**PhP/kW-month x  $\frac{\text{PHIL CPI}_C}{\text{PHIL CPI}_B}$**

Where:

PHIL CPI<sub>C</sub> = 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

PHIL CPI<sub>B</sub> = 131.40

**Energy Fees**

**Fuel Rate:**

**PhP/kWh x  $\frac{\text{Global Coal Newcastle}_C}{\text{Global Coal Newcastle}_B}$  x  $\frac{\text{FOREX}_C}{\text{FOREX}_B}$**

Where:

Global Coal Newcastle<sub>C</sub> = 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<sub>B</sub> = 89.41 USD/MT

FOREX<sub>C</sub> = 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<sub>B</sub> = 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<sub>c</sub> = 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<sub>B</sub> = 41.749 PhP/USD

EP<sub>I<sub>AVE</sub></sub> = Average Export Price Index (EPI) for US, Japan and Europe

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

Where:

J<sub>Ic</sub> = 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<sub>Ib</sub> = 93.93

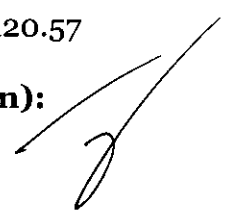
USI<sub>Ic</sub> = US EPI six (6) months immediately preceding the adjustment date, taken from the IFS published by the IMF

USI<sub>Ib</sub> = 91.70

EI<sub>Ic</sub> = 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<sub>Ib</sub> = 120.57

**Variable O&M (Local Portion):**



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

Where:

RPI<sub>c</sub> =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<sub>B</sub> =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:

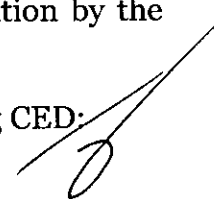
i. The Buyer has no arrears from previous power billings including the Security Deposit or any unpaid charges or penalties including VAT;

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 10<sup>th</sup> 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:



<b>Collection Efficiency Levels</b>	<b>Discount, PhP/kWh</b>
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 ISECO's Overall Generation Rate**

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

<b>PERIOD</b>	<b>WITHOUT SMEC (PHP/KWH)</b>	<b>WITH SMEC (PHP/KWH)</b>	<b>INCREASE/ (DECREASE) (PHP/KWH)</b>
April 2014	7.712	6.146	1.566
May 2014	5.143	4.510	0.634
June 2014	5.092	4.454	0.638



July 2014	5.874	5.231	0.643
August 2014	5.293	4.798	0.495
September 2014	5.133	4.667	0.466
October 2014	5.001	4.623	0.378
November 2014	4.089	4.112	(0.024)
December 2014	3.087	3.401	(0.314)
January 2015	3.504	3.609	(0.105)
February 2015	5.272	4.991	0.281
Mar 2015	5.441	5.156	0.285
April 2015	3.996	4.236	(0.240)
May 2015	4.338	4.297	0.041
June 2015	4.829	4.452	0.377
July 2015	5.296	4.525	0.771
August 2015	4.657	4.517	0.140
September 2015	3.884	4.074	(0.189)
October 2015	3.636	3.894	(0.258)
November 2015	4.030	4.231	(0.201)
December 2015	4.034	4.296	(0.262)
January 2016	4.016	4.416	(0.400)
February 2016	2.978	3.179	(0.201)

<b>PARTICULARS</b>	<b>KWH</b>	<b>AMOUNT (PHP)</b>	<b>AVERAGE RATE (PHP/KWH)</b>
Total Energy Purchased	482,444,644		
Generation Charge Without SMEC		2,231,678,265.52	4.626
Generation Charge With SMEC		2,136,137,642.18	4.428
<b>Reduction in Generation Rate</b>		<b>95,540,623.34</b>	<b>(0.198)</b>

**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	ISC entered into by and between ISECO and SMEC
G and Series	<p>Details of the ISC:</p> <p>Executive Summary</p> <p>Sources of Funds/Financial Plans  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</p> <p>Purchased Power Rate  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 ISECO once the contract is approved  Basis/Rationale of indexation and level of indexation</p> <p>Cash Flow  Initial Costs  Breakdown of Operating and Maintenance expenses  Minimum Energy Off-take (MEOT)</p>
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 ISECO
L and Series	Acknowledgment receipts by the Sangguniang Pambayan of Santiago, the Sangguniang Panlalawigan of Ilocos Sur, and the Sangguniang Panlungsod of 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 ISC
P and Series	Details of the Competitive Selection Process (CSP) undertaken by ISECO 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 ISECO, ISECO's Special Bids and Awards Committee (SBAC) Evaluation Report; ISECO'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	ISECO's latest Distribution Development Plan (DDP) and Load Forecast Projections
S	Demand Side Management (DSM) Program that could be implemented by ISECO 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 ISECO
T-5	Potential Cost (absolute amounts and

	PhP/kWh) of Ancillary Services as and when SMEC or ISECO 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 (1<sup>st</sup>) and fifth (5<sup>th</sup>) “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.*)

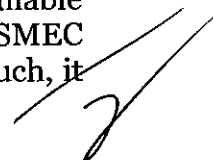
15. By way of emphasis, Resolution No. 21, Series of 2005 of the Honorable Commission dated 19 October 2005 had directed all Distribution Utilities (DUs) “to enter into future bilateral power supply contract with power producers to be subjected to a review by the Commission.” (*Underscoring supplied.*)

16. The ISC with SMEC was made to ensure the continuous supply of power to ISECO 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. ISECO 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, ISECO must source power from SMEC immediately to avoid power outage in its franchise area. As such, it



was constrained to implement the ISC 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, ISECO 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, ISECO 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 ISECO'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.)

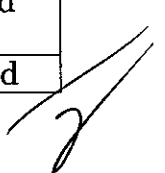
20. To emphasize the necessity of the foregoing allegations, a judicial affidavit in support of the motion for provisional authority is attached to the Joint Application as Annex “U” and made an integral part hereof;

**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 ISECO 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)
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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.*<sup>1</sup>, 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;
- (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 ISC 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

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<sup>1</sup> G.R. No. 172835, December 13, 2007

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. ISECO and SMEC, likewise, pray for the confidential treatment of **Annexes "I", "I-1", and "I-2"**, under the same premises above; and

27. Accordingly, ISECO 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**

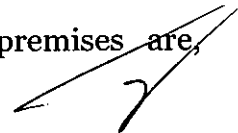
**WHEREFORE**, the foregoing premises considered, the Joint Applicants Ilocos Sur Electric Cooperative, Incorporated (ISECO) and San Miguel Energy Corporation (SMEC) most respectfully pray that the Honorable Commission:

1. Pending hearing, **ISSUE** an Order provisionally approving the Joint Application and the ISC thereby authorizing ISECO 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 ISC between ISECO and SMEC, and authorizing ISECO 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 Application 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 **25 October 2016 at one o'clock in the afternoon (1:00 P.M.), at ISECO's Principal Office at Bigbiga, Santiago, Ilocos Sur.**

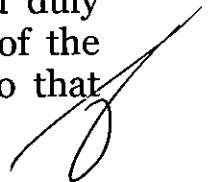
Applicants ISECO AND SMEC are hereby directed to cause the publication of the attached Notice of Public Hearing in two (2) newspapers of nationwide circulation in the Philippines at their own expense, twice (2x) within two (2) successive weeks, the dates of publication not being less than seven (7) days apart and the date of the last publication to be 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 ISECO, by any other means available and appropriate, of the filing of the 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 Provincial Governors, the City and Municipality Mayors, and the Local Government Unit (LGU) legislative bodies within MERALCO's franchise area for the appropriate posting thereof on their respective bulletin boards.

Applicants ISECO AND SMEC 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 ISECO must submit to the Commission its written Compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidence on the actual posting and publication of the Notice of Public Hearing consisting of certifications issued to that





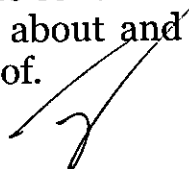
effect, signed by the afore-mentioned Governors, Mayors, and LGU legislative bodies or their duly authorized representatives, bearing the seals of their offices, and the affidavits of the Editors or Business Managers of the newspapers where the said Notice of Public Hearing were published together with the complete issues of the said newspapers, and such other proofs of compliance with the requirements of the Commission.

ISECO, 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 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 Applicants to submit the required Pre-trial Brief and Judicial Affidavits of its 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, ISECO and SMEC 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, 07 September 2016.

FOR AND BY AUTHORITY  
OF THE COMMISSION:

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

**ERC**  
*Office of the Chairman*



1-2016-021-OC-04942

LS: IC/APV

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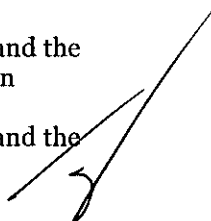
1. Atty. Jeremiah D. Francisco  
DeChavez & Evangelista Law Offices  
*Counsel for Applicant ISECO*  
1609-1610, Tycoon Centre, Pearl Drive, Ortigas Center, Pasig City
2. Atty. Jupiter M. Cabaguio and Atty. Avelino G. Cedo III  
*Counsel for Applicant SMEC*  
7, Saint Francis Street, Mandaluyong City
3. Ilocos Sur Electric Cooperative, Inc. (ISECO)  
*Applicant*  
Bigbiga, Santiago, Ilocos Sur
4. San Miguel Energy Corporation (SMEC)  
*Applicant*  
2<sup>nd</sup> Floor, 808 Building, MERALCO Avenue corner General Lim Street, Barangay San Antonio, Pasig City
5. Office of the Solicitor General  
134 Amorsolo Street, Legaspi Village, Makati City
6. Commission on Audit  
Commonwealth Avenue, Quezon City
7. Senate Committee on Energy  
GSIS Bldg. Roxas Blvd., Pasay City
8. House Committee on Energy  
Batasan Hills, Quezon City
8. 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
9. Office of the Governor and the

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Office of the Sangguniang Panlalawigan  
Province of Ilocos Sur

10. Office of the City Mayor and the  
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Candon City, Ilocos Sur
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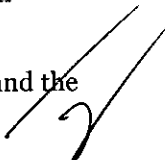


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Office of the Sangguniang Bayan  
Salcedo, Ilocos Sur

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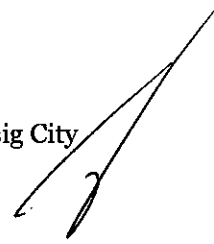


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Office of the Sangguniang Bayan  
Tagudin, Ilocos Sur

44. TWG PSA 2  
17<sup>th</sup> Floor, Pacific Center, San Miguel Avenue, Pasig City

A handwritten signature in black ink, consisting of a series of overlapping loops and a long, sweeping stroke extending upwards and to the right.