

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



**IN THE MATTER OF THE
APPLICATION OF THE 20
MW EMERGENCY POWER
SUPPLY AGREEMENT
BETWEEN OCCIDENTAL
MINDORO ELECTRIC
COOPERATIVE, INC. AND
OCCIDENTAL MINDORO
CONSOLIDATED POWER
CORPORATION, WITH
PRAYER FOR PROVISIONAL
AUTHORITY,**

ERC CASE NO. 2020-044 RC

**OCCIDENTAL MINDORO
ELECTRIC COOPERATIVE,
INC. (OMEKO) AND
OCCIDENTAL MINDORO
CONSOLIDATED POWER
CORPORATION (OMCPC),
*Applicants.***

Promulgated:
February 17, 2021

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O R D E R

On 29 December 2020, Occidental Mindoro Electric Cooperative, Inc. (OMEKO) and Occidental Mindoro Consolidated Power Corporation (OMCPC) filed a *Joint Application* dated 19 November 2020, seeking the Commission's approval of their 20 MW Emergency Power Supply Agreement (EPSA), with prayer for Provisional Authority.

The pertinent portions of the said *Joint Application* are hereunder quoted as follows:

THE APPLICANTS

1. OMEKO is a non-stock, non-profit electric cooperative organized and existing under Presidential Decree No. 269, as amended, with principal office at M.H. del Pilar St., San Jose, Occidental Mindoro. OMEKO has a franchise to distribute electricity in the municipalities of Abra de Ilog, Mamburao, Sta. Cruz, Sablayan,

Calintaan, Rizal, San Jose, Paluan, and Magsaysay, all within the Province of Occidental Mindoro.

Copies of OMECO's Certificate of Registration, By-Laws, Certification on members of the Board of Directors and Certificate of Franchise are attached hereto as **Annexes "A" to "A-3"**.

2. OMCPD is a corporation duly authorized and existing under the laws of the Republic of the Philippines, with office address at Unit 1003 and 1004, 10th floor, Galleria Corporate Center, EDSA corner Ortigas Avenue, Brgy. Ugong Norte, Quezon City.

Copies of OMCPD's Certificate of Incorporation, AOI, By-Laws, Certificates of Filing of Amended AOI with the attached copies of the Amended AOI, latest General Information Sheet, Audited Financial Statements, and OMCPD's corporate structure are attached hereto as Annexes **"B" to "B-7"**.

3. Joint Applicants may be served orders and other processes through their respective undersigned counsel.

NATURE OF THE APPLICATION

4. Pursuant to Rule 20 (B) of the ERC Rules of Practice and Procedure, approved by this Honorable Commission on 22 June 2006 in Resolution No. 38, Series of 2006, this Application is submitted to this Honorable Commission for its review and approval of the Emergency Power Supply Agreement ("EPSA") between OMECO and OMCPD.

A copy of the EPSA is attached hereto as **Annex "C"**.

COMPLIANCE WITH PRE-FILING REQUIREMENTS

5. In compliance with Rule 6 of the ERC Rules of Practice and Procedure, Joint Applicants have furnished the legislative bodies of each of the local government units where they principally operate a copy of the present Application with all its annexes and accompanying documents.

The corresponding proofs of receipt are attached hereto as **Annexes "D" to "D-2"**.

6. Furthermore, Joint Applicants have caused the publication of the present Application in its entirety, excluding its annexes, in a newspaper of general circulation within OMECO's franchise area.

Copies of the newspaper and the corresponding Affidavit of Publication are attached hereto as **Annexes "E" and "E-1"**, respectively.

STATEMENT OF FACTS

7. **Necessity for Power Supply.** OMECO is currently conducting a Competitive Selection Process (“CSP”) for the procurement of 39 MW power supply to meet the full power requirements in its franchise area in Occidental Mindoro. It is expected that power supply obtained through the CSP would only be available halfway through 2021, considering various delays in the CSP by reason of the COVID-19 pandemic.

8. In the meantime, OMECO needs power supply during the first half of 2021, and with the steadily increasing demand for power, OMECO is anticipating that said demand would already reach 29 MW by then.

9. It is expected, however, that during said first half of 2021, OMECO would no longer be able to procure supply from OMCPC under their current supply arrangement given the restrictions imposed on the availment from the Universal Charge for Missionary Electrification (“UC-ME”) subsidy.

10. With the aforesaid problems confronting OMECO, OMECO would have a severe lack of power supply during the first half of 2021 and there would be a province-wide black-out in Occidental Mindoro for six months.

11. Without emergency power supply, Occidental Mindoro would have to endure half a year of power outages and disruptions to business activities as well as to the daily lives of the public, which are still suffering from the effects of the COVID-19 pandemic.

12. **Demand Projections.** As mentioned, the power demand in OMECO’s franchise area will reach 29 MW in first half of 2021. The expected increase is indicated in OMECO’s Distribution Development Plan (“DDP”) and supply-demand projections.

Copies of OMECO’s DDP Summary, and Supply - Demand Scenario and Average Daily Load Curve are attached hereto as Annexes “F” and “G”, respectively.

13. **Procurement Process for Emergency Supply.** Foreseeing a lack of supply in the first half of 2021, OMECO submitted with the Department of Energy (“DOE”) a request for issuance of a Certificate of Exemption from the conduct of a CSP for the procurement of 29 MW of emergency power supply, pursuant to DOE Department Circular No. DC2018-02-0003¹ (the “DOE Circular”).

14. On 26 June 2020, the DOE issued the Certificate of Exemption from the conduct of CSP for a cooperation period from 1 July 2020 to 25 June 2021.

A copy of said Certificate is attached hereto as Annex “H”.

¹ Adopting and Prescribing the Policy for the Competitive Selection Process in the Procurements by the Distribution Utilities of Power Supply Agreement for the Captive Market

15. OMECO entered into negotiations with OMPCPC for emergency power supply since OMPCPC's 24 MW power plant is the only existing plant in Occidental Mindoro other than NPC's 5 MW plant in Mamburao, and it would take a long time for a new plant of sufficient capacity to be built instead. The parties eventually agreed on signing the EPSA subject of the present Joint Application.

16. Under the law, no contract for the supply of power can become legally effective unless approved by this Honorable Commission. Hence, this Joint Application.

**ABSTRACT OF THE POWER SALES AGREEMENT AND
RELATED INFORMATION**

17. **The Generation Facilities.** OMPCPC shall supply power under the EPSA using a bunker-fired diesel power plant with a gross capacity of 24 MW in San Jose, Occidental Mindoro (the "OMPCPC Power Station").

18. The OMPCPC Power Station consists of three (3) 8 MW power generating units with a rated voltage of 13.8 kV, and is connected to the Occidental Mindoro power system at 13.2 and 69 kV.

19. A brief description of the technical characteristics of the OMPCPC Power Station and the single line diagram showing its connection to the Occidental Mindoro power system are attached hereto as **Annexes "I" and "J"**, respectively.

20. The Specific Fuel Oil Consumption ("SFOC") rate of the OMPCPC Power Station shall be based on guaranteed ceiling values depending on plant capacity factor, as previously approved in ERC Case No. 2014-102 RC.

21. A copy of a certification on the SFOC rates is attached hereto as **Annex "K"**.

20. Salient Features of the EPSA.

20.1. Supply of Power Requirements. Under the EPSA, OMPCPC shall make available, reserve, guarantee and deliver to OMECO the contracted capacity of twenty (20) MW ("Contracted Capacity"). OMPCPC shall supply the Contracted Capacity and Dispatchable Energy in accordance with good utility practice and in compliance with appropriate rules and regulations.

20.2. Commencement of Supply. OMPCPC shall commence supplying power on 1 January 2021, or the date the certain conditions under the EPSA have occurred or are waived, whichever is later ("Commercial Operation Date").

20.3. Term. The term of supply and purchase under the EPSA shall be for six (6) months from the Commercial

Operation Date, unless otherwise extended or terminated in accordance with the terms of the EPSA. The term complies with the requirement under the DOE Circular that the term shall not exceed one (1) year.

20.4. Effective Date. The obligations under the EPSA shall become effective on the Effective Date, when certain conditions shall have been satisfied, including this Honorable Commission's approval of the EPSA and its pricing structure, a subsidy agreement and written confirmation from NPC that it has available funds and will provide the full amount of subsidy for the emergency supply.

20.5. Approved Tariff. The parties adopted the rates of the OMPC Power Station previously approved by this Honorable Commission in ERC Case No. 2014-102 RC. This is in compliance with the requirement in the DOE Circular that the rate shall not be higher than the latest approved generation tariff for same or similar technology in the area.

20.6. The approved rates were for a term of 25 years. The same rates were adopted even though the rates for the EPSA should be much higher considering they are for same contracted capacity but with a much shorter capital recovery period of only 6 months.

20.7. The foregoing is consistent with the "one plant, one tariff" policy of this Honorable Commission.

22. Purchased Power Rate. For the capacity drawn by OMECO to OMPC, OMECO shall pay the monthly payment based on the following formulae, as previously approved by this Honorable Commission:

1. Monthly Payment

The Monthly Payment (MP) shall be paid to the Seller on a monthly basis based on the following formula:

$$\text{Monthly Payment} = \frac{(\text{CRF}_B + \text{FOMF}_B + \text{VOMF}_B + \text{FF})}{(1 - \text{TL}_B)} + \text{Taxes}$$

where:

- CRF_B = Capital Recovery Fee in Pesos
- FOMF_B = Fixed Operations and Maintenance Fee in Pesos
- VOMF_B = Variable Operations and Maintenance Fee in Pesos
- FF = Fuel Fee
- TL_B = The associated transmission loss in percent (%) to the Receiving Point(s) pursuant to Section 6.3 (*Settlement*)
- Taxes = Value-Added Tax and other applicable taxes

1.1 Capital Recovery Fee (CRF_B)

The monthly Capital Recovery Fees shall be paid by the Buyer to the Seller to recover the capital return on investment and to be computed as follows:

$$CRF_B = \left(CRR \times \left(\frac{FX_{COD}}{FX_{CSD}} \right) \times CC \right)$$

where:

- CRF_B = Capital Recovery Fee in Pesos
- CRR = Capital Recovery Rate at PhP 1,117.31/kW-month
- CC = Contracted Capacity equivalent to 20MW
- FX_{COD} = Arithmetic average of the Philippine Peso to US Dollar exchange Rate at the Commercial Operations Date as published by the Bangko Sentral ng Pilipinas
- FX_{CSD} = Actual Philippine Peso to US Dollar exchange rate as published by the Bangko Sentral ng Pilipinas as of 28 February 2014, the Contract Signing Date of the PSA between Emerging Power, Inc. and the Buyer

1.2 Fixed Operation and Maintenance Fee (FOMF_B)

The Fixed Operation and Maintenance Fee covers the operating and maintenance costs of the power structures and equipment, and plant management and supervision costs. It shall be computed according to the following formula:

$$FOMF_B = FOMR \times \left\{ \left[\left(0.05 \times \frac{FCPI_n}{FCPI_{CSD}} \right) \times \frac{Fx_n}{Fx_{CSD}} \right] + \left[\left(0.95 \times \frac{LCPI_n}{LCPI_{CSD}} \right) \right] \right\} \times CC$$

where:

- FOMF_B = Fixed Operation & Maintenance Fee in Pesos
- FOMR = Fixed Operation & Maintenance Rate in PhP 280.03/ kW-month
- CC = Contracted Capacity equivalent to 20MW
- FCPI_n = The arithmetic average of the values of the United States Consumer Price Index for all Items, as last published on or before the last day of such Billing Month by the International Monetary Fund; provided that if the International Monetary Fund ceases to publish such indices, the relevant indices as published by the U.S. Department of Labor Bureau of Labor Statistics shall apply
- FCPI_{CSD} = The United States Consumer Price Index for all Items; as published by the International Monetary Fund on the month of the Contract Signing Date of the PSA between Emerging Power, Inc. and the Buyer (28 February 2014), provided that if the International Monetary Fund ceases to publish

- such indices, the relevant indices as published by the U.S. Department of Labor Bureau of Labor Statistics shall apply
- LCPI_n = The arithmetic average of the values of the Consumer Price Index in the Philippines for all items and General Wholesale Price Index in Metro Manila for mineral fuels, lubricant and related materials, both as last published on or before the last day of such Billing Month by the National Statistics Office
- LCPI_{CSD} = The Consumer Price Index in the Philippines for all items and General Wholesale Price Index in Metro Manila for mineral fuels, lubricant and related materials, both as published by the National Statistics Office on the month of the Contract Signing Date of the PSA between Emerging Power, Inc. and the Buyer (28 February 2014)
- FX_n = Actual Philippine Peso to US Dollar exchange rate on the meter reading date of such Billing Month as published by the Bangko Sentral ng Pilipinas, www.bsp.gov.ph
- FX_{CSD} = Actual Philippine Peso to US Dollar exchange rate at the Notice of Award Date of the PSA between Emerging Power, Inc. and the Buyer as published by the Bangko Sentral ng Pilipinas, www.bsp.gov.ph

1.3 Variable Operation and Maintenance Fee (VOMF_B)

The Variable Operation and Maintenance Fee covers the use of chemicals, lubricants, spare parts, etc. that are directly related to the generation of the bunker-fired diesel generator. It shall be computed according to the following formula:

$$VOMF_B = VOMR \times \left\{ \left[\left(0.44 \times \frac{PPP_n}{PPP_{CSD}} \right) \times \frac{FX_n}{FX_{CSD}} \right] + \left(0.56 \times \frac{LCPI_n}{LCPI_{CSD}} \right) \right\} \times E_{DEL}$$

where:

- VOMF_B = Variable Operation & Maintenance Fee in Pesos
- VOMR = Variable O & M Rate in PhP 0.5000 / kWh
- E_{DEL} = Electricity delivered during the billing period in kWh
- PPP_n = The arithmetic average of the values of the United States Producers' Price Index for industrial goods; as last published on or before the last day of such Billing Month by the International Monetary Fund; provided that if the International Monetary Fund ceases to publish such indices, the relevant indices as published by the U.S. Department of Labor Bureau of Labor Statistics shall apply
- PPP_{CSD} = The United States Producers' Price Index for industrial goods; as published by the International

Monetary Fund on the month of the Contract Signing Date of the PSA between Emerging Power, Inc. and the Buyer (28 February 2014), provided that if the International Monetary Fund ceases to publish such indices, the relevant indices as published by the U.S. Department of Labor Bureau of Labor Statistics shall apply

- LCPI_n = The arithmetic average of the values of the Consumer Price Index in the Philippines for all items and General Wholesale Price Index in Metro Manila for mineral fuels, lubricant and related materials, both as last published on or before the last day of such Billing Month by the National Statistics Office
- LCPI_{CSD} = The Consumer Price Index in the Philippines for all items and General Wholesale Price Index in Metro Manila for mineral fuels, lubricant and related materials, both as published by the National Statistics Office on the month of the Contract Signing Date of the PSA between Emerging Power, Inc. and the Buyer (28 February 2014)
- FX_n = Actual Philippine Peso to US Dollar exchange rate on the meter reading date of such Billing Month as published by the Bangko Sentral ng Pilipinas, www.bsp.gov.ph
- FX_{CSD} = Actual Philippine Peso to US Dollar exchange rate at the Notice of Award Date of the PSA between Emerging Power, Inc. and the Buyer as published by the Bangko Sentral ng Pilipinas, www.bsp.gov.ph

1.4 Fuel Fee (FF)

The pass-through fuel fee (FF) for the Billing Month shall be paid to Seller to cover the cost of bunker, diesel and lubes consumed in the generation of electricity and shall be computed as follows:

$$FF = FF_{HFO} + FF_{LFO} + LF_{LUB}$$

1.4.1 For Heavy Fuel Oil (Bunker C)

$$FF_{HFO} = (HFO_{DP} \times SFOC \times 0.95 E_{DEL})$$

where:

- FF_{HFO} = Fuel fee using Heavy Fuel Oil (Bunker) in Pesos. Indicative Fuel Fee is PhP 7.5603 / kWh
- HFO_{DP} = The delivered price of Heavy Fuel Oil or bunker C in Pesos per liter during the Billing Month. Indicative price is PhP 32.831 / liter
- SFOC = Actual fuel consumption rate or the Guaranteed Specific Fuel Oil Consumption Ceiling, as indicated in the table below, whichever is lower

E_{DEL} = Delivered Energy in kWh that is generated from bunker-fired diesel generator
 1.4.2 For Light Fuel Oil (Diesel)

1.4.2 For Light Fuel Oil (Diesel)

$$FF_{LFO} = (LFO_{DP} \times SFOC \times 0.05 E_{DEL})$$

where:

FF_{LFO} = Fuel fee using Light Fuel Oil (Diesel) in Pesos. Indicative Fuel Fee is PhP 0.4053 / kWh
 LFO_{DP} = The delivered price of Light Fuel Oil or Diesel in Pesos per liter during the Billing Month. Indicative price is PhP 33.4375/liter
 $SFOC$ = Actual fuel consumption rate or the Guaranteed Specific Fuel Oil Consumption Ceiling, as indicated in the table below, whichever is lower
 E_{DEL} = Delivered Energy in kWh that is generated from the bunker-fired diesel generator

Guaranteed Ceiling	
Plant Factor	SFOC, liter/kWh
49% & Below	0.2799
50 – 64%	0.2695
65 – 79%	0.2618
80 – 100%	0.2518

Note:

The above ceiling values took into consideration the Ambient Condition at the Site, the Lower Heating Value (LHV) of the Bunker/Diesel Fuel available and wear of the engine while in operation prior to major overhaul. For reference, the Specific Fuel Oil Consumption of 0.2424 liter per kWh is at 74.5% plant load, brand new, at Site Conditions and Fuel Specs of LHV 40,285 KJ/kg.

Should the SFOC exceed these values at the operating load specified (taken at the high side of the step-up transformer plus the in-house load), the fuel cost over and above the ceiling will be for the account of the Seller.

1.4.3 Lubes Fee

$$LF_{LUB} = LUBE_{DP} \times SLOC \times E_{DEL}$$

where:

LF_{LUB} = Lubes fee of lube, oil and additives in Pesos. Indicative Lube Fee is PhP 0.3537 / kWh
 $LUBE_{DP}$ = The delivered price of lube oils in Pesos per liter during the Billing Month. Indicative price is PhP 113.7150 / liter

SLOC	=	Specific Lube Oil Consumption at 0.002645 liter per kWh
EDEL	=	Delivered Energy in kiloWatt hours that is generated from the bunker-fired diesel generator
Taxes	=	Value added tax, and other applicable taxes and fees

2. True Cost Generation Rate (TCGR)

The True Cost Generation Rate (TCGR) of the Seller for the Billing Month shall be calculated as follows:

$$TCGR = \frac{MP}{E_{DEL}}$$

where:

MP	=	Monthly Payment pursuant to Section 1 of this Schedule B
EDEL	=	Delivered Energy in kWh that is generated from the bunker-fired Power Station

3. Subsidized Approved Generation Rate (SAGR)

The SAGR of the Buyer for the billing month shall be that SAGR (with Deferred Accounting Adjustments) as approved by the ERC as of 31 December 2013.

4. Computation of the UCME Subsidy

The UCME Subsidy Fee (SF) shall be collected from NPC-SPUG by the Seller and shall be computed as follows:

$$SF = [(TCGR - SAGR) \times E_{DEL}]$$

where:

EDEL	=	Energy delivered for the previous Billing Month
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21.1. Sample computation. For reference, a sample computation of the rate is contained in Schedule D of the EPSA.

21.2. Equivalent PhP/kWh computation. A computation of the equivalent PhP/kWh for the fixed fees is attached hereto as Annex "L".

21.3. Basis for indexation. As indicated in the formulas above, the monthly fees to be paid by OMECO are subject to adjustments based on various indices or factors in order to properly reflect the fluctuation of OMPC's costs in producing electricity. Since the formulas were retained from the previous approval in ERC Case No. 2014-102, the indices properly refer to the year 2014.

21.4. The components of the fees representing foreign currency-denominated costs are adjusted based on the foreign exchange rate and the appropriate price indices; those representing local costs are adjusted based on local price indices. The fuel and lube oil components vary based on the actual cost of fuel and lube oil.

21.5. **Financial Model.** A copy of OMCPC's financial model for the tariff is attached hereto as Annex "M". As discussed below, the financial model is the subject of a Motion for Confidential Treatment of Information.

22. Sources of Funds/Financial Plans.

22.1. **Cost of Equity.** The project has a debt to equity ratio of 70:30. A breakdown of the weighted cost of capital is attached here to as **Annex "N"**.

22.2. OMCPC's cost of debt is indicated in the loan agreement attached hereto as **Annex "O"**.

22.3. **Project Cost.** A breakdown of the total project cost for the OMCPC Power Station is attached hereto as **Annex "P"**.

23. Cash Flow.

23.1. **Breakdown of Operating and Maintenance Expenses.** A breakdown of the operating expenses is attached hereto as **Annex "Q"**.

23.2. **Offtake Arrangement.** There is no minimum energy offtake. Under the EPSA, OMCPC shall make available, reserve, guarantee and deliver to OMECO the Contracted Capacity, and OMECO shall pay for such quantity of electric power. OMCPC shall utilize such Contracted Capacity to generate energy for OMECO.

23.3. Also, the capacity to be provided by OMCPC shall always be the Contracted Capacity. In case the actual capacity delivered by OMCPC, as per dispatch order or limitation of OMECO for a given billing month is less than the Contracted Capacity, the difference between the actual capacity utilized by OMECO and Contracted Capacity for that billing month shall be deemed delivered to and utilized by OMECO.

24. **Registration with the Board of Investments ("BOI").** The generating units of the Power Station were registered with the BOI.

Copies of the BOI certificate of registration and the terms and conditions thereof are attached hereto as **Annexes "R" and "R-1"**.

25. **Fuel supply.** The fuel necessary for the operations of the OMPC Power Station will be supplied by the supplier who offered the best terms after offers were solicited from available suppliers in the area.

A copy of a sworn affidavit on the fuel procurement process is attached hereto as **Annex “S”**. Copies of the relevant fuel supply contracts are attached hereto as **Annexes “T” and “T-1”**.

26. **Environmental Compliance Requirements.** The Department of Environment and Natural Resources has issued the necessary Environmental Compliance Certificate (“ECC”) covering the OMPC Power Station.

A copy of the ECC is attached hereto as **Annex “U”**.

27. **DOE Certification.** The Department of Energy (“DOE”) has certified that the capacity of the OMPC Power Station is consistent with the DOE’s Power Development Plan.

A copy of the said certification is attached hereto as **Annex “V”**.

28. **Provisional Authority to Operate.** Under regulations, a generation company must secure either a Certificate of Compliance (“COC”) or a Provisional Authority to Operate (“PAO”) prior to its commercial operation.

29. This Honorable Commission has issued the necessary PAO for the OMPC Power Station, valid until 18 October 2021.

A copy of the PAO is attached hereto as **Annex “W”**.

RATE IMPLICATIONS

30. The approval of the EPSA will have no direct rate impact to OMECO’s member-consumers as they will continue paying the Subsidized Approved Generation Rate as approved by this Honorable Commission.

31. Likewise, the approval of the EPSA will have no impact on the existing UC-ME subsidy rate considering that OMPC’s proposed TCGR under the EPSA is the same as the ERC-approved TCGR of its current supply arrangement with OMECO.

MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION

32. As mentioned above, the financial model attached as **Annex “M”** is hereby submitted under a motion to treat information confidential.

33. The financial model discloses the basis for the tariff under the EPSA. It includes all the formulas and calculations as well as the assumptions and values considered therein.

34. In accordance with Section 1, Rule 4 of this Honorable Commission's Rules of Practice and Procedure ("ERC Rules"), Applicant OMPC respectfully moves that the financial model be treated as confidential information for the following reasons:

34.1. The financial model qualifies as a "trade secret" as contemplated under existing jurisprudence.

34.2. In the case "Air Philippines Corporation vs. Pennswell Inc,"² the Supreme Court defined "trade secret" as follows:

"A trade secret is defined as a plan or process, tool, mechanism or compound known only to its owner and those of his employees to whom it is necessary to confide it. The definition also extends to a secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade having commercial value. 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 advantage over competitors who do not possess the information. Generally, a trade secret is a process or device intended for continuous 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."

35. Also, the financial model was prepared and developed for the exclusive use of OMPC, and is designed for the specific use of the company in its power generation business. Consequently, should the financial model be disclosed to the public, it could easily be copied or used by OMPC's competitors or other entities engaged in the power business for their own benefit, and to the prejudice of OMPC. Thus, the commercial value of the said model will be diminished significantly.

36. Given the foregoing, the financial model qualifies as "confidential information" as defined under Section 2, Rule 4 of the ERC Rules.

37. In accordance with Section 1 (b), Rule 4 of the ERC Rules, an electronic copy of the financial model is contained in one compact disc and submitted in a sealed envelope marked with the word "Confidential."

² G.R. No. 172835, 13 December 2007

38. Further, all parties furnished copies of the present Application are not furnished copies of the documents subject of the present motion.

39. In accordance with Sections 3 and 4, Rule 4 of the ERC Rules, Applicant MPI reserves the right to use the financial model and its contents as evidence, and respectfully moves for the issuance of a Protective Order.

ALLEGATIONS IN SUPPORT OF
THE MOTION FOR PROVISIONAL AUTHORITY

40. OMECO currently sources its power requirements from NPC and OMPC. NPC supplies 4 MW through its diesel power plant while OMPC supplies 20 MW through the OMPC Power Station.

41. OMECO's power demand is expected to reach 29 MW in the first half of 2021.

42. However, OMECO no longer expects that it would be able to procure supply from OMPC starting in 2021 given the restrictions imposed on the availment from UC-ME subsidy.

43. Although OMECO is already conducting a CSP for the procurement of 39 MW power supply, it is expected to be available only halfway through 2021, considering the delays and difficulties due to the COVID-19 pandemic.

44. Hence, there is an urgent need for a provisional approval of the subject EPSA prior to the intended Commercial Operation Date on 1 January 2021 for OMPC to be able to continue supplying power to OMECO and to prevent widespread and prolonged power outages in the entire province of Occidental Mindoro for a period of six months.

45. The prolonged power outages would have disastrous consequences on the lives of the people of Occidental Mindoro who are already struggling due to the unprecedented economic and health crisis. Power outages would further cripple local businesses that are yet to recover after being devastated by the economic shutdown. Hospitals and healthcare facilities would also lose power at this most critical of times.

46. Thus, in order to help ensure sufficiency of power supply to OMECO's customers, a provisional approval of the supply under the EPSA must be already available before the intended date of the Commercial Operation Date on 1 January 2021.

47. Since the OMPC Power Station is already existing and operating, it can readily supply power to OMECO under the EPSA as soon as a provisional authority is issued.

48. In view of the foregoing, Joint Applicants respectfully move for the provisional approval of the instant Application pursuant to Rule 14 of the ERC Rules of Practice and Procedure.

A copy of the Judicial Affidavit in Support of the Prayer for Provisional Authority is attached hereto as Annex "X".

INAPPLICABILITY OF CERTAIN REQUIREMENTS

49. Certain documentary requirements contained in this Honorable Commission's Checklist of Pre-Filing Requirements for Applications for Approval of Power Supply Agreement are not applicable to the present Joint Application.

Written explanations on the inapplicability of the said requirements to OMECO and to OMCPG are attached hereto as Annexes "Y" and "Z", respectively.

PRAYER

WHEREFORE, premises considered, Joint Applicants OMECO and OMCPG respectfully pray that this Honorable Commission:

1. issue an Order declaring the financial model attached hereto as **Annex "M"** as confidential information within the purview of Rule 4 of the ERC Rules, as well as directing that the financial model be treated with confidentiality and be protected from public disclosure;
2. issue the corresponding Protective Order in accordance with Section 2 and 4 of the said Rule 4;
3. immediately issue an Order provisionally approving the EPSA subject of the instant Joint Application as well as the generation rate and adjustment mechanisms indicated therein, and allowing OMCPG to recover the difference between OMECO's SAGR and the provisionally approved TCGR from the UC-ME Subsidy Fund being managed by NPC, effective on the Commencement Date thereof of 01 January 2021; and
4. after due hearing, render a decision approving with finality the EPSA subject of the instant Joint Application, as well as the generation rate and adjustment mechanisms indicated therein, and allowing OMCPG to recover the difference between OMECO's SAGR and the approved TCGR from the UC-ME Subsidy Fund being managed by NPC.

Joint Applicants pray for other just and equitable relief under the premises.

Finding the said *Joint Application* to be sufficient in substance, with the required fees having been paid, the same is hereby set for the determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of

evidence on the following dates and online platform for the conduct thereof, pursuant to Resolution No. 09, Series of 2020³ dated 24 September 2020:

Date and Time	Platform	Activity
23 March 2021 (Tuesday) 9:00 A.M.	Microsoft Teams	Determination of compliance with jurisdictional requirements and expository presentation
30 March 2021 (Tuesday) 9:00 A.M.	Microsoft Teams	Pre-Trial Conference and Presentation of Evidence

RELATIVE THERETO, OMECO and OMCPG are hereby directed to:

- 1) Cause the publication of the attached *Notice of Virtual 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;
- 2) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing* the Offices of the Provincial Governor, the Municipal Mayors, and the Local Government Unit (LGU) legislative bodies within OMECO's franchise area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within OMECO's franchise area of the filing of the *Application*, its reasons therefor, and of the scheduled hearings thereon, by any other means available and appropriate;
- 4) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing*, 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 hearings; and

³ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

- 5) Furnish with copies of the *Joint Application* and its attachments all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

Within five (5) calendar days prior to the date of the virtual hearing, Applicants must submit to the Commission via electronic mail (e-mail) at docket@erc.ph, copy furnish the Legal Service through legal@erc.ph, the scanned copies of their written compliance with the aforementioned jurisdictional requirements attaching therewith, methodically arranged and duly marked the following:

- 1) The evidence of publication of the attached *Notice of Virtual Hearing* consisting of the affidavits of the Editor or Business Managers of the newspapers where the said *Notice of Virtual Hearing* was published, and the complete issues of the said newspapers;
- 2) The evidence of actual posting of this *Order* and the attached *Notice of Virtual 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;
- 3) The evidence of other means employed by OMECO and OMCPD to inform the consumers affected of the filing of the *Joint Application*, its reasons therefor, and of the scheduled hearings thereon;
- 4) The evidence of receipt of copies of this *Order* and the attached *Notice of Virtual Hearing* by the OSG, COA, and the Committees on Energy of both Houses of Congress;
- 5) The evidence of receipt of copies of the *Joint Application* and its attachments by all those making requests therefor, if any; and
- 6) Such other proofs of compliance with the requirements of the Commission.

Moreover, Applicants are hereby required to post on their bulletin boards, the scanned copies of the foregoing jurisdictional requirements, together with the newspaper publications and certifications issued by the concerned Offices of the City and Municipal

Mayors, Provincial Governor and Local Legislative Bodies, and to submit proof of its posting thereof.

Applicants and all interested parties are also required to submit to the Commission via e-mail at docket@erc.ph, copy furnish the Legal Service through legal@erc.ph, at least five (5) calendar days before the date of the scheduled virtual hearing and Pre-trial Conference, their respective Pre-Trial Briefs containing, among others:

- 1) A summary of admitted facts and proposed stipulation of facts;
- 2) The issues to be tried or resolved;
- 3) The documents or exhibits to be presented, stating the purposes and proposed markings therefor, which should also be attached to the Pre-trial Brief; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-trial Brief.

OMECO and OMCPC must ensure that all the documents or exhibits proposed to be presented have already been duly submitted to the Commission at least five (5) calendar days before the date of the scheduled initial virtual hearing and Pre-trial Conference pursuant to the preceding paragraph.

Failure of OMECO and OMCPC to comply with the above requirements 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 the said date of cancellation.

OMECO and OMCPC must also be prepared to make an expository presentation of the instant *Joint Application*, aided by whatever communication medium that it 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, the nature of the *Joint Application* with relevant information and pertinent details substantiating the reasons and justifications being cited in support thereof.

OMECO and OMCPC are hereby directed to file a copy of their Expository Presentation via e-mail at docket@erc.ph, copy furnish the Legal Service through legal@erc.ph, at least five (5) calendar days prior to the scheduled virtual hearing. OMECO and OMCPC shall also be

required, upon the request of any stakeholder, to provide an advance copy of its expository presentation, at least five (5) calendar days prior to the scheduled virtual hearing.

Any interested stakeholder may submit its comments and/or clarifications at least one (1) calendar day prior to the scheduled virtual hearing, via e-mail at docket@erc.ph, copy furnish the Legal Service through legal@erc.ph. The Commission shall give priority to the stakeholders who have duly submitted their respective comments and/or clarifications, to discuss the same and propound questions during the course of the expository presentation.

Applicants are further directed to submit, either through personal service, registered or ordinary mail/private courier, one (1) set of the original or certified true hard/printed copy/ies of its Jurisdictional Compliance, Expository Presentation, Pre-trial Brief, and Judicial Affidavit/s of witness/es, within five (5) working days from the date that the same were electronically submitted, as reflected in the acknowledgment receipt e-mail sent by the Commission. Similarly, all interested parties who filed their Petition for Intervention or Opposition are required to submit the hard/printed copy thereof within the same period through any of the available modes of service.

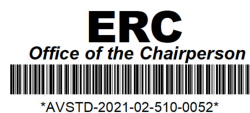
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Finally, OMECO and OMCP, including their authorized representative/s and witness/es, are hereby directed to provide the Commission, thru legal.virtualhearings@erc.ph, with their respective e-mail addresses upon receipt of this *Order*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearing.

SO ORDERED.

Pasig City, 09 February 2021.

FOR AND BY AUTHORITY
OF THE COMMISSION:




AGNES VST DEVANADERA
Chairperson and CEO


LS: RLDJ/CLB/MCCG

Copy Furnished:

1. Occidental Mindoro Electric Cooperative, Inc. (OMECO)
Applicant
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3. Occidental Mindoro Consolidated Power Corporation
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4. Lachica & Associates
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Email: contact@lachicaandassociates.com
5. Office of the Provincial Governor
Province of Occidental Mindoro

6. Office of the Sangguniang Panlalawigan
Province of Occidental Mindoro
7. Office of the Municipal Mayor
Abra de Ilog, Occidental Mindoro
8. Office of the LGU Legislative Body
Abra de Ilog, Occidental Mindoro
9. Office of the Municipal Mayor
Calintaan, Occidental Mindoro
10. Office of the LGU Legislative Body
Calintaan, Occidental Mindoro
11. Office of the Municipal Mayor
Magsaysay, Occidental Mindoro
12. Office of the LGU Legislative Body
Magsaysay, Occidental Mindoro
13. Office of the Municipal Mayor
Mamburao, Occidental Mindoro
14. Office of the LGU Legislative Body
Mamburao, Occidental Mindoro
15. Office of the Municipal Mayor
Paluan, Occidental Mindoro
16. Office of the LGU Legislative Body
Paluan, Occidental Mindoro
17. Office of the Municipal Mayor
Rizal, Occidental Mindoro
18. Office of the LGU Legislative Body
Rizal, Occidental Mindoro
19. Office of the Municipal Mayor
Sablayan, Occidental Mindoro
20. Office of the LGU Legislative Body
Sablayan, Occidental Mindoro
21. Office of the Municipal Mayor
San Jose, Occidental Mindoro
22. Office of the LGU Legislative Body
San Jose, Occidental Mindoro
23. Office of the Municipal Mayor
Sta. Cruz, Occidental Mindoro
24. Office of the LGU Legislative Body
Sta. Cruz, Occidental Mindoro
25. Philippine Chamber of Commerce and Industry (PCCI)
3rd Floor, Chamber and Industry Plaza (CIP),
1030 Campus Avenue corner Park Avenue, McKinley Town Center,
Fort Bonifacio, Taguig City

26. Office of the Solicitor General (OSG)
Amorsolo Street, Legaspi Village
Makati City
27. Commission on Audit (COA)
Commonwealth Ave.,
Quezon City
28. Senate Committee on Energy
GSIS Building, Roxas Boulevard
Pasay City
29. House Committee on Energy
Batasan Hills
Quezon City
30. Regulatory Operations Service (ROS)
Energy Regulatory Commission
17th floor, Pacific Center Building, San Miguel Ave.,
Ortigas Center, Pasig City