

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City



**IN THE MATTER OF
THE APPLICATION FOR THE
APPROVAL OF THE POWER
SUPPLY AGREEMENT
BETWEEN FIRST BAY POWER
CORPORATION (FBPC) AND AP
RENEWABLES, INC. (APRI),
WITH MOTION FOR
CONFIDENTIAL TREATMENT
OF INFORMATION AND
PRAYER FOR PROVISIONAL
AUTHORITY**

ERC CASE NO. 2021-007 RC

**FIRST BAY POWER
CORPORATION (FBPC) AND AP
RENEWABLES, INC. (APRI),**
Applicants.

Promulgated:
February 17, 2021

X ----- X

ORDER

On 26 January 2021, First Bay Power Corporation (FBPC) and AP Renewables, Inc. (APRI) filed a *Joint Application* dated 16 December 2020, seeking the Commission's approval of their Power Supply Agreement (PSA), with motion for confidential treatment of information and prayer for the issuance of provisional authority.

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

1. Applicant FBPC is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office located at Kapitan Ponso Ext., Poblacion 2, Bauan, Batangas. It is a franchised distribution utility engaged in the distribution of electricity and presently operates within the franchise area of the Municipality of Bauan, Province of Batangas.

2. Applicant APRI is a private corporation duly organized and existing under the laws of the Philippines, with principal office at NAC Tower, 32nd Street, Bonifacio Global City, Taguig City. APRI is the owner and operator of geothermal plants located in Sto. Tomas, Batangas; Bay, Laguna; Calauan, Laguna; and Tiwi, Albay.
3. Applicants may be served with notices, orders, and other processes of this Honorable Commission through their respective counsel at the addresses indicated below.

STATEMENT OF FACTS

4. On 21 March 2005, FBPC entered into a contract with Bauan Electric Light System (“BELS”), wherein the power to operate the electric distribution in the Municipality of Bauan, Batangas was transferred to FBPC, including its franchise.
5. Thereafter, on 30 June 2005, BELS was granted a franchise by the National Electrification Commission (NEC) to operate an electric light, heat, and power systems for the purpose of generating and/or distributing electricity for sale within the Municipality of Bauan, Province of Batangas for a period of twenty (20) years from expiry of its Certificate of Public Convenience and Necessity (CPCN) or until 30 June 2019.
6. By virtue of the transfer of the franchise, on 7 May 2014, FBPC filed an Application for the Approval of its own CPCN pursuant to ERC Resolution No. 5, Series of 2008¹, docketed as ERC Case No. 2014-031 MC², which is pending resolution from this Honorable Commission.
7. Meanwhile, on 2 September 2016, Republic Act No. 10891³ took effect, granting FBPC a franchise to construct, install, establish, operate, and maintain a distribution system for conveyance of electric power to the end users in the Municipality of Bauan, Province of Batangas.
8. FBPC needs ten (10) Megawatts (MW) power supply escalating up to fifteen (15) MW for a period of ten (10) years commencing on 26 January 2021. Consequently, FBPC conducted a Competitive Selection Process (CSP) in compliance with the requirements of the Department of Energy (DOE) Circular DC2018-02-0003⁴.
9. In the CSP conducted by FBPC, APRI’s offer was computed as the least calculated bid after successfully passing the

¹ A Resolution Adopting the Rules to Govern the Issuance of Certificate of Public Convenience and Necessity (CPCN) to Entities engaged in the Transmission and Distribution of Electricity;

² In the Matter of the Application for the Approval of Public Convenience and Necessity;

³ An Act Granting the First Bay Power Corp. (FPBC) A Franchise to Construct, Install, Establish, Operate and Maintain a Distribution System for the Conveyance of Electric Power to the End Users in the Municipality of Bauan, Province of Batangas;

⁴ Adopting and Prescribing the Policy for the Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreement for the Captive Market otherwise known as “CSP Rules”;

evaluation conducted by the Third Party Bids and Awards Committee (TPBAC) of FBPC and its Technical Working Group (TWG). APRI's bid was accepted and approved by the management of FBPC through a Notice of Award.

10. Accordingly, FBPC and APRI executed a Power Supply Agreement (PSA) for a period of ten (10) years.
11. Hence, this instant *Joint Application* for the approval of the PSA between FBPC and APRI subject of this *Joint Application*.

SALIENT TERMS OF THE PSA

12. The PSA between FBPC and APRI, a copy of which is attached as ANNEX "A" and "A-1" contains the following salient features:
 - 12.1. **Contract Term.** The PSA shall take effect on the Effective Date and shall remain in force for a period of ten (10) years from 26 January 2021 or until 2400h of 25 January 2031, unless earlier terminated in accordance with the provisions of this PSA.
 - 12.2. **Contracted Capacity and Contracted Energy.** The Contracted Capacity refers to the capacity of 10 MW escalating to 15MW up to the end of the Contract Term which FBPC intends to take or buy from APRI under this PSA.

Contract Year	Contracted Capacity (kW)
January 26, 2021 to January 25, 2022	10,000
January 26, 2022 to January 25, 2023	10,000
January 26, 2023 to January 25, 2024	11,000
January 26, 2024 to January 25, 2025	11,000
January 26, 2025 to January 25, 2026	11,000
January 26, 2026 to January 25, 2027	12,000
January 26, 2027 to January 25, 2028	12,000
January 26, 2028 to January 25, 2029	13,000
January 26, 2029 to January 25, 2030	14,000
January 26, 2030 to January 25, 2031	15,000

Contracted energy refers to the energy equivalent of 65% to 100% of the Contracted Capacity that FBPC intends to take or buy from APRI in accordance with this PSA.

APRI may source the Contracted Energy from power plants it owns and/or operates or any of those that is owned/operated by its affiliates, the WESM, or any

other third party supplier, provided that the corresponding BCQ shall be declared from any of APRI's market trading node identified in **Annex A (Delivery Schedule)** of the PSA.

FBPC shall pay the Contracted Capacity and its Associated Energy from 65% to 100% capacity utilization factor (CUF). The monthly capacity utilization factor (CUF_{month}) shall be computed using the following formula:

$$CUF_{month} = \frac{Q}{CC \times (H_T - EH_F)} \times 100\%$$

where, Q = Energy delivered by APRI for the Billing Period, in kWh;

CC = Contract Capacity, in kW;

H_T = Total number of hours in the Billing Period;

EH_F = The sum of the duration, in Equivalent Hours, of Force Majeure events for the subject Billing Period.

At any given time during the Contract Term, the Contract Capacity and its Associated Energy may be reduced equivalent to the reduction in the demand of FBPC's Captive Market by reason of the implementation of Retail Competition and Open Access, RA No. 9513 or the Renewable Energy Act of 2008, or other laws, and legal requirements to which FBPC is required to comply.

Any request for decrease of Contract Capacity and/or Contracted Energy shall be made in writing by FBPC at least thirty (30) days prior to the start of Delivery of the requested decrease, and APRI shall deliver its response in writing within ten (10) working days upon receipt of said request. Failure of APRI to provide a written response relative to said submission shall constitute its approval of the request.

FBPC shall be responsible on securing necessary government approvals for such decrease of Contract Capacity and/or its Associated Energy, when applicable.

- 12.3. **Additional Energy and Additional Energy Charge.** Additional Energy refers to the energy consumed by FBPC in excess of the Maximum Contract Energy per Interval with APRI.

Additional Energy Charge refers to the hourly WESM Ex-Ante Price at the Delivery Node multiplied by the difference between the actual consumption of FBPC

per Interval and the Maximum Contract Energy per Interval in case the actual consumption of FBPC per Interval is beyond the Maximum Contract Energy of FBPC per Interval.

- 12.4. **Payment of Fees.** APRI shall deliver to FBPC a Billing Statement on or before the seventh (7th) day of the month immediately succeeding each billing month. The Billing Statement shall reflect all charges applicable for the subject billing month based on the Contracted Energy Delivered by APRI to FBPC, subject to Article 5.5.

FBPC shall pay all monthly Electricity Fees, including all applicable taxes and charges identified in the Billing Statement on or before the Payment Date, provided that if such day falls on a Saturday, Sunday, a regular or special holiday, or a local holiday in Batangas, then the Payment Date shall be the first business day immediately succeeding the original Payment Date.

All fees and charges shall be billed by APRI and paid by FBPC in Philippine Peso. Payment shall be made by remittance of funds to the account of APRI including all taxes due and applicable to FBPC.

Payment Date refers to the 25th day of the month immediately succeeding the subject billing month.

In case FBPC consumes Additional Energy, APRI shall bill FBPC at the Ex-ante WESM Price at the Delivery Node and all applicable charges.

In case FBPC consumes less than its Minimum Contract Energy, APRI shall charge FBPC the Minimum Energy Charge. However, if failure to reach the Minimum Contract Energy is due to, but not limited to, Transmission System failure, outage on the side of FBPC due to an event of Force Majeure, temporary disconnection of a major captive customer due to an event of Force Majeure, and other Force Majeure-related reasons, APRI shall reduce the Minimum Contract Energy of FBPC for the billing month proportionate to the reduction of its consumption due to the event that caused its inability to meet the Minimum Contract Energy. FBPC shall provide documents to support its claim.

- 12.5. **Penalties.** If FBPC fails to pay its monthly Electricity Fees, the relevant and applicable taxes, or any other amount payable by it under this PSA in full on the Payment Date, APRI may (1) draw against the Security Deposit posted by FBPC, (2) pay a penalty equivalent to one percent (1%) of the amount due per month (a fraction of a month prorated based on the number of days for the month) until the date that such amount is

received in full by APRI, (3) temporarily reduce or suspend its obligation to generate and sell electric power to FBPC, and/or (4) direct NGCP or any other relevant entity to disconnect FBPC from the Grid.

- 12.6. **Taxes, Fees and Costs.** FBPC shall be liable for and pay (i) any and all taxes (including value-added tax, if any), fees, charges, levies and imposts imposed or assessed by any Governmental Authority on or in connection with the purchase and sale of electricity and/or payments due to APRI hereunder, and (ii) any new taxes, fees, charges, levies and imposts (including any increase in the rate or amount thereof after the date hereof but excluding income taxes imposed on APRI and fines and penalties directly attributed to APRI's gross negligence) after the date hereof in connection with the performance by APRI of its obligations pursuant to this PSA. Such payments shall be made as and when required pursuant to Applicable Laws in effect from time to time.
- 12.7. **Electricity Fees.** Electricity Fees refers to the total amount that FBPC has to pay APRI with respect to the Contract Capacity and Contracted Energy supplied by APRI to FBPC for the subject Billing Period, computed in accordance with Article 6.

FBPC shall pay all monthly Electricity Fees, including all applicable taxes and charges, in accordance with the agreed price structure set out in “**Annex B: Price Structure**”.

$$\text{Electricity Fees} = \mathbf{A + B + C + D + E}$$

All computations on payments to APRI shall not be rounded off, except for the final PHP amount, which shall be rounded off to the nearest Philippine centavo.

Where:

$$A = CRF \times CC \times Adj$$

$$CRF = 1,138.19 \text{ PhP/kW-mo}$$

CC = the Contracted Capacity in kW

$$Adj = \sum_{j=1}^n \sum_{i=1}^{Int} \frac{ACC_{ij}}{CC \times Int \times n}$$

ACC_{ij} = CC less affected capacity due to Force Majeure for interval i and day j,

Int = the number of Intervals per day

n = the number of days for the current Billing Period

$$B = FOM \times CC \times Adj$$

$$FOM = \text{Base FOM} \times \frac{RPCPI_{y-1}}{RPCPI_{y-2}}$$

$$\text{Base FOM} = 238 \text{ Php/kW/mo}$$

$RPCPI_{y-1}$ = the Philippine Consumer Price Index for All Income Households in the Philippines – All Items (2012=100) published as of the end of December for year y-1, the year prior to which the Invoice is being prepared

$RPCPI_{y-2}$ = the Philippine Consumer Price Index for All Income Households in the Philippines – All Items (2012=100) as of the end of December for year y-2, two years prior to which the Invoice is being prepared

CC = as previously defined

Adj = as previously defined

$$C = VOM \times TED$$

$$VOM = 0.1325 \text{ P/kWh}$$

TED = the total energy delivered (in kWh) during the current Billing Period within the Maximum Contract Energy per Interval and within the Maximum Contract Energy per Billing Period

$$D = \text{Fuel} \times TED$$

$$\text{Fuel} = \text{Base Fuel Fee} \times \frac{N_m}{N_o} \times \frac{FX_m}{FX_o}$$

$$\text{Base Fuel Fee} = 1.69 \text{ Php/kWh}$$

N_m = the average Newcastle index (USD/MT) for the last three calendar months prior to the Billing Period for which the Invoice is being prepared, as posted by globalCOAL on the website www.globalcoal.com or its successor or, if globalCOAL ceases to report the Newcastle Index, an agreed upon replacement source that reports the Newcastle Index shall be adopted by the Parties

N_o = the Newcastle index of 65.95 USD/MT

FX_m = the average of the PHP/USD exchange rate for the last three calendar months prior to the Billing Period for which the invoice is being prepared, as published in the Bangko Sentral ng Pilipinas website

FX_o = the PHP/USD exchange rate of 52.1052

In the event that revisions are made on the above indices, including any shift made in the base year and other adjustments to such index made by the relevant authorized entity, its successor-in-interest, there shall be a corresponding change in the base index such that the use of the revised index will yield the equivalent values as the use of the original base index.

In the event that the index (a) becomes unavailable, (b) is replaced by a new benchmark rate as determined by the relevant authorized entity, its successor-in-interest, or (c) ceases to exist, or (d) in the reasonable determination of either Party, fails to reflect the real costs and forms an integral part of this price mechanism, the Parties shall agree to adopt a new price index.

TED = as previously defined

E = all existing and future taxes, fees and imposts (and any increase or adjustments thereon), real property taxes, local business taxes, transmission charges, and other charges imposed on the Power Plant, including the Pass-through Charges, in Philippine Pesos

13. FBPC simulated a rate impact analysis based on assumed quantities, which resulted in an estimated effective rate of PhP4.0247 per kWh, or a reduction of PhP0.5788 with the execution of the PSA with APRI:

<i>in P/kWH</i>	Previous Rate*	New Rate	Rate Impact
Average Price**	4.6035	4.0247	0.5788
Value-Added Tax	0	0	0
Total	4.6035	4.0247	0.5788

*Assumptions: *Based on applied rates under ERC Case No. 2013-031 RC. While the case remains pending, NPC TOU rates have been implemented.*

***Using April 2020 to September 2020 billing periods at 70% CUF.*

14. Likewise, the Applicants provide the following documents for the evaluation of the Joint Application:

Description of Document	Annex
FBPC's Articles of Incorporation and By-Laws	"B" and series
FBPC's General Information Sheet (which shows the list of Directors)	"C"

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FBPC's Demand Side Management Program	"D"
FBPC's Supply and Demand Scenario	"E"
FBPC's Rate Impact Simulation	"F"
FBPC's Certification on the Non-Applicability of the NPC Certification	"G"
Affidavit of Publication; CSP Evaluation Cover Letter dated 9 September 2020; FBPC Evaluation Report – APRI; FBPC Evaluation Report – SEM Calaca Power Corporation; Financial Bid Proposals – SN Aboitiz Power – Magat Inc., Bac-Man Geothermal Inc., SEM Calaca Power Corporation, and APRI; FBPC Board Resolution No. 0258-2020, Resolution Approving the FBPC's TPBAC Evaluation of CSP for 10 MW Supply, dated 10 September 2020; FBPC Certification of Conduct of CSP dated 8 October 2020; Notice of Award; Letters to DOE dated 15 April 2020, 30 April 2020, 7 July 2020 and DOE Comment dated 23 April 2020; and Timeline of CSP Process	"H" and series
APRI's Amended Articles of Incorporation and By-Laws	"I" and series
APRI's SEC Certificate of Incorporation with the Securities and Exchange Commission ("SEC")	"J"
APRI's General Information Sheet ("GIS")	"K"
APRI's Diagram of Corporate Structure/Organizational Chart	"L"
APRI's Board of Investments ("BOI") Certificates of Registration Nos. 2009-083, 2009-084, and 2016-152	"M" and series
APRI's Environmental Compliance Certificate ("ECC") Ref. Nos. 9206-041-203C, 0112-871-203, 9112-037-203, 0109-642-203, including ECC Transfer of Ownership for MakBan and Tiwi Geothermal Power Plant Projects	"N" and series
APRI's Certificate of Compliance ("COC") Nos. 17-05-M-00105L, 15-11-M-00028L, 15-11-M-286rL APRI's PAO for Makban Units A-E Plant dated June 30, 2020	"O" and series
APRI's DOE Certificate of Endorsement	"P"
APRI's Geothermal Renewable Energy Operating Contracts for Tiwi and Makban	"Q" and "Q-1"
APRI's DOE Certificate of Registration	"R"

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APRI's Transmission Service Agreement with National Grid Corporation of the Philippines ("NGCP")	"S"
APRI's Connection Agreement with NGCP	"T"
APRI's Metering Services Agreement with NGCP	"U"
Executive Summary of the PSA	"V"
APRI's Sources of Funds/Financial Plans; Generation Rate and Derivation; Cash Flow; APRI's Bank Certifications; Breakdown of the base prices; Capital Recovery Fee, Fixed and Variable O&M, and Fuel Fee; Basis/rationale of indexation including the sources, reference date, and weight of indexation; Basis/rationale/derivation of Other Charges such as replacement, start-up, pre-commercial costs; and Equivalent Php/kWh with assumptions for foreign denominated rates	"W" and series*
Sample Bill	"X"
APRI's Explanation on Fuel Procurement	"Y"*
Technical and economic characteristics of the generation capacity	"Z"
APRI's 2019 Audited Financial Statements	"AA"
Simulation of the Minimum Energy Off-Take (MEOT)	"BB"
APRI's Write-Up on the Non-Applicability of the following: <ul style="list-style-type: none"> ● Shareholders' Agreement; ● Related agreements (like Transmission Wheeling Contract, IPPA Agreement, EPC Contract, O&M Contract, Wholesale Aggregator Agreement, Project Feasibility Study); ● Certification (from the engine manufacturer or IPP) of the net heat rate (initial and every after major maintenance schedule) in liters per kwh; and ● Potential cost (absolute amounts and Php/kWh) of Ancillary Services as when the IPP or the DU is connected to the main grid 	"CC"
Affidavit of Ray Florence T. Reyes	"DD"

* **Subject of the Motion for Confidential Treatment of Information**

**MOTION FOR CONFIDENTIAL TREATMENT OF
ANNEX "W" and series and ANNEX "Y"**

15. Under the ERC Rules of Practice and Procedure, a party to any proceeding before the Honorable Commission may request that certain information not be disclosed and be treated as

confidential.⁵ Pursuant to this, APRI prays for the confidential treatment of the information contained in the following annexes:

Documents and/or Information	Annex
APRI's Sources of Funds/Financial Plans; Generation Rate and Derivation; Cash Flow; APRI's Bank Certifications; Breakdown of the base prices; Capital Recovery Fee, Fixed and Variable O&M, and Fuel Fee; Basis/rationale of indexation including the sources, reference date, and weight of indexation; Basis/rationale/derivation of Other Charges such as replacement, start-up, pre-commercial costs; and Equivalent Php/kWh with assumptions for foreign denominated rates	“W” and series
APRI's Explanation on Fuel Procurement	“Y”

16. The foregoing annexes contain non-public, proprietary information and data involving APRI's investments, business operations, and financial calculations. APRI determines its competitive rates through its power rate calculations and its financial model, the methodology thereof is privileged and confidential in nature and is not generally available to the public. APRI's competitiveness will seriously be prejudiced if this information is unduly disclosed.

17. Considering that APRI has actual and valuable proprietary interest to protect with respect to such information, **Annex “W” and series and Annex “Y”** fall within the bounds of “trade secrets”, which are entitled to protection under the Constitution, statutes, and rules and regulations of this Honorable Commission.

18. In the case of *Air Philippines Corporation vs. Pennswell, Inc.*,⁶ the Supreme Court defined “trade secrets” and explained that:

“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 a 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 an advantage over competitors who do not possess the information. Generally, a trade

⁵ Section 1, Rule 4, ERC Rules of Practice and Procedure, ERC Resolution No. 38, Series of 2006;

⁶ 564 Phil. 774 (2007), G.R. No. 172835;

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.”** (*Emphasis supplied.*)

19. Moreover, the Honorable Commission categorically acknowledged in its Decision in ERC Case No. 2015-111 RC⁷ that formulas and pricing structures of a generation company must be accorded confidential protection,

“In the case of PNOC RC, the documents sought to be protected from disclosure contain formula and pricing structures used in arriving at their proposed tariff. In fact, all three (3) documents were used by the Commission in evaluating the reasonableness of the proposed rate. **In the electric power industry w(h)ere prices is[sic] a major consideration in selecting one’s supplier, it is apparent that the assumptions used in arriving at one’s proposed tariff is considered a competitive leverage by one player against its competitors.**

Thus, the Commission resolves to treat the said documents confidential and may not be publicly disclosed.” (*Emphasis supplied.*)

20. Clearly, the Honorable Commission recognizes the importance of treating pricing structures as confidential in order to ensure competitiveness of the generation sector. This information, which falls within the definition of a trade secret as defined by jurisprudence, merits the confidential treatment provided for under Rule 4 of the ERC Rules of Practice and Procedure.
21. APRI hereby submits one (1) copy of each of the foregoing confidential documents in a sealed envelope, with the envelope and each page of the document stamped with the word “Confidential”.⁸

ALLEGATIONS IN SUPPORT OF THE PRAYER FOR PROVISIONAL AUTHORITY

22. Under Rules 14 of the ERC Rules of Practice and Procedure, the Honorable Commission is authorized to issue provisional authority or interim relief prior to a final decision, provided the facts and circumstances alleged warrant such remedy.
23. As shown from the comparative scenarios of the Rate Impact Analysis, the PSA between FBPC and APRI reflects the most

⁷ Decision, ERC Case No. 2015-111 RC dated 30 May 2017 entitled “*In the Matter of the Application for Approval of the Power Supply Agreement Between Nueva Ecija II Electric Cooperative, Inc.-Area 2 (NEECO II – Area 2) and PNOC Renewables Corporation (PNOC RC).*”;

⁸ Soft copies of the same to be provided to this Honorable Commission are password protected; and

beneficial and cheapest generation charges with a resultant reduction rate of Php 0.5788/kWh. Consequently, the current rate of Php 4.6035/kWh will be reduced to Php 4.0247/kWh.

24. The implementation of the PSA with APRI will afford FBPC's end-users with a reliable supply of electricity at affordable rates.
25. The grant of a provisional authority will allow FBPC to immediately draw power under the PSA by 26 January 2021. This in turn will immediately redound to the benefit of FBPC's end-users in terms of providing continuous, efficient, and affordable supply of electricity. To support the Motion for Provisional Authority, the Affidavit of Ray Florence T. Reyes is attached as **Annex "DD"** of the Application.

PRAYER

WHEREFORE, premises considered, it is respectfully prayed that the Honorable Commission:

- (i) **ISSUE** an Order treating **Annex "W" and series and Annex "Y"** as confidential, directing their non-disclosure to persons other than the officers and staff of the Honorable Commission, perpetually 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
- (ii) **GRANT** the provisional authority prayed for by FBPC to confirm its authority to implement the PSA; and
- (iii) After hearing on the merits, **ISSUE** a Decision approving the Joint Application and PSA between FBPC and APRI, including all the rates, fees, charges, and tariff adjustment mechanisms set out therein at the rates provided in the PSA, and authorizing FBPC to charge and collect the fees therein from its customers reckoned from the start of the supply by APRI to FBPC under the PSA.

Other relief just and reasonable are likewise prayed for.

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 09, Series of 2020⁹, dated 24 September 2020:

Date	Platform	Activity
<p>14 April 2021 (Wednesday) at nine o'clock in the morning (9:00 A.M.)</p>	<p>Microsoft Teams Application</p>	<p>Determination of compliance with the jurisdictional requirements and Expository Presentation</p>
<p>21 April 2021 (Wednesday) at nine o'clock in the morning (9:00 A.M.)</p>		<p>Pre-trial Conference and Presentation of Evidence</p>

Accordingly, FBPC and APRI are hereby directed to host the virtual hearings at **FBPC's Principal Office in Kapitan Ponso Ext., Poblacion 2, Bauan, Batangas**, as the designated venue for the conduct thereof, and ensure that the same is open to the public and that the community quarantine guidelines are observed at all times. Moreover, Applicants shall guarantee that, during the conduct of the Expository Presentation, the participation of the public shall not be impaired.

RELATIVE THERETO, FBPC and APRI 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/s, the City and the Municipal Mayors, and the Local Government Unit (LGU) legislative bodies within the Applicants' franchise areas for the appropriate posting thereof on their respective bulletin boards;

⁹ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

- 3) Inform the consumers within the Applicants' franchise areas, by any other means available and appropriate, of the filing of the *Joint Application*, their reasons therefor, and of the scheduled virtual hearings thereon;
- 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 and attend the scheduled hearings; and
- 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 initial virtual hearing, FBPC and APRI must submit to the Commission via electronic mail (e-mail) at docket@erc.ph and records@erc.gov.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 affidavits of the Editors 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/s, Mayors, and LGU legislative bodies or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by FBPC and APRI 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, FBPC and APRI are hereby required to post on their respective bulletin boards, the scanned copies of the foregoing jurisdictional requirements, together with the newspaper publications and certifications issued by the concerned Offices of the Provincial Governor/s, Mayors, and Local Legislative Bodies, and to submit proofs of their posting thereof.

FBPC and APRI and all interested parties are also required to submit to the Commission via e-mail at docket@erc.ph and records@erc.gov.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.

FBPC and APRI 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 FBPC and APRI to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearings, and the resetting of which shall be six (6) months from the said date of cancellation.

FBPC and APRI must also be prepared to make an expository presentation of the instant *Joint 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, the nature of the *Joint Application* with relevant information and pertinent details substantiating the reasons and justifications being cited in support thereof.

FBPC and APRI are hereby directed to file a copy of their Expository Presentation via e-mail at doCKET@erc.ph and records@erc.gov.ph, copy furnish the Legal Service through legal@erc.ph, at least five (5) calendar days prior to the scheduled initial virtual hearing. FBPC and APRI shall also be required, upon the request of any stakeholder, to provide an advance copy of their expository presentation, at least five (5) calendar days prior to the scheduled initial virtual hearing.

Any interested stakeholder may submit its comments and/or clarifications at least one (1) calendar day prior to the scheduled initial virtual hearing, via e-mail at doCKET@erc.ph and records@erc.gov.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.

FBPC and APRI are hereby 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 their 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.

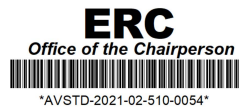
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Finally, FBPC and APRI, including their authorized representative/s and witness/es, are hereby directed to provide the Commission, thru legal.virtualhearings@erc.ph with their respective e-mail addresses upon receipt of this *Order*. The Commission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

SO ORDERED.

Pasig City, 01 February 2021.

FOR AND BY AUTHORITY
OF THE COMMISSION:




AGNES VST DEVANADERA
Chairperson & CEO


LS: [ema/arg/mccg.2021-007 RC FBPC and APRI_PSA_IO.doc](#)

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Province of Laguna
12. Office of the LGU Legislative Body
Province of Laguna
13. Office of the Governor
Province of Albay
14. Office of the LGU Legislative Body
Province of Albay
15. Office of the City Mayor
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16. Office of the LGU Legislative Body
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17. Office of the Municipal Mayor
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18. Office of the Sangguniang Bayan
Bauan, Batangas
19. Office of the Municipal Mayor
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21. Office of the Municipal Mayor
Bay, Laguna
22. Office of the Sangguniang Bayan
Bay, Laguna

23. Office of the Municipal Mayor
Calauan, Laguna
24. Office of the Sangguniang Bayan
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26. Office of the Sangguniang Bayan
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