

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City



**IN THE MATTER OF THE
APPLICATION FOR THE
APPROVAL OF THE
EMERGENCY ELECTRIC
POWER PURCHASE
AGREEMENT (EPPA)
BETWEEN MORE ELECTRIC
AND POWER CORPORATION
AND PANAY POWER
CORPORATION**

ERC CASE NO. 2021-063 RC

**MORE ELECTRIC AND
POWER CORPORATION AND
PANAY POWER
CORPORATION,**
Joint Applicants.

Promulgated:
September 20, 2021

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O R D E R

On 05 August 2021, More Electric and Power Corporation (MORE) and Panay Power Corporation (PPC) filed a *Joint Application* dated 20 May 2021, seeking the Commission's approval of their Emergency Electric Power Purchase Agreement (EPPA).

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

THE JOINT APPLICANTS

1. Applicant More Electric and Power Corporation (MORE) is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal address at GST Building, Quezon St., Iloilo City. It is a private electric distribution utility duly enfranchised under Republic Act No. 11212 to establish, operate and maintain, for commercial purposes and in the public interest, a distribution system for the conveyance of electric power to end users in the City of Iloilo. In the Honorable Commission's Order dated March 5, 2020, in ERC Case No. 2018-019MC, entitled "*In the Matter of the Application for the Issuance of a Certificate of Public*

Convenience and Necessity for the Operation of the Electric Distribution System for Iloilo City, with a Prayer for Provisional Authority” (hereafter, the “MORE CPCN Application”), Applicant MORE was issued a Provisional Authority to operate the Iloilo City distribution network.

2. Applicant Panay Power Corporation (PPC) is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal address at Brgy. Ingore, La Paz, Iloilo City. It owns and operates the 94.88 MW PPC1 and PPC2 Bunker C-Fired Diesel Power Plants and its 1.0MW Black Start Diesel Engine Generating Unit located in Brgy. Ingore, La Paz, Iloilo City, with a Provisional Authority to Operate dated 27 August 2020.
3. Applicants may be served notices, orders and other processes of the Honorable Commission through their respective counsels at their addresses indicated below.

NARRATION OF FACTS

4. On February 14, 2019, Republic Act No. 11212 was signed into law granting Applicant MORE a franchise to establish, operate and maintain a distribution system in Iloilo City for a period of 25 years. Section 5 of RA No. 11212 provides:

The grantee is required to source and procure its power requirements in accordance with the applicable rules and orders of the ERC: Provided, That, the grantee, immediately after the enactment of this Act, may be allowed to avail of the negotiated procurement of emergency power supply under the DOE circular DC 2018-02-0003... (Underscoring supplied).

5. DOE Circular No. DC2018-02-003 (hereafter, the “CSP Rules”) provides as follows:

- 2.2 All PSAs shall be procured through CSP: Provided however, that the following instances shall warrant a Certificate of Exemption from the Department of Energy (DOE) on the conduct of CSP:

xxx xxx xxx

- 2.2.2. Negotiated procurement of emergency power supply; Provided, that the cooperation period of the corresponding PSA shall not exceed one (1) year; Provided further, that the rate shall not be higher than the latest ERC approved generation tariff for the same or similar

technology in the area; (Underscoring supplied).

6. Following the grant of its legislative franchise, Applicant MORE filed expropriation proceedings before the Regional Trial Court (RTC) of Iloilo City Branch 23 (hereafter, the “Expropriation Court”), against the distribution facilities of Panay Electric Company, Inc. (PECO) under Case No. 19-34158 entitled “*MORE Electric and Power Corporation vs. Panay Electric Company, Inc.*”
7. Applicants MORE and PPC began negotiations on the emergency power supply agreement pursuant to the mandate of RA 11212 and the CSP rules. Applicant MORE recognized that due to the existing limited connection of the distribution system in Iloilo City to the Panay Grid, it had to contract with Applicant PPC in order to secure the power requirements of the said city upon its takeover.
8. By virtue of a Writ of Possession issued by the Expropriation Court, Applicant MORE was installed in the possession and control of the distribution facilities of Iloilo City on February 29, 2020.
9. Following the take-over of PECO’s distribution assets on February 29, 2020, Applicant MORE did not have time to conduct a Competitive Selection Process (CSP) to source power for the people of Iloilo City. Power had to be supplied on an emergency basis and distributed to the people of Iloilo City from the very second Applicant MORE took possession and control of the distribution network. Applicant MORE had to ensure that there was no power interruption in spite of the take-over.
10. Applicants respectfully note that as far as they are aware, there is no precedent for this situation. The grant of legislative franchise to Applicant MORE is the first time that the distribution franchise of the then distribution utility (PECO) was not renewed upon expiration, and instead, a new franchise was issued to a new distribution utility (Applicant MORE). This is also the first time that the incoming distribution utility expropriated and took over the distribution assets of the outgoing distribution utility.
11. Applicants also note that RA No. 11212 did not set a specific date for the turn-over of the distribution assets to Applicant MORE. While RA No. 11212 provided for a maximum 2-year transition period, no specific date was set for the take-over. Applicant MORE had to wait for the Expropriation Court to issue and implement the Writ of Possession before it could take over PECO’s distribution assets. The situation was very fluid.
12. It was therefore very hard to tell when the take-over would happen, or if it would happen especially considering the cases

PECO filed to question Applicant MORE's authority to expropriate.

13. The urgency and fluidity of the situation therefore did not afford Applicant MORE time to conduct a CSP for the sourcing of its power supply. The situation necessitated the sourcing of power supply on an emergency basis from PECO's then power suppliers in order to ensure that there was no power interruption during the transition.
14. The foregoing urgency was recognized by no less than the Honorable Commission when it issued an Order dated March 5, 2020 in the MORE CPCN Application which provides as follows:

WHEREFORE, mindful of its mandates to protect consumer interest, ensure uninterrupted electric service to consumers in Iloilo City, prevent chaos and confusion and promote order, the Commission hereby RESOLVES TO ADOPT the following resolutions:

xxx xxx xxx

2. Issue a Provisional Authority, pursuant to Sec. 8 of EO 172, authorizing MORE to operate the distribution network;
3. Authorize MORE to implement the last approved distribution charges of PECO; and
4. Require MORE to source and procure its power requirements in accordance with Section 5 of RA 11212. While MORE is unable to secure the Certificate of Exemption from the Department of Energy (DOE) necessary to enter into emergency power supply agreements, it shall source its power requirements from the current power generation suppliers of PECO.

SO ORDERED. (Underscoring supplied).

A copy of the Honorable Commission's March 5, 2020 Order in the MORE CPCN Application is attached and made an integral part hereof as Annex EEE.

15. Applicant PPC was a power supplier of PECO at the time Applicant MORE took over PECO's distribution assets on February 29, 2020.
16. In view of and pursuant to the foregoing, and mindful of its undertaking to the Honorable Commission and the Honorable Department of Energy (DOE) that there will be no power interruption in the City of Iloilo, Applicant PPC

supplied power to Applicant MORE during and after the events surrounding Applicant MORE's taking possession of the Iloilo City distribution network on February 29, 2020.

17. The Applicants thereafter entered into an Emergency Electric Power Purchase Agreement (hereafter, the "Emergency EPPA"). The Emergency EPPA was executed in counterparts on account of the Covid-19 pandemic. Applicant PPC's counterpart was notarized on May 26, 2020. Thereafter, the Emergency EPPA was transmitted to Applicant MORE. Applicant MORE's counterpart was notarized on June 22, 2020. The Applicants initially agreed for the Emergency EPPA to become effective on May 26, 2020. However, on November 4, 2020, the Honorable DOE issued to Applicant MORE the Certificate of Exemption No. COE-CSP-2020-09-001 (hereafter, the "COE") stating that the Emergency EPPA shall become effective on June 4, 2020. A copy of the Emergency EPPA is attached and made an integral part hereof as Annex Y.
18. Section 11.4 of the Emergency EPPA states that one of the conditions for the Commercial Operations Date shall be the issuance by the Honorable DOE of a Certificate of Exemption pursuant to the CSP Rules.

COMPLIANCE WITH THE CSP RULES.
EXEMPTION FROM
COMPETITIVE SELECTION PROCESS.

19. On 27 May 2020, Applicant MORE submitted a copy of the Emergency EPPA to the Honorable DOE with a request for the issuance of a Certificate of Exemption.
20. On November 4, 2020, the Honorable DOE issued to Applicant MORE the Certificate of Exemption No. COE-CSP-2020-09-001. The COE provides as follows:

This is to certify that MORE ELECTRIC AND POWER CORPORATION (MEPC) is exempted from the conduct of COMPETITIVE SELECTION PROCESS (CSP) for the Electric Power Purchase Agreements (EPPAs) for the Emergency Power Supply with PANAY ENERGY DEVELOPMENT CORPORATION and PANAY POWER CORPORATION for the period 4 June 2020 to 3 June 2021 with contracted capacity of 62 MW and 20 MW, respectively. (Underscoring supplied).

SALIENT PROVISIONS
OF THE EMERGENCY EPPA

The salient provisions of the Emergency EPPA are as follows. For purposes of the succeeding discussions, Applicant MORE

is referred to as “Buyer” while Applicant PPC is referred to as “Seller”.

21. Contract Capacity
 - 21.1. Contracted Capacity: 20 MW
 - 21.2. Optional Reduction in Contracted Capacity. At any time from the 181st day of the Cooperation Period onwards, the BUYER shall have the option to transfer up to 20MW of its Contracted Capacity to Panay Energy Development Corporation (PEDC) (the “Buyer’s Option”). The Buyer’s Option may be exercised for the entire 20 MW, or in two tranches of blocks of 10 MW each.

[Note: This Buyer’s Option has not yet been exercised. PEDC is Applicant PPC’s affiliate. PEDC also has an emergency power supply agreement with Applicant MORE that is subject of a separate application before the Honorable Commission. MORE, PEDC and PPC’s Emergency EPPAs effectively grant MORE the option to manage costs by reducing the contracted capacity from PPC (diesel) and transferring that capacity to PEDC (coal) when line capacities permit.]
 - 21.3. Additional Contracted Capacity: In the event the Seller has available capacity, the Seller shall have the right (but not the obligation) to supply the Buyer the additional capacity. Such additional contracted capacity shall be subject to the same Electricity Fees as provided in Schedule 3 of the Emergency EPPA.
 - 21.4. Replacement Power for PEDC in Event of Constraints. Without limiting the generality of the foregoing, in the event that PEDC’s generating plants are on Outage and the replacement power requirements of the Buyer under its Electric Power Purchase Agreement with PEDC cannot be fully supplied by PEDC from its plants or from WESM due to line constraints, the Buyer may source the aforesaid replacement power supply requirements from the Seller. If the capacity is available, the Seller shall supply such requirements which shall be billed in accordance with Schedule 3 of the PPC-MORE Emergency EPPA.
22. Generation Source: PPC1 and PPC2
23. Cooperation Period: One (1) year from Commercial Operations Date.
24. Commercial Operations Date: The Parties shall jointly declare the specific date and time for the start of Commercial Operations Date, upon which date and time the obligation of the Seller to supply the Contracted Capacity and its Associated

Energy and the obligation of the Buyer to accept, receive and pay for the same shall take effect. In this case, the Commercial Operations Date of the Emergency EPPA shall be from June 4, 2020 until June 3, 2021 pursuant to the DOE Certificate of Exemption No. COE-CSP-2020-09-001.

25. Electricity Fees. Buyer shall pay the Electricity Fees in accordance with Schedule 3 of the Emergency EPPA.

An Electricity Fees Matrix for the Emergency EPPA is attached and made an integral part hereof as Annex Y-1.

26. Other Charges. Universal Charge, Feed-in-Tariff, line rentals, market fees, net settlement surplus/deficit, must run unit charges/adjustments, price substitution methodology adjustments, site specific loss adjustments, other WESM-related costs, charges, penalties and taxes, transmission charges and other charges, costs, expenses, penalties, fees and taxes that may now or in the future be charged to, incurred and/or assumed by the Seller for the supply of electricity, and/or for the transmission of electricity to the Buyer, and/or for Ancillary Services and other related services under the Emergency EPPA shall be for the account of the Buyer.

SUPPLY-DEMAND SCENARIO

27. Below is the Supply-Demand Scenario for the Iloilo City franchise area:

27.1. SUPPLY-DEMAND SCENARIO

Demand & Supply	Historical		Forecasted					
	2018	2019	2020	2021	2022	2023	2024	2025
Peak Demand	118.01	124.47	112.03	114.62	117.27	119.98	122.75	125.58
Supplier/s:								
PEDC	65.00	65.00	62.00					
PPC	15.00	15.00	20.00					
PCPC	10.00	10.00						
KSPC			5.00					
APRI			10.00					
Total Supply (MW)	90.00	90.00	97.00	0.00	0.00	0.00	0.00	0.00
Deficit/Surplus	28.01	34.47	15.03	114.62	117.27	119.98	122.75	125.58

Power Suppliers:

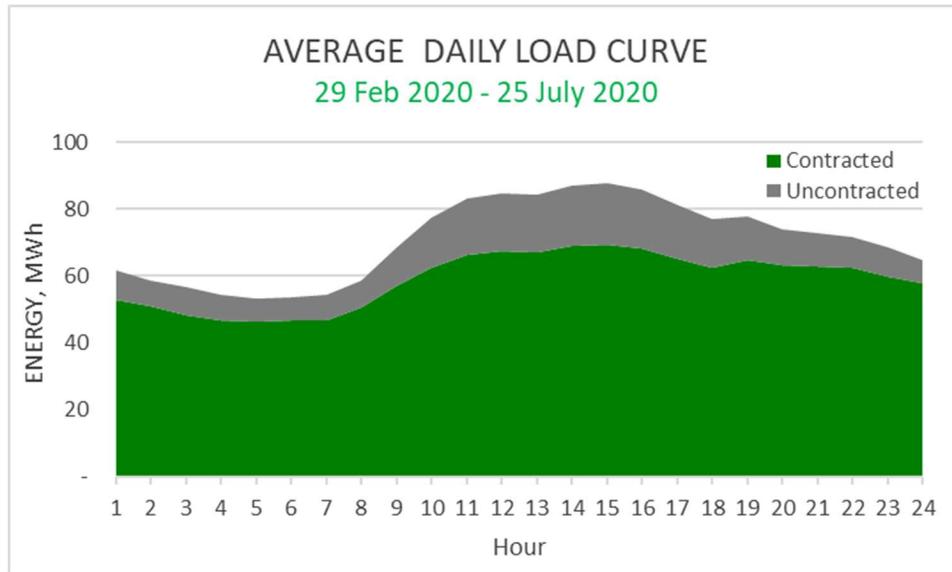
PPC - Panay Energy Development Corporation
 PPC - Panay Power Corporation
 PCPC - Palm Concepcion Power Corporation
 APRI - Aboitiz Power Renewables, Incorporated
 KSPC - KEPCO-SPC Power Corporation

Remarks:

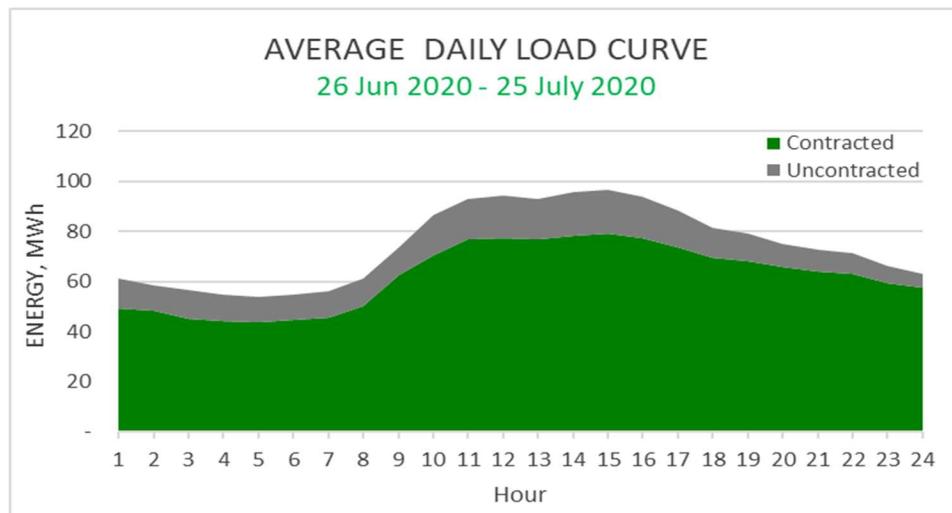
1. Historical 2018 and 2019 - demand and supply situation of the previous operator DU, Panay Electric Company (PECO).

2. 2020 - current MORE Power demand and supply situation. Under Section 5 of RA 11212, MORE Power is authorized to avail of negotiated procurement of emergency power supply under the Department of Energy Department Circular DC 2018-02-003. Power Supply Agreements entered into by MORE Power with PPC, PPC, KSPC & APRI are emergency power supply contract for a period of one (1) year only.
3. 2021 Onwards - forecasted demand based on the 2.31% annual average growth rate of Iloilo City as published in the Distribution Development Plan by the Department of Energy (DOE). Demand continuously lower and is expected to increase gradually due to movement limitation caused by pandemic COVID-19. As mandated, supply from 2021 onwards will be subject to a Competitive Selection Process (CSP).

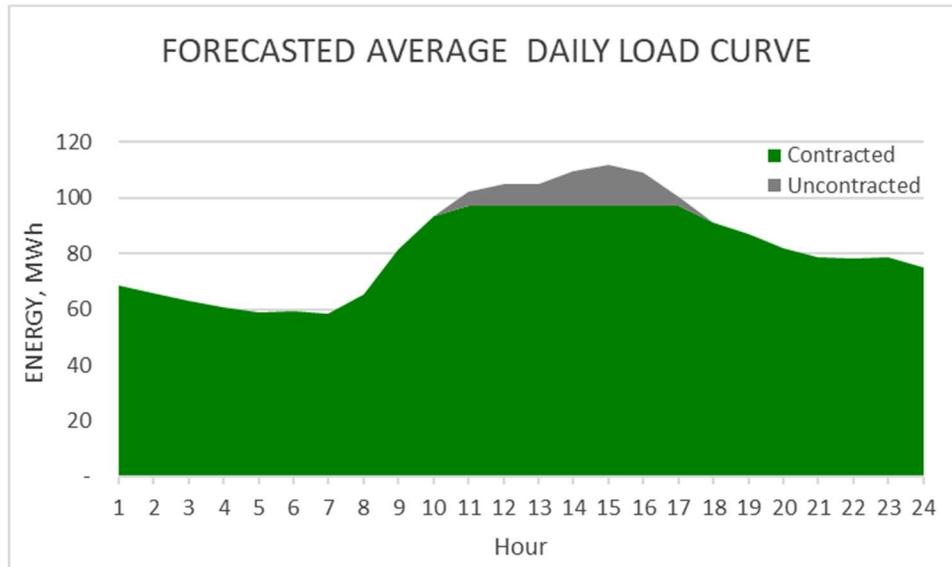
27.2. AVERAGE DAILY LOAD CURVE



Remarks: Actual assumption by MORE Electric and Power Corporation (MORE Power) of the operation of the distribution system in Iloilo City on Feb 29, 2020.



Remarks: Supply of power from Aboitiz Power Renewables, Incorporated (APRI) commenced on May 26, 2020.



RATE IMPACT ANALYSIS

- 28. The table in Annex SS (Rate Impact Analysis) shows in greater detail the estimated rate impact of Applicant MORE's generation rate.
- 29. In summary, the supply of power from Applicant PPC will result to a decrease in the total generation rate of P1.0175/kWh (VAT exclusive).

In Php/kWh	Amount	VAT	Total
Total blended generation rate, P/kWh (with PPC)	6.0758	0.6395	6.7153
Total blended generation rate, P/kWh (without PPC)	7.0934	0.7082	7.8015
Difference	-1.0175	-0.0687	-1.0862

- 30. Whereas, if compared to the previous DU's (PECO's) 2019 average generation rate of P8.2061/kWh (VAT inclusive), the resulting total generation rate (VAT Inclusive) will further decrease by P1.4908/kWh.

Php/kWh	Amount	VAT	Total
Total blended generation rate, P/kWh (with PPC)	6.0758	0.6395	6.7153
2019 PECO Average Generation Rate, P/kWh	7.3929	0.8132	8.2061
Difference	-1.3171	-0.1738	-1.4908

ALLEGATIONS IN SUPPORT OF
 THE EMERGENCY EPPA RATE

31. Section 2.2.2 of the CSP Rules provides that the rate for the emergency power supply “*shall not be higher than the latest ERC approved generation tariff for the same or similar technology in the area.*”
32. The latest ERC-approved generation tariff for the same or similar technology in Panay Island (where Applicant MORE’s distribution network and where Applicant PPC’s power plants are located) is the generation rate for the supply of power between SPC Island Power Corporation and Iloilo III Electric Cooperative, Inc. (ILECO III) in the Honorable Commission’s Order dated 18 March 2016 in ERC Case No. 2016-001RC.
33. Attached as Annex TT is a Generation Rate Comparative Matrix showing that the rate being charged in the Applicants’ Emergency EPPA is not higher – but in fact lower - than the rate approved by the Honorable Commission in the foregoing power supply agreement. The rates under Applicant’s Emergency EPPA is subject of Applicant PPC’s motion for confidential treatment of information. The allegations in support of the said motion are provided below.
34. The Applicants respectfully submit that the rates in the Emergency EPPA are compliant with the CSP Rules.

COMPLIANCE WITH PRE-FILING
 REQUIREMENTS
 AND SUPPORTING DOCUMENTS

35. Likewise in support of this Application, the Applicants provide the Honorable Commission with the following documents which underwent the pre-filing conference of this Honorable Commission.

Annex	1. MORE – Government Requirements
A	MORE’s Secretary’s Certificate dated 27 July 2020 (Re Change in corporate name)
B	MORE’s Certificate of Incorporation
C	MORE’s Amended Articles of Incorporation
D	MORE’s By-Laws
E	MORE’s General Information Sheet
F	Not Used

Annex	2. PPC – Government Requirements
G	PPC’s Certificate of Incorporation
H	PPC’s Amended Articles of Incorporation
I	PPC’s By-Laws
J	PPC’s General Information Sheet (2021)
K	PPC’s Document showing Ultimate Parent Company, its Subsidiaries and all its affiliates

L	PPC 1&2 BOI Certificate of Registration with attached Terms and Conditions
M	Not Used
N	PPC Environmental Compliance Certificate (ECC)
O-1	PPC 1&2 Provisional Authority to Operate (PAO) – Letter
O-2	PPC 1&2 PAO – Annex A
O-3	PPC 1&2 PAO – Annex B
P	PPC Explanation – Re non-applicability of requirement: Certification from DOE regarding the Philippine Development Plan (PDP) or Certificate of Endorsement
Q	PPC Explanation – Re non-applicability of requirement: Renewable Energy Service/ Operating Contract from DOE
R	PPC Explanation – Re non-applicability of requirement: Certificate of Registration or Certificate of Confirmation of Commerciality by an RE Developer
S	MORE Explanation – Re non-applicability of requirement: Demand Side Management (DSM) program

Annex	3. Supply Demand Scenario
T	MORE Explanation – Re non-applicability of NPC Certification on Transition Supply Contract
U	MORE - Details regarding the load forecast projections; average daily load curve, supply and demand scenario.

Annex	4. Procurement Process
V	MORE Explanation – Re details of the procurement process (negotiated procurement for emergency power supply)
W	MORE’s letter to DOE requesting for exemption dated 27 May 2020
X	MORE’s Certificate of Exemption No. COE-CSP-2020-09-001

Annex	5. Power Supply Agreement and Other Agreements
Y	Emergency Electric Power Purchase Agreement between MORE and PPC
Y-1	Emergency EPPA - Electricity Fees Matrix
Z	Not Used
AA	Not Used
BB	MORE’s Secretary’s Certificate Re Board Resolution for the Emergency EPPA
CC	PPC’s Secretary’s Certificate Re Board Resolution for the Emergency EPPA
DD	PPC Explanation – Re details regarding transmission projects or grid connection projects

	necessary to complement the proposed generation capacity
EE	Transmission Service Agreement between PPC and NGCP.
FF	PPC Explanation – Re non-applicability of requirement for Copy of Related Agreements (TWC, IPPA, EPC Contract, O&M Contract, Wholesale Aggregator Agreement, Project Feasibility Study)

Annex	6. Generation/Power Rate
GG	Details of the Emergency EPPA <ul style="list-style-type: none"> • Executive Summary • Sources of Funds/Financial Plans • Generation Rate and Derivation • Cash Flow
HH	PPC Explanation – No Bank Long-term Loans
II	Not used
JJ	Not used
KK	PPC Sworn Statement on Fuel Procurement Process
LL-1	PPC-Chevron Diesel Oil Supply Contract
LL-2	PPC-Petron Diesel Oil Supply Contract
LL-3	PPC-SL Harbor HFO Supply Contract
LL-4	PPC-SL Harbor SFO Supply Contract
LL-5	PPC-Shell Supply and Equipment Loan Agreement
LL-6	PPC-Shell Extension of Supply and Equipment Loan Agreement
MM-1 up to MM-10	Relevant technical and economic characteristics of the generation capacity; Installed Capacity, Mode of Operation, Dependable Capacity, Auxiliary Load; Scheduled and Unscheduled Outages; Basis/Justification of day used. <ul style="list-style-type: none"> • Annex MM-1 to MM-10 – PPC Performance Test Report
NN	PPC Explanation re Cost analysis related to the generation in support of the proposed pricing provisions of the contract
OO	PPC Audited Financial Statement (ending 2020)
PP	PPC Explanation re Certification from the engine manufacturer or IPP of the net heat rate in liters per kWh
QQ	PPC Explanation re Simulation of no. of generating units necessary to meet the MEOT and/or additional energy/demand requirements of MORE.
RR	MORE Potential Cost of Ancillary Services

Annex	7. Rate Impact Analysis
SS	MORE's Rate Impact Analysis

Annex	8. Generation Rate Comparison
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TT	MORE - Generation Rate Comparative Matrix (PPC vs. SPC-ILECO III) [Lower than latest ERC approved rate in the area]
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Annex	9. Other Documents
UU	Copy of the Honorable Commission's Order dated 5 March 2020 in ERC Case No. 2018-019MC, entitled " <i>In the Matter of the Application for the Issuance of a Certificate of Public Convenience and Necessity for the Operation of the Electric Distribution System for Iloilo City, with a Prayer for Provisional Authority</i> "
VV	Proof of Service to Sangguniang Panlungsod of Iloilo City (Certification or Affidavit of Service with "stamp received" on copy)
XX	Proof of Service to Sangguniang Panlalawigan of the Province of Iloilo (Certification or Affidavit of Service with "stamp received" on copy)
YY	Proof of Service to the Office of the Mayor, Iloilo City (Certification or Affidavit of Service with "stamp received" on copy)
ZZ	Proof of Service to the Office of the Governor, Province of Iloilo (Certification or Affidavit of Service with "stamp received" on copy)
AAA	Publication 1 - Affidavit of Publication
AAA-1	Publication 1 - complete issue of the newspaper where the Joint Application was published
BBB	Publication 2 - Affidavit of Publication
BBB-1	Publication 2 - complete issue of the newspaper where the Joint Application was published

**MOTION FOR CONFIDENTIAL
TREATMENT OF INFORMATION**

36. The following Annexes (hereafter, the "Confidential Annexes") contain data, methodology, and calculations which provide valuable information and insight on how PPC arrives at the Contract Price and other material information that would accordingly reflect PPC's bidding strategy for distribution utilities undertaking competitive process (CSP) for the selection of their power suppliers and PPC's trading activities in the Wholesale Electricity Spot Market (WESM).
- a) Annex O-1 to O-3 – PPC Provisional Authority to Operate
 - b) Annex W – MORE letter to DOE to request for the Certificate of Exemption (it contains the Electricity Fees in the Emergency EPPA)
 - c) Annex Y - Schedule 3 (Electricity Fees) of the Emergency EPPA
 - d) Annex Y-1 - Electricity Fees Matrix
 - e) Annex GG – Details of Emergency EPPA (Executive Summary, Sources of Funds/Financial Plans, Generation Rate Derivation, and Cash Flow)
 - f) Annexes LL-1 upto LL-6 – Fuel Supply Agreements

- g) Annex QQ – Simulation on number of generating units needed to meet MEOT
 - h) Annex SS – Rate Impact Analysis
 - i) Annex TT – Generation Rate Comparative Matrix
37. Under Rule 4 of the ERC Revised Rules of Practice and Procedure, the Honorable Commission may, upon motion of a party and determination of the existence of conditions, which would warrant such remedy, treat certain information submitted to it as confidential. Pursuant to such provision, Applicant PPC respectfully requests for the issuance of a protective order declaring the Confidential Annexes as confidential information, as the Applicants intend to present them as evidence in the instant Application.
38. In addition to the foregoing, pursuant to PEDC's agreement with its counterparties, Annexes LL-1 up to LL-6 (Fuel Supply Agreements) likewise contain certain non-public information involving its lenders' financial trade secrets.
39. It is submitted therefore that Annexes LL-1 up to LL-6 fall within the bounds of proprietary "trade secrets" which are entitled to protection under the Constitution, statutes, and rules and regulations of this Honorable Commission.
40. The data contained in the Confidential Annexes constitute "trade secrets" of Applicant PPC; thus, PPC has actual and valuable proprietary interest to protect with respect to such information. The Honorable Supreme Court, in the case of *Air Philippines Corporation vs. Pennswell, Inc.*^[1], had the opportunity to discuss the definition of "trade secrets" and the great extent to which the same are protected under our laws. In other instances, the Supreme Court has held that the confidential nature of trade secrets protects such from disclosure even in the face of the right of inspection given to stockholders^[2] or the constitutional right to information^[3].
41. In *ERC Case No 2008-030*, the National Power Corporation's ("NPC") application for revised basic generation rates, the Honorable Commission had an occasion to rule on the confidentiality of NPC's results of operation per power plant for calendar years 2005 to 2007. The Honorable Commission declared such information as confidential, in this wise:

"Upon review of the documents submitted by NPC, the Commission found that the results of operation per plant of NPC for years 2005 to 2007 contain vital information necessary in the calculation of its production costs in P/kWh per plant and the corresponding revenues. This information will serve as initial inputs to NPC's decision-making. As such, disclosure of this information will give the other parties, particularly the other generation

^[1] 540 SCRA 215 [2007].

^[2] *Philpotts vs. Philippine Manufacturing Company*, 40 Phil. 471 (1919).

^[3] *Garcia vs. Board of Investments, G.R. 88637* (1989).

companies (Gencos) and the distribution utilities (DUs) with Genco counterparts, undue advantage in the pricing of electricity in the market over NPC and other Gencos by using its production costs as benchmark. Thus, the Commission deems the information as confidential, which may not be made public, as it may affect adversely the competitive position of NPC and other generation companies.”

42. Information which falls within the definition of a trade secret as defined by jurisprudence is clearly information which merits the confidential treatment provided for under Rule 4 of the ERC Revised Rules of Practice and Procedure. The Confidential Annexes should therefore be entitled to the protection of confidential information provided under Rule 4 of the ERC Revised Rules of Practice and Procedure.

PRAYER

WHEREFORE, premises considered, Applicants respectfully pray that:

1. an order be issued GRANTING Applicant PPC’s motion for confidential treatment of the Confidential Annexes; and
2. after hearing on the merits, a Decision be rendered APPROVING the Emergency EPPA.

Other reliefs that are just and equitable under the circumstances 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 No. 09, Series of 2020¹ dated 24 September 2020 and Resolution No. 01, Series of 2021, dated 17 December 2020 (ERC Revised Rules of Practice and Procedure)²:

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¹ Entitled: A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

² A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

Date	Platform	Activity
12 October 2021 (Tuesday) at two o'clock in the afternoon (2:00 P.M.)	Microsoft Teams	Determination of compliance with jurisdictional requirements and expository presentation
19 October 2021 (Tuesday) at two o'clock in the afternoon (2:00 P.M.)	Microsoft Teams	Pre-Trial Conference and Presentation of Evidence

Accordingly, MORE and PPC are hereby directed to host the virtual hearing at **MORE's principal office located at GST Building, Quezon St., Iloilo City**, as the designated venue for the conduct thereof, and ensure that the same is open to the public and the community quarantine guidelines are observed at all times. Moreover, MORE and PPC shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

RELATIVE THERETO, MORE and PPC 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 City and the Municipal Mayors, and the Local Government Unit (LGU) legislative bodies within MORE's franchise area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within MORE's franchise area, by any other means available and appropriate, of the filing of the *Joint Application*, its reasons therefor, and of the scheduled virtual hearing 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 hearing; and

- 5) Furnish with copies of the *Joint Application* and its attachments all those making requests therefor, subject to the resolution of the prayer for confidential treatment of information, if any, and reimbursement of reasonable photocopying costs.³

Within five (5) calendar days prior to the date of the virtual hearing, MORE and PPC 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 affidavit 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, Mayors, and LGU legislative bodies or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by MORE and PPC to inform the consumers affected of the filing of the *Joint Application*, its reasons therefor, and of the scheduled hearing 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

³ For the e-mail address of the applicant, please see page 21.

- 6) Such other proofs of compliance with the requirements of the Commission.

Moreover, MORE and PPC 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 Provincial Governor, Mayors, and Local Legislative Bodies, and to submit proof of their posting thereof.

MORE and PPC 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.

MORE and PPC 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 MORE and PPC 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.

MORE and PPC 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.

MORE and PPC 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. MORE and PPC 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 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.

MORE and PPC 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, MORE and PPC, 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, 15 September 2021.

FOR AND BY AUTHORITY
OF THE COMMISSION:



AGNES VST DEVANADERA
Chairperson and CEO

RCP LSP MCG
LS: RCP/LSP/MCCG



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ORDER/15 SEPTEMBER 2021
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7. Senate Committee on Energy
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9. Office of the City Mayor
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10. Local Government Unit (LGU) Legislative Body
Iloilo City
11. Office of the Provincial Governor
Province of Iloilo
12. Local Government Unit (LGU) Legislative Body
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13. Regulatory and Operations Service (ROS)
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