

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



**IN THE MATTER OF THE
APPLICATION FOR
APPROVAL OF THE LETTERS
OF AGREEMENT (LOAs), FOR
SUPPLY OF ELECTRIC
ENERGY WITH THE
DISTRIBUTION UTILITIES
(DUs) IN THE VISAYAS GRID,
WITH PRAYER FOR
ISSUANCE OF PROVISIONAL
AUTHORITY (PA)**

ERC CASE NO. 2020-030 RC

**POWER SECTOR ASSETS AND
LIABILITIES MANAGEMENT
CORPORATION (PSALM),
Applicant.**

Promulgated:
January 18, 2021

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NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 04 September 2020, Power Sector Assets and Liabilities Management Corporation (PSALM) filed an *Application* dated 18 June 2020, seeking the Commission's approval of its Letters of Agreement (LOAs) with the Distribution Utilities in the Visayas Grid, with prayer for issuance of provisional authority.

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

1. This is an Application for the Approval of the terms and conditions of the Letters of Agreement (LOAs) entered into by and between Applicant PSALM and several Distribution Utilities (DUs) in the Visayas Grid pursuant to Section 67 of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act (EPIRA) of 2001".
2. PSALM is a government-owned and controlled corporation created by virtue of the EPIRA, with principal office address

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at 24th Floor Vertis North Corporate Center 1, Astra corner Lux Drives, North Avenue, Quezon City.

3. Pursuant to Section 49 of the EPIRA and the consequent assignment on 11 May 2009 (the Letter of Agreement is hereto attached as Annex "A") of all NPC power supply contracts to PSALM, NPC assigned and transferred to PSALM all its rights and obligations in, to and under its CSEEs and other similarly or substantially equivalent power supply contracts with NPC power supply contracts with NPC power customers (collectively referred to as "Power Supply Contracts").
4. On and from 11 May 2009, the power supply contracts were deemed amended as follows: (i) all references to NPC therein shall be treated as references to PSALM; (ii) PSALM shall be deemed the SUPPLIER under said Power Supply Contracts; and (iii) the rights and obligations of the Parties shall be governed by and construed in accordance with said Power Supply Contracts, as amended by the 11 May 2009 Letter Agreement. Thus, this instant application by PSALM.
5. The CSEEs were executed based on the ERC-approved template under ERC Resolution No. 08, Series of 2005 issued on 07 July 2005. On 09 August 2005, said template was later on amended by this Honorable Commission in its Resolution No 15, Series of 2005.
6. In ERC Resolution No. 33, Series of 2006, "Resolution Clarifying the Purpose of the Adoption of the TSC Template," the ERC clarified that the TSC Template should merely serve as a guide for the DUs and NPC, and should not be construed as the contract contemplated under Section 67 of the EPIRA.
7. PSALM filed similar Applications in 2011, 2012, 2013 and 2014 for the Approval of the terms and conditions of the Contracts for the Sale of Electric Energy (CSEEs) and Letters of Agreements (LOAs) with the following durations: (i) 26 December 2010 to 25 December 2011; (ii) 26 December 2011 to 25 December 2012; (iii) 26 December 2012 to 25 December 2013; and (iv) 26 December 2013 to 25 December 2014, respectively.
8. By reason of public bidding to privatize rights to the contracted energy under the Unified Leyte Geothermal Power Plant (ULGPP) and the asset sale of the Naga Power Plant Complex, PSALM no longer renewed the CSEEs that expired on 25 December 2014.
9. The ULGPP has a dependable capacity of 400 MW out of the 538 MW installed capacity. At present, PSALM has contracted for a total of about 315 MW out of the available capacity of 400 MW.
10. On 08 June 2018, PSALM filed its Application for approval of the CSEEs duly executed and negotiated with Leyte III

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Electric Cooperative, Inc. (LEYECO III) and Leyte V Electric Cooperative, Inc. (LEYECO V), docketed as Energy Regulatory Commission (ERC) Case No. 2018-055 RC, for the duration of 26 December 2017 to 25 December 2020. Said Application is pending resolution before this Honorable Commission.

11. On 31 May 2019, PSALM filed a similar application (docketed as ERC Case No. 2019-040 RC) for approval of several duly executed and negotiated CSEEs and LOAs with Visayas Grid DUs. These CSEEs had a duration of 26 December 2018 to 25 December 2019.
12. While the LOAs included in said Application are that of LEYECO III and LEYECO V relative to the CSEEs filed under ERC Case No. 2018-055 RC. The LOAs were necessary to accommodate LEYECO III and LEYECO V's requests for increase in contract demand and energy.
13. On 27 November 2019, the PSALM Board approved the execution of the CSEEs and were informed of the LOAs with the Visayas Electric Cooperatives for the period effective 26 December 2019 to 25 December 2020.

The 26 December 2017 to 25
December 2020 CSEEs under
ERC Case No. 2018-055 RC

14. On 08 June 2018, PSALM filed its Application for the approval of the CSEEs duly negotiated and executed with LEYECO III and LEYECO V. Said Application is pending resolution before this Honorable Commission.
15. The foregoing CSEEs, which have durations from 26 December 2017 to 25 December 2020, were executed based on the template approved by this Honorable Commission under Resolution No. 8, Series of 2005 as amended by Resolution No. 15, Series of 2005. Likewise, the CSEEs incorporated the minor changes previously proposed by PSALM and approved by the DUs. Which changes were contained in the CSEEs approved by this Honorable Commission's PSALM Application in ERC Case No. 2012-008 RC, ERC Case No. 2013-044 RC, ERC Case No. 2013-169 RC and ERC Case No. 2014-173 RC.
16. The revisions made in the CSEEs under said Application consist of (i) those found in Annex 1 of the CSEEs (which reflects the Contracted Energy and the corresponding equivalent demand); and (ii) the amendment of Section 3.1 on CONTRACT DURATION, as follows:

3.1 This Contract consisting of the Transition Supply Contract shall remain in full force and effect from 26 December 2017 to 25 December 2020. Unless otherwise provided, the applicable provisions of this Contract shall be deemed modified by the applicable WESM Rules.

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The 26 December 2018 to 25
December 2019 CSEEs and LOAs
under ERC Case No. 2019-040 RC

17. On 31 May 2019, PSALM filed its Application for approval of the CSEEs duly negotiated and executed several Visayas Grid DUs.
18. The revisions made in the CSEEs under said Application consists of (i) those found in Annex 1 of the CSEEs (which reflects the Contracted Energy and the corresponding equivalent demand); and (ii) the amendment of Section 3.1 on CONTRACT DURATION, as follows:
 - 3.1 This Contract consisting of the Transition Supply Contract shall remain in full force and effect from 26 December 2017 to 25 December 2020. Unless otherwise provided, the applicable provisions of this Contract shall be deemed modified by the applicable WESM Rules.
19. Said Application pending for resolution before this Honorable Commission, also includes the LOAs of LEYECO III and LEYECO V relative to the CSEEs filed before this Honorable Commission under ERC Case No. 2018-055 RC.
20. The CSEEs and LOAs were necessary due to delay in the commercial operations of the 1336 MW (2 x 668) Coal-Fired Power Plant located in Dinginin, Mariveles, Bataan owned by GNPowder Dinginin Ltd., Co. (GNPD), with which the DUs had power supply contracts.
21. The LOAs under ERC Case No. 2019-040 were likewise filed to accommodate the DUs request for increase in contract demand and energy from January to December 2019.

The LOAs under the present
Application

22. Pursuant to Section 5, Article III of the ERC's Guidelines for the Recovery of Costs for the Generation Component of the Distribution Utilities' Rate, PSALM is filing the instant Application for the approval of the LOAs duly negotiated and executed with the following DUs:
 - (i) Biliran Electric Cooperative, Inc. (BILECO) [Annex "B-1"];
 - (ii) Bohol Electric Cooperative, Inc. (BOHECO I) [Annex "B-2"];
 - (iii) Bohol II Electric Cooperative, Inc. (BOHECO II) [Annex "B-3"];
 - (iv) Don Orestres Romualdez Electric Cooperative (DORELCO) [Annex "B-4"];
 - (v) Eastern Samar Electric Cooperative, Inc. (ESAMELCO) [Annex "B-5"];
 - (vi) Leyte II Electric Cooperative, Inc. (LEYECO II) [Annex "B-6"];

- (vii) Leyte III Electric Cooperative, Inc. (LEYECO III) [Annex “B-7”];
- (viii) Leyte IV Electric Cooperative, Inc. (LEYECO IV) [Annex “B-8”];
- (ix) Northern Samar Electric Cooperative, Inc. (NORSAMELCO) [Annex “B-9”];
- (x) Samar I Electric Cooperative, Inc. (SAMELCO I) [Annex “B-10”];
- (xi) Samar II Electric Cooperative (SAMELCO II) [Annex “B-11”]; and
- (xii) Southern Leyte Electric Cooperative, Inc. (SOLECO) [Annex “B-12”].

- 23. Notably, as mentioned under ERC Case No. 2019-040 RC, the only revisions PSALM introduced in the CSEEs under said Application consist of (i) those found in Annex 1 of the CSEEs (which reflects the Contracted Energy and the corresponding equivalent demand); and (ii) the amendment of Section 3.1 on CONTRACT DURATION, from 26 December 2018 to 25 December 2019.
- 24. The LOAs (filed under ERC Case No. 2019-040 RC) which included LEYECO III’s and LEYECO V’s relative to the CSEEs filed under ERC Case No. 2018-055 RC had a CONTRACT DURATION from 26 December 2018 to 25 December 2020.
- 25. The LOAs subjects of the instant Application have a duration from 26 December 2019 to 25 December 2020.
- 26. The requests for extension were necessary due to the delay in the commercial operations of the 1336MW (2 x 668) Coal-Fired Power Plant located in Dinginin, Mariveles, Bataan owned by GNPower Dinginin Ltd., Co. (GNPD), with which the DUs had power supply contracts.
- 27. Finally, in compliance with Section 4(e), Rule 3 of the EPIRA IRR and ERC Resolution No. 38-2006, and in support of the instant Application for the CSEE’s approval, a copy of the instant Application (including Annexes) was furnished to the Sangguniang Panlungsod of Quezon City (Annex “C”). The Application (excluding Annexes) was also published in a newspaper of general circulation (Annex “D”).

**ALLEGATIONS IN SUPPORT FOR THE ISSUANCE OF
PROVISIONAL AUTHORITY**

- 28. PSALM acknowledges that the continued operation of the Distribution Utilities is indispensable to the economic efficiency of the franchise area they service, not to mention the ripple effect of that efficiency to the economic growth of the entire country. In order for these Distribution Utilities to continue lawfully drawing electricity from the grid, it is imperative that they enter into agreement/s with PSALM as Supplier for the supply of electricity, through a contract of sale for electricity, hence the respective CSEE.

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29. Accordingly, a grant of provisional authority on the LOAs effective 26 December 2019 will benefit the DUs and will ultimately redound to the benefit of the end consumers.
30. Attached as Annex "E" is the Judicial Affidavit of Abner Tolentino, Department Manager, Asset Management Department, under the Office of the Vice President – Privatization and Asset Management Group attesting to the truth of the above matters.
31. Pursuant to ERC rules of practice and procedure, this Honorable Commission may exercise its discretion by granting provisional authority or interim relief prior to a final decision.
32. It is understood that the interim relief sought by Applicant PSALM that may be granted by this Honorable Commission, shall be subject to adjustments and other conditions that this Honorable Commission may impose after its hearing and final determination.

PRAYER

WHEREFORE, Applicant PSALM most respectfully prays that this Honorable Commission approve the duly executed DUs covering the period of 26 December 2019 to 25 December 2020:

- (i) Biliran Electric Cooperative, Inc. (BILECO);
- (ii) Bohol Electric Cooperative, Inc. (BOHECO I);
- (iii) Bohol II Electric Cooperative, Inc. (BOHECO II);
- (iv) Don Orestres Romualdez Electric Cooperative (DORELCO);
- (v) Eastern Samar Electric Cooperative, Inc. (ESAMELCO);
- (vi) Leyte II Electric Cooperative, Inc. (LEYECO II);
- (vii) Leyte III Electric Cooperative, Inc. (LEYECO III);
- (viii) Leyte IV Electric Cooperative, Inc. (LEYECO IV);
- (ix) Northern Samar Electric Cooperative, Inc. (NORSAMELCO);
- (x) Samar I Electric Cooperative, Inc. (SAMELCO I);
- (xi) Samar II Electric Cooperative (SAMELCO II); and
- (xii) Southern Leyte Electric Cooperative, Inc. (SOLECO).

It is likewise prayed that a Provisional Authority (PA) be issued authorizing PSALM to implement the subject LOAs with the concerned DU in the Visayas Grid.

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

Subsequently, the Commission, in its *Order and Notice of Virtual Hearing*, both dated 28 October 2020, set the instant *Application* for the jurisdictional requirements, expository

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presentation, Pre-trial Conference, and presentation of evidence through a virtual hearing on 14 January 2021.

However, on 18 December 2020, PSALM filed a *Manifestation with Motion to Re-Schedule the Hearing* (Motion), alleging its inability to comply with the requirements in the Commission's *Order* dated 28 October 2020.

Finding the *Motion* in order, the Commission granted the same and cancelled the hearing set on 14 January 2021.

IN VIEW THEREOF, the Commission hereby sets anew the instant *Application* for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on the following dates and online platforms for the conduct thereof, pursuant to Resolution No. 09, Series of 2020¹ dated 24 September 2020:

Date	Platform	Activity
05 March 2021 (Friday) at two o'clock in the afternoon (2:00 P.M.)	Microsoft Teams	Determination of Jurisdictional Compliance and Expository Presentation
12 March 2021 (Friday) at two o'clock in the afternoon (2:00 P.M.)	Microsoft Teams	Pre-trial Conference and Presentation of Evidence
19 March 2021 (Friday) at two o'clock in the afternoon (2:00 P.M.)	Microsoft Teams	Presentation of Evidence

Any interested stakeholder may submit its comments and/or clarifications at least one (1) calendar day prior to the scheduled virtual hearing, via electronic mail (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.

Moreover, all persons who have an interest in the subject matter of the instant case may become a party by filing with the Commission via e-mail at docket@erc.ph and records@erc.gov.ph, copy furnish the Legal Service through legal@erc.ph, a verified Petition to Intervene at

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

least five (5) calendar days prior to the date of the initial virtual hearing and subject to the requirements under Rule 9 of the 2006 ERC Rules of Practice and Procedure, indicating therein the docket number and title of the case and stating the following:

- 1) The petitioner's name, mailing address, and e-mail address;
- 2) The nature of petitioner's interest in the subject matter of the proceeding and the way and manner in which such interest is affected by the issues involved in the proceeding; and
- 3) A statement of the relief desired.

Likewise, all other persons who may want their views known to the Commission with respect to the subject matter of the case may likewise file through e-mail at docket@erc.ph and records@erc.gov.ph, copy furnish the Legal Service through legal@erc.ph, their Opposition or Comment thereon at least five (5) calendar days prior to the initial virtual hearing and subject to the requirements under Rule 9 of the 2006 ERC Rules of Practice and Procedure. No particular form of Opposition or Comment is required, but the document, letter, or writing should contain the following:

- 1) The name, mailing address, and e-mail address of such person;
- 2) A concise statement of the Opposition or Comment; and
- 3) The grounds relied upon.

All such persons who wish to have a copy of the *Application* may request from Applicant that they be furnished with the same prior to the date of the initial hearing. Applicant is hereby directed to furnish all those making such request with copies of the *Application* and its attachments, through any of the available modes of service, upon their agreement, subject to the reimbursement of reasonable photocopying costs. Any such person may likewise examine the *Application* and other pertinent records filed with the Commission during the standard office hours. In the alternative, those persons who wish to have an electronic copy of the *Application* may request the Commission for the e-mail addresses of the Applicant by sending an e-mail to docket@erc.ph and records@erc.gov.ph, copy furnish the Legal Service through legal@erc.ph. Nonetheless, any person may also

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access the *Application* as posted by the Commission in its official website at www.erc.gov.ph.

Finally, all interested persons may be allowed to join the scheduled initial virtual hearing by providing the Commission, thru legal.virtualhearings@erc.ph, with their respective e-mail addresses and indicating therein the case number of the instant *Application*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearing.

WITNESS, the Honorable Commissioners **ALEXIS M. LUMBATAN**, **CATHERINE P. MACEDA**, **FLORESINDA G. BALDO-DIGAL** and **MARKO ROMEO L. FUENTES**, Energy Regulatory Commission, this 8th day of January 2021 in Pasig City.


AGNES VST DEVANADERA
Chairperson and CEO


LS: MVM/LSP/MCCG