

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City



**IN THE MATTER OF THE
APPLICATION FOR
APPROVAL OF THE POWER
SUPPLY AGREEMENT (PSA)
ENTERED INTO BY AND
BETWEEN IFUGAO
ELECTRIC COOPERATIVE,
INC. AND THE PROVINCIAL
GOVERNMENT OF IFUGAO
(PGI)**

ERC CASE NO. 2021-029 RC

**IFUGAO ELECTRIC
COOPERATIVE, INC.
(IFELCO), and THE
PROVINCIAL GOVERNMENT
OF IFUGAO (PGI),
Applicants.**

Promulgated:
July 23, 2021

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NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 20 April 2021, Ifugao Electric Cooperative, Inc. (IFELCO) and the Provincial Government of Ifugao (PGI) filed a *Joint Application* seeking the Commission's approval of their Power Supply Agreement (PSA).

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

1. Applicant IFELCO is a non-stock, non-profit electric cooperative duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at Brgy. Poblacion East, Lagawe, Ifugao. It is represented herein by its **Officer in Charge MARCIAL D. NAHIWAN**. IFELCO holds an exclusive franchise issued by the National Electrification Commission to operate an electric light and power distribution service in all the municipalities of the Province of Ifugao namely: Aginaldo, Alfonso Lista, Asipulo, Banaue, Hingyon, Hungduan, Kiangan, Lagawe,

Lamut, Mayoyao and Tinoc. A copy of its certificate of franchise issued by National Electrification Commission is hereto attached as *Annex "A"* and made part hereof;

2. Applicant PGI is a local government unit organized and existing under the laws of the Republic of the Philippines, with address at the Provincial Capitol Compound, Poblacion South, Lagawe, Ifugao. It is represented herein by **Governor JERRY U. DALIPOG**, of legal age, married and a Filipino citizen

NATURE OF THE APPLICATION

3. This is an application for the approval of the Power Supply Agreement (PSA) executed by and between IFELCO and PGI, pursuant to Rule 20 (b) of the ERC Rules of Practice and Procedures (ERC Rules), and other pertinent rules and regulations;

STATEMENT OF FACTS

Brief Background of Likud Mini-Hydro Power Plant

4. R.A. 9513 or the Renewable Energy Act of 2008 gives a mandate for the State to formulate programs and policies for the accelerated development of renewable energy systems in order to minimize the country's dependence on fossil fuels thereby minimizing our exposure to price fluctuations in the international market;
5. Further, R.A. 9513 seeks to encourage the development and utilization of renewable energy resources as tools to prevent global warming thereby giving a balance with economic development and the protection of health and the environment;
6. By virtue of this mandate, the Department of Energy (DOE) submitted a proposal for Grant-Aid Project to Japan International Cooperation Agency (JICA) for Mini-Hydro Power Development in the Philippines;
7. In response to this request-proposal, JICA sent a Preparatory Survey Team to the Philippines to conduct a preparatory survey for the Likud Mini-Hydro Power Plant Project, in Asipulo, Ifugao;
8. From the survey of the site, JICA agreed to develop the same through a one hundred percent (100%) grant from the Government of Japan through JICA;
9. DOE coordinated and negotiated with PGI to take part in the implementation of the said project to which PGI agreed to be the recipient of the ownership of the Mini-Hydro Power Plant including its transmission facilities;

10. PGI then entered into a Memorandum of Agreement with DOE relative to the construction, organization and the eventual operation of the **Likud Mini-Hydro Power Plant (LMHPP)**. A copy of the said agreement is hereto attached as *Annex "B"* and made part hereof;
11. Pursuant to Energy Regulations 1-94 as further reiterated by R.A. 9136 or the Electric Power Industry Reform Act (EPIRA), PGI again entered into a Memorandum of Agreement with DOE for the grant of financial benefits to the host communities. A copy of this agreement is hereto attached as *Annex "C"* and made part hereof;
12. With its completion, PGI now owns and operates the 810-kW **Likud Mini-Hydro Power Plant (LMHPP)** located at Haliap, Asipulo, Ifugao. PGI was issued a Certificate of Endorsement by DOE certifying that the 810 kW Likud Mini-Hydro Power Plant, owned and operated by PGI is consistent with the Power Development Plan (PDP) of the government. A copy of which is hereto attached as *Annex "D"* and made part hereof;

Events that Transpired Prior to the Application for Approval of the PSA

13. PGI and IFELCO, on March 12, 2015 submitted their Joint Application for the Approval of their Power Supply Agreement (PSA) before the Energy Regulatory Commission (ERC) and was referred for completion of the Pre-Filing Requirements. Most unfortunately, the applicants were not able to complete all the documentary requirements when DC2015-06-0008, dated June 11, 2015, was issued by the Department of Energy, requiring all distribution utilities to undergo competitive selection process (CSP) in securing Power Supply Agreement before the ERC;
14. Both applicants submitted a request for exemption from the conduct of the CSP before the ERC but the same has not been acted upon. A copy of the requests for exemption including the subsequent follow-up communications are hereto attached as Annexes "E" and "F" to form part hereof;
15. On July 26, 2018, IFELCO sent another letter addressed to the Department of Energy (DOE) Secretary, HONORABLE ALFONSO G. CUSI, again requesting for exemption from the conduct of the CSP. It premised its request for exemption on DOE DEPARTMENT CIRCULAR NO. 2018-02-00030, Re: Adopting and Prescribing the Policy for the Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreement. In Section 2 of Annex "A" of the Circular, it particularly provide: "All power Supply Agreement (PSAs) shall be procured through CSP; provided however, that the following instances shall warrant a certificate of Exemption from the DOE on the conduct of

CSP...” This provision would seem to provide that it is the Department of Energy who shall grant an exemption from the CSP. A copy of the July 26, 2018 letter is hereto attached as Annex “G” to form part hereof;

16. On September 5, 2018, IFELCO received a letter from the Undersecretary of the DOE, HON. FELIX WILLIAM B. FUENTEBELLA, addressed to ENGR. JAIME PE BENITO, JR., General Manager of IFELCO, copy furnished the Provincial Governor of Ifugao, HON. PEDRO G. MAYAM-O, in response to the letter of IFELCO requesting for Certificate of Exemption from the conduct of CSP for LMHPP. A copy of the response of the DOE is hereto attached as Annex “H” to form part hereof;

In sum, the Honorable Secretary explicitly mentioned:

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“The Power Supply Agreement between IFELCO and Provincial Government of Ifugao for the LMHPP is **not covered** by the said DOE CSP Circular (DOE Circular No. DC2018-02-0003) inasmuch as the said power project is a government project which was established for a specific purpose of augmenting the financial requirements of maintaining the Ifugao Rice Terraces.

Moreover, the contracting of power supply for the LMHPP is not the contracting of power supply that was contemplated on the CSP Circular. Clearly, Likud Mini-Hydro is not intended for profit but, as stated in the Memorandum of Agreement between the DOE and PGI, the revenue collected therefrom shall be placed in a trust account for the (1) operations and maintenance of the power project; (b) rehabilitation of the rice terraces and (c) research and development of hydro power in Ifugao.”

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17. With this declaration from the DOE, PGI and IFELCO hereto submits this Application for Approval of their PSA;

Power Supply Agreement

18. PGI negotiated with IFELCO, a public utility cooperative engaged in the distribution and sale of electric energy in the Province of Ifugao, for the latter to purchase the electricity to be generated or produced by the LMHPP;
19. IFELCO sources 96.05% of its electricity requirements for distribution to its customers from the SN Aboitiz Power Magat, Inc. (SNAP) by virtue of a Power Sale Agreement (PSA), which will expire on August 25, 2017, and the remaining 3.95% from the Ambangal Minihydro Power Plant (AMPP) by a virtue of a Power Sale Agreement (PSA), which will expire on December 10, 2039;

ERC CASE NO. 2021-029 RC
NOTICE OF VIRTUAL HEARING/14 July 2021
Page 5 of 14

20. The expiration of the PSA of IFELCO and SNAP is near. Moreover, it is expected that the energy requirements of IFELCO's customers will significantly increase in the next few years, as demonstrated by its Distribution Development Plan (DDP). Presented below is IFELCO's supply- demand scenario, to wit:

	Historical		Forecasted					
	2013	2014	2015 (Current Year)	2016	2017	2018	2019	2020
Peak Demand (kW)	3,590	4,239	4,701	5,068	5,435	5,801	6,168	6,534
Suppliers:								
ISELCO	937.83	1,035	0	0	0	0	0	0
AMHPP	200	200	200	200	200	200	200	200
SNAP	2,452	3,004	4,501	4,868	5,235	5,601	5,968	6334
Total Supply (kW)	3,590	4,239	4,701	5,068	5,435	5,801	6,168	6,534
Deficit/Surplus	0	0	0	0	0	0	0	0

21. Sometime in CY 2014, When the PGI, was putting up a run-off-river mini hydro power plant within IFELCO's franchise area in Haliap, Asipulo, PGI offered to sell to IFELCO all of the energy to be generated from that plant;
22. Mindful of the volatile prices in the spot market, the cooperative's increasing load requirements and the lack of other power suppliers that could supply its requirements at the earliest possible time, IFELCO started negotiations with the PGI, and eventually accepted its offer;
23. IFELCO through its Board of Directors, authorized the IFELCO Board President to enter into and sign a Power Supply Agreement with PGI relative to the operation of the LMHPP. A copy of the Board Resolution is hereto attached as *Annex "E"* and made part hereof;
24. PGI, on the other hand, through its Sangguniang Panlalawigan, passed a Resolution authorizing Hon. Denis B. Habawel, Provincial Governor, to enter into a Power Supply Agreement with IFELCO for the purchase of the latter of the electricity to be generated by the LMHPP. A copy of the said Resolution is hereto attached as *Annex "F"* and made part hereof;
25. With both Resolutions in place, IFELCO and PGI entered into a Power Supply Agreement which is now the subject of the instant application. A copy of the **Power Supply Agreement**, is hereto attached as *Annex "G"* and made part hereof;

Abstract of the Power Supply Agreement (PSA)

26. THE GENERATION FACILITY. To supply power under the PSA, PGI shall finance, build, construct, develop and operate the Likud Mini Hydro Power Project located in Haliap, Municipality of Asipulo, Ifugao;
27. The LMHPP has a projected plant capacity of 810 kWh and firm capacity of 564 kWh. Run-of-river is the type of generation with catchment area of 44.0 km². Intake water level is at EL 600 meters while tailrace water level is at EL 541 meters. Height of dam is 4.5 meters with width of 1.6 meters. Annual energy generation is 6, 206.2 MWh while effective annual generation is 5, 585.5 MWh;
28. LMHPP is designed to utilize about 2.0 cubic meter per second of the water discharge from Mappit River at a net head of 52.6 meters between the intake weir and the powerhouse;
29. The PSA between IFELCO and the PGI has the following salient provisions, to wit:

“CLAUSE THREE- POWER AND ENERGY SUPPLY PROVISIONS”

3.1 This power Supply Agreement shall have a term of 25 years and shall remain in full force and effect from the commencement of the commercial operation of the Likud MHPP.

“CLAUSE FOUR- ENERGY RATES AND PAYMENT PROVISIONS”

4.1 Selling rate for 1st year of operation: PGI shall sell the energy output to IFELCO which the latter agrees to buy at a rate of PhP 4.35 per kilowatt hour.

4.2 The selling rate after 1st year of commercial operation shall be maintained unless the parties herein mutually amend the Agreement during the one-year mandatory review.

“CLAUSE 15-DISPUTE RESOLUTION”

15.1 Throughout the term of this Agreement, authorized representatives of PGI and IFELCO shall meet once a month to discuss the operation of the mini-hydro power plant to ensure that the arrangements between the parties proceed on a mutually satisfactory basis.

15.2 The parties hereto agree that in the event of dispute relating to this Agreement, or the breach thereof, their respective Chief Executives shall meet to resolve such dispute.

30. IFELCO considered the impact of the PSA on its effective rates taking into account the other suppliers of electricity in its franchise area. The table below summarizes the rate impact of the PSA:

Table I. IFELCO’s projected load allocations (2016-2020) with current suppliers (kWh)

Supplier	Kw	Load Factor %	Purchased, kWhr	Energy Cost PhP.	Basic Rate PhP/kWh
SNAP	4,868	96.05	110,194,000	460,743,152.80	4.1812
AMHPP	200	3.95	4,250,000	15,385,000.00	3.6200
Total	5,068	100	114,444,000	476,128,152.80	4.1604

Table II. Combined Generation Rate from the projected load allocations (2016-2020) with current suppliers (kWhrs) and Likud MHPP

Supplier	Kw	Load Factor %	Purchased, kWh	Energy Cost PhP.	Basic Rate PhP/kWh
SNAP	4,048	79.87	82,266,500	343,972,689.80	4.1812
AMHPP	200	3.95	4,250,000	15,385,000	3.6200
LMHPP	820	16.18	27,927,500	121,484,625	4.3500
Total	5,068	100.00	144,444,000	480,842,314.80	4.2016

Utilization of the Proceeds from the Operation of LMHPP

31. The Rice Terraces of the Cordillera was included in the list of World Heritage Sites by the United Nations Educational, Scientific and Cultural Organization (UNESCO), however, it was observed recently that there has been gradual degradation of these heritage sites, thus it was placed in the list of World Heritage Sites in Danger;
32. The Ifugao Rice Terraces, practically being referred to when one speaks of the Rice Terraces of the Cordillera, needs the necessary amount as well as government intervention in order to sustain its conservation;
33. PGI, being the forefront agency in the conservation of the Ifugao Rice Terraces is struggling to raise funds to fulfill its responsibility of preserving the Ifugao Rice Terraces as a world heritage site, hence, this LMHPP Project was conceptualized to help PGI generate revenue for its conservation;
34. The revenue from the operation of the LMHPP will be placed under the created “Rice Terraces Conservation Funds (RCTF). Further, to sustain the RCTF and the LMHPP operations, the PGI will also set aside funds from the generated revenue

intended for the repair and future replacement costs of the equipment;

35. PGI through its Sangguniang Panlalawigan, in its goal of conserving the Ifugao Rice Terraces, adopted Provincial Ordinance No. 2015-59 Establishing the Manual of Operations and Operational Structure of the Mini-Hydro Power Plants and the Guidelines for the Rice Terraces Conservation Fund. A copy of which is hereto attached as *Annex "H"* and made part hereof;

Documentary Requirements

36. In support of the instant application and in compliance with the documentary requirements mandated under **Rule 20 B, Section 2 of the ERC Rules of Practice and Procedure**, applicants are submitting the attached documents which are made integral parts hereof, as follows:
 - a) Articles of Incorporation, Certificate of Registration of the Articles of Incorporation, List of Shareholders – being a local government unit created by law, its (PGI) creation and profile is hereto attached in lieu thereof, as *Annex "I"*;
 - b) Board of Investment (BOI) Certificate of Registration – this does not apply, PGI being a Local Government Unit. In lieu thereof, a Certificate of Registration issued by the Department of Energy certifying that PGI is a Renewable Energy Developer (RED), is hereto attached as *Annex "J"* and made part hereof;
 - c) Environmental Compliance Certificate (ECC) – hereto attached as *Annex "K"*;
 - d) Power Supply Agreement – earlier attached as *Annex "G"*;
 - e) Details of the PSA
 - e.1. Sources of Funds/ Financial Plan – attached as *Annex "L"*;
 - e.2. Power Purchase Rate – the Feasibility Study particularly the Part on the Financial Analysis is hereto attached as *Annex "M"*;
 - e.3. Cash Flow - the LMHPP Economic Model is hereto attached as *Annex "N"*;
 - f) All details of the procurement process of fuel – this is not applicable as LMHPP uses water not fuel and at the same time it is a grant from JICA;

- g) Copy of Related Agreements (i.e. Transmission Wheeling Contract, Fuel Supply Agreements, etc.) – no other agreements as the transmission and grid lines are embedded in the transmission line of IFELCO;
 - h) Certificate of Compliance (COC) issued by the ERC – this was submitted before the ERC and is still on process;
 - i) Acknowledgment receipt by the Sangguniang Bayan of Asipulo, Ifugao, as well as the Sangguniang Panlalawigan of Ifugao – hereto attached as *Annex “O” and “O-1”* respectively;
 - j) Publication in a newspaper of general circulation – the affidavit of publication is hereto attached as *Annex “P”*, and the newspaper itself is hereto attached as *Annex “P-1”*;
 - k) Compliance with a Pre-filing Conference – a certification stating compliance thereto is hereto attached as *Annex “Q”*;
37. That PGI has complied with **Article VI, Section 1 and 2** of the ERC Guidelines for the Recovery of Cost for the Generation Component of the Distribution Utilities to wit:
- a) Certification by NPC whether Transition Supply Contract (TSC) capacity and energy is expected to be available during the contract period and other supporting documents – this is not applicable because the voltage level is 440 V/13.2 kV distribution voltage level. The power does not pass through the 69 kV transmission line;
 - b) Technical and economic characteristics of the generation company – the technical characteristics of LMHPP is hereto attached as *Annex “R”*;
 - c) Cost Analysis related to the generation in support of the pricing produced pricing provisions of the contract – these are all provided in the in the LMHPP Economic Model which was earlier attached as *Annex “N”*;
 - d) Details on the Procurement Process used by the Distribution Utility leading to the selection of the Generation Company (IFELCO) – a write up or an explanation on the History on how the PSA transpired is hereto attached as *Annex “S”*;

- e) Details regarding transmission projects or grid connection projects – this does not apply as the transmission or grid connections are embedded in the distribution line of IFELCO. I support however, the Transmission Service Agreement between IFELCO and NGCP is hereto attached as *Annex “T”*;
- f) Details regarding the load forecast projections in accordance with the latest Distribution Development Plan of the Distribution Utility and the variability of those projections over the proposed contractual period – IFELCO’s DDP Summary and Average Daily Load Curve are hereto attached as *Annex “U” and “U-1”* respectively;
- g) Other documents:
 - g.1. Latest and complete audited Financial Statements of the Generation Company – the 2014 audited financial statements of PGI and IFELCO are hereto attached as *Annex “V and V-1”* respectively;
 - g.2. Operating expenses of the power plant and the general administrative expenses – these are included in the LMHPP Financial Model which is earlier attached *Annex “N”*;
 - g.3. Judicial Affidavit of PGI Governor Denis B. Habawel in support of the Motion for Issuance of a Provisional Authority – attached as *Annex “W”*.

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

- 38. Applicant most respectfully pray for the issuance of a Provisional Authority pending the issuance of the Final Authority, due to the immediate need of applicants to generate income from said facility in order to sustain its very purpose as contained in the PSA;
- 39. Further, in the interest of the public, particularly the Ifugao power consumers, there is a necessity for the immediate approval of the instant application in order that there will be no undue disruption in power time and the IFELCO customers shall, at the soonest possible time, benefit from the low generation cost;
- 40. A provisional approval of the instant application, pursuant to rule 14 of the ERC Rules of Practice and Procedure will enable PGI to continue with the operation of the project and

consequently, provide power needed by IFELCO under the PSA in a timely manner;

41. The issuance of a Provisional Authority shall be advantageous to both the applicant and the local utility in furtherance of the purpose as contained in the PSA;

PRAYER

WHEREFORE, premises considered, IFELCO and the PGI respectfully pray that the Honorable Commission:

- a) Upon initial review of the application and pending trial on the merits, GRANT a provisional approval of the PSA, as well as a provisional authority to IFELCO to recover from its consumers the full amount of the fees and charges under the PSA; and
- b) After due notice and hearing, approve with finality the PSA, including the rates set out therein, and authorize IFELCO to recover the full amount from its customers.

Other relief just and equitable under the circumstances are likewise prayed for.

Consequently, the Commission, in its Order and Notice of Virtual Hearing, both dated 11 June 2021, set the instant Application for the jurisdictional requirements and expository presentation, and Pre-trial Conference and presentation of evidence through a virtual hearing on 22 July 2021 and on 29 July 2021 respectively.

However, on 09 July 2021, IFELCO and PGI filed an Urgent Motion to Reset the Hearing (*Motion*), alleging its inability to comply with the requirements in the Commission's Order dated 11 June 2021 considering the time constraints and the need to undergo the procurement process for the payment of the publication requirement.

Finding the *Motion* in order, the Commission hereby grants the same. In view thereof, the hearing set on 22 July 2021 and 29 July 2021 are hereby cancelled.

ACCORDINGLY, the Commission hereby sets anew the schedule of the hearings for 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 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:

Date	Platform	Activity
20 August 2021 (Friday) at two o'clock in the afternoon (2:00 PM)	Microsoft Teams	Determination of compliance with the jurisdictional requirements and expository presentation
27 August 2021 (Friday) at two o'clock in the afternoon (2:00 PM)	Microsoft Teams	Pre-trial Conference and 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, 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, copy furnish the Legal Service through legal@erc.ph, a verified Petition to Intervene at least five (5) calendar days prior to the date of the initial virtual hearing and subject to the requirements under Rule 9 of the ERC Revised 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;

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.

- 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 file through e-mail at docket@erc.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 ERC Revised 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.

Any of the persons mentioned in the preceding paragraphs may access the copy of the Application on the Commission's official website at www.erc.gov.ph.

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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 *Joint 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 14th day of July 2021 in Pasig City.


AGNES VST DEVANADERA
Chairperson and CEO


LS: MSIA/CLB/MCCG

