

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



IN THE MATTER OF THE APPLICATION FOR THE APPROVAL OF THE LETTERS OF AGREEMENT (LOAs) AND CONTRACTS FOR THE SUPPLY OF ELECTRIC ENERGY (CSEEs) ENTERED WITH DISTRIBUTION UTILITIES (DUs) LOCATED IN THE MINDANAO GRID WITH PRAYER FOR THE ISSUANCE FOR PROVISIONAL AUTHORITY (PA),

ERC CASE NO. 2016 -186 RC

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

D O C K E T E D
Date: MAR 06 2017
By: W

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NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 04 November 2016, Power Sector Assets and Liabilities Management Corporation (PSALM) filed an *Application* dated 19 October 2016 (*Application*) seeking the Commission's approval of the Letters of Agreement (LOAs) and Contracts for the Supply of Electric Energy (CSEEs) entered with Distribution Utilities (DUs) located in the Mindanao Grid.

PSALM alleged the following in its *Application*:

1. This is an Application for the approval of the terms and conditions of the Letters of Agreement (LOAs) and Contracts for the Supply of Electric Energy (CSEEs) entered into by and between Applicant PSALM and twenty-six (26) Distribution

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Utilities (DUs) located in the Mindanao Grid pursuant to Section 67 of Republic Act 9136.

2. On 7 July 2005, the Honorable Commission issued Resolution No. 078, Series of 2005 approving and adopting the template for the Transition Supply Contract (TSC). On 9 August 2005, said template for the TSC was later on amended by the Honorable Commission in its Resolution No. 15, Series of 2005.
3. On separate dates, the National Power Corporation (NPC) filed applications for the approval of the Contracts for the Supply of Electric Energy (CSEEs)/TSCs for the Mindanao Grid, which were correspondingly approved by the Honorable Commission on 19 October 2006 and 03 August 2009.
4. Applicant PSALM is a government-owned and controlled corporation created by virtue of RA 9136 or the "Electric Power Industry Reform Act of 2001" (EPIRA), with principal office address at 7/F Bankmer Building, 6756 Ayala Avenue, Makati City.
5. Pursuant to Section 49 of the EPIRA and the consequent assignment on 11 May 2009 (Annex "A") of all power supply contracts of NPC to PSALM, NPC assigned and transferred to PSALM all of NPC's rights and obligations in, to and under its CSEE and other similarly or substantially equivalent power supply contracts with NPC power customers (collectively referred to as Power Supply Contracts).
6. On and from 11 May 2009, the power supply contracts are deemed amended as follows: (i) all references to NPC in the supply contracts shall be treated as references to PSALM; (ii) PSALM shall be deemed the SUPPLIER under the Power Supply Contracts; and (iii) the rights and obligations of the Parties shall be governed by and construed in accordance with the Power Supply Contracts, as amended by the 11 May 2009 Letter Agreement.
7. PSALM previously filed four (4) Applications for the Approval of the terms and conditions of CSEEs of the DUs located in the Mindanao Grid on 19 September 2011, 07 October 2011, 20 January 2012 and were approved by the Honorable Commission on 25 February 2013, and on 1 April 2013 and approved by the Honorable Commission on 9 December 2013 (ERC Case No. 2013-055RC).
8. Subsequently, on 2 December 2014, PSALM filed an Application for the Approval of the terms and conditions of twenty-two (22) LOAs and a CSEE entered into by and between Applicant PSALM and twenty-three (23) DUs located in the Mindanao Grid docketed as ERC Case No. 2014-175 RC.

9. The LOAs are executed between the parties in cases of changes in the provisions of the CSEE other than the terms and conditions appearing in the template for the TSC, approved by the Honorable Commission in Resolution No. 08, Series of 2005. These changes may include the extension of the duration or amendments to the monthly contracted energy.
10. In the present Application, the LOAs were executed to amend Annex I of the CSEEs (contracted energy) pursuant to Section 4.1 of the CSEE which reserves the right of the Supplier (PSALM) to change the Contract Energy and Equivalent Demand annually due to change in the projected available capacity of the Supplier's power plants.
11. As agreed upon by the contracting parties, PSALM shall file the necessary application for the approval of the LOAs and the new CSEE. Thus, this application.

Terms and conditions of the CSEE under ERC Case
No. 2013-055RC

12. In ERC Resolution No. 33, Series of 2006, "Resolution Clarifying the Purpose of the Adoption of the TSC Template", the Honorable Commission clarified that the TSC Template should serve as a mere guide for the DUs and NPC and should not be construed as the contract contemplated under Section 67 of the EPIRA.
13. Notably, in ERC Case No. 2013-055RC, PSALM introduced the following revisions to the CSEEs executed with the DUs in the Mindanao Grid, which CSEEs were submitted to and approved by this Honorable Commission:
 - 10.1 CONTRACT DURATION – This Contract consisting of the Transition Supply Contract shall remain in full force and effect for a period of four (4) years from 26 December 2012 to 25 December 2016 or one year after the declaration of open access in Mindanao by the DOE, whichever comes first. xxx¹
 - 10.2. CONTRACT ENERGY – Contract Energy and Equivalent Demand as indicated in Annex I and Annex Ia may be changed by SUPPLIER annually due to a change in the projected available capacity of SUPPLIER's power plants and at any time during the duration of the Contract due to the privatization of any of the assets of SUPPLIER pursuant to the EPIRA.²
 - 10.3 AVAILABILITY OF SUPPLY – xxx Supply of energy shall be available except for interruption or reduction due to: a) causes beyond the control of SUPPLIER

¹ Section 3.1 of the CSEE

² Section 4.1, *ibid*

despite the exercise of due care, *including but not limited to the conditions stated in Section 4.1 of this Contract*; xxx In case of excess in the generation capacity of the SUPPLIER, CUSTOMER shall be informed of the excess and allocation of the excess available supply of electricity to the CUSTOMER shall be proportionate to the equivalent contract demand as provided for in this Contract. The CUSTOMER can increase its energy consumption up to but not more than 100% of the allocated excess supply.³

- 10.4 CONSUMPTION IN EXCESS OF CONTRACT ENERGY – Whenever available, in accordance with good utility practice, SUPPLIER may, but shall not be obliged to provide electricity to CUSTOMER in excess of Contract Energy.⁴
- 10.5 ASSIGNABILITY – When a CUSTOMER has been assigned by the SUPPLIER to a Successor Generating Company (SGC) by virtue of the privatization of the PSALM Generating Plant pursuant to the EPIRA, the SGC has the option to renegotiate this Contract with the CUSTOMER within six (6) months from the actual transfer of the CUSTOMER to the SGC. If the CUSTOMER and the SGC fail to reach an agreement, either Party shall have the right to terminate this Contract.⁵
- 10.6 CUSTOMER may assign, sell or transfer a part or all of its Contract Energy and/or Equivalent Demand either permanently or for a certain number of billing periods, xxx a) CUSTOMER has obtained certification from NGCP, that the transmission, sub-transmission, substation and other facilities can accommodate the increase in the power requirements of the assignee/transferee.⁶
- 10.7 BASIC ENERGY CHARGE – The ERC-approved generation rates, which are attached as Annex III and other charges exclusive of penalties, bonuses, shall be applied to the CUSTOMER's contracted monthly or hourly energy consumption. *Prior to the commercial operation of the WESM, the basic energy charge to be applied shall be the prevailing ERC approved rate and other adjustments.* Upon the commercial operation of the WESM, the basic energy charge to be applied to the contracted energy shall be in accordance with Section 8.1 of this Contract.⁷

³ Section 4.2, *id.*

⁴ Section 4.3, *id.*

⁵ Section 4.8, *id.*

⁶ Section 4.9, *id.*

⁷ Section 6.1, *id.*

- 10.8 SERVICE INTERRUPTION ADJUSTMENT – xxx the Contract Energy shall be adjusted to actual off-take below contract level for all hours when service was curtailed or interrupted *based on declaration of power curtailment issued by the NGCP.* xxx⁸
- 10.9 OVERDUE ACCOUNT – If the account of the CUSTOMER is overdue for more than six (6) months, xxx a restructuring agreement of the overdue account shall be executed by the CUSTOMER, with the following salient terms and conditions, xxx *Section 6.17.4 Non-renewal of contract for failure to pay the monthly amortization, current bill and other charges.* xxx⁹
14. The above revisions to the CSEEs were introduced in consultation with the Department of Energy (DOE) and the National Electrification Administration (NEA) and with the approval of the DUs in the Mindanao Grid. The revisions addressed apparent issues that may not have been considered in 2005. Likewise, the amendments were proposed to clarify recurring issues frequently subject of dispute.
15. The Honorable Commission later approved the above-mentioned provisions in its Decision dated 09 December 2013 in ERC Case No. 2013-055RC citing that the implementation of the CSEEs will ensure the continuous supply of power at a fairly stable cost for the benefit of the Mindanao end-users.¹⁰

The LOA of the Distribution Utilities located in the Mindanao Grid

16. Pursuant to Section 67 of the EPIRA and in compliance with the ERC Order dated 01 December 2010 in ERC Case No. 2010-079, the LOAs between PSALM and the DUs in the Mindanao Grid are hereby submitted for the Honorable Commission's approval:
- 16.1 Agusan del Norte Electric Cooperative, Inc. (ANECO) – [Annex “B-1”];
- 16.2 Agusan del Sur Electric Cooperative, Inc. (ASELCO) [Annex “B-2”];
- 16.3 Camiguin Electric Cooperative, Inc. (CAMELCO) [Annex “B-3”];

⁸ Section 6.4, *id.*

⁹ Section 6.17, *id.*

¹⁰ The contract duration of these CSEEs are for four (4) years. The annual ERC application for these CSEEs would cover only the change or revision in the Contracted Energy and Equivalent Demand depending on the changes in plant availability as provided for in Sec. 4.1

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- 16.4 Cotabato Electric Cooperative, Inc. (COTELCO) [Annex "B-4"];
 - 16.5 Davao del Sur Electric Cooperative, Inc. (DASURECO) [Annex "B-5"];
 - 16.6 Davao Oriental Electric Cooperative, Inc. (DORECO) [Annex "B-6"];
 - 16.7 Iligan Light and Power, Inc. (ILPI) [Annex "B-7"];
 - 16.8 Lanao del Norte Electric Cooperative, Inc. (LANECO) [Annex "B-8"];
 - 16.9 Misamis Occidental I Electric Cooperative, Inc. (MOELCI-I) [Annex "B-9"];
 - 16.10 Misamis Occidental II Electric Cooperative, Inc. (MOELCI-II) [Annex "B-10"];
 - 16.11 Misamis Oriental II Rural Electric Service Cooperative, Inc. (MORESCO II) [Annex "B-11"];
 - 16.12 Siargao Electric Cooperative, Inc. (SIARELCO) [Annex "B-12"];
 - 16.13 South Cotabato I Electric Cooperative, Inc. (SOCOTECO I) [Annex "B-13"];
 - 16.14 South Cotabato II Electric Cooperative, Inc. (SOCOTECO-II) [Annex "B-14"];
 - 16.15 Sultan Kudarat Electric Cooperative, Inc. (SUKELCO) [Annex "B-15"];
 - 16.16 Surigao del Norte Electric Cooperative, Inc. (SURNECO) [Annex "B-16"];
 - 16.17 Surigao del Sur I Electric Cooperative, Inc. (SURSECO-I) [Annex "B-17"];
 - 16.18 Surigao del Sur II Electric Cooperative, Inc. (SURSECO II) [Annex "B-18"];
 - 16.19 Zamboanga del Norte Electric Cooperative, Inc. (ZANECO) [Annex "B-19"];
 - 16.20 Zamboanga del Sur I Electric Cooperative, Inc. (ZAMSURECO I) [Annex "B-20"]; and
 - 16.21 Zamboanga City Electric Cooperative, Inc. (ZAMCELCO) [Annex "B-21"].
17. The above LOAs reflect a change on the Contract Energy and Equivalent Demand (Annex I) of the CSEEs based on NPC's

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forecast of an average decrease of forty (40%) in the total plant available capacity of the PSALM-owned plants in Mindanao.

18. The projected available capacity for 2016 is allocated pro rata to forty-two (42) customers (including industries and DUs) with short term CSEEs until 25 December 2016 through LOAs and to seven (7) customers whose CSEEs expired in 2015 through signing of new CSEEs with effective date from 26 December 2015 to 25 December 2016 to coincide with the short term CSEEs.
19. The expired long term CSEEs did not contain Section 4.1, thus, the allocation of the contracted demand and energy as provided in their original CSEEs are without deduction. The remaining capacity was allocated pro rata among customers with short terms CSEEs. For 2016, Section 4.1 will be inserted in the new CSEEs so that all our customers will have pro rata allocation of available supply.
20. It is emphasized that the terms and conditions of the above Mindanao DUs' CSEE/TSC as approved by the Honorable Commission in separate dates on 19 October 2006, 03 August 2008, 25 February 2013, and 09 December 2013 remain applicable, and have not been changed by these subsequent LOAs being submitted.
21. Likewise submitted for approval of the Honorable Commission are the following CSEEs, which are effective from 26 December 2015 to 25 December 2016 to coincide with the short term CSEEs:
 - a. Cagayan Electric Power and Light Company, Inc. (CEPALCO) [Annex "C-1"];
 - b. Cotabato Light and Power Company (CLPC) [Annex "C-2"];
 - c. Davao Light and Power Company, Inc. (DLPC) [Annex "C-3"];
 - d. First Bukidnon Electric Cooperative, Inc. (FIBECO) [Annex C-4"]; and
 - e. Misamis Oriental 1 Rural Electric Service Cooperative, Inc. (MORESCO 1) [Annex "C-5"].
22. Finally, in compliance with Section 4(e) of Rule 3 of the EPIRA IRR and ERC Resolution No. 38-2006, and in support of the instant Application for the approval of the LOAs, a copy of the instant Application (including Annexes) was furnished to the Sangguniang Panlungsod of Makati City (Annex "D"). The Application (excluding Annexes) was also published in a newspaper of general circulation (Annex "E").

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

23. PSALM acknowledges that the continued and efficient 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 delivering sufficient supply and stable cost of electricity to its customers, it is imperative that the LOAs be executed and implemented.

24. The Mindanao region has been suffering from low supply of electricity for decades. Because of the under supply, the allocation of the available generation capacity to the Mindanao DUs has been very tight. Thus, the contracted energy of the DUs under the above LOAs will definitely benefit the DUs and will ultimately redound to the benefit of the end-users.
25. Accordingly, the grant of provisional authority to execute the LOAs will benefit the DUs and will ultimately redound to the benefit of the end consumers.
26. Attached herewith is the Affidavit of Abner B. Tolentino, Acting Department Manager, Electricity Trading Department, under the Office of the Vice President – Asset Management Group of PSALM in support of this prayer (Annex “F”).
27. Pursuant to ERC rules of practice and procedures, the Honorable Commission may exercise its discretion by granting provisional authority or interim relief prior to a final decision.
28. It is understood that the interim relief sought by Applicant PSALM that may be granted by the Honorable Commission, shall be subject to adjustments and other conditions that the Honorable Commission may impose after hearing and final determination thereof.

RELIEF

WHEREFORE, Applicant PSALM most respectfully prays that the Honorable Commission:

1. Approve the duly negotiated LOAs for the change in the contracted energy and equivalent demand;
2. Approve the new CSEEs of the following DUs for the period 26 December 2015 to 25 December 2016;
 - a. Cagayan Electric Power and Light Company, Inc. (CEPALCO);
 - b. Cotabato Light and Power Company (CLPC);
 - c. Davao Light and Power Company, Inc. (DLPC);
 - d. First Bukidnon Electric Cooperative, Inc. (FIBECO);
 - e. Misamis Oriental 1 Rural Electric Service Cooperative, Inc. (MORESCO 1)

3. Issue a Provisional Authority authorizing PSALM to implement the subject LOAs and CSEEs with the concerned DUs in the Mindanao Grid.

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

The Commission has set the *Application* for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on **17 May 2017 (Wednesday) at ten o'clock in the morning (10:00 A.M.), at the ERC Davao Field Office, Mezzanine Floor, Mintrade Building, Monteverde corner Sales Streets, Davao City.**

All persons who have an interest in the subject matter of the instant case may become a party by filing with the Commission a verified Petition to Intervene at least five (5) days prior to the initial hearing and subject to the requirements under Rule 9 of the 2006 Rules of Practice and Procedure, indicating therein the docket number and title of the case and stating the following:

- 1) The petitioner's name and 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.


All other persons who may want their views known to the Commission with respect to the subject matter of the case may file their Opposition or Comment thereon at any stage of the proceeding before Applicant concludes the presentation of its evidence, subject to the requirements under Rule 9 of the 2006 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 and address of such person;
- 2) A concise statement of the Opposition or Comment; and
- 3) The grounds relied upon.

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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, 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.

WITNESS, the Honorable Chairman **JOSE VICENTE B. SALAZAR**, and the Honorable Commissioners **ALFREDO J. NON**, **GLORIA VICTORIA C. YAP-TARUC**, **JOSEFINA PATRICIA A. MAGPALE-ASIRIT**, and **GERONIMO D. STA. ANA**, Energy Regulatory Commission, this 20th day of February 2017 in Pasig City.


ATTY. NATHAN J. MARASIGAN
Chief of Staff
Office of the Chairman and CEO


LS: MCC/ARG/PAR/APV