

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



**IN THE MATTER OF THE
JOINT APPLICATION FOR
APPROVAL OF THE INTERIM
SUPPLY CONTRACT (ISC)
ENTERED INTO BY AND
BETWEEN ILOCOS SUR
ELECTRIC COOPERATIVE,
INC. (ISECO) AND SAN
MIGUEL ENERGY
CORPORATION (SMEC),
WITH PRAYER FOR
PROVISIONAL AUTHORITY
AND CONFIDENTIAL
TREATMENT OF
INFORMATION**

ERC CASE NO. 2016-105 RC

**ILOCOS SUR ELECTRIC
COOPERATIVE, INC. (ISECO)
AND SAN MIGUEL ENERGY
CORPORATION (SMEC),
Applicants.**

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DOCKETED
Date: SEP 23 2016
By: MM

NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 29 April 2015, Ilocos Sur Electric Cooperative, Incorporated (ISECO) and San Miguel Energy Corporation (SMEC) filed a *Joint Application with Prayer for Provisional Authority and Confidential Treatment of Information* seeking the Commission's approval of the Interim Supply Contract (ISC) that both parties entered into.

In their *Joint Application*, ISECO and SMEC alleged the following:

The Joint Applicants

1. ISECO is an electric cooperative duly registered with the National Electrification Administration (NEA) pursuant to Presidential Decree No. 269, as amended, with principal office address at Santiago, Ilocos Sur. It holds a franchise to operate light and power services in the Cities of Candon and Vigan, and in the Municipalities of Alilem, Banayoyo, Bantay, Burgos, Cabugao, Caoayan, Cervantes, Gregorio Del Pilar, Galimuyod, Lidlidda, Magsingal, Nagbukel, Narvacan, Quirino, Salcedo, San Ildefonso, San Juan, San Emilio, San Esteban, San Vicente, Santa, Sta. Catalina, Sta. Cruz, Santiago, Sigay, Sinait, Sta. Lucia, Sta. Maria, Sto. Domingo, Sugpon, Suyo and Tagudin, all in the Province of Ilocos Sur (Franchise Area). It shall also be herein referred to as the "Buyer";

2. SMEC is a domestic corporation organized and existing under the Philippine laws, with office address at the 2nd Floor, 808 Building, MERALCO Avenue corner Gen. Lim Street, Barangay San Antonio, Pasig City. It is the Independent Power Producer (IPP) Administrator of the 1,000 Net Contracted Capacity of the Sual Coal-Fired Thermal Power Plant located in Barangay Pangascasan, Sual, Pangasinan. It shall also be herein referred to as the "Seller";

3. The Joint Applicants may be served with the orders, notices and other processes of the Honorable Commission through their respective undersigned counsels at the addresses indicated herein;

Nature of the Application

4. The Joint Application for approval of the Interim Supply Contract (ISC) dated 22 August 2014 entered into by and between ISECO and SMEC, is being submitted to the Honorable Commission for its review and approval pursuant to Sections 25 and 45(b) of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 or the EPIRA, Rules 5, Section 4(e) and 11, Section 5 of its Implementing Rules and Regulations (IRR), Rule 20(B) of its Rules of Practice and Procedure, and other pertinent rules and regulations;

Statement of Facts

5. Competitive Selection Process (CSP). After a continuous assessment of its power requirements, ISECO determined that there is a need to contract for additional base and peaking supply. In doing so, it resorted into extensive forecasting methods and performed optimization models and analyses for the rate impact thereof. The need for additional supply is also necessary to forestall too much exposure from the spot market and avoid the price volatility thereof, particularly, during the summer months. ISECO initially requested from its current power supplier, GNPower Mariveles Coal Plant Ltd. Company (GMCP), to provide the additional power requirements but the latter could not accommodate such request because it was already fully contracted;

Having established the details, ISECO, through a letter, informed the Honorable Commission of its intent to conduct a CSP. Aside from the publications of its "Invitation to Bid", ISECO also personally invited several generation companies through phone calls to participate in the bidding process. Parenthetically, SMC Consolidated Power Corporation (SCPC) was the lone power supplier who responded and presented a formal offer;

After a comprehensive study, ISECO's Technical Working Committee concluded that SCPC's offer is favorable to the distribution utility's requirements primarily taking into consideration the exigency of additional supply. It further concluded that since SCPC will still be at the testing and commissioning stage by the time ISECO requires the additional supply, an interim power supply from SMEC is, likewise, necessary to bridge the gap until such time that SCPC commences commercial operations;

Thus, on 22 August 2014, it executed an ISC with SMEC, subject of the Joint Application;

6. Salient Features of the ISC.

6.1 Contract Capacity. The Contracted Capacity for the duration of the ISC shall be 5,000 kW. The Buyer shall maintain a minimum hourly nomination of at least thirty-five percent (35%) of the Contract Capacity for the duration of the said ISC. The Contract Capacity shall be subject to a separate Nomination Protocol;

6.2 Contract Term. The ISC shall take effect between the Parties on the date of signing (Execution Date) and shall remain effective until the Commercial Operations Date (COD) of SCPC's Power Plant in Limay, Bataan;

6.3 Capacity and Energy Fees. Under the ISC, ISECO shall pay the following Capacity and Energy Fees to SMEC:

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		25-Dec-13	25-Jan-14	25-Feb-14	25-Mar-14	25-Apr-14	25-May-14	25-Jun-14	25-Jul-14	25-Aug-14	25-Sep-14	25-Oct-14	25-Nov-14	25-Dec-14
Rates Schedule														
CAPACITY FEES														
A1	Monthly Capacity Payment (Dollar Portion)	PhP/kW-Mo	359,9158	361,6783	361,4334	362,1909	362,9510	363,7136	364,4788	365,2465	366,0167	366,7896	367,5650	368,3430
A2	Monthly Capacity Payment (Local Portion)	PhP/kW-Mo	894,0620	895,4344	897,4701	899,1943	901,6708	904,9737	909,5885	916,7777	925,8179	936,8036	949,8336	964,9142
B	Monthly Fixed Operation and Maintenance	PhP/kW-Mo	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830
			1,380,3708	1,362,4957	1,347,2865	1,366,7682	1,363,1343	1,371,0703	1,367,4563	1,375,4022	1,377,5776	1,371,9778	1,381,9516	1,378,3672
ENERGY FEES														
C	Fuel Rate	PhP/kWh	2.0372	2.0372	2.0372	2.0372	2.0372	2.0372	2.0372	2.0372	2.0372	2.0372	2.0372	2.0372
D1	Variable O&M (Dollar Portion)	PhP/kWh	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626
D2	Variable O&M (Local Portion)	PhP/kWh	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083
			2.1081	2.1081	2.1081	2.1081	2.1081	2.1081	2.1081	2.1081	2.1081	2.1081	2.1081	2.1081

		25-Dec-14	25-Jan-15	25-Feb-15	25-Mar-15	25-Apr-15	25-May-15	25-Jun-15	25-Jul-15	25-Aug-15	25-Sep-15	25-Oct-15	25-Nov-15	25-Dec-15
Rates Schedule														
CAPACITY FEES														
A1	Monthly Capacity Payment (Dollar Portion)	PhP/kW-Mo	436,7449	436,5275	437,3133	438,1017	438,8928	439,6864	440,4828	441,2818	442,0834	442,8877	443,6947	444,5044
A2	Monthly Capacity Payment (Local Portion)	PhP/kW-Mo	1,030,7761	1,031,1557	1,016,4105	1,075,0206	1,030,7446	1,037,5197	1,033,6430	1,040,8312	1,042,2948	1,038,6860	1,045,2361	1,040,5358
B	Monthly Fixed Operation and Maintenance	PhP/kW-Mo	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830
			1,572,8534	1,573,6662	1,560,1068	1,579,5133	1,576,8094	1,583,9231	1,580,5138	1,588,4960	1,590,7612	1,587,3057	1,595,3188	1,591,4732
ENERGY FEES														
C	Fuel Rate	PhP/kWh	1.9943	1.9943	1.9943	1.9943	1.9943	1.9943	1.9943	1.9943	1.9943	1.9943	1.9943	1.9943
D1	Variable O&M (Dollar Portion)	PhP/kWh	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626
D2	Variable O&M (Local Portion)	PhP/kWh	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083
			2.0652	2.0652	2.0652	2.0652	2.0652	2.0652	2.0652	2.0652	2.0652	2.0652	2.0652	2.0652

BASE INDICES:		September 2012
Global Coal New Castle Price Index	US\$/MT	69.41
FOREX Rate	PHP/USD	41.749
US Consumer Price Index (1982-84=100)	Fixed	231.407
Philippine Consumer Price Index (2006=100)	Fixed	131.49
		January 1994
Japan Export Price Index	Fixed	93.93
US Export Price Index	Fixed	91.76
Europe Export Price Index	Fixed	120.57
Retail Price Index - Metro Manila (2000=100)	Fixed	75.90

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		25-Dec-15	25-Jan-16	25-Feb-16	25-Mar-16	25-Apr-16	25-May-16	25-Jun-16	25-Jul-16	25-Aug-16	25-Sep-16	25-Oct-16	25-Nov-16	25-Dec-16
Rates Schedule														
CAPACITY FEES														
A1	Monthly Capacity Payment (Dollar Portion)	PhP/kW-Mo	445,3168	446,1319	446,9497	447,7703	448,5935	449,4193	450,2464	451,0759	451,9082	452,7432	453,5807	454,4208
A2	Monthly Capacity Payment (Local Portion)	PhP/kW-Mo	1,045,7765	1,046,2533	1,046,2522	1,053,2533	1,049,0288	1,056,2642	1,052,0294	1,059,2942	1,055,0165	1,062,2957	1,058,0736	1,064,8033
B	Monthly Fixed Operation and Maintenance	PhP/kW-Mo	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830	106,3830
			1,600,4763	1,602,7682	1,599,5949	1,607,4296	1,603,9633	1,611,6517	1,608,7198	1,616,7571	1,613,1137	1,621,4789	1,617,8498	1,626,4323
ENERGY FEES														
C	Fuel Rate	PhP/kWh	2.0145	2.0145	2.0145	2.0145	2.0145	2.0145	2.0145	2.0145	2.0145	2.0145	2.0145	2.0145
D1	Variable O&M (Dollar Portion)	PhP/kWh	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626	0.0626
D2	Variable O&M (Local Portion)	PhP/kWh	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083	0.0083
			2.0854	2.0854	2.0854	2.0854	2.0854	2.0854	2.0854	2.0854	2.0854	2.0854	2.0854	2.0854

6.4 Adjustment Formula. The Capacity and Energy Fees are subject to monthly adjustments based on the following formula and indices (Annex II-A of the ISC):

Capacity Fees

Monthly Capacity Payment (Dollar Portion converted to PhP):

$$\text{PhP/kW-month} \times \frac{\text{FOREX}_C}{\text{FOREX}_B}$$

Where:

FOREX_C = Average of the daily exchange rate of the Philippine Peso to the US Dollar, as posted by the *Bangko Sentral ng Pilipinas* (BSP) for the calendar month within which the start of the current Billing Period occurs

FOREX_B = 41.749 PhP/USD

Monthly Capacity Payment (Local Portion in PhP):

PhP/kW-Month = No Indexation

Monthly Fixed Operations and Maintenance:

PhP/kW-month x $\frac{\text{PHIL CPI}_C}{\text{PHIL CPI}_B}$

Where:

PHIL CPI_C = Consumer Price Index (CPI) for All Income Households in the Philippines – All Items (2006 = 100), as posted by the Philippine National Statistics Office (NSO) for the calendar month within which the start of the current Billing Period occurs

PHIL CPI_B = 131.40

Energy Fees

Fuel Rate:

PhP/kWh x $\frac{\text{Global Coal Newcastle}_C}{\text{Global Coal Newcastle}_B}$ x $\frac{\text{FOREX}_C}{\text{FOREX}_B}$

Where:

Global Coal Newcastle_C = Fuel Cost Index in USD/MT based on the Global Coal Newcastle posting representing the average index for the calendar month within which the start of the current billing Period occurs

Global Newcastle_B = 89.41 USD/MT

FOREX_C = Average of the daily exchange rate of the Philippine Peso to the US Dollar, as posted by the BSP for the calendar month within which the start of the current Billing Period occurs

FOREX_B = 41.749 PhP/USD

Variable O&M (Dollar Portion):

$$\text{PhP/kWh} \times \frac{\text{FOREX}_C}{\text{FOREX}_B} \times \text{EPI}_{AVE}$$

Where:

FOREX_C = Average of the daily exchange rate of the Philippine Peso to the US Dollar, as posted by the BSP for the calendar month within which the start of the current Billing Period occurs

FOREX_B = 41.749 PhP/USD

EP_{LAVE} = Average Export Price Index (EPI) for US, Japan and Europe

$$= \frac{JI_C / JI_B + (USI_C / USI_B) + (EI_C / EI_B)}{3}$$

Where:

JI_C = Japan EPI six (6) months immediately preceding the adjustment date, taken from the International Financial Statistics (IFS) published by the International Monetary Fund (IMF)

JI_B = 93.93

USI_C = US EPI six (6) months immediately preceding the adjustment date, taken from the IFS published by the IMF

USI_B = 91.70

EI_C = EPI of a European country agreed between the IPP Counter Party and the IPP and notified to the Administrator six (6) months immediately preceding the adjustment date, taken from the IFS published by the IMF

EI_B = 120.57

Variable O&M (Local Portion):

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$$\text{PhP/kWh} \times \frac{\text{RPI}_c}{\text{RPI}_B}$$

Where:

RPI_c =Retail Price Index for All Items (2000=100) in Metropolitan Manila six (6) months immediately preceding the adjustment date, as published by the NSO

RPI_B =75.90

Base Indices:

Particulars	September 2012	
Global Coal Newcastle Price Index	USD/MT	89.41
FOREX Rate	PhP/USD	41.749
US CPI (1982-84=100)	Fixed	231.407
Philippine CPI (2006=100)	Fixed	131.40
	January 1994	
Japan EPI (2010=100)	Fixed	93.93
US EPI (2010=100)	Fixed	91.70
Europe EPI (2005=100)	Fixed	120.57
Retail Price Index – Metro Manila (2000=100)	Fixed	75.90

6.5 Other Charges. The Buyer shall bear all other costs and charges including but not limited to transmission line losses, line rental, site specific loss adjustments, and adjustments for must-run units, among others;

6.6 Discounts. The Seller provides for both Prompt Payment Discount (PPD) and Collection Efficiency Discount (CED);

a) **PPD.** The Buyer may avail of the PPD equivalent to three percent (3%) of the total of the Capacity and Energy Fees components of the current power bill, provided that:

i. The Buyer has no arrears from previous power billings including the Security Deposit or any unpaid charges or penalties including VAT;

ii. The Buyer has submitted all necessary Bureau of Internal Revenue (BIR) Tax Certificates for all taxes withheld;

iii. The Buyer pays the power bill in full on or before the 10th day of the calendar month following the current Billing Period; and

iv. The Buyer complies with other policies and procedures as may be required by the Seller, subject to prior notification by the Seller to the Buyer;

b) **CED.** The Buyer shall be entitled to the following CED:

Collection Efficiency Levels	Discount, PhP/kWh
Below 65%	None
66% to 75%	0.05
76% to 85%	0.10
86% to 95%	0.15
96% and above	0.20

In order for the Buyer to avail of the CED, it must comply with the following conditions:

i. The Buyer has no outstanding obligations to the Seller from previous power bills including VAT; and

ii. The Buyer shall submit to the Seller: a copy of its Monthly Financial and Statistical Report (MFSR)/Collection Efficiency Report signed by its Finance Manager and General Manager, stamped "received" by the NEA; Audited Financial Statements (AFS) stamped "received" by the BIR (to be submitted to the Seller within three (3) calendar days from receipt of the BIR; zero (0)-rated VAT certificates as updated monthly; and a duly accomplished CED Availment Form; and

6.7 **Outages.** The Seller shall not be obligated to deliver energy from the Power Plant during the Annual Outage Allowance of one thousand six hundred eighty (1,680) cumulative outage hours;

The Seller shall be allowed an additional Major Maintenance Outage Allowance of seven hundred twenty (720) cumulative outage hours once every five (5) years reckoned from the most recent Major Maintenance of each Unit of the Power Plant. The Seller is not obligated to deliver energy from the said Power Plant during the said Major Maintenance Outage;

Unutilized Outage Allowance or Major Maintenance Outage hours shall not be carried forward to any subsequent Contract Year; and

6.8 **Replacement Power.** To ensure the uninterrupted supply of energy to the Buyer during the Annual Outage Allowance or Major Maintenance Outage hours, the Seller may procure replacement energy from other sources, the cost of which shall be passed-on to the Buyer;

Rate Impact on ISECO's Overall Generation Rate

7. The indicative rate impact on ISECO's overall generation rate with and without the supply from SMEC are as follows:

PERIOD	WITHOUT SMEC (PHP/KWH)	WITH SMEC (PHP/KWH)	INCREASE/ (DECREASE) (PHP/KWH)
April 2014	7.712	6.146	1.566

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May 2014	5.143	4.510	0.634
June 2014	5.092	4.454	0.638
July 2014	5.874	5.231	0.643
August 2014	5.293	4.798	0.495
September 2014	5.133	4.667	0.466
October 2014	5.001	4.623	0.378
November 2014	4.089	4.112	(0.024)
December 2014	3.087	3.401	(0.314)
January 2015	3.504	3.609	(0.105)
February 2015	5.272	4.991	0.281
Mar 2015	5.441	5.156	0.285
April 2015	3.996	4.236	(0.240)
May 2015	4.338	4.297	0.041
June 2015	4.829	4.452	0.377
July 2015	5.296	4.525	0.771
August 2015	4.657	4.517	0.140
September 2015	3.884	4.074	(0.189)
October 2015	3.636	3.894	(0.258)
November 2015	4.030	4.231	(0.201)
December 2015	4.034	4.296	(0.262)
January 2016	4.016	4.416	(0.400)
February 2016	2.978	3.179	(0.201)

PARTICULARS	KWH	AMOUNT (PHP)	AVERAGE RATE (PHP/KWH)
Total Energy Purchased	482,444,644		
Generation Charge Without SMEC		2,231,678,265.52	4.626
Generation Charge With SMEC		2,136,137,642.18	4.428
Reduction in Generation Rate		95,540,623.34	(0.198)

8. Environmental Compliance Certificate (ECC). On 8 November 2004, the Department of Environment and Natural Resources (DENR) issued an ECC with Reference No. 9406-003-206 to Pangasinan Electric Corporation (PEC) for the 1,200 MW Sual Coal-fired Power Project located at Sitios Bangayao, Buyog and Pao of Barangay Pangascasan, Sual, Pangasinan covering 280 hectares land area;

9. Board of Investments (BOI) Certificate. On 26 January 2011, the Power Plant Project was registered with the BOI which issued Certificate of Registration No. 2011-024;

10. Certificate of Compliance (COC). On 20 April 2009, the Honorable Commission issued a COC registered under the name of Team Sual for its 1,294 MW Coal-Fired Thermal Power Plant. The said COC was a renewal of the previously issued COC on 17 December 2003 under the name of the power plant's former owner, Mirant Sual Corporation.

Compliance with the Pre-filing Requirements

11. Copies of the foregoing documents and/or information are attached to the Joint Application as annexes and made integral parts hereof:

Annex	Documents/Information
A	SMEC's Articles of Incorporation
B	SMEC's Certificate of Registration issued by the Securities and Exchange Commission (SEC)
C	SMEC's Latest General Information Sheet (GIS)
D	SMEC's Certificate of Registration with the BOI
E	ECC issued by the DENR for the Sual Coal-Fired Thermal Power Plant
F	ISC entered into by and between ISECO and SMEC
G and Series	<p>Details of the ISC:</p> <p>Executive Summary</p> <p>Sources of Funds/Financial Plans Debt/Equity Ratio Project Cost Computation of Return on Investment (ROI)/Weighted Average Cost of Capital (WACC) Certification from the Bank/Lending Institution specifying the principal amortization, term and interest during the cooperation period of the loan agreement</p> <p>Purchased Power Rate Breakdown of the base prices Sample Computation of Power Rates with the supporting documents on the assumptions taken Rate Impact Study/Simulation Statement of impact on the overall rates of ISECO once the contract is approved Basis/Rationale of indexation and level of indexation</p> <p>Cash Flow Initial Costs Breakdown of Operating and Maintenance expenses Minimum Energy Off-take (MEOT)</p>
H	Details of the Power Rate Calculations and Financial Model (Confidential)
I, I-1 and I-2	Contracts for the Supply, Construction and Supervision for the Power Plant

	(Confidential)
J	Details of the Fuel Procurement Process
K	Transmission Service Agreement (TSA) between the National Grid Corporation of the Philippines (NGCP) and ISECO
L and Series	Acknowledgment receipts by the Sangguniang Pambayan of Santiago, the Sangguniang Panlalawigan of Ilocos Sur, and the Sangguniang Panlungsod of Mandaluyong City, of copies of the Joint Application (including annexes)

12. Further, in compliance with Article VI, Sections 1 and 2 of the Honorable Commission's *Guidelines for the Recovery of Costs for the Generation Component of the Distribution Utilities' (DU) Rates*, copies of the foregoing are, likewise, attached to the Joint Application as annexes and made integral parts hereof:

Annex	Documents/Information
N	Relevant technical and economic characteristics of the generation capacity, installed capacity, mode of operation, and dependable capacity
O	Costs analysis of the proposed pricing provisions of the ISC
P and Series	Details of the Competitive Selection Process (CSP) undertaken by ISECO leading to the selection of SMEC as its supplier, including invitations to participate and submit proposals, Terms of Reference (TOR), proposals and/or tender offers received by ISECO, ISECO's Special Bids and Awards Committee (SBAC) Evaluation Report; ISECO's Board Resolution confirming the said SBAC Evaluation Report, and the Notice of Award to SMEC
Q and Series	Details of the interconnection facility of the Sual Coal-Fired Thermal Power Plant
R	ISECO's latest Distribution Development Plan (DDP) and Load Forecast Projections
S	Demand Side Management (DSM) Program that could be implemented by ISECO if approved by the Honorable Commission
T	SMEC's latest Audited Financial Statements (AFS), Balance Sheet, Income Statement, and Statement of Cash Flows
T-1	Bank Certification of Long-term Loans, including Schedule of Original Loan (principal amount, interest payable and term of the loan) and Updated Balances (principal amount, interest payable and penalties, if any and remaining term of the loan)
T-2	Operating Expenses for the Power Plant and General and Administrative Expense
T-3	Certification from the engine manufacturer or SMEC of the net heat rate in liters per kWh

T-4	Simulation on the number of operating units necessary to meet the MEOT and/or additional energy/demand requirements of ISECO
T-5	Potential Cost (absolute amounts and PhP/kWh) of Ancillary Services as and when SMEC or ISECO is connected to the main grid
U	Judicial Affidavit in support of the motion for provisional authority

13. Furthermore, the Joint Application is consistent and in accordance with the first (1st) and fifth (5th) “Whereas clauses” of the Department of Energy (DOE) Circular No. 2003-12-11 which are quoted hereunder:

“WHEREAS, Section 2 of Republic Act No. 9136, also known as the Electric Power Industry Reform Act of 2001 or EPIRA, declared as a policy of the State, among others, [to ensure the quality, reliability, security and affordability of the supply of electric power;]” (*first “whereas clause”, Department of Energy Circular No. 2003-12-11.Underscoring supplied.*)

“WHEREAS, pursuant to Section 23 of EPIRA, all distribution utilities, as defined in the law, SHALL HAVE THE OBLIGATION TO SUPPLY ELECTRICITY IN THE LEAST COST MANNER TO ITS CAPTIVE MARKET subject to the collection of retail rate duly approved by the Energy Regulatory Commission;” (*fifth “whereas clause”, ibid. Underscoring supplied.*)

14. The Joint Application is, likewise, consistent with Section 1 of the same Department Circular which declares as State policy, that:

“All distribution utilities must henceforth take cognizance and assume full responsibility to forecast, assure and contract for the supply of electric power in the respective franchise areas to meet their obligations as a distribution utility.” (*Underscoring supplied.*)

15. By way of emphasis, Resolution No. 21, Series of 2005 of the Honorable Commission dated 19 October 2005 had directed all Distribution Utilities (DUs) “to enter into future bilateral power supply contract with power producers to be subjected to a review by the Commission.” (*Underscoring supplied.*)

16. The ISC with SMEC was made to ensure the continuous supply of power to ISECO and due to the former’s competitive pricing structure and other favorable terms of its contract, which will redound to the benefit of the latter and its end-consumers in terms of reliable and affordable power supply;

Allegations in Support of the Motion for Provisional Authority

17. ISECO and SMEC replead the foregoing allegations in support of their prayer for the immediate issuance of provisional authority, anchored on the following grounds:

17.1 Considering the current limitations on the available capacity in the Luzon Grid, ISECO must source power from SMEC immediately to avoid power outage in its franchise area. As such, it was constrained to implement the ISC under the belief that it will redound to the benefit of its member-consumers considering that the rates therein are lower than the Commission-approved National Power Corporation – Time-of-Use (NPC-TOU) rates;

17.2 Per its Actual/Forecasted Load Data and DDP, ISECO is undergoing a significant increase and is expecting a further increase in its energy requirements due to a growth in the total demand of its member-consumers; and

17.3 Without the supply of SMEC, ISECO will be exposed to the unpredictable and expectedly higher prices in the WESM or worse, be unable to supply the required energy to its franchise area resulting in total blackout;

18. In the interest of the public, there is a necessity for the immediate and provisional approval of the Joint Application in order that there will be no undue disruption in the power supply to ISECO's member-consumers;

19. It bears stressing that pursuant to Rule 14, Section 3 of the Honorable Commission's Rules of Practice and Procedure, the Honorable Commission may issue a provisional authority pending approval of the Joint Application, to wit:

“Section 3.Action on the Motion. – Motions for provisional authority or interim relief may be acted upon with or without hearing. The Commission shall act on the motion on the basis of the allegations of the application or petition and supporting documents and other evidences that applicant or petitioner has submitted and the comments or opposition filed by any interested person, if there be any.” (Emphasis provided.)

20. To emphasize the necessity of the foregoing allegations, a judicial affidavit in support of the motion for provisional authority is attached to the Joint Application as Annex “U” and made an integral part hereof;

Allegations in Support of the Confidential Treatment of Annexes “H”, and “I”, “I-1”, and “I-2”

21. Rule 4 of the Honorable Commission's Rules of Practice and Procedure provides that ISECO and SMEC may request that information may not be disclosed;

22. SMEC prays for the confidential treatment of the information contained in the following annexes, and not disclosed except to the officers and staff of the Honorable Commission and its staff:

Annex	Documents and/or Information
H	Details of the Power Rate Calculations and Financial Model (Confidential)
I, I-1 and I-2	Contracts for the Supply, Construction and Supervision for the Power Plant (Confidential)

23. **Annex "H"** contains the details of SMEC's power rate calculations and financial model as well as the manner by which these were derived. These information are proprietary in nature and should be protected as trade secrets as contemplated by law and jurisprudence. In the case of *Air Philippines Corporation vs. Pennswell, Inc.*¹, the Supreme Court defined a trade secret, as follows:

"A trade secret may consist of any formula, pattern, device, or compilation of information that: **(1) is used in one's business; and (2) gives the employer an opportunity to obtain an advantage over competitors who do not possess the information.** Generally, a trade secret is a process or device intended for continuous use in the operation of the business, for example, a machine or formula, but **can be a price list or catalogue or specialized customer list.** It is indubitable that trade secrets constitute proprietary rights. The inventor, discoverer, or possessor of a trade secret or similar innovation has rights therein which may be treated as property, and ordinarily an injunction will be granted to prevent the disclosure of the trade secret by one who obtained the information "in confidence" or through a "confidential relationship". American jurisprudence has utilized the following factors to determine if an information is a trade secret, to wit:

- (1) the extent to which the information is known outside of the employer's business;
- (2) the extent to which the information is known by employees and others involved in the business;
- (3) the extent of measures taken by the employer to guard the secrecy of the information;
- (4) the value of the information to the employer and to competitors;
- (5) the amount of effort or money expended by the company in developing the information; and
- (6) the extent to which the information could be easily or readily obtained through an independent source."*(citations omitted, emphasis supplied)*

24. The interest of the consuming public is sufficiently protected by the review and evaluation of the rates under the ISC by

¹ G.R. No. 172835, December 13, 2007

the Honorable Commission, without the need to disclose the contents of **Annex "H"**. The reasonableness and transparency of the prices of electricity is to be assured by the Honorable Commission through its own review and verification of SMEC's operating costs and expenses;

25. More importantly, SMEC's competitors, should they obtain the information in **Annex "H"**, will gain undue advantage thereon and have the opportunity to use the same in their operations. The negotiating power of SMEC with parties it plans to contract with or who it is currently doing business with, will clearly be thwarted if it is compelled to disclose such information;

26. Further, **Annexes "I", "I-1", and "I-2"** pertain to the Supply, Construction, and Supervision Contracts, respectively, for the Power Plant. These contracts have counter-parties who are not parties to the Joint Application. They contain highly technical designs, drawings and other information which are the intellectual property and trade secrets of the counter-parties, and therefore should not be disclosed to the public. ISECO and SMEC, likewise, pray for the confidential treatment of **Annexes "I", "I-1", and "I-2"**, under the same premises above; and

27. Accordingly, ISECO and SMEC submit one (1) copy each of **Annexes "H", "I", "I-1", and "I-2"**, in a sealed envelope, with the said envelope and each page of the documents and/or information stamped with the word "*Confidential*".

Prayer

WHEREFORE, the foregoing premises considered, the Joint Applicants Ilocos Sur Electric Cooperative, Incorporated (ISECO) and San Miguel Energy Corporation (SMEC) most respectfully pray that the Honorable Commission:

1. Pending hearing, **ISSUE** an Order provisionally approving the Joint Application and the ISC thereby authorizing ISECO and SMEC to immediately implement the rate structures therein;

2. **ISSUE** an Order treating **Annexes "H", "I", "I-1", and "I-2"**, and all the information contained therein as confidential, directing their non-disclosure to persons other than the officers and staff of the Honorable Commission, **continuously protecting the said information from public disclosure by maintaining the same separate and apart from the records of the case**, and ensuring that these are not divulged to unauthorized persons, pursuant to Rule 4 of its Rules of Practice and Procedure; and

3. After due notice and hearing, **ISSUE** a Decision approving

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the Joint Application and the ISC between ISECO and SMEC, and authorizing ISECO to charge and collect the fees therein from its member-consumers.

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

The Commission has set the Application for initial hearing, expository presentation, pre-trial conference and evidentiary hearing on **25 October 2016 at one o'clock in the afternoon (1:00 P.M.), at ISECO's Principal Office at Bigbiga, Santiago, Ilocos Sur.**


All persons who have an interest in the subject matter of the proceeding may become a party by filing, at least five (5) days prior to the initial hearing and subject to the requirements in the ERC's Rules of Practice and Procedure, a verified petition with the Commission giving the docket number and title of the proceeding and stating: (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 proceeding may file their opposition to the Application or comment thereon at any stage of the proceeding before the Applicants conclude the presentation of their evidence. No particular form of opposition or comment is required, but the document, letter or writing should contain the name and address of such person and a concise statement of the opposition or comment and the grounds relied upon.

All such persons who wish to have a copy of the Application may request from the Applicants that they be furnished with the same, prior to the date of the initial hearing. The Applicants are 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 7th day of September 2016 at Pasig City.


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


LS: ICG/APV