

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 A
CONTRACT FOR THE SUPPLY
OF ELECTRIC ENERGY (CSEE)
ENTERED WITH DISTRIBUTION
UTILITIES (DUs) LOCATED IN
THE MINDANAO GRID WITH
PRAYER FOR THE ISSUANCE OF
PROVISIONAL AUTHORITY (PA)**

ERC CASE NO. _____

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

Applicant,

X ----- X

APPLICATION

Applicant **Power Sector Assets and Liabilities Management Corporation (PSALM)**, by counsel to this Honorable Commission, respectfully states:

1. This is an Application for the approval of the terms and conditions of the Letters of Agreement (LOAs) and a Contract for the Supply of Electric Energy (CSEE) entered into by and between Applicant PSALM and twenty-three (23) Distribution Utilities (DUs) located in the Mindanao Grid pursuant to Section 67 of Republic Act (R.A.) No. 9136.

2. On 7 July 2005, the Honorable Commission issued Resolution No. 08, 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 Contract 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 R.A. 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 three (3) 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, and 20 January 2012, and were approved by the Honorable Commission on 25 February 2013.

8. Recently, PSALM filed a similar Application for the Approval of the terms and conditions of CSEEs entered into by and between Applicant PSALM and the twenty-three (23) DUs located in the Mindanao Grid on 01 April 2013 docketed as ERC Case No. 2013-055RC, which was later approved by the Honorable Commission in its Decision dated 09 December 2013.

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. Meanwhile, the previously approved CSEEs of one (1) Mindanao DU were for only the period of six (6) months, thus, had already expired. The new CSEE has the same duration as the other ERC-approved CSEEs which is until 25 December 2016.

12. As agreed upon by the contracting parties, PSALM shall file the necessary application for the approval of the LOAs and new CSEE. Thus, this application.

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

13. 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.

14. Notably, in ERC Case No. 2013-055RC, PSALM introduced the following revisions¹ to the CSEEs executed with the DUs in the Mindanao Grid, which CSEEs were submitted before this Honorable Commission:

10.1 CONTRACT DURATION² - 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. xxx.

¹ *Italicized* for ease of reference.

² The previous CSEEs of MAGELCO were for six (6)-month periods only. The new CSEE has the same duration as the other approved CSEEs which is until 25 December 2016.

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.³

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 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.⁴

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.⁵

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.⁶

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

³ Section 4.1, *ibid.*
⁴ Section 4.2, *id.*
⁵ Section 4.3, *id.*
⁶ Section 4.8, *id.*

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.*⁷

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.⁸

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.*xxx⁹

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.*xxx¹⁰

15. 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.

16. The Honorable Commission later approved the above-mentioned provisions in its Decision dated 09 December 2013 in

⁷ Section 4.9, *id.*
⁸ Section 6.1, *id.*
⁹ Section 6.4, *id.*
¹⁰ Section 6.17, *id.*

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.¹¹

**The LOA of the Distribution
Utilities located in the Mindanao
Grid**

17. 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:

17.1 Agusan del Norte Electric Cooperative, Inc. (ANECO) – [Annex “B-1”];

17.2 Agusan del Sur Electric Cooperative, Inc. (ASELCO) – [Annex “B-2”];

17.3 Bukidnon Second Electric Cooperative, Inc. (BUSECO) - [Annex “B-3”];

17.4 Camiguin Electric Cooperative, Inc. (CAMELCO) - [Annex “B-4”];

17.5 Cotabato Electric Cooperative, Inc. (COTELCO) - [Annex “B-5”];

17.6 Davao del Sur Electric Cooperative, Inc. (DASURECO) - [Annex “B-6”];

17.7 Davao Oriental Electric Cooperative, Inc. (DORECO) - [Annex “B-7”];

17.8 Iligan Light and Power, Inc. (ILPI) - [Annex “B-8”];

17.9 Lanao del Norte Electric Cooperative, Inc. (LANECO) - [Annex “B-9”];

¹¹ 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.

- 17.10 Misamis Occidental I Electric Cooperative, Inc. (MOELCI-I) - [Annex “B-10”];
- 17.11 Misamis Occidental II Electric Cooperative, Inc. (MOELCI-II) - [Annex “B-11”];
- 17.12 Misamis Oriental II Rural Electric Service Cooperative, Inc. (MORESCO II) - [Annex “B-12”];
- 17.13 Siargao Electric Cooperative, Inc. (SIARELCO) - [Annex “B-13”];
- 17.14 South Cotabato I Electric Cooperative, Inc. (SOCOTECO I) - [Annex “B-14”];
- 17.15 Sultan Kudarat Electric Cooperative, Inc. (SUKELCO) - [Annex “B-15”];
- 17.16 Surigao del Norte Electric Cooperative, Inc. (SURNECO) - [Annex “B-16”];
- 17.17 Surigao del Sur I Electric Cooperative, Inc. (SURSECO I) - [Annex “B-17”];
- 17.18 Surigao del Sur II Electric Cooperative, Inc. (SURSECO II) - [Annex “B-18”];
- 17.19 Zamboanga del Norte Electric Cooperative, Inc. (ZANECO) - [Annex “B-19”];
- 17.20 Zamboanga del Sur I Electric Cooperative, Inc. (ZAMSURECO I) - [Annex “B-20”];
- 17.21 Zamboanga del Sur II Electric Cooperative, Inc. (ZAMSURECO II) - [Annex “B-21”];
- 17.22 Zamboanga City Electric Cooperative, Inc. (ZAMCELCO) - [Annex “B-22”].

18. The above LOAs reflect an increase on the Contract Energy and Equivalent Demand (Annex I) of the CSEEs. The

increase is based on the generation projection for 2014, wherein the power supply from NPC/PSALM –owned generating plants and NPC-Independent Power Producer (IPP) contracts would allow an average of 16% increase in the equivalent demand and the corresponding increase in the contracted energy for Mindanao customers.

19. It is emphasized though 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.

20. Likewise submitted for approval of the Honorable Commission is the new CSEE of Maguindanao Electric Cooperative, Inc. (MAGELCO) - [**Annex "B-23"**]. The old CSEEs of MAGELCO were only for a six (6)-month period. The last one was sent to MAGELCO last year, covering the period of 26 December 2013 to 25 June 2014 for signing and notarization. However, MAGELCO belatedly return to PSALM the signed and notarized CSEE for reasons known only to them, thus, had already expired. Recently, MAGELCO entered into a restructuring agreement with PSALM, undertaking to settle all its financial obligations with PSALM for a specified period. As such, PSALM granted MAGELCO a longer contract duration. The new CSEE is effective from 26 June 2014 until 25 December 2016, in order to coincide with the other Mindanao CSEEs.

21. 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 "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

22. 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.

23. 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 increase in 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. Also, the CSEE of MAGELCO had already expired on 25 June 2014 and despite the expiration, PSALM continued to supply electricity to said DU in order not to disrupt essential public service.

24. Accordingly, the grant of provisionally authority to execute the LOAs effective 26 December 2013 and the CSEE effective 26 June 2014, will benefit the DUs and will ultimately redound to the benefit of the end consumers.

Attached herewith is the Affidavit of Atty. Beatriz Irina C. Alazas, Department Manager, Electricity Trading Depart, under the Office of the Vice President – Asset Management Group of PSALM in support of this prayer (**Annex “E”**).

25. 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.

26. 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 increase in the contracted energy and equivalent demand;
2. Approve the new CSEE of MAGELCO for the period 26 June 2014 to 25 December 2016; and

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

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

Makati City for the City of Pasig, 17 November 2014.

-signatories on the next page-

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Republic of the Philippines)
Makati City) s.s.

VERIFICATION AND CERTIFICATION

I, **ELMER NONNATUS A. CADANO**, of legal age, married, with office address at the Power Sector Assets and Liabilities Management Corporation (PSALM), 7th Floor, Bankmer Building, 6756 Ayala Avenue, Makati City, after having been duly sworn to in accordance with law, do hereby depose and state that:

- (1) I am the Acting Vice President – Asset Management Group of PSALM and the duly authorized representative of the President & CEO with authority to commence, initiate and file the foregoing *Application for the Approval of the Letters of Agreement (LOAs) and Contract for the Supply of Electric Energy (CSEE) entered with Distribution Utilities (DUs) in the Mindanao Grid with Prayer for the Issuance of Provisional Authority (PA)* and to verify and certify under oath the filing of such Application pursuant to PSALM Board Resolution No. 04-38;
- (2) I have read the Application and the allegations therein are true and correct based on my personal knowledge or the authentic records available to PSALM;
- (3) I have not commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals or any court, tribunal, or quasi-judicial agency and, to the best of my knowledge, no such other action or claim is pending therein; and
- (4) If I should hereinafter learn that the same or a similar action or claim has been filed or is pending in the Supreme Court, the Court of Appeals or any court, tribunal, or quasi-judicial agency, I shall report the said fact within five (5) days from discovery thereof to the Honorable Court.

19 November 2014, Makati City, Philippines.

(SGD.) ELMER NONNATUS A. CADANO
Affiant

SUBSCRIBED and SWORN TO before me this 20th day of November 2014, with affiant presenting to me his Driver's License No. N02-96-313303 expiry on 26 September 2016 at LTO, known to me and to me known to be the same person who executed the foregoing Verification and Certification.

(SGD.) MARIA CONCEPCION B. MENDOZA

Notary Public Appointment No. M-405

Until 31 December 2015

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