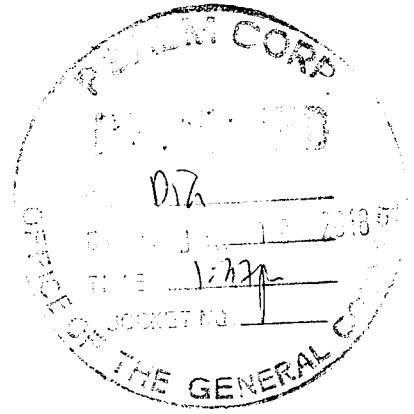


Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City

**IN THE MATTER OF THE
APPLICATION FOR THE
APPROVAL OF THE
CONTRACTS FOR THE
SUPPLY OF ELECTRIC
ENERGY (CSEEs)
ENTERED WITH THE
DISTRIBUTION
UTILITIES (DUs)
LOCATED IN THE
VISAYAS GRID WITH
PRAYER FOR THE
ISSUANCE OF
PROVISIONAL
AUTHORITY (PA)**



ERC CASE NO. 2018-055 RC

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

Applicant.

X-----X

D O C K E T N O . 2018-055-RC
Date: JUL 19 2018
By: [Signature]

ORDER

On 08 June 2018, Power Sector Assets and Liabilities Management Corporation (PSALM) filed an *Application* dated 23 May 2018, seeking the approval of the Contracts for the Supply of Electric Energy (CSEEs) entered with Distribution Utilities (DUs) located in the Visayas Grid, with prayer for the issuance of provisional authority.

PSALM alleged the following in its *Application*:

1. This is an Application for the Approval of the terms and conditions of the Contracts for the Supply of Electric Energy (CSEEs) entered into by and between Applicant PSALM and two (2) Distribution Utilities (DUs) located in the Visayas Grid pursuant to Section 67 of Republic Act No. 9136, otherwise known as the "*Electric Power Industry Reform Act (EPIRA) of 2001*".

2. Applicant PSALM is a government-owned and controlled corporation created by virtue of the EPIRA, with principal office address at 3rd Floor, National Transmission Corporation (TransCo) Building, Power Center, Quezon Avenue corner BIR Road, Diliman, 1101 Quezon City.
3. PSALM filed similar Applications in 2011, 2012, 2013 and 2014 for the Approval of the terms and conditions of CSEEs effective 26 December 2010 to 25 December 2011, 26 December 2011 to 25 December 2012, 26 December 2012 to 25 December 2013 and 26 December 2013 to 25 December 2014, respectively.
4. By reason of the public bidding to privatize the rights to the contracted energy¹ under the Unified Leyte Geothermal Power Plant (ULGPP) and the asset sale of the Naga Power Plant Complex, PSALM no longer renewed the CSEEs that expired on 25 December 2014.
5. At present, PSALM has about 300MW of available capacity for contracting. This includes the termination of the IPP Administration Agreement for the ULGPP Strips of Energy of about 100MW.
6. To inform the Visayas customers of ULGPP's available capacity for CSEE contracting, PSALM conducted the Visayas Customers Forum in Cebu City on 16 October 2017 where twenty-one (21) distribution utilities and two (2) Visayas electric cooperatives associations participated.
7. On 13 November 2018 and 14 November 2018, respectively, PSALM received Letters of Intent from LEYECO III and LEYECO V in compliance with its charter for CSEE processing.

**Terms and conditions of the
CSEE under ERC Case No.
2014-173 (26 December 2013
to 25 December 2014)**

8. On 26 November 2014, PSALM filed the various LOAs with prayer for the issuance of provisional authority to extend the duration of the CSEE as requested by various DUs in the same grid for the period 26 December 2013 to 25 December 2014.
9. The only revisions² made in the CSEEs under ERC Case No. 2014-173 are found in (i) Annex 1 of the CSEEs that reflects the Contracted Energy and the corresponding Equivalent

¹ By virtue of the EPIRA, the assets transferred to PSALM included the rights of the NPC to the contracted energy under the Purchase Power Agreement (PPA) with Energy Development Corp. (EDC). The contract term of the PPA between NPC and EDC expires on 25 July 2021 for "Leyte A" and 25 July 2022 for "Leyte B".

² Italicized (some of which were likewise underlined) for convenience

Demand; and (ii) Section 3.1 on the provision on **CONTRACT DURATION**, to wit:

- 3.1 This Contract consisting of the Transition Supply Contract shall remain in full force and effect from 26 December 2013 to 25 December 2014 or upon turn over date to the winning bidder for the administration of the contracted energy of the Unified Leyte Geothermal Power Plant, whichever comes first. Unless otherwise provided, the applicable provisions of this Contract shall be deemed modified by the applicable WESM Rules.
10. The Honorable Commission approved PSALM's Application for the 26 December 2013 to 25 December 2014 CSEE under ERC Case No. 2014-173RC in its 29 June 2015 Decision.
11. Pursuant to Section 49 of the Republic Act No. 9136 (RA 9136) and the consequent assignment on 11 May 2009 (the Letter Agreement is hereto attached as 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).
12. 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. Thus, this instant application by PSALM.
13. These CSEEs were executed based on the template approved by the Energy Regulatory Commission (ERC) under Resolution No. 08, Series of 2005 issued on 7 July 2005. 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.
14. In Energy Regulatory Commission (ERC) Resolution No. 33, Series of 2006, "Resolution Clarifying the Purpose of the Adoption of the TSC Template", the ERC clarified that the TSC Template should 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.

**The 26 December 2017 to 25
December 2020 CSEEs of the
Distribution Utilities located
in the Visayas Grid**

15. Pursuant to Section 5, Article III of the ERC's Guidelines for the Recovery of Costs for the Generation Component of the Distribution Utilities' Rate, PSALM is filing the instant Application for the approval of CSEEs duly negotiated and executed with the following DUs in the Visayas Grid:
 - 15.1 Leyte III Electric Cooperative, Inc. (LEYECO III) - [Annex "B-1"]; and
 - 15.2 Leyte V Electric Cooperative, Inc. (LEYECO V) - [Annex "B-2"].
16. The said CSEEs, which have a duration from 26 December 2017 to 25 December 2020, were executed based on the template approved by the Honorable Commission under Resolution No. 8, Series of 2005 as amended by Resolution No. 15, Series of 2005. Likewise, the CSEEs incorporated the minor changes previously proposed by PSALM and approved by the DUs, which changes were contained in the CSEEs approved by this Honorable Commission in PSALM's Application in ERC Case No. 2012-008 RC, ERC Case No. 2013-044 RC, ERC Case No. 2013-169 RC and ERC Case No. 2014-173.
17. The **revisions** made in the CSEEs under the present Application are found in (i) Annex 1 of the CSEEs which reflects the Contracted Energy and the corresponding equivalent demand; and (ii) amendment of Section 3.1 on the provision on **CONTRACT DURATION**, as follows:
 - 3.1 This Contract consisting of the Transition Supply Contract shall remain in full force and effect from 26 December 2017 to 25 December 2020. Unless otherwise provided, the applicable provisions of this Contract shall be deemed modified by the applicable WESM Rules.
18. The CSEE subject of this application has the following salient provisions, apart from the revisions mentioned in the preceding paragraph:
 - (i) **CONTRACT ENERGY**
 - 4.1 Contract Energy and Equivalent Demand as indicated in Annex I maybe changed by SUPPLIER 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.

4.1.1 The CUSTOMER shall nominate month-ahead its hourly and daily energy quantity requirements three (3) days before the start of the next billing period based on its Daily Load Profile as reflected in Annex 1a. On a day to day transaction, the CUSTOMER shall confirm the schedule of hourly energy requirements to PSALM on the day ahead. PSALM shall declare to WESM the schedule of hourly energy requirements delivered to customers immediately on the day after.

(ii) **ASSIGNABILITY**

4.8 SUPPLIER may assign or transfer part or all of its rights and obligations in the supply of Contract Energy herein stated, to any such entity, provided that prior written notice is given to CUSTOMER thirty (30) days before the actual transfer. This Contract shall remain binding to Parties, their successors and assignees. SUPPLIER warrants that any sale, assignments, transfer, or subcontracting of the Contract shall not affect or impair CUSTOMER's rights and obligations with respect to quantity and price of electricity, Contract effectivity, incentives, discounts and other terms and conditions of this Contract. The assignee shall, by written instrument, assume the rights and obligations of SUPPLIER to CUSTOMER. 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.

4.9 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, subject to the written consent of SUPPLIER under the following conditions, and which consent shall not be unreasonably withheld:

- 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.
- b. CUSTOMER has submitted necessary proof that the buyer, assignee or transferee has no outstanding obligation to SUPPLIER, and undertakes to assume the obligations of

CUSTOMER and to pay for the additional expenses necessary or incidental to the transfer.

- c. Assignment of CUSTOMER to assignee shall comply with the forms provided in Annex IVa and Annex IVb of this Contract.

(iii) **AMOUNT**

- 5.1 The Security Deposit shall be equivalent to 100% of the estimated average monthly power bill for the duration of this Contract.

(iv) **FORM AND TIME OF POSTING**

- 5.2 The Security Deposit may be required to be posted upon privatization of the generating asset/s to which this Contract is allocated or assigned as provided for in Section 4.8 hereof if the prospective buyer, assignee, transferee or successor-in-interest so requires. It shall be in the form of cash, cash bond, manager's or cashier's check, bank certified check, irrevocable stand-by letter of credit, performance bond or bank guarantee "callable on demand" issued by a financial institution, or any other forms of security such as but not limited to escrow account to be administered by a bank acceptable to SUPPLIER. In the event the Security Deposit of the CUSTOMER becomes nil, the SUPPLIER reserves the right to refuse or discontinue supply of electric energy. In cases of partial depletion of the Security Deposit, the CUSTOMER shall replace the Security Deposit not later than thirty (30) days thereafter. The SUPPLIER reserves the right to continue supply of electric energy to the extent of Security Deposit of the CUSTOMER.

(v) **RELEASE OF SECURITY DEPOSIT**

- 5.3 The Security Deposit (for the portion that should be settled within the WESM) shall be returned to the CUSTOMER within thirty (30) days upon presentation of proof of compliance with the prudential requirements of the WESM. SUPPLIER shall return or release the Security Deposits to CUSTOMER including interest earned, subject to deductions for any amounts owed by CUSTOMER to SUPPLIER. Security Deposits, except those in the form of letter of credit or performance bond, shall earn interest based on prevailing savings deposit rate of the Land Bank of the Philippines (LBP).

(vi) **BASIC ENERGY CHARGE**

- 6.1 The Basic Energy Charge (BEC) applied to the CUSTOMER's hourly energy consumption shall be the

ERC-approved NPC/PSALM's Time of Use (TOU) generation rates, which is attached as Annex III, plus adjustments in the tariff such as, but not limited to Deferred Accounting Adjustments (DAAs) and the Incremental Currency Exchange Rate Adjustments (ICERA), the RA 9136 Mandatory Rate Reduction Adjustments. The basic energy charge to be applied to the contracted energy shall be in accordance with Section 7.1 of this Contract.

Energy consumption higher than the contracted level shall be sourced by the Customer from the Wholesale Electricity Spot Market at the Wholesale Electricity Spot Market rate and paid directly to the Philippine Electricity Market Corporation (PEMC).

6.1.1 The BEC shall be applied to the CUSTOMER's hourly energy consumption based on the hourly nominated energy quantity mentioned in Section 4.1.1.

(vii) **MINIMUM CHARGES**

6.2 CUSTOMER shall pay the minimum charge based on the Contract Energy per billing period as indicated in Section 4.1 of this Contract using the basic energy charge if CUSTOMER has not fully taken or failed to consume the Contract Energy, subject to deductions and adjustments as expressly provided for in this Contract.

(viii) **SERVICE INTERRUPTION ADJUSTMENT**

6.4 Should the supply of electricity be interrupted or curtailed to a level below the Contract Energy due to the fault or lack of generation capacity of the SUPPLIER, even if CUSTOMER was at that time unable to take or consume electricity, 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. (This Section shall only apply if there are Time-Of-Use rates).

(ix) **MAINTENANCE SERVICE ADJUSTMENT**

6.6 CUSTOMER may avail of the service adjustment during the scheduled maintenance of its facilities, not to exceed two (2) billing periods in one year. The minimum charge on the energy consumption shall be fifty percent (50%) of the Contract Energy. To be able to avail of this adjustment, CUSTOMER must inform SUPPLIER in writing thirty (30) days prior to the commencement of the scheduled maintenance.

(x) **PROMPT PAYMENT DISCOUNT**

6.10 Subject to ERC's approval, the Prompt Payment Discount (PPD) shall be in accordance with the PSALM's credit and collection policies duly approved by the PSALM Board.

(xi) **DISPUTED BILLS**

6.11 Disputed bills shall be questioned in writing by CUSTOMER within sixty (60) days from the date of its receipt and SUPPLIER shall act on such disputed bills on a best effort basis and commit to resolve the claim within sixty (60) days from the date of filing of the claim. Failure by CUSTOMER to question the power bills on time shall constitute a waiver by CUSTOMER of any claim on such bills.

(xii) **OVERDUE ACCOUNT**

6.15 In the event that a power bill remains unpaid within five (5) days after its due date, SUPPLIER has the option to call on or draw against the Security Deposit as provided for under Section 5 (Security Deposit) of this Contract.

6.16 Any power bill or account of CUSTOMER not paid on due date shall bear a floating rate of interest computed from the first day after it becomes due and payable, based on the non-prime lending rate for each quarter of the Land Bank of the Philippines or the Philippine National Bank, whichever is higher. Interest on overdue accounts shall be computed based on a 360-day year.

6.17 If the account of the CUSTOMER is overdue for more than six (6) months, CUSTOMER shall pay an additional penalty of one percent (1%) per month for every additional month of delay beyond six (6) months. Moreover, a restructuring agreement of the overdue account shall be executed by the CUSTOMER.

(xiii) **DEDUCTION DUE TO FORCE MAJEURE**

9.6 SUPPLIER shall have a maximum of seventy-two (72) hours from the time a force majeure event prevented it from supplying electricity and perform its other obligations under the Contract to resume supply. CUSTOMER shall not be entitled to interruption adjustment for such period, unless interruptions exceed seventy-two (72) hours and the CUSTOMER failed to fully take or consume its Contract Energy.

(xiv) **CONTRACT TERMINATION**

9.11 Either party will have the right to terminate this Contract upon failure of the other to perform its obligation under this Contract, provided that the party at fault will have to pay all its outstanding account and reimburse the costs incurred by the other party as a result of the termination.

(xv) **EFFECTIVITY**

9.19 This Contract shall take effect on 26 December 2017 and shall be filed immediately with the ERC for approval.

19. 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 CSEEs, a copy of the instant Application (including Annexes) was furnished to the Sangguniang Panlungsod of Quezon City (Annex "C"). The Application (excluding Annexes) was also published in a newspaper of general circulation (Annex "D").

ALLEGATIONS IN SUPPORT FOR THE ISSUANCE OF PROVISIONAL AUTHORITY

20. PSALM acknowledges that the continued operation of the Distribution Utilities is indispensable to the economic efficiency of the franchise area they service, not to mention the ripple effect of that efficiency to the economic growth of the entire country. In order for these Distribution Utilities to continue lawfully drawing electricity from the grid, it is imperative that they enter into agreement with PSALM as Supplier for the supply of electricity, a contract of sale for electricity, hence the respective CSEEs.
21. The CSEEs of the above-listed DUs expired on 25 December 2014. Accordingly, a grant of provisionally authority to execute the CSEEs effective 26 December 2017 will benefit the DUs and will ultimately redound to the benefit of the end consumers.
22. It should be noted that the ERC exempted PSALM from the conduct of Competitive Selection Process (CSP) in its letter dated 20 September 2016 (Annex "E"). The ERC recognized PSALM's exemption from joining the mandatory CSP in its decision approving the application for the approval of the LOAs and CSEEs with the DUs located in the Mindanao Grid in ERC Case No. 2016-186 RC.
23. Attached as Annex "F" is the Judicial Affidavit of Abner Tolentino, Department Manager, Electricity Trading Department, under the Office of the Vice President – Asset Management Group attesting to the above matters.

24. 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.
25. 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 Commission may impose after hearing and final determination of the Honorable Commission.

PRAYER

WHEREFORE, Applicant PSALM most respectfully prays that the Honorable Commission approve the duly negotiated CSEEs with the two (2) Distribution Utilities in the Visayas Grid covering the period 26 December 2017 to 25 December 2020. It is likewise prayed that a Provisional Authority (PA) be issued authorizing PSALM to implement the subject CSEEs with the concerned DUs in the Visayas Grid.

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

Finding the said *Application* sufficient in substance with the required fees having been paid, the same is hereby set for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on **26 September 2018 (Wednesday) at two o'clock in the afternoon (2:00 PM) at ERC Visayas Field Office, St. Mary's Drive, Banilad, Cebu City.**

Accordingly, PSALM is hereby directed to:

- 1) Cause the publication of the attached Notice of Public Hearing in two (2) newspapers of nationwide circulation in the Philippines at its own expense, twice (2x) within two (2) successive weeks, the dates of publication not being less than seven (7) days apart, and the date of the last publication to be made not later than ten (10) days before the date of the scheduled initial hearing;
- 2) Furnish with copies of this Order and the attached Notice of Public Hearing the Offices of the Provincial Governors, the City/Municipal Mayors, and the Local Government Unit (LGU) legislative bodies of Leyte and City Mayors and Local Government Unit (LGU) legislative bodies of Ormoc City, Makati City, and Quezon City for the appropriate posting thereof on their respective bulletin boards;

- 3) Inform the consumers within the affected franchise area of the filing of the *Application*, its reasons therefor, and of the scheduled hearing thereon, by any other means available and appropriate;
- 4) Furnish with copies of this Order and the attached Notice of Public Hearing the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress. They are hereby requested, if they so desire, to send their duly authorized representatives at the scheduled hearing; and
- 5) Furnish with copies of the *Application* and its attachments all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing, Applicant must submit to the Commission its written compliance with the aforementioned jurisdictional requirements attaching therewith, methodically arranged and duly marked the following:

- 1) The evidence of publication of the attached Notice of Public Hearing consisting of affidavits of the Editors or Business Managers of the newspapers where the said Notice of Public Hearing were published, and the complete issues of the said newspapers;
- 2) The evidence of actual posting of this Order and the attached Notice of Public Hearing consisting of certifications issued to that effect, signed by the aforementioned Governors, Mayor, LGU legislative body, or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by Applicant to inform the consumers within the affected franchise area of the filing of the *Application*, its reasons therefor, and of the scheduled hearing thereon;
- 4) The evidence of receipt of copies of this Order and the attached Notice of Public Hearing by the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress;
- 5) The evidence of receipt of copies of the *Application* and its attachments by all those making requests therefor, if any; and

- 6) Such other proof of compliance with the requirements of the Commission.

Applicant and all interested parties are also required to submit, at least five (5) days before the date of the initial hearing and Pre-Trial Conference, their respective Pre-Trial Briefs containing, among others:

- 1) A summary of admitted facts and proposed stipulation of facts;
- 2) The issues to be tried or resolved;
- 3) The documents or exhibits to be presented, stating the purposes and proposed markings therefor; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-trial Brief.

Failure of Applicant to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from the said date of cancellation.


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PSALM must also be prepared to make an expository presentation of the instant *Application*, aided by whatever communication medium that it may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties, what the *Application* is all about and the reasons and justifications being cited in support thereof.


SO ORDERED.

Pasig City, 10 July 2018.

FOR AND BY AUTHORITY
OF THE COMMISSION:


AGNES VST DEVANADERA
Chairman & CEO


LS: TB/LSP/APV

ERC
Office of the Chairperson

AVSTD-2018-7-510-0046

ERC CASE NO. 2018-055 RC
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PAGE 14 OF 14

Copy Furnished:

1. Attys. Geoffry DL. Masancay and Lalaine Mae C. Parlade
Counsel for Applicant PSALM
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2. Power Sector Assets and Liabilities Management Corporation (PSALM)
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Power Center, Quezon Ave. cor. BIR Rd., Diliman, Quezon City
3. Office of the Solicitor General
134 Amorsolo Street, Legaspi Village, Makati City
4. Commission on Audit
Commonwealth Avenue, Quezon City
5. Senate Committee on Energy
GSIS Bldg. Roxas Blvd., Pasay City
6. House Committee on Energy
Batasan Hills, Quezon City
7. Philippine Chamber of Commerce and Industry (PCCI)
3rd Floor, Chamber and Industry Plaza (CIP), 1030 Campus Avenue corner Park Avenue,
McKinley Town Center, Fort Bonifacio, Taguig City
8. Leyte III Electric Cooperative, Inc. (LEYECO III)
Tunga, Leyte
9. Leyte V Electric Cooperative, Inc. (LEYECO V)
Brgy. San Pablo, Ormoc City
10. Office of the Governor
Province of Leyte
11. Office of the LGU legislative body
Province of Leyte
12. Office of the Mayor
Tunga, Leyte
13. Office of the LGU legislative body
Tunga, Leyte
14. Office of the Mayor
Ormoc City
15. Office of the LGU legislative body
Ormoc City
16. Office of the Mayor
Quezon City
17. Office of the LGU legislative body
Quezon City
18. Office of the Mayor
Makati City
19. Office of the LGU legislative body
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20. Regulatory and Operations Service (ROS)
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