

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



**IN THE MATTER OF THE
APPLICATION FOR
APPROVAL OF THE POWER
SUPPLY AGREEMENT (PSA)
BETWEEN LEYTE III
ELECTRIC COOPERATIVE,
INC. (LEYECO III) AND SAN
MIGUEL ENERGY
CORPORATION (SMEC),
WITH PRAYER FOR
CONFIDENTIAL
TREATMENT OF
INFORMATION AND
ISSUANCE OF
PROVISIONAL AUTHORITY**

ERC CASE NO. 2018-008 RC

**LEYTE III ELECTRIC
COOPERATIVE, INC.
(LEYECO III) AND SAN
MIGUEL ENERGY
CORPORATION (SMEC),
Applicants.**

D O C K E T E D
Date: MAY 03 2018
By: W

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ORDER

On 23 February 2018, applicants Leyte III Electric Cooperative, Inc. (LEYECO III) and San Miguel Energy Corporation (SMEC) filed an *Application* dated 03 April 2017 for the approval of their Power Supply Agreement (PSA), with prayer for the issuance of provisional authority.

In the said *Application*, LEYECO III and SMEC alleged the following:

1. Applicant LEYECO III is a non-stock, non-profit electric cooperative, duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at National Highway, Barangay San Roque, Tunga, Leyte. It is authorized to distribute and provide electricity services to its member-consumers in the Cities/Municipalities of

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Alangalang, Barugo, Capoocan, Carigara, Jaro, Pastrana, San Miguel, Sta. Fe and Tunga, all in the Province of Leyte (collectively, the “Franchise Area”). It has been authorized to file the instant Joint Application as per Board Resolution No. 2016-04-68, a copy of which is attached as **Annex “A”**;

2. Applicant 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 (“IPPA”) Administrator of the 1,000 MW Net Contracted Capacity of the Sual Coal-Fired Thermal Power Plant located in Barangay Pangascasan, Sual, Pangasinan. It has been authorized to file the instant Joint Application as per Secretary’s Certificate, a copy of which is attached as **Annex “B”**;
3. **Environmental Compliance Certificate (“ECC”)**. On 8 November 1994, 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;
4. **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;
5. **Certificate of Compliance (“COC”)**. On 11 April 2014, the Honorable Commission issued a COC registered under the name of Team Sual for its 1,294 MW Coal-Fired Thermal Power Plant;
6. The following pertinent documents evidencing the registration of LEYECO III and SMEC are appended hereto, as follows:

Annex	Documents/Information
“C”	LEYECO III’s Articles of Incorporation
“C-1”	List of LEYECO III’s Board Members
“D”	LEYECO III’s By-laws
“E”	LEYECO III’s Certificate of Registration
“F”	LEYECO III’s Certificate of Franchise
“G”	SMEC’s Articles of Incorporation
“H”	SMEC’s Certificate of Registration issued by the Securities and Exchange Commission (“SEC”)
“H-1”	SMEC’s information related to the ultimate parent company, its subsidiaries and all its affiliates
“I”	SMEC’s Latest General Information Sheet (“GIS”)
“J”	SMEC’s Certificate of Registration with the BOI

“K”	ECC issued by the DENR for the the Sual Coal-Fired Thermal Power Plant
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7. Applicants LEYECO III and SMEC may be served with orders, notices and other legal processes of this Honorable Commission through the address of the undersigned counsel;
8. By and pursuant to *Sections 23, 25, 43 (u), and 45 (b) of Republic Act No. 9136*, otherwise known as the “*Electric Power Industry Reform Act of 2001*” (“EPIRA”), its *Implementing Rules and Regulations* (“IRR”), and other pertinent rules and regulations, the instant *Joint Application* for the approval of the *Power Supply Agreement* (“PSA”) executed by and between Applicants LEYECO III and SMEC on 27 April 2016 is respectfully filed for the approval of the Honorable Commission;

I. STATEMENT OF FACTS

9. The aggregate uncontracted baseload demand of Region 8 from the years 2015 to 2018 is continually increasing as shown in the table below:

Contract Year	Contract Duration	Aggregated Baseload
2015	Dec. 26, 2014 – Dec. 25, 2015	65 MW
2016	Dec. 26, 2015 – Dec. 25, 2016	78 MW
2017	Dec. 26, 2016 – Dec. 25, 2017	83 MW
2018	Dec. 26, 2017 – Dec. 25, 2018	93 MW

10. Meanwhile, the power supply contracts of various Electric Cooperatives (“ECs”) in Region 8 with the National Power Corporation – Power Sector Assets and Liabilities Management Corporation (“NPC-PSALM”) expired on 25 December 2014;
11. On 07 November 2013, the eleven (11) ECs of Region 8 composed of Don Orestes Romualdez Electric Cooperative, Inc. (“DORELCO”), Leyte II Electric Cooperative, Inc. (“LEYECO II”), Leyte III Electric Cooperative, Inc. (“LEYECO III”), Leyte IV Electric Cooperative, Inc. (“LEYECO IV”), Leyte V Electric Cooperative, Inc. (“LEYECO V”), Southern Leyte Electric Cooperative, Inc. (“SOLECO”), Biliran Electric Cooperative, Inc. (“BILECO”), Northern Samar Electric Cooperative, Inc. (“NORSAMELCO”), Samar I Electric Cooperative, Inc. (“SAMELCO I”), Samar II Electric Cooperative, Inc. (“SAMELCO II”), and Eastern Samar Electric Cooperative, Inc. (“ESAMELCO”) (collectively, the “Region 8 ECs”), participated in the bidding for PSALM’s 200 strips of energy from the Unified Leyte Geothermal Power Plant. Unfortunately, they lost in said bidding;

9/2

12. On 08 November 2013, typhoon Yolanda hit the region and as a consequence, efforts to contract additional power supply were stalled and the focus was shifted on the massive restoration efforts in the area;
13. Sometime in 2014, the Region 8 ECs conducted a Joint Power Supply Planning for their power supply requirements for the period 2015 - 2018. The result was an agreement, embodied in a Memorandum of Agreement (“MOA”), to conduct a joint procurement of their short-term aggregated baseload requirement, beginning 26 December 2015 until 25 December 2018. Thereafter, the competitive bidding for the region’s power requirements was conducted from September 2014 to December 2014;
14. A Bids and Awards Committee was created to conduct the Region 8 Joint Competitive Power Supply Procurement (“R8 JCPSP”) as follows:
 - 14.1 The Region 8 ECs prepared their respective least-cost power supply plans and their aggregated baseload demands for competitive bidding;
 - 14.2 The competitive tender was published and announced in the franchise areas of the Region 8 ECs. In addition, prospective bidders (Generation Companies, IPP Administrators and Wholesale Aggregators whose names are listed on the Department of Energy [DOE] website) were invited;
 - 14.3 The capacity offered by the winning bidder/s was allocated among the eleven (11) Region 8 ECs in proportion to their declared demands. A bidder was allowed to offer to supply capacity that is less than or equal to the aggregated baseload requirement in any or all of the contract years in increments of 1 MW. In the event that some winning bidders offered less than 11 MW, the loads were optimally allocated in such a way that the blended price of generation resulting from the R8 JCPSP transaction is almost the same for all ECs. In the event multiple bidders are declared winners for any contract year, all winning bidders must enter into individual PSCs with each of the 11 ECs;
 - 14.4 All bidders who signified their intention to join, bought bid documents, attended pre-bid conferences and sought clarification on the bidding requirements and process, were issued bid bulletins and the Final Instruction to Bidders;
 - 14.5 The process followed the 2-envelope system – the legal requirements and proof of financial and technical capability in the first, and the

4/2

- commercial offer in the second. Bids were evaluated based on an Evaluation Framework and Evaluation Methodology released to the Bidders;
- 14.6 After evaluating the bids of each supplier, on 14 November 2014, the BAC declared Applicant SMEC as the winning bidder for a total of 83 MW and 93 MW for Contract Years 2017 and 2018, respectively;
- 14.7 On 25 April 2016, SMEC and the Region 8 ECs commenced the final negotiations for the other commercial and technical terms and conditions of the PSC.
- 14.8 Accordingly, on 27 April 2016, LEYECO III and SMEC executed the subject PSA, providing the terms and conditions for the supply of 2 MW baseload power for 2017 and 2018, which will assure the adequate and reliable supply of power to LEYECO III's franchise area. A copy of the PSA is attached as **Annex "L"**;
15. On 19 September 2016, LEYECO III negotiated for an increase of 3 MW in its capacity requirements in accordance with Article 7.1.1. of the PSA which provides that a "*Buyer may apply in writing for an increase in the Contracted Capacity and Seller may approve such an increase in writing, which approval shall not be unreasonably withheld.*" Said increase in capacity shall commence upon approval of the letter-request. Thereafter, LEYECO III renegotiated for a decrease of 2 MW (from 5 MW to 3 MW effective on 26 February 2017) in capacity in accordance with Article 7.2.1. of the PSA which states that a "*Buyer shall be allowed a reduction of the Contracted Capacity only upon the prior written consent of Seller, which consent shall not be unreasonably withheld*" due to the fact that a large-end user became a Contestable Customer under the Retail Competition and Open Access ("RCOA"). Attached as **Annex "M" and "M-1"** is a copy of the two (2) letter requests of LEYECO III with SMEC's subsequent approvals indicated therein;

II. ABSTRACT OF THE PSA AND
OTHER RELATED INFORMATION

16. The following are the salient features of the PSA:
- 16.1 Term and Effectivity. This Agreement shall take effect on the date of signing ("Execution Date") and shall remain in force and effect until 12:00 MN of December 25, 2018 ("Contract Term"), subject to extension of the Contract Term as may be agreed upon by the Parties. In the event that BUYER intends to extend the Agreement, it shall

5/26

notify SELLER no later than June 25, 2018. SELLER shall supply BUYER beginning 12:00 AM of 26 December 2016 or the date of receipt of ERC final approval ("Supply Effective Date").

- 16.2 Security Deposit. BUYER shall provide a Security Deposit to SELLER equivalent to one hundred percent (100%) of the estimated average monthly power bill during the first Contract Year and shall be updated annually based on Contracted Capacity and Associated Energy of the BUYER subject to adjustments as may be necessary. Each update shall be executed at least one (1) week prior to the beginning of the ensuing Contract Year provided that all documents required from SELLER to enable BUYER to establish the Security Deposit shall be made available at least three (3) months prior to the beginning of the ensuing Contract Year. The updated Security Deposit shall be similarly calculated based on the next twelve (12) months of the ensuing Contract Year.

Additional Security. BUYER also offers a second fund in favor of SELLER and established by RENAGMEC Power Corporation. This will serve as an additional security for the amounts payable by BUYER to SELLER. If the Security Deposit of BUYER is insufficient for the amount payable by BUYER to SELLER, SELLER shall draw the balance from the RENAGMEC Security Fund subject to guidelines to be agreed upon by the Parties.

- 16.3 Contracted Capacity. Beginning Supply Effective Date, SELLER shall make available to BUYER, and BUYER shall take and accept the Contracted Capacity specified in Annex I at the Contract Price specified in Annex II. The quantities specified in Annex I shall not be changed by either Party except in cases provided for in this Agreement. The Contracted Capacity shall be sourced from the Facility or from other electricity generators, including the WESM, provided that, if the Contracted Capacity is sourced from other electricity generators, any difference between the Line Rental incurred if sourced from other generating facilities and Line Rental incurred if sourced from the Facility, shall be for the account of the SELLER.

BUYER's Contracted Capacity shall be as follows:

Contract Year	Duration	Contracted Capacity (kW)
CY 2017	Dec. 26, 2016– Dec. 25, 2017	3,000
CY 2018	Dec. 26, 2017– Dec. 25, 2018	3,000

BUYER shall maintain a minimum hourly nomination of at least fifty percent (50%) of the Contracted Capacity for the duration of the Agreement.

Capacity Utilization Factor. BUYER shall purchase the Contracted Capacity and pay for the Contracted Capacity from seventy percent (70%) to one hundred percent (100%) Capacity Utilization Factor (“CUF”), computed per Billing Period, in accordance with Annex II.

Unutilized Capacity. The unutilized capacity of BUYER may be made available for utilization by other Region 8 ECs or sold to the WESM in accordance with the Nomination Protocol.

Exchange of Contracted Capacities among Region 8 ECs. In order to maximize capacity utilization, Region 8 ECs may exchange quantities of their Contracted Capacities in accordance with the Nomination Protocol. Upon notice by BUYER, SELLER shall deliver to other Region 8 ECs the Contracted Capacity or a portion thereof not utilized by BUYER; provided that BUYER shall still be responsible for the settlement and payment of the Contracted Capacities.

- 16.4 Replacement Power During Outages. The SELLER shall guarantee supply and provide BUYER with Replacement Power sourced from other generating facilities or third parties, including the WESM, during Scheduled Outage and Forced Outage of the Plant or Facility.

The BUYER shall pay the SELLER a Replacement Power Charge for the total energy consumed that is associated with the Forced Outage of the Plant in every Billing Period as specified in Annex II; provided that the total number of cumulative hours of Forced Outage does not exceed seven hundred twenty (720) Equivalent Hours in a Contract Year.

If the cumulative number of Equivalent Hours of Forced Outage of the Plant in a Contract Year exceeds seven hundred twenty (720) Equivalent Hours, the Replacement Power Charge for the energy associated with Forced Outage in excess of

246

seven hundred twenty (720) Equivalent Hours shall be zero.

- 16.5 Adjustments in Contracted Capacity. BUYER may apply in writing for an increase in the Contracted Capacity and SELLER may approve such an increase in writing, which approval shall not be unreasonably withheld. Any approved increase shall be subject to the availability of capacity and the technical constraints of the Plant, the transmission lines, substations and other facilities, at the same Contract Price as provided for in this Agreement and under similar terms and conditions that the Parties may agree upon.

BUYER shall be allowed a reduction in its Contracted Capacity only upon prior written consent of SELLER, which consent shall not be unreasonably withheld. The BUYER shall apply in writing to the SELLER for a reduction of the Contracted Capacity, and SELLER shall, within thirty (30) calendar days from receipt of the BUYER's application, inform the BUYER of its decision. Upon approval of the request for reduction in Contracted Capacity, the other Region 8 ECs may opt to assume the quantity of reduction in BUYER's Contracted Capacity, and shall be responsible for said BUYER's obligations to SELLER. Any Contracted Capacity not assumed by the other Region 8 ECs shall be sold to the WESM. SELLER shall sell the reduction in Contracted Capacity and Associated Energy to the WESM and any positive difference between the Total Monthly Charge (if such energy was sold to BUYER) and the sales from WESM associated with such energy, shall be for the account of the BUYER.

BUYER shall be allowed to reduce its Contracted Capacity on account of the implementation of RCOA, when: (a) any of its large end-users with a monthly peak demand of 750 kW or higher ceases to engage in business or becomes a Contestable Customer under RCOA or (b) any of its large end-users cease to engage in business or become Contestable Customers due to further reduction of the threshold for contestability under RCOA; provided that, in case of (a) or (b) hereof, there is a proportionate reduction of bilateral contract quantities among all of BUYER's power suppliers.

- 16.6 Capacity Fees and Energy Fees. Beginning Supply Effective Date and subject to the terms and conditions of this PSC, BUYER shall pay the Capacity Fees and Energy Fees as provided for in Annex II.

89

The Total Monthly Charge, before taxes, for a Billing Period shall be computed according to the following:

Total Monthly Charge = Capacity Charge + Energy Charge + Replacement Power Charge

1. Capacity Charge

$$\text{Capacity Charge} = \max\{(Q_{ACTUAL} - Q_{FO}), Q_{@70\%CUF}\} * \text{Capacity Fee}_{CUF}$$

$$Q_{FO} = EH_{FO} * CC$$

$$CUF = \max\left\{70\%, \frac{(Q_{ACTUAL} - Q_{FO})}{CC * [H_T - EH_{FO} - EH_{FM}]}\right\}$$

$$Q_{@70\%CUF} = 0.7 * CC * [H_T - EH_{FO} - EH_{FM}]$$

$$\text{Capacity Fee} = \left(LCR_{CUF} + LFOM_{CUF} * \frac{PHCPI_{n-1}}{PHCPI_0} + FCR_{CUF} * FOREX_{n-1} * \frac{USCPI_{n-1}}{USCPI_0} \right)$$

$$\text{Capacity Fee}_{CUF} = \frac{\text{Capacity Fee}_{100\%}}{CUF} \quad LCR_{CUF} = \frac{LCR_{100\%}}{CUF}$$

$$LFOM_{CUF} = \frac{LFOM_{100\%}}{CUF} \quad FCR_{CUF} = \frac{FCR_{100\%}}{CUF}$$

Note: $Q_{FO} = 0$ for energy associated with Forced Outage in excess of 720 Equivalent Hours.

2. Energy Charge

$$\text{Energy Charge} = (Q_{ACTUAL} - Q_{FO}) * \text{Energy Fee}$$

$$\text{Energy Fee} = LVOM * \frac{PHCPI_{n-1}}{PHCPI_0} + FFC * FOREX_{n-1} * \frac{FPI_{n-1}}{FPI_0} + FVOM * FOREX_{n-1} * \frac{USCPI_{n-1}}{USCPI_0}$$

Note: $Q_{FO} = 0$ for energy associated with Forced Outage in excess of 720 Equivalent Hours.

3. Replacement Power Charge

ERC CASE NO. 2018-008 RC
ORDER/18 APRIL 2018
PAGE 10 OF 25

$$\text{Replacement Power Charge} = Q_{FO} * RP_{BASE} * \frac{PHCPI_{n-1}}{PHCPI_{FO}}$$

Note: $Q_{FO} = 0$ and therefore **Replacement Power Charge = 0**, for energy associated with Forced Outage in excess of 720 Equivalent Hours.

Where,

Total Monthly Charge	Amount to be paid by BUYER to SELLER in a Billing Period, in PHP, to which VAT and other applicable taxes will be applied.
Capacity Charge	Monthly payment for capacity and fixed costs, in PHP.
Energy Charge	Monthly payment for fuel and variable costs, in PHP.
Replacement Power Charge	Monthly payment for Replacement Power procured by SELLER for the BUYER during Plant Forced Outages, in PHP.
RPBASE	Replacement Power Fee (Base = March 2016) at PhP5.5000/kWh.
Q_{ACTUAL}	Total actual energy delivered by SELLER to the BUYER, in kWh
Q_{@70%CUF}	Energy supplied by SELLER to BUYER if dispatched at 70% CUF, in kWh
Q_{FO}	Total Energy supplied by SELLER to the BUYER during Plant Forced Outage for the Billing Period, in kWh
CUF	Capacity Utilization Factor, in percent (%).
CC	Contracted Capacity, in kW.
H_T	Total number of hours in the Billing Period.
EH_{FO}	The sum of the duration, in Equivalent Hours, of Forced Outages in the Billing Period.
EH_{FM}	The sum of the duration, in Equivalent Hours, of outages or reduced delivery of energy due to Force Majeure in the Billing Period.
LCR_{CUF}	Local component of Capital Recovery Fee at CUF from 70% up to 100%, in PHP/kWh.
LFOM_{CUF}	Local component of Fixed O&M Fee at CUF from 70% up to 100% in PHP/kWh.
FCR_{CUF}	Foreign component of Capital Recovery Fee at CUF from 70% up to 100%, in USD/kWh.
PHCPI_{n-1}	Philippine Consumer Price Index of the calendar month within which the start of the current Billing Period occurs, for All Income Households – All Items (2006=100), as published by the <i>Philippine Statistics Authority</i> (PSA) (or its substitute or replacement agency, as the case may be) (http://www.census.gov.ph/business/price-indices/cpi-index).
PHCPI₀	Base Philippine Consumer Price Index for the month of September 2014 for All Income Households – All Items (2006=100), as published by the <i>Philippine Statistics Authority</i> (PSA) (or its substitute or replacement agency, as the case may be). PHCPI₀ = 140.90.
PHCPI_{FO}	Base Philippine Consumer Price Index for the month of March 2016 for All Income Households – All Items (2006=100), as published by the <i>Philippine Statistics Authority</i> (PSA) (or its substitute or replacement agency, as the case may be). PHCPI_{FO} = 142.60.

USCPI_{n-1}	US Consumer Price Index, All Items, <i>Bureau of Labor Statistics (BLS)</i> (2010=100) for the calendar month within which the start of the current Billing Period occurs. (http://www.bls.gov/cpi/#tables)
USCPI₀	US Consumer Price Index, All Items, <i>Bureau of Labor Statistics (BLS)</i> (2010=100) for the month of September 2014. USCPI₀ = 109.20
FOREX_{n-1}	Monthly Average of daily Philippine Peso (PHP) vs. US Dollar (USD) Reference Foreign Exchange Rate as published by the Bangko Sentral ng Pilipinas (BSP) for the calendar month within which the start of the current Billing Period occurs. (http://www.bsp.gov.ph/statistics/keystat/day99.htm)
LVOM	Local component of Variable O&M in PHP/kWh.
FFC	Foreign Fuel Cost component of Energy Fee in USD/kWh.
FVOM	Foreign component of Variable O&M in USD/kWh.
FPI_{n-1}	GlobalCoal Newcastle index for the calendar month within which the start of the current Billing Period occurs. (https://www.globalcoal.com/ClientZone/coalMarketReport/)
FPI₀	Base Fuel Price Index posted (GlobalCoal Newcastle Index) for the month of September 2014. FPI₀ = USD66.37/MT.

4. Schedule of Capacity Fees and Energy Fees for CY 2017

Capacity Fee Price Components for CY 2017			
C.U.F.	Local Components (PHP/kWh)		Foreign Component (USD/kWh)
	Capital Recovery (LCR _{CUF})	Fixed O&M (FOM _{CUF})	Capital Recovery (FCR _{CUF})
100%	1.4605	0.1457	0.0151
99%	1.4753	0.1472	0.0152
98%	1.4903	0.1487	0.0154
97%	1.5057	0.1502	0.0156
96%	1.5214	0.1518	0.0157
95%	1.5374	0.1534	0.0159
94%	1.5537	0.1550	0.0161
93%	1.5704	0.1567	0.0162
92%	1.5875	0.1584	0.0164
91%	1.6050	0.1601	0.0166
90%	1.6228	0.1619	0.0168
89%	1.6410	0.1637	0.0170
88%	1.6597	0.1656	0.0172
87%	1.6787	0.1675	0.0173
86%	1.6983	0.1695	0.0175
85%	1.7182	0.1714	0.0178
84%	1.7387	0.1735	0.0180
83%	1.7596	0.1756	0.0182
82%	1.7811	0.1777	0.0184
81%	1.8031	0.1799	0.0186
80%	1.8256	0.1822	0.0189
79%	1.8487	0.1845	0.0191
78%	1.8724	0.1868	0.0194

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77%	1.8968	0.1893	0.0196
76%	1.9217	0.1918	0.0199
75%	1.9473	0.1943	0.0201
74%	1.9737	0.1969	0.0204
73%	2.0007	0.1996	0.0207
72%	2.0285	0.2024	0.0210
71%	2.0571	0.2053	0.0213
70%	2.0864	0.2082	0.0216

Energy Fee Price Components for CY 2017				
Energy Fee	Local Component (PHP/kWh)		Foreign Components (USD/kWh)	
	Variable O&M (LVOM)		Fuel (FFC)	Variable O&M (FVOM)
	0.0083		0.0382	0.0015

5. Schedule of Capacity Fees and Energy Fees for CY 2018

Capacity Fee Price Components for CY 2018			
C.U.F.	Local Components (PHP/kWh)		Foreign Component (USD/kWh)
	Capital Recovery (LCR _{CUF})	Fixed O&M (FOM _{CUF})	Capital Recovery (FCR _{CUF})
100%	1.4869	0.1457	0.0154
99%	1.5019	0.1472	0.0156
98%	1.5173	0.1487	0.0158
97%	1.5329	0.1502	0.0159
96%	1.5489	0.1518	0.0161
95%	1.5652	0.1534	0.0163
94%	1.5818	0.1550	0.0164
93%	1.5988	0.1567	0.0166
92%	1.6162	0.1584	0.0168
91%	1.6340	0.1601	0.0170
90%	1.6521	0.1619	0.0172
89%	1.6707	0.1637	0.0173
88%	1.6897	0.1656	0.0175
87%	1.7091	0.1675	0.0177
86%	1.7290	0.1695	0.0180
85%	1.7493	0.1714	0.0182
84%	1.7701	0.1735	0.0184
83%	1.7915	0.1756	0.0186
82%	1.8133	0.1777	0.0188
81%	1.8357	0.1799	0.0191
80%	1.8586	0.1822	0.0193
79%	1.8822	0.1845	0.0195

12/16

78%	1.9063	0.1868	0.0198
77%	1.9311	0.1893	0.0201
76%	1.9565	0.1918	0.0203
75%	1.9826	0.1943	0.0206
74%	2.0093	0.1969	0.0209
73%	2.0369	0.1996	0.0212
72%	2.0652	0.2024	0.0214
71%	2.0942	0.2053	0.0217
70%	2.1242	0.2082	0.0221

Energy Fee Price Components for CY 2018				
Energy Fee	Local Component (PHP/kWh)		Foreign Components (USD/kWh)	
	Variable O&M (LVOM)		Fuel (FFC)	Variable O&M (FVOM)
	0.0083		0.0381	0.0015

III. ADVANTAGE OF THE GENERATION RATE AND IMPACT ON LEYECO III'S RETAIL RATES

17. LEYECO III, together with the other Region 8 ECs, need to address the insufficiency of power supply due to the increasing demand within their franchise area and the expiration of their respective contracts with NPC-PSALM;
18. Currently, LEYECO III receives a total of 2.5 MW from its existing suppliers, out of its peak requirement of 8.0 MW. With an annual average growth rate of 5.86%, LEYECO III forecasts that its peak demand from 26 December 2017 to 25 December 2018 will be 7.78 MW;
19. The additional supply from SMEC will significantly augment the supply deficiency of LEYECO III and will decrease the adverse effects thereof by providing a stable and adequate source of electricity;
20. Among the alternative suppliers capable of providing additional energy to LEYECO III and the rest of the Region 8 ECs, SMEC's rates proved to be more reasonable and competitive. While SMEC's offer is primarily intended for its base load requirements, the Capacity Factor Pricing under the PSA provides flexibility in the DUs' utilization of the Contracted Capacity;
21. LEYECO III simulated a rate impact analysis, the details of which are provided in **Annex "N"**, which ultimately resulted in a PhPo.4398/kWh and PhPo.3710/kWh decrease for CYs 2017 and 2018, respectively, to wit:

**ERC CASE NO. 2018-008 RC
ORDER/18 APRIL 2018
PAGE 14 OF 25**

BASE ONLY				
Power Supplier	Forecasted 2017 Quantity (kWh)	Amount (PhP)	2017 Average Rate (P/kWh)	Weighted Average Rate (kWh)
GCGI	21,900,000	109,938,000.00	5.0200	4.5877
SMEC	30,477,500	122,272,682.25	4.0119	
WESM	(14,630,424)	(59,037,976.48)	4.6148	
TOTAL	37,747,076	173,172,705.77		
BASE W/O SMFC				
Power Supplier	Forecasted 2017 Quantity (kWh)	Amount (PhP)	2017 Average Rate (P/kWh)	Weighted Average Rate (kWh)
GCGI	21,900,000	109,938,000.00	5.0200	5.0276
SMEC	0	0.00	4.0119	
WESM	15,847,076	79,837,494.90	5.0112	
TOTAL	37,747,076	189,775,494.90		
Rate Impact Difference:				(0.4398)

BASE ONLY						
Power Supplier	Forecasted 2018 Quantity (kWh)	Amount (PhP)	Percent Share (%)	Resulting Capacity Factor (%)	2016 Average Rate (P/kWh)	Weighted Average Rate (kWh)
GCGI	21,900,000	109,938,000.00	55.91%	100%	5.0200	4.6380
SMEC	33,580,000	134,719,602.00	85.73%	100%	4.0119	
WESM	(16,310,423)	(62,987,844.17)	-41.64%		4.6656	
TOTAL	39,169,577	181,669,757.83	100%			
BASE W/O SMFC						
Power Supplier	Forecasted 2018 Quantity (kWh)	Amount (PhP)	Percent Share (%)	Resulting Capacity Factor (%)	2016 Average Rate (P/kWh)	Weighted Average Rate (kWh)
GCGI	21,900,000	109,938,000.00	55.91%	100%	5.0200	5.0090
SMEC	0	0.00	0.00%	100%	4.0119	
WESM	17,269,577	86,262,566.86	44.09%		4.9912	
TOTAL	39,169,577	196,200,566.86	100%			
Rate Impact Difference						0.3710

22. In addition to the lower generation cost of the power supply from SMEC, LEYECO III is also entitled to a Prompt Payment Discount ("PPD"), if conditions are met, equivalent to three percent (3%) of the total Capacity and Energy Charges and a Collection Efficiency Discount ("CED"), if conditions are met, equivalent to:

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

23. In compliance with *Rule 20 of the ERC Rules of Practice and Procedure* relative to the submission of supporting documents and information for the approval of the PSA and the rate structure embodied therein, the following

14/26

documents are hereby attached and submitted to form integral parts hereof:

Annex	Documents/Information
“O and series”	Details of the PSA: <ol style="list-style-type: none"> a. Executive Summary b. Sources of Funds/Financial Plans <ul style="list-style-type: none"> ▪ 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 c. Purchased Power Rate <ul style="list-style-type: none"> ▪ 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 LEYECO III once the contract is approved ▪ Basis/Rationale of indexation and level of indexation d. Cash Flow <ul style="list-style-type: none"> ▪ Initial Costs ▪ Breakdown of Operating and Maintenance expenses ▪ Minimum Energy Off-take (“MEOT”)
“P”	Details of the Power Rate Calculations and Financial Model (Confidential)
“Q”	Write-up on SMEC’s IPPA Agreement
“R”	Details of the Fuel Procurement Process
“S”	Transmission Service Agreement (“TSA”) between NGCP and LEYECO III, if applicable

24. 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 following documents are, likewise, attached to the Joint Application as annexes and made integral parts hereof:

Annex	Documents/Information
“T”	Relevant technical and economic characteristics of the generation capacity, installed capacity, mode of operation, and dependable capacity
“U”	Costs analysis of the proposed pricing provisions of the PSA
“V” and	Details of the Competitive Selection Process (“CSP”) undertaken by R8 ECs leading to the selection of

15/4

series	SMEC as their supplier, including invitations to participate and submit proposals, Terms of Reference ("TOR"), proposals and/or tender offers received by R8 JCPSP, Joint Bids and Awards Committee ("JBAC") Evaluation Report; R8 JCPSP 's Board Resolution confirming the said JBAC Evaluation Report, and the Notice of Award to SMEC (Confidential)
"W" and series	Details of the interconnection facility of the Sual Coal-Fired Thermal Power Plant
"X" and series	LEYECO III's latest Distribution Development Plan ("DDP")
"Y" and series	LEYECO III's Load Forecast Projections, Power Demand and Supply Scenario and Average Daily Load Curve
"Z"	LEYECO III's Demand Side Management ("DSM") Program that could be implemented by EC if approved by the Honorable Commission
"AA"	SMEC's latest Audited Financial Statements ("AFS"), Balance Sheet, Income Statement, and Statement of Cash Flows and Operating Expenses for the Power Plant and General and Administrative Expense
"AA-1"	Certification from the engine manufacturer or SMEC of the net heat rate in liters per kWh
"AA-2"	Updated Certificate of Compliance ("COC") from the Energy Regulatory Commission

25. Furthermore, Applicants LEYECO III and SMEC respectfully reserve their right to submit other documents, either in the course of the hearing or as may be required by this Honorable Commission;
26. The Joint Application is consistent and in accordance with Section 2 of Republic Act No. 9136, or EPIRA, declaring as a policy of the State, among others, [to ensure the quality, reliability, security and affordability of the supply of electric power;] and Section 23 thereof, which provides: *"To achieve economies of scale in utility operations, distribution utilities may, after due notice and public hearing, pursue structural and operational reforms such as but not limited to, joint actions between or among the distribution utilities, subject to the guidelines issued by the ERC (which) . . . shall result in improved efficiencies, reliability of service, reduction of costs and compliance to the performance standards prescribed in the IRR of this Act"* and that all distribution utilities 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;
27. The Joint Application is likewise consistent with DOE Department Circular No. DC2015-06-0008 which mandates

14 *ES*

all distribution utilities to undergo Competitive Selection Process (“CSP”) in securing Power Supply Agreements (“PSAs”) to ensure security and certainty of electricity prices of electric power to end-users in the long term. It is likewise compliant with ERC Resolution No. 13, Series of 2015, which requires that “PSA shall be awarded to the winning Generation Company following a successful transparent and competitive selection process . . . A CSP is successful if the DU receives at least two (2) qualified bids from entities with which the DU is not prohibited from entering into a contract for power supply in accordance with Rule 11, Section 5 (b) of the EPIRA IRR.”;

28. The PSA between LEYECO III and SMEC was entered into to ensure the continuous supply of power to LEYECO III coupled with SMEC’s competitive pricing structure and other favorable terms of the contract, which will redound to the benefit of the LEYECO III and its end-consumers in terms of reliable and affordable power supply;

IV. COMPLIANCE WITH PRE-FILING REQUIREMENTS

29. Applicants LEYECO III and SMEC respectfully manifest their substantial compliance with the pre-filing requirements mandated under the *Implementing Rules and Regulations of the EPIRA* and *Rule 6 of the ERC Rules of Practice and Procedure*, to be established as follows:
- 29.1 Certifications acknowledging receipt of the *Joint Application* with annexes to be issued by the Legislative Bodies of Pasig City, Municipality of Tunga, and the Province of Leyte, to be appended as **Annexes “BB”, “BB-1” and “BB-2”**, respectively;
- 29.2 Notarized Affidavit of Publication stating that the *Joint Application* was published in a newspaper of general circulation within LEYECO III’s Franchise Area, to be appended herein as **Annex “CC”**; and
- 29.3 Complete newspaper issue where the *Joint Application* was published, to be appended herein as **Annex “CC-1”**, and the relevant page thereof where the *Application* appears, as **Annex “CC-2”**;

V. MOTION FOR CONFIDENTIAL TREATMENT OF ANNEXES “P” and “V”

30. Under *Rule 4 of the ERC Rules of Practice and Procedure*, a party to any proceeding before the Honorable Commission may request that certain information not be disclosed and be treated as confidential, by describing with particularity the information to be treated as confidential, specifying the grounds for the claim of confidential treatment of the

information, if applicable, and specifying the period during which the information must not be disclosed;

31. Applicant SMEC respectfully moves for the confidential treatment of **Annex "P"** hereof, consisting of SMEC's Sources of Funds and Financial Plans with Cost Assumptions. This annex, exclusively owned by Applicant SMEC, contains information which are considered part of its business and trade secrets. As such, SMEC has the sole proprietary interest thereof and will be unduly prejudiced should they be disclosed to the public;
32. This annex contain numbers, data, formula, methodology, and calculations involving valuable and sensitive commercial, financial information reflecting SMEC's business operations and financial trade secrets. Therefore, SMEC's confidential, proprietary, and private information included in the aforesaid annex should be protected from public dissemination. Otherwise, such information can be illegally and unfairly utilized by business competitors who may use the same for their own private gain, to the irreparable prejudice of SMEC. Negotiations with prospective customers may also be affected;
33. Similarly, Applicant LEYECO III humbly requests for the confidential treatment of **Annex "V and series"** hereof, consisting of the MOA among Region 8 ECs, e-mails confirming participation of interested suppliers in the bidding, Information Memorandum, Final Instructions to Bidders, Bid Forms, Bid Evaluation Slips, Comparison of Bids, and Notice of Award, respectively. This annex shows the individual offers of the bidders which participated in the R8 JCPSP. The Region 8 ECs, including LEYECO III, are bound by their undertaking to secure and keep in confidence the offers and the proposed terms of supply, so as not to prejudice or pre-empt any future CSPs which these bidders will participate in. Otherwise, LEYECO III and the rest of the Region 8 ECs may be held liable for damages for breach of confidentiality, and eventually, risk their good relations with the suppliers concerned;
34. Accordingly, it is respectfully submitted that **Annex "P" and Annex "V" and series**, be accorded confidential treatment. As such, they are to be used *exclusively* by the Honorable Commission for the *sole* purpose of evaluating this *Joint Application*, thereby protecting these data from unnecessary public disclosure;
35. In accordance with *Section 1(b), Rule 4 of the ERC Rules of Practice and Procedure*, Applicants LEYECO III and SMEC submit one (1) copy each of **Annex "P" and Annex "V" and series** in sealed envelopes, with the envelope and each page of the documents stamped with the word "*Confidential*";

(8) /

VI. PRAYER FOR PROVISIONAL AUTHORITY

36. All the foregoing allegations are re-pleaded by reference in support of herein *Prayer* for the issuance of Provisional Authority to implement the subject PSA;
37. LEYECO III and SMEC respectfully pray for the issuance of a Provisional Authority or interim relief pending the Honorable Commission's final decision pursuant to *Rule 14* of the *ERC Rules of Practice and Procedure*, 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.”

38. In recognition of the fact that a substantial amount of time is customarily needed to evaluate the documents submitted to support the approval of herein *Joint Application*, Applicants LEYECO III and SMEC seek the kind consideration of the Honorable Commission to approve the instant *Joint Application*, immediately, albeit, provisionally;
39. Owing to the short-term of the contract, which is only for a period of two (2) years, a Provisional Authority is all the more imperative to allow the timely delivery of energy by SMEC to LEYECO III, which is set to start on 26 December 2016 at 12:00 A.M. in order to avoid their exposure to the Wholesale Electricity Spot Market (“WESM”);
40. The additional power from SMEC is needed to curtail any power interruptions that may be experienced by LEYECO III's member-consumers due to inadequate power supply in the Region;
41. To further support the *Prayer* for Provisional Authority, an Affidavit emphasizing the necessity thereof is attached hereto as **Annex “DD”**, to form an integral part hereof; and
42. Finally, the following annexes are attached in compliance with the additional requirements of the Technical Working Group:

Annex	Documents/Information
“EE”	SMEC Shareholders Agreement
“EE-1”	Renewable Energy Service/Operating Contract from the Department of Energy (“DOE”)
“EE-2”	Certificate of Registration or Certificate of Confirmation of Commerciality by an RE Developer and after due confirmation by the DOE

19/4

“EE-3”	Explanation on the non-applicability of potential cost of ancillary services
“EE-4”	Consistency/inconsistency of the Sual Coal Fired Power Station with the DOE's PDP
“EE-5”	SMEC as an IPPA project
“EE-6”	Explanation on the non-applicability of the MEOT provision on the SMEC contract
“EE-7”	Status of LEYECO III's Transition Supply Contract (“TSC”) with the NPC/PSALM
“EE-8”	Non-applicability to electric cooperatives of document showing list of board of directors and board members related to the ultimate parent company, its subsidiaries and all its affiliates

PRAYER

WHEREFORE, the foregoing premises considered, the Joint Applicants Leyte III Electric Cooperative, Inc. (“LEYECO III”) 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 PSA, thereby, authorizing LEYECO III and SMEC to immediately implement the rate structures therein;
2. **ISSUE** an Order treating **Annexes “P” and “V and series”**, 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 the information contained therein 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 the Joint Application and the PSA between LEYECO III and SMEC, and authorizing LEYECO III to charge and collect the fees therein from its member-consumers.

Other reliefs as may be just and equitable under the premises are, likewise, most respectfully prayed for.

Finding the said *Application* to be 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 **12 July 2018 (Thursday) at nine o'clock in the morning (09:00 A.M.)**, at LEYECO III's principal office at **National Highway, Barangay San Roque, Tunga, Leyte**.

20/4/18

Accordingly, LEYECO III and SMEC are 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 their 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 Municipal Mayors, and the Local Government Unit (LGU) legislative bodies within LEYECO III's franchise area 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, Applicants must submit to the Commission their 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 was 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

21/4/18

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 Applicants 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.

Applicants 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 Applicants 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.

LEYECO III and SMEC must also be prepared to make an expository presentation of the instant *Application*, aided by whatever

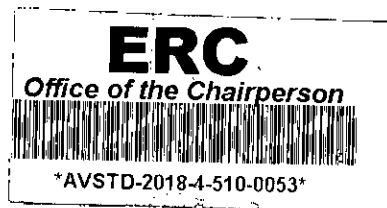
communication medium that they may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties, what the *Application* is all about and the reasons and justifications being cited in support thereof.

SO ORDERED.

Pasig City, 18 April 2018.

FOR AND BY AUTHORITY
OF THE COMMISSION:


AGNES VST DEVANADERA
Chairperson and CEO



LS: MCC/JGM/CLS/APV


COPY FURNISHED:

1. Leyte III Electric Cooperative, Inc. (LEYECO III)
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2. Attys. Maria Concepcion O. Ojeda and Shirley Menciano Olaguer-Obenza
Counsel for Applicant LEYECO III
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240 J.P. Rizal, Marikina City
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Applicant
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Barangay San Antonio, Pasig City
4. Elenita D. Go
General Manager of SMEC
19th Floor, San Miguel Properties Centre, No. 7 St. Francis Street
Mandaluyong City
6. Office of the Solicitor General
134 Amorsolo Street, Legaspi Village, Makati City

ERC CASE NO. 2018-008 RC
ORDER/18 APRIL 2018
PAGE 24 OF 25

7. Commission on Audit
Commonwealth Avenue, Quezon City
8. Senate Committee on Energy
GSIS Bldg. Roxas Blvd., Pasay City
9. House Committee on Energy
Batasan Hills, Quezon City
10. 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
11. Office of the Provincial Governor
Province of Leyte
12. Office of the Sangguniang Panlalawigan
Province of Leyte
13. Office of the Municipal Mayor
Alangalang, Leyte
14. Office of the Sangguniang Bayan
Alangalang, Leyte
15. Office of the Municipal Mayor
Barugo, Leyte
16. Office of the Sangguniang Bayan
Barugo, Leyte
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21. Office of the Municipal Mayor
Jaro, Leyte
22. Office of the Sangguniang Bayan
Jaro, Leyte
23. Office of the Municipal Mayor
Pastrana, Leyte
24. Office of the Sangguniang Bayan
Pastrana, Leyte
25. Office of the Municipal Mayor
San Miguel, Leyte
26. Office of the Sangguniang Bayan
San Miguel, Leyte
27. Office of the Municipal Mayor
Sta. Fe, Leyte

24 8/6

28. Office of the Sangguniang Bayan
Sta. Fe, Leyte
29. Office of the Municipal Mayor
Tunga, Leyte
30. Office of the Sangguniang Bayan
Tunga, Leyte
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Handwritten initials