

Republic of the Philippines  
**ENERGY REGULATORY COMMISSION**  
Pasig City



**IN THE MATTER OF THE  
PETITION FOR DISPUTE  
RESOLUTION**

**PHINMA ENERGY  
CORPORATION (PHINMA),**  
*Petitioner,*

-versus-

**ERC Case No. 2017-008 DR**

**BATANGAS I ELECTRIC  
COOPERATIVE, INC.**  
**(BATELEC I),**  
*Respondent.*

**D O C K E T E D**  
Date: MAY 09 2018  
By: W

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**ORDER**

On 7 December 2017, Phinma Energy Corporation (Phinma) filed the above-captioned petition for dispute resolution against Batangas I Electric Cooperative, Inc., (BATELEC I).

In the said Petition, Phinma alleges the following:

1. Petitioner PHINMA Energy is a corporation duly organized and existing under Philippines laws, with principal office at Level 11, PHINMA Plaza, 39 Plaza Drive, Rockwell Center, Makati City. Petitioner PHINMA Energy may be served with orders, notices and other legal processes of this Honorable Commission through the undersigned counsels at its address indicated below.
2. Respondent Batangas I Electric Cooperative, Inc., ("BATELEC I"), is an electric cooperative duly organized and existing under Philippine laws, with business address at Km. 116 National Highway, Calaca, Batangas, where it may be served with orders, notices and other legal processes of this Honorable Commission.

**I. NATURE OF THE PETITION**

3. This is a Petition For Dispute Resolution, for the payment by BATELEC I of Seventy One Million Four Hundred Forty Thousand Sixty Pesos and Thirteen Centavos (PhP 71,440,060.13)("Billing Adjustment"), plus interest charges, attorney's fees and litigation expenses, pursuant to the Contract for

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the Sale of Electricity (“CSE”). The amount represents billing adjustments on the actual metered consumption of BATELEC I for the period March 2016 – August 2016.

4. The instant Petition is anchored on the jurisdiction of the Honorable Commission pursuant to Section 43 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001, particularly, but not limited to paragraph (u) which states:

*“Section 43. Functions of the ERC.*

*xxxx                      xxx                      xxx*

*(u) The ERC shall have **original and exclusive jurisdiction** over all cases contesting rates, fees, fines and penalties imposed by the ERC in the exercise of the above-mentioned powers, functions and responsibilities and **over all cases involving disputes between and among participants in the energy sector.**” (emphasis supplied)*

5. Furthermore, the CSE between PHINMA Energy and BATELEC I state that disputes, which the parties failed to amicably settle, shall be brought or filed by either party with the Energy Regulatory Commission (“ERC”). Section 13.4 of the CSE provides:

*“13.4 SETTLEMENT OF DISPUTES*

*The Parties shall exert all reasonable efforts to amicably settle all disputes arising from and in connection with the Contract. **Any disputes arising in connection with the Contract that the Parties failed to settle amicably shall be brought or filed by either Party with the ERC.**” (emphasis supplied)*

Despite all efforts to amicably settle the issues, BATELEC I and PHINMA Energy failed to resolve the dispute.

## **II. STATEMENT OF FACTS**

6. On June 07, 2013, PHINMA Energy and BATELEC I entered into the CSE for the supply, by PHINMA Energy, of the load following electricity requirements of BATELEC I. The contracted electricity under the CSE is based on the quantities of electricity as reflected in the meter data furnished by the Philippine Electricity Market Corporation (“PEMC”) (the “Metered Quantities” or “MQ”). This means that all electricity, in excess of its baseload contracted capacity, measured and recorded in the meters of BATELEC I shall be paid by BATELEC I. A copy of the CSE is hereto attached as **Annex “A”**.

7. The CSE was provisionally approved by the Honorable Commission in its Order dated March 31, 2014, in the case docketed as ERC Case No. 2014-004RC entitled *In the Matter of the Application for Approval of the Contract for the Sale of Electricity (CSE) between Batangas I Electric Cooperative Incorporated (BATELEC I) and Trans-Asia Oil and Energy Development Corporation (TA-OIL) (As Wholesale Aggregator), with Prayer for Provisional Authority.*

8. The CSE was provisionally approved by the Honorable Commission using the National Power Corporation Time-of-Use ("NPC-TOU") base rate, including the Automatic Cost Adjustment. A copy of the Order issued by the Honorable Commission dated March 31, 2014, is hereto attached as **Annex "B"**.

9. The Honorable Commission provisionally approved the NPC-TOU base rate plus the Automatic Cost Adjustment, which was below the rate required to make the transaction viable. Thus, PHINMA Energy filed several motions for reconsideration and motions for urgent re-evaluation. Pending the decision of the Honorable Commission, PHINMA Energy did not yet supply BATELEC I its electricity requirements.

10. BATELEC I requested PHINMA Energy to commence supply of its electricity requirements due to its increasing load requirements and volatility or unpredictability of the prices in the Wholesale Electricity Spot Market ("WESM"). After several meetings and consultations, PHINMA Energy accommodated the request of BATELEC I and began supplying electricity on June 26, 2015, charging electricity fees on the basis of the provisionally approved rates, without prejudice to any directive or final decision which the Honorable Commission may issue in resolving PHINMA Energy's Motions for Re-evaluation and Reconsideration.

11. While the term of the CSE was five (5) years from the approval of the Energy Regulatory Commission ("ERC"), PHINMA Energy was constrained to supply only until December 19, 2016, due to the issuance by the Honorable Commission of ERC Resolution No. 12, Series of 2015 or the *Resolution to Discontinue the Wholesale Aggregator Scheme as Embodied in the Rules for the Registration of the Wholesale Aggregators*. Under ERC Resolution No. 12, Series of 2015, all Certificates of Registration of Wholesale Aggregators shall remain effective only until the end of their respective terms. The WA Certificate of Registration of PHINMA Energy was only valid until December 18, 2016.

12. For the more than one (1) year that PHINMA Energy has supplied all the electricity requirements of BATELEC I, the Parties have adopted, by practice and experience, the following process, without any issue, for the sale and purchase of electricity between the Parties:

- a) BATELEC I nominates to PHINMA Energy its electricity supply quantities and requirements for each day;

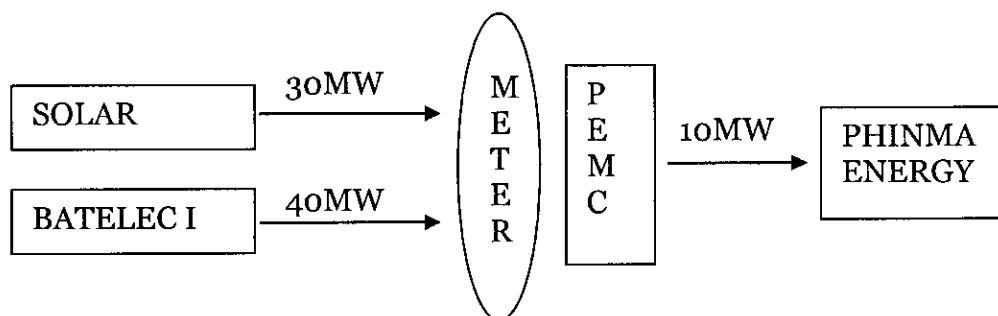
- b) PHINMA Energy declares the bilateral contract quantities (“BCQ”) of BATELEC I to the PEMC.
- c) Upon request of PHINMA Energy, PEMC sends the metered quantities of BATELEC I to PHINMA Energy;
- d) PHINMA Energy bills BATELEC I on the basis of the preliminary metered quantities and data provided for by PEMC and the corresponding charges and fees as approved by the ERC;
- e) For purposes of convenience, differences in the final settlement metered quantities from PEMC and declared quantities are settled or adjusted accordingly by the parties and reflected in the succeeding electric power bill, when the final data is available.
- f) BATELEC I pays its electric power bill;

13. Since the implementation of the CSE and the supply of PHINMA Energy to BATELEC I, the parties had not encountered any substantial issue or dispute in the trading, billing, settlement and reconciliation of the electricity requirements of BATELEC I.

14. However, sometime in July 2016, BATELEC I raised with PEMC unexplained purchases in the WESM when in fact its contract with PHINMA Energy states that all electricity requirements in excess of its baseload contracted capacity, are to be supplied by PHINMA Energy.

15. Likewise, sometime in September 2016, PHINMA Energy’s internal software that monitors BATELEC I’s electricity consumption began showing that one of BATELEC I’s meters registered negative metered quantities.

16. After several meetings and consultations, it was found out that the negative metered quantities as registered in one of the meters of BATELEC I was due to the entry of a Solar Power Plant in Calatagan, Batangas. The meter data received by PHINMA Energy from PEMC is already net of the electricity generated by the Solar Power Plant. To further explain and illustrate:



Thus, by way of example, if the Solar Power Plant generates 30MW and BATELEC I consumes 40MW, the meters of PEMC nets out the generation of the Solar Power Plant (30MW) with the actual consumption of BATELEC I (40MW), thus the data provided by PEMC to PHINMA Energy for the actual consumption of BATELEC

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I is only 10MW, when in truth and in fact, the actual consumption of BATELEC I is 40MW.

17. Such fact, however, was never communicated to PHINMA Energy. In providing the metered quantities of BATELEC I, PEMC provides PHINMA the metered quantities without the quantities generated by the Solar Power Plant, which data, was only given to BATELEC I. The data given by PEMC to PHINMA Energy nets out the electricity generated by the Solar Power Plant with the actual metered quantities of BATELEC I.

18. In order to reconcile the data, BATELEC I had to provide PHINMA Energy the correct actual metered quantities of BATELEC I for the period March – August 2016. Since the CSE provided that all contracted electricity of BATELEC I is to be supplied by PHINMA Energy and paid for by BATELEC I, PHINMA Energy reconciled the actual metered quantities of BATELEC I, computed the WESM purchases or exposures of BATELEC I, and deducted the same to arrive at the Billing Adjustment.

19. It was only sometime in November – December 2016 when BATELEC I and PHINMA Energy were able to finish the reconciliation and arrive at the amount of PhP 69,644,938.00 (PhP 71,440,060.13- with interest). The said amount represents the billing adjustments on account of the incomplete data for the billing periods March 2016-August 2016, after deducting the WESM exposures and purchases made by BATELEC I. The amount of PhP 69,644,938.00 is reflected in the December 2016 electric power bill of BATELEC I, hereto attached as **Annex “C”**.

20. Shown below are tables of the summaries of the difference in energy quantities, computation of charges based on the actual MQ of BATELEC I, the charges billed by PHINMA Energy based on the MQ furnished by PEMC, and the summary of adjustments payable by BATELEC I.

**a) Table 1: Difference in Energy Quantities- shows the breakdown of the differences in the actual metered quantities (MQ) of BATELEC I, the metered quantities given by PEMC (without the quantities of the Solar Power Plant), and the Bilateral Contract Quantities declared by PHINMA Energy to PEMC.**

**Table 1: Difference in energy quantities (in kWh):**

<b>Billing Month</b>	<b>Actual MQ</b>	<b>PEMC MQ billed by PHINMA</b>	<b>BCQ Declared by PHINMA</b>
March 2016	14,957,255.58	12,243,815.09	12,409,729.43
April 2016	20,081,692.85	12,784,845.28	12,829,602.36
May 2016	20,975,026.39	13,707,545.11	14,217,782.76

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Billing Month	Actual MQ	PEMC MQ billed by PHINMA	BCQ Declared by PHINMA
June 2016	19,629,496.28	13,167,805.87	13,896,850.51
July 2016	16,776,342.34	11,052,771.39	17,478,742.00
August 2016	16,788,975.25	11,812,991.87	16,292,892.00

As may be noted above, the actual MQs of BATELEC I are higher than the data provided by PEMC. The PEMC MQ was already net of the generation of the Solar Power Plant as illustrated above, when in truth and in fact, BATELEC I consumed more quantities of electricity than the MQs provided by PEMC.

b) **Table 2: Computation of Charges based on Actual Metered Quantities from BATELEC I and adjustments in the BCQ declaration- based on the above Table 1, PHINMA Energy computed the charges payable by BATELEC I to take into account the NPC-TOU rate Automatic Cost Adjustment, as approved by the ERC, and adjustments in the BCQ declared by PHINMA Energy based on the actual MQs from BATELEC I.**

Table 2a: Computation of Charges based on Actual MQ (from BATELEC I):

Billing Month	Generation Fee	FPPCA Rate	FPPCA*	FxA Rate	FxA**
March 2016	66,245,432.66	0.3650	5,459,398.29	0.2679	4,007,048.77
April 2016	87,943,269.47	0.3660	7,349,899.58	0.2611	5,243,330.00
May 2016	93,142,363.79	0.3723	7,809,002.33	0.2639	5,535,309.47
June 2016	88,522,075.92	---	---	---	---
July 2016	69,357,945.11	---	---	---	---
August 2016	71,001,439.49	---	---	---	---

\*FPPCA- Automatic Monthly Adjustment on Fuel and Purchase Power Cost Adjustment.

\*\*FxA- Automatic Monthly Adjustment on Foreign Related Cost.

**Table 2b: Total amount payable to account for adjustments in BCQ declaration (in PhP):**

Billing Month	Total Amount (Sum of Generation Fee, FFPCA, and FxA)	Adjustments in BCQ declaration (Based on Actual MQ from BATELEC I)	TOTAL
March 2016	75,711,879.22	(8,073,855.81)	<b>67,638,023.91</b>
April 2016	100,536,499.06	(27,663,319.91)	<b>72,873,179.14</b>

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Billing Month	Total Amount (Sum of Generation Fee, FFPCA, and FxA)	Adjustments in BCQ declaration (Based on Actual MQ from BATELEC I)	TOTAL
May 2016	106,486,675.58	(19,498,946.61)	<b>86,987,728.98</b>
June 2016	88,522,075.92	(29,279,278.13)	<b>59,242,797.79</b>
July 2016	69,357,945.11	1,890,568.84	<b>71,248,513.95</b>
August 2016	71,001,439.49	(1,025,271.41)	<b>69,976,168.09</b>

It has always been the practice of the parties that differences in the BCQ nomination of BATELEC I to PHINMA Energy and the BCQ declaration of PHINMA Energy to PEMC, are adjusted or reconciled by the parties, and reflected in the succeeding electric power bill.

- c) **Table 3: Charges billed by PHINMA Energy to BATELEC I based on the MQ provided by PEMC- this shows the generation fee and the adjustments billed by PHINMA Energy to BATELEC I based on the MQs and data provided by PEMC.**

Table 3: Charges billed by PHINMA Energy to BATELEC I based on MQ provided by PEMC.

Billing Month	Generation Fee	Adjustments	TOTAL
March 2016	60,256,787.80	445,982.87	60,702,770.68
April 2016	57,521,399.70	(231,803.51)	57,289,596.20
May 2016	62,354,490.73	1,559,983.03	63,914,473.76
June 2016	52,141,644.21	4,198,307.08	56,339,951.29
July 2016	41,280,703.34	21,929,430.22	63,210,133.55
August 2016	45,173,878.08	19,152,627.92	64,326,506.01

- d) **Table 4: Amount billed by PHINMA Energy due to adjustments in MQ- this table shows the amount billed by PHINMA Energy as a result of the re-computation and adjustments in metered quantities between the PEMC issued metered quantities and the actual metered quantities provided by BATELEC I.**

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Table 4: Amount billed by PHINMA Energy due to adjustments in MQ

Billing Month	Total amount based on computation of charges based on Actual MQ from BATELEC I (Table 2b above)	Total amount based on the MQs issued by PEMC (Table 3 above)	Amount billed to BATELEC I-excluding VAT	Amount billed to BATELEC I-with VAT
March 2016	67,638,023.91	60,702,770.68	6,935,253.23	7,767,483.62
April 2016	72,873,179.14	57,289,596.20	15,583,582.95	17,453,612.90
May 2016	86,987,728.98	63,914,473.76	23,073,255.21	25,842,045.84
June 2016	59,242,797.79	56,339,951.29	2,902,846.49	3,241,188.07
July 2016	71,248,513.95	63,210,133.55	8,038,380.40	9,002,986.04
August 2016	69,976,168.09	64,326,506.01	5,649,662.08	6,327,621.53
TOTAL				69,644,938.00  with interest: 71,440,060.13

21. Notably, since the parties already knew the source of discrepancy in the actual metered quantities and already agreed on the procedures, computations and mechanisms to be adopted to account for the entry of the Solar Power Plant and its effects on the metered quantities of BATELEC I, the September 2016 electric power bill of BATELEC I, resulted to an adjustment in the amount of PhP 31,052,303.67 (without Value Added Tax).

22. BATELEC I requested that the amount of PhP 31,052,303.67, representing adjustments in the metered quantities be paid in three (3) equal monthly installments since the said payment of the whole amount would result to an abrupt increase in the generation fee charge billed by BATELEC I to its member-consumers.

23. PHINMA Energy accommodated the request and agreed to the installment payment of the adjustments for the September 2016 billing period. As proof thereof, the electric power bill of BATELEC I included a line item "**Adj. based on the Final MQ Sept 2016 (1 of 3, 2 of 3, or 3 of 3)**". The said September 2016 electric power bill which contained the adjustments in the MQs were fully paid by BATELEC I in three monthly installments. A copy of the electric power bill for October, November and December 2016 showing the line item mentioned above, together with receipts showing payment of BATELEC I, are attached hereto as **Annexes "D" – "D-6"**.

24. BATELEC I recognized the adjustments in the metered quantities and already provided PHINMA Energy copies of their actual metered data. This enabled PHINMA Energy to bill BATELEC I based on its actual metered quantities. Copies of the



cover electronic mail message showing that BATELEC I provided PHINMA Energy the actual metered quantities for its October, November and December actual consumption, are hereto attached as Annexes "E" – "E-3".

25. On February 10, 2017, PHINMA Energy wrote a letter to BATELEC I proposing that BATELEC I pay the amount of PhP 69,644,938.00 in six (6) equal monthly installments beginning February 26, 2017. A copy of the letter dated February 10, 2017, is hereto attached as Annex "F".

26. On February 24, 2017, BATELEC I wrote a letter to PHINMA Energy, pointing out the following, among others:

- a) For the period March to August 2016, there have been discrepancies in the bilateral contract nomination declared by PHINMA Energy;
- b) The computation of the amount was derived from the meter data from BATELEC I and not from PEMC;
- c) Since PHINMA Energy is not anymore its electricity supplier, BATELEC I is not authorized anymore to include power purchases (other than from new power suppliers) in the ERC Uniform Reportorial Requirement (URR) template for generation cost component unless there is an approval from the ERC;
- d) The payment of the amount of PhP 69,644,938.00 would need the approval of its Board of Directors and the ERC.

A copy of the letter of BATELEC I dated February 24, 2017, is hereto attached as Annex "G".

27. PHINMA Energy thereafter imposed interest on the amount of PhP 69,644,938.00, thus resulting to an adjusted payable amount of PhP 71,440,060.13. In a letter dated March 17, 2017, BATELEC I formally requested that the '*amount should not incur interest while it is under dispute*'. A copy of the letter dated March 17, 2017 is hereto attached as Annex "H".

28. PHINMA Energy again accommodated the request of BATELEC I and suspended the imposition of interest charges pending the resolution of the dispute, and to provide ample time for BATELEC I to consult the ERC and file the appropriate action for the collection of the Billing Adjustment.

29. Subsequently, BATELEC I and its Board of Directors invited PHINMA Energy to a meeting on May 11, 2017 to amicably discuss the billing dispute. BATELEC I through its legal counsel refused to pay the amount demanded, claiming that bill adjustments can only be made within six (6) months from the date of discovery. Since the matter of the bill adjustment was discovered only sometime in October 2016, the bill adjustments for the month

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of March and April 2016 would not anymore be considered or has lapsed since, allegedly, the same is already over the 6 month period provided in the CSE. It was also discussed that the parties go to the ERC and seek their guidance on how BATELEC I can pass on the amount to its member-consumers.

BATELEC I was referring to Section 4.7 of the CSE which reads:

*“4.7 DISPUTED BILLS.*

*xxxx xxxx*

*In the event that the SELLER identifies an error in the Invoice, the SELLER shall issue a debit/credit notice within thirty (30) Business Days from the date of receipt of the Invoice; Provided that metering errors, such as, but not limited to the following, incorrect use of a multiplier, partial metering failure, inaccurate meter registration due to drift and others, shall be corrected within sixty (60) Business Days from detection; Provided further, that the metering error was detected within six (6) months from its occurrence.” (emphasis ours)*

30. Further, in a letter dated May 22, 2017, BATELEC I asserted the above provision, and claimed that bill adjustments should be made within six (6) months from the date of discovery. A copy of the letter of BATELEC I dated May 22, 2017, is hereto attached as **Annex “I”**.

31. In a letter dated June 05, 2017, PHINMA Energy, clarified that the provision relied upon by BATELEC I, Section 4.7 of the CSE, does not apply since the provision providing for a prescriptive period of six (6) months from detection on bill adjustments only applies to metering errors. However, what occurred in the case of the bill adjustments was not a case of metering errors but rather a case of incomplete data or metered quantities brought about by the entry of the Solar Power Plant. PHINMA Energy, likewise, mentioned that it was looking forward to BATELEC I writing the ERC to seek the ERC’s approval for the collection of the PhP 71,440,060.13. A copy of the letter of PHINMA Energy dated June 05, 2017 is hereto attached as **Annex “J”**.

32. Despite the considerable length of time given to BATELEC I to seek the approval of the ERC, and the various concessions, leeway and accommodations extended, BATELEC I still failed to settle the Billing Adjustment nor has it formally sought the approval of the ERC despite the previous advice of the ERC.

33. On August 10, 2017, PHINMA Energy wrote a Demand Letter to BATELEC I, formally demanding that BATELEC I pay the amount of PhP 71,440,060.13 on or before August 24, 2017. Failure to pay the said amount shall result to, among others, the imposition of interest at 2% per month pursuant to the CSE until fully paid, penalty charges in the minimum amount of 12% per

annum plus damages, attorney's fees, cost of litigation. A copy of the Demand Letter of PHINMA Energy dated August 10, 2017, is hereto attached as **Annex "K"**.

34. On August 24, 2017, BATELEC I replied to the Demand Letter of PHINMA Energy, informing PHINMA Energy that it cannot heed to the demand of billing adjustment. A copy of the letter of BATELEC I dated August 24, 2017 is hereto attached as **Annex "L"**.

35. In view of the foregoing, PHINMA Energy presents the following issues for resolution of the Honorable Commission:

### III. ISSUES

A. **WHETHER THE CSE PRECLUDES PHINMA ENERGY FROM COLLECTING FROM BATELEC I THE BILLING ADJUSTMENT IN THE AMOUNT OF SEVENTY ONE MILLION FOUR HUNDRED FORTY THOUSAND SIXTY PESOS AND THIRTEEN CENTAVOS (PHP 71,440,060.13)**

### IV. ARGUMENTS AND DISCUSSIONS

36. PHINMA Energy is NOT precluded from collecting from BATELEC I the Billing Adjustment in the amount of PhP 71,440,060.13 on the following arguments:

**A. SECTION 4.7 OF THE CSE IN INAPPLICABLE. THE BILLING ADJUSTMENT IS NOT A RESULT OF ANY METER ERROR BUT ONLY OF FINANCIAL ADJUSTMENTS AS A RESULT OF INCOMPLETE DATA.**

37. In letter dated May 22, 2017 (Annex "I"), BATELEC I refers to Section 4.7 of the CSE as a justification in stating that the March and April 2016 billing adjustment should not be included in the computation of the total Billing Adjustment as any bill adjustment should have been made within six (6) months from the date of discovery.

38. For purposes of clarity, Section 4.7 is quoted hereunder:

*"4.7 Disputed Bills*

*(a) xxxx      xxxx*

*(b) In the event that the SELLER identifies an error in the Invoice, the SELLER shall issue a debit/credit notice within thirty (30) Business Days from the date of receipt of the Invoice; Provided that metering errors, such as, but not limited to the following, incorrect use of a*

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*multiplier, partial metering failure, inaccurate meter registration due to drift and others, shall be corrected within sixty (60) Business Days from detection; Provided further, that the metering error was detected within six (6) months from its occurrence.”*

39. The said provision providing for a prescriptive period of six (6) months from detection on bill adjustments only applies to **metering errors**. Classifications of metering errors under the provision have been enumerated as follows:

- a) incorrect use of multiplier;
- b) partial metering failure;
- c) inaccurate meter registration due to drift and others.

40. What occurred in this case is not an event classified as a metering error since there was no incorrect use of multiplier, no partial metering failure, no inaccurate meter registration due to drift on BATELEC I's meters. Neither can it fall under the category of 'other', since the word 'others' was immediately preceded by the word drift. The word 'others' is then construed or limited to situations of a similar nature with the word drift.

41. The provision also presupposes that BATELEC I report and/or inform PHINMA Energy of the occurrence of any faulty meter readings or errors inasmuch as PHINMA Energy is not the owner of the meters, has no access nor knowledge of any faulty meters, meter trouble reports or malfunctions occurring in the meters of BATELEC I. A technical malfunction in the meter could have given rise to a metering error as intended by the provision above. Thus, in the absence of any meter trouble report or metering error, the cited provision above, providing for a six (6) month prescriptive period does not apply.

42. The Billing Adjustment in the amount of PhP 71,440,060.13 is not in any way a case of meter trouble or inaccurate meter registration of BATELEC I, but rather a case of incomplete data or metered quantities covering the billing periods March – August 2016, on account of the entry of the Solar Power Plant in Calaca, Batangas. Thus, it was necessary for BATELEC I to furnish PHINMA Energy the data of its actual metered quantities since the data provided by PEMC did not reflect the ACTUAL and TRUE metered quantities or consumption of BATELEC I.

43. BATELEC I cannot invoke the said provision since the actual data can only come from BATELEC I to enable PHINMA Energy to accurately bill the billing adjustment for March –August 2016. Due to the voluminous data and since the parties were still reconciling and settling their differences, it was only sometime in October when PHINMA Energy received the data and only sometime November- December 2016 when the reconciliation was finalized. To invoke the 6 months prescriptive period would grossly result to an injustice as PHINMA Energy could not compute the

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billing adjustment without the much needed data of actual quantities from BATELEC I.

44. Furthermore, during the March-August 2016 Billing Periods, BATELEC I never raised the issue of any meter failure which occurred in any of its meters or facilities, thereby negating the fact that any meter failure occurred. This was fully relied upon by PHINMA Energy to indeed believe that no meter failure occurred during the period. For BATELEC I to argue the contrary would be grossly prejudicial to PHINMA Energy.

**B. UNDER THE CSE, THE CONTRACTED ELECTRICITY, BASED ON METERED QUANTITIES, ABOVE ITS BASELOAD CONTRACTED CAPACITY SHALL BE SUPPLIED BY PHINMA ENERGY**

45. Under Schedule 1 of the CSE, the Contracted Electricity for each hour shall be computed as follows:

$$HCE = MQ - BLCC$$

Where:

- HCE = Hourly Contracted Electricity, in kW; whenever BLCC is greater than MQ, HCE shall be zero
- MQ = Corresponding Metered Quantities for each hour, In kW
- BLCC = Baseload Contracted Capacity of 20,000 kW

46. In simple terms, this provides that all electricity consumed by BATELEC I in excess of its baseload contracted capacity shall be supplied by PHINMA Energy and paid for by BATELEC I.

47. It must be noted, however, that due to the structure and mechanism in the WESM, supply of electricity is not necessarily a physical supply and delivery of electricity, but more importantly is a purely financial transaction, settlement and reconciliation between the parties.

48. For more than (1) year that PHINMA Energy has supplied BATELEC I, the parties have adopted and used the PEMC data as basis for computing the metered quantities consumed by BATELEC I. When the embedded Solar Power Plant located in Calaca, Batangas commenced its operations, the meter data that was furnished by PEMC to PHINMA Energy was already net of the quantities of electricity generated by the Solar Power Plant. PEMC then furnished BATELEC I the metered quantities of the Solar Power Plant. PHINMA Energy had no knowledge of the operations of the Solar Power Plant, neither was this relayed by BATELEC I to PHINMA Energy. It was only sometime on September 2016 when

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PHINMA Energy started to make inquiries on the substantial decrease in the metered quantities of BATELEC I.

49. PEMC furnished BATELEC I, and not PHINMA Energy, the meter data relative to the Solar Power Plant since PHINMA Energy had no existing relationship nor privity of contract with the Solar Power Plant. Neither will this data be given to PHINMA Energy by PEMC even if requested by PHINMA Energy.

50. Upon recognizing the effects of the entry of the Solar Power Plant to the metered quantities of BATELEC I, it was agreed upon by the Parties that for an accurate billing and settlement of the electricity consumed, BATELEC I furnished PHINMA Energy their ACTUAL metered quantities taking into consideration the effect of the generation of the Solar Power Plant.

51. In fact, to compute for the September 2016 Billing Period, BATELEC I provided PHINMA Energy its actual metered quantities. Upon reconciliation, the billing adjustment for the period of September 2016 amounted to PhP 31,052,303.67. This amount was FULLY paid by BATELEC I in three (3) equal monthly installments.

52. Moving forward, during the October, November and December 2016 Billing Periods, it must be noted that to compute for its ACTUAL consumption, consistent with the very intention of the CSE, BATELEC I provided PHINMA Energy the needed ACTUAL consumption data. It is noteworthy to point out that for the September, October, November and December 2016 Billing Periods, BATELEC I paid all the electric bills with the billing adjustments without any dispute. Attached as Annexes "D and series" and "E and series" are the electric power bills and accompanying official receipts showing the payments made by BATELEC I, and the electronic mail message showing that BATELEC I provided PHINMA Energy the meter data to compute the October, November and December 2016 electric power bills.

53. It would be unfair and unjust now for BATELEC I to raise the argument that the billing adjustments for the months of March-August 2016 should not be paid based on arguments that are inconsistent with the actual actions and conduct it has taken. The act of BATELEC I in paying the September, October, November and December 2016 electric power bills is a clear, unequivocal and categorical acknowledgment of the adjustments on account of incomplete data, and a recognition of the propriety or correctness of the method, process, and manner employed by PHINMA Energy in arriving at the amount payable for the September, October, November and December 2016 billing periods. This was the same method, process or manner employed by PHINMA Energy in computing the Billing Adjustment. A change in the theory or ground relied upon by BATELEC I to resist payment of the Billing Adjustment would result to severe prejudice and injustice to PHINMA Energy.

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54. Upon reconciliation of the data provided by BATELEC I, the actual metered quantities during the March-August 2016 Billing Periods are as follows:

Billing Month	Actual MQ as provided by BATELEC I	PEMC MQ billed by PHINMA
March 2016	14,957,255.58	12,243,815.09
April 2016	20,081,692.85	12,784,845.28
May 2016	20,975,026.39	13,707,545.11
June 2016	19,629,496.28	13,167,805.87
July 2016	16,776,342.34	11,052,771.39
August 2016	16,788,975.25	11,812,991.87

55. The difference in the metered quantities as provided by BATELEC I to PHINMA Energy, clearly show that the electricity consumed by BATELEC I on top of its baseload requirements are higher than the meter data provided by PEMC to PHINMA Energy. Consequently, BATELEC I should pay its ACTUAL metered consumption, pursuant to the CSE between the parties.

56. Upon further computation and reconciliation of the adjustments, as shown in Table 4 above as reproduced herein, there exist amounts to be paid by BATELEC I arising from the incomplete data which PHINMA Energy received by PEMC. The amounts indicated below already take into consideration and deducts or returns to BATELEC I all WESM exposures or purchases which may have been made by BATELEC I.

Billing Month	Total amount based on computation of charges based on Actual MQ from BATELEC I (Table 2b above)	Total amount based on the MQs issued by PEMC (Table 3 above)	Amount billed to BATELEC I-excluding VAT	Amount billed to BATELEC I-with VAT
March 2016	67,638,023.91	60,702,770.68	6,935,253.23	7,767,483.62
April 2016	72,873,179.14	57,289,596.20	15,583,582.95	17,453,612.90
May 2016	86,987,728.98	63,914,473.76	23,073,255.21	25,842,045.84
June 2016	59,242,797.79	56,339,951.29	2,902,846.49	3,241,188.07
July 2016	71,248,513.95	63,210,133.55	8,038,380.40	9,002,986.04
August 2016	69,976,168.09	64,326,506.01	5,649,662.08	6,327,621.53
TOTAL				69,644,938.00  with interest: 71,440,060.13

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**C. PHINMA ENERGY HAS CONSISTENTLY ACCOMODATED THE REQUESTS OF BATELEC I. NON-PAYMENT OF THE BILLING ADJUSTMENT WILL RESULT TO UNJUST ENRICHMENT AND CONTRAVENE THE CSE.**

57. It bears stressing that PHINMA Energy supplied BATELEC I to accommodate its request to commence supply even if the electricity rates were not feasible, and despite PHINMA Energy's motions for re-evaluation and reconsideration of the electricity rates. PHINMA Energy has given BATELEC I, on numerous occasions, concessions and time to settle its Billing Adjustment, and even suspended the imposition of interest.

58. The non-payment by BATELEC I of the Billing Adjustment for the period March – August 2016 Billing periods violates the CSE which states that Metered Quantities above its baseload contracted capacity are to be supplied by exclusively PHINMA Energy and paid for by BATELEC I.

59. It must be underscored that prior to the commencement of supply to BATELEC I by PHINMA Energy, BATELEC I was compelled to source almost forty percent (40%) of its total energy from the WESM, thereby heavily exposing its member-consumers to the unstable and highly unpredictable prices of the WESM. The supply by PHINMA Energy not only ensured continuous and uninterrupted power supply to BATELEC I's franchise area but, more importantly, mitigated the risk of exposure to the volatile prices of the WESM resulting to stable prices of electricity enjoyed by BATELEC I's member-consumers. BATELEC I substantially reaped the benefits of the supply by PHINMA Energy.

60. To reiterate, the issue is merely the incomplete meter data that was provided to PHINMA Energy. It was absolutely necessary for BATELEC I to provide the metered quantities to enable PHINMA Energy to compute the billing adjustment. The delay in providing PHINMA Energy the actual metered quantities should not result to a gross injustice and waive any claim by PHINMA Energy.

61. Even if BATELEC I made purchases from the WESM to supply quantities above its baseload contracted capacity, PHINMA Energy will return to BATELEC I any purchases it may have made consistent with the very intention of the parties in the CSE to shield BATELEC I from WESM exposures. It must be remembered that the purchase and sale of electricity in WESM, or for that matter from PHINMA Energy, are not actual physical sales of the product. Inasmuch as the physical flow of electricity, as a commodity cannot be traced, the parties in the transaction have to bill, settle, or reconcile metered data, actual consumption and financial settlements or transactions between the parties based on



the quantities of electricity as measured in the meters of BATELEC I.

62. BATELEC I claims that it is not anymore authorized to include PHINMA Energy power purchases in the Uniform Reportorial Requirement (“URR”) template of the ERC. BATELEC I, allegedly, is restricted to include the Billing Adjustment in the URR since PHINMA Energy is not anymore its electricity supplier beyond December 2016.

63. Such restriction should not be used as an excuse by BATELEC I to renege in its obligation to pay PHINMA Energy its actual consumption as computed above. The manner of BATELEC I collecting from its member-consumers is a matter between BATELEC and its consumers. As far as PHINMA Energy is concerned, BATELEC I owes PHINMA Energy the Billing Adjustments. At any rate, BATELEC I was advised to formally write the ERC and explain its predicament and seek guidance on how to collect such Billing Adjustment. This BATELEC I disregarded.

64. There is no distinction between the crux of the billing adjustments on account of the incomplete meter data as computed from March 2016- August 2016 and owed by BATELEC I, and the billing adjustments as paid for by BATELEC I in its September, October, November and December 2016 electric power bills that were FULLY paid for by BATELEC I. The billing adjustments for the September – December 2016 billing periods, that were paid for by BATELEC I, were included in pass on rates charged to the member-consumers.

65. As a result of BATELEC I’s refusal to comply with the demand to pay, Petitioner PHINMA Energy, pursuant to the CSE, is entitled to:

- a) Interest at the rate of two percent (2%) per month, in accordance with Section 4.5<sup>1</sup> of the CSE, from the time of demand (August 10, 2017) until fully paid;
- b) Attorney’s fees and litigation expenses in the amount of twenty percent (20%) of the value of the amount claimed pursuant to Section 13.5<sup>2</sup> of the CSE.

#### PRAYER

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<sup>1</sup> 4.5 **INTEREST.** Any amount payable by the BUYER to the SELLER under this Contract that is not paid on Due Date shall earn interest as follows:

(a) the interest rate of the Electricity Fees shall be equivalent to 2% per month, computed on a twenty-eight (28) day period.

<sup>2</sup>13.5 **ATTORNEY’S FEES AND LITGATION EXPENSES.** In the event of arbitration or litigation as provided in this Section Thirteen, an amount of twenty percent (20%) of the value of the award by the arbitrator or court shall be made by the Party against whom judgment is rendered to the prevailing Party by way of attorney’s fees and other expenses of litigation, but in no case shall such amount be less than One Hundred Thousand Pesos (PhP 100,000.00).

WHEREFORE, premises considered, it is most respectfully prayed for of this Honorable Commission that:

- (a) BATELEC I be directed to pay PHINMA Energy the amount of Seventy One Million Four Hundred Forty Thousand Sixty Pesos and Thirteen Centavos (PhP 71,440,060.13) ("Billing Adjustment"), pursuant to the Contract for the Sale of Electricity ("CSE") representing billing adjustments for the period March – August 2016.
- (b) To pay interest at the rate of two percent (2%) per month, pursuant to the CSE, from the time of demand on August 10, 2017, until fully paid;
- (c) To pay Attorney's fees and litigation expenses, pursuant to the CSE, in the amount of twenty percent (20%) of the value of the amount claimed;

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

Respectfully Submitted.

Makati City for Pasig City, December 06, 2017.

Finding the said Petition to be sufficient in form and substance, with the required fees having been paid, pursuant to Section 4, Rule 5 of the Energy Regulatory Commission's 2006 Rules of Practice and Procedure (2006 ERPP), the same is hereby set for determination of compliance with the jurisdictional requirements, expository presentation, pre-trial conference, and presentation of evidence on **1 June 2018 at two o'clock in the afternoon (2:00 P.M.) at the ERC Hearing Room, 15th Floor, Pacific Center Building, San Miguel Avenue, Pasig City.**

Petitioner is hereby directed to cause the publication of the attached Notice of Public Hearing at its own expense, once (1X) in a newspaper of nationwide circulation, at least ten (10) days before the scheduled hearing.

Moreover, pursuant to Section 6, Rule 5 of the 2006 ERPP, Respondent is likewise directed to file its Answer to the Petition within fifteen (15) days from receipt of the instant Order.

On the date of the initial hearing, Petitioner must submit to the Commission its written Compliance with the foregoing requirements

attaching therewith the affidavit of the Editor or Business Manager of the newspaper where the said Notice of Public Hearing was published, together with the complete issue of the said newspaper.

Petitioner and Respondent, as well as all interested parties are directed to submit, at least five (5) days before the date of initial hearing and pre-trial conference, their respective Pre-trial Briefs containing, among others:

- a. A summary of admitted facts and proposed stipulation of facts;
- b. The issues to be tried or resolved;
- c. The documents or exhibits to be presented, stating the purposes and proposed markings therefore; and
- d. The number and names of the witnesses, with their written testimonies in an individual affidavit form, to be attached to the Pre-trial Brief.

Failure of the Petitioner to submit the required Pre-trial Brief and Judicial Affidavits of its witnesses 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 said date of cancellation.

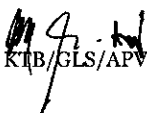
As part of the pre-trial conference, Petitioner must also be prepared to make an expository presentation of the instant Complaint, aided by whatever communication medium it may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the other concerned parties, what the Complaint is all about and the reasons and justifications being cited in support thereof.

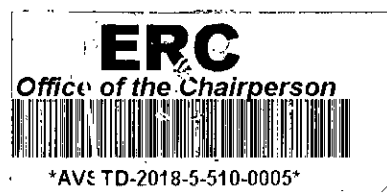
**SO ORDERED.**

Pasig City, 24 April 2018.

FOR AND BY THE AUTHORITY  
OF THE COMMISSION

  
**AGNES VST DEVANADERA**  
*Chairperson & CEO*

  
KTB/GLS/APV



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**ROS PSA-TWG**

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