

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



**IN THE MATTER OF THE
APPLICATION FOR
APPROVAL OF THE POWER
SUPPLY CONTRACT (PSC)
BETWEEN OLONGAPO
ELECTRICITY
DISTRIBUTION COMPANY,
INC. (OEDC) AND SAN
MIGUEL ENERGY
CORPORATION (SMEC)**

ERC CASE NO. 2015-001 RC

**OLONGAPO ELECTRICITY
DISTRIBUTION COMPANY,
INC. (OEDC) AND SAN
MIGUEL ENERGY
CORPORATION (SMEC)
Applicants.**

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DOCKETED
Date: **JUN 22 2018**
By: _____

DECISION

Before this Commission for resolution is the *Application* filed on 06 January 2015 by Olongapo Electricity Distribution Company, Inc. (OEDC) and San Miguel Energy Corporation (SMEC), seeking the approval of their Power Supply Contract (PSC).

In the said *Application*, OEDC and SMEC alleged the following:

I The Applicant

- 1.1 Applicant OLONGAPO ELECTRICITY DISTRIBUTION CO., INC. ("OEDC") is an electric distribution utility duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office address at 2nd Floor Ecaldre Building 2270 Rizal Avenue East Bajac-Bajac Olongapo City. It holds a franchise to construct, install, establish, operate and maintain a distribution system for the conveyance of electric power to the end-users in the City of Olongapo and its suburbs. Attached as Annex "A" is the Articles of Incorporation, Annex "A-1" is the Certificate of

Incorporation and Annex "A-2" is the Legislative Franchise of OEDC.

- 1.2 Applicant may be served with orders and other processes of this Honorable Commission through their undersigned counsel at the address stated herein below.

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Statement of Facts

- 2.1 On 17 June 2013, OEDC purchased the distribution assets of the Olongapo City Public Utilities Department ("OCPUD"). The power requirements of OCPUD were served through a Transition Supply Contract ("TSC") with National Power Corporation (NPC) and later on with the Power Sector Assets and Liabilities Management Corporation ("PSALM"). The TSC was assigned to San Miguel Energy Corporation ("SMEC") upon the privatization of the contracted capacity of the Sual Coal-fired Thermal Power Plant. Thus, while the TSC was between OCPUD and PSALM, the supply of power actually came for SMEC. Upon the expiration of the TSC on 25 July 2010, SMEC discontinued the supply of power to OCPUD.
- 2.2 SMEC is a domestic corporation created and existing by and under the laws of the Republic of the Philippines, having its address at 2nd Floor 808 Building, Meralco Ave. corner Gen. Lim St., San Antonio Village, Pasig City. A copy of the Articles of Incorporation of SMEC is attached as Annex "B".
- 2.3 When OEDC assumed distribution of electric service from OCPUD, the latter did not have a power supply contract from generation companies. OEDC attempted to secure supply from other generators but was unsuccessful thus OEDC had to secure its entire supply of electric energy from the Wholesale Electricity Spot Market (WESM). Finally, OEDC prevailed upon SMEC to resume supplying power to Olongapo City. To ensure the continued supply of power to the franchise area of OEDC, OEDC and SMEC executed a Power Supply Contract ("PSC") on November 21, 2013, a copy of which is attached as Annex "C". The details of the procurement process leading to the selection of SMEC as the supplier of the power requirements of OEDC is hereto attached as Annex "D" and series.
- 2.4 The PSC shall be effective from the date of signing to December 25, 2023. Pursuant to an Interim Supply Agreement, SMEC's supply to OEDC commenced on December 26, 2013 at a rate equivalent to the ERC-approved NPC Time-of-Use ("TOU") rates, Franchise and Benefits to Host Communities charge and other ERC-approved adjustments, until ERC approval of the PSC, to wit:

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Period	Maximum Allowable Demand (kW)	Contract Energy (kWh)
First ISA (Annex "E")		
Oct. 26, 2013 to Nov.25, 2013		19,100,000
Nov. 26, 2013 to Dec. 25,2013		19,100,000
Second ISA (Annex "E-1")		
Dec. 26, 2013 to Feb. 25, 2014		actual energy off-take
Third ISA (Annex "E-2")		
Feb. 26, 2014 to Mar. 25, 2014		14,093,424
Mar. 26, 2014 to Apr. 25, 2014		13,853,836
Apr. 26, 2014 to May 25, 2014		14,063,800
Fourth ISA (Annex "E-3")		
May 26, 2014 to June 25, 2014	34,000	17,603,477
June 26, 2014 to July 25, 2014	34,000	16, 267,349
July 26, 2014 to Aug. 25, 2014	34,000	15,095,681

Attached as Annex "E" and series are the Interim Supply Agreements between SMEC and OEDC.

2.5 The salient terms of the PSC are:

Executive Summary:

Contract Capacity	34,000 kW
Term	From date of signing to December 25, 2023
Supply Commencement	December 26, 2013 at ERC approved NPC-TOU Rates, other charges and adjustments (Interim Supply Agreement)
Source	Unit 2 of the Sual Coal-Fired Thermal Power Plant in Sual, Pangasinan
Delivery Point	High Voltage Side of the Plant's Transformer
Receiving Point	KALE Substation
Nominal Delivery Voltage	69 kV
Minimum Hourly Nomination	Thirty-five percent (35%) of the Contract Capacity
Increase in Contract Capacity	The BUYER may apply in writing for an increase in the Contract Capacity, subject to the SELLER's approval, availability of capacity and technical constraints of the plant, the transmission lines and other facilities
Decrease in Contract Capacity	BUYER shall be allowed a reduction in the Contract

	Capacity subject to the payment of a Buy-out fee. No buy-out fee shall be required if the reduction of the Contract Capacity is caused by the implementation of Retail Competition and Open Access, and when applicable laws require the BUYER to source part of its requirements from Renewable Energy Developers
Annual Outage Allowance	SELLER shall be entitled to 1,680 cumulative outage hours for every Contract Year
Replacement Power within the Annual Outage Allowance	SELLER may procure replacement energy and pass on the cost to the BUYER during the annual outage allowance
Discounts	<p>a. Prompt Payment Discount – 3% of the total Capacity and Energy Charges, subject to payment conditions;</p> <p>b. Collection Efficiency Discount</p>
Force Majeure	An Event of Force Majeure shall excuse a Party from complying with its obligations under the Contract, except for obligations already accruing and for actual energy delivered
Security Deposit	The Security Deposit shall be equivalent to 100% of the estimated average monthly power bill, updated annually

- 2.6 The Parties executed an Amendment Agreement to reduce the Contract Capacity from 34,000 kW to 32,000 kW. Attached hereto as Annex “F” is a copy of the said Amendment Agreement.
- 2.7 Under the PSC, SMEC shall impose Capacity and Energy Fees. The detailed Capacity and Energy Fees for CY 2015 to CY 2023 are as follows:

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Contract Year 2015			CAPACITY FEES (PhP/kW-month)			ENERGY FEES (PhP/kWh)		
			Capacity Payment		Fixed O&M	Fuel Rate	Variable O&M	
From	To	Dollar Portion	Peso Portion	Dollar Portion			Peso Portion	
26-Dec-14	- 25-Jan-15	435.7443	1,030.7261	106.3830	1.9943	0.0626	0.0083	
26-Jan-15	- 25-Feb-15	436.5275	1,032.1557	106.3830	1.9943	0.0626	0.0083	
26-Feb-15	- 25-Mar-15	437.3133	1,016.4105	106.3830	1.9943	0.0626	0.0083	
26-Mar-15	- 25-Apr-15	438.1017	1,035.0286	106.3830	1.9943	0.0626	0.0083	
26-Apr-15	- 25-May-15	438.8928	1,030.7446	106.3830	1.9943	0.0626	0.0083	
26-May-15	- 25-Jun-15	439.6864	1,037.9197	106.3830	1.9943	0.0626	0.0083	
26-Jun-15	- 25-Jul-15	440.4828	1,033.6480	106.3830	1.9943	0.0626	0.0083	
26-Jul-15	- 25-Aug-15	441.2818	1,040.8312	106.3830	1.9943	0.0626	0.0083	
26-Aug-15	- 25-Sep-15	442.0834	1,042.2948	106.3830	1.9943	0.0626	0.0083	
26-Sep-15	- 25-Oct-15	442.8877	1,038.0360	106.3830	1.9943	0.0626	0.0083	
26-Oct-15	- 25-Nov-15	443.6947	1,045.2361	106.3830	1.9943	0.0626	0.0083	
26-Nov-15	- 25-Dec-15	444.5044	1,040.9858	106.3830	1.9943	0.0626	0.0083	

Contract Year 2016			CAPACITY FEES (PhP/kW-month)			ENERGY FEES (PhP/kWh)		
			Capacity Payment		Fixed O&M	Fuel Rate	Variable O&M	
From	To	Dollar Portion	Peso Portion	Dollar Portion			Peso Portion	
26-Dec-15	- 25-Jan-16	445.3168	1,048.7765	106.3830	2.0145	0.0626	0.0083	
26-Jan-16	- 25-Feb-16	446.1319	1,050.2653	106.3830	2.0145	0.0626	0.0083	
26-Feb-16	- 25-Mar-16	446.9497	1,040.2622	106.3830	2.0145	0.0626	0.0083	
26-Mar-16	- 25-Apr-16	447.7703	1,053.2533	106.3830	2.0145	0.0626	0.0083	
26-Apr-16	- 25-May-16	448.5935	1,049.0088	106.3830	2.0145	0.0626	0.0083	
26-May-16	- 25-Jun-16	449.4195	1,056.2642	106.3830	2.0145	0.0626	0.0083	
26-Jun-16	- 25-Jul-16	450.2484	1,052.0284	106.3830	2.0145	0.0626	0.0083	
26-Jul-16	- 25-Aug-16	451.0799	1,059.2942	106.3830	2.0145	0.0626	0.0083	
26-Aug-16	- 25-Sep-16	451.9142	1,060.8165	106.3830	2.0145	0.0626	0.0083	
26-Sep-16	- 25-Oct-16	452.7512	1,056.5957	106.3830	2.0145	0.0626	0.0083	
26-Oct-16	- 25-Nov-16	453.5912	1,063.8756	106.3830	2.0145	0.0626	0.0083	
26-Nov-16	- 25-Dec-16	454.4338	1,059.6655	106.3830	2.0145	0.0626	0.0083	

Contract Year 2017			CAPACITY FEES (PhP/kW-month)			ENERGY FEES (PhP/kWh)		
			Capacity Payment		Fixed O&M	Fuel Rate	Variable O&M	
From	To	Dollar Portion	Peso Portion	Dollar Portion			Peso Portion	
26-Dec-16	- 25-Jan-17	455.2793	1,067.9536	106.3830	2.0342	0.0626	0.0083	
26-Jan-17	- 25-Feb-17	456.1276	1,069.5023	106.3830	2.0342	0.0626	0.0083	
26-Feb-17	- 25-Mar-17	456.9787	1,053.7243	106.3830	2.0342	0.0626	0.0083	
26-Mar-17	- 25-Apr-17	457.8327	1,072.6143	106.3830	2.0342	0.0626	0.0083	
26-Apr-17	- 25-May-17	458.6896	1,068.4008	106.3830	2.0342	0.0626	0.0083	
26-May-17	- 25-Jun-17	459.5492	1,075.7462	106.3830	2.0342	0.0626	0.0083	
26-Jun-17	- 25-Jul-17	460.4117	1,071.5435	106.3830	2.0342	0.0626	0.0083	
26-Jul-17	- 25-Aug-17	461.2772	1,078.8999	106.3830	2.0342	0.0626	0.0083	
26-Aug-17	- 25-Sep-17	462.1455	1,080.4834	106.3830	2.0342	0.0626	0.0083	
26-Sep-17	- 25-Oct-17	463.0167	1,076.2978	106.3830	2.0342	0.0626	0.0083	
26-Oct-17	- 25-Nov-17	463.8908	1,083.6691	106.3830	2.0342	0.0626	0.0083	
26-Nov-17	- 25-Dec-17	464.7678	1,079.4927	106.3830	2.0342	0.0626	0.0083	

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Contract Year 2018			CAPACITY FEES (PhP/kW-month)			ENERGY FEES (PhP/kWh)		
			Capacity Payment		Fixed O&M	Fuel Rate	Variable O&M	
From	To	Dollar Portion	Peso Portion	Dollar Portion			Peso Portion	
26-Dec-17	-	25-Jan-18	465.6477	1,086.6966	106.3830	2.0297	0.0626	0.0083
26-Jan-18	-	25-Feb-18	466.5306	1,088.3073	106.3830	2.0297	0.0626	0.0083
26-Feb-18	-	25-Mar-18	467.4164	1,072.6112	106.3830	2.0297	0.0626	0.0083
26-Mar-18	-	25-Apr-18	468.3052	1,091.5478	106.3830	2.0297	0.0626	0.0083
26-Apr-18	-	25-May-18	469.1968	1,087.4035	106.3830	2.0297	0.0626	0.0083
26-May-18	-	25-Jun-18	470.0916	1,094.8071	106.3830	2.0297	0.0626	0.0083
26-Jun-18	-	25-Jul-18	470.9893	1,090.6738	106.3830	2.0297	0.0626	0.0083
26-Jul-18	-	25-Aug-18	471.8899	1,098.0891	106.3830	2.0297	0.0626	0.0083
26-Aug-18	-	25-Sep-18	472.7936	1,099.7379	106.3830	2.0297	0.0626	0.0083
26-Sep-18	-	25-Oct-18	473.7003	1,095.6221	106.3830	2.0297	0.0626	0.0083
26-Oct-18	-	25-Nov-18	474.6100	1,103.0531	106.3830	2.0297	0.0626	0.0083
26-Nov-18	-	25-Dec-18	475.5227	1,098.9466	106.3830	2.0297	0.0626	0.0083

Contract Year 2019			CAPACITY FEES (PhP/kW-month)			ENERGY FEES (PhP/kWh)		
			Capacity Payment		Fixed O&M	Fuel Rate	Variable O&M	
From	To	Dollar Portion	Peso Portion	Dollar Portion			Peso Portion	
26-Dec-18	-	25-Jan-19	476.4385	1,107.1950	106.3830	2.0500	0.0626	0.0083
26-Jan-19	-	25-Feb-19	477.3574	1,108.8721	106.3830	2.0500	0.0626	0.0083
26-Feb-19	-	25-Mar-19	478.2793	1,093.1632	106.3830	2.0500	0.0626	0.0083
26-Mar-19	-	25-Apr-19	479.2042	1,112.2423	106.3830	2.0500	0.0626	0.0083
26-Apr-19	-	25-May-19	480.1323	1,108.1386	106.3830	2.0500	0.0626	0.0083
26-May-19	-	25-Jun-19	481.0634	1,115.6358	106.3830	2.0500	0.0626	0.0083
26-Jun-19	-	25-Jul-19	481.9977	1,111.5416	106.3830	2.0500	0.0626	0.0083
26-Jul-19	-	25-Aug-19	482.9351	1,119.0491	106.3830	2.0500	0.0626	0.0083
26-Aug-19	-	25-Sep-19	483.8755	1,120.7677	106.3830	2.0500	0.0626	0.0083
26-Sep-19	-	25-Oct-19	484.8191	1,116.6913	106.3830	2.0500	0.0626	0.0083
26-Oct-19	-	25-Nov-19	485.7659	1,124.2174	106.3830	2.0500	0.0626	0.0083
26-Nov-19	-	25-Dec-19	486.7159	1,120.1524	106.3830	2.0500	0.0626	0.0083

Contract Year 2020			CAPACITY FEES (PhP/kW-month)			ENERGY FEES (PhP/kWh)		
			Capacity Payment		Fixed O&M	Fuel Rate	Variable O&M	
From	To	Dollar Portion	Peso Portion	Dollar Portion			Peso Portion	
26-Dec-19	-	25-Jan-20	576.4966	1,264.1748	106.3830	2.0060	0.0501	0.0083
26-Jan-20	-	25-Feb-20	577.4529	1,265.9207	106.3830	2.0060	0.0501	0.0083
26-Feb-20	-	25-Mar-20	578.4124	1,256.2175	106.3830	2.0060	0.0501	0.0083
26-Mar-20	-	25-Apr-20	579.3750	1,269.4254	106.3830	2.0060	0.0501	0.0083
26-Apr-20	-	25-May-20	580.3409	1,265.4620	106.3830	2.0060	0.0501	0.0083
26-May-20	-	25-Jun-20	581.3100	1,272.9562	106.3830	2.0060	0.0501	0.0083
26-Jun-20	-	25-Jul-20	582.2823	1,269.0060	106.3830	2.0060	0.0501	0.0083
26-Jul-20	-	25-Aug-20	583.2578	1,276.5133	106.3830	2.0060	0.0501	0.0083
26-Aug-20	-	25-Sep-20	584.2367	1,278.2984	106.3830	2.0060	0.0501	0.0083
26-Sep-20	-	25-Oct-20	585.2041	1,274.3646	106.3830	2.0060	0.0501	0.0083
26-Oct-20	-	25-Nov-20	586.2041	1,281.8895	106.3830	2.0060	0.0501	0.0083
26-Nov-20	-	25-Dec-20	587.1927	1,277.9672	106.3830	2.0060	0.0501	0.0083

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Contract Year 2021			CAPACITY FEES (PhP/kW-month)			ENERGY FEES (PhP/kWh)		
From		To	Capacity Payment		Fixed O&M	Fuel Rate	Variable O&M	
			Dollar Portion	Peso Portion			Dollar Portion	Peso Portion
26-Dec-20	-	25-Jan-21	588.1846	1,286.5482	106.3830	2.0264	0.0501	0.0083
26-Jan-21	-	25-Feb-21	589.1798	1,288.3621	106.3830	2.0264	0.0501	0.0083
26-Feb-21	-	25-Mar-21	590.1784	1,272.9161	106.3830	2.0264	0.0501	0.0083
26-Mar-21	-	25-Apr-21	591.1803	1,292.0147	106.3830	2.0264	0.0501	0.0083
26-Apr-21	-	25-May-21	592.1855	1,288.0922	106.3830	2.0264	0.0501	0.0083
26-May-21	-	25-Jun-21	593.1940	1,295.6887	106.3830	2.0264	0.0501	0.0083
26-Jun-21	-	25-Jul-21	594.2060	1,291.7798	106.3830	2.0264	0.0501	0.0083
26-Jul-21	-	25-Aug-21	595.2213	1,299.3881	106.3830	2.0264	0.0501	0.0083
26-Aug-21	-	25-Sep-21	596.2400	1,301.2466	106.3830	2.0264	0.0501	0.0083
26-Sep-21	-	25-Oct-21	597.2620	1,297.3562	106.3830	2.0264	0.0501	0.0083
26-Oct-21	-	25-Nov-21	598.2876	1,304.9850	106.3830	2.0264	0.0501	0.0083
26-Nov-21	-	25-Dec-21	599.3164	1,301.1064	106.3830	2.0264	0.0501	0.0083

Contract Year 2022			CAPACITY FEES (PhP/kW-month)			ENERGY FEES (PhP/kWh)		
From		To	Capacity Payment		Fixed O&M	Fuel Rate	Variable O&M	
			Dollar Portion	Peso Portion			Dollar Portion	Peso Portion
26-Dec-21	-	25-Jan-22	600.3488	1,309.5509	106.3830	2.0468	0.0501	0.0083
26-Jan-22	-	25-Feb-22	601.3846	1,311.4429	106.3830	2.0468	0.0501	0.0083
26-Feb-22	-	25-Mar-22	602.4238	1,295.9911	106.3830	2.0468	0.0501	0.0083
26-Mar-22	-	25-Apr-22	603.4665	1,315.2413	106.3830	2.0468	0.0501	0.0083
26-Apr-22	-	25-May-22	604.5127	1,311.3673	106.3830	2.0468	0.0501	0.0083
26-May-22	-	25-Jun-22	605.5623	1,319.0656	106.3830	2.0468	0.0501	0.0083
26-Jun-22	-	25-Jul-22	606.6155	1,315.2055	106.3830	2.0468	0.0501	0.0083
26-Jul-22	-	25-Aug-22	607.6722	1,322.9163	106.3830	2.0468	0.0501	0.0083
26-Aug-22	-	25-Sep-22	608.7324	1,324.8508	106.3830	2.0468	0.0501	0.0083
26-Sep-22	-	25-Oct-22	609.7961	1,321.0096	106.3830	2.0468	0.0501	0.0083
26-Oct-22	-	25-Nov-22	610.8633	1,32.7402	106.3830	2.0468	0.0501	0.0083
26-Nov-22	-	25-Dec-22	611.9341	1,324.9129	106.3830	2.0468	0.0501	0.0083

Contract Year 2023			CAPACITY FEES (PhP/kW-month)			ENERGY FEES (PhP/kWh)		
From		To	Capacity Payment		Fixed O&M	Fuel Rate	Variable O&M	
			Dollar Portion	Peso Portion			Dollar Portion	Peso Portion
26-Dec-22	-	25-Jan-23	613.0086	1,333.4599	106.3830	2.0671	0.0501	0.0083
26-Jan-23	-	25-Feb-23	614.0865	1,335.4272	106.3830	2.0671	0.0501	0.0083
26-Feb-23	-	25-Mar-23	615.1681	1,319.9772	106.3830	2.0671	0.0501	0.0083
26-Mar-23	-	25-Apr-23	616.2533	1,339.3808	106.3830	2.0671	0.0501	0.0083
26-Apr-23	-	25-May-23	617.3421	1,335.5588	106.3830	2.0671	0.0501	0.0083
26-May-23	-	25-Jun-23	618.4345	1,343.3614	106.3830	2.0671	0.0501	0.0083
26-Jun-23	-	25-Jul-23	619.5306	1,339.5535	106.3830	2.0671	0.0501	0.0083
26-Jul-23	-	25-Aug-23	620.6303	1,347.3692	106.3830	2.0671	0.0501	0.0083
26-Aug-23	-	25-Sep-23	621.7337	1,349.3808	106.3830	2.0671	0.0501	0.0083
26-Sep-23	-	25-Oct-23	622.8407	1,345.5942	106.3830	2.0671	0.0501	0.0083
26-Oct-23	-	25-Nov-23	623.9515	1,353.4289	106.3830	2.0671	0.0501	0.0083
26-Nov-23	-	25-Dec-23	625.0659	1,349.6546	106.3830	2.0671	0.0501	0.0083

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2.8 Further, the PSC likewise provides from a cost adjustment mechanism, the Adjustment Formula that shall determine the movements, on a monthly basis, of SMEC's generation costs to reflect the changes in fuel prices, the Philippine Peso to US Dollar exchange rate fluctuations and Philippine Consumer Price Index ("CPI") and other inflationary indices, as changes in these factors are beyond SMEC's control, as follows:

Monthly Adjustment Formula

I. CAPACITY FEES

A1. Monthly Capacity Payment (Dollar Portion converted to PhP)

$$\text{PhP/kW-Mo.} \times \frac{\text{FOREX}_c}{\text{FOREX}_B}$$

Where:

FOREX_c = Average of the daily exchange rate of the Philippine Peso to the US Dollar as posted by the Bangko Sentral ng Pilipinas for the calendar month within which the start of the current Billing Period occurs.

FOREX_B = 41.749 PhP/USD

A2. Monthly Capacity Payment - (Local Portion in PhP)

$$\text{PhP/kW-Mo.} = \text{NO INDEXATION}$$

B. Monthly Fixed Operations and Maintenance

$$\text{PhP/kW-Mo} \times \frac{\text{PHIL CPI}_c}{\text{PHIL CPI}_B}$$

Where:

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

PHIL CPI_B = 131.40

II. ENERGY FEES

C. Fuel Rate

$$\text{PhP/kWh} \times \frac{\text{GLOBAL COAL NEWCASTLE}_c}{\text{GLOBAL COAL NEWCASTLE}_B} \times \frac{\text{FOREX}_c}{\text{FOREX}_B}$$

Where:

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

GLOBAL COAL NEWCASTLE_B = 89.41 USD/MT

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FOREX_c = Average of the daily exchange rate of the Philippine Peso to the US Dollar as posted by the Bangko Sentral ng Pilipinas for the calendar month within which the start of the current Billing Period occurs.

FOREX_B = 41.749 PhP/USD

D1. Variable O&M (Dollar Portion)

$$\text{PhP/kWh} \quad X \quad \frac{\text{FOREX}_c}{\text{FOREX}_B} \quad X \quad \text{EPI}_{AVE}$$

Where:

FOREX_c = Average of the daily exchange rate of the Philippine Peso to the US Dollar as posted by the Bangko Sentral ng Pilipinas for the calendar month within which the start of the current Billing Period occurs.

FOREX_B = 41.749 PhP/USD

EPI_{AVE} = Average Export Price Index for US, Japan and Europe

$$\frac{[(J_{Ic}/J_{Ib}) + (US_{Ic}/US_{Ib}) + (E_{Ic}/E_{Ib})]/3}$$

Where:

J_{Ic} = Japan Export Price Index six (6) months immediately preceding the adjustment date, taken from the International Financial Statistics published by the International Monetary Fund

J_{Ib} = 93.93

US_{Ic} = US Export Index six (6) months immediately preceding the adjustment date, taken from the International Financial Statistics published by the International Monetary Fund

US_{Ib} = 91.70

E_{Ic} = Export Price Index of a European country agreed between the IPP Counter Party and the IPP and notified to the Administrator six (6) months immediately preceding the adjustment date, taken from the International Financial Statistics published by the International Monetary Fund

E_{Ib} = 120.57

D2. Variable O&M (Local Portion)

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

Where:

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

RPI_B = 75.90

BASE INDICES:

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

- a. Under the PSC, OEDC may avail of a Prompt Payment Discount (“PPD”) equivalent to three percent (3%) of the Capacity and Energy Charges of the current power bill

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including Value Added Tax (“VAT”) provided that the same is paid in full on or before the 10th day of the month following the billing month, provided further, that OEDC has no outstanding obligation arising from previous power bills from SMEC.

- b. SMEC shall grant OEDC a Collection Efficiency Discount (“CED”) based on its actual collection efficiency as shown in the table below:

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

The list of conditions for the availment of the CED is attached as Annex IV of the PSC.

III Rate Impact

- 3.1 Without the PSC, OEDC would have to secure its entire power supply from the WESM. The rate impact of the SMEC and OEDC Power Supply Contract are as follows:

	PSA	WESM	ISA	Rate Reduction	
				vs. WESM	vs. ISA
Monthly kWh Purchased	17,670,828	17,670,828	17,670,828		
Cost of Power, Peso	71,342,565	289,092,979	90,077,682		
Effective Cost of Power, P/kWh	4.0373	16.3599	5.0975	(12.32)	(1.06)

Assumptions:

- a. Cost of power from SMEC were computed based on the base prices for June 2014, escalated using the following indices:
 - i. CPI = 139
 - ii. FOREX = P44.00/US\$
 - b. The cost of power if the supply is sourced from WESM is based on the average WESM price as billed to MERALCO for May 2014 at P16.3599/kWh.
 - c. The cost of power under the ISA is based on the actual billing of SMEC for June 2014.
- 3.2 As can be gleaned from the table above, the overall rate impact is a decrease using OEDC’s actual load profile and prevailing financial indices.

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IV
Compliance with ERC Rules

- 4.1 In compliance with Rule 20B of the Rules of Practice and Procedure, copies of the foregoing are attached as annexes to the instant Application:

Annex	Description
A	Articles of Incorporation of OEDC
A-1	Certificate of Incorporation of OEDC
A-2	Legislative Franchise
B	Articles of Incorporation of SMEC
C	Power Supply Contract (PSC) between SMEC and OEDC
D and series	Detail of Procurement Process
E and series	Interim Supply Agreements between SMEC and OEDC
F	Amendment Agreement
G	Certificate of Registration of SMEC issued by the Securities and Exchange Commission (SEC)
H	Latest General Information Sheet of SMEC
I	SMEC's Application for Registration with the Board of Investment (BOI)
J	Environmental Compliance Certificate Issued by the Department of Environment and Natural Resources to the Sual Coal-Fired Power Project of the Pangasinan Electric Corporation
K	Power Plant Description
L	Purchased Power Rates; Sample Computation
M	Transmission Service Agreement (TSA) between OEDC and NGCP
N	SMEC's Cost-Based Calculation of Pricing (Sealed and Attached to copies of Application for Filing with the ERC)
O	Details of Procurement Process of Fuel
P	Certificate of Compliance (COC) issued by ERC
Q	Certification issued by the Local Government Unit Legislative Body Olongapo City
R	Newspaper where the Application was published
S	Affidavit of Publication

- 4.2 In compliance with Article VI, Section 1 and 2 of the ERC Guidelines for the Recovery of Costs for the Generation Component of the Distribution Utilities' (DU) Rates, copies of the following are attached as annexes to this application:

Annex	Description
T	OEDC Board Resolution approving the

u

	Power Supply Contract (ESC) with SMEC
U	OEDC Board Resolution approving the filing for approval of the PSC with the Energy Regulatory Commission (ERC)
V	OEDC Load Forecast Projections
W	OEDC Latest Audited Financial Statement, Balance Sheet and Cash Flow
X	SMEC's Latest Audited Financial Statement, Balance Sheet and Cash Flow
Y	Rate Impact Computation

- 4.3 The instant application is likewise filed by Applicant in line with the first (1st) and fifth (5th) “whereas clauses” of the Department of Energy Circular No. 2003-12-11 which are quoted hereunder:

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

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

- 4.4 Moreover, Section 1 of the same Department Circular declares as State policy that:

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

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

- 4.6 In the interest of the public, considering that SMEC was the only supplier which expressed interest in supplying the power requirements of OEDC, and in view of the expiration

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of its TSC there is an urgent necessity for the approval of the instant Application in order that there will be no undue disruption in the power supply and the customers of OEDC shall, at the soonest possible time, benefit from the lower generation cost as can be gleaned from the proposed of SMEC;

- 4.7 Notwithstanding the suspension of the Amendment to the ERC Guidelines on the Recovery of Costs for the Generation Component of the Distribution Utilities' (DUs) Rates in 2004 by virtue of ERC Resolution No. 21, Series of 2006 dated May 10, 2006 which has not been lifted up to the present, the PSC with SMEC was made to ensure the continuous supply of power to OEDC and due to SMEC's competitive pricing structure and other favorable terms of its contract, which will redound to the benefit OEDC and its end-consumers in terms of reliable and affordable power supply.

V

**ALLEGATIONS IN SUPPORT OF MOTION FOR CONFIDENTIAL
TREATMENT OF INFORMATION**

- 5.1 Article 16.9 of the PSC specifically provides that "the BUYER shall keep under strict confidence all information communicated by the SELLER as confidential information or which by its nature should be considered as confidential information".
- 5.2 Under Rule 4 of the ERC Rules of Practice and Procedures, the Honorable Commission may upon request of a party and determination of the existence of conditions which would warrant such remedy, treat certain information submitted to it as confidential. Pursuant to its undertaking, OEDC respectfully moves that Annex "N" not to be disclosed and be treated as confidential documents in accordance with Rule 4 of the ERC Rules of Practice and Procedures as these documents contain certain non-public information, data and calculations involving SMEC's business operations and financial trade secrets.
- 5.3 OEDC therefore hereby submits one (1) copy of Annex "N" in a sealed envelope, with the envelope and each page of the document stamped with the word "Confidential".

PRAYER

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

1. Upon initial review of the instant Application the Honorable Commission set this case for public hearing as soon as possible;
2. After notice and public hearing, the Honorable Commission approve this Application and allow the

applicant to pass on the generation rate and applicable adjustments under the PSC;

3. Issue an Order (a) treating Annex "N" and the information contained therein as confidential, (b) directing their non-disclosure pursuant to Rule 4 of the ERC Rules of Practice and Procedures and (c) prescribing the guidelines for the protection thereof.
4. Other reliefs, just and equitable under the premises are likewise prayed for.

On 06 January 2015, SMEC filed a *Petition for Intervention* dated 01 December 2014.

Thereafter, on 15 May 2015, SMEC filed a *Motion to Join as Co-Applicant* of even date.

The Commission, having found the said *Application* to be sufficient in form and substance with the required fees having been paid, issued an *Order* and a *Notice of Public Hearing*, both dated 15 June 2015, setting the case for determination of compliance with the jurisdictional requirements on 16 July 2015. Also, the Commission admitted SMEC as a co-applicant in the instant *Application*.

On 10 July 2015, OEDC and SMEC filed their *Pre-trial Brief* dated 10 July 2015.

In the 16 July 2015 hearing, Applicants OEDC and SMEC appeared. Applicants submitted their compliance with the jurisdictional requirements of the Commission which were duly marked as Exhibits "D" to "M-1", inclusive. There was neither Intervenor nor Oppositor who appeared at the hearing.

The expository presentation was delivered under oath by Engr. Richard Ratunil, Senior Manager and Head of the Corporation Planning Division of OEDC, and Mr. Alberto Reyes III, the Head of the Utility Economics of SMEC. Upon motion of SMEC, the Commission issued an order of general default, there being no intervenor or oppositor present.

Engr. Ratunil was presented as OEDC's witness. He identified his Judicial Affidavit and the signature therein, which were marked as Exhibits "O" and "O-1", respectively. Subsequently, Mr. Reyes was presented as SMEC's second witness. He identified his Judicial Affidavit and the signature therein, which were marked as Exhibits

“Q” and “Q-1”, respectively. Questions were propounded by the Commission, which the witnesses were able to address.

On 10 July 2015, OEDC and SMEC filed their *Formal Offer of Exhibits* (FOE) dated 05 August 2015.

On 09 September 2015, SMEC filed its *Compliance and Manifestation* dated 31 July 2015

On 05 February 2016, Applicants filed a *Motion for Early Resolution* dated 03 February 2016.

On 02 September 2016, Applicants filed their *Second Motion for Early Resolution* dated 31 August 2016.

Having found the exhibits contained in the Applicants’ FOE to be relevant and material in the evaluation of the *Application*, the Commission admitted the same and declared the case submitted for resolution.

ISSUE

The issue for the Commission’s resolution is whether or not the Power Supply Contract (PSC) entered into by OEDC and SMEC should be approved.

COMMISSION’S RULING

The Commission resolves to approve instant *Application*, subject to certain conditions.

DISCUSSION

I. SMEC as the Independent Power Producer Administrator (IPPA) of the Sual Coal-Fired Thermal Power Plant

On 01 September 2009, a Notice of Award was issued by Power Sector Assets and Liabilities Management Corporation (PSALM) to

SMEC declaring the latter as the winning bidder for the appointment of an IPP Administrator for the 1,000 MW contracted capacity (out of the 1,294 MW installed capacity) of Sual Coal-Fired Thermal Power Plant.

On 26 November 2009, SMEC assumed operations of the Sual Power Station as the appointed IPP Administrator by virtue of the IPP Administration Agreement (IPPAA) and its accompanying Implementation Agreement/Nomination Protocol between SMEC and PSALM.

Pursuant to the IPPAA it entered with PSALM, SMEC is liable for the supply of fuel for the 1,000 MW contracted capacity of the Sual Coal-Fired Power Plant. Further, it is also obligated to pay PSALM the energy fees and fixed monthly fees comprising of US Dollar (USD) and Philippine Peso (PhP) monthly payments until the end of the IPPAA on 24 October 2024.

On several dates from 2010 up to present, SMEC contracted with several Distribution Utilities (DUs) for the supply of power coming from the Sual Power Plant, offering its rates on various structures and adjustment formulae, from Energy-based Pricing (Time-of-Use (TOU) Rates), Capacity-based, and the Load Factor-based Pricing.

II. Evaluation of the Proposed Rate

To ensure that the base electricity fees would be for the recovery of prudent and reasonable costs incurred, and consistent with the previous approvals issued for the Sual Power Plant, the Commission made an evaluation of SMEC's cost of generation by referring to the historical cost of operations as reflected in its Audited Financial Statements (AFS). The figures reflected in the AFS represent the actual costs incurred which was objectively verified and validated by an Independent Third Party.

A. Capital Recovery Fee (CRF)

In computing the applicable CRF, the Commission determined the capital cost for recovery, a return on working capital and the saleable generation (Billing Determinant) of the Sual Power Plant.

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The Commission deemed it appropriate to consistently use the net amount of Property, Plant and Equipment (PPE) reflected in SMEC's AFS as the appropriate asset base or capital cost.

The Commission noted that SMEC, in accounting in its books the IPPA Agreement, considered the same as an agreement that contains a lease, since it has substantially acquired all the risks and rewards incidental to the ownership of a power plant. Consequently, SMEC accounted the said agreement as a finance lease and recognized the power plant in its books as non-current asset under PPE.

The power plant was valued equal to the present value of SMEC's future payments to PSALM using the PhP and USD discount rates.

For the Weighted Average Cost of Capital (WACC), the Commission considered a reasonable Cost of Debt ranging from 6.5% to 8.75% based on previous approvals¹, and a Cost of Equity (COE) equivalent to the applicable COE approved by the Commission per year.

Consistent with the previous approvals, the Commission used the actual kWh sales of Sual Power Plant as the Billing Determinant.

For measuring the reasonableness of the rates as proposed, the Commission utilized the parameters as discussed above. The Commission found that the proposed rate under the PSC is at par with the calculated rates evaluated by the Commission. Hence, the proposed rate, and its corresponding monthly adjustment formula is found to be reasonable.

B. Operations and Maintenance (O&M) Fee

B.1 Fixed O&M Fee

On previous approvals regarding the Fixed O&M Fee computation, the Commission made reference to SMEC's actual cost of operations disclosed in its 2010, 2011 and 2012 AFS.

¹ ERC Case No. 2013-021 RC (DLPC-TSI), ERC Case No. 2013-051 RC (ZAMCELCO-SRPI), ERC Case No. 2013-134 RC (CEPALCO-MINERGY COAL), ERC Case No. 2013-205 RC (NORECO I-PCPC), ERC Case No. 2014-076 RC (MERALCO-SBPL), and ERC Case No. 2014-129 RC (DORECO-FDC MISAMIS)

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The Commission likewise referred to SMEC's 2013 to 2016 AFS to further reflect the plant's actual cost of operation. Further, the Commission disallowed the items that were excluded on previous approvals involving the plant, such as Provision for Impairment of Losses of Receivables, Donations, and Depreciation Expenses, to arrive at an adjusted Operating Expense.

For succeeding years, the Commission considered the average operating expenses for years 2011 to 2016, which is found to be higher than SMEC's proposed operating expense amounting to PhP1.2 Billion.

B.2 Variable O&M Fee

The proposed Variable O&M Fee is for the recovery of the monthly energy fees that SMEC pay to PSALM for the actual energy delivered by the IPP [equivalent to the amount paid by National Power Corporation (NPC)/PSALM to the IPP]. The Energy Fee is similar to the Monthly Capacity Fee, which has a Peso and Dollar denominated base rates, and are adjusted using the Philippine Consumer Price Index (CPI) and US CPI, among others.

On previous approvals of the Variable O&M Fee computation, the Commission referred to the actual Energy Fees paid by SMEC to PSALM in years 2010 to 2012, as reported in its AFS. Similar with the Fixed O&M Fee where the operating expenses were considered, the Commission looked into the actual Energy Fees for years 2013 to 2016.

Further, the Commission computed an average Variable O&M Fee for the succeeding years, which is slightly higher than the proposed Variable O&M Fee of PhP0.0709/kWh. Moreover, on previous approvals, the proposed variable rates were verified to be the Base Energy Rate of USD0.0015/kWh (converted to peso using PhP41.749 foreign exchange rate) and PhP0.0083/kWh under the IPPA Agreement.

The Commission likewise adopted the proposed Variable O&M Fee since they represent actual pass-through costs that are required to be paid to PSALM.

C. Fuel Fee

Under the IPPA Agreement, SMEC has the obligation to supply and deliver, at its own cost, all fuel requirements of the power plant in accordance with specifications provided under the Energy Conversion Agreement (ECA).

Shown below are the actual fuel costs incurred by SMEC as disclosed in its AFS for years 2010 to 2016:

Particulars	Year						
	2010	2011	2012	2013	2014	2015	2016
Fuel Cost, '000	10,936,124	11,462,851	13,056,970	10,775,637	9,781,226	7,851,287	7,843,021

The Fuel Costs are likewise adopted since they represent the recovery of costs of the fuel used to generate electricity, subject to the guaranteed heat rates under the IPPA Agreement.

However, the Commission deemed that the fuel cost to be passed-on to end-users shall be the Net Plant Heat Rate (NPHR) Schedule (in kcal/kWh) under SMEC and PSALM's IPPA Agreement or actual, whichever is lower.

III. Rate Derivation

Based on the foregoing discussion, the Commission initially derived a generation rate applicable for SMEC. Subsequently, the Commission made a comparison between and among its computed generation rate and SMEC's proposed rates with various DUs.

The computed rates were then compared on various pricing structures, from Energy-based Pricing – Time-of-Use (TOU) Rates, Capacity-based Pricing, and Load Factor-based Pricing.

Based on the comparison, it was found that SMEC's proposed rates under its Power Supply Contract (PSC) is reasonable as the same is within the level of the Commission's computed generation rate for SMEC. Thus, the Commission approves the proposed rates under the subject PSC as the same will redound to the benefit of OEDC's member-consumers.

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IV. Walk-Away Clause

The Commission in ERC Case No. 2012-087 RC¹ issued an *Order* dated 16 December 2013, which states that:

The Commission has a mandate to protect the interest of electricity consumers insofar as they are affected by the rates, by ensuring that the rates are consistent with the principles of full recovery of prudent and reasonable costs. In the exercise of its rate-fixing authority, the Commission balances the interests of the consumers and the distribution utilities/generation companies (service providers). The Commission ensures that the rates prescribed are reasonable but non-discriminatory. It must neither be so low to enable the service providers to operate viably. The consumers should be charged with reasonable rates for the services rendered while the service providers should be given a reasonable return on their investment so they can render effective and efficient service. This will enhance the inflow of private capital since investors may be encouraged to invest capital in the electric power industry.

This Court discussed the nature of rate-regulation in Republic of the Philippines, represented by the Energy Regulatory Board (ERB), vs. Manila Electric Company (MERALCO) and Lawyers Against Monopoly and Poverty (LAMP) et al vs. MERALCO, G.R. Nos. 141314 and 141369, promulgated on November 15, 2002, viz:

The regulation of rates to be charged by public utilities is founded upon the police powers of the State and statutes prescribing rules for the control and regulation of public utilities are a valid exercise thereof. When private property is used for a public purpose and is affected with public interest, it ceases to be *juris privati* only and becomes subject to regulation. The regulation is to promote the common good. Submission to regulation maybe withdrawn by the owner by discontinuing use; but as long as use of the property is continued, the same is subject to public regulation.² In regulating rates charged by public utilities, the State protects the public against arbitrary and excessive rates while maintaining the efficiency and quality of services rendered. However, the power to regulate rates does not give the State the right to prescribe rates which are so low as to deprive the public utility of a reasonable return on investment. Thus, the rates prescribed by the State must be one that yields a fair return on the public utility upon the value of the property performing the service and one that is reasonable to the public for the services rendered.³ The fixing of just and

¹ In the Matter of the Application for Approval of the Power Supply Agreement (PSA) Between Manila Electric Company (MERALCO) and San Miguel Energy Corporation (SMEC).

² *Munn. V. People of the State of Illinois*, 94 U.S. 113, 126 (1877)

³ IV A.F. Agbayani, *Commentaries and Jurisprudence on the Commercial Laws of the Philippines* 500 (1993)

reasonable rates involves a balancing of the investor and the consumer interests.⁴ (Emphasis supplied)

xxx Electric power generation and distribution is a traditional instrument of economic growth that affects not only a few but the entire nation. It is an important factor in encouraging investment and promoting business. The engines of progress may come to a screeching halt if the delivery of electric power is impaired. Billions of pesos would be lost as a result of power outages or unreliable electric power services. The State thru the ERC should be able to exercise its police power with great flexibility when the need arises. xxx”⁵

The approved rates herein are reasonable, both for the consumers and the service providers since the Commission already considered the necessary costs for rendering an effective and efficient service and the recovery thereof with a reasonable return in order to ensure that the service provider is able to maintain a viable business.

Should either MERALCO or SMEC find the approved rates unacceptable, they are not precluded, under the PSA, to renegotiate for mutually beneficial/acceptable terms. However, the renegotiated price, if any, shall still be subject to the Commission’s approval. They cannot, however, terminate the PSA since the provision allowing them to do so is deemed by the Commission as not written as it will prejudice MERALCO’s consumers.

In view thereof, the Commission disallows the termination or “walk-away” clause as incorporated in the subject PSC.

V. Rate Impact

As alleged in the *Application*, without the supply from SMEC, OEDC would have to secure its entire power supply from the Wholesale Electricity Spot Market (WESM). The indicative impact on OEDC’s overall generation rate with the supply from SMEC are as follows:

	PSA	WESM	ISA	Rate Reduction	
				vs. WESM	vs. ISA
Monthly kWh Purchased	17,670,828	17,670,828	17,670,828		
Cost of Power, Peso	71,342,565	289,092,979	90,077,682		
Effective Cost of Power, P/kWh	4.0373	16.3599	5.0975	(12.32)	(1.06)

⁴ Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591

⁵ Cited in Gerochi, et al vs. DOE, ERC, et al, G.R. No. 159796, July 17, 2007

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The Commission has a mandate to protect the interest of the electricity consumers insofar as they are affected by the rates, by ensuring that the tariffs imposed are consistent with the principle of full recovery of prudent and reasonable costs.

The Commission finds that the approval and implementation of the subject PSC will be beneficial to OEDC's member consumers by way of reliable, continuous and efficient supply of power within its franchise area at reasonable costs as mandated by Republic Act No. 9136, otherwise known as, the Electric Power Industry Reform Act of 2001 (EPIRA)⁶.

WHEREFORE, the foregoing premises considered, the *Joint Application* filed by Olongapo Electricity Distribution Company, Inc. (OEDC) and San Miguel Energy Corporation (SMEC) for approval of their Power Supply Contract (PSC) is hereby **APPROVED**, subject to the following conditions:

1. The applicable rates shall be the rates provided under the PSC, which shall be adjusted in accordance with the Adjustment Formula stated therein;
2. The pass-through fuel cost shall be the actual fuel cost subject to the Net Plant Heat Rate (NPHR) schedule (in kcal/kWh) under the IPPA Agreement between SMEC and PSALM or the actual, whichever is lower;
3. OEDC is directed to include in the monthly calculation of its generation rate in accordance with the Automatic Generation Rate Adjustment (AGRA) Rules, the indices used by SMEC in the calculation of monthly payment and the details of the fuel cost calculation, including the relevant heat rates and actual consumption;
4. SMEC's actual cost of operation and construction shall be audited by an Independent Third Party, in accordance with the rules to be promulgated by the Commission, and the approved rates herein shall be adjusted, if warranted. The test of the reasonability shall be "*whether or not such cost*

⁶ Section 2. Declaration of Policy – It is hereby declared the policy of the State:

xxx

(b) To ensure the quality, reliability, security and affordability of the supply of electric power;

xxx.

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is incurred based on a good utility practice and comparable or within the level of the power plants similarly situated to that of SMEC” and NOT the actual cost incurred. The cost of audit shall be shouldered by SMEC.

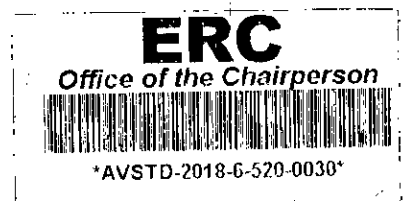
The Commission further **RESOLVES** to:

1. **DISALLOW** the termination or "walk-away" clause incorporated in the PSC; and
2. **DIRECT** OEDC to **PASS ON** to its member-consumers fifty percent (50%) of the Prompt Payment Discount (PPD) availed from SMEC and fifty percent (50%) of the Collection Efficiency Discount (CED) granted to it.

SO ORDERED.

Pasig City, 29 May 2018.


AGNES VST DEVANADERA
Chairperson and CEO




ALFREDO J. NON
Commissioner


GLORIA VICTORIA C. YAP-TARUC
Commissioner


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner


GERONIMO D. STA. ANA
Commissioner

LS: MVM/LSE/APV

ROS: KRV/LOC/AJMO/FBO

29 May 2018

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Copy Furnished:

1. Atty. Analita Ocampo-Fallet
Counsel for Applicant OEDC
1170 Rizal Avenue East Tapinac
Olongapo City
2. Olongapo Electricity Distribution Company, Inc. (OEDC)
Applicant
1170 Rizal Avenue East Tapinac
Olongapo City
3. Atty. Julieta B. Estamo
Counsel for Applicant SMEC
19th Floor San Miguel Properties Centre,
No. 7 St. Francis St., Mandaluyong City
4. San Miguel Energy Corporation (SMEC)
Applicant
2F 808 Building
Meralco Avenue corner General Lim Street
San Antonio Village, Pasig City
5. Office of the Solicitor General
134 Amorsolo Street, Legaspi Village , Makati City
6. Commission on Audit
Commonwealth Ave., Quezon City
7. The Senate Committee on Energy
GSIS Building, Roxas Boulevard, Pasay City
8. The House Committee on Energy
Batasan Hills, Quezon City
9. Office of the President of PCCI
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
10. Office of the Governor
Province of Zambales
11. Office of the Sangguniang Panlalawigan
Province of Zambales
12. Office of the City Mayor
City of Olongapo
13. Office of the Sangguniang Panlungsod
City of Olongapo
14. Regulatory Operations Service (ROS)
Energy Regulatory Commission (ERC)
17th Floor, Pacific Center Bldg., San Miguel Avenue, Pasig City

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L
F