

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



**IN THE MATTER OF THE
APPLICATION FOR THE
APPROVAL OF THE POWER
SUPPLY CONTRACT (PSC)
ENTERED INTO BY AND
BETWEEN TARLAC I
ELECTRIC COOPERATIVE,
INC. (TARELCO I) AND SAN
MIGUEL ENERGY
CORPORATION (SMEC),
WITH MOTION FOR
PROVISIONAL AUTHORITY,**

ERC CASE NO. 2016-034 RC

**TARLAC I ELECTRIC
COOPERATIVE, INC.
(TARELCO I) AND SAN
MIGUEL ENERGY
CORPORATION (SMEC),
Applicants.**

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D O C K E T E D
Date: **JUN 22 2016**
By: _____

DECISION

Before this Commission for resolution is the *Joint Application* dated 30 September 2015 filed by Applicants Tarlac I Electric Cooperative, Inc. (TARELCO I) and San Miguel Energy Corporation (SMEC) on 29 March 2016 for the approval of their Power Supply Contract (PSC), with prayer for the issuance of provisional authority.

In the said *Application*, TARELCO I and SMEC alleged the following:

1. TARELCO I is a non-stock, non-profit electric cooperative duly organized and existing under Philippines laws, with principal address at Brgy. Amacalan, Gerona, Tarlac. TARELCO I has the exclusive franchise to supply and distribute electricity within its franchise area comprising of the municipalities of Gerona, Paniqui, Ramos, Moncada, San Manuel, Victoria, Pura, Anao, Camiling, San Jose, Mayantoc, Sta. Ignacia, and San Clemente, Province of Tarlac and the municipalities of Nampicuan and Cuyapo, Province of Nueva

Ecija; the barangays of Laoang, San Juan de Mata, Batangbatang, Bora and Sto. Domingo, all of Tarlac City in the Province of Tarlac; the barangays of Maybubon, Agcano, Bagong Barrio, Bulakid, Caingin, Tabing Ilog, Escano, San Agustin, Yuson, Lamorito and San Miguel in the municipality of Guimba, Province of Nueva Ecija and Barangay Villa Rosa in the municipality of Licab, also in the Province of Nueva Ecija. TARELCO I shall also be referred to herein as "Buyer".

2. SMEC is a corporation duly organized and existing under Philippine laws, with office address at 2nd Floor 808 Building, Meralco Ave. corner Gen. Lim St., Brgy. San Antonio, Pasig City. SMEC shall also be referred to herein as "Seller".

Nature of the Application

3. This is an application for the approval of the Power Supply Contract ("PSC") between TARELCO I and SMEC, filed pursuant to Rule 20 (B) of the Rules of Practice and Procedure before the Energy Regulatory Commission.

Statement of Facts

4. SMEC is the IPP Administrator of the 1000 MW Net Contracted Capacity of the Sual Coal-Fired Thermal Power Plant located in Brgy. Pangascasan, Sual, Pangasinan, under an IPP Administration Agreement executed between SMEC and the Power Sector Assets and Liabilities Management Corporation (PSALM). As IPP Administrator, SMEC has the right to sell, trade or otherwise dispose of the net contracted capacity of the plant for its own account and its own risk.
5. **Procurement Process.** As of Dec 25, 2013, energy was being supplied to TARELCO I by the Masinloc Power Partners Co. Ltd. (MPPCL) (14.36MW), and GNPowder Mariveles Coal Power Plant (GMCP) (20MW), with a total PSC of 34.36MW. However, due to the inflow of large industries and the steady increase of captive customers' load, there was a need to increase supply. Back then, TARELCO I's actual demand was 37.58MW (with a deficit of 3.22MW). This prompted TARELCO I to request its existing suppliers for additional/increase in contract capacity. Letters were sent to MPPCL and GMCP. However, no extra supply was available.

Thereafter, TARELCO I requested SMEC to supply the former with 5MW capacity, since SMEC was once a supplier prior to GMCP. SMEC responded and agreed to a 3-year Power Supply Agreement with 5MW baseload which started November 26, 2013, renewable yearly up to December 25, 2016.

6. **Demand-Supply Scenario.** As of December 26, 2013, TARELCO I was being supplied by GMCP and MPPCL. The

contract with GMCP started on December 26, 2013, with Contract Demand of 20MW which will terminate on December 25, 2027.

7. MPPCL's Initial Contract was for 3 years which started on November 26, 2009 and later on extended for 10 years on December 26, 2013.
8. Contract Demand is increasing yearly with an average increase of 2MW yearly. TARELCO I's demand exceeded its contracted supply in 2013 by 3.22MW. With large industrial customers still being constructed, additional supply thru the 5MW PSC with SMEC is needed, and is the subject of this application. To ensure the security of supply for TARELCO I's customers, and to cater to the increasing demand of incoming big loads, TARELCO I signed a Power Supply Contract with SMCP (San Miguel Consolidated Power Corp.-Limay Bataan-2x150MW-Coal Fired) with a 10MW baseload and is subject of a separate application with the ERC. This serves as a replacement for SMEC's expiring 5MW supply contract by December 25, 2016, or when SMCP becomes commercially available, then the PSC from SMEC is automatically terminated.

Salient Features of the Power Supply Contract

9. **Power Supply Agreement.** TARELCO I and SMEC signed the PSC for TARELCO I's baseload electricity requirements beginning December 26, 2014 until the Commercial Operations Date ("COD") of the 2 x 150 MW CFB Coal Fired Plant of SMC Consolidated Power Corporation ("SCPC") in Limay, Bataan with whom TARELCO I also entered into a Power Supply Contract. The PSC has the following salient points:
 - 9.1. **Term.** The PSC shall take effect between the Parties upon signing and shall be effective until the Commercial Operations Date ("COD") of the 2x150 MW CFB Coal-Fired Power Plant in Limay, Bataan of SMC Consolidated Power Corporation ("SCPC").
 - 9.2. **Contract Capacity.** Beginning December 26, 2014 until COD, the Seller agreed to deliver and the Buyer agrees to take 5,000 kilowatts (kW) of capacity from the Plant. The Seller may allow an increase in the Contract Capacity upon application of the Buyer, and the Contract Capacity may be decreased subject to the payment of a buy-out fee.
 - 9.3. **Supply.** The supply of the Contract Capacity shall commence on December 24, 2014, with a minimum hourly nomination of 35%.
 - 9.4. **Discounts.** The Seller provides the following discounts (a) Prompt Payment Discount (PPD) – three percent (3%) of the total Capacity and Energy

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Charges, subject to payment conditions. Start-up charges and WESM charges, if any, shall not be subjected to PPD; and (b) Collection Efficiency Discount (CED) of up to a maximum of PhPo.20/kWh may be granted subject to compliance with certain payment requirements.

9.5. **Outage Allowance.** For every Contract Year, the SELLER shall have Scheduled Outage Allowance of 720 cumulative outage hours and Forced Outage Allowance of 720 cumulative outage hours. Any unutilized outage allowance hours for the Contract Year shall not be carried over into the following Contract Year. The SELLER shall also have an additional Major Maintenance Outage Allowance of 720 cumulative outage hours every five (5) years beginning the first major maintenance of the Plant.

10. **Contract Charges.** Under the PSC, TARELCO I shall pay the following capacity and energy fees to SMEC:

Period Covered			CAPACITY FEES (PhP/kW-month)			ENERGY FEES (PhP/kWh)		
Contract Year 2015			Dollar Portion	Local Portion	Fixed O&M	Fuel Rate	Variable O&M (Dollar)	Variable O&M (Local)
From		To	A1	A2	B	C	D1	D2
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								
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

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10.1. **Other Charges.** BUYER shall bear all other costs and charges incurred after the Delivery Point, including but not limited to transmission line losses, any interconnection charges and site specific loss adjustments, among others.

10.2. **Taxes.** All applicable taxes as well as other future taxes, except corporate income tax, that may be imposed by the government in connection with the SELLER's performance of its obligation under this Contract, including any increase or adjustment thereon, shall be for the account of the BUYER.

10.3. **Adjustment Formula.** The capacity and energy fees are subject to monthly adjustment based on the following formula and indices:

I. CAPACITY FEES

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

$$\text{PhP/kW-Mo.} \quad X \quad \frac{\text{FOREX}_C}{\text{FOREX}_B}$$

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

$$\text{PhP/kW-Mo} \quad X \quad \frac{\text{PHIL CPI}_C}{\text{PHIL CPI}_B}$$

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

Rate Impact on TARELCO I

11. The charges on Capacity and Energy Fees and rate discounts and adjustments under Annex II – A and Sections 9.1 & 9.2 of Article 9 of the PSC will result to lower generation cost charges of TARELCO I. Shown in the Tables below is the rate impact

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summary. The tables show TARELCO I's suppliers based on May 26, 2015 to June 25, 2015 billing period.

TABLE 1. Power supply allocation with SMEC's PSC and resulting rate.

- Actual Billing month – May 26 to June 25, 2015
- Actual Coincident peak = 42,210KW
- WESM Rate is actual for TARELCO I purchase on May 26-June 25, 2015 Billing period.

Supplier	Percent Share		MW (Max)	Capacity Factor	KWh Purchased	Amount	Rate
	Coincident Peak (42,210KW)	Energy (KWh)					
GMCP	47.38%	65.58%	20,000.00	93%	13,899,361.01	54,992,739.01	3.9565
MPPCL	33.77%	15.36%	14,256.28	(TOU Rate)	3,254,340.00	15,091,869.57	4.6375
SMEC	11.85%	17.24%	5,000.00	100%	3,653,000.00	15,200,240.94	4.1610
WESM	7.00%	1.83%	Imbalance		386,998.99	5,232,588.30	13.5209
TOTAL	100.00%	100.00%			21,193,700.00	90,517,437.82	4.2710

TABLE II. Power supply allocation with current suppliers without SMEC's PSC and resulting rate.

- Actual Billing month – May 26 to June 25, 2015
- Actual Coincident peak = 42,210KW
- WESM Rate is actual for TARELCO I purchase on May 26-June 25, 2015 Billing period.
- Maximum Contract Energy for MPPCL is purchased using average MPPCL TOU rate.

Supplier	Percent Share		MW (Max)	Capacity Factor	KWh Purchased	Amount	Rate
	Coincident Peak (42,210KW)	Energy (KWh)					
GMCP	47.38%	65.58%	20,000.00	93%	13,899,361.01	54,992,739.01	3.9565
MPPCL	33.77%	15.36%	14,256.28	(TOU Rate)	6,548,193.14	31,642,779.16	4.8323
WESM	18.84%	49.77%	Imbalance		746,145.85	10,088,563.36	13.5209
TOTAL	100.00%	100.00%			21,193,700.00	96,724,081.53	4.5638

Note: There will be an increase in rate had TARELCO I had not contracted with SMEC. The resulting rate increase would be from Php 4.2710/Kwh to Php 4.5638/Kwh.

With the 5MW supply from SMEC, there is a total of Php 0.2928/Kwh reduction in blended generation rate, or Php 6,206,643.71 reduction to power cost.

Compliance with ERC Rules

- In support of the instant application and in compliance with the ERC Guidelines for the Recovery of Costs for the Generation Component of the Distribution Utilities' (DUs) Rates as well as Rule 20(B) of the ERC Rules of Practice and Procedure, the parties are submitting herewith the following documents, attached hereto and made integral parts hereof as annexes to this Application, to wit:

ANNEX	NATURE OF DOCUMENT
A	TARELCO I Certificate of Franchise issued by the National Electrification Commission (NEC)
B	TARELCO I Certificate of Registration issued by the National Electrification Administration (NEA)
C to C-1	TARELCO I Articles of Incorporation and By-Laws
D	SMEC Certificate of Registration with the SEC
E to E-1	SMEC Articles of Incorporation and By-Laws
F	SMEC Latest General Information Sheet filed with SEC
G	Board of Investment (BOI) Certificate of Registration
H	Environmental Compliance Certificate (ECC)
I	Certificate of Compliance (COC) issued by the ERC
J	Power Supply Contract (PSC) between SMEC and TARELCO I
K	Executive Summary of the PSC
L	TARELCO I Board Resolution approving the PSC with SMEC
M	SMEC Board Resolution approving the PSC with TARELCO I
N	Details of the PSC's power rate calculations (confidential)
O	Details of the Procurement Process of Fuel
P	Relevant technical and economic characteristics of the Generation Capacity; Installed Capacity; Mode of Operation; Dependable Capacity
Q	SMEC's Latest Audited Financial Statement, Balance Sheet and Statement of Cash Flow
R	TARELCO I's DDP Summary
S	Demand Side Management (DSM) program that could be implemented by TARELCO I if approved by the ERC
T	Transmission Service Agreement between TARELCO I and NGCP
U	Rate Impact; Purchased Power Rates; sample computation; comparison between existing and proposed rates
V	TARELCO I's Latest Audited Financial Statement, Balance Sheet and Statement of Cash Flow
W	TARELCO I Board Resolution approving the filing for approval of the PSC with the ERC
X	Demand Supply Scenario
Y	SMEC Board Resolution approving the filing for approval of the PSC with the ERC
Z	Judicial Affidavit in Support of the Motion for Provisional Authority
AA to AA-1	Proof of furnishing copies of the Application to the Sangguniang Bayan of Gerona and Sangguniang Panlalawigan of Tarlac
BB and series	Newspaper publication of the Application, with Affidavit of Publication

**MOTION FOR CONFIDENTIAL TREATMENT
OF INFORMATION**

13. Invoking the provisions of Rule 4 of the ERC Rules of Practice and Procedure, SMEC respectfully requests for the confidential treatment of the information contained in Annex "N" (Details of the PSA's Power Rate Calculations).

14. SMEC is part of a group of companies which considers the exploration of several potential projects all over the Philippines for the operation, maintenance or administration of power plants similar to the plant involved in the instant application. As such, it has valuable proprietary interest in securing the confidentiality of the foregoing information particularly from existing and potential competitors in the power generation sector. Public exposure of these sensitive information/data, particularly the full details thereof, could give these parties a competitive advantage over SMEC as they would have the opportunity and ability to utilize the ingenuity involved in the computations in arriving at the data/information sought to be protected.

**ALLEGATIONS IN SUPPORT FOR THE
MOTION FOR PROVISIONAL AUTHORITY**

15. Applicants replead the above allegations in support of their prayer for the immediate issuance of the provisional authority, for the reason that without the supply of SMEC, TARELCO I will be exposed to the unpredictable and expectedly higher prices in the WESM or worse, be unable to supply the required energy to its franchise area resulting in total blackout.
16. In the interest of the public, there is a necessity for the immediate and provisional approval of the instant application in order that there will be no undue disruption in the power supply to the customers of TARELCO I.
17. TARELCO I and SMEC prayed that the Commission will:
- a. Issue an Order treating Annex "N" and the information contained therein as confidential pursuant to Rule 4 of the ERC Rules, and prescribing the guidelines for the protection thereof;
 - b. Issue a Provisional Authority in accordance with the ERC Rules of Practice and Procedure, allowing TARELCO I to implement the PSC;
 - c. After notice and hearing, Approve with Finality the Power Supply Contract between SMEC and TARELCO I, and allowing TARELCO I to pass on the cost of such purchased power to its customers.
 - d. Applicants likewise pray for such other reliefs that may be just and equitable under the premises.

Having found the said *Application* to be sufficient in form and substance, with the required fees having been paid, the Commission issued an *Order* and a *Notice of Public Hearing*, both dated 04 May 2016, setting the case for initial hearing, expository presentation, pre-trial conference, and evidentiary hearing on 06 July 2016.

In the same *Order*, TARELCO I and SMEC were directed to cause the publication of the attached Notice of Public Hearing, at their own expense, twice (2x) for two (2) successive weeks in two (2) newspapers of general circulation in the Philippines. The last publication should be made not later than ten (10) days before the date of the scheduled initial hearing. They were also directed to inform the consumers within TARELCO I's franchise area, by any other means available and appropriate, of the filing of the application, their reasons therefor, and of the scheduled hearing thereon.

Likewise, the Offices of the Provincial Governor, the City and Municipal Mayors, and the Local Government Unit (LGU) legislative bodies within the franchise area of TARELCO I were furnished with copies of the *Order* and *Notice of Public Hearing* for the appropriate posting thereof on their respective bulletin boards.

On 10 June 2016, the Commission has resolved to grant Applicants a provisional authority to implement their PSC, with the following disposition:

IN VIEW OF THE FOREGOING, Applicants Tarlac I Electric Cooperative, Inc. (TARELCO I) and San Miguel Energy Corporation (SMEC) are hereby **GRANTED PROVISIONAL AUTHORITY** to implement their Power Supply Contract (PSC), subject to the following conditions:

1. Applicable Rate:

Components	Rates
Capacity Fees (PhP/kW/Month)	
Capital Recovery Fee	1,443.1152
Fixed O&M	70.5009
Total Capacity Fees	1,513.6161
Energy Fees (PhP/kWh)	
Variable O&M (Dollar Portion)	0.06262
Variable O&M (Local Portion)	0.0083
Total Variable O&M Fee	0.0709
Fuel Cost	Pass-through, subject to the NPHR schedule (in kcal/kWh) under SMEC and PSALM's IPPA Agreement or actual, whichever is lower.

Note: The foregoing rates shall be subject to adjustment based on economic indices provided in the PSA.

2. The Fixed and Variable O&M (dollar and local portions) Fees shall be adjusted in accordance with the adjustment formula, as provided in the PSC. On the other hand, the CRF shall be adjusted using the following formula:

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$$\text{AdjustedCRF} = \text{CRF}(70\%) + \text{CRF}(30\%) * \left(\frac{\text{FXc}}{\text{FXb}} \right)$$

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 (BSP) for the calendar month within which the start of the current Billing Period occurs

FOREX_b = PhP41.749/USD

3. TARELCO I is directed to submit the monthly calculation of its generation rate in accordance with Automatic Generation Rate Adjustment (AGRA) Rules. Further, for monitoring purposes, 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 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 reasonability shall be "whether or not such cost is incurred based on a good utility practice and comparable 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.
5. TARELCO I is directed to pass on to its member consumers fifty percent (50%) of the Prompt Payment Discount availed from SMEC and fifty percent (50%) of the Collection Efficiency Discounted granted to it.
6. The pass-through fuel cost shall be subject to the Net Plant Heat Rate (NPHR) schedule (in kcal/kWh) under SMEC and PSALM's IPPA Agreement or actual, whichever is lower.
7. In the event that the rates provisionally approved are found to be higher than the final rates, the amount corresponding to the excess shall be refunded by TARELCO I to its member-consumers by crediting the same in their electric bills over a period to be determined by the Commission;
8. On Overdue Account, the interest rate and penalty charged by SMEC to TARELCO I in case of non-payment shall not be allowed to be passed-on to TARELCO I consumers.
9. The domestic component of the coal sourced from local suppliers shall not be subjected to Forex index.

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10. The Extension of the PSC under Section 2.2 thereof must be governed by ERC Resolution No. 13, Series of 2015 and ERC Resolution No. 01, Series of 2016.

SO ORDERED.

TARELCO I and SMEC filed their *Joint Pre-Trial Brief* on 01 July 2016.

During the hearing on 06 July 2016, Applicants TARELCO I and SMEC appeared. There was no intervenor or oppositor who appeared nor there was any petition or opposition that was filed.

The Applicants submitted their proof of compliance with the publication and posting requirements, which were duly marked as Exhibits "A" to "I". The Commission upon perusal of the Applicants' submissions, found the same to be compliant with the Order dated 04 May 2016. Thus, the Commission declared to have acquired jurisdiction over the instant case.

The Applicants delivered under oath their respective expository presentation through Mr. Alberto B. Reyes III, SMEC's Head, Utility Economics, and Engr. Alvin Pagbilao, TARELCO I's Energy Trading Office Chief.

Considering that no one manifested their intention to participate in the instant case as an intervenor or oppositor, the Commission, upon motion of the Applicants, issued an order of general default. In the course of the Pre-trial Conference, the Commission adopted the stipulations of facts and proposed issues contained in the Applicants' Pre-trial Brief.

Thereafter, the presentation of evidence commenced. TARELCO I presented its witness, Engr. Alvin Pagbilao, who identified his Judicial Affidavit (JA) and his signature thereon that were marked as Exhibits "GG" and "GG-1", respectively.

SMEC presented its witness, Mr. Alberto B. Reyes III, who identified his JA and his signature thereon that were marked as Exhibits "HH" and "HH-1", respectively.

The Commission propounded clarifying questions to both witnesses who were able to address the same. Considering that there are no other parties in the instant case, no cross-examination was conducted on both witnesses.

On 19 August 2016, TARELCO I and SMEC filed their *Formal Offer of Evidence*.

On 26 October 2016, SMEC filed an *Urgent Motion for Reconsideration (to the Order dated 10th June 2016)* seeking for the recalculation and reconsideration of the rate components provisionally approved by the Commission. SMEC prayed that:

PRAYER

WHEREFORE, based on the foregoing premises, SMEC respectfully prays that the Honorable Commission reconsider the Order dated June 10, 2016, and in lieu thereof, an order be issued:

1. Fixing the Capacity Payments based on the fixed monthly payments under the IPPA Agreement, for the period beginning 26th December 2014 until December 2016 or the Commercial Operations Date of SMC Consolidated Power Corporation's power plant which ever comes earlier;
2. Stating that the adjustment of the CRF must be based on the exact proportion of the dollar and peso component of the fixed monthly payments by SMEC to PSALM;
3. Fixing the FOM Fee based on the CY 2014 AFS which is more reflective of the true cost of supplying TARELCO I at the start of the first contract year of the PSC.
4. Which will immediately resolve the pending incident so as not to adversely affect SMEC's capability to comply with its obligations to PSALM under the IPPA.

Applicant prays for other just and equitable relief under the circumstances.

In an *Order* dated 06 June 2017, the Commission extended the provisional authority granted to the Applicants, *to wit*:

WHEREFORE, premises considered, the provisional authority granted to Applicants Tarlac Electric Cooperative, Inc. – (TARELCO I) and San Miguel Energy Corporation (SMEC) in the *Order* dated 10 June 2016 is hereby **EXTENDED** until revoked or made permanent by the Commission.

SO ORDERED.

The Commission, having found the exhibits contained in the Applicants' *Formal Offer of Evidence* relevant and material in the

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evaluation of the instant case, admitted the same and declared the instant case submitted for resolution.

ISSUE

The issue for the Commission's resolution is whether or not the Power Supply Contract entered into by Applicants TARELCO I and SMEC should be approved.

THE COMMISSION'S RULING

The Commission resolves to approve the 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.

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%

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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.

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

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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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 PhPo.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 PhPo.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)

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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 TARELCO I's member-consumers.

IV. Walk-Away Clause

The Commission in ERC Case No. 2012-087 RC² 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

² 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).

(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.³ 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.⁴ The fixing of just and reasonable rates involves a balancing of the investor and the consumer interests.⁵ (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”⁶

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

³ Munn. V. People of the State of Illinois, 94 U.S. 113, 126 (1877)

⁴ IV A.F. Agbayani, Commentaries and Jurisprudence on the Commercial Laws of the Philippines 500 (1993)

⁵ Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591

⁶ Cited in Gerochi, et al vs. DOE, ERC, et al, G.R. No. 159796, July 17, 2007

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*, the rate impact summary on the generation rate of TARELCO I is as follows:

TABLE 1. Power supply allocation with SMEC's PSC and resulting rate.

- Actual Billing month – May 26 to June 25, 2015
- Actual Coincident peak = 42,210KW
- WESM Rate is actual for TARELCO I purchase on May 26-June 25, 2015 Billing period.

Supplier	Percent Share		MW (Max)	Capacity Factor	KWh Purchased	Amount	Rate
	Coincident Peak (42,210KW)	Energy (KWh)					
GMCP	47.38%	65.58%	20,000.00	93%	13,899,361.01	54,992,739.01	3.9565
MPPCL	33.77%	15.36%	14,256.28	(TOU Rate)	3,254,340.00	15,091,869.57	4.6375
SMEC	11.85%	17.24%	5,000.00	100%	3,653,000.00	15,200,240.94	4.1610
WESM	7.00%	1.83%	Imbalance		386,998.99	5,232,588.30	13.5209
TOTAL	100.00%	100.00%			21,193,700.00	90,517,437.82	4.2710

TABLE II. Power supply allocation with current suppliers without SMEC's PSC and resulting rate.

- Actual Billing month – May 26 to June 25, 2015
- Actual Coincident peak = 42,210KW
- WESM Rate is actual for TARELCO I purchase on May 26-June 25, 2015 Billing period.
- Maximum Contract Energy for MPPCL is purchased using average MPPCL TOU rate.

Supplier	Percent Share		MW (Max)	Capacity Factor	KWh Purchased	Amount	Rate
	Coincident Peak (42,210KW)	Energy (KWh)					
GMCP	47.38%	65.58%	20,000.00	93%	13,899,361.01	54,992,739.01	3.9565
MPPCL	33.77%	15.36%	14,256.28	(TOU Rate)	6,548,193.14	31,642,779.16	4.8323
WESM	18.84%	49.77%	Imbalance		746,145.85	10,088,563.36	13.5209
TOTAL	100.00%	100.00%			21,193,700.00	96,724,081.53	4.5638

Note: There will be an increase in rate had TARELCO I had not contracted with SMEC. The resulting rate increase would be from Php 4.2710/Kwh to Php 4.5638/Kwh.

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 TARELCO I'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)⁷.

WHEREFORE, the foregoing premises considered, the *Joint Application* filed by Tarlac I Electric Cooperative, Inc. (TARELCO I) 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. TARELCO I 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. TARELCO I and SMEC are directed to submit for the Commission's approval their scheme of over or under recovery of the difference between the provisionally-approved rates and the rates herein approved.

⁷ 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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5. 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 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.

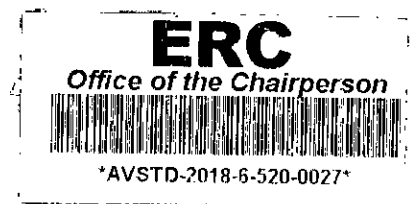
The Commission further **RESOLVES** to:

1. **DISALLOW** the termination or "walk-away" clause incorporated in the PSC; and
2. **DIRECT TARELCO I 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: ROP/LSP/ARG/APV


ROS: JAM/LUC/AJMO/FGED

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