

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



**IN THE MATTER OF THE
JOINT APPLICATION FOR
APPROVAL OF THE POWER
SUPPLY CONTRACT (PSC)
ENTERED INTO BY AND
BETWEEN CAMARINES SUR
III ELECTRIC
COOPERATIVE, INC.
(CASURECO III) AND SAN
MIGUEL ENERGY
CORPORATION (SMEC),
WITH PRAYER FOR
PROVISIONAL AUTHORITY
AND CONFIDENTIAL
TREATMENT OF
INFORMATION**

ERC CASE NO. 2018-077 RC

**CAMARINES SUR III
ELECTRIC COOPERATIVE,
INC. (CASURECO III) AND
SAN MIGUEL ENERGY
CORPORATION (SMEC),
Applicants.**

X-----X

DOCKETED
Date: **DEC 20 2018**
By: *[Signature]*

NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 13 July 2018, Camarines Sur III Electric Cooperative, Inc. (CASURECO III) and San Miguel Energy Corporation (SMEC) filed an *Application* (Application) dated 06 June 2018, seeking the approval of their Power Supply Contract (PSC) with prayers for the issuance of provisional authority and confidential treatment of information.

On 01 August 2018, the Commission issued an Order and Notice of Public Hearing setting the instant case for initial hearing on 15 November 2018. However, due to inadvertence, the tables on Capacity Fee and Energy Fee of the allegations were disarranged.

In their *Application*, CASURECO III and SMEC alleged, among others, the following:

The Applicants

1. CASURECO III (BUYER) is an electric cooperative duly registered with the National Electrification Administration (NEA) pursuant to Presidential Decree No. 269, as amended, with principal office address at San Isidro, Iriga City, Camarines Sur. It holds a franchise to operate light and power services in the City of Iriga and in the Municipalities of Bato, Nabua, Buhi, Baao, Bula, and Balatan, all in the Province of Camarines Sur (Franchise Area). It shall also be herein referred to as the BUYER.
2. SMEC (SELLER) is a domestic corporation organized and existing under the Philippine laws, with office addresses at the 2nd Floor, 808 Building, MERALCO Avenue Corner Gen. Lim Street, Barangay San Antonio, Pasig City. It is the Independent Power Producer (IPP) Administrator of the 1,000 MW Net Contracted Capacity of the Sual Coal-Fired Thermal Power Plant located in Barangay Pangascasan, Sual, Pangasinan. It shall also be herein referred to as the SELLER.

Nature of the Application

3. This Joint Application for approval of the Power Supply Contract (PSC) dated 10 April 2017 entered into by and between CASURECO III and SMEC is being submitted to the Honorable Commission for its review and approval pursuant to Sections 25 and 45 (b) of Republic Act No. 9136, otherwise known as the *Electric Power Industry Reform Act of 2001* or the EPIRA, Rules 5, Sections 4 (e) and 11, Section 5 of its Implementing Rules and Regulations (IRR), Rule 20 (B) of its Rules of Practice and Procedure, and other pertinent rules and regulations.

Statement of Facts

4. In view of the impending expiration of the Energy Supply Contract between CASURECO III and SMEC, and the need to secure additional power for continuance of electric service to its franchise area,

CASURECO III conducted a Competitive Selection Process (CSP) for the said supply of power for a term of three (3) years from 26 December 2016 to 25 December 2019.

On 31 August 2016, CASURECO III caused the publication of the *Invitation to Public Bidding* in the 31 August 2016 issue of the Philippine Daily Inquirer.

On 30 September 2016, a Bidding Conference was conducted by CASURECO III's Special Bids and Awards Committee (SBAC) wherein only SMEC submitted a bid for Lot 1. Thus, SBAC declared a failure of bidding for Lot 1.

On 10 October 2016, CASURECO III caused another publication of an *Invitation to Public Bidding* in the 10 October 2016 issue of Philippine Daily Inquirer.

On 17 October 2016, SBAC conducted a Bidding Conference. Despite diligent efforts exerted by CASURECO III in inviting bidders, only SMEC submitted a bid. Thus, a second failure of bidding was declared for Lot 1.

On 20 October 2016, SBAC recommended to the Board of Directors of CASURECO III to enter into a Direct Negotiation with SMEC ("*SBAC Report*").

On 26 October 2016, the Board of Directors issued *Resolution No. 54, Series of 2016* authorizing the PS/AGM Engr. Desuyo, Jr. and the SBAC to enter into a Direct Negotiation with SMEC for Lot 1.

On 24 February 2017, the new set of Board of Directors issued Resolution No. 41, Series of 2017 approving the PSA for Lot 1 executed between CASURECO III and SMEC. (Board Resolution Approving the SBAC Report)

On 27 February 2017, CASURECO III issued a Notice of Award to SMEC as a result of Direct Negotiation after two (2) failed biddings.

On April 10, 2017, the PSC was executed between CASURECO III and SMEC, which is the subject of the instant Joint Application.

5. **Salient Features of the PSC.**

5.1 Contract Capacity.

Under the PSC, the SELLER shall provide for a Base Load Contract Capacity (BLCC) and a Load Following Contract Capacity (LFCC) as follows:

YEAR	CONTRACT CAPACITY (CC), MW	
	Base Load (BL)	Load Following (LF)
2017	8	10
2018	8	11
2019	8	12

The BUYER shall, at best effort, maintain a nomination of one hundred percent (100%) of the BLCC for the duration of the Contract. If nomination shall be lower than 100%, the BUYER shall be billed with the Capacity Fees based on BLCC and Energy Fees based on actual energy.

The BUYER shall maintain a minimum hourly nomination of at least thirty percent (30%) of the LFCC for the duration of the Contract. The actual energy for the LFCC shall be billed based on the resulting average Capacity and Energy fees (in PhP/kWh) of the BLCC for the same Billing Period.

The Contract Capacity shall be subject to a separate Nomination Protocol.

5.2 Contract Term. The PSC shall take effect between the Parties on the date of signing (“Execution Date”) and shall remain effective until 25 December 2019 (“Contract Term”). SMEC shall supply CASURECO III beginning 26 December 2016 (“Supply Effective Date”).

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5.3 Capacity and Energy Fees. Under the PSC, CASURECO III shall pay the following Capacity and Energy Fees to SMEC:

Period Covered			CAPACITY FEES (PhP/kW-month)			ENERGY FEES (PhP/kWh)		
Contract Year 2017			Dollar Portion	Local Portion	Fixed O&M	Fuel Rate	Variable O&M (Dollar)	Variable O&M (Local)
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

Period Covered			CAPACITY FEES (PhP/kW-month)			ENERGY FEES (PhP/kWh)		
Contract Year 2018			Dollar Portion	Local Portion	Fixed O&M	Fuel Rate	Variable O&M (Dollar)	Variable O&M (Local)
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

Period Covered			CAPACITY FEES (PhP/kW-month)			ENERGY FEES (PhP/kWh)		
Contract Year 2019			Dollar Portion	Local Portion	Fixed O&M	Fuel Rate	Variable O&M (Dollar)	Variable O&M (Local)
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

5.4 Adjustment Formula. The Capacity and Energy Fees are subject to monthly adjustments based on the following formula and indices (Annex II-B of the PSC):

Capacity Fees

Monthly Capacity Payment (Dollar Portion converted to PhP):

$$\text{PhP/kW-month} \times \frac{\text{FOREX}_C}{\text{FOREX}_B}$$

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

FOREX_B = 41.749 PhP/USD

Monthly Capacity Payment (Local Portion in PhP):

PhP/kW-Month = No Indexation

Monthly Fixed Operations and Maintenance:

$$\text{PhP/kW-month} \times \frac{\text{PHIL CPI}_C}{\text{PHIL CPI}_B}$$

Where:

PHIL CPI_C = Consumer Price Index (CPI) for All Income Households in the Philippines – All Items (2006 = 100), as posted by the Philippine National Statistics Office (NSO) for the calendar month within

which the start of the current Billing Period occurs

$$\text{PHIL CPI}_B = 131.40$$

Energy Fees

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

$$\text{Global Newcastle}_B = 89.41 \text{ USD/MT}$$

FOREX_c = Average of the daily exchange rate of the Philippine Peso to the US Dollar, as posted by the BSP for the calendar month within which the start of the current Billing Period occurs

$$\text{FOREX}_B = 41.749 \text{ PhP/USD}$$

Variable O&M (Dollar Portion):

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

Where:

$FOREX_C$ = Average of the daily exchange rate of the Philippine Peso to the US Dollar, as posted by the BSP for the calendar month within which the start of the current Billing Period occurs.

$FOREX_B$ = 41.749 PhP/USD

EP_{IAVE} = Average Export Price Index (EPI) for US, Japan and Europe

$$= \frac{J_{I_C}}{J_{I_B}} + \frac{US_{I_C}}{US_{I_B}} + \frac{EI_C}{EI_B} \Big/ 3$$

Where:

J_{I_C} = Japan EPI six (6) months immediately preceding the adjustment date, taken from the International Financial Statistics (IFS) published by the International Monetary Fund (IMF)

J_{I_B} = 136.24

US_{I_C} = US EPI six (6) months immediately preceding the adjustment date, taken from the IFS published by the IMF

US_{I_B} = 79.59

EI_C = EPI 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 IFS published by the IMF

EI_B = 120.57

Variable O&M (Local Portion):

$$\text{PhP/kWh} \times \frac{\text{RPI}_C}{\text{RPI}_B}$$

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 NSO

RPI_B = 75.90

The Parties agree to adopt changes in any of the fuel and inflationary indices subject to the prior notification by the SELLER to the BUYER for the occurrence of any of the following events: a) shift made in the base year and other adjustment(s) to such index made by the relevant authorized entity, or b) any of the indices (i) becomes unavailable or (ii) is replaced by a new benchmark rate as determined by the relevant authorized entity, or (iii) ceases to exist or (iv) in the reasonable determination of either Party, fails to reflect the real costs and forms an integral part of this price adjustment formula.

Base Indices:

Particulars	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 CPI (2006=100)	Fixed	131.40
	January 1994	
Japan EPI (2010=100)	Fixed	136.24
US EPI (2010=100)	Fixed	79.59
Europe EPI (2005=100)	Fixed	120.57
Retail Price Index – Metro Manila (2000=100)	Fixed	75.90

5.5 Other Charges. The BUYER shall bear all other costs and charges occurring after the Delivery Point, including but not limited to transmission line losses and site specific loss adjustments, among others.

5.6 Discounts. The SELLER provides for both Prompt Payment Discount (PPD) and Collection Efficiency Discount (CED).

5.6.1 PPD. The BUYER may avail of the PPD equivalent to three percent (3%) of the total of the Capacity and Energy Fees components of the current power bill.

5.6.2 CED. The BUYER shall be entitled to the following CED:

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

5.7 Outages

5.7.1 Scheduled Outages. During the term of this PSC, SELLER is allowed Scheduled Outages not to exceed Seven Hundred Twenty (720) cumulative hours (Scheduled Outage Allowance) for each Contract Year, during which times

SELLER is not obligated to deliver any energy from the Plant.

5.7.2 Forced Outages. During the term of this PSC, SELLER is allowed Forced Outages not to exceed Seven Hundred Twenty (720) cumulative hours (Forced Outage Allowance) for each Contract Year, during such time, reduced or no supply of Contract

Capacity or Associated Energy will be available to the BUYER.

5.7.3 Major Maintenance Outage. The SELLER shall be allowed an additional outage allowance of seven hundred twenty (720) cumulative outage hours (Major Maintenance Outage Allowance) in case of Major Maintenance of the Plant which is five (5) years reckoned from the most recent Major Maintenance of the Plant. The SELLER is not obligated to deliver energy from the Plant during the said Major Maintenance Outage.

Unutilized Outage Allowance or Major Maintenance Outage hours shall not be carried forward to any subsequent Contract Year.

5.8 Replacement Power. During Scheduled Outages within the Scheduled Outage Allowance, or during Forced Outages within the Forced Outage Allowance, or during Major Maintenance Outages within the Major Maintenance Outage hours, the SELLER shall not be required to supply the BUYER with Contract Capacity and Associated Energy. In such circumstances, the BUYER, at its own cost, shall source the Replacement Power. The SELLER may also exert its best efforts to source Replacement Power and offer it to the BUYER, and if such offer is acceptable, the BUYER shall be billed the cost of such Replacement Power.

If during any Contract Year, the Scheduled Outages exceed the Scheduled Outage Allowance, or the Forced Outages exceed the Forced Outage Allowance, or the Major Maintenance Outages exceed the Major Maintenance Outage hours, the SELLER shall procure at its own cost, such supply of Contract Capacity and Associated Energy from third parties (including the WESM) to satisfy the relevant day-ahead nominations of

BUYER. During such period, the BUYER shall pay the SELLER the Contract Charges.

Rate Impact on the Overall Generation Rate of CASURECO III

6. The indicative rate impact on the overall generation rate with the supply of CASURECO III from SMEC is as follows:

	Scenario 1¹	Scenario 2²	Difference
Supplier	SMEC	WESM	
Average Rate, PhP/kWh	3.5163	3.5106	0.0057

7. **Environmental Compliance Certificate (ECC).** On 8 November 2004, the Department of Environment and Natural Resources (“DENR”) issued an ECC with Reference No. 9406-003-206 to Pangasinan Electric Corporation for the 1,200 MW Sual Coal-fired Power Project located at Sitios Bangayao, Buyog and Pao of Barangay Pangascasan, Sual, Pangasinan covering 280 hectares land area.
8. **Board of Investments (BOI) Certificate.** On 26 January 2011, the Power Plant Project was registered with the BOI which issued Certificate of Registration No. 2011-024.
9. **Certificate of Compliance (COC).** On 20 April 2009, the Honorable Commission issued a COC registered under the name of Team Sual for its 1,294 MW Coal-Fired Thermal Power Plant. The said COC was a renewal of the previously issued COC on 17 December 2003 under the name of the power plant’s former owner, Mirant Sual Corporation.

¹ CASURECO III sources all its power requirements from SMEC. SMEC Rate is the average rate for 10 years, net of discounts.

² CASURECO III sources all its power requirements from WESM. Average WESEM Ex Ante Price from March 2016 to August 2016

**COMPLIANCE WITH THE PRE-FILING
REQUIREMENTS**

10. Copies of the following documents and/or information are attached to the Joint Application as annexes and made integral parts hereof:

Annex	Documents/Information
“A”	Articles of Incorporation of CASURECO III.
“B”	Task Force Duterte Rinconda Power created by the NEA last 30 January 2017 (in relation to the list of the Board of Directors of CASURECO III).
“C” “C-1”	Articles of Incorporation and By-Laws of SMEC. Amended Articles of Incorporation of SMEC.
“D”	Write-up on the Shareholders’ Agreement of SMEC.
“E” to “E-1”	Certificate of Registration of SMEC issued by the Securities and Exchange Commission.
“F”	Latest General Information Sheet of SMEC.
“G”	Corporate Structure of SMC Global Power and its subsidiaries.
“H”	BOI Certificate of Registration of SMEC.
“I”	ECC issued by the DENR to the Sual Coal-Fired Thermal Power Plant.
“J”	COC issued by the Energy Regulatory Commission in favor of SMEC.
“K” “K-1” “K-2”	Write-up on the Non-Applicability of the Renewable Energy Service/Operating Contract from the Department of Energy (“DOE”); Write-up on the Non-Applicability of the Certificate of Registration or Certificate of Confirmation of Commerciality by an RE Developer and after due confirmation by the DOE; and Write-up on the Consistency/Inconsistency of the Sual Coal Fired Power Station with the DOE’s PDP.
“L”	Demand Side Management Program of CASURECO III.
“M”	Write-up by CASURECO III related to its National Power Corporation - Transition Supply Contract.
“N and Series”	Historical and Forecasted Supply and Demand Scenario, and Daily Load Curve of CASURECO III.
“O”	Competitive Selection Process Documents of

and Series”	CASURECO III.
“P”	PSC dated 10 April 2017 entered into by and between CASURECO III and SMEC.
“Q”	National Grid Corporation of the Philippines Certification on CASURECO III’s Transmission Service Agreement and Metering Services Agreement.
“R”	Write-up on the IPPA Project of SMEC.
“S”	Write-up on the Details regarding the Transmission Projects or Grid Connection Projects of SMEC
“T”	Executive Summary of the CASURECO III and SMEC PSC.
“U”	Details of the Power Rate Calculations and Financial Model (Confidential).
“V”	Rate Impact Analysis.
“W”	Details of the Fuel Procurement Process of SMEC. (Confidential).
“W-1”	Affidavit of Competitive Procurement Process of SMEC.
“X”	Relevant technical and economic characteristics of the generation capacity, installed capacity, mode of operation, dependable capacity, scheduled outage allowance, major maintenance outage, and forced outage allowance of SMEC.
“Y”	Cost Analysis of the Proposed Pricing Provisions of the PSC.
“Z”	Latest Audited Financial Statements, Balance Sheet, Income Statement, and Statement of Cash Flows of SMEC;
“Z-1”	Certification from the engine manufacturer of SMEC on the net heat rate in liters per kWh;
“Z-2”	Explanation on the non-applicability of Potential Cost of Ancillary Services; and
“Z-3”	Explanation of the non-applicability of the MEOT provision on the SMEC Contract.
“AA and Series”	Proof of Service to the Sanggunian within the franchise area of CASURECO III and Sangguniang Panlungsod of Pasig City, of copies of the Joint Application including annexes.
“BB	Affidavit of Publication and complete issue of the

and Series”	newspapers where the Joint Application was published.
“CC”	Judicial Affidavit of Mr. Alberto B. Reyes III in support of the Motion for Provisional Authority.
“DD” “DD-1”	Secretary Certificate dated 16 May 2016, duly signed by Atty. Irene M. Cipriano, Assistant Corporate Secretary of SMEC, on the authorized personnel of SMEC to sign and deliver contracts, agreements, instruments and/or securities. Secretary Certificate dated 16 May 2016, duly signed by Atty. Irene M. Cipriano, Assistant Corporate Secretary of SMEC, on the authority of the authorized representatives of SMEC to appoint and designate representative to prosecute, defend, arbitrate, settle and/or collect in behalf of the company.

11. Furthermore, the Joint Application is consistent and in accordance with the first (1st) and fifth (5th) “Whereas clauses” of the DOE Circular No. 2003-12-11 which are respectfully quoted hereunder, to wit:

“WHEREAS, Section 2 of 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;” (*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.” (*Underscoring supplied*)

12. The Joint Application is, likewise, consistent with Section 1 of the same Department Circular which 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 obligations as a distribution utility.” (*Underscoring supplied*)

13. By way of emphasis, Resolution No. 21, Series of 2005 of the Honorable Commission dated 19 October 2005 had directed all distribution utilities “to enter into future bilateral power supply contract with power producers to be subjected to a review by the Commission.” (*Underscoring supplied*)
14. The PSC was entered into by CASURECO III and SMEC to ensure the continuous supply of power to CASURECO III’s franchise area. SMEC’s competitive pricing structure and other favorable terms in the PSC will redound to the benefit of CASURECO III and its member-consumers in terms of reliable and affordable power supply.

Allegations in Support of the Motion for Provisional Authority

15. CASURECO III and SMEC replead the foregoing allegations in support of their prayer for the immediate issuance of provisional authority, anchored on the following grounds:
- 15.1 Considering the current limitations on the available capacity in the Luzon Grid, CASURECO III must source power from SMEC immediately to avoid power outage in its franchise area;
- 15.2 Per its Actual/Forecasted Load Data and DDP, CASURECO III is undergoing a

significant increase and is expecting a further increase in its energy requirements due to a growth in the total demand of its member-consumers; and

- 15.3 Without the supply of SMEC, CASURECO III 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 Joint Application in order that there will be no undue disruption in the power supply to CASURECO III's member-consumers.
17. It bears stressing that pursuant to Rule 14, Section 3 of the Honorable Commission's Rules of Practice and Procedure, the Honorable Commission may issue a provisional authority pending approval of the Joint Application, to wit:

“Section 3. Action on the Motion. – Motions for provisional authority or interim relief may be acted upon with or without hearing. The Commission shall act on the motion on the basis of the allegations of the application or petition and supporting documents and other evidences that applicant or petitioner has submitted and the comments or opposition filed by any interested person, if there be any.” (Emphasis provided)

18. To emphasize the necessity of the foregoing allegations, a judicial affidavit in support of the motion for provisional authority is

attached to the Joint Application and made an integral part hereof.

Allegations in Support of the Confidential Treatment of Annex “U” and Annex “W”

19. *Rule 4 of the Honorable Commission’s Rules of Practice and Procedure* provides that CASURECO III and SMEC may request that information may not be disclosed;
20. SMEC prays for the confidential treatment of the information contained in the following annexes, and not disclosed except to the officers and staff of the Honorable Commission:

Annex	Documents and/or Information
“U”	Details of the Power Rate Calculations and Financial Model (Confidential) .
“W”	Details of the SMEC’s Fuel Procurement Process. (Confidential) .

21. **Annex “U” and “W”** contain the details of the power rate calculations and financial model of SMEC as well as the manner by which these were derived. These information is proprietary in nature and should be protected as trade secrets as contemplated by law and jurisprudence. In the case of *Air Philippines Corporation vs. Pennswell, Inc.*³, the Supreme Court defined a trade secret, as follows:

“A trade secret may consist of any formula, pattern, device, or compilation of information that: **(1) is used in one's business; and (2) gives the employer an opportunity to obtain an advantage over competitors who do not possess the information.** Generally, a trade secret is a process or device intended for continuous use in the operation of the business, for

³ G.R. No. 172835, December 13, 2007

example, a machine or formula, but can be a price list or catalogue or specialized customer list. It is indubitable that trade secrets constitute proprietary rights. The inventor, discoverer, or possessor of a trade secret or similar innovation has rights therein which may be treated as property, and ordinarily an injunction will be granted to prevent the disclosure of the trade secret by one who obtained the information "in confidence" or through a "confidential relationship". American jurisprudence has utilized the following factors to determine if an information is a trade secret, to wit:

- (1) the extent to which the information is known outside of the employer's business;
- (2) the extent to which the information is known by employees and others involved in the business;
- (3) the extent of measures taken by the employer to guard the secrecy of the information;
- (4) the value of the information to the employer and to competitors;
- (5) the amount of effort or money expended by the company in developing the information; and
- (6) the extent to which the information could be easily

or readily obtained through
an independent source.”
*(citations omitted, emphasis
supplied)*

22. The interest of the consuming public is sufficiently protected by the review and evaluation of the rates under the PSC by the Honorable Commission, without the need to disclose the contents of Annex “U”. The reasonableness and transparency of the prices of electricity is to be assured by the Honorable Commission through its own review and verification of SMEC’s operating costs and expenses.
23. More importantly, competitors of SMEC, should they obtain the information in Annexes “U” and Annex “W”, will gain undue advantage thereon and have the opportunity to use the same in their operations. The negotiating power of SMEC with parties it plans to contract with or who it is currently doing business with, will clearly be thwarted if it is compelled to disclose such information.
24. Accordingly, CASURECO III and SMEC submit one (1) copy of Annexes “U” and Annex “W”, in a sealed envelope, with the said envelope and each page of the documents and/or information stamped with the word “Confidential”.
25. CASURECO III and SMEC pray of this Commission that, after due notice and hearing:
 - a. Pending hearing, ISSUE an Order provisionally approving the Joint Application and the PSC thereby authorizing CASURECO III and SMEC to immediately implement the rate structures therein;
 - b. ISSUE an Order treating Annexes “U” and Annex “W”, and all the information contained therein as confidential, directing their non-disclosure to persons other than the officers and staff of the Honorable Commission, continuously protecting the said information from public disclosure by maintaining the

same separate and apart from the records of the case, and ensuring that these are not divulged to unauthorized persons, pursuant to Rule 4 of its Rules of Practice and Procedure; and

- c. After due notice and hearing, ISSUE a Decision approving the Joint Application and the PSC between CASURECO III and SMEC, and authorizing CASURECO III to charge and collect the fees therein from its member-consumers.

CASURECO III and SMEC pray for other relief deemed just and equitable under the premises.

The Commission has set anew the *Application* for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and evidentiary hearing on **31 January 2019 (Thursday) at ten o'clock in the morning (10:00 AM) at CASURECO III's Principal Office at San Jose, Iriga City, Camarines Sur.**

All persons who have an interest in the subject matter of the instant case may become a party by filing with the Commission a verified Petition to Intervene at least five (5) days prior to the initial hearing and subject to the requirements under Rule 9 of the 2006 Rules of Practice and Procedure, indicating therein the docket number and title of the case and stating the following:

- 1) The petitioner's name and address;
- 2) The nature of petitioner's interest in the subject matter of the proceeding and the way and manner in which such interest is affected by the issues involved in the proceeding; and
- 3) A statement of the relief desired.

All other persons who may want their views known to the Commission with respect to the subject matter of the case may file their Opposition or Comment thereon at any stage of the proceeding before Applicants rest their case, subject to the requirements under Rule 9 of the 2006 Rules of Practice and Procedure. No particular

form of Opposition or Comment is required, but the document, letter, or writing should contain the following:

- 1) The name and address of such person;
- 2) A concise statement of the Opposition or Comment; and
- 3) The grounds relied upon.

All such persons who wish to have a copy of the *Application* may request from Applicants that they be furnished with the same, prior to the date of the initial hearing. Applicants are hereby directed to furnish all those making such request with copies of the *Application* and its attachments, subject to the reimbursement of reasonable photocopying costs. Any such person may likewise examine the *Application* and other pertinent records filed with the Commission during the standard office hours.

WITNESS, the Honorable Chairperson and CEO **AGNES VST DEVANADERA**, and Commissioners **ALEXIS M. LUMBATAN** and **CATHERINE P. MACEDA**, Energy Regulatory Commission, this 3rd day of December 2018 in Pasig City.


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Oversight Commissioner for Legal

LS: M/M/ISP/GLO
