

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



IN THE MATTER OF THE APPLICATION FOR APPROVAL OF THE ANCILLARY SERVICES PROCUREMENT AGREEMENT BETWEEN THE NATIONAL GRID CORPORATION OF THE PHILIPPINES (NGCP) AND MASINLOC POWER PARTNERS CO. LTD. (MPPCL), WITH PRAYER FOR ISSUANCE OF PROVISIONAL AUTHORITY

ERC CASE NO. 2018-010 RC

NATIONAL GRID CORPORATION OF THE PHILIPPINES (NGCP) AND MASINLOC POWER PARTNERS CO. LTD. (MPPCL),

D O C K E T E D
Date: APR 06 2018
By: [Signature]

Applicants.

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NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 28 February 2018, applicants National Grid Corporation of the Philippines (NGCP) and Masinloc Power Partners Co. Ltd. (MPPCL) filed an Application dated 12 February 2018 for the approval of their Ancillary Services Procurement Agreement (ASPA), with prayer for the issuance of provisional authority.

Applicants NGCP and MPPCL alleged the following in their *Application*:

NATURE OF THE CASE

1. This Application is for the approval of the Ancillary Services Procurement Agreement (“ASPA”) between the NGCP and MPPCL dated 8 September 2017, pursuant to the Decision dated 3 October 2007 in ERC Case No. 2006-049RC entitled: *“In the Matter of the Application for the Approval of Ancillary Services – Cost Recovery Mechanism (AS-CRM) of the Ancillary Services Procurement Plan, with Prayer for Provisional Authority.”*

THE PARTIES

2. Applicant NGCP is a corporation created and existing under the laws of the Philippines, with office address at NGCP Building, Quezon Avenue corner BIR Road, Diliman, Quezon City. It holds a franchise under Republic Act No. 9511¹ to engage in the business of conveying or transmitting electricity through high-voltage back-bone systems of interconnected transmission lines, substations and related facilities, and for other purposes. The franchise also includes the conduct of activities necessary to support the safe and reliable operation of the transmission system.
3. Applicant MPPCL is a limited partnership organized and existing under and by virtue of the Philippine laws with principal place of business at Masinloc Coal-Fired Thermal Power Plant, Brgy. Bani, Masinloc, Zambales. It may be served with orders, notices, and other legal processes through its undersigned counsel. It is the owner and operator of the AES Masinloc Advancion Energy Storage Array (“Generation Facility”) located at Masinloc, Zambales Province, which was certified and accredited by NGCP to be capable of providing Ancillary Services (“AS”) in the form of Regulating Reserve (“RR”).

ANTECEDENT FACTS

4. Republic Act No. 9136 provides that it is the responsibility of NGCP to ensure and maintain the reliability, adequacy, security, stability and integrity of the nationwide electrical grid in accordance with the performance standards for its operations and maintenance, as set forth in the Philippine Grid Code (PGC), adopted and promulgated by the Honorable Commission, and to adequately serve generation companies, distribution utilities and suppliers requiring transmission service and/or ancillary services through the transmission system.²

¹ An Act Granting the National Grid Corporation of the Philippines a Franchise To Engage in the Business of Conveying or Transmitting Electricity Through High Voltage Back-Bone System of Interconnected Transmission Lines, Substations and Related Facilities, and for other Purposes;

² Section 9 (d).

5. Similarly, the PGC provides that NGCP is responsible for determining, acquiring, and dispatching the capacity needed to supply the required Grid Ancillary Services and for developing and proposing Wheeling Charges and Ancillary Service tariffs to the ERC.³
6. Ancillary services (AS) as defined in Section 4b of the EPIRA “refer to those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the transmission system in accordance with good utility practice and the Grid Code to be adopted in accordance with this Act.” These services are essential in ensuring reliability in the operation of the transmission system and consequently, in the reliability of the electricity supply in the Luzon, Visayas and Mindanao grids.
7. In order to implement and regulate the procurement of AS, the Honorable Commission approved the Ancillary Services Procurement Plan (“ASPP”) through its Order dated 9 March 2006 in ERC Case No. 2002-253 and the Ancillary Services-Cost Recovery Mechanism (“AS-CRM”) through its Decision dated 3 October 2007 in ERC Case No. 2006-049RC.
8. Pursuant to its mandate, NGCP on different dates published in newspapers of general circulation a Notice of Invitation for Prospective Ancillary Services Providers, inviting all grid-connected merchant plants and independent power producers to participate in the provision of ancillary services. NGCP received several positive responses from generation companies. Upon receipt of the intention from MPPCL to provide ancillary services, NGCP commenced negotiation for the execution of a new ASPA.
9. NGCP agreed to procure and MPPCL agreed to supply Ancillary Services in the form of RR under a firm arrangement. A copy of the *Ancillary Services Procurement Agreement between NGCP and MPPCL* dated 8 September 2017 is attached as **Annex “A”**.
10. During the period of negotiation, NGCP conducted several tests on Generation Facility, and certified that the power plant has met and complied with the Standard Ancillary Services Technical Requirements of the ASPP as capable of providing RR. The copy of the Accreditation Certificate No. 2017-L020 dated 1 December 2017 is attached as **Annex “B.”**
11. The ASPA became effective upon its execution, until five (5) years from the commencement of the provision of the AS, renewable for another five (5) years. Considering the importance of guaranteeing the availability of AS to ensure and maintain the reliability, adequacy, security, stability and integrity of the Luzon Grid, the Applicants agreed that upon

³ Section 6.3.1.2.

signing and until the issuance of a provisional or final approval of the Application by this Honorable Commission (“Interim Period”), MPPCL may already provide RR, in whole or in part. Nevertheless, the charges for the AS during the Interim Period shall be subject to the approval of this Honorable Commission.

FIRM CONTRACTED CAPACITY RATE AND IMPACT SIMULATION

12. Schedule 1 of the ASPA provides that MPPCL shall provide:

“Firm Contracted Capacity: 20,000kW

The Parties acknowledge that Generation Facility can discharge up to 10,000kW into the grid or draw up to 10,000kW from the grid, thus providing a firm Contracted Capacity of 20,000kW of Regulating Reserve (“RR”), 24 hours per day at the 7.2 kV side of the Generation Facility.

The Firm Contracted Capacity is subject to the Constraint Guidelines a outlined in Schedule 7 of this Agreement.”

13. Schedule 4 of the ASPA provides for the agreed upon formula for the computation of the Ancillary Services Fees, which shall consist of the Capacity Payment and the Incidental Energy Payment. It also provides the the applicable maximum hourly rate for the capacity covered by the ASPA:

Firm:

Ancillary Service	Applicable Hourly Rate
Regulating Reserve	Capacity Payment - PhP 2.20/kW/Hr Incidental Energy Payment – Maximum of PhP0.05/kWh for dispatched energy

14. NGCP respectfully submits that the rate is the lowest offer that NGCP has received from RR providers in recent years. Given that the Generation Facility was constructed for the dedicated purpose of supplying AS to the grid, the ASPA rate and term provide a reasonable recovery on its capital invested and risks taken to provide the procured AS.
15. The rate under ASPA was subjected to a simulation by NGCP, as follows:

RR	SIMULATION for 24hr Schedule	
	P/kW-mo	P/kWh Equivalent
	3.3299	0.0065

A copy of the Rate Impact Simulation is attached as **Annex “C.”**

16. Consistent with the AS-CRM, all the related and incidental expenses which NGCP will incur as a result of the procurement and operation of the ancillary services shall be recovered from all the load customers in the Luzon Grid.
17. MPPCL, as a generation company, falls within the ambit of Sections 6 of the EPIRA. Attached are copies of relevant documents proving MPPCL's due registration as a generation company, relevant permits to operate the Generation Facility and audited financial statements, as follows:

Document	Annex
<i>Certificate of Compliance ("COC") No. 17-07-M-00127L dated 10 July 2017</i>	"D"
<i>Certificate of No Existing Power Supply Agreement</i>	"E"
<i>Articles of Incorporation</i>	"F"
<i>Latest Security Exchange Commission – General Information Sheet</i>	"G"
<i>Latest Audited Financial Statement</i>	"H"
<i>WESM Registration dated 1 July 2016</i>	"I"

While MPPCL is a co-applicant, it manifests that this joint application shall neither modify, diminish or constitute a waiver of MPPCL's rights nor expand its obligations and responsibilities as a generation company under EPIRA.

**ALLEGATIONS IN SUPPORT OF THE PRAYER FOR
CONFIDENTIAL TREATMENT**

18. Applicant MPPCL respectfully submits that portions of Annex A, specifically Schedules 4 and 7 thereof, contain numbers, methodology, and calculations which provide valuable information and insight on how MPPCL arrives at its computations. It is submitted therefore that Schedules 4 and 7 of Annex A of the instant Application fall within the bounds of proprietary "trade secrets" which are entitled to protection under the Constitution, statutes, and rules and regulations of this Honorable Commission.
19. Under Rule 4 of the ERC Rules of Practice and Procedure, 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 such provision, Applicant MPPCL respectfully requests for the issuance of a protective order declaring the Schedules 4 and 7 of Annex A of this Application as confidential information, as the Applicants intend to present it as evidence in the instant Application.
20. The data contained in Schedules 4 and 7 of Annex A attached to this Application constitute "trade secrets" of Applicant MPPCL; thus, MPPCL has actual and valuable proprietary interest to

protect with respect to such information. The Supreme Court, in the case of *Air Philippines Corporation vs. Pennswell, Inc.*, had the opportunity to discuss the definition of “trade secrets” and the great extent to which the same are protected under our laws. The Supreme Court defined the term “trade secret” as follows:

“A trade secret is defined as a plan or process, tool, mechanism or compound known only to its owner and those of his employees to whom it is necessary to confide it. The definition also extends to a secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade having a commercial value. **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 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 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.”⁴ (Emphasis supplied.)

21. Information which falls within the definition of a trade secret as defined by jurisprudence is clearly information which merits the confidential treatment provided for under Rule 4 of the ERC Rules of Practice and Procedure. **Applicant MPPCL respectfully submits that the numbers, methodology, and calculations which relate to how MPPCL arrives at the Ancillary Service Fees and Applicable Rates for the instant Application qualify as trade secrets, as this will give other parties, particularly the other generation companies, who may get hold of this**

⁴ G.R. No. 172835; 13 December 2007.

information, undue advantage in the pricing of its Ancillary Service Fees by using these vital information. Schedules 4 and 7 of Annex A of this Application should therefore entitled to the protection of confidential information provided under Rule 4 of the ERC Rules of Practice and Procedure.

**ALLEGATIONS IN SUPPORT OF THE
PRAYER FOR PROVISIONAL AUTHORITY**

22. It is a declared policy of the State to ensure the quality, reliability, security and affordability of the supply of electric power (*Section 2b, EPIRA*). To this end, there is a need to comply with the system requirements for AS to ensure grid system security and reliability. As mentioned above, NGCP has the mandate to procure the required AS.
23. The current levels of RR in the Luzon Grid has not yet reached the desired levels necessary for the system security and reliability. Thus, Applicants executed the ASPA. A copy of the relevant actual data showing the required and available levels of RR in the Luzon Grid is attached as **Annex "J."**
24. As the demand for power in the Luzon increases and more Variable Renewable Energy plants are commissioned, the requirements of the system to ensure stability, reliability and security likewise increases. Ensuring the integrity of the system is essential to protect the interests of the public. The absence of system reliability and stability will certainly discourage investments and growth.
25. The importance of RR to be provided by MPPCL to ensure and maintain the reliability, adequacy, security, stability and integrity of the Luzon Grid cannot be overemphasized. Hence, it is imperative that MPPCL commence providing RR, in whole or in part, during the Interim Period. Applicants therefore submit that the provisional or final approval of the ASPA be issued to cover the Interim Period as well, and Approve the terms of the ASPA dated 08 September 2017 on the RR during the Interim Period.
26. Applicants respectfully submit that the immediate approval of the ASPA by this Honorable Commission is a necessity to maintain the reliability, adequacy, security, stability and integrity of the Luzon Grid. In support of these allegations, NGCP submits a copy of the Judicial Affidavit of Engr. Lisaflor Bacani-Kater of the Revenue and Regulatory Affairs Department of NGCP, which is attached as **Annex "K."**

PRAYER

WHEREFORE, premises considered, Applicants respectfully pray that the Honorable Commission to:

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- a) Immediately **ISSUE** a provisional authority to implement the subject ASPA executed on 08 September 2017;
- b) **ALLOW** NGCP the full recovery of ancillary services for the provision of Regulating Reserve by MPPCL during the Interim Period as provided in the ASPA;
- c) **APPROVE**, after notice and hearing, the subject ASPA;
- d) **ISSUE** an Order treating Schedules 4 and 7 of Annex A as confidential information pursuant to Rule 4, Section 1 of the ERC Rules of Practice and Procedure and prescribing the guidelines for the protection thereof.

Applicants pray for other just and equitable relief.

Finding the said *Application* to be sufficient in substance, with the required fees having been paid, the same is hereby set for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on **27 April 2018 (Friday) at nine o'clock in the morning (09:00 A.M.), at Dawal Resort, Rizal St., Barangay Uacon, Candelaria, Zambales.**

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:

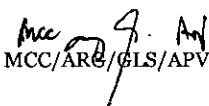
- 1) The name and address of such person;
- 2) A concise statement of the Opposition or Comment; and
- 3) The grounds relied upon.

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 the Honorable Commissioners **ALFREDO J. NON**, **GLORIA VICTORIA C. YAP-TARUC**, and **GERONIMO D. STA. ANA**, Energy Regulatory Commission, this 3rd day of April 2018 in Pasig City.

FOR AND BY AUTHORITY
OF THE COMMISSION:


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Oversight Commissioner for Legal


LS: MCC/ARG/ELS/APV