

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 AGREEMENT  
BETWEEN MASINLOC  
POWER PARTNERS CO., LTD.  
AND KALINGA-APAYAO  
ELECTRIC COOPERATIVE,  
INC., WITH PRAYER FOR  
CONFIDENTIAL TREATMENT  
OF INFORMATION**

**ERC CASE NO. 2015-220 RC**

**KALINGA-APAYAO ELECTRIC  
COOPERATIVE, INC. AND  
MASINLOC POWER  
PARTNERS CO. LTD.,  
Applicants.**

X ----- X

**D O C K E T E D**  
Date: **SEP 14 2016**  
By: 

**ORDER**

On 23 December 2015, Kalinga-Apayao Electric Cooperative, Inc. ("KAELCO") and Masinloc Power Partners Co. Ltd. ("MPPCL") filed an Application for the Approval of the Power Supply Agreement (PSA) with Prayer for Confidential Treatment of Information.

Likewise, on 29 January 2016, KAELCO and MPPCL filed their "Compliance" pursuant to the Commission's directives to submit additional documents and information which are necessary for the evaluation of the instant Application.

In their Application, KAELCO and MPPCL alleged among others, the following:

**I. THE APPLICANTS**

1. KAELCO is a non-stock non-profit electric cooperative duly organized and existing under Presidential Decree No. 269, as amended, otherwise known as the National Electrification

Administration Decree, with principal office address at Brgy. Bulanao, Tabuk City, Kalinga. KAELCO has been granted a franchise or authority to distribute electric service in the municipalities of Balbalan, Lubuagan, Pasil, Pinukpuk, Rizal, Tanudan and Tinglayan and to the City of Tabuk, all in the province of Kalinga; and municipalities of Calanasan, Conner and Kabugao, all in the province of Apayao (collectively, the "**Franchise Area**").

Copies of relevant documents proving the due incorporation, registration, and permit to operate of KAELCO as a distribution utility are attached hereto as follows:

<b>Document</b>	<b>Annex</b>
<i>Articles of Incorporation</i>	A
<i>Amended By-laws</i>	B
<i>Certificate of Registration with the National Electrification Administration</i>	C
<i>Certificate of Franchise issued by the National Electrification Commission</i>	D

2. MPPCL is a limited partnership established in the Philippines to construct, develop, improve, operate, maintain, and hold power production and electric generating facilities in the country, for the production and sale of electricity. MPPCL's principal office address is located at the Masinloc Coal-Fired Thermal Power Plant, Bani, Masinloc, Zambales.
  
3. MPPCL is in the process of expanding its existing power generating facility in Zambales through the construction, operation, management and maintenance of a new 300 MW coal-fired power generating facility (the "**Plant**") to supply, among others, the aggregated base load requirement of KAELCO and other electric cooperatives in Region 1 and Cordillera Administrative Region ("**R1+CAR ECs**")<sup>1</sup>.

Attached are copies of relevant documents proving MPPCL's due registration as a generation company, relevant permits to operate the Plant and audited financial statements, as follows:

<b>Document</b>	<b>Annex</b>
<i>Amended Articles of Limited Partnership</i>	E
<i>Certificate of Registration with the Securities and Exchange Commission</i>	F
<i>Board of Investments ("BOI") Certificate</i>	G

<sup>1</sup> Electric cooperatives in Region 1 and the CAR, namely: Abra Electric Cooperative Inc. ("**KAELCO**"), Benguet Electric Cooperative Inc. ("**BENECO**"), Ilocos Norte Electric Cooperative Inc. ("**INEC**"), Ilocos Sur Electric Cooperative Inc. ("**ISECO**"), Kalinga - Apayao Electric Cooperative Inc. ("**KAELCO**"), La Union Electric Cooperative ("**LUELCO**") Mountain Province Electric Cooperative Inc. ("**MOPRECO**") and Pangasinan III Electric Cooperative Inc. ("**PANELCO III**").

<i>of Registration as a Pioneer Enterprise No. BOI 2012-221 dated 12 October 2012</i>	
<i>Environmental Compliance Certificate ("ECC") No. 1111-020, as amended on 23 April 2012, for the Masinloc Power Plant</i>	H
<i>Certificate of Endorsement No. DOE COE 2011-09-01 issued by the Department of Energy ("DOE") on 8 August 2011</i>	I
<i>Latest Audited Financial Statements</i>	J

4. As the Plant will still be constructed, MPPCL has yet to obtain the Certificate of Compliance ("**COC**") from this Honorable Commission, which covers the same. MPPCL undertakes to apply for and obtain the COC prior to the Plant's commercial operations.
5. The Applicants may be served with copies of orders and other processes through their respective undersigned counsels at their addresses indicated herein below.

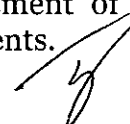
## **II. NATURE OF THE APPLICATION**

6. Pursuant to Sections 23, 25 and 45 (b) of Republic Act No. 9136 or the "Electric Power Industry Reform Act of 2001" ("**EPIRA**") in relation to Rule 20 (B) of the ERC Rules of Practice and Procedure, approved by the Honorable Commission on 22 June 2006 in Resolution No. 38, Series of 2006, this Application is submitted to the Honorable Commission for its review and approval of the Power Supply Agreement ("**PSA**"), dated 13 October 2015, executed by KAELCO and MPPCL.

A copy of the PSA is hereto attached and made an integral part hereof as **Annex "K"**.

Also attached hereto as **Annexes "L"** and "**L-1**" are the respective board and partner's resolutions of KAELCO and MPPCL approving the execution of the PSA by the parties.

7. It bears stressing that the instant Application is one of the first applications filed before this Honorable Commission for the approval of a power supply agreement resulting from a successful joint competitive selection process undertaken by R1+CAR ECs for procurement of their aggregated long-term base load power requirements.



**III. COMPLIANCE WITH PRE-FILING REQUIREMENTS**

8. In compliance with Rule 3, Section 4 (e) of the Implementing Rules and Regulations of the EPIRA and Rule 6 of the ERC Rules of Practice and Procedure, Applicants have furnished the respective legislative bodies of the local government units within the Franchise Area, and the *Sangguniang Panlalawigan* of Kalinga and the *Sangguniang Panlalawigan* of Apayao with copies of the instant Application and its accompanying documents.

Certifications from the Presiding Officer or Secretary of the legislative bodies of the Franchise Area, the *Sangguniang Panlalawigan* of Kalinga and the *Sangguniang Panlalawigan* of Apayao, or their duly authorized representatives, attesting to the fact of such service will be attached hereto as follows:

<b>Certification of Presiding Officer/Duly Authorized Representative</b>	<b>Annex</b>
Balbalan	M
Lubuagan	M-1
Pasil	M-2
Pinukpuk	M-3
Rizal	M-4
Tanudan	M-5
Tinglayan	M-6
Tabuk City	M-7
Calanasan	M-8
Conner	M-9
Kabugao	M-10
Sangguniang Panlalawigan of Kalinga	M-11
Sangguniang Panlalawigan of Apayao	M-12

9. Furthermore, Applicants have caused the publication of the present Application in its entirety in a newspaper of general circulation in KAELCO's Franchise Area.

The Affidavit of Publication and the newspaper issue containing the published Application will be attached hereto as follows:

<b>Document</b>	<b>Annex</b>
Affidavit of Publication	N
Copy of Newspaper	N-1

IV. STATEMENT OF FACTS

10. The EPIRA mandates that a distribution utility 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 this Honorable Commission.<sup>2</sup> Towards this end, the EPIRA expressly allows distribution utilities to enter into bilateral power supply contracts, subject to review by this Honorable Commission.<sup>3</sup>
11. In furtherance of the State policy to ensure the quality, reliability, security and affordability of the supply of electric power and to protect public interest affected by the rates and services of the electric utilities and other providers of electric power, this Honorable Commission issued Resolution No. 21, Series of 2005 which directed all distribution utilities to enter into future bilateral power supply contract with power producers to be subjected to a review by the ERC.
12. Consistent with these policies and regulations, the R1+CAR ECs, which includes KAELCO, entered into a Memorandum of Agreement for the joint procurement of their aggregated long-term (20-year) uncontracted base load power supply requirement equivalent to 106 MW ("**Transaction**"). Notwithstanding the aggregation of their base load power requirements, however, each of the R1+CAR ECs has agreed to individually sign a contract with the winning bidder for its respective committed demand, as indicated in the table below.

**Committed Demand of R1+CAR ECs**

<b>Electric Cooperative</b>	<b>Committed Demand (MW)</b>
KAELCO	7
BENECO	14
INEC	51
ISECO	7
KAELCO	5
MOPRECO	4
LUELCO	8
PANELCO III	10
<b>TOTAL</b>	<b>106</b>

13. The Power Supply and Demand Situation in KAELCO's Franchise Area. Annex "O" shows KAELCO's Historical Demand and Supply Scenario from January 2008 to October 2015. KAELCO contracted its 5-year power supply requirement to the AP Renewables, Inc. (APRI) totaling to 102,900 mWh of energy that commenced in June 26, 2012 and will end in July 25, 2017. KAELCO's demand that is not covered by the contracted supply, including peaking load requirements, is/will

<sup>2</sup> Cf. EPIRA, Sec. 23, par. 3.

<sup>3</sup> Cf. EPIRA, Sec. 45(b).

be supplied by Bulanao Mini-hydro Power Plant and is/will be procured from the WESM.

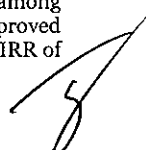
Annex "O-1" shows KAELCO's Forecasted Demand and Supply Scenario for the years 2015 to 2038. The total forecasted demand for 2015 to 2038 is evidently increasing. The table in Annex "O-1" shows that the forecasted base and peaking demands will both be increasing from 4.28 MW in 2015 to 8.71 MW in 2038 and 1.83 MW in 2015 to 3.73 MW in 2038, respectively.

Annex "O-2" shows the yearly supply and demand scenario as well as the average daily load curves.

14. The Competitive Procurement Process. On account of the foregoing, the R1+CAR ECs decided to pursue the joint procurement of their aggregated long-term uncontracted base load power supply requirement in accordance with Section 23<sup>4</sup> of the EPIRA, through the conduct of a transparent, clear and fair competitive selection process, with the assistance of transaction advisors engaged by the R1+CAR ECs, and adhering strictly with the procedures and guidelines approved by the R1+CAR EC Joint Bids and Awards Committee ("JBAC").
  - 14.1 The plan of the R1+CAR ECs, including KAELCO, to procure power commenced with the preparation by the Joint Technical Working Group ("JTWG") of a least-cost power supply plan for each EC and for the aggregated demand of the R1+CAR ECs. The power supply plan includes the short-term and long-term peak demand and annual energy that was projected based on scientifically formulated load forecast models that were subjected to validity and accuracy tests.
  - 14.2 Following the determination of the least-cost power supply plan for each EC, the R1+CAR ECs published on November 23 and 24, 2014 in a newspaper of general and national circulation the Invitation to Bid for the Transaction. Prospective bidders from the generation sector were likewise individually invited to participate in the bidding process through letters and electronic mail. In addition thereto, KAELCO also posted at a public bulletin board within its franchise area, a copy of the Invitation to Bid.
  - 14.3 In response to the Invitation to Bid, seven different generation companies, including MPPCL, GN Power Ltd. Co., SoEnergy International Philippines, Inc., Global

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<sup>4</sup> Section 23 provides that "to achieve economies of scale in utility operations, distribution utilities may, after due notice and public hearing, pursue structural and operational reforms such as but not limited to, joint actions between or among the distribution utilities, subject to the guidelines issued by the ERC. Such joint actions shall result in improved efficiencies, reliability of service, reduction of costs and compliance to the performance standards prescribed in the IRR of this Act."



Business Power Corporation, MERALCO PowerGen Corporation, Trans-Asia Oil and Energy Development Corporation and First Gen Corporation, expressed their interest and qualified to participate in the bid conducted by the R1+CAR JBAC.

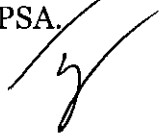
- 14.4 As part of the bidding process, pre-bid conferences were held by the JBAC where the bidders were given opportunity to submit their comments and raise clarificatory questions on the Transaction.
- 14.5 For the bid submission, the interested bidders were required to submit their bids in two (2) separate envelopes. The first envelope contains the legal requirements and proof of technical and financial capability of the bidder to finance, build, operate and maintain power plants. The second envelope contains the commercial offer, consisting of the technical and financial offers, of the bidder.
- 14.6 On 30 April 2015, the R1+CAR ECs' JBAC received from GN Power Ltd. Co. and MPPCL their respective bids for the Transaction.
- 14.7 The JBAC evaluated the submitted bids based on an Evaluation Framework and Evaluation Methodology previously released to the bidders. After thorough evaluation of the bids, the R1+CAR EC JBAC issued on 11 May 2015 the Notice of Lowest Calculated Bid to MPPCL informing MPPCL that it submitted the Lowest Calculated Bid for the Transaction. MPPCL tendered the Lowest Calculated Bid with a base price of **PhP 3.7495/kWh** and a long-term levelized price of **PhP 5.4967/kWh**.
- 14.8 After complying with the Post-Qualification Process for the Transaction, on 25 May 2015, the JBAC of the R1+CAR ECs issued a Notice of Award to MPPCL, informing MPPCL of its selection as the winning bidder for the supply of power to R1+CAR ECs.
- 14.9 On 1 June 2015, MPPCL and the R1+CAR ECs commenced negotiations for the other commercial and technical terms and conditions of the PSA, except for the power rate which is equivalent to MPPCL's Lowest Calculated Bid.

- 14.10 On 13 October 2015, MPPCL and the member ECs of the R1+CAR ECs executed individual PSAs covering their respective committed demand.

Attached are copies of the relevant documents proving MPPCL's selection and qualification as the winning bidder in the joint competitive selection process undertaken by R1+CAR ECs for the supply of their aggregated base load demand for the contract year 2019 up to 2038.

<b>Document</b>	<b>Annex</b>	<b>Document</b>	<b>Annex</b>
Invitation to Bid	P	Minutes of Meetings	P-4
Information Memorandum	P-1	Bidding Tally Sheet	P-5
Instruction to Bidders	P-2	Notice of Lowest Calculated Bid dated 11 May 2015	P-6
Bid Bulletins	P-3	Notice of Award of Contract dated 25 May 2015	P-7

15. It bears stressing that the competitive selection process conducted by the JBAC was well-structured, fair, and transparent, and thus resulted in a highly attractive price for the R1+CAR ECs. In Department Circular No. DC2015-06-008, the Department of Energy ("DOE") cited with approval, the results of the R1+CAR ECs' competitive bidding process as evidence for achieving greater efficiencies through the conduct of competitive selection process in the aggregation of the uncontracted demand of distribution utilities.
16. It is also worthy to note that the transparent competitive selection process led to good faith negotiations between MPPCL and the R1+CAR ECs for the terms and conditions of the PSAs. All actions taken by MPPCL and KAELCO leading to and in connection with the execution of the KAELCO PSA are compliant with all applicable laws, including the U.S. Foreign Corrupt Practices Act and the Philippine Anti-Graft and Corrupt Practices. KAELCO and MPPCL hereby certify that they, or their respective employees, officers, directors, affiliates, agents and representatives did not, at any time, directly or indirectly offer, give, make, promise, pay or authorize the payment of any money, gift or anything of value to any employee, officer or director of the other party to induce such other party to sign or enter into the KAELCO PSA.





V. ABSTRACT OF THE PSA AND RELATED INFORMATION

17. The following are the salient features of the KAELCO PSA:
- 17.1 **Term.** The PSA shall commence on the date of signing of the PSA by MPPCL and KAELCO and shall expire at 24:00 hours on the final Day of the 240<sup>th</sup> Billing Period after the Start of Supply Delivery<sup>5</sup>, subject to extensions of such term pursuant to the PSA provisions governing Excused Delay Event<sup>6</sup> and Force Majeure during Supply Delivery,<sup>7</sup> unless earlier terminated upon the occurrence of certain conditions for Termination Date.<sup>8</sup>
- 17.2 **Volume.** Under the PSA, MPPCL shall supply KAELCO a Contract Capacity of 5,000 kW which shall be the maximum kW demand that KAELCO may nominate as Bilateral Contract Quantity in a Wholesale Electricity Spot Market Trading Interval, without prejudice to adjustments that may be made on the Contract Capacity and Associated Energy pursuant to the terms of the PSA.
- 17.3 **Commissioning Energy.** During commissioning prior to the Start of Supply Delivery, MPPCL may offer to sell to KAELCO the Commissioning Energy at a rate equivalent to the Contract Price and Associated Charges less the Capital Recovery Fee and Fixed O&M Fees.
- 17.4 **Outages.** The supply obligation of MPPCL shall be subject to an Outage Allowance of Twenty-One (21) days for Scheduled Outages and Fifteen (15) days for Forced Outages per Contract Year. During Scheduled and Forced Outages, MPPCL may provide reduced or no supply of the Contract Capacity to KAELCO, provided that MPPCL has not exceeded the relevant Outage Allowance for a given Contract Year.
- 17.5 **Contract Price.** For electricity supplied by MPPCL, KAELCO shall pay MPPCL a Monthly Power Bill which is composed of the Contract Price, the Associated Charges<sup>9</sup> and necessary adjustments resulting from foreign currency conversion of the Dollar Payables component of the Contract Price to Philippine Peso, if any.
- 17.5.1 The Contract Price shall be composed of the sum of the Capacity Payment and the Energy Payment

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<sup>5</sup> Under the PSA, the Start of Supply Delivery or the obligation of MPPCL to supply KAELCO the Contract Capacity and Associated Energy and provisions related thereto shall commence not later than the start of a Billing Period thirty six (36) months from the Commencement Date, unless extended in accordance with the PSA.

<sup>6</sup> Cf. Section 2.6 of Annex "K," hereof.

<sup>7</sup> *Ibid.*, Section 13.3.2(b).

<sup>8</sup> *Ibid.* Section 14.10.

<sup>9</sup> Means the Governmental Charges, WESM Charges, and NGCP and Ancillary Services Charges identified in the PSA.

17.5.1.1 The **Capacity Payment** shall be composed of the Capital Recovery Charge, the Dollar Fixed O&M Charge and the Peso Fixed O&M Charge.

- a. **Capital Recovery Charge:** The Capital Recovery Charge shall be calculated as the product of the Capital Recovery Fee and the Associated Energy for the Billing Period.

The Capital Recovery Fee shall be determined using the tariff schedule below:

Capacity Utilization Factor	Capital Recovery Fee US\$/kWh
100%	0.0393
99%	0.0396
98%	0.0400
97%	0.0404
96%	0.0408
95%	0.0412
94%	0.0416
93%	0.0420
92%	0.0424
91%	0.0429
90%	0.0433
89%	0.0437
88%	0.0442
87%	0.0447
86%	0.0452
85%	0.0457
84%	0.0462
83%	0.0467
82%	0.0472
81%	0.0478
80%	0.0483
79%	0.0489
78%	0.0495
77%	0.0501
76%	0.0507
75%	0.0514
74%	0.0520
73%	0.0527

72%	0.0534
71%	0.0541
70%	0.0548

The Capacity Utilization Factor shall be calculated in accordance with the formula below:

$$CUF = AE / \{ CC \times ( H_T - EH_{T0} ) \}$$

Where

CUF Capacity Utilization Factor

AE Associated Energy, which shall be the sum of the Bilateral Contract Quantities declared by the Seller for the Buyer in the WESM during the Billing Period, *provided that* the Associated Energy shall not be less than the quantity which is 70% multiplied by the Contract Capacity multiplied by the factor  $( H_T - EH_{T0} )$ .

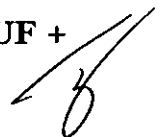
CC Contract Capacity, stated in kW

H<sub>T</sub> Total number of hours in the Billing Period

EH<sub>T0</sub> The Equivalent Hours of Scheduled Outages and Forced Outages in such Billing Period

The CUF shall be calculated up to the 4<sup>th</sup> decimal place. When the calculation results in a CUF lower than 70%, the CUF shall be deemed to equal 70%. When the CUF calculation does not result in a whole percentage point, the corresponding Capital Recovery Fee shall be determined using the formula below:

$$CRF = 0.0608 \times CUF^2 - 0.1547 \times CUF + 0.1332$$



If the Commencement Date occurs later than December 26, 2015, the Seller shall have the right to increase the Capital Recovery Fee in the foregoing table based on the percentage increase, if any, in the United States Producers Prices Capital Equipment Index [2010=100] reported in the International Financial Statistics published by the International Monetary Fund immediately before the Commencement Date vis a vis the same index published on April 2015 (i.e., 106.982)

- b. **Dollar Fixed O&M Charge:** The Dollar Fixed O&M Charge shall be calculated as the product of the Dollar Fixed O&M Fee and the Associated Energy for the Billing Period.

The Dollar Fixed O&M Fee shall be determined using the formula below:

$$\text{Dollar FOM} = \text{US\$ } 0.0021/\text{kWh} \times \text{USIndex} / \text{CUF}$$

Where,

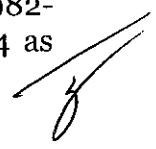
Dollar FOM      Dollar Fixed O&M Fee

CUF              as defined above

$$\text{USIndex} = \text{USCPI}_n / \text{USCPI}_o$$

USCPI<sub>n</sub>      the average US Consumer Price Index City Average for All Urban Consumers – All Items for the last three calendar months prior to the start of the Billing Period for which the invoice is being prepared.

USCPI<sub>o</sub>      the US Consumer Price Index City Average for All Urban Consumers – All Items (1982-84=100) for September 2014 as



published by the US Bureau of  
Labor Statistics.

- c. **Peso Fixed O&M Charge:** The Peso Fixed O&M Charge shall be calculated as the product of the Peso Fixed O&M Fee and the Associated Energy for the Billing Period.

The Peso Fixed O&M Fee shall be determined using the formula below:

$$\text{Peso FOM} = \text{PhP } 0.2330/\text{kWh} \times \text{RPIndex} / \text{CUF}$$

Where,

Peso FOM    Peso Fixed O&M Fee

CUF            as defined above

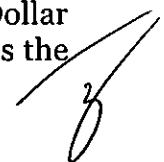
$$\text{RPIndex} = \text{RPCPI}_n / \text{RPCPI}_0$$

$\text{RPCPI}_n$     the average Philippine Consumer Price Index for All Income Households in the Philippines – All Items for the last three calendar months prior to the start of the Billing Period for which the invoice is being prepared.

$\text{RPCPI}_0$     the Philippine Consumer Price Index for All Income Households in the Philippines – All Items (2006=100) for September 2014 as published by the Bangko Sentral ng Pilipinas.

- 17.5.1.2 The **Energy Payment** shall consist of the Dollar Variable O&M Charge and Fuel Charge.

- a. **Dollar Variable O&M Charge:** The Dollar Variable O&M Charge shall be calculated as the



product of the Dollar Variable O&M Fee, and the Associated Energy for the Billing Period.

The Dollar Variable O&M Fee shall be determined using the formula below:

$$\text{Dollar VOM} = \text{US\$ } 0.0018/\text{kWh} \times \text{USIndex}$$

Where,

Dollar VOM      Dollar Variable O&M Fee

USIndex          as defined above

- b. **Fuel Charge.** Fuel Charge shall be calculated as the product of the Fuel Rate and the Associated Energy for the Billing Period.

The Fuel Rate shall be calculated in accordance with the formula below:

$$\text{FR} = \text{US\$ } 0.0271/\text{kWh} \times \text{FuelIndex}$$

Where

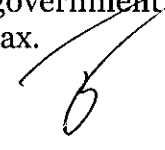
FR Fuel Rate

$$\text{FuelIndex} = \text{CIF}_n / \text{CIF}_o$$

$\text{CIF}_n$     CIF Cost of Fuel for the Billing Period

$\text{CIF}_o$     Base CIF Cost of Fuel equal to US\$ 11.0617/Million kcal

18. MPPCL's foregoing Contract Price was the Lowest Calculated Bid with a base price of **PhP 3.7495/kWh** based on the parameters of the procurement process. The Contract Price calculated above does not yet include the relevant Value-Added Tax ("VAT"), and KAELCO undertakes to pay in full the invoiced VAT and any applicable local government unit Tax on the Contract Price, except real property tax.



It bears stressing that the Contract Price discovered by this successful competitive selection process is lower than those in all the other PSAs with newbuild generators filed with the Honorable Commission in the recent past. Attached as **Annex Q** is a comparison of these power rates.

Attached as **Annex "R"** hereof is a summary of the methodology used by MPPCL to arrive at the Contract Price under the PSA. It also contains information regarding the debt or equity ratio, capital costs, weighted average cost of capital, and fuel cost, among other information.

Also attached as **Annex "R-1"** hereof is a certification by MPPCL regarding the principal amortization, term and interest of its long-term loans.

Considering the confidential nature of **Annexes "R" and "R-1"** as the numbers, methodology, and calculations contained therein would provide valuable information reflecting the bidding strategy of MPPCL, not only for distribution utilities undertaking competitive process for their power supply requirements, but also for MPPCL's trading in the WESM, MPPCL respectfully requests that **Annexes "R" and "R-1"** be treated as a confidential document. In accordance with Section 1(b), Rule 4 of the ERC Rules of Practice and Procedure, Applicant MPPCL hereby submits one (1) copy of **Annexes "R" and "R-1"** in a sealed envelope, with each page of the document stamped with the word "Confidential."

19. **Characteristics of the power capability and connection facility.** The Plant will be a coal-fired power generating facility with a capacity of 300 MW. The Plant's generation capacity is consistent with the DOE's Philippine Development Plan as shown by Certificate of Endorsement No. DOE COE 2011-09-01 issued by the DOE on 8 August 2011.<sup>10</sup>

MPPCL will expand or modify its existing switchyard to connect the Plant to the 230kV grid system of the National Grid Corporation of the Philippines ("**NGCP**"). KAELCO is likewise connected to the Luzon grid.

All relevant technical and economic characteristics of the Plant are described in **Annex "S"**. The relevant technical specifications of the transmission and delivery facilities are likewise specifically described in **Annex "S-1."**

20. **Rate Impact.** An analysis was conducted to determine the impact of the implementation of the PSA on KAELCO's generation costs once the PSA is approved. Without the PSA by 2019, KAELCO may be exposed to the WESM, whose average price in 2014 was PhP 4.7509/kwh. The PSA Contract Price

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<sup>10</sup> Cf. Annex "I," hereof.



enables KAELCO to reduce its generation cost for about PhP 0.6673/kwh to PhP 0.8637/kwh in its first five years. (See table below)

<b>Average Generation Rate</b>			
<b>Year</b>	<b>without MPPCL</b>	<b>With MPPCL</b>	<b>Rate Reduction</b>
2015	4.3956	3.6721	0.7235
2019	5.0765	4.4091	0.6673
2020	5.1307	4.3806	0.7501
2021	5.1783	4.3809	0.7975
2022	5.2210	4.3862	0.8348
2023	5.2572	4.3935	0.8637

A copy of the foregoing analysis is attached hereto and made an integral part hereof as Annex "T."

21. **Other Documents.** In compliance with the ERC Rules of Practice and Procedure, the following documents are likewise submitted:

<b>Document</b>	<b>Annex</b>
Transmission Service Agreement between NGCP and KAELCO	U
Procurement process of coal	V
Distribution Development Plan of KAELCO	W

MPPCL and NGCP are in the process of negotiating their Connection Agreement, Transmission Services Agreement and Metering Services Agreement for the Plant. MPPCL undertakes to submit copies of these documents once it has signed these agreements with NGCP.

**VI. CONFIDENTIAL TREATMENT OF ANNEX "R" and "R-1"**

22. As earlier mentioned, **Annex "R-1"** contains numbers, methodology, and calculations which provide valuable information and insight on how MPPCL arrives at the Contract Price and would accordingly reflect MPPCL's bidding strategy for distribution utilities undertaking competitive process for the selection of their power suppliers and MPPCL's trading in the WESM.

Pursuant to MPPCL's agreement with its lenders, **Annex "R-1"** likewise contains certain non-public information involving its lenders' financial trade secrets. The information contained in **Annex "R-1"**, when disclosed together with **Annex "R"** would provide an indication of MPPCL's bidding strategy for



distribution utilities undertaking competitive process for the selection of their power suppliers and MPPCL's trading in the WESM.

It is submitted therefore that **Annexes "R" and "R-1"** 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.

23. 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 **Annexes "R" and "R-1"** as confidential information, as the Applicants intend to present it as evidence in the instant Application.
24. Even though it will be treated as a confidential document and a protective order will be issued, the rules do not preclude the parties of record or their lawyers access to such confidential information after agreeing to be bound by the terms of the protective order.
25. The data contained in **Annexes "R" and "R-1"** 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 recent case of *Air Philippines Corporation vs. Pennswell, Inc.*<sup>11</sup>, had the opportunity to discuss the definition of "trade secrets" and the great extent to which the same are protected under our laws. In other instances, the Supreme Court has held that the confidential nature of trade secrets protects such from disclosure even in the face of the right of inspection given to stockholders<sup>12</sup> or the constitutional right to information<sup>13</sup>.
26. In ERC Case No 2008-030, the National Power Corporation's ("**NPC**") application for revised basic generation rates, the Honorable Commission had an occasion to rule on the confidentiality of NPC's results of operation per power plant for calendar years 2005 to 2007. The Honorable Commission declared such information as confidential, in this wise:

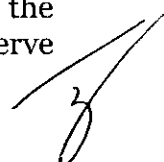
"Upon review of the documents submitted by NPC, the Commission found that the results of operation per plant of NPC for years 2005 to 2007 contain vital information necessary in the calculation of its production costs in P/kWh per plant and the corresponding revenues. This information will serve

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<sup>11</sup> 540 SCRA 215 [2007].

<sup>12</sup> Philpotts vs. Philippine Manufacturing Company, 40 Phil. 471 (1919).

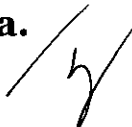
<sup>13</sup> Garcia vs. Board of Investments, G.R. 88637 (1989).



as initial inputs to NPC's decision-making. As such, disclosure of this information will give the other parties, particularly the other generation companies (Gencos) and the distribution utilities (DUs) with Genco counterparts, undue advantage in the pricing of electricity in the market over NPC and other Gencos by using its production costs as benchmark. Thus, the Commission deems the information as confidential, which may not be made public, as it may affect adversely the competitive position of NPC and other generation companies."

27. 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. **Annexes "R" and "R-1"** should therefore be entitled to the protection of confidential information provided under Rule 4 of the ERC Rules of Practice and Procedure.
28. In view of all the foregoing, Applicants respectfully submit the instant Application for the approval of the Power Supply Agreement between MPPCL and KAELCO for the Honorable Commission's urgent and utmost consideration.
29. KAELCO and MPPCL prayed that the Commission will:
  - a. Issue an Order treating **Annexes "R" and "R-1"** 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;
  - b. After, due notice and hearing, issue a final approval of the PSA dated 13 October 2015 entered into between KAELCO and MPPCL; and
  - c. Grant such other just and equitable reliefs.

Finding the said Application and the "*Compliance*" sufficient in form and substance with the required fees having been paid, the instant Application is hereby set for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence **13 October 2016 (Thursday) at nine o'clock in the morning (9:00 A.M.) at KAELCO's Principal Office at Brgy. Bulanao, Tabuk City, Kalinga.**



KAELCO and MPPCL are hereby 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 dates of publication not being less than seven (7) days apart, with the date of last publication made not later than ten (10) days before the date of the scheduled initial hearing. They are also directed to inform the consumers within their respective franchise area, by any other means available and appropriate, of the filing of the instant Application, its reasons therefor, and of the scheduled hearing thereon.

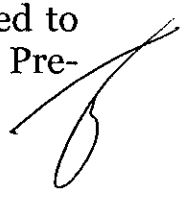
Let copies of the application, this Order and the attached Notice of Public Hearing be furnished the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress. They are hereby requested, if they so desire, to send their duly authorized representatives at the scheduled hearing.

Likewise, let copies of this Order and the attached Notice of Public Hearing be furnished the Offices of the Governor, the Mayors of the respective cities or municipalities and the Local Government Unit (LGU) Legislative Bodies within the franchise areas of KAELCO for the appropriate posting thereof on their bulletin boards.

KAELCO and MPPCL are hereby directed to furnish all those making requests therefor with copies of the Application and its attachments, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing KAELCO and MPPCL must submit to the Commission their written *Compliance* with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidences on the actual posting and publication of the Notice of Public Hearing consisting of certifications issued to that effect, signed by the aforementioned Governor, Mayors, and LGU Legislative Bodies or their duly authorized representatives, bearing the seals of their offices, and the affidavits of the Editors or Business Managers of the newspapers where the said Notice of Public Hearing were published together with the complete issues of the said newspapers, and such other proofs of compliance with the requirements of the Commission.

KAELCO and MPPCL and all interested parties are directed to submit, at least five (5) days before the date of initial hearing and Pre-



trial Conference, their respective Pre-trial Briefs containing, among others:

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

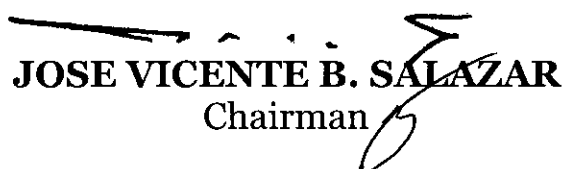
Failure of KAELCO and MPPCL to submit the required Pre-trial Brief and Judicial Affidavits of their witnesses within the prescribed period shall be a ground for cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from said date of cancellation.

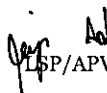
As part of the Pre-trial Conference, KAELCO and MPPCL must also be prepared to make an expository presentation of their Application, aided by whatever communication medium that they may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties, what the Application is all about and the reasons and justifications being cited in support thereof.

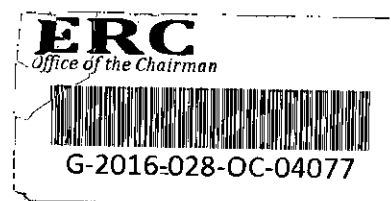
**SO ORDERED.**

Pasig City, 12 July 2016.

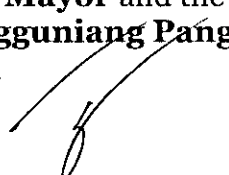
FOR AND BY AUTHORITY  
OF THE COMMISSION:

  
**JOSE VICENTE B. SALAZAR**  
Chairman

  
LSP/APV/ERC CASE No. 2015-220 RC. IO



Copy furnished:

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  4. **Masinloc Power Partners Co. Ltd. (MPPCL)**  
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  5. **Office of the Solicitor General**  
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  7. **Senate Committee on Energy**  
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  8. **House Committee on Energy**  
Batasan Hills, Quezon City, Metro Manila
  8. **Office of the President**  
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**Office of the Sangguniang Panlalawigan**  
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  10. **Office of the Governor and the**  
**Office of the Sangguniang Panlalawigan**  
Province of Apayao
  11. **Office of the City Mayor and the**  
**Office of the Sangguniang Panglungsod**  
Tabuk City, Kalinga
- 

12. **Office of the Municipal Mayor and the  
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Balbalan, Kalinga
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