

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



**IN THE MATTER OF THE
JOINT APPLICATION FOR
APPROVAL OF THE POWER
SUPPLY CONTRACT (PSC)
ENTERED INTO BY AND
BETWEEN DAVAO DEL SUR
ELECTRIC COOPERATIVE,
INC. (DASURECO) AND SAN
MIGUEL CONSOLIDATED
POWER CORPORATION
(SMCPC), WITH PRAYER
FOR CONFIDENTIAL
TREATMENT OF
INFORMATION**

ERC CASE NO. 2016-106 RC

**DAVAO DEL SUR ELECTRIC
COOPERATIVE, INC.
(DASURECO) AND SAN
MIGUEL CONSOLIDATED
POWER CORPORATION
(SMCPC),**

Applicants.

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D O C K E T E D
Date: **SEP 27 2016**
By: _____

ORDER

On 29 April 2016, Davao del Sur Electric Cooperative, Inc. (DASURECO) and San Miguel Consolidated Power Corporation (SMCPC) filed their Joint Application dated 21 April 2016 (Joint Application) for approval of their Power Supply Contract (PSC) dated 26 April 2016, with prayer for provisional authority and confidential treatment of information.

In support of said Application, DASURECO and SMCPC alleged, among others, the following:

The Joint Applicants

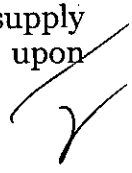
1. DASURECO is a non-stock, non-profit electric cooperative duly organized and existing under the Philippine Laws, with principal office address at Digos City, Davao del Sur. It holds a franchise to operate light and power services in the City of Digos and in the Municipalities of Bansalan, Hagonoy, Kiblawan, Magsaysay, Malalag, Matanao, Padada, Sta. Cruz, and Sulop in the Province of Davao del Sur, and Don Marcelino, Jose Abad Santos, Malita, Sta. Maria, and Sarangani in the Province of Davao Occidental (Franchise Area). It shall also be herein referred to as the "Buyer";
2. SMCPC is a corporation duly created and existing by and under the laws of the Republic of the Philippines, with business address at No. 40 San Miguel Avenue, Mandaluyong City 1550. It shall also be herein referred to as the "Seller";
3. Applicants may be served with the orders, notices and other processes of the Commission through respective counsels;

Nature of the Application

4. The Joint Application for approval of the Power Supply Contract (PSC) dated 18 April 2016 entered into by and between DASURECO and SMCPC, 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, Section 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

5. Competitive Selection Process (CSP). On June 2013, SMCPC presented before DASURECO's Board its proposed project of constructing a coal-fired power plant in Malita, Davao del Sur. In response thereto, DASURECO' Board expressed its intention of contracting with SMCPC as soon as the power plant becomes fully operational;
 - 5.1 On 23 January 2015, DASURECO's Technical Working Group (TWG) presented before its Board the fifteen (15)-year supply and demand scenario of DASURECO. Said presentation highlighted the need to secure additional capacity to address the increasing demand of DASURECO and taking into consideration the most reliable and least cost generation mix for the benefit of its member-consumers;

- 5.2 On 27 February 2016, said TWG informed DASURECO's Board and Management on Sarangani Energy Corporation's (SEC) unexpected change in power supply schedule of 10 MW, from 1st quarter of 2016 to 2nd quarter of 2018;
- 5.3 Moreover, since September 2015, the *El Niño* phenomenon has considerably reduced the capacity allocation of the National Power Corporation (NPC)/Power Sector Assets and Liabilities Management Corporation (PSALM) and Tudaya 2 for DASURECO, from forty percent (40%) to sixty percent (60%);
- 5.4 DASURECO's TWG recommended for the need of securing an additional power supplier, which would commercially operate at the soonest possible time and augment the power shortage in its Franchise Area;
- 5.5 On 15 April 2016, SMPCPC presented before DASURECO's Board and Management its final proposal as regards the capacity it could allocate for DASURECO. Likewise, it disclosed that the 150 MW capacity of its Malita Power Plant will be connected to the grid by June 2016; and
- 5.6 After a thorough deliberation on SMPCPC's offer and subsequent negotiations in good faith, on 18 April 2016, DASURECO executed a PSC with SMPCPC, subject of the Joint Application;
6. Salient Features of the PSCs.
- 6.1 **Contract Capacity.** The Contract Capacity for the duration of the PSC shall be 10,000 kW. The Buyer shall maintain a minimum hourly nomination of at least forty percent (40%) of the Contract Capacity for the duration of the PSC, as its share in the minimum stable load of the Power Plant. The Contract Capacity shall be subject to a separate nomination protocol set forth in Annex V of the said PSC;
- 6.2 **Generation Source.** SMPCPC is constructing a 2 x 150 MW Circulating Fluidized Bed Coal-Fired Thermal Power Plant (the Plant) located in Barangay Culaman, Malita, Davao del Sur, which is expected to be commercially operational by the 1st quarter of calendar year 2016;
- 6.3 **Contract Term.** The PSC shall take effect between the Parties on the date of signing (Execution Date) and shall remain effective for a period of ten (10) years from Commercial Operations Date (COD). The supply of electric power by the Seller shall commence upon
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COD, and shall continue until the end of the Contract Term;

- 6.4 **Current Charges.** Under the PSC, the Buyer shall pay the following Contract Charges for the duration of the Contract, subject to the applicable value-added tax (VAT), and computed as follows:

Particulars	Unit	Amount
Capacity Fee		
A. Capital Recovery Fee	PhP/kW-month	1,386.8021
B. Fixed Operation and Maintenance Fee	PhP/kW-month	383.8079
Total Capacity Fee		1,770.6100
Energy Fee		
C. Variable Operation and Maintenance Fee	PhP/kWh	0.2831
D. Fuel Fee	PhP/kWh	1.6566
Total Energy Fee		1.9397

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

- 6.6 **Adjustment Formula.** The Contract Charges are adjusted on a monthly basis in accordance with the following Adjustment Formula (Annex II-B of the PSC):

$$\text{MONTHLY CONTRACT CHARGES} = \text{Capacity Charges}_{\text{month}} + \text{Energy Charges}_{\text{month}}$$

Where:

$$\text{Capacity Charges} = \text{Capital Recovery Fee (CRF)} + \text{Fixed Operation and Maintenance Fee (FOM)}$$

$$\text{Energy Charges} = \text{Variable Operation and Maintenance Fee (VOM)} + \text{Fuel Fee} + \text{Start-up Charge}$$

I. CAPITAL RECOVERY FEE (CRF_{month})

$$\text{CRF}_{\text{month}} = \text{CRF}_{\text{adjusted}} \times \text{CC}$$

Where:



$$CRF_{\text{adjusted}} = (CRF_{\text{(base)}} \times 0.30) + (CRF_{\text{(base)}} \times 0.70 \times \frac{FX_m}{FX_o})$$

CRF_{base} = Capital Recovery Fee in PhP/kW-month contained in Annex II-A of the PSC

FX_m = The simple 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

FX_o = Exchange rate of the Philippine Peso to the US Dollar, Base = PhP44.00

CC = Contract Capacity in kW

II. FIXED OPERATION AND MAINTENANCE FEE (FOM_{month})

$$FOM_{\text{month}} = FOM \times \frac{PHCPI_m}{PHCPI_o} \times CC$$

Where:

FOM = Fixed Operation and Maintenance Fee in PhP/kW-month contained in Annex II-A of the PSC

$PHCPI_m$ = Philippine 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

$PHCPI_o$ = Philippine CPI for All Income Households in the Philippines – All Items (2006=100), as posted by the Philippine NSO for the calendar month of the COD

CC = Contract Capacity in kW



III. VARIABLE OPERATION AND MAINTENANCE FEE (VOM_{month})

$$\text{VOM}_{\text{month}} = \left[\left(0.85 \times \text{VOM} \times \frac{\text{USCPI}_m}{\text{USCPI}_0} \times \frac{\text{FX}_m}{\text{FX}_0} \right) + \left(0.15 \times \text{VOM} \times \frac{\text{PHCPI}_m}{\text{PHCPI}_0} \right) \right] \times \text{AE}$$

Where:

VOM = Variable Operation and Maintenance Fee in PhP/kWh contained in Annex II-A of the PSC

USCPI_m = United States (US) CPI for All Urban Consumers – All Items (1982-84=100), as posted by the United States Bureau of Labor Statistics (USBLS) for the calendar month within which the start of the current Billing Period occurs

USCPI₀ = US CPI for All Urban Consumers – All Items (1982-84=100) for the calendar month of the COD

FX_m = The average 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

FX₀ = Exchange rate of the Philippine Peso to the US Dollar, Base=PhP44.00

PHCPI_m = Philippine CPI for All Income Households in the Philippines – All Items (2006=100), as posted by the Philippine NSO for the calendar month within which the start of the current Billing Period occurs

PHCPI₀ = Philippine CPI for All Income Households in the Philippines – All Items (2006=100), as posted by the Philippine NSO for the calendar month of the COD

AE = Associated Energy in kWh delivered to the Buyer by the Seller

during the current Billing Period at the Delivery Points stated in Annex III of the PSC

The Parties agree to adopt changes in any of the inflationary indices subject to 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 adjustments to such inflation index made by the relevant authorized entity; or b) the inflation index: i) becomes unavailable, ii) is replaced by a new benchmark rate as determined by the relevant authorized entity or its successor-in-interest, 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;

IV. FUEL FEE ($Fuel_{month}$)

$$Fuel_{month} = \left[\left(\frac{FuelCost + FreightCost}{1,000} \right) \times CR \times FX_m \right] \times AE$$

Where:

Fuel Cost = Base Fuel Cost, in USD/MT $\times \frac{Newcastle_m}{Newcastle_0}$

Newcastle_m = Average monthly coal price index in USD/MT as posted by global coal on the website www.globalcoal.com for the calendar month within which the start of the current Billing Period occurs

Newcastle₀ = Coal price index equivalent to USD74.00/MT

Base Fuel Cost = Blended Cost equivalent to USD62.69/MT

Freight Cost = Actual Transport Costs in USD/MT which includes but not limited to port charges, fuel insurance, wharfage fees, excise tax, handling, customs brokerage fees, custom duties, stevedores and arrastre costs, tuggage costs, survey fee, towage, pilotage, light dues, mooring and unmooring, berthing and de-berthing, and tonnage dues



and sundries on the coal used during the current Billing Period. Freight costs shall include all other existing and future taxes, fees, imposts and other charges that may be imposed on the transport of coal

- CR = Consumption rate at 0.70kg/kWh escalated annually by one percent (1%) or the actual plant fuel consumption rate, whichever is lower
- FX_m = The average 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
- FX_o = Exchange rate of the Philippine Peso to the US Dollar, Base=PhP44.00
- AE = Associated Energy in kWh delivered to the Buyer by the Seller during the current Billing Period at the Delivery Points stated in Annex III of the PSC

The Parties further agree that when any or all of the above components of the Fuel Cost no longer reflect the Seller's actual cost of coal (including the FOB price, coal indexation, premiums, among others), the Fuel Cost shall be computed based on the Seller's actual cost of fuel subject to the Seller's prior notification to the Buyer and subject to the approval of the Honorable Commission prior to implementation;

V. Start-up Charge (per Unit and per Start-up) - to be added on top of VOM & Fuel charges

Cold Start-up – downtime of eight (8) hours and above

$$\text{Start-up Charge} = 130,000 \text{ liters} \times \text{LFO}_m \times \frac{\text{CC}}{\text{TPC}}$$

Warm Start-up – downtime of less than eight (8) hours



$$\text{Start-up Charge} = 36,000 \text{ liters} \times \text{LFO}_m \times \frac{\text{CC}}{\text{TPC}}$$

Where:

LFO_m = The actual price of diesel oil in PhP/liter as billed by supplier of diesel oil applicable for the Billing Period

CC = Contract Capacity in kW

TPC = Total plant capacity (net) per unit in kW

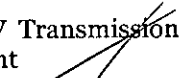
6.7 **Grid Connection.** Pursuant to the Honorable Commission's Decision dated 17 November 2014 in ERC Case No. 2014-060 RC¹, the National Grid Corporation of the Philippines (NGCP) was authorized to construct the 230 kV Malita-Matanao Transmission Line in Malita, Davao del Sur. Upon completion of the said Transmission Line, SMCPG will execute the necessary Service Agreement with NGCP and undertakes to submit the same to the Honorable Commission;

6.8 **Source of Funds.** The total estimated Project Cost of the Power Plant is PhP24,824 Million. SMC Global Power Holdings Corporation, SMCPG's parent company, advanced a total amount of US\$300 Million to commence and allow the on-going construction of the said Power Plant. It was initially financed through one hundred percent (100%) equity since the funding thereof was undertaken by the said parent company without interest payments. SMCPG intends to undertake project financing with a target Debt to Equity ratio of 70%:30%;

6.9 **Discounts.** The Seller provides for both Prompt Payment Discount (PPD) and Collection Efficiency Discount (CED);

a) **PPD.** The Buyer may avail of the PPD equivalent to one percent (1%) of the total of the Capacity and Energy Charges and other components of the current power bill except the Interim Mindanao Electricity Market (IMEM) or the Wholesale Electricity Spot Market (WESM) charges and Replacement Power Cost, if any, provided that:

¹ In the Matter of the Application for Approval of the Malita-Matanao 230 kV Transmission Project, with Prayer for the Issuance of a Provisional Authority, NGCP – Applicant



- i. The Buyer has no arrears from previous power billings including the Security Deposit or any unpaid charges or penalties including VAT;
 - ii. The Buyer has submitted all necessary Bureau of Internal Revenue (BIR) Tax Certificates for all taxes withheld as well as for all zero (0)-rated VAT end-consumers;
 - iii. The Buyer pays the power bill in full on or before the 10th day of the calendar month following the current Billing Period; and
 - iv. The Buyer complies with other policies and procedures as may be required by the Seller, subject to prior notification by the Seller to the Buyer;
- b) **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

In order for the Buyer to avail of the CED, it must comply with the following conditions:

- i. The Buyer has no outstanding obligations to the Seller from previous power bills including VAT; and
- ii. The Buyer shall submit to the Seller: a copy of its Monthly Financial and Statistical Report (MFSR)/Collection Efficiency Report signed by its Finance Manager and General Manager, stamped "received" by the NEA; Audited Financial Statements (AFS) stamped "received" by the BIR (to be submitted to the Seller within three (3) calendar days from receipt of the BIR; zero (0)-rated VAT certificates as updated monthly; and a duly accomplished CED Availment Form;

6.10 Outages.

- 6.1.1 **Annual Outage Allowance Per Unit.** The Seller shall be entitled to an Annual Outage Allowance of one thousand one hundred fifty-



eight (1,158) cumulative outage hours for each Contract Year at the cost specified in Annex II-A of the PSC. During this period, the Seller shall not be obligated to deliver energy to the Buyer;

6.1.2 **Major Maintenance Outage Hours Per Unit.** The Seller shall be allowed an additional outage allowance of seven hundred twenty (720) cumulative outage hours for Major Maintenance once every five (5) years counted from the first Major Maintenance of each Unit of the Plant. The Seller is not obligated to deliver energy during Major Maintenance Outage; and

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

6.11 **Replacement Power.** To ensure the uninterrupted supply of energy to the Buyer during the Annual Outage Allowance or Major Maintenance Outage hours, the Seller may procure replacement energy from other sources, the cost of which shall be passed-on to the Buyer;

Rate Impact on DASURECO's Overall Generation Rate

7. The indicative rate impact on DASURECO's overall generation rate with and without the supply from SMCPC are as follows:

Supplier	% Share	Energy, kWh	Amount, PhP	Rate, PhP/kWh
Year 2017				
Scenario 1: Average Generation Mix WITHOUT SMCPC				
FDC	29.88	8,760,000	58,701,780.00	6.7011
TSI	24.90	7,300,000	35,177,190.00	4.8188
Tudaya 2	6.82	2,000,000	12,504,027.37	6.2520
TMI	11.95	3,504,000	16,237,516.80	4.6340
MPI	26.45	7,755,000	60,682,275.00	7.8249
Total	100.00	29,319,000	183,302,789.17	6.2520
Scenario 2: WITH SMCPC				
FDC	29.88	8,760,000	58,701,780.00	6.7011
TSI	24.90	7,300,000	35,177,190.00	4.8188
SMCPC	24.90	7,300,000	31,865,910.00	4.3652
Tudaya 2	6.82	2,000,000	11,547,507.00	5.7738
TMI	11.95	3,504,000	16,237,516.80	4.6340
MPI	1.55	455,000	15,750,775.00	34.6171
Total	100.00	29,319,000	169,280,678.80	5.7738
Generation Cost Decrease				(0.4783)

Notes:

- a. VAT included;
- b. Total Energy is the average of the forecasted monthly energy for the year 2017;
- c. FDC/TSI/SMCPC at 100% Load Factor;
- d. Energy from Tudaya 2 is the average monthly energy delivered. Rate applied is based on Feed-in Tariff (FIT);
- e. Energy from TMI is assumed using 40% Load Factor;
- f. Energy from MPI is the quantity needed to cover the supply deficit; and
- g. Fuel price for MPI is at Php21.00

8. **Environmental Compliance Certificate (ECC).** On 7 June 2013, the Department of Environment and Natural Resources (DENR) has issued ECC No. ECC-CO-1304-0010 in favor of SMCPC;
9. **Board of Investments (BOI) Certificate.** On 24 June 2013, the Power Plant Project was registered with the BOI which issued Certificate of Registration No. 2013-137;
10. **Certificate of Compliance (COC).** The Power Plant is still under construction and the target/estimated COD is sometime in June 2016. Hence, it is not yet covered by a COC. Nonetheless, SMCPC undertakes to file the necessary application for a COC at least three (3) months before the target COD;
11. Further, SMCPC's Power Plant is considered as a committed project, and is in the process of securing a certification from the Department of Energy (DOE) that the same is consistent with the Power Development Plan (PDP). It undertakes to submit the certification as soon as the same becomes available;
12. Furthermore, SMCPC undertakes to submit a certification from the National Power Corporation (NPC) on the insufficiency of supply within the Mindanao Region during the term of the PSC;

Compliance with the Pre-filing Requirements

13. Copies of the foregoing documents and/or information are attached to the Joint Application as annexes and made integral parts thereof:

Annex	Documents/Information
A	SMCPC's Articles of Incorporation
B	SMCPC's Certificate of Registration issued by the Securities and Exchange Commission (SEC)
C	SMCPC's Latest General Information Sheet (GIS)
D	SMCPC's Certificate of Registration with the BOI

E	ECC issued by the DENR to the Circulating Fluidized Bed Coal-Fired Thermal Power Plant Project of SMCP
F	PSC entered into by and between DASURECO and SMCP
G and Series	<p>Details of the PSC:</p> <ul style="list-style-type: none"> a. Executive Summary b. Sources of Funds/Financial Plans <ul style="list-style-type: none"> ▪ Debt/Equity Ratio ▪ Project Cost ▪ Computation of Return on Investment (ROI)/Weighted Average Cost of Capital (WACC) ▪ Certification from the Bank/Lending Institution specifying the principal amortization, term and interest during the cooperation period of the loan agreement c. Purchased Power Rate <ul style="list-style-type: none"> ▪ Breakdown of the base prices ▪ Sample Computation of Power Rates with the supporting documents on the assumptions taken ▪ Rate Impact Study/Simulation ▪ Statement of impact on the overall rates of DASURECO once the contract is approved ▪ Basis/Rationale of indexation and level of indexation d. Cash Flow <ul style="list-style-type: none"> ▪ Initial Costs ▪ Breakdown of Operating and Maintenance expenses <p>Minimum Energy Off-take (MEOT)</p>
H	Details of the Power Rate Calculations and Financial Model (Confidential)
I, I-1 and I-2	Contracts for the Supply, Construction and Supervision for the Power Plant (Confidential)
J	Details of the Fuel Procurement Process
K	Transmission Service Agreement (TSA) between NGCP and DASURECO
L and Series	Acknowledgment receipts by the <i>Sangguniang Panlalawigan</i> of Davao del Sur and Davao Occidental and the <i>Sangguniang Panlungsod</i> of Digos City, of copies of the Joint Application (including annexes)
M and Series	Affidavit of Publication and complete issue of the newspaper where the Joint Application was published (excluding annexes)

14. Further, in compliance with Article VI, Sections 1 and 2 of the Commission's *Guidelines for the Recovery of Costs for the Generation Component of the Distribution Utilities' (DU) Rates*, copies of the foregoing are, likewise, attached to the Joint Application as annexes and made integral parts thereof:

Annex	Documents/Information
N	Relevant technical and economic characteristics of the generation capacity, installed capacity, mode of operation, and dependable capacity
O	Costs analysis of the proposed pricing provisions of the PSC
P and Series	Details of the Competitive Selection Process (CSP) undertaken by DASURECO leading to the selection of SMCPC as its supplier, including invitations to participate and submit proposals, Terms of Reference (TOR), proposals and/or tender offers received by DASURECO, DASURECO's Special Bids and Awards Committee (SBAC) Evaluation Report; DASURECO's Board Resolution confirming the said SBAC Evaluation Report, and the Notice of Award to SMCPC
Q and Series	Details of the interconnection facility of the SMCPC Power Plant
R	DASURECO's latest Distribution Development Plan (DDP) and Load Forecast Projections
S	Demand Side Management (DSM) Program that could be implemented by DASURECO if approved by the Honorable Commission
T	SMCPC's latest Audited Financial Statements (AFS), Balance Sheet, Income Statement, and Statement of Cash Flows
T-1	Bank Certification of Long-term Loans, including Schedule of Original Loan (principal amount, interest payable and term of the loan) and Updated Balances (principal amount, interest payable and penalties, if any and remaining term of the loan)
T-2	Operating Expenses for the Power Plant and General and Administrative Expense
T-3	Certification from the engine manufacturer or SMCPC of the net heat rate in liters per kWh
T-4	Simulation on the number of operating units necessary to meet the MEOT and/or additional energy/demand requirements of DASURECO
T-5	Potential Cost (absolute amounts and PhP/kWh) of Ancillary Services as and when SMCPC or DASURECO is connected to the main grid

15. 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 quoted hereunder:

“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;]” (first “whereas clause”, Department of Energy Circular No. 2003-12-11. Underscoring supplied.)

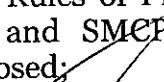
“WHEREAS, pursuant to Section 23 of EPIRA, all distribution utilities, as defined in the law, SHALL HAVE THE OBLIGATION TO SUPPLY ELECTRICITY IN THE LEAST COST MANNER TO ITS CAPTIVE MARKET subject to the collection of retail rate duly approved by the Energy Regulatory Commission;” (fifth “whereas clause”,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

16. 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.)

17. By way of emphasis, Resolution No. 21, Series of 2005 of the Commission dated 19 October 2005 had directed all Distribution Utilities (DUs) “to enter into future bilateral power supply contract with power producers to be subjected to a review by the Commission.” (Underscoring supplied.)
18. The PSCs with SMCP was made to ensure the continuous supply of power to DASURECO and due to the former’s competitive pricing structure and other favorable terms of its contract, which will redound to the benefit of the latter and its end-consumers in terms of reliable and affordable power supply;

Allegations in Support of the Confidential Treatment of Annexes “H”, and “I”, “I-1”, and “I-2”

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

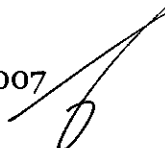
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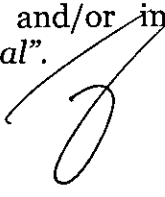
21. **Annex "H"** contains the details of SMCPD's power rate calculations and financial model as well as the manner by which these were derived. These information are proprietary in nature and should be protected as trade secrets as contemplated by law and jurisprudence. In the case of *Air Philippines Corporation vs. Pennswell, Inc.*², 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 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;

² G.R. No. 172835, December 13, 2007



- (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 PSCs by the Commission, without the need to disclose the contents of **Annex "H"**. The reasonableness and transparency of the prices of electricity is to be assured by the Commission through its own review and verification of SMCP's operating costs and expenses;
23. More importantly, SMCP's competitors, should they obtain the information in **Annex "H"**, will gain undue advantage thereon and have the opportunity to use the same in their operations. The negotiating power of SMCP 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. Further, **Annexes "I", "I-1", and "I-2"** pertain to the Supply, Construction, and Supervision Contracts, respectively, for the Power Plant. These contracts have counter-parties who are not parties to the Joint Application. They contain highly technical designs, drawings and other information which are the intellectual property and trade secrets of the counter-parties, and therefore should not be disclosed to the public. DASURECO and SMCP, likewise, pray for the confidential treatment of **Annexes "I", "I-1", and "I-2"**, under the same premises above; and
25. Accordingly, DASURECO and SMCP submit one (1) copy each of **Annexes "H", "I", "I-1", and "I-2"**, in a sealed envelope, with the said envelope and each page of the documents and/or information stamped with the word "Confidential".
- 

PRAYER

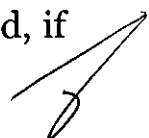
26. Joint Applicants DASURECO and SMPCPC pray before the Commission that:
- i. **ISSUE** an Order treating **Annexes “H”, “I”, “I-1”, and “I-2”**, and all the information contained therein as confidential, directing their non-disclosure to persons other than the officers and staff of the Honorable Commission, **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
 - ii. **ISSUE** a Decision approving the Joint Application and the PSC between DASURECO and SMPCPC, and authorizing DASURECO to charge and collect the fees therein from its member-consumers.

On 19 July 2016, DASURECO and SMPCPC filed an Urgent Ex-Parte Motion for the Issuance of Interim Relief and Expeditious Resolution of the Joint Application.

Finding the said Joint Application to be sufficient in form and in substance with the required fees having been paid, the same is hereby set for hearing for the determination of compliance with jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on **24 November 2016 (Thursday) at two o'clock in the afternoon (2:00 P.M.) at DASURECO's Main Office, Digos City, Davao del Sur.**

DASURECO and SMPCPC are hereby directed to cause the publication of the attached Notice of Public Hearing in two (2) newspapers of general circulation in the Philippines at their own expense, twice (2x) within two (2) successive weeks, 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. DASURECO is also directed to inform its customers within its franchise area, by any other means available and appropriate, of the filing of the Joint Application, the reasons therefor, and of the scheduled hearing thereon.

Let copies of the Joint 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



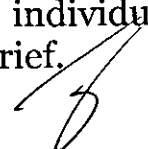
they so desire, to send their duly authorized representatives at the scheduled hearing.

Likewise, let copies of this Order and the attached Notice of Public Hearing be furnished the Offices of the Governors of the Province of Davao del Sur and Davao Occidental, as well as the Mayors and Local Government Legislative Bodies within DASURECO's franchise area for the appropriate posting thereof on their respective bulletin boards.

DASURECO and SMCPC 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 and Pre-trial Conference, DASURECO and SMCPC must submit to the Commission their written Compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidence of the actual posting and publication of the Notice of Public Hearing consisting of certifications issued to that effect, signed by the aforementioned Mayors and Local Government 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 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.

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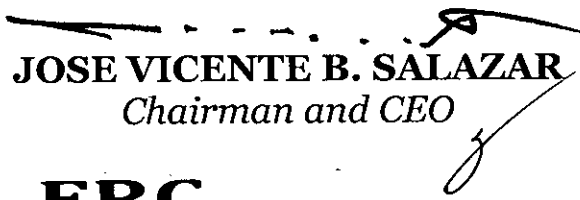
Failure of DASURECO and SMCPD to submit the required Pre-trial Brief and Judicial Affidavits of their witnesses within the prescribed period shall be a ground for cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from said date of cancellation.

As part of the Pre-trial Conference, DASURECO and SMCPD must also be prepared to make an expository presentation of their Joint 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 Joint Application is all about and the reasons and justifications being cited in support thereof.

SO ORDERED.

Pasig City, 15 September 2016.

FOR AND BY AUTHORITY
OF THE COMMISSION:


JOSE VICENTE B. SALAZAR
Chairman and CEO

ERC
Office of the Chairman



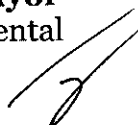
I-2016-023-OC-05003

Copy furnished:

1. **Sagmit and Associates**
Counsel for Applicant DASURECO
Unit 107, Ground Floor, Metrolifestyle Complex
Torres Street, Davao City
2. **Davao del Sur Electric Cooperative, Inc. (DASURECO)**
Digos City, Davao del Sur
3. **Attys. Jupiter M. Cabaguio and Avelino G. Cedo III**
Counsel for Applicant SMPCPC
No. 7 St. Francis Street, Mandaluyong City
4. **San Miguel Consolidated Power Corporation (SMPCPC)**
No. 40 San Miguel Avenue, Mandaluyong City 1550
5. **Office of the Solicitor General**
134 Amorsolo Street, Legaspi Village
Makati City, Metro Manila
4. **Commission on Audit**
Commonwealth Avenue
Quezon City, Metro Manila
5. **Senate Committee on Energy**
GSIS Bldg., Roxas Blvd., Pasay City
Metro Manila
6. **House Committee on Energy**
Batasan Hills, Quezon City, Metro Manila
7. **The City Mayor**
City of Digos, Davao del Sur
8. **Office of the Local Government Legislative Body**
City of Digos, Davao del Sur
9. **The Municipal Mayor**
Bansalan, Davao del Sur
10. **Office of the Local Government Legislative Body**
Bansalan, Davao del Sur
11. **The Municipal Mayor**
Hagonoy, Davao del Sur
12. **Office of the Local Government Legislative Body**
Hagonoy, Davao del Sur
13. **The Municipal Mayor**
Kiblawan, Davao del Sur



14. **Office of the Local Government Legislative Body**
Kiblawan, Davao del Sur
15. **The Municipal Mayor**
Magsaysay, Davao del Sur
16. **Office of the Local Government Legislative Body**
Magsaysay, Davao del Sur
17. **The Municipal Mayor**
Malalag, Davao del Sur
18. **Office of the Local Government Legislative Body**
Malalag, Davao del Sur
19. **The Municipal Mayor**
Matanao, Davao del Sur
20. **Office of the Local Government Legislative Body**
Matanao, Davao del Sur
21. **The Municipal Mayor**
Padada, Davao del Sur
22. **Office of the Local Government Legislative Body**
Padada, Davao del Sur
23. **The Municipal Mayor**
Sta. Cruz, Davao del Sur
24. **Office of the Local Government Legislative Body**
Sta. Cruz, Davao del Sur
25. **The Municipal Mayor**
Sulop, Davao del Sur
26. **Office of the Local Government Legislative Body**
Sulop, Davao del Sur
27. **The Municipal Mayor**
Don Marcelino, Davao Occidental
28. **Office of the Local Government Legislative Body**
Don Marcelino, Davao Occidental
29. **The Municipal Mayor**
Jose Abad Santos, Davao Occidental
30. **Office of the Local Government Legislative Body**
Jose Abad Santos, Davao Occidental
31. **The Municipal Mayor**
Malita, Davao Occidental



- 32. Office of the Local Government Legislative Body**
Malita, Davao Occidental
- 33. The Municipal Mayor**
Sta. Maria, Davao Occidental
- 34. Office of the Local Government Legislative Body**
Sta. Maria, Davao Occidental
- 35. The Municipal Mayor**
Sarangani, Davao Occidental
- 36. Office of the Local Government Legislative Body**
Sarangani, Davao Occidental
- 37. The Provincial Governor**
Province of Davao del Sur
- 38. The Provincial Governor**
Province of Davao Occidental
- 39. PSA TWG 2**
Energy Regulatory Commission
17th Floor, Pacific Center, San Miguel Avenue, Pasig City

