

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



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

ERC CASE NO. 2016-108 RC

**LANAO DEL NORTE
ELECTRIC COOPERATIVE,
INC. (LANECO) AND SAN
MIGUEL CONSOLIDATED
POWER CORPORATION
(SMCPC),**

D O C K E T E D
Date: FEB 14 2017
By: W

Applicant.

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ORDER

On 29 April 2016, Lanao del Norte Electric Cooperative, Inc. (LANECO) and San Miguel Consolidated Power Corporation (SMCPC) filed a *Joint Application with Prayer for Confidential Treatment of Information* seeking the Commission's approval of the Power Supply Contract (PSC) executed by both parties 14 March 2016.

On 07 December 2016, the Commission issued an Order and a corresponding Notice of Public Hearing setting the *Joint Application* for hearing on 12 January 2017. However, on 09 January 2017, the Commission received a *Motion to Reset Hearing* from LANECO and SMCPC asking that the initial hearing be reset to another date as Applicants could not comply on time with the Commission's

publication and notice requirements as directed in the Commission's 07 December 2016 Order.

Finding the said *Motion* meritorious, the Commission hereby cancels the initial hearing set on 12 January 2017 and reschedules the same on 16 March 2016.

It may be recalled that in their *Joint Application*, Applicants alleged the following:

The Joint Applicants

1. LANEKO is an electric cooperative duly registered with the National Electrification Administration (NEA) pursuant to Presidential Decree No. 269, as amended, with principal office address at Sagadan, Poblacion, Tubod, Lanao del Norte. It holds a franchise to operate light and power services in the Municipalities of Bacolod, Baloi, Baroy, Kapatagan, Kauswagan, Kolambugan, Lala, Linamon, Magsaysay, Maigo, Matungao, Munai, Poona Piagapo, Salvador, Sapad, Sultan Naga Dimaporo, Tangkal and Tubod, all in the Province of Lanao del Norte (Franchise Area). It shall also be herein referred to as the "Buyer";
2. SMCPK 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. The Joint Applicants may be served with the orders, notices and other processes of the Honorable Commission through their respective undersigned counsels at the addresses indicated herein;

Nature of the Application

4. The Joint Application for approval of the Power Supply Contract (PSC) dated 14 March 2016 entered into by and between LANEKO and SMCPK, 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 6 February 2016 and 22 February 2016, LANEKO's Bids and Awards Committee (BAC) conducted two (2) separate biddings for

the supply of its electricity requirements, however, both had failed considering that only one (1) qualified bidder, SMCP, submitted an offer on both occasions;

- 5.1 On 1 March 2016, LANECO's BAC issued Resolution No. 10, Series of 2016 resorting to direct negotiation with SMCP for the procurement of 5 MW electric energy for the period 2016-2026;
 - 5.2 On 3 March 2016, LANECO, through Mr. Sherwin C. Mañada, its Project Supervisor-Acting General Manager, invited SMCP for a meeting for the negotiation of its power supply;
 - 5.3 After a thorough deliberation on SMCP's offer and subsequent negotiations in good faith, on 4 March 2016, LANECO's Technical Working Group (TWG) on Power Supply issued Resolution No. 01, Series of 2016 endorsing to LANECO's Board of Directors through its Management to enter into a power supply contract with SMCP;
 - 5.4 On 7 March 2016, LANECO's Board issued Resolution No. 26, Series of 2016 authorizing, among others, Mr. Emmanuel A. Mejorada, its Board President, to sign the PSC with SMCP for the supply of 5 MW electric energy to LANECO for the period 2016-2026; and
 - 5.5 Thus, on 14 March 2016, LANECO and SMCP executed the PSC, subject of the Joint Application;
6. Salient Features of the PSC.
- 6.1 Contract Capacity. The Contract Capacity for the duration of the PSC shall be 5,000 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. SMCP 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

COD, and shall continue until the end of the Contract Term;

- 6.4 Contract 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		
Capital Recovery Fee	PhP/kW-month	1,386.8021
Fixed Operation and Maintenance Fee	PhP/kW-month	383.8079
Total Capacity Fee		1,770.6100
Energy Fee		
Variable Operation and Maintenance Fee	PhP/kWh	0.2831
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})

$$CRF_{\text{month}} = CRF_{\text{adjusted}} \times CC$$

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})

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

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})

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

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})

$$\text{Fuel}_{\text{month}} = \left[\left(\frac{\text{FuelCost} + \text{FreightCost}}{1,000} \right) \times \text{CR} \times \text{FX}_m \right] \times \text{AE}$$

Where:

Fuel Cost = Base Fuel Cost, in USD/MT $\times \frac{\text{Newcastle}_m}{\text{Newcastle}_0}$

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 and a half percent (1.5%) 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, SMCPC will execute the necessary Service Agreement with NGCP and undertakes to submit the same to the Honorable Commission;

6.8 Sources of Funds. The total estimated Project Cost of the Power Plant is PhP24,824 Million. SMC Global Power Holdings Corporation, SMCPC'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. SMCPC 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:

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;

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.

- 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. The Seller shall be entitled to an Annual Outage Allowance Per Unit 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;

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

Unutilized outage hours for a Contract Year shall not be carried over to the following 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 LANECO's Overall Generation Rate

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

Without SMCPC (Current Situation):

Supplier	Amount, PhP	kWh	Effective Rate, PhP/kWh
PSALM	7,322,407.29	2,496,887.00	2.9326
FDC (Mt. Apo)	19,835,021.06	3,531,009.57	5.6174
KEGI	14,964,351.16	1,174,334.74	12.7428
Total	42,121,779.51	7,202,231.31	5.8484

With SMCPC (5 MW) and KEGI (Capacity Fee Only):

Supplier	kWh	kW	Rate, PhP/kWh	Amount, PhP	Effective Rate, PhP/kWh
PSALM	686,941.74		2.9326	2,014,535.38	2.9326
FDC (Mt. Apo)	3,531,009.57	5,000	5.6174	19,835,021.06	5.6174
Sub-Total	4,217,951.31			21,849,556.44	5.1801
KEGI					
Fixed Capacity Fee		3,000	1,328.0000	3,984,000.00	
Fixed O&M Fee		3,000	399.7500	1,199,261.08	
Sub-Total				5,183,261.08	
SMCPC					
Capacity Fee		5,000	1,386.8021	6,934,010.50	
Fixed O&M Fee		5,000	383.8079	1,919,039.50	
Fuel Payment	2,984,280.00		1.6566	4,943,758.25	
Variable O&M Fee	2,984,280.00		0.2831	844,849.67	
Sub-Total				14,641,657.92	4.9063
Total	7,202,231.31			41,674,475.43	5.7863

Total Rate Impact by Contracting with SMCPC	(PhPo.0720/kWh)
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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 hereof:

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 SMCPC
F	PSC entered into by and between LANECO and SMCPC
G and Series	<p>Details of the PSC:</p> <p>Executive Summary</p> <p>Sources of Funds/Financial Plans</p> <p>Debt/Equity Ratio</p> <p>Project Cost</p> <p>Computation of Return on Investment (ROI)/Weighted Average Cost of Capital</p>

	<p>(WACC) Certification from the Bank/Lending Institution specifying the principal amortization, term and interest during the cooperation period of the loan agreement</p> <p>Purchased Power Rate 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 LANECO once the contract is approved Basis/Rationale of indexation and level of indexation</p> <p>Cash Flow Initial Costs Breakdown of Operating and Maintenance expenses 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 LANECO
L and Series	Acknowledgment receipts by the Sangguniang Pambayan of Tubod, the Sangguniang Panlalawigan of Lanao del Norte, and the Sangguniang Panlungsod of Mandaluyong 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 Honorable 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 hereof:

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 LANEKO leading to the selection of SMCPK as its supplier, including invitations to participate and submit proposals, Terms of Reference (TOR), proposals and/or tender offers received by LANEKO, LANEKO's Special Bids and Awards Committee (SBAC) Evaluation Report; LANEKO's Board Resolution confirming the said SBAC Evaluation Report, and the Notice of Award to SMCPK
Q and Series	Details of the interconnection facility of the SMCPK Power Plant
R	LANEKO's latest Distribution Development Plan (DDP) and Load Forecast Projections
S	Demand Side Management (DSM) Program that could be implemented by LANEKO if approved by the Honorable Commission
T	SMCPK'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 SMCPK 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 LANEKO
T-5	Potential Cost (absolute amounts and PhP/kWh) of Ancillary Services as and when SMCPK or LANEKO 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 Honorable 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 PSC with SMCPD was made to ensure the continuous supply of power to LANECO 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 Honorable Commission’s Rules of Practice and Procedure provides that LANECO and SMCPD may request that information may not be disclosed;
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 Honorable Commission and its staff:

Annex	Documents and/or Information
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)

21. Annex "H" contains the details of SMCP'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;
- (3) the extent of measures taken by the employer to guard the secrecy of the information;
- (4) the value of the information to the employer and to competitors;
- (5) the amount of effort or money expended by the company in developing the information; and
- (6) the extent to which the information could be easily or readily obtained through an independent source."*(citations omitted, emphasis supplied)*

22. The interest of the consuming public is sufficiently protected by the review and evaluation of the rates under the PSC by the Honorable Commission, without the need to disclose the

² G.R. No. 172835, December 13, 2007

contents of Annex "H". The reasonableness and transparency of the prices of electricity is to be assured by the Honorable 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. LANECO and SMCP, likewise, pray for the confidential treatment of Annexes "I", "I-1", and "I-2", under the same premises above; and
25. Accordingly, LANECO 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

WHEREFORE, the foregoing premises considered, the Joint Applicants Lanao del Norte Electric Cooperative, Incorporated (LANECO) and San Miguel Consolidated Power Corporation (SMCP) most respectfully pray that after due notice and hearing, the Honorable Commission:

1. 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
2. ISSUE a Decision approving the Joint Application and the PSC between LANECO and SMCP, and authorizing LANECO to charge and collect the fees therein from its member-consumers.

Other reliefs just and equitable under the premises are, likewise, prayed for.

Finding the said *Joint Application* 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 **16 March 2017 at nine o'clock in the morning (9:00 A.M.), at the LANEKO's Main Office, Tubod, Lanao del Norte.**

Accordingly, LANEKO and SMCPC are hereby directed to:

- 1) Cause the publication of the attached Notice of Public Hearing in two (2) newspapers of nationwide 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 and the date of the last publication to be made not later than ten (10) days before the date of the scheduled initial hearing;
- 2) Furnish with copies of this Order and the attached Notice of Public Hearing the Offices of the Provincial Governors, the City and Municipal Mayors, and the Local Government Unit (LGU) legislative bodies within the affected franchise area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform of the filing of the *Joint Application*, the reasons therefor, and of the scheduled hearing thereon, the consumers within the affected franchise area, by any other means available and appropriate;
- 4) Furnish with copies of this Order and the attached Notice of Public Hearing, 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; and
- 5) Furnish with copies of the *Joint Application* and the attachments all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing, Applicants must submit to the Commission their written compliance with the aforementioned jurisdictional requirements attaching therewith, methodically arranged and duly marked the following:

- 1) The evidence of publication of the attached Notice of Public Hearing consisting of affidavits of the Editors or Business Managers of the newspapers where the said Notice of Public Hearing was published, and the complete issues of the said newspapers;
- 2) The evidence of actual posting of this Order and the attached Notice of Public Hearing consisting of certifications issued to that effect, signed by the aforementioned Governors, Mayors, and LGU legislative bodies or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by Applicants to inform of the filing of the *Joint Application*, the reasons therefore, and of the scheduled hearing thereon, the consumers within the affected franchise area;
- 4) The evidence of receipt of copies of this Order and the attached Notice of Public Hearing by the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress;
- 5) The evidence of receipt of copies of the *Joint Application*, and the attachments by all those making requests therefor, if any; and
- 6) Such other proofs of compliance with the requirements of the Commission.

Applicants and all interested parties are also required 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:

- 1) A summary of admitted facts and proposed stipulation of facts;
- 2) The issues to be tried or resolved;
- 3) The documents or exhibits to be presented, stating the purposes and proposed markings therefore; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-trial Brief.

Failure of Applicants to comply with the above requirements 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 the said date of cancellation.

LANECO must also be prepared to make an expository presentation of the instant *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, 06 February 2017.

FOR AND BY AUTHORITY
OF THE COMMISSION:


JOSE VICENTE B. SALAZAR
Chairman and CEO

ERC



Office of the Chairman and CEO



B-2017-013-OC-00103

LS: IC/ R/ M/ APV

COPY FURNISHED:

1. Lanao del Norte Electric Cooperative, Inc. (LANECO)
Applicant
Tubod, Lanao del Norte
2. Atty. Jeremiah D. Francisco
Dechavez & Evangelista Law Offices
Counsel for LANECO
1609-1610, Tycoon Center, Pearl Drive, Ortigas Center, Pasig City
3. San Miguel Consolidated Power Corporation (SMCPC)
Applicant
40, San Miguel Avenue, Mandaluyong City
4. Atty. Jupiter M. Cabaguio
Counsel for SMCPC
23rd Floor, San Miguel Properties Center, 7, St Francis Street, Mandaluyong City
5. Office of the Mayor
Bacolod, Lanao del Norte
6. Office of the Local Government Unit (LGU) legislative body

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Baroy, Lanao del Norte
 10. Office of the LGU legislative body
Baroy, Lanao del Norte
 11. Office of the Mayor
Kapatagan, Lanao del Norte
 12. Office of the LGU legislative body
Kapatagan, Lanao del Norte
 13. Office of the Mayor
Kauswagan, Lanao del Norte
 14. Office of the LGU legislative body
Kauswagan, Lanao del Norte
 15. Office of the Mayor
Kolambugan, Lanao del Norte
 16. Office of the LGU legislative body
Kolambugan, Lanao del Norte
 17. Office of the Mayor
Lala, Lanao del Norte
 18. Office of the LGU legislative body
Lala, Lanao del Norte
 19. Office of the Mayor
Linamon, Lanao del Norte
 20. Office of the LGU legislative body
Linamon, Lanao del Norte
 21. Office of the Mayor
Magsaysay, Lanao del Norte
 22. Office of the LGU legislative body
Magsaysay, Lanao del Norte
 23. Office of the Mayor
Maigo, Lanao del Norte
 24. Office of the LGU legislative body
Maigo, Lanao del Norte
 25. Office of the Mayor
Matungao, Lanao del Norte
 26. Office of the LGU legislative body
Matungao, Lanao del Norte
 27. Office of the Mayor
Munai, Lanao del Norte
 28. Office of the LGU legislative body
Munai, Lanao del Norte
 29. Office of the Mayor
Poona Piagapo, Lanao del Norte
 30. Office of the LGU legislative body
Poona Piagapo, Lanao del Norte

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34. Office of the LGU legislative body
Sapad, Lanao del Norte
35. Office of the Mayor
Sultan Naga Dimaporo, Lanao del Norte
36. Office of the LGU legislative body
Sultan Naga Dimaporo, Lanao del Norte
37. Office of the Mayor
Tangkal, Lanao del Norte
38. Office of the LGU legislative body
Tangkal, Lanao del Norte
39. Office of the Mayor
Tubod, Lanao del Norte
40. Office of the LGU legislative body
Tubod, Lanao del Norte
41. Office of the Governor
Province of Lanao del Norte
42. Office of the LGU legislative body
Province of Lanao del Norte
43. Office of the Solicitor General
134 Amorsolo Street, Legaspi Village, Makati City
44. Commission on Audit
Commonwealth Avenue, Quezon City
45. Senate Committee on Energy
GSIS Bldg. Roxas Blvd., Pasay City
46. House Committee on Energy
Batasan Hills, Quezon City
47. Philippine Chamber of Commerce and Industry (PCCI)
3rd Floor, Chamber and Industry Plaza (CIP), 1030 Campus Avenue corner Park Avenue, McKinley
Town Center, Fort Bonifacio, Taguig City
48. TWG PSA 2
17th Floor, Pacific Center, San Miguel Avenue, Pasig City