

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 DAVAO DEL
NORTE ELECTRIC
COOPERATIVE, INC.
(DANECO) AND SAN MIGUEL
CONSOLIDATED POWER
CORPORATION (SMCPC),
WITH PRAYER FOR
CONFIDENTIAL TREATMENT
OF INFORMATION,**

ERC CASE NO. 2016-104 RC

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

Applicants.

x ----- x

D O C K E T E D
Date: AUG 29 2017
By: [Signature]

ORDER

On 29 April 2016, applicants Davao del Norte Electric Cooperative, Inc. (DANECO) and San Miguel Consolidated Power Corporation (SMCPC) filed a *Joint Application with Prayer for Confidential Treatment of Information* (Application) dated 22 April 2016 for the approval of their Power Supply Contract (PSC), with prayer for confidential treatment of information.

In the said *Application*, Applicants alleged the following:

The Joint Applicants Davao del Norte Electric Cooperative, Incorporated (DANECO) and San Miguel Consolidated Power Corporation (SMCPC), through their respective undersigned counsels and unto this Honorable Commission, most respectfully state, that:

The Joint Applicants

1. DANECO is a non-stock, non-profit electric cooperative duly organized and existing under the Philippine Laws, with principal office address at Km. 100, Montevista, Compostela Valley. It holds a franchise to operate light and power services in Tagum City, Island Garden City of Samal, Asuncion, Kapalong, New Corella, San Isidro and Talaingod, all in the Province of Davao del Norte, and Compostela, Laak, Mabini, Maco, Maragusan, Mawab, Monkayo, Montevista, Nabunturan, New Bataan and Pantukan, all in the Province of Compostela Valley (Franchise Area). It shall be herein referred to as the "Buyer";
2. SMCPD 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 18 April 2016 entered into by and between DANECO and SMCPD, 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).** SMCPD submitted an unsolicited proposal to DANECO for the supply of its power requirements. On 1 February 2016, DANECO's Board issued Resolution No. 15, Series of 2016 authorizing its Bids and Awards Committee (BAC) to conduct a CSP pursuant to the Honorable Commission's Resolution No. 13, Series of 2015. On even date, said Board issued Resolution No. 15-A, Series of 2016 directing its BAC to proceed with the *Swiss Challenge*.
 - 5.1 On 2 March 2016 and 23 March 2016, DANECO's BAC conducted two (2) separate biddings for the supply of its electricity requirements, however, both had failed considering that only one (1) qualified bidder, SMCPD, the original proponent, attended on both occasions;
 - 5.2 On 31 March 2016, DANECO's BAC issued Resolution No. 015, S-2016 recommending to the Board to enter into a PSC

with SMCP. Subsequently, on 4 April 2016, DANECO's Board issued Resolution No. 96, Series of 2016 confirming said BAC Resolution. On even date, the Board also issued Resolution No. 96-A, Series of 2016 approving the PSC with SMCP and authorizing its Project Supervisor, President, and General Manager to sign said contract; and

5.3 Thus, on 21 April 2016, DANECO executed a PSC with SMCP, 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 20,000 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		
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:

Capacity Charges = Capital Recovery Fee (CRF) + Fixed Operation and Maintenance Fee (FOM)

Energy Charges = Variable Operation and Maintenance Fee (VOM) + Fuel Fee + Start-up Charge

I. CAPITAL RECOVERY FEE (CRF_{month})

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

Where:

$$\text{CRF}_{\text{adjusted}} = (\text{CRF}_{(\text{base})} \times 0.30) + (\text{CRF}_{(\text{base})} \times 0.70 \times \frac{\text{FX}_m}{\text{FX}_o})$$

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 = Contract Capacity in kW

CC = Contract Capacity in kW

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

$$\text{FOM}_{\text{month}} = \text{FOM} \times \frac{\text{PHCPI}_m}{\text{PHCPI}_o} \times \text{CC}$$

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 the 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})

$$VOM_{month} = \left[\left(0.85 \times VOM \times \frac{USCPI_m}{USCPI_o} \times \frac{FX_m}{FX_o} \right) + \left(0.15 \times VOM \times \frac{PHCPI_m}{PHCPI_o} \right) \right] \times AE$$

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

USCPI_o = 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

FX_o = 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

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

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 x $\frac{\text{Newcastle}_m}{\text{Newcastle}_o}$

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

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

Base Fuel Cost = Blended Cost equivalent to USD 62.69/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. Startup 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, SMCPD 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, SMCPD's parent company, advanced a total amount of US\$300 Million to commence and allow the ongoing 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. SMCPD 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;
 - 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;

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

- 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.

6.10.1 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;

6.10.2 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

6.10.3 Unutilized Outage Allowance hours or Major Maintenance Outage hours shall not be carried over to the 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 DANECO 's Overall Generation Rate

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

Current Rate (Billing February 2016)

Suppliers	Energy Produced (kWh)	Billing (PhP)	Cost (PhP/kWh)
NPC/PSALM	12,878,570	38,212,227.35	2.97
TSI	8,141,931	40,341,843.17	4.95
FDC Geothermal	7,764,350	39,786,954.04	5.12
TMI	6,180,153	24,769,536.65	4.01
EEIP	1,546,930	20,719,779.16	13.39
Blended Cost per kWh	36,511,934	163,830,331.37	4.49

WITHOUT SMCP

Suppliers	Energy Produced (kWh)	Billing (PhP)	Cost (PhP/kWh)
NPC/PSALM	7,200,000	21,363,244.28	2.97
TSI	9,600,000	47,566,319.89	4.95
FDC Geothermal	8,141,931	41,721,787.56	5.12
TMI	5,400,000	21,642,748.64	4.01
Other IPP Diesel	5,703,222	48,762,551.57	8.55
EEIP	2,635,000	27,087,800.00	10.28
Genset Modular (MGC)	1,431,781	12,241,724.08	8.55
Blended Cost per kWh	40,111,934	220,386,176.01	5.49

WITH SMCP

Suppliers	Energy Produced (kWh)	Billing (PhP)	Cost (PhP/kWh)
NPC/PSALM	7,200,000	21,363,244.28	2.97
TSI	9,600,000	47,566,319.89	4.95
FDC Geothermal	7,824,847	40,096,950.49	5.12
SMCP	12,670,000	55,367,900.00	4.37
EEIP	2,635,000	27,087,800.00	10.28
Genset Modular (MGC)	1,431,781	12,237,046.44	8.55
Blended Cost per kWh	40,111,934	203,719,261.09	5.08

Analysis:

Particular	Cost (PhP/kWh)
Without SMCP	5.49
With SMCP	5.08
Blended Rate Impact (Reduction)	(0.42)

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 SMCP;
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, SMCP undertakes to file the necessary application for a COC at least three (3) months before the target COD;
11. Further, SMCP'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, SMCP 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 DANECO and SMCPC
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 DANECO 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 ▪ Minimum Energy Off-take (MEOT)
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 the NGCP and DANECO
L and Series	Acknowledgement receipts by the <i>Sangguniang Pambayan</i> of Motevista and the <i>Sangguniang</i>

	<i>Panlalawigan</i> of Davao del Norte and Compostela Valley, 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 DANECO leading to the selection of SMCPG as its supplier, including invitations to participate and submit proposals, Terms of Reference (TOR), proposals and/or tender offers received by DANECO, DANECO's Special Bids and Awards Committee (SBAC) Evaluation Report; DANECO's Board Resolution confirming the said SBAC Evaluation Report, and the Notice of Award to SMCPG
Q and Series	Details of the interconnection facility of the Sual SMCPG Power Plant
R	DANECO's latest Distribution Development Plan (DDP) and Load Forecast Projections
S	Demand Side Management (DSM) Program that could be implemented by DANECO if approved by the Honorable Commission
T	SMCPG'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 SMCPG 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 DANECO
T-5	Potential Cost (absolute amounts and PhP/kWh) of Ancillary Services as and when SMCPG or DANECO 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 Department of Energy (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 DANECO 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-I”, and 1-2”

19. Rule 4 of the Honorable Commission’s Rules of Practice and Procedure provides that DANECO 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 (<i>Confidential</i>)
I, I-1 and I-2	Contracts for the Supply, Construction and Supervision for the Power Plant (<i>Confidential</i>)

21. **Annex "H"** contains the details of SMCPC'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)

² G.R. No. 172835, December 13, 2007

22. The interest of the consuming public is sufficiently protected by the review and evaluation of the rates under the PSC by the Honorable Commission, without the need to disclose the contents of **Annex "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 SMEC with parties it plans to contract with or who it is currently doing business with, will clearly be thwarted if it is compelled to disclose such information;
24. 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. DANECO and SMCP likewise, pray for the confidential treatment of **Annexes "I", "I-1", and "I-2"**, under the same premises above; and
25. Accordingly, DANECO 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 Davao del Norte Electric Cooperative, Incorporated (DANECO) 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 DANECO and SMCP, and authorizing DANECO to charge and collect the fees therein from its member-consumers.

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

The Commission issued an *Order* dated 06 September 2016 dismissing the *Application* without prejudice, for the Applicants' failure to submit a valid Verification and Certification against Forum Shopping as provided under the Commission's Rules of Practice and Procedure, the Rules of Court, and existing jurisprudence.

On 29 September 2016, the Applicants filed a *Motion for Reconsideration (On the Order dated 06th September 2016)* dated 28 September 2016 attaching therewith the Applicants' valid Verification and Certification of Non-Forum Shopping, and praying that the *Order* dismissing the Application be set aside.

Thereafter, the Commission issued an *Order* dated 21 December 2016 granting the Applicants' Motion for Reconsideration and setting aside the Order dated 06 September 2016. Likewise, the Commission imposed the penalty of Php 100,000.00 on Applicants pursuant to Resolution No. 3, Series of 2009 for their violation of Section 4, Rule 3 of the ERC's Rules of Practice and Procedure.

On 13 February 2017, DANECO and SMCP filed a *Manifestation and Compliance (On the Order dated 21st December 2016)* explaining their failure to attach a valid Verification and Certification Against Forum Shopping and attaching therewith a valid Verification and Certification Against Forum Shopping executed by DANECO's Officer-in-Charge, Engr. Maximo S. Roxas.

On 10 April 2017, SMCP filed a letter dated 07 April 2017, informing the Commission of the applicants' full compliance with the directives in the *Order* dated 21 December 2016, and attaching therewith an official receipt as proof that it has paid the penalty imposed upon the Applicants in the amount of PhP 100,000.00.

Now, therefore, finding the said *Application* to be sufficient in substance, with the required fees having been paid, the same is hereby set for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on **21 September 2017 at two o'clock in the afternoon (2:00 P.M.), at DANECO's Main Office, Km. 100, Montevista, Compostela Valley.**

Accordingly, DANECO 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 its 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 the consumers within the affected franchise area of the filing of the *Application*, its reasons therefor, and of the scheduled hearing thereon, 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 *Application* and its 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 the consumers within the affected franchise area of the filing of the *Application*, their reasons therefor, and of the scheduled hearing thereon;
- 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 *Application* and its attachments by all those making requests therefor, if any; and
- 6) Such other proof 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 the 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 therefor; 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.

DANECO and SMPCPC must also be prepared to make an expository presentation of the instant *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.

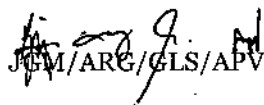
SO ORDERED.

Pasig City, 08 August 2017.

FOR AND BY AUTHORITY
OF THE COMMISSION:



ALFREDO J. NON
Officer in Charge of ERC

LS:  JEM/ARG/GLS/APV

COPY FURNISHED:

1. **Atty. Edmon B. Evangelista**
Counsel for Applicant DANECO
Suite 707, 7th Floor, OMM-CITRA Building,
San Miguel Avenue, Ortigas Center, Pasig City
2. **Atty. Jupiter M. Cabaguio and Atty. Avelino G. Cedo III**
Counsel for Applicant SMCPCC
23rd Floor San Miguel Properties Centre
No. 7 St. Francis Avenue,
Mandaluyong City, Metro Manila
3. **Davao del Norte Electric Cooperative, Inc. (DANECO)**
Km. 100, Motevista, Compostela Valley
4. **San Miguel Consolidated Power Corporation (SMCPCC)**
No. 40, San Miguel Avenue,
Mandaluyong City
5. **The Office of the Solicitor General**
234 Amorsolo Street, Legaspi Village, Makati City
6. **The Commission on Audit**
Commonwealth Avenue, Diliman, Quezon City
7. **The Senate Committee on Energy**
Senate of the Philippines
GSIS Building, Roxas Blvd., Pasay City
8. **The House Committee on Energy**
House of Representatives
Batasan Hills, Quezon City
9. **Office of the President of PCCI**
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
10. **Office of the Provincial Governor**
Province of Davao del Norte
11. **Office of the LGU Legislative Body**
Province of Davao del Norte
12. **Office of the City Mayor**
Tagum City, Davao del Norte
13. **Office of the LGU Legislative Body**
Tagum City, Davao del Norte
14. **Office of the City Mayor**
Island Garden City of Samal, Davao del Norte
15. **Office of the LGU Legislative Body**
Island Garden City of Samal, Davao del Norte
16. **Office of the Municipal Mayor**
Asuncion, Davao del Norte

17. **Office of the LGU Legislative Body**
Asuncion, Davao del Norte
18. **Office of the Municipal Mayor**
Kapalong, Davao del Norte
19. **Office of the LGU Legislative Body**
Kapalong, Davao del Norte
20. **Office of the Municipal Mayor**
New Corella, Davao del Norte
21. **Office of the LGU Legislative Body**
New Corella, Davao del Norte
22. **Office of the Municipal Mayor**
San Isidro, Davao del Norte
23. **Office of the LGU Legislative Body**
San Isidro, Davao del Norte
24. **Office of the Municipal Mayor**
Talaingod, Davao del Norte
25. **Office of the LGU Legislative Body**
Talaingod, Davao del Norte
26. **Office of the Provincial Governor**
Province of Compostela Valley
27. **Office of the LGU Legislative Body**
Province of Compostela Valley
28. **Office of the Municipal Mayor**
Compostela, Compostela Valley
29. **Office of the LGU Legislative Body**
Compostela, Compostela Valley
30. **Office of the Municipal Mayor**
Laak, Compostela Valley
31. **Office of the LGU Legislative Body**
Laak, Compostela Valley
32. **Office of the Municipal Mayor**
Mabini, Compostela Valley
33. **Office of the LGU Legislative Body**
Mabini, Compostela Valley
34. **Office of the Municipal Mayor**
Maco, Compostela Valley
35. **Office of the LGU Legislative Body**
Maco, Compostela Valley
36. **Office of the Municipal Mayor**
Maragusan, Compostela Valley

37. **Office of the LGU Legislative Body**
Maragusan, Compostela Valley
38. **Office of the Municipal Mayor**
Mawab, Compostela Valley
39. **Office of the LGU Legislative Body**
Mawab, Compostela Valley
40. **Office of the Municipal Mayor**
Monkayo, Compostela Valley
41. **Office of the LGU Legislative Body**
Monkayo, Compostela Valley
42. **Office of the Municipal Mayor**
Montevista, Compostela Valley
43. **Office of the LGU Legislative Body**
Montevista, Compostela Valley
44. **Office of the Municipal Mayor**
Nabunturan, Compostela Valley
45. **Office of the LGU Legislative Body**
Nabunturan, Compostela Valley
46. **Office of the Municipal Mayor**
New Bataan, Compostela Valley
47. **Office of the LGU Legislative Body**
New Bataan, Compostela Valley
48. **Office of the Municipal Mayor**
Pantukan, Compostela Valley
49. **Office of the LGU Legislative Body**
Pantukan, Compostela Valley
50. **Regulatory Operations Service (ROS)**
17th Floor, Energy Regulatory Commission,
Pacific Center Building, San Miguel Avenue,
Ortigas Center, Pasig City