

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



**IN THE MATTER OF THE
PETITION FOR DISPUTE
RESOLUTION DUE TO
REPEATED NON-COMPLIANCE
WITH PSA PROVISIONS ON
SCHEDULED NET EXPECTED
ENERGY (NEE) AND ORDER OF
DISPATCH**

**DMCI POWER CORPORATION
(DPC),**

Petitioner

-versus-

ERC CASE NO. 2020-003 DR

**PALAWAN
COOPERATIVE,
(PALECO),**

**ELECTRIC
INC.**

Respondent.

Promulgated:
September 30, 2020

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ORDER

On 18 June 2020, DMCI Power Corporation (DPC) filed a *Petition* for dispute resolution due to repeated non-compliance with Power Supply Agreement (PSA) provisions on scheduled net expected energy (NEE) and order of dispatch against Palawan Electric Cooperative, Inc. (PALECO).

The pertinent allegations of the said *Petition* are hereunder quoted as follows:

I. THE PARTIES

1. Petitioner DPC is a corporation duly organized and existing under Philippine laws, with principal office at 3F DMCI Plaza Building, 2281 Don Chino Roces Avenue Extension, Makati City. It is established to energize the small and remote islands

in the country that are not connected to the main power grid. Currently, DPC is one of the existing Independent Power Providers (“IPP”) in Palawan, within the franchise area of PALECO;

2. Respondent Palawan Electric Cooperative, Inc. (“PALECO”) is an electric cooperative duly organized under Philippine laws and duly registered with the Cooperative Development Authority (“CDA”) and National Electrification Administration (“NEA”), with principal office address at Km 7, North National Highway, Puerto Princesa City, Palawan. It was granted a franchise to operate and supply electric power services to its member-consumers in its area coverage, namely, Puerto Princesa City and the Municipalities of Narra, Aborlan, Quezon, Brooke’s Point, Balabac, Rizal, Roxas, Taytay, El Nido, Araceli, Dumarán, Cuyo, Magsaysay, Bataraza, San Vicente, Cagayancillo, Agutaya and Española, all in the Province of Palawan. Likewise, PALECO is the System Operator of the Palawan Main Grid, a function it assumed from the National Power Corporation (“NPC”) in accordance with the Philippine Small Grid Guidelines;
3. Copies of pleadings and motions filed, as well as orders and other issuances by the Honorable Commission may be served on Petitioner DPC through the undersigned Firm at its address indicated below, and on Respondent PALECO at its address as herein provided;

II. NATURE OF THE CASE

4. This Petition is filed pursuant to *Chapter IV, Section 43 (u) of Republic Act No. 9136* or the *Electric Power Industry Reform Act of 2001* (“EPIRA”), which provides that:

*“(u) **The ERC shall have the original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties imposed by the ERC in the exercise of the above mentioned powers, functions and responsibilities and over all cases involving disputes between and among participants or players in the energy sector.**”*

(Emphasis supplied)

III. STATEMENT OF FACTS

5. On 25 July 2012, DPC and PALECO executed a fifteen (15) - year Power Supply Agreement (“PSA”) for DPC’s supply of 25 MW Guaranteed Dependable Capacity (“GDC”). The PSA was provisionally approved by the Honorable Commission in its *Order* dated 15 April 2013¹ in *ERC Case No. 2013-022 RC*, making DPC the third power provider in the franchise area of PALECO, next only to Palawan Power Generation, Inc. (“PPGI”) for 12 MW and Delta P, Inc. (“Delta P”) for 12 MW.

¹ Subsequently, in an *Order* dated 11 April 2014, the provisional authority was extended until revoked or made permanent by the Honorable Commission;

A copy of the PSA is herewith attached as **Annex “A”** and made an integral part hereof;

6. The provisions of the PSA relevant to DPC’s supply of power to PALECO are as follows:

6.1 DPC shall supply a GDC of 25 MW for Active Power requirements, Frequency Regulation, Contingency Reserve and Voltage Control;

6.2 The Net Expected Energy (“NEE”) (kWh) for each Contract Year² are the following:

Contract Year 1	10,624,215
Contract Year 2	83,212,778
Contract Year 3	95,455,025
Contract Year 4	107,348,337
Contract Year 5	119,230,117
Contract Year 6	133,899,927
Contract Year 7	175,000,000
Contract Year 8	180,000,000
Contract Year 9	180,000,000
Contract Year 10	180,000,000
Contract Year 11	180,000,000
Contract Year 12	180,000,000
Contract Year 13	180,000,000
Contract Year 14	180,000,000
Contract Year 15	180,000,000
Contract Year 16	120,000,000

6.3 The Dispatch provisions of the PSA state: xxx

Section 2.3 (a)

Nominate the dispatch of the Power Station in accordance with the Dispatch Protocols in Schedule E of this Agreement. xx

Section 4.6.4 Nominated Dispatch.

For any power supply requirements by OFFTAKER, OFFTAKER shall nominate the dispatch of the Power Station up to the Guaranteed Dependable Capacity according to the dispatch protocol, subject only to any technical or transmission constraints. xxx

Section 4.8 Dispatch.

OFFTAKER shall nominate the dispatch of the Power Station and pay the OFFTAKER Fee in accordance with Section 6.1 (Total Fees and Charges) of this Agreement, provided that: (i) the Parties shall allocate the annual Net Expected Energy provided in Schedule E, Annex 1 into a monthly Net Expected Energy after taking into account the monthly seasonality of the demand for electricity; and (ii) OFFTAKER is not required to take

² Schedule E – Annex 1 of the PSA;

or pay the Net Expected Energy and shall pay only for actual energy delivered, **except** on the following instances and only for the purposes specified below:

X X X X

(b) In case of an OFFTAKER default in Section 12.1.2 (Default and Termination; Offtaker Default) of this Agreement, OFFTAKER shall make payments in accordance with Section 12.2.2 (Default and Termination; Effects of Default; Obligation not Suspended) and the formula provided in Schedule G, Item 10 of this Agreement.

Section 12.1.2 OFFTAKER Default.

The following shall constitute an OFFTAKER default:

- a. Failure to nominate the Power Station in accordance with the Dispatch Protocols in Schedule E of this Agreement.

X X X X

- g. Nominating for its power supply requirements to generating units without **satisfying the order of priority of NPPs**, except when due to technical or transmission constraints. (Emphasis supplied).

Section 12.2.2 (b)

(b) In the event of an OFFTAKER default under Section 12.1.2 (Offtaker Default) of this Agreement which results in an offtake lower than the NEE, **SUPPLIER shall be entitled to receive payment of the Total Fee** computed in accordance with Schedule G, Item 10, provided that, the Capacity Recovery Fee and the Operations & Maintenance Fee of the Total Fee shall be computed based on the Net Expected Energy while the Energy Fee component shall be based on actual energy delivered, if any. **OFFTAKER shall also pay SUPPLIER a penalty** equivalent to the balance between the Subsidy Fee calculated based on actual energy delivered (to be paid by NPC-SPUG) and the Subsidy Fee calculated based on Net Expected Energy, as provided in Schedule G, Item 10 of this Agreement

7. Notwithstanding the foregoing, on several occasions during the implementation of the PSA and up to 25 December 2019, PALECO dispatched DPC below its 25 MW GDC resulting in the latter's failure to meet each Contract Years' NEE. DPC has sent notices to PALECO urging it to respect the NEE and observe proper Dispatch Protocol. Several meetings between the Parties were also held to discuss and address the issue of nomination and lower dispatch of DPC's units;

8. On 24 July 2015, PALECO published an *Invitation to Bid for Comparative Proposal for Power Supply* in Palawan Main Grid after Delta P offered a new 20 MW Bunker Plant. PALECO conducted a Swiss Challenge for the supply of an additional 20 MW GDC;
9. On 24 August 2015, DPC filed a "*Petition for Dispute Resolution to Cease and Desist with Prayer for Status Quo Ante Order*"³ before the ERC on the ground that PALECO's conduct of the Swiss Challenge proceedings for the additional 20 MW GDC for a period of fifteen (15) years has a clear negative impact on DPC's existing PSA with PALECO. In fact, such is violative of the PSA's provisions on dispatch and additional power supply capacity;
 - 9.1 During the Pre-trial Conference, DPC expressed its willingness to withdraw its Petition on the condition that PALECO will abide by its contractual obligations in the PSA. Consequently, PALECO issued *Resolution No. 260, Series of 2015* entitled "*A Resolution assuring DMCI Power Corporation that PALECO will abide by its contractual obligations as provided in their existing Power Supply Agreement and that the former shall not displace the latter in the dispatch of power purchased from various suppliers.*" The Resolution stated that:
 - a) PALECO shall faithfully abide by its obligations under its original PSA with DPC more particularly on patronizing the guaranteed 25MW of power to be supplied by the latter; and
 - b) PALECO guarantees it shall maintain DPC's original position in the order of nomination of power dispatch should additional power be contracted by PALECO with other supplier.

A copy of *Resolution No. 260, Series of 2015* is herewith attached and made an integral part hereof as **Annex "B"**.

- 9.2 On the basis of PALECO's commitments in its *Resolution No. 260, Series of 2015*, DPC filed a "*Manifestation with Motion*" to terminate the *Petition for Dispute Resolution*. Consequently, the PSA of Delta P (New) for 20 MW was filed with the ERC then provisionally approved in May 2017. It commenced operations in the same year;
10. With the provisional approval of Delta P (New) PSA, the New Order of Priority of Power Dispatch among IPPs in Palawan will be as follows:

³ ERC Case No. 2015-052 MC;

TABLE 1. Order of Priority of PALECO’s Suppliers

IPPs	Order of Dispatch	Contract Term	Capacity/NEE	Rate* (PhP/kWh)
PPGI-ESA-1	Priority Dispatch (plant capacity as must run)	15 years (Feb 2010 to Feb 2025)	74,000,000kWh (Energy Allocation under PSA)	9.896
PPGI-ESA-2	First Priority (on Peaking and Reserve in case of scheduled downtime of other NPPs)	15 years (Jan 2009 to Jan 2024)		9.896
Delta P (Old)	Secondary Power Supply Source	10 years (3 April 2009 to 3 April 2019); extended for 1 year	55,000,000kWh (Energy Allocation under PSA)	13.1385
DPC	Third Power Supply Source	15 years (from COD)	Various NEE per Year	11.5556
Delta P (New)	Merit Order	15 years (from COD)	No NEE or MEOT	23.1982

* Rates as of 2019, exclusive of VAT

11. However, despite PALECO’s undertaking in its *Resolution No. 260, Series of 2015*, it failed and continues to fail to observe DPC’s NEE. In 2017, DPC was under-dispatched by 21,857,791.40 kWh or equivalent to 18% of the NEE⁴, while Delta P was over-dispatched by more than the said quantity at 24,517,399.41 kWh⁵ or equivalent to 45% of its energy allocation under its PSA;
12. Furthermore, PALECO dispatched Delta P (New) even if DPC’s contracted capacity of 25 MW was not yet fully exhausted and that the power rate of Delta P (New) is more expensive than DPC’s. From 25 April 2017 to 25 December 2017, PALECO dispatched Delta P (New) for the delivery of 20,336,416.51 kWh energy while DPC was under-dispatched by 12,415,919.47 kWh for the same period, even though DPC has a lower generation rate as shown in Table 1 above. This is in clear violation of the established dispatch priority and merit order;
13. The following tables show PALECO’s actual dispatch of DPC (Table 2) and of its other suppliers (Tables 3 and 4) from 2017 up to 2019⁶ using available data based on PALECO’s monthly Certifications where energy dispatched from Delta P (New) and (Old) were combined:

⁴ See Table 2 below based on hereto attached **Annex “C”**;

⁵ See Table 3 below based on hereto attached **Annex “C”**. Actual dispatch of Delta P is based on PALECO Certifications providing information on combined dispatch of Delta P (New) and (Old);

⁶ Based on **Annexes “C” to “C-2”** hereof;

TABLE 2: PALECO’s Dispatch of DPC (Supplier 3) from 2017 up to 25 December 2019 based on PALECO’s Certifications per Billing Cut-Off*

YEAR	DPC’s NET EXPECTED ENERGY (NEE) in kWh	AS DISPATCHED BY PALECO (kWh)	ENERGY UNDER-DISPATCH (kWh)	% OF UNDER-DISPATCH
2017	119,230,117.00	97,372,325.60	21,857,791.40	18%
2018	133,899,927.00	130,385,241.00	3,514,686.00	3%
2019	175,000,000.00	148,398,216.00	26,601,784.00	15%
TOTAL	428,130,044.00		51,974,261.40	12%

* Every 25th of the Month

TABLE 3: PALECO’s Dispatch of DELTA-P Old (as Supplier 2) and DELTA-P (New) from 2017 up to 25 December 2019 based on PALECO’s Certifications per Billing Cut-Off

YEAR	SUPPLIER 2’s CONTRACTED ENERGY ALLOCATION UNDER PSA (kWh)	AS DISPATCHED BY PALECO (kWh)	ENERGY OVER-DISPATCH (kWh)	% OF OVER-DISPATCH
2017	55,000,000	79,517,399.41	24,517,399.41	45%
2018	55,000,000	81,825,665.00	26,825,665.00	49%
2019	55,000,000	89,281,044.00	34,281,044.00	62%

TABLE 4: PALECO’s Dispatch of PPGI (Supplier 1) from 2017 up to 25 December 2019 based on PALECO’s Certifications per Billing Cut-Off

YEAR	SUPPLIER 1’s CONTRACTED ENERGY ALLOCATION UNDER PSA (kWh)	AS DISPATCHED BY PALECO (kWh)	ENERGY OVER-DISPATCH (kWh)	% OF OVER-DISPATCH
2017	74,000,000	79,871,436.53	5,871,436.53	8%
2018	74,000,000	74,955,196.78	955,196.78	1%
2019	74,000,000	74,368,646.31	368,646.31	0.5%

14. Details of the monthly energy dispatched by PALECO from each supplier vis-à-vis their respective net expected or contracted energies in 2017, 2018 and 2019 are herewith attached as **Annexes “C” to “C-2”**, respectively;
15. It was also in 2017 that the Senate Committee on Energy conducted an inquiry to determine the causes of frequent power outages or interruptions in the Province of Palawan. As an upshot, PALECO issued *Resolution No. 174, Series of 2017*, stating in part as follows:

“WHEREAS, in line with the Hearings in the Senate of the Philippines led by Honorable Sherwin T. Gatchalian regarding power outages in the Province of Palawan, the Senate Committee on Energy, the Independent Power Providers (IPPs) including the National Electrification Administration (NEA) and the Energy Regulation Commission (ERC) have agreed for rearranging the

power dispatch order in the franchise area of Palawan Electric Cooperative (PALECO); xxxx

WHEREAS, the PALECO-Technical Services Department has submitted a revised power generation dispatch order, based on the instruction during the September 25, 2017 Senate Hearing; xxxx

RESOLVED, AS IT IS HEREBY RESOLVED, to approve the revised power generation dispatch order as hereto attached, effective immediately.”

- 15.1 The gist of the Revised Power Generation Dispatch Order mentioned in the aforesaid *Resolution No. 174, Series of 2017* is that “DMCI will be displaced as third priority and reduced to a maximum of 50% of the Guaranteed Dependable Capacity (13MW) from its Bunker Power Plant in Aborlan, Quezon and Brooke’s Point Diesel Power Plants (*sic*);
- 15.2 A copy of *Resolution No. 174, Series of 2017* is herewith attached and made an integral part hereof as **Annex “D”**;
16. **Notably, DPC did not agree to the foregoing revision of the power generation dispatch since it unilaterally amends contractual provisions of the PSA without DPC’s consent and approval;**
 - 16.1 In a letter to PALECO dated 18 January 2018, herewith attached as **Annex “E”**, DPC reiterated PALECO’s repeated failure to observe the NEE and order of dispatch. DPC took exception to PALECO’s *Resolution No. 174, Series of 2017*, which effectively amends PALECO’s contractual obligations without DPC’s consent. DPC cited PSA provisions on PALECO’s obligation to respect DPC’s GDC and position in the dispatch order. This also served as a reminder of DPC’s entitlement to collect penalty from PALECO in case of violation;
 - 16.2 To resolve the issues raised by DPC in the same letter, it moved to convene a Steering Committee for which DPC appointed its representatives
17. However, PALECO remained impervious to DPC’s demands to resolve its dispatch issues. It continued to under-dispatch DPC in 2018, prompting DPC to send several notices of violation, copies are herewith attached as **Annexes “F” to “F-3”** and made integral parts hereof;
18. The Steering Committee was finally constituted. During its 02 August 2018 meeting, DPC computed PALECO’s penalties for under-generation to be around PhP37M based on GDC or declared capacity (from October 2017 and up to 30 April 2018), while PALECO, acknowledging under-dispatch for the same period, computed a lesser penalty of around PhP146,000.00 based on nomination;

- 18.1 On the PhP37M under-dispatch penalty claimed by DPC, PALECO counter-proposed that it be allowed instead to reach the NEE for 2018 to cover the under-dispatch. PALECO committed to prepare the simulations for the catch-up plan;
- 18.2 The minutes of the Steering Committee Meeting is herewith attached as Annex “G” and forms an integral part hereof
19. Notwithstanding PALECO’s counter-proposal to cover the under-dispatch in the succeeding NEEs, DPC was still dispatched below its NEE despite available capacity and PALECO’s need for power supply. DPC sent another notice of violation to PALECO dated 15 August 2019 for under-dispatch from 25 December 2018 to 25 July 2019, a copy is herewith attached as Annex “H” and forms an integral part hereof;
20. At the end of 2019, DPC was under-dispatched by 26,601,784 kWh or 15% of its 2019 NEE, while Delta P has already been dispatched up to 62%. Considering that PALECO dispatched Delta P (Old) over and above its contracted energy and Delta P (New) ahead of DPC even if the latter’s contracted capacity of 25 MW was not yet fully exhausted, PALECO has given undue benefit to Delta P at the expense of DPC;
21. The following table shows PALECO’s dispatch of Delta P (New) for the relevant period:

TABLE 5: PALECO Dispatch of Delta P (New)

PERIOD COVERED	ENERGY DISPATCHED (kWh)
2017 (Oct to Dec)	5,864,805 ⁷
2018	18,458,988 ⁸
2019	24,372,538

22. For PALECO’s repeated non-compliance with PSA provisions on scheduled NEE and order of dispatch from 2017 to 2019, DPC most respectfully files the present *Petition* to recover rightful penalty charges amounting to **PhP162,349,056.23** computed using the formula under the PSA, as well as other equitable reliefs.

⁷ Dispatch is from October 6 to December 2017 based on PALECO Certifications;

⁸ For 2018 and 2019, energy dispatched from Delta P (New) is based on data gathered by DPC, subject to proof during trial, since PALECO Certifications during these periods no longer provided separate data on dispatch from Delta P (New) and (Old). Instead, PALECO Certifications indicated that dispatch is from “Delta P Net”, combining dispatch from New and Old;

IV. ISSUES

A.

WHETHER PALECO'S ACTS OF UNDER-DISPATCHING DPC'S AVAILABLE ENERGY CONSTITUTE A VIOLATION OF PSA PROVISIONS ON NEE AND DISPATCH PROTOCOL.

B.

WHETHER DPC MAY RECOVER COSTS AND PENALTIES UNDER THE PSA AND BE GRANTED OTHER EQUITABLE RELIEFS IN THE EVENT THE ERC FINDS THAT PALECO INDEED BREACHED THE PSA

V. ARGUMENTS/DISCUSSION

A. **WHETHER PALECO'S ACTS OF UNDER-DISPATCHING DPC'S AVAILABLE ENERGY CONSTITUTE VIOLATION OF PSA PROVISIONS ON NEE AND DISPATCH PROTOCOL.**

I. The NEE is part of the PSA, a perfected contract, thus, binding and obligatory to PALECO and DPC. PALECO violated both the PSA when it under-dispatched DPC, preventing DPC to reach the NEE from 2017 to 2019 and the Dispatch Protocol agreed upon by the Parties.

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23. Schedule E (Annex 1) providing for the NEE for each Contract Year forms an integral part of the PSA entered into by the parties and approved by the Honorable Commission. The mutuality and obligatory character of contracts⁹ require the

⁹ Mutuality of Contracts

Article 1308. The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them. (New Civil Code)

Obligatory Force of Contracts

Article 1159. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.

Parties to respect and faithfully comply with the terms of the PSA. Any violation of the terms gives the injured party a right of relief;

24. The obligatory force of Schedule E is even explicitly recognized under the PSA, which provides that non-compliance thereof constitutes as an OFFTAKER default under Section 12.1.2, thus –

“OFFTAKER Default. The following shall constitute an OFFTAKER default:

- a. **Failure to dispatch the Power Station in accordance with the Dispatch Protocols in Schedule E of this Agreement;***

x x x x

- g. Nominating for its power supply requirements to generating units **without satisfying the order of priority of NPPs**, except when due to technical or transmission constraints;”* (Emphasis supplied.)

25. Further, it is significant to point out that Schedule E is the Annual Forecasted Energy Requirement of PALECO. This induced DPC to participate in the bidding and make significant investments in Palawan. In fact, DPC’s TCGR, which it submitted with its bid proposal, was computed based on Schedule E;
26. It bears stressing that Schedule E forms part of the offer of PALECO during the Competitive Selection Process (CSP) in 2012, as it was contained in the Terms of Reference and Bid Bulletin No. 10. DPC’s acceptance of Schedule E, based on PALECO’s offer and representations, created a valid and binding obligation between the Parties;
27. In this connection, of special interest is PALECO’s Bid Bulletin No. 10, which includes PALECO’s Expected Demand and Energy, attached and made an integral part hereof as **Annex “I”**, which explains how DPC’s Net Expected Energy was derived vis-à-vis the power supply contracts of the other two (2) suppliers, PPGI and Delta P (Old). This is best illustrated by the following equation:

Art. 1315. Contracts are perfected by mere consent, and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all consequences which, according to their nature, may be in keeping with good faith, usage and law.

Art. 1356. Contracts shall be obligatory, in whatever form they may have been entered into, provided all the essential requisites for their validity are present. However, when the law requires that a contract be proved in some form in order that it may be valid or enforceable, or that a contract be proved in a certain way, that requirement is absolute and indispensable. In such cases, the right of the parties stated in the following article cannot be exercised. (New Civil Code);

(PALECO's Total Energy Demand) minus (Contracted Energy from 2 NPPs [PPGI and Delta P, Old]) equals (Net Expected Energy [NEE] for 3rd NPP [DPC])

28. Stated otherwise, DPC's share on PALECO's Total Energy Demand should be whatever is left after satisfying the power supply contracts of the two (2) other NPPs, PPGI and Delta P;
29. Bid Bulletin No. 10, in effect establishes an Order of Priority in the Dispatch and a sound system of allocation of PALECO's energy demand among the NPPs, on the basis of which DPC accepted PALECO's offer and formulated its winning bid;
30. It is regrettable that during the implementation of the PSA, PALECO refuses to be true to its representations, to the damage and prejudice of DPC;
31. While it is true that the NEE under Schedule E bears the notation "indicative," it does not make it any less obligatory. As will be discussed at length below, the nomination and actual dispatch must always conform to Schedule E, Section 7.3.1, which requires PALECO's nominations to be consistent with its contractual obligations and the NEE;¹⁰
32. PALECO's failure, without legal reason, to comply with PSA obligations constitutes a breach, which is the basis for the imposition of penalties stated in Schedule G of the PSA;¹¹
33. While Schedule E states that the NEE figures are "indicative", considering that the NEE are mere projections of the future requirements of PALECO, deviations therefrom must be **tolerable** and **reasonable**. Deviations to be tolerable and reasonable, should only be based on *seasonality of demand* (see Schedule E - Annex 1) and certainly NOT on *active* violation of the Order of Priority and over dispatch of other IPPs, as in this case;
34. PALECO's chronic inability to meet DPC's NEE under Schedule E of the PSA is not really because of the lack of demand but because of two (2) factors: *first*, the significant **over-dispatch** of PALECO's Supplier 2, Delta P (Old); and *second*, the non-observance by PALECO of the **order of priority** in dispatching Delta P (New) despite available DPC capacity;
35. It can readily be seen in Table 3 above that Delta P has been enjoying a remarkably higher dispatch, way above its annual contracted energy under its contract. Evidently, this arrangement effectively resulted in the displacement of DPC, in violation of its own PSA;

¹⁰ "The OFFTAKER shall prepare a Nomination Table, showing the capacity of Generating Units arranged in an ordered list of priority to meet the hourly demand for active power in a manner consistent with contractual obligations and the Net Expected Energy (NEE)."

¹¹ *Talampas vs. Moldex Realty*, G.R. No. 170134, June 17, 2015;

36. Compounding matters is the entry of Delta P (New) as the *fourth* power provider in Palawan in 2015. Records will bear out that Delta P (New) is being dispatched without first satisfying DPC's contracted energy, even though DPC has available capacity to satisfy PALECO's demand;
37. The concept of an "*order of priority*" in the supply of power is plain and simple. Supply contracts of power providers which placed higher in the hierarchy of dispatch must be satisfied ahead of those below them in the order;
38. Indeed, the entry of Delta P (New) as another IPP in Palawan prejudiced DPC because DPC's scheduled NEE was not met. Instead, PALECO dispatched power from Delta P (New) without first meeting the NEE of the third power provider, DPC. PALECO effectively disregarded the "*order of priority*" in the dispatch in clear violation of DPC's PSA;
39. It is equally significant to point out that the actuations of PALECO is grossly inconsistent with its own *Board Resolution No. 260, Series of 2015*¹² wherein PALECO committed to:
- "x x x **faithfully abide** by its obligations under its original PSA with DPC more particularly on patronizing the guaranteed 25MW of power to be supplied by the latter x x x x and **guarantees that it shall maintain DPC's original position in the original order of nomination** of power dispatch should additional power be contracted by PALECO with other suppliers x x x x."* (Emphasis supplied.)
40. Moreover, the dispatch of Delta P (New) was without consideration of the fact that its higher tariff rate at PhP23.1982/kWh Ex-VAT is unfavorable to consumers as it is higher than DPC's composite tariff rate at only PhP11.5556/kWh Ex-VAT;
41. It should be noted that aside from being a Distribution Utility ("DU"), PALECO is at the same time the System Operator ("SO") in the Palawan Main Grid. As such, it has full authority and control on matters of nomination and dispatch;
42. As SO, PALECO is bound to comply with *Resolution No. 15, Series of 2013* ("*A Resolution Adopting the Philippine Small Grid Guidelines*"), mandating in Section 7.2.3.5 thereof that the System Operator shall take into account the following factors in re-dispatching Generating Units and in satisfying needs for imbalance Energy in real time:
- a) **Power Agreements between Parties;**
 - b) The Dispatch Schedule;
 - c) The demand requirements of the Users x x x

¹² See Annex "B";

43. PALECO's dispatching problem has been recognized by the Department of Energy ("DOE") in its letter dated 30 September 2019:

"Secondly, the issues raised by DMPC (sic) are indications of the limited capability of PALECO as a system operator. PALECO must have the competence to analyze the issues on dispatch and eventually, to formulate a dispatch order and procedure that will result in the complementary supply arrangement, rather than the competition, among the power plants. Such order and procedure must be developed by PALECO in consultation with all the affected stakeholders, especially the NPPs." (Emphasis supplied.)

A copy of DOE letter dated 30 September 2019 is herewith attached as Annex "J" and made an integral part hereof;

44. Worth mentioning also is the Steering Committee formed in 2018 for purposes of resolving the matter of under-dispatch of DPC. PALECO admitted the under-dispatch of DPC and committed to provide a catch-up plan, in lieu of penalties, to carry over the un-dispatched energy from the previous year to 2018. However, nothing came out of that commitment as PALECO continued to breach the dispatch provisions of the PSA;
45. Despite PALECO's assurances and commitments, as well as DPC's compliance in making available the 25 MW GDC under the PSA, the fact of under-dispatch persists up to the present;
46. Verily, PALECO's over-dispatch of the other IPP and disregard of the order of priority in the dispatch transgress the following provisions of the PSA –

Section 2.3 (a)

Nominate the dispatch of the Power Station in accordance with the Dispatch Protocols in Schedule E of this Agreement.

Section 4.6.4

Nominated Dispatch. For any power supply requirements by OFFTAKER, OFFTAKER shall nominate the dispatch of the Power Station up to the Guaranteed Dependable Capacity according to the dispatch protocol, subject only to any technical or transmission constraints.

Section 12.1.2

OFFTAKER Default. The following shall constitute an OFFTAKER default:

a. **Failure to dispatch the Power Station in accordance with the Dispatch Protocols in Schedule E of this Agreement;**

x x x.

g. *Nominating for its power supply requirements to generating units **without satisfying the order of priority of NPPs**, except when due to technical or transmission constraints; (Emphasis supplied.)*

47. PALECO's unilateral intent to under-dispatch DPC became evident when it implemented two (2) Board Resolutions:

*First, PALECO Board Resolution No. 174, Series of 2017*¹³, which was an offshoot of a Senate inquiry into the frequent power interruptions in Palawan. On the basis of a supposed "instruction" from the Senate, PALECO revised its Power Generation Dispatch Order such that "DMCI will be displaced as third priority but at a maximum of 50% of the guaranteed dependable capacity (13MW) from its Bunker Power Plant in Aborlan, Quezon and Brooke's Point Diesel Power Plants (sic)."

Second, PALECO Board Resolution No. 275, Series of 2018, herewith attached and made an integral part hereof as **Annex "K"**, "A Resolution Temporarily Suspending the Net Expected Energy (NEE) in the 25MW Power Supply Agreement (PSA) Between PALECO and DMCI Power Corporation Effective Immediately" due to the absence of the coal plant stipulated in the PSA.

48. As for PALECO's *Board Resolution No. 174, Series of 2017*, PALECO's revision of the power generation dispatch order has the effect of *unilaterally* amending PSA provisions. In any case, its basis – the alleged instruction from the Senate – bears no merit since it is not within the power of the Senate to order one party to an agreement to simply unilaterally amend the terms thereof to the prejudice of the other party. The Senate hearing referred to in *Resolution No. 174* was conducted "in aid of legislation," and not for purposes of encouraging PALECO to violate its agreement with DPC. It cannot, therefore, legally use the supposed "instruction" from the Senate as an excuse to disregard its commitments under the PSA of DPC;

49. Under Article 6, Section 21 of the Philippine Constitution, in conducting inquiries in aid of legislation the rights of persons appearing in or affected by such inquiries **shall be respected**. Applying this principle, the Supreme Court ruled in *Neri vs. Senate* (G.R. No. 180643, September 4, 2008) that the power of

¹³ See **Annex "D"**;

the Senate to conduct inquiries in aid of legislations has limitations. To wit:

*“No matter how noble the intentions of respondent Committees are, **they cannot assume the power reposed upon our prosecutorial bodies and courts.** x x x. **Moreover, it bears stressing that no inquiry is an end in itself; it must be related to, and in furtherance of, a legitimate task of the Congress, i.e. legislation.** Investigations conducted solely to gather incriminatory evidence and ‘punish’ those investigated are indefensible. There is no Congressional power to expose for the sake of exposure.” (Emphasis supplied.)*

So must it be in the present case.

50. As for PALECO *Board Resolution No. 275, Series of 2018*, there is an evident **disconnect** between the subject of “suspending the Net Expected Energy (NEE)” and the predicate “absence of the coal plant.” We fail to discern the relation between the two;
 - 50.1. Be that as it may, DPC cannot be faulted for its inability to deliver the coal plant on time due to the stiff opposition of NGOs in Palawan. This is something beyond DPC’s control. It is important to note that the PSA enumerates PALECO’s responsibilities as Off-taker in Section 2.3, which includes providing assistance to DPC in securing necessary permits for the construction of the power plant;
 - 50.2. More importantly, DPC put up significant investments in bunker plant to fully comply with the 25MW GDC stipulated in the PSA, in the interim, while waiting for the issuance of the ECC for the coal plant. These additional investments are way beyond DPC’s commitment under the PSA;
 - 50.3. In effect, *Board Resolution No. 275, Series of 2018* penalized DPC for not delivering the coal plant (which is not its fault), notwithstanding that DPC is still compliant with its obligations under the PSA by investing in bunker plant to meet the required 25 MW GDC.
51. By implementing the foregoing resolutions, PALECO unilaterally amended the PSA without DPC’s consent. This act violates three (3) well-entrenched principles of law – (a) the right to due process; (b) the principle of inviolability of contracts; and (c) the principle of mutuality of contracts. For these reasons, the twin resolutions of PALECO are illegal and *void ab initio*;
52. PALECO’s breach of the PSA does not end there. In April 2019, the supply contract of Delta P (Old) expired and was extended for one (1) year on the pretext of an emergency procurement, under

the same terms and conditions, including its status as second (2nd) in the order of priority in dispatch;

53. With the expiration of the supply contract of Delta P (Old), DPC should have been elevated in its place as second in the hierarchy of dispatch, next to PPGI. More significantly, DPC has enough excess capacity and un-dispatched energy to cover the 12 MW left by the supply contract of Delta P (Old), and recover in the process from the previous under-dispatch;
54. Verily, the extension of the supply contract of Delta P (Old) is of doubtful validity. Thus, in the DOE letter dated 30 September 2019¹⁴, the DOE itself concluded that:

*“x x x. As an immediate concern, PALECO must clarify the extension of the electricity sales agreement of the old Delta-P power plant despite the alleged under-dispatch of the power plants of other NPPs. **Please note that PALECO did not inform the DOE on the said extension and the transaction is not consistent with governing principles of Department Circular No. DC2018-02-0003 and the rationalization of the subsidy of the Universal Charge for Missionary Electrification as contemplated in Department Circular No. DC2019-01-0001, which is a valid ground that can prompt the National Power Corporation (NPC) to make the necessary intervention with the Energy Regulation Commission.**”* (Emphasis supplied.)

B. WHETHER DPC MAY RECOVER COSTS AND PENALTIES UNDER THE PSA AND BE GRANTED OTHER EQUITABLE RELIEFS IN THE EVENT THE ERC FINDS THAT PALECO INDEED BREACHED THE PSA.

I. PALECO’s non-compliance with its contractual obligations to DPC entitled the latter to appropriate relief.

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55. The PSA is explicit. Section 12.2.2 of the PSA provides:

*“In the event of an OFFTAKER default under Section 12.1.2 (Offtaker Default) of this Agreement which results in an offtake lower than the NEE, **SUPPLIER shall be entitled to receive payment of the Total Fee computed in accordance with Schedule G, Item 10, provided that, the Capacity***

¹⁴ See Annex “J”;

*Recovery Fee and the Operations & Maintenance Fee of the Total Fee shall be computed based on the Net Expected Energy while the Energy Fee component shall be based on actual energy delivered, if any. **OFFTAKER shall also pay SUPPLIER a penalty** equivalent to the balance between the Subsidy Fee calculated based on actual energy delivered (to be paid by NPC-SPUG) and the Subsidy Fee calculated based on Net Expected Energy, as provided in Schedule G, Item 10 of this Agreement.”*
(Emphasis supplied.)

56. In *RCPI v. Verchez, et al.*, G.R. No. 164349, January 31, 2006, (citing *FGU Insurance Corporation v. G.P. Sarmiento Trucking Corporation*, 435 Phil. 333, 341-342 (2002), the Court held:

*“In culpa contractual x x x **the mere proof of the existence of the contract and the failure of its compliance justify, prima facie, a corresponding right of relief.** The law, recognizing the obligatory force of contracts, will not permit a party to be set free from liability for any kind of misperformance of the contractual undertaking or a contravention of the tenor thereof. **A breach upon the contract confers upon the injured party a valid cause for recovering that which may have been lost or suffered.** x x x”* (Emphasis supplied.)

57. In the present case, PALECO acknowledged during the Steering Committee meetings that they failed to comply with their contractual obligation and committed to remedy the situation. PALECO even independently came up with their own computation of what should have been their liability based on the PSA, thereby confirming the breach and DPC’s entitlement to relief. A copy of PALECO and DMCI Computation is herewith attached and made an integral part hereof as **Annex “L”**;
58. It is worthwhile to reiterate that the NEE formed part of the terms offered by PALECO as shown in its Bid Bulletin No. 10¹⁵, which induced DPC to make significant investments on the project. Thus, PALECO’s failure to meet the NEE is a violation of the PSA which resulted in substantial losses on the part of DPC;
59. Indeed, PALECO’s disregard of critical contractual obligations such as complying with the NEE has the effect of discouraging private investments in the NPC-SPUG areas. This is contrary to the policy behind the EPIRA, which seeks “to enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors”¹⁶;

¹⁵ See **Annex “I”** hereof;

¹⁶ Whereas Clause, EPIRA Law of 2001;

60. In addition to the penalties under the PSA, DPC is, likewise, entitled to exemplary damages under Article 2232 of the New Civil Code: “[i]n contracts and quasi-contracts, the Court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner”;
61. PALECO’s violation of its obligation to properly dispatch DPC was repetitive and done with impunity. For many years, PALECO has never sufficiently dispatched DPC to achieve the scheduled NEE. DPC has consistently called PALECO’s attention of their contractual obligation to reach the yearly NEE. DPC even reminded, through regular notices, the monthly NEE targets to ensure PALECO’s compliance;
62. It is regrettable that, notwithstanding the formation of the Steering Committee, PALECO appears to have simply gone through the motions without serious intention of honoring its commitments;
63. Prescinding from the foregoing, it is indubitable that DPC is entitled to recover from PALECO the following costs and penalties, computed based on Schedule G, Item 10 of the PSA¹⁷, as follows:

¹⁷ 10.0 Computation of Fees for Deemed Initial COD Scenario and upon OFFTAKER Default

(c) In the case of the OFFTAKER event of default, the OF_t will be calculated using Formula 10.4 below.

$$OF_t = (SAGR_t \times ED_t) + \left[\frac{((CRR_{COD} \times [0.3 \times (CPI_t / CPI_{COD}) + 0.7] + OMR_{COD} \times [0.3 \times (XR_t / XR_{COD}) + 0.4 \times (CPI_t / CPI_{COD}) + 0.3]) \times (NEE_t - ED_t))}{100} \right]$$

Where:

- OF_t = OFFTAKER Fee for Billing Month t
- $SAGR_t$ = Subsidized / Approved Generation Rate for Billing Month t as determined by Formula 8 in Schedule G
- CRR_{COD} = Capacity Recovery Rate at commencement date of Commercial Operations Period as calculated using Formula 2.1 above and expressed in PhP/kWh
- OMR_{COD} = Operations and Maintenance Rate at commencement date of Commercial Operations Period as calculated using Formula 4.1 above and expressed in PhP/kWh
- NEE_t = Net Expected Energy Billing Month t , and expressed in kWh
- XR_t = Average Foreign Denomination (e.g. US Dollars, Japanese Yen, Euro Dollars) to PhP exchange rate for Billing Month t as reported by the Bangko Sentral ng Pilipinas
- XR_{COD} = Average Foreign Denomination (e.g. US Dollars, Japanese Yen, Euro Dollars) to PhP exchange rate at commencement date of Commercial Operations Period and reported by the Bangko Sentral ng Pilipinas
- CPI_t = Monthly Consumer Price Index for the Philippines for All Income Households (All Items) as published by National Statistics Office (NSO) during or before Billing Month t
- CPI_{COD} = Monthly Consumer Price Index for the Philippines for All Income Households (All Items) as published by National Statistics Office (NSO) at the commencement date of Commercial Operations Period

TABLE 6: Costs and Penalties Payable to DPC Due to Off-taker Default

YEAR	BASED ON NEE OF DPC LESS DISPATCH	
	kWh	Amount, PhP (inclusive of VAT)
2017	21,857,791.40 ¹⁸	67,623,110.45 ¹⁹
2018	3,514,686.00 ²⁰	11,061,419.78 ²¹
2019	26,601,784.00 ²²	83,664,526.01 ²³
TOTAL	51,974,261.40	162,349,056.23

64. The basis and computation of the foregoing penalties are shown in herewith attached annexes, as follows:

ANNEX	DOCUMENT
“M”	Computation of Off-taker Default Fee for PALECO’s Under-Dispatch of DPC in 2017
“M-1”	Computation of Off-taker Default Fee for PALECO’s Under-Dispatch of DPC in 2018
“M-2”	Computation of Off-taker Default Fee for PALECO’s Under-Dispatch of DPC in 2019
“N”	Method of Computing Off-taker Default Fee, including Computation of CRR _{COB} and OMR _{COB} as components of the Off-taker Default Fee
“N-1”	Monthly CPI from January 2017 to December 2018 used in computing the Off-taker Default Fee
“N-2”	Monthly CPI from January 2019 to February 2020 used in computing the Off-taker Default Fee

C. The Honorable ERC, having the original and exclusive jurisdiction over all cases involving disputes between and among participants in the energy sector, has the authority to enjoin PALECO to consistently comply with provisions of the ERC-approved PSA on NEE and order of dispatch.

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ED_t = Energy Delivered by SUPPLIER during Billing Month t as determined by Section 5 of the PSA, the Dispatch Protocols and Schedule F.

¹⁸ See Annex “C” for the Difference between actual total energy dispatched and NEE of DPC for 2017;

¹⁹ See Annex “M” for computation of Off-taker Default Fee for 2017;

²⁰ See Annex “C-1” for the Difference between actual total energy dispatched and NEE of DPC for 2018;

²¹ See Annex “M-1” for computation of Off-taker Default Fee for 2018;

²² See Annex “C-2” for the Difference between actual total energy dispatched and NEE of DPC for 2019;

²³ See Annex “M-2” for computation of Off-taker Default Fee for 2019;

65. The Honorable Commission is a purely independent regulatory body performing the combined quasi-judicial, quasi-legislative and administrative functions in the electric industry.²⁴ *Section 43 of the EPIRA*, provides that:

“SEC. 43. Functions of the ERC - The ERC shall promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry. In appropriate cases, the ERC is authorized to issue cease and desist order after due notice and hearing. Towards this end, it shall be responsible for the following key functions in the restructured industry:

(u) The ERC shall have the original and exclusive jurisdiction..... over all cases involving disputes between and among participants or players in the energy sector;” (Emphasis supplied.)

66. Further, it bears stressing that under *Section 4 (o), Rule 3 of the EPIRA Implementing Rules and Regulations (EPIRA-IRR)*, the Honorable Commission shall also be “empowered to issue such other rules that are essential in the discharge of its functions as an independent quasi-judicial body”;
67. The Honorable Commission has the power and authority to perform any act/s in relation to the settlement of the issues presented before it, particularly involving disputes between independent power players, as in this case;
68. Here, it is apparent that the parties involved are participants in the electric power industry and the subject matter is the PSA of the parties, which has been provisionally approved by the Honorable Commission. It is just appropriate that the Honorable Commission take cognizance of all matters raised in the instant *Petition* and perform act/s as it may deem fit (*i.e.*, issue an order) to compel PALECO to consistently comply with its obligations to DPC under the PSA;
69. The express power of the Honorable Commission to adjudicate disputes between parties who are players in the energy sector necessarily includes the power to grant such orders and reliefs to the end of settling issues raised. Thus, the Honorable Commission is sufficiently clothed with powers to enjoin PALECO to comply with its obligations under the PSA, in line with the doctrine of necessary implication, a basic postulate that what is implied in a statute is as much a part of it as that which is expressed;
70. Every statute is understood, by implication, to contain all such provisions as may be necessary to effectuate its object and purpose, or to make effective rights, powers, privileges or jurisdiction which it grants, including all such collateral and

²⁴ Brief History of Energy Regulation Commission, <https://www.erc.gov.ph/ContentPage/13>.

subsidiary consequences as may be fairly and logically inferred from its terms²⁵;

71. In view of the foregoing, DPC humbly begs this Honorable Commission as an independent regulatory body for electric power industry, to enjoin PALECO to consistently perform its contractual obligations to DPC under the PSA that has been provisionally approved by the Honorable Commission, especially on the provisions of NEE and the order of priority dispatch.

PRAYER

WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Commission to:

- a) **ORDER** PALECO to pay DPC in the amount of **PhP162,349,056.23** representing Total Fee and Penalty due to PALECO's under-dispatch of DPC's available energy from 2017 to 2019; and
- b) **ISSUE** an Order to compel PALECO to strictly abide by its contractual obligations with DPC with respect to the agreed NEE and order of priority dispatch and to implement its *Resolution No. 260, Series of 2015*.

Other reliefs as may be just and equitable under the premises are likewise, most respectfully prayed for.

Finding the said *Petition* to be sufficient in substance with the required fees having been paid, the Commission hereby sets the same for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on **24 November 2020 (Tuesday) at two o'clock in the afternoon (2:00 P.M.)**, through a virtual hearing using the **Zoom Application** as the online platform for the conduct thereof pursuant to Resolution No. 07, Series of 2020²⁶ dated 23 July 2020.

Petitioner is hereby directed to: (1) cause the publication of the attached *Notice of Virtual Hearing* at its own expense, once in a newspaper of nationwide circulation, at least ten (10) days before the scheduled hearing; and (2) furnish with copies of this *Order* and the attached *Notice of Virtual 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

²⁵ Hacienda Luisita, Inc. vs Presidential Agrarian Reform Council (G.R. No.171101, July 54, 2011)

²⁶ A Resolution for the Transitory Implementation of Legal e-Processes Pending the Adoption of the Interim Guidelines Governing Electronic Application, Filings, and Virtual Hearings Before the Energy Regulatory Commission.

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

Moreover, pursuant to Section 6, Rule 5 of the ERC Rules of Practice and Procedure, PALECO is hereby directed to file its *Answer/Comment* on the *Petition* within fifteen (15) days from receipt of this *Order* via electronic mail (e-mail) at records@erc.gov.ph and records.erc.gov.ph@gmail.com, copy furnish the Legal Service through legal.erc.gov.ph@gmail.com.

Likewise, within five (5) calendar days prior to the date of the virtual hearing, DPC must submit to the Commission via e-mail at records@erc.gov.ph and records.erc.gov.ph@gmail.com, copy furnish the Legal Service through legal.erc.gov.ph@gmail.com, the scanned copies of its written compliance with the aforementioned jurisdictional requirements attaching therewith, methodically arranged and duly marked the following: (1) the affidavit of the Editor or Business Manager of the newspaper where the *Notice of Virtual Hearing* was published, together with the complete issue of the said newspaper; and (2) the evidence of receipt of copies of this *Order* and the attached *Notice of Virtual Hearing* by the OSG, COA, and the Committees on Energy of both Houses of Congress.

DPC and PALECO are also required to submit via e-mail at records@erc.gov.ph and records.erc.gov.ph@gmail.com, copy furnish the Legal Service through legal.erc.gov.ph@gmail.com, at least five (5) calendar days before the date of the scheduled virtual 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, which should also be attached to the Pre-trial Brief; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-trial Brief.

DPC must ensure that all the documents or exhibits proposed to be presented have already been duly submitted to the Commission at

least five (5) calendar days before the date of the scheduled initial virtual hearing and Pre-trial Conference pursuant to the preceding paragraph.

Failure of DPC 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.

DPC must also be prepared to make an expository presentation of the instant *Petition*, aided by whatever communication medium that it 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, the nature of the *Petition* with relevant information and pertinent details substantiating the reasons and justifications being cited in support thereof.

DPC is hereby directed to file a copy of its Expository Presentation via e-mail at records@erc.gov.ph and records.erc.gov.ph@gmail.com, copy furnish the Legal Service through legal.erc.gov.ph@gmail.com, at least five (5) calendar days prior to the scheduled virtual hearing. DPC shall also be required, upon the request of any stakeholder, to provide an advance copy of its expository presentation, at least five (5) calendar days prior to the scheduled virtual hearing.

Any interested stakeholder may submit its comments and/or clarifications at least one (1) calendar day prior to the scheduled virtual hearing, via e-mail at records@erc.gov.ph and records.erc.gov.ph@gmail.com, copy furnish the Legal Service through legal.erc.gov.ph@gmail.com. The Commission shall give priority to the stakeholders who have duly submitted their respective comments and/or clarifications, to discuss the same and propound questions during the course of the expository presentation.

DPC is hereby directed to submit, either through personal service, registered or ordinary mail/private courier, one (1) set of the original or certified true hard/printed copy/ies of its Jurisdictional Compliance, Expository Presentation, Pre-trial Brief, and Judicial Affidavit/s of witness/es, within five (5) working days from the date that the same were electronically submitted, as reflected in the acknowledgment receipt e-mail sent by the Commission. Similarly, PALECO in filing its Answer/Comment, and all interested parties who filed their Petition for Intervention or Opposition are required to submit the hard/printed copy thereof within the same period through any of the available modes of service.

Finally, DPC and PALECO, including its authorized representative/s and witness/es, are hereby directed to provide the Commission, through legal.virtualhearings.erc.gov.ph@gmail.com, with their respective e-mail addresses upon receipt of this *Order*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearing.

SO ORDERED.

Pasig City, 16 September 2020.

FOR AND BY AUTHORITY
OF THE COMMISSION:


AGNES VST DEVANADERA
Chairperson and CEO


LS: MFD/ARG/MCCG

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