

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City



**IN THE MATTER OF THE
JOINT APPLICATION FOR
THE APPROVAL OF THE
ELECTRIC POWER
PURCHASE AGREEMENT
ENTERED INTO BY AND
BETWEEN LA UNION
ELECTRIC COMPANY, INC.
AND MASINLOC POWER
PARTNERS CO. LTD., WITH
MOTION FOR THE
ISSUANCE OF A
PROVISIONAL AUTHORITY
OR INTERIM RELIEF AND
CONFIDENTIAL
TREATMENT OF
INFORMATION**

ERC CASE NO. 2021-048 RC

**LA UNION ELECTRIC
COMPANY, INC. (LUECO)
AND MASINLOC POWER
PARTNERS CO. LTD.
(MPPCL),**

Promulgated:
July 16, 2021

Applicants.

X-----X

ORDER

On 07 July 2021, La Union Electric Company Inc. (LUECO) and Masinloc Power Partners Co. Ltd. (MPPCL) filed a *Joint Application* dated 21 June 2021, seeking the Commission's approval of their Electric Power Purchase Agreement (EPPA), with motion for the issuance of a provisional authority or interim relief and confidential treatment of information.

The pertinent allegations of the *Joint Application* are hereunder quoted as follows:

1. LUECO is a private electric distribution utility duly organized and existing under the laws of the Republic of the Philippines,

with principal office address at LUECO Building, Quezon Avenue, San Fernando City, La Union. It may be served with notices and other processes of this Honorable Commission through its counsel at the address herein indicated.

2. LUECO is the grantee of a legislative franchise (R.A. No. 9385) issued by the Thirteenth (13th) Congress of the Philippines on 24 July 2006 to operate and maintain an electric distribution system within the City of San Fernando and the Municipalities of Bauang and San Juan, all in the Province of La Union.
3. LUECO is represented in this Joint Application by its President, Mr. CARLOS L. VALERO.
4. MPPCL is a limited partnership established in the Philippines to invest in, acquire, finance, complete, construct, develop, improve, operate, maintain, and hold power production and electric generating facilities in the country, with business address at Masinloc Coal-Fired Thermal Power Plant, Barangay Bani, Masinloc, Zambales. It may be served with notices and other processes of this Honorable Commission through its counsel at the address herein indicated.
5. MPPCL owns the 1 x 315 MW (Unit 1), 1 x 344 MW (Unit 2) and 351.75 MW (Unit 3) of the Masinloc Coal Fired Thermal Power Plant located in Barangay Bani, Masinloc, Zambales.
6. MPPCL is represented in this Joint Application by its authorized representatives, Mr. PAUL BERNARD D. CAUSON.

NATURE OF THE APPLICATION

7. This Joint Application for the approval of the “ELECTRIC POWER PURCHASE AGREEMENT” (“EPPA”) dated 28 May 2021 entered into by and between LUECO and MPPCL is being submitted to this 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” (“EPIRA”), Rules 5, Sections 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

8. On 18 July 2019, two months before the expiration of its EPPA with Team (Philippines) Energy Corporation (“TPEC”) on 25 August 2019, LUECO wrote the Hon. ALFONSO G. CUSI, Secretary of the Department of Energy, requesting for the issuance of a Certificate of Exemption (“COE”) “to enable LUECO to extend its existing power supply agreement under the same terms and conditions.”¹

¹ Last paragraph, page 2, letter dated 18 July 2019 to Sec. Alfonso G. Cusi. Underscoring supplied.

9. On 25 November 2019, the Department of Energy (“DOE”) issued its Certification (COE-CSP-2019-10-001) certifying that LUECO “is exempted from the conduct of COMPETITIVE SELECTION PROCESS (CSP) to extend its existing power supply agreement with Team (Philippines) Energy Corporation (TPEC) for one (1) year supply under the same terms and conditions starting from 26 August 2019 until 25 August 2020.”² Furthermore, the DOE also stated that “LUECO’s succeeding PSA procurement shall undergo CSP in accordance with DC2018-02-0003 in a manner provided under Section 5 thereof – through public bidding x x x .”³
10. However due to the issuance of Proclamation No. 929, Series of 2020 on 16 March 2020 by President RODRIGO ROA DUTERTE declaring a State of Calamity throughout the Philippines due to Corona Virus Disease 2019 Pandemic or COVID-19 Pandemic, LUECO was not able to complete the conduct of its CSP.
11. On 02 December 2020, pursuant to DOE Department Circular DC2018-02-003, LUECO sent a letter to the DOE attaching its Terms of Reference (TOR) for its approval.
12. On 10 December 2020, the DOE sent its reply to the letter dated 02 December 2020 of LUECO suggesting some revisions in its TOR, particularly the revision of the 2020-2029 Power Supply Procurement Plan (PSPP) and the submission of the 2020-2029 Distribution Development Plan (DDP).
13. Pursuant to the 10 December 2020 letter of the DOE, LUECO, on 21 December 2020, submitted its compliance and likewise furnished the DOE the Secretary’s Certificate providing the composition of LUECO’s Third Party Bids and Awards Committee (“TPBAC”), TPBAC- Technical Working Group (“TWG”) and TPBAC Secretariat.
14. On 22 December 2020, the DOE sent its reply to the 21 December 2020 letter of LUECO recommending the removal of the option to extend for a maximum period of five (5) years pursuant to the Supreme Court Decision in G.R. No. 227670 requiring all PSAs to undergo CSP and the deletion of the Prompt Payment Discount and Prompt Payment Discount Period.
15. On 29 December 2020, LUECO sent the revised TOR in compliance with the 22 December 2020 letter of the DOE, and on 04 January 2021, the DOE via electronic mail approved the TOR and allowed LUECO to cause the publication of the Invitation to Bid on 05 January 2021 and 12 January 2021.

² First (1st) paragraph, COE-CSP-10-001 dated 25 November 2019. Underscoring supplied.

³ First (1st) paragraph, page 2, letter of Secretary Cusi to Mr. Bernardo L. Valero dated 25 November 2019. Underscoring supplied.

16. The salient provisions of the TOR are herein provided:

TYPE OF CONTRACT	BASELOAD AND LOAD FOLLOWING, FIRM
Commencement Date of Supply	August 26, 2021 or upon approval by the ERC whichever is later but to coincide with NGCP Billing every 26 th day of the month.
Tariff Structure	<p>Base Energy Rate (BER) in Php/kWh subject to the following:</p> <ul style="list-style-type: none"> • 50% maximum of the BER can be escalated at an annual rate not greater than 3.5% beginning on the second contract year. • Inclusive of Line Rental and all other market related charges • Exclusive of VAT <p>Bids shall be evaluated based on Levelized Cost of Electricity (LCOE) after VAT, whenever applicable which shall be derived using the LCOE calculation sheet in accordance with the formula in Annex B. The Bidder's Proposed Price (for the first Billing Year) and its LCOE are both subject to pre-determined "Reserved Prices".</p> <p>Bid VAT Rate shall be the maximum VAT rate that Winning Bidder may charge LUECO for any given Billing Month.</p>
Power Act Reduction (PAR)	Power Supplier may opt to offer a Power Act Reduction (PAR) rate of Php0.30/kWh applicable to energy affecting residential customers only (approximately 50% of LUECO's annual energy requirement; that the actual average for the last 5 years pre-COVID19 is 44%).

17. On 05 January 2021 and 12 January 2021, LUECO caused the publication of its "Invitation to Bid" in the Manila Bulletin which contained the TOR, indicating a summary of the process and timelines of the CSP and inviting generation companies ("GenCos") to submit an Expression of Interest between 06 January 2021 and 19 January 2021.

18. In response to LUECO's published Invitation to Bid, eight (8) GenCos purchased bid documents, namely:

- a. GNPower DINGININ LTD. CO
- b. SOLARACE₁ ENERGY CORPORATION
- c. SEM-CALACA POWER CORPORATION
- d. TEAM (PHIL) ENERGY CORP

- e. MASINLOC POWER PARTNERS CO. LTD.
- f. THERMA LUZON INC.
- g. SN ABOITIZ POWER - MAGAT INC.
- h. ENERGY DEVELOPMENT CORPORATION

19. Out of the eight (8) GenCos who purchased bid documents, two (2) did not submit their bids while one (1) GenCo withdrew prior to the submission of bids. The GenCos who submitted their bids are the following:

GENERATION COMPANY	First Year Pre-VAT rate* (PhP/kWh)	Final LCOE Pre-VAT rate* (PhP/kWh)
MASINLOC POWER PARTNERS CO. LTD.	3.4508	3.4508
TEAM (PHIL) ENERGY CORP	3.9462	4.2971
SEM-CALACA POWER CORPORATION	4.0948	4.4460
SN ABOITIZ POWER - MAGAT INC.	4.2777	4.4538
ENERGY DEVELOPMENT CORPORATION	4.5210	4.9087

* First Year and Final LCOE rates are net of offered PPD and/or PAR

- 20. On 30 April 2021, the respective bid offers of the bidders who passed the pre-qualification were opened. MPPCL's bid was declared as the best bid.
- 21. On 03 May 2021, LUECO's TPBAC sent a Notification of Best Bid to MPPCL as the winning power supplier confirming after post-evaluation that its proposed energy price was found to be the best bid.
- 22. On 07 May 2021, LUECO sent MPPCL the result of the post evaluation qualification.
- 23. On 17 May 2021, the Notice of Award was sent to MPPCL which it accepted on 24 May 2021 via zoom meeting. A copy of the "Notice of Award" is hereto attached and marked as Annex "H-8".
- 24. A copy of the TPBAC Summary Report regarding the conduct of LUECO's CSP is likewise hereto attached and marked as Annex "H-10".

SALIENT FEATURES OF THE EPPA

- 25. The EPPA dated 28 May 2021, entered into by and between LUECO and MPPCL, a copy of which is hereto attached as Annex "A" and made an integral part hereof, contains the following salient features:

2.2 COOPERATION PERIOD OF AGREEMENT

2.2.1 Subject to Section 2.3, this Agreement shall become effective on the Effective Date.

2.2.1.1 The term of this Agreement (the “Cooperation Period”) shall commence on the Commencement Date and shall expire on February 25, 2032, unless terminated earlier or extended in accordance with the terms of this Agreement.

2.3 CONDITIONS PRECEDENT, EFFECTIVE DATE, AND COMMENCEMENT DATE

2.3.1 Effective Date

2.3.1.1 The Effective Date shall be the date the conditions precedent in Section 13.1.1 and 13.2.1 have been satisfied or waived by the relevant Party (the “Effective Date”).

2.3.3 COMMENCEMENT DATE

2.3.3.1 The “Commencement Date” shall occur upon the satisfaction of the conditions set out in Section 2.3.2.

2.3.3.2 It shall be on August 26, 2021 or upon approval by the ERC, (whether interim relief, provisional or final), whichever is later but to coincide with NGCP Billing every 26th day of the month.

x x x

4.1 Supply of Electricity. Subject to the terms and conditions of this Agreement, from the Commencement Date until the expiration of the Cooperation Period or earlier termination of this Agreement, SELLER shall make available to LUECO the Contract Capacity to be sourced from the Power Plant, the WESM, or any other source at prevailing Electricity Fee. SELLER shall ensure that its daily declarations of BCQs reported to the Market Operator (as required by the WESM Rules) accurately reflects the metered quantities in each of LUECO’s Delivery Points net of any reduction by reason of enforcement of RCOA and/or Renewable Energy Law. xxx

4.2 Failure of Power Plant to Generate Electricity. In case SELLER is unable to source electricity from Power Plant for whatever reason except cases of Force Majeure, SELLER shall undertake alternative sourcing arrangements to compensate for the failure or shortfall, provided that, BUYER shall pay to SELLER the prevailing Electricity Fee or from the alternative source, whichever, is lower. In case SELLER fails to supply BUYER electricity due to unavailability of supply from its Power Plant, WESM, and any other source, SELLER shall pay a fine calculated as follows:

Fine = 5% x GENRATE from the previous Billing Period x Unsupplied Energy

Where:

Unsupplied Energy = the average of the last four (4) same day, same hour of the Trading Intervals affected by the loss of supply from Power Plant, WESM, and any other source which shall be used to reduce the generation charge to the consumers. For

avoidance of doubt, in case SELLER fails to supply electricity despite availability thereof, then Section 14.1 shall apply.

5.1 ELECTRICITY FEES.

SELLER shall render to BUYER an itemized Invoice for each Billing Period in accordance with the provisions of this Agreement and SCHEDULE 5. BUYER shall pay Invoices when due and payable in accordance with this Agreement and SCHEDULE 5.

SCHEDULE 4:

ELECTRICITY FEES

Electricity Fee = $[(E \times \text{GENRATE}) \times (1+\text{VAT})] + [(E_{\text{FM}} \times E_{\text{FM}} \text{Rate}) \times (1+ \text{VAT})]$

Where:

E The metered quantities at BUYER's Delivery Points for the Billing Period that is net of energy carved out by reason of enforcement of RCOA, Renewable Energy Law, and Event of Force Majeure affecting SELLER, expressed in kWh.

E_{FM} The metered quantities at BUYER's Delivery Points for the Billing Period measured for hours during which Event of Force Majeure is affecting SELLER, expressed in kWh.

GENRATE The generation fee rate applicable for the Billing Period, expressed in PHP/ kWh.

$E_{\text{FM}} \text{Rate}$ GENRATE or Ex-Ante WESM Price at BUYER's relevant Delivery Point, whichever is lower, expressed in Php/kWh

Where:

$\text{GENRATE} = \text{BER} \times \text{ADJ}_{\text{ESC}}$

Where:

BER = is the Base Energy Rate equivalent to PHP3.5575/kWh

$\text{ADJ}_{\text{ESC}} = [\text{Percent Subject to Escalation} \times (1 + \text{Escalation}) ^ { (\text{Contract Year} - 1) }] + [1 - \text{Percent Subject to Escalation}]$

Percent Subject to Escalation = none

Escalation = none

VAT = Maximum Value Added Tax equivalent to twelve percent (12%)

Effective VAT = Blended Maximum VAT and VAT from WESM Purchases

**RATE IMPACT ON LUECO'S
OVERALL GENERATION RATE**

26. The indicative rate impact on LUECO's overall generation rate with the supply from MPPCL is as follows:

SUPPLIER	CURRENT SUPPLIER	MPPCL	DIFFERENCE
Average Rate PhP/kWh (for the recent 12 months)	4.2876	3.4939	0.7937

Details of the calculation of the rate impact on LUECO's overall generation rate with the supply from MPPCL is hereto attached and marked as Annex "J".

**COMPLIANCE BY THE JOINT APPLICANTS WITH
THE PRE-FILING CHECKLIST REQUIREMENTS**

27. In compliance with the pre-filing requirements of this Honorable Commission and in further support of the instant Joint Application, Joint Applicants submit the following:

LUECO SUPPORTING DOCUMENTS	
ANNEX	DESCRIPTION OF THE DOCUMENT
"B"	Articles of Incorporation and By-Laws
"C"	Latest General Information Sheet (GIS)
"D"	Load forecast projections in accordance with the latest DDP
"E" & series	Average daily load curve, supply and demand scenario in accordance with the templates under Annex A of the Prefiling Checklist Requirements
"F"	Demand Side Management (DSM) Program
"G"	PSPP
"H" & series	Documents showing the conduct of CSP
"I"	Executive Summary of the LUECO-MPPCL EPPA
"J"	Rate Impact Study
MPPCL SUPPORTING DOCUMENTS	
"L"	2007 Articles of Partnership
"M"	2020 Amended Articles of Partnership
"M-1"	Certificate of Registration issued by the Securities and Exchange Commission (SEC)
"N"	Write-up – Explanation on the Requirement of Shareholders Agreement
"O"	Write-up – Explanation on the Requirement of List of Shareholders (GIS Sheet)
"P"	Corporate Structure Chart
"Q"	Write-up – Explanation on the Non-applicability of the Board of Investments (BOI) Certificate of Registration (COR) for MPPCL Units 1 and 2
"R"	BOI COR for MPPCL Units 3 and 4
"S and series"	Environmental Compliance Certificates for MPPCL Units 1-3 issued by the Department of Environment and Natural Resources
"T"	Letter of Provisional Authority to Operate (PAO) issued by the ERC
"U"	Write-up – Explanation on the Non-applicability of the Requirements regarding Renewable Energy Plant
"V"	Write-up – Explanation on the Non-applicability of Minimum Energy Off-take Provision

“W”	Write-up – Explanation on the Non-applicability of Requirements regarding the Ancillary Services Procurement Agreement
“X”	Certification by the CFO of MPPCL on items under Sources of Funds/Financial Plans of the Pre-filing Requirements (Confidential)
“Y”	Write-up – Explanation on Pre-filing Requirements on Computation of Rates
“Z”	Affidavit of Competitive Procurement Process of Fuel executed by the Procurement Manager of MPPCL (Confidential)
“AA and series”	Relevant technical and economic characteristics of the generation capacity, installed capacity, mode of operation, and dependable capacity
“BB”	Write-up – Explanation on the Non-applicability of the DOE Certificate of Endorsement (COE) for MPPCL Units 1 and 2
“CC”	DOE COE for MPPCL Units 3 and 4
“DD”	Transmission Service Agreement (TSA) between the National Grid Corporation of the Philippines (NGCP) and MPPCL
“EE”	Audited Financial Statements (AFS), Balance Sheet, Income Statement, and Statement of Cash Flows
“FF to FF-2”	Certification from MPPCL Units 1-3 on Net Heat Rate
“GG and series”	MPPCL Secretary’s Certificate for Filing of Joint Application and Delegation Letter to Counsels

**ALLEGATIONS IN SUPPORT OF THE
IMMEDIATE ISSUANCE OF
PROVISIONAL AUTHORITY OR INTERIM RELIEF**

28. LUECO and MPPCL replead the foregoing allegations in further support of their prayer for the immediate issuance of a provisional authority or interim relief.
29. Currently, LUECO continues to source its power from TPEC pursuant to a Letter of Agreement dated 11 June 2019 for a period of one (1) year from 26 August 2020 to 25 August 2021 under the same terms and conditions.
30. Given the impending expiration of the Letter of Agreement between LUECO and TPEC and without a provisional authority or interim relief issued by this Honorable Commission authorizing the supply by MPPCL starting 26 August 2021, LUECO will be left with no other supplier. Moreover, LUECO cannot purchase from the Wholesale Electricity Spot Market (WESM) as it is not a direct member therein. Thus, with no supplier to provide the much-needed electric service, consumers of LUECO may experience total blackout instead of enjoying the lowest generation rate offered by MPPCL.
31. In the interest of LUECO’s consumers, there is a necessity for the immediate issuance of a provisional authority or interim

relief in order to have a continuous and reliable supply of electricity.

32. Pursuant to its Rules of Practice and Procedure, this Honorable Commission may issue a provisional authority or interim relief:

“Section 3. Action on the Motion. – Motions for Provisional Authority or Interim Relief may be acted upon with or without hearing. The Commission shall act on the motion on the basis of the allegations of the application or petition and supporting documents and other evidences that applicant or petitioner has submitted and the comments or opposition filed by any interested person, if any.”

33. In further support of the immediate issuance of a provisional authority, Joint Applicants attach as Annex “K” the Judicial Affidavit executed by Mr. JOSEPH BERNARD G. VALERO, EMO Manager and Member of the Board of Directors of LUECO.

**ALLEGATIONS IN SUPPORT OF THE MOTION FOR
CONFIDENTIAL TREATMENT OF INFORMATION**

34. Under the ERC Rules of Practice and Procedure, a party to any proceeding before the Honorable Commission may request that certain information not be disclosed and be treated as confidential.⁴ Pursuant to this, Applicant MPPCL prays for the confidential treatment of the information contained in the following annexes:

Documents and/or Information	Annex
Certification by the CFO of MPPCL on items under Sources of Funds/Financial Plans of the Pre-filing Requirements (Confidential)	“X”
Affidavit of Competitive Procurement Process of Fuel executed by the Procurement Manager of MPPCL (Confidential)	“Z”

35. Annexes “X”, and “Z” contain the details of the power rate calculations and financial model of MPPCL 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.⁵, 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

⁴ Section 1, Rule 4, Rules of Practice and Procedure of the Energy Regulatory Commission.

⁵ G.R. No. 172835, December 13, 2007

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)

The interest of the consuming public is sufficiently protected by the review and evaluation of the rates under the EPPA by the Honorable Commission, without the need to disclose the contents of Annexes "X", and "Z". The reasonableness and transparency of the prices of electricity is to be assured by the Honorable Commission through its own review and verification of MPPCL's generation costs.

More importantly, competitors of MPPCL, should they obtain the information in Annexes "X", and "Z" may gain undue advantage to the prejudice of MPPCL. The negotiating power of MPPCL 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;

36. Accordingly, Joint Applicants hereby submits one (1) copy of the confidential documents in a sealed envelope, with the envelope and each page of the document stamped with the word "Confidential".⁶
37. Lastly and corollary to the foregoing, MPPCL would like to implore the discerning wisdom of the Honorable Commission to include in its issuance for this purpose the "xxx procedures for the handling or returning the confidential information, as

⁶ Soft copies of the same to be provided to this Honorable Commission are password protected.

appropriate, upon the close of the proceedings or at the end of the period provided in this Rule⁷”.

38. This is guided by the fact that MPPCL will seek for the return of these sought to be declared confidential annexes after its utilization as evidence in this case and/or at the close of the proceedings hereof, so as to relieve the Honorable Commission of the burden of safekeeping the trade secrets of MPPCL enclosed in the subject annexes.

PRAYER

WHEREFORE, in view of all the foregoing, Joint Applicants, LA UNION ELECTRIC COMPANY, INC. and MASINLOC POWER PARTNERS CO., LTD. respectfully pray of this Honorable Commission that:

1. Before and during the pendency of the proceedings:
 - a. An Order be issued GRANTING provisional authority or interim relief authorizing the immediate implementation of the EPPA including the rate embodied in Schedule 4 thereof.
 - b. An Order treating Annexes “X”, and “Z” and all the information contained therein as confidential in perpetuity, directing their non-disclosure to persons other than the officers and staff of the Honorable Commission, perpetually protecting the said information from public disclosure by maintaining the same separate and apart from the records of the case, ensuring that these are not divulged to unauthorized persons, from the time these annexes are received by the Honorable Commission up to the termination of the instant case; and,
 - c. an Issuance concerning the procedures for handling the confidential information upon the close of the proceedings and its return/delivery to MPPCL.
2. After due notice and hearing, render a Decision approving the EPPA including the rates set out therein and authorizing LUECO to charge and collect the fees therein from its customers reckoned from the start of the supply by MPPCL to LUECO under the EPPA.

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

Finding the said *Joint Application* to be sufficient in form 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

⁷ Rule 4, Section 2, paragraph 5 of the 2021 ERC Rules of Practice and Procedure.

presentation of evidence on the following dates and online platform for the conduct thereof, pursuant to Resolution No. 09, Series of 2020,⁸ dated 24 September 2020 and Resolution No. 01, Series of 2021, dated 17 December 2020 (ERC Revised Rules of Practice and Procedure)⁹:

Date	Platform	Activity
04 August 2021 (Wednesday) at two o'clock in the afternoon (2:00 PM)	Microsoft Teams	Determination of compliance with the jurisdictional requirements and expository presentation
11 August 2021 (Wednesday) at two o'clock in the afternoon (2:00 PM)	Microsoft Teams	Pre-trial Conference and presentation of evidence

Accordingly, LUECO and MPPCL are hereby directed to host the virtual hearing at **LUECO's principal office located at LUECO Building, Quezon Avenue, San Fernando City, La Union**, as the designated venue for the conduct thereof, and ensure that the same is open to the public and the community quarantine guidelines are observed at all times. Moreover, LUECO and MPPCL shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

RELATIVE THERETO, LUECO and MPPCL are hereby directed to:

- 1) Cause the publication of the attached *Notice of Virtual Hearing* in two (2) newspapers of nationwide circulation in the Philippines at their own expense, twice (2x) within two (2) successive weeks, the dates of publication not being less than seven (7) days apart, and the date of the last publication to be made not later than ten (10) days before the date of the scheduled initial hearing;
- 2) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing* the Offices of the Provincial Governor, the Mayors and the Local Government Unit (LGU) legislative bodies within LUECO's franchise area for the

⁸ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

⁹ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

appropriate posting thereof on their respective bulletin boards;

- 3) Inform the consumers within LUECO's franchise areas, by any other means available and appropriate, of the filing of the *Joint Application*, its reasons therefor, and of the scheduled virtual hearings thereon;
- 4) 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 so desire to send their duly authorized representatives and attend the scheduled hearings; and
- 5) Furnish with copies of the *Joint Application* and its attachments all those making requests therefor, subject to the resolution of the prayer for confidential treatment of information, if any, and reimbursement of reasonable photocopying costs.¹⁰

Within five (5) calendar days prior to the date of the initial virtual hearing, LUECO and MPPCL must submit to the Commission via electronic mail (e-mail) at docket@erc.ph, copy furnish the Legal Service through legal@erc.ph, the scanned copies of 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 Virtual Hearing* consisting of affidavit of the Editors or Business Managers of the newspapers where the said *Notice of Virtual Hearing* was published, and the complete issue of the said newspapers;
- 2) The evidence of actual posting of this *Order* and the attached *Notice of Virtual Hearing* consisting of certifications issued to that effect, signed by the aforementioned Governor, Mayors and LGU legislative bodies or their duly authorized representatives, bearing the seals of their offices;

¹⁰ For the e-mail address of the applicants, please see page 18.

- 3) The evidence of other means employed by LUECO and MPPCL to inform the consumers within the affected franchise area of the filing of the *Joint Application*, its reasons therefor, and of the scheduled hearings thereon;
- 4) The evidence of receipt of copies of this *Order* and the attached *Notice of Virtual Hearing* by the OSG, the COA, and the Committees on Energy of both Houses of Congress;
- 5) The evidence of receipt of copies of the *Joint 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.

Moreover, LUECO and MPPCL are hereby required to post on their bulletin boards, the scanned copies of the foregoing jurisdictional requirements, together with the newspaper publications and certifications issued by the concerned Office of the Governor, Mayors, and Local Legislative Bodies, and to submit proof of their posting thereof.

LUECO, MPPCL and all interested parties are also required to submit via e-mail at doCKET@erc.ph, copy furnish the Legal Service through legal@erc.ph, 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.

LUECO and MPPCL 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 LUECO and MPPCL 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.

LUECO and MPPCL must also be prepared to make an expository presentation of the instant *Joint Application*, aided by whatever communication medium that they may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties, the nature of the *Application* with relevant information and pertinent details substantiating the reasons and justifications being cited in support thereof.

LUECO and MPPCL are hereby directed to file a copy of their Expository Presentation via e-mail at docket@erc.ph, copy furnish the Legal Service through legal@erc.ph, at least five (5) calendar days prior to the scheduled virtual hearing. LUECO and MPPCL shall also be required, upon the request of any stakeholder, to provide an advance copy of their 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 docket@erc.ph, copy furnish the Legal Service through legal@erc.ph. 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.

LUECO and MPPCL are 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 their 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, 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, LUECO and MPPCL, including their authorized representative/s and witness/es, are hereby directed to provide the Commission, thru legal.virtualhearings@erc.ph, 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, 12 July 2021.

FOR AND BY AUTHORITY
OF THE COMMISSION:


AGNES VST DEVANADERA
Chairperson and CEO


LS: VMA/LSP/MCCG

ERC
Office of the Chairperson

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Copy Furnished:

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14. Office of the LGU Legislative Body
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