

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City



**IN THE MATTER OF THE
JOINT APPLICATION FOR
APPROVAL OF THE POWER
SUPPLY AGREEMENT
ENTERED INTO BY AND
BETWEEN NUEVA ECIJA II
ELECTRIC COOPERATIVE,
INC. – AREA 2 AND
MASINLOC POWER
PARTNERS CO. LTD., WITH
PRAYER FOR PROVISIONAL
AUTHORITY AND/OR
INTERIM RELIEF AND
CONFIDENTIAL TREATMENT
OF INFORMATION**

ERC CASE NO. 2021-046 RC

**NUEVA ECIJA II ELECTRIC
COOPERATIVE, INC. – AREA
2 (NEECO II – AREA 2) AND
MASINLOC POWER
PARTNERS CO. LTD.
(MPPCL),**

Applicants.

X-----X

Promulgated:

July 13, 2021

NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 16 June 2021, Nueva Ecija II Electric Cooperative, Inc. – Area 2 (NEECO II – AREA 2) and Masinloc Power Partners Co. Ltd. (MPPCL) filed a *Joint Application* dated 20 May 2021, seeking the Commission’s approval of their Power Supply Agreement (PSA), with prayer for provisional authority and/or interim relief and confidential treatment of information.

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

The Joint Applicants

1. **NEECO II-AREA 2** is an electric cooperative duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office address at San Leonardo, Nueva Ecija. It holds a franchise to operate light and power services in the Municipalities and City of Sta. Rosa, San Leonardo, Penaranda, Papaya (Gen. Tinio), Bongabon, Laur, Gabaldon (Bitulok & Sabani), Llanera, Gen. Natividad, Rizal and Palayan City, all in the Province of Nueva Ecija (Franchise Area). It shall also be herein referred to as the “Buyer”;
2. **MPPCL** is a limited partnership organized and existing under the Philippine laws, with business addresses at Masinloc Coal-Fired Thermal Power Plant, Barangay Bani, Masinloc, Zambales. 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 Agreement (PSA) entered into by and between NEECO II-AREA 2 and MPPCL, is being submitted to the Honorable Commission for its review and approval pursuant to Sections 25¹ and 45(b)² of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (the “EPIRA”), Rules 5, Section 4(e)³ and 11, Section 5⁴ 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. NEECO II-AREA 2 previously sourced most of its electricity requirements from San Miguel Energy Corporation (SMEC) through a Power Supply Contract (PSC). However, said PSC, including the extension thereof, has already expired. Hence, a Competitive Selection Process (CSP) with the objective of securing the electricity cost most advantageous and beneficial to the cooperative and its members-consumers-owners (“MCO”) was conducted, as will be discussed below.

¹ SEC.25. Retail Rate. – The retail rates charged by distribution utilities for the supply of electricity in their captive market shall be subject to regulation by the ERC based on the principle of full recovery of prudent and reasonable economic costs incurred, or such other principles that will promote efficiency as may be determined by the ERC.

² Distribution utilities may enter into bilateral power supply contracts subject to review by the ERC: xxx xxx xxx.

³ Prior to the implementation of Open Access and Retail Competition, the prices charged by a Generation Company for the Supply of Electricity shall be subject to ERC regulation on the Retail Rates charged by Distribution Utilities and transition supply contracts(TSCs) as specified in Section 67 of the Act.

⁴ Limits on Bilateral Supply Contracts by a Distribution Utility.

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6. On September 1, 2020 NEECO II-AREA 2 caused the publication in a newspaper of general circulation an Invitation to Bid for the supply of Thirty-seven Megawatts (37 MW) Baseload power requirement through CSP.

7. There were seven (7) participating bidders as follows:

	Bidders
1	Solar Philippines Power Project Holdings, Inc.
2	SN Aboitiz Power Inc.,
3	Masinloc Power Partners Co., Ltd.
4	SEM CALACA Power Corp
5	First Gen. Corporation
6	Therma Luzon Inc.
7	FDC Misamis Power Corp.

8. The preliminary result of the post evaluation revealed five (5) remaining qualified bidders:

1	Masinloc Power Partners Co., Ltd.
2	SEM CALACA Power Corp
3	SN Aboitiz Power Inc.,
4	First Gen. Corporation
5	Therma Luzon Inc.

9. Further analyses of all the bid proposals submitted by the five (5) bidders were made to determine the required Lowest Calculated Bid. The results of the calculations are as follows:

	Bidders	Result of Calculation (Php/kWh)
1	Masinloc Power Partners Co., Ltd.	3.6404
2	SEM CALACA Power Corp	3.6625
3	SN Aboitiz Power Inc.,	3.7471
4	First Gen. Corporation	3.7853
5	Therma Luzon Inc.	3.9415

10. Thereafter, a post-qualification was conducted to determine if the bidder that is evaluated to have the Lowest Calculated Bid complies with and is responsive to all the requirements and conditions for eligibility and the bidding. Based on the foregoing process and analyses, and after additional clarifications, the TPBAC and TWG-TPBAC determined that MPPCL has the Lowest Calculated Responsive Bid that is most advantageous and beneficial to both the members-consumers-owners and cooperative.

11. On October 16, 2020, NEECO II-AREA 2's TPBAC and TWG-TPBAC recommended the confirmation of the Board that MPPCL has the Lowest Calculated Responsive Bid for the supply of the 37 MW Baseload power requirement for NEECO II-AREA 2;

12. On 18 November 2020, NEECO II-AREA 2's Board issued Resolution No. 2020-11-08, Series of 2020 approving the joint recommendation of the TPBAC and TWG-TPBAC and confirming MPPCL to have the Lowest Calculated Responsive Bid; and
13. Thus, on November 27, 2020, NEECO II-AREA 2 awarded to MPPCL the contract to supply the Thirty-seven Megawatts (37 MW) Baseload power requirement through a Notice of Award of the same date.
14. **Salient Features of the PSA.**
- 14.1 **Contract Capacity.** The Contracted Capacity for the duration of the PSA shall be Baseload: 37,000 kW.
- 14.2 **Contract Term.** The PSA shall take effect between the Parties on the date of signing (Execution Date) and shall remain effective until 25 December 2030;
- 14.3 **Capacity and Energy Fees.** Under the PSA, NEECO II-AREA 2 shall pay the following Capacity and Energy Fees to MPPCL:

CAPACITY FEES			
A	Capital Recovery Fee	PhP/kW-month	1,370.0253
B	Fixed Operation & Maintenance Fee	PhP/kW-month	300.2512
Total Capacity Fees		PhP/kW-month	1,670.2765

ENERGY FEES			
C	Variable Operation & Maintenance Fee	PhP/kWh	0.1000
D	Fuel Fee	PhP/kWh	1.5232
Total Energy Fees		PhP/kWh	1.6232

The monthly Capacity and Energy Fees shall be subject to the applicable Value Added tax (VAT).

- 14.4 **Adjustment Formula.** The Capacity and Energy Fees are subject to monthly adjustments based on the following formula and indices (Annex II-B of the PSA):

MONTHLY CAPACITY AND ENERGY CHARGES

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

where:

Capacity Charges_{month} = Capital Recovery Fee
(CRF_{month}) + Fixed
Operation & Maintenance
Fee (FOM_{month})

Energy Charges_{month} = Variable Operation &
Maintenance Fee
(VOM_{month}) + Fuel
Fee (FF_{month})

I. CAPITAL RECOVERY FEE (CRF_{month})

$$\mathbf{CRF_{month} = CRF \times CC}$$

where:

CRF = Capital Recovery Fee in PhP/kW-month
contained in Annex II-A (No indexation)

CC = Contract Capacity in kW contained in Annex
I

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

$$\mathbf{FOM_{month} = FOM \times CC}$$

where:

FOM = Fixed Operation and Maintenance Fee in
PhP/kW-month contained in Annex II-A (No
Indexation)

CC = As previously defined

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

$$\mathbf{VOM_{month} = VOM \times AE}$$

where:

VOM = Variable Operation and Maintenance Fee
in PhP/kWh contained in Annex II-A (No
Indexation)

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.

IV. FUEL FEE (FF_{month})

$$\mathbf{FF_{month} = FF \times AE}$$

where:

FF = Fuel Fee in PhP/kWh contained in Annex II-A (No Indexation)

AE = As previously defined

14.5 **Line Rental.** Line Rental Charges as billed by the Market Operator to the Buyer shall be for the account of the Seller;

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

14.7 **Discounts.** The Seller provides for both Prompt Payment Discount (PPD) and Capacity Utilization Factor Discount (CUFD)

a) **PPD.** The Buyer may avail of the PPD equivalent to five centavos per kilowatt-hour (Php0.0500/kWh) applied to BUYER's Associated Energy of the current power bill;

b) **CUFD.** The Buyer shall be entitled to the following CUFD:

CUF for the Billing Period	Discount, PhP/kWh
40.00% to 59.99%	0.0750
60.00% and Above	0.1500

14.8 **Outages.** During the term of the PSA, the MPPCL shall guarantee the supply of the Contract Capacity and Associated Energy to NEECO II – AREA 2, even during the Scheduled and Unscheduled Outages of the Plant, except during Force Majeure Events.

Rate Impact on NEECO II-AREA 2's Overall Generation Rate

15. The indicative rate impact on NEECO II-AREA 2's overall generation rate with the supply from MPPCL is as follows:

YEAR 2020

Month	Bill With SMEC	Line Rental SMEC	TOTAL	With VAT	Rate (Peso/kWh)
Jan	₱112,526,392.63	₱6,099,313.96	₱118,625,706.59	₱132,860,791.38	₱6.40
Feb	₱100,096,430.20	₱3,129,646.41	₱103,226,076.61	₱115,613,205.81	₱6.16
Mar	₱114,540,022.71	₱3,149,356.54	₱117,689,379.25	₱131,812,104.76	₱6.06
Apr	₱126,321,793.18	₱1,959,856.55	₱128,281,649.73	₱143,675,447.70	₱5.80
May	₱124,569,518.38	₱3,182,626.99	₱127,752,145.38	₱143,082,402.82	₱5.67

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Jun	₱127,167,448.25	₱5,720,370.40	₱132,887,818.65	₱148,834,356.89	₱5.59
Jul	₱118,395,702.87	₱2,850,165.99	₱121,245,868.87	₱135,795,373.13	₱5.40
Aug	₱111,959,334.57	₱2,661,131.34	₱114,620,465.91	₱128,374,921.82	₱5.34
Sept	₱116,509,156.20	₱5,675,390.84	₱122,184,547.03	₱136,846,692.68	₱5.38
Oct	₱113,696,505.34	₱2,199,237.72	₱115,895,743.06	₱129,803,232.23	₱5.48
Nov	₱119,150,223.81	₱1,307,070.41	₱120,457,294.22	₱134,912,169.52	₱6.62
Dec	₱131,468,342.82	₱1,572,998.69	₱133,041,341.51	₱149,006,302.49	₱7.19
Average			₱5.92		

YEAR 2020

Month	Bill if MPPCL	Line Rental with MPPCL	TOTAL	With VAT	Rate (Peso/kWh)
Jan	₱95,491,483.32	₱0.00	₱95,491,483.32	₱106,950,461.32	₱5.15
Feb	₱92,277,037.64	₱0.00	₱92,277,037.64	₱103,350,282.16	₱5.50
Mar	₱97,081,565.17	₱0.00	₱97,081,565.17	₱108,731,353.00	₱5.00
Apr	₱102,004,857.38	₱0.00	₱102,004,857.38	₱114,245,440.27	₱4.61
May	₱102,779,865.59	₱0.00	₱102,779,865.59	₱115,113,449.46	₱4.56
Jun	₱105,020,972.38	₱0.00	₱105,020,972.38	₱117,623,489.06	₱4.42
Jul	₱102,640,833.64	₱0.00	₱102,640,833.64	₱114,957,733.67	₱4.57
Aug	₱100,810,157.84	₱0.00	₱100,810,157.84	₱112,907,376.78	₱4.70
Sept	₱103,076,845.40	₱0.00	₱103,076,845.40	₱115,446,066.85	₱4.54
Oct	₱100,243,880.17	₱0.00	₱100,243,880.17	₱112,273,145.79	₱4.74
Nov	₱94,903,711.92	₱0.00	₱94,903,711.92	₱106,292,157.35	₱5.21
Dec	₱95,419,364.43	₱0.00	₱95,419,364.43	₱106,869,688.17	₱5.16
AVE			₱4.85		

DIFFERENCE BETWEEN PREVIOUS CONTRACT AND NEW CONTRACT

Month	Previous Contract (SMEC) Peso per kWh	New Contract (MPPCL) Peso per kWh	Peso per kWh Difference
Jan	₱ 6.40	₱ 5.15	₱ 1.25
Feb	₱ 6.16	₱ 5.50	₱ 0.65
Mar	₱ 6.06	₱ 5.00	₱ 1.06
Apr	₱ 5.80	₱ 4.61	₱ 1.19
May	₱ 5.67	₱ 4.56	₱ 1.11
Jun	₱ 5.59	₱ 4.42	₱ 1.17
Jul	₱ 5.40	₱ 4.57	₱ 0.83
Aug	₱ 5.34	₱ 4.70	₱ 0.64
Sept	₱ 5.38	₱ 4.54	₱ 0.84
Oct	₱ 5.48	₱ 4.74	₱ 0.74
Nov	₱ 6.62	₱ 5.21	₱ 1.40
Dec	₱ 7.19	₱ 5.16	₱ 2.03
Average	₱ 5.92	₱ 4.85	₱ 1.08

16. **Environmental Compliance Certificate (ECC).** On 23 April 2012, the Department of Environment and Natural Resources (DENR) issued an ECC with Reference No. Ref Code 1111-0020 to MPPCL for the 1,012 MW Masinloc Coal-fired Power Project located at Barangay Bani, Masinloc, Zambales;
17. **Board of Investments (BOI) Certificate.** On 12 October 2012, the Power Plant Project was registered with the BOI which issued Certificate of Registration No. 2012-221;

18. **Certificate of Compliance (COC).** On 16 December 2020, the Honorable Commission issued a Provisional Authority to Operate (PAO) in lieu of a COC registered for MPPCL's 660MW for Units 1&2 and additional 351.75MW for Unit 3.

Compliance with the Pre-filing Requirements

19. 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	PSA entered into by and between NEECO II-AREA 2 and MPPCL
A-1	Executive Summary of the PSA
B	NEECO II – AREA 2 Amended By-laws
C	NEECO II – AREA 2 List of Board of Directors
D	NEECO II-AREA 2's latest Distribution Development Plan (DDP) and Load Forecast Projections
E	Demand Side Management (DSM) Program that could be implemented by NEECO II-AREA 2 if approved by the Honorable Commission
F	NEECO II – AREA 2 Board Resolution Approving Matters Related to the Filing of the Joint Application
G	MPPCL 2007 Articles of Partnership
G-1	MPPCL 2020 Amended Articles of Partnership
H	Write-up – Explanation on the Requirement of Shareholders Agreement
I	MPPCL Certificate of Registration issued by the Securities and Exchange Commission (SEC)
J	Write-up – Explanation on the Requirement of List of Shareholders (GIS Sheet)
K	MPPCL Corporate Structure Chart
L	MPPCL Certificate of Registration with the BOI
M and series	MPPCL Environmental Compliance Certificates for its Units 1-3
N	MPPCL Letter of Provisional Authority to Operate issued by the ERC
O	Write-up – Explanation on the Non-applicability of the Requirements regarding Renewable Energy Plant
P	Write-up – Explanation on the Non-applicability of Minimum Energy Off-take Provision
Q	Write-up – Explanation on the Non-applicability of Requirements regarding the Ancillary Services Procurement Agreement
R	Certification by the CFO of MPPCL on items under Sources of Funds/Financial Plans of the Pre-filing Requirements (Confidential)
S	MPPCL Pricing and Cost Estimation (Confidential)

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T	Affidavit of Competitive Procurement Process of Fuel executed by the Procurement Manager of MPPCL (Confidential)
U	MPPCL Secretary's Certificate to enter into PSA with NEECO II – Area 2
V	MPPCL Secretary's Certificate for Filing of Joint Application
V-1	MPPCL's Delegation Letter to Counsels

20. 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
W and series	Relevant technical and economic characteristics of the generation capacity, installed capacity, mode of operation, and dependable capacity
X	MPPCL DOE Certificate of Endorsement
Y	Transmission Service Agreement (TSA) between the National Grid Corporation of the Philippines (NGCP) and MPPCL
Z	Cost analysis of the proposed pricing provisions of the PSA (Confidential)
AA	MPPCL's latest Audited Financial Statements (AFS), Balance Sheet, Income Statement, and Statement of Cash Flows
BB and Series	Certification from MPPCL Units 1-3 on net heat rate
CC and series	Details of the Competitive Selection Process (CSP) undertaken by NEECO II-AREA 2 leading to the selection of MPPCL as its supplier, including invitations to participate and submit proposals, Terms of Reference (TOR), proposals and/or tender offers received by NEECO II-AREA 2, NEECO II-AREA 2's Third Party Bids and Awards Committee (TPBAC) Evaluation Report; NEECO II-AREA 2's Board Resolution confirming the said TPBAC Evaluation Report, and the Notice of Award to MPPCL
DD	Certification of Non-applicability of the Requirement of NPC Transition Supply Contract for NEECO II – AREA 2
EE	Transmission Service Agreement (TSA) between the National Grid Corporation of the Philippines (NGCP) and NEECO II-AREA 2
FF	NEECO II-AREA 2's Rate Impact Simulation

21. 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.)

22. 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.)

23. 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.)
24. The PSA with MPPCL was made to ensure the continuous supply of power to NEECO II-AREA 2 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 Motion for Provisional Authority and/or Interim Relief

25. NEECO II-AREA 2 and MPPCL replead the foregoing allegations in support of their prayer for the immediate issuance of Provisional Authority and/or Interim Relief, anchored on the following grounds:
- 25.1 Considering the current limitations on the available capacity in the Luzon Grid, NEECO II-AREA 2 must source power from MPPCL immediately to avoid power outage in its franchise area. As such, it was constrained to implement the PSA under the belief that it will redound to the benefit of its member-consumers considering that the rates therein are lower than the

Commission-approved National Power Corporation –
Time-of-Use (NPC-TOU) rates;

- 25.2 Per its Actual/Forecasted Load Data and DDP, NEECO II-AREA 2 is undergoing a increase and is expecting a further increase in its energy requirements due to a growth in the total demand of its member-consumers; and
- 25.3 Without the supply of MPPCL, NEECO II-AREA 2 will be exposed to the unpredictable and expectedly higher prices in the WESM;
26. In the interest of its MCO, there is a necessity for the immediate issuance of a Provisional Approval and/or Interim Relief for the implementation of the PSA, subject of the Joint Application, in order that there will be no undue disruption in the power supply to NEECO II-AREA 2's members-consumers-owners;
27. It bears stressing that pursuant to Rule 14, Section 3 of the Honorable Commission's Rules of Practice and Procedure, the Honorable Commission may issue a Provisional Authority and/or Interim Relief pending approval of the Joint Application, to wit:

***“Section 3. Action on the Motion. – 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 as well as the comments or opposition filed by any interested person, if there be any. Motions for provisional authority or interim relief may be acted upon with or without hearing.*”**

xxx xxx xxx"

(Emphasis provided.)

Allegations in Support of the Confidential Treatment of Annexes “R”, and “S”, “T”, and “Z”

28. Rule 4 of the Honorable Commission's Rules of Practice and Procedure provides that NEECO II-AREA 2 and MPPCL may request that information may not be disclosed;
29. MPPCL 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:

Annex	Documents and/or Information
R	Certification by the CFO of MPPCL on items under Sources of Funds/Financial Plans of the Pre-filing Requirements (Confidential)
S	MPPCL Pricing and Cost Estimation (Confidential)
T	Affidavit of Competitive Procurement Process of Fuel executed by the Procurement Manager of MPPCL (Confidential)
Z	Cost analysis/write-up of the proposed pricing provisions of the PSA (Confidential)

30. **Annexes “R”, and “S”, “T”, and “Z”** contain the details of MPPCL’s power rate calculations and cost analysis 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 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;

⁵ G.R. No. 172835, December 13, 2007

- (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*)
31. The interest of the MCO is sufficiently protected by the review and evaluation of the rates under the PSA by the Honorable Commission, without the need to disclose the contents of **Annexes “R”, and “S”, “T”, 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 operating costs and expenses;
32. More importantly, MPPCL’s competitors, should they obtain the information in **Annexes “R”, and “S”, “T”, and “Z”**, will gain undue advantage thereon and have the opportunity to use the same in their operations. 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;
33. Accordingly, NEECO II-AREA 2 and MPPCL submit one (1) copy each of **Annexes “R”, and “S”, “T”, and “Z”**, in a sealed envelope, with the said envelope and each page of the document/s and/or information stamped with the word “*Confidential*”.
34. 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 appropriate, upon the close of the proceedings or at the end of the period provided in this Rule**”⁶.
35. 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.

⁶ Rule 4, Section 2, paragraph 5 of the 2021 ERC Rules of Practice and Procedure.

PRAYER

WHEREFORE, premises considered, Joint Applicants NEECO II AREA-2 and MPPCL most respectfully pray that the Honorable Commission:

1. Before and during the pendency of the proceedings/scheduled hearing(s) and the final resolution/approval of this case, that an Order be issued for the **GRANT** of:
 - a. a **Provisional Authority or Interim Relief** allowing the Joint Applicants to immediately implement the PSA subject of this case in its entirety;
 - b. an **Order** affording Annexes “R”, “S”, “T” and “Z” **confidential treatment** in the handling and evaluation thereof 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, **ISSUE** a Decision approving the instant Joint Application **in toto** which will thereby allow/authorize NEECO II AREA-2 to charge and collect the fees from its members-consumers-owners reckoned from the commencement of the supply to the latter by MPPCL.

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

The Commission has set the instant *Joint Application* for determination of compliance with the jurisdictional requirements, expository presentation, pre-trial conference and presentation of evidence on the following dates and online platform for the conduct thereof, pursuant to Resolution No. 09, Series of 2020,⁷ dated 24 September 2020, and Resolution No. 1, Series of 2021, dated 17 December 2020 (ERC Revised Rules of Practice and Procedure):⁸

⁷ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission;

⁸ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

Date	Platform	Activity
19 August 2021 (Thursday) at two o'clock in the afternoon (2:00 P.M.)	Microsoft Teams Application	Determination of compliance with jurisdictional requirements and Expository Presentation
26 August 2021 (Thursday) at two o'clock in the afternoon (2:00 P.M.)		Pre-trial Conference and Presentation of Evidence

Any interested stakeholder may submit its comments and/or clarifications at least one (1) calendar day prior to the scheduled initial virtual hearing, via electronic mail (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.

Moreover, all persons who have an interest in the subject matter of the instant case may become a party by filing with the Commission via e-mail at doCKET@erc.ph, copy furnish the Legal Service through legal@erc.ph, a verified Petition to Intervene at least five (5) calendar days prior to the date of the initial virtual hearing and subject to the requirements under Rule 9 of the ERC Revised Rules of Practice and Procedure, indicating therein the docket number and title of the case and stating the following:

- 1) The petitioner's name, mailing address, and e-mail address;
- 2) The nature of petitioner's interest in the subject matter of the proceeding and the way and manner in which such interest is affected by the issues involved in the proceeding; and
- 3) A statement of the relief desired.

Likewise, all other persons who may want their views known to the Commission with respect to the subject matter of the case may file through e-mail at doCKET@erc.ph, copy furnish the Legal Service through legal@erc.ph, their Opposition or Comment thereon at least

five (5) calendar days prior to the initial virtual hearing and subject to the requirements under Rule 9 of the ERC Revised Rules of Practice and Procedure. No particular form of Opposition or Comment is required, but the document, letter, or writing should contain the following:

- 1) The name, mailing address, and e-mail address of such person;
- 2) A concise statement of the Opposition or Comment; and
- 3) The grounds relied upon.

Any of the persons mentioned in the preceding paragraphs may access the copy of the *Joint Application* on the Commission's official website at www.erc.gov.ph.

Finally, all interested persons may be allowed to join the scheduled virtual hearings by providing the Commission, thru legal.virtualhearings@erc.ph, with their respective e-mail addresses and indicating therein the case number of the instant *Joint Application*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearings.

WITNESS, the Honorable Commissioners **ALEXIS M. LUMBATAN, CATHERINE P. MACEDA, FLORESINDA G. BALDO-DIGAL** and **MARKO ROMEO L. FUENTES**, Energy Regulatory Commission, this 28th day of June 2021 in Pasig City.



AGNES VST DEVANADERA
Chairperson and CEO


LS: RSPV/ARG/MCCG

