



Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

**IN THE MATTER OF THE
PETITION FOR DISPUTE
RESOLUTION FOR NON-
PAYMENT OF THE
ELECTRICITY FEES UNDER
THE ELECTRIC POWER
PURCHASE AGREEMENT
WITH PRAYER FOR
SPECIFIC PERFORMANCE**

**PALM CONCEPCION POWER
CORPORATION (PCPC),**
Petitioner,

-versus-

ERC CASE NO. 2021-003 DR

**PANAY ELECTRIC COMPANY
(PECO),**
Respondent.

Promulgated:
September 10, 2021

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NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 11 August 2021, Palm Concepcion Power Corporation (PCPC) filed a *Petition* against Panay Electric Company (PECO) for non-payment of electricity fees under their Electric Power Purchase Agreement (EPPA) with prayer for specific performance.

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

1. Petitioner PCPC is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with principal office address at Brgy. Nipa, Municipality of Concepcion, Province of Iloilo. PCPC is the owner and operator of 135 MW clean coal-fired power plant (the “Power

Plant”) located at Brgy. Nipa, Municipality of Concepcion, Province of Iloilo. Petitioner PCPC may be served copies of all orders and processes from the Honorable Commission through the registered email address of its counsel as stated below.

2. Respondent PECO is a private electricity utility duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at the PECO Building, Gen Luna St., Iloilo City. PECO has no registered email address with the Honorable Commission;

NATURE OF THE CASE

3. PCPC respectfully submits this Petition pursuant to Chapter IV, Section 43 (u) 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 and underscoring supplied)
4. PCPC and PECO are both participants in the energy sector as PCPC is a generator while PECO was the electric distribution utility in Iloilo City during the time the power bills subject of this Petition were incurred. Thus, the Honorable Commission has jurisdiction over the parties to this case.
5. Further, under Article 16 of the Electric Power Purchase Agreement (EPPA) executed between Petitioner PCPC and Respondent PECO, the Honorable Commission has exclusive jurisdiction over all actions or proceedings arising out of or in connection with the said Agreement. As will be shown below, the unpaid power bills that are the subject of this Petition arose from the EPPA. Thus, the Honorable Commission has exclusive jurisdiction over the subject of this Petition.

STATEMENT OF FACTS

6. On 20 May 2013 PCPC executed an Electric Power Purchase Agreement (EPPA) with the Panay Electric Co. (PECO), which was then the distribution utility in Iloilo City and is also an Intervenor in the instant case, for the supply by PCPC of 10MW of Contracted Capacity and Energy to PECO for a term of (20) twenty years. A copy of the EPPA between PCPC and PECO is attached hereto as Annex “A” and made an integral part hereof. On the same date, a Clarificatory Letter amending certain provisions of the EPPA was executed between the same Parties. A copy of the Clarificatory Letter between PCPC and PECO is attached hereto as Annex “A-1” and made an integral part hereof.

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7. On 19 April 2016, PCPC and PECO filed a Joint Application for the Approval of the EPPA, with a prayer for the issuance of a Provisional Approval, with the Honorable Commission which was docketed as ERC Case No. 2016-043 RC.
8. In an Order docketed on 18 October 2016 in ERC Case No. 2016-043 RC, the Honorable Commission granted a Provisional Approval for the Joint Application of PCPC and PECO. A copy of the provisional approval issued by the Honorable Commission in ERC Case No. 2016-043 RC is attached hereto as Annex “B” and made an integral part hereof.
9. Pursuant to this Provisional Approval, PCPC began deliveries of the Contracted Capacity and Energy under the EPPA to PECO in May 2019.
10. Under Section 4.2 of the EPPA, between PECO and PCPC as amended, PECO was given a period of forty-five (45) from receipt of a power bill within which to settle the same.
11. On 29 February 2020, MORE Electric and Power Corp. (MORE), took over the distribution assets of PECO in Iloilo City pursuant to the provisions of its franchise, R.A. 11212 and began operations as the new distribution utility therein.
12. In an Order dated 05 March 2020, the Honorable Commission granted a Provisional Certificate of Public Convenience and Necessity (CPCN) to MORE and revoked the Provisional CPCN previously granted to PECO in ERC Case No. 2018-008 MC.
13. Since the takeover by MORE and the revocation of the CPCN of PECO, Petitioner-Intervenor PCPC has not been able to deliver the Contracted Capacity and Energy under its EPPA with PECO. PCPC currently has no power supply contract with MORE;
14. From 5 March 2020 until the present, PECO has the following unpaid and undisputed power bills due to PCPC with their corresponding amounts broken down as follows:

Billing Period	Doc. No.	Billing Due Date (30 calendar days from date of receipt)	Generation	VAT	Total	Interest up to May 31, 2021	Total Receivable from PECO
Nov. 26 – Dec. 25, 2019	INV No. 0000463 ¹	02/08/2020	7,788,443.81	934,613.26	8,723,057.07	562,058.83	9,285,115.90
Dec 26 – Jan. 25, 2020	INV No. 0000474 ²	03/11/2020	41,450,018.87	4,974,002.26	46,424,021.13	2,912,897.47	49,336,918.60

¹ Annex “C”.

² Annex “D”.

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Jan. 26 – Feb. 25, 2020	INV No. 0000486 ³	04/08/2020	40,894,789.20	4,907,374.70	45,802,163.90	2,688,210.56	48,490,374.46
Feb. 26 – Mar 25, 2020	INV No. 0000559 ⁴	05/03/2020	4,679,384.63	561,526.16	5,240,910.79	284,969.14	5,525,879.93
Mar 26 – Apr 25, 2020	INV No. 0000507 ⁵	06/03/2020	7,519.40	902.33	8,421.73	425.98	8,847.71
			94,820,155.91	11,378,418.71	106,198,574.62	6,448,561.98	112,647,136.60

Note: March 26 to April 25, 2020 Bill pertains to Market Fee allocation of PECO for energy delivered from February 26 to 29, 2020.

15. The foregoing power bills were all issued by PCPC for the undisputed electricity deliveries made to PECO during the time when the latter was still the duly authorized and operating distribution utility in Iloilo City and prior to the takeover by MORE Power. Further, the foregoing power bills were duly received and acknowledged by PECO.
16. In addition to energy fees, PECO, as provided under the EPPA⁶ is also obligated to pay the VAT in relation to the purchase of the electricity. The VAT, as shown above, is part of the power bills issued to PECO.
17. PCPC thereafter demanded from PECO the payment of the above detailed power bills. PCPC and PECO conducted a series of formal and informal negotiations for the possible settlement of the said unpaid bills in accordance with the procedures in the EPPA. In fact, PCPC has consistently sent reminder and demand letters to PECO reiterating the payments of its undisputed and unpaid bills as indicated below:

Date	Subject	Annex Marking
12 March 2020	Unpaid bills of PECO for the period of Nov. 26, 2019 to Feb. 25, 2020 in the amount of Php 100,949,242.11.	H
21 April 2020	Notice of Demand for Unpaid Electricity Fees	I
28 April 2020	Letter to PECO's counsel informing them of their client's unpaid electricity fees to PCPC in the amount of Php 106,653,873.73	J
18 May 2020	Granting PECO's request for reconciliation regarding the unpaid electricity fee billings	K
26 June 2020	Reminder letter to PECO of its unpaid electricity fee in the amount of Php 107,684,652.87 as of May 31, 2020.	L

³ Annex "E".

⁴ Annex "F".

⁵ Annex "G".

⁶ Section 4.6 (a).

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23 Sept. 2020	Final Demand Letter to PECO for the payment of the amount of Php 109,918,182.15	M
14 Oct. 2020	PCPC demand for payment of the undisputed generation fee and interest in the amount of Php 94,820,165.91 and Php 2,824,027.98, respectively and its offer to continue to discuss the VAT portion of the billings.	N
3 May 2021	PCPC demand for payment of the undisputed generation fee, interest and VAT in the amount of Php94,820,165.91, Php 5,911,593.98 and Php 11,378,418.71, respectively. (The said demand letter was not received since PECO is no longer using the address stated by virtue of the expropriation case)	O

18. In accordance with the Dispute Resolution provision of the EPPA, on 4 August 2020, the PCPC CEO and PECO's duly authorized representative tried to amicably discuss the possible settlement of the unpaid power bills. During the said meeting, PECO acknowledged its obligation to pay the unpaid bills and committed to PCPC that it will revert the matter to its Board of Directors and propose a payment scheme within two (2) weeks from the said meeting. However, PECO failed to provide any settlement parameters despite several informal communications and the lack of communication up to the filing of the instant Petition on the part of PECO can be construed as a failure to resolve the issue by the parties. Further, more than fourteen (14) days have lapsed since the said amicable settlement meeting justifying recourse to the Honorable Commission, as PCPC has exhausted all applicable administrative remedies.
19. Under Section 4.3 of the EPPA, if any undisputed amount payable by PECO under the said Agreement is not paid on the due date, PECO shall pay interest thereon at a rate per annum, equal to the T-Bill Rate as of the due date plus two percent (2%), from the date when such payment is due until the date such amount is received in full by PCPC. Applying the foregoing provision, as of 31 May 2021, PECO, as mentioned in paragraph 14 above, has unpaid obligations to PCPC under the EPPA in the total amount of Php 112,647,136.60 comprised of NINETY-FOUR MILLION EIGHT HUNDRED TWENTY THOUSAND AND ONE HUNDRED FIFTY-FIVE PESOS AND NINETY-ONE CENTAVOS (Php 94,820,155.91) for Electricity/Generation Fees, ELEVEN MILLION THREE HUNDRED SEVENTY-EIGHT THOUSAND FOUR HUNDRED EIGHTEEN PESOS AND SEVENTY-ONE CENTAVOS (Php 11,378,414.71) for VAT and SIX MILLION FOUR HUNDRED FORTY-EIGHT THOUSAND FIVE HUNDRED SIXTY-ONE PESOS AND NINETY-EIGHT CENTAVOS (Php6,448,561.98) for interest. The detailed

breakdown and computation of these amounts are attached hereto as Annex “P” and made integral part hereof.

20. To date, despite due demands by PCPC, PECO has failed to settle and continues to fail to settle the above detailed power bills to the prejudice of PCPC’s economic condition.
21. PECO has cited the fact that it could no longer bill and collect its unpaid power bills from the electricity consumers in Iloilo City after the takeover by MORE as the reason for its continued failure to settle the above detailed power bills of PCPC.
22. In a letter dated 22 October 2020, PECO informed PCPC that: *“we have filed a Motion/Petition dated 15 October 2020 before the ERC to direct MORE to collect from the electricity consumers in Iloilo City the payments for electricity bills covering the period from 26 January to 28 February 2020, including those of prior billings, for our account, and to remit the same to us for payment to our suppliers and contractors. Thus, if the motion/petition is granted by the ERC, the amount collected by MORE for our account would be used to settle our outstanding obligations to our suppliers, including PCPC.”* A copy of this letter is attached hereto as Annex “Q” and made an integral part hereof.
23. On 24 December 2020, PCPC filed a Comment in ERC Case No. 2018-019 MC with respect to the Motion/Petition of PECO. Such Comment was meant to bring to the attention of the Honorable Commission the unpaid power bills of PECO to PCPC in relation to such Motion/Petition. A copy of the said Comment of PCPC is attached hereto as Annex “R” and made an integral part hereof. To date, the Honorable Commission has not yet acted on the Motion/Petition of PECO or the Comment of PCPC.
24. However, in the EPPA between PECO and PCPC as amended and approved by the Honorable Commission, collection from its electricity consumers is not a condition for the effectivity of the obligations of PECO, specifically its obligation to pay the power bills of PCPC for electricity delivered by PCPC to PECO. Thus, PECO should pay the above detailed power bills to PCPC, including interest due thereon regardless of whether it can collect from the electricity consumers of Iloilo City. PECO’s failure or inability to collect the power bills from the electricity consumers of Iloilo City should not prejudice PCPC which honoured and fulfilled its obligations under the EPPA and delivered the Contracted Capacity and Energy to PECO when PECO was still authorized and operating distribution utility in the said city.
25. Further, the continued non-payment by PECO of the above detailed power bills will have a detrimental effect on the financial well-being of PCPC as a generation company.

26. Due to the foregoing, PCPC is constrained to submit this Petition in order to ask the Honorable Commission to order PECO to immediately settle the above detailed unpaid power bills that it owes to PCPC, including all interest due thereon.
27. The Board of Directors of PCPC duly authorized the filing of the instant Petition. A copy of the Board Resolution/Secretary's Certificate authorizing the filing of the instant Petition is attached hereto as Annex "S" and made an integral part hereof.
28. PCPC would like to emphasize that as its above-described power bills were all for electricity deliveries made to PECO under the EPPA which had previously been approved by the Honorable Commission, the settlement of such power bills will have no additional impact on the rates that the electricity consumers in Iloilo City would have to pay to PECO for electricity delivered to them during the period covered by the said power bills. The cancellation of PECO's franchise should not, in any way, deprive PCPC the payment of electricity duly received by PECO prior to such cancellation. The contract to deliver energy between PCPC and PECO is totally separate and distinct from any electrical service agreement between PECO and its consumers. PECO is not the collecting agency of PCPC as PCPC has no obligation to provide electricity to PECO's consumers within the latter's franchise area.
29. The Honorable Commission, having the original and exclusive jurisdiction over all cases involving disputes between and among participants in the energy sector, has the clear authority to enjoin PECO to immediately comply with provisions of the approved EPPA and settle the above detailed amounts owed to PCPC.
30. Here, it is apparent that the parties involved are participants in the electric power industry and the subject matter is the EPPA 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 to compel PECO to immediately comply with its obligations to PCPC under the EPPA.
31. In view of the foregoing, PCPC humbly begs this Honorable Commission as the independent regulatory body for the electric power industry, to enjoin PECO to perform its contractual obligations to PCPC under the EPPA that has been provisionally approved by the Honorable Commission, especially on the immediate settlement of its due and demandable but unpaid power bills.

PROOF OF SERVICE

32. Petitioner could not serve and file the instant Petition under ERC Resolution No. 9, Series of 2020 as upon inquiry with the

Central Email Registry of the Honorable Commission, it was determined that Respondent PECO did not have any registered email addresses as required under the said resolution. Thus, Petitioner was constrained to serve this Petition through ordinary means via service at the registered address of Respondent PECO at the PECO Building, Gen. Luna St., Iloilo City. However, Petitioner PCPC learned that the said address was no longer occupied by PECO as it has already been expropriated by MORE Power.

33. In communications with respondent PECO, Petitioner PCPC was informed by Mr. Emmanuel Lubis, the AVP of PECO that their current business address is PO BOX 411, Aduana Street, Iloilo City.
34. Due to the foregoing, Petitioner has no option but to serve this Petition on Respondent PECO by sending copies hereof through registered mail and personal service to the following addresses: a) the PECO Building, Gen. Luna St., Iloilo City (which is still the registered address of PECO in the records of the Honorable Commission); b) PO BOX 411, Aduana Street, Iloilo City, which was the address provided by its personnel, and; c) the address of the President of PECO, Mr. Luis Miguel Cacho.

PRAYER

WHEREFORE, premises considered, PCPC respectfully prays that the Honorable Commission ORDER PECO to:

- a) Immediately pay PCPC the amount of NINETY-FOUR MILLION EIGHT HUNDRED TWENTY THOUSAND AND ONE HUNDRED FIFTY-FIVE PESOS AND NINETY-ONE CENTAVOS (Php 94,820,155.91) representing Electricity Fees under the EPPA for the periods of 26 November 2019 to 25 April 2020;
- b) Immediately pay PCPC the amount of ELEVEN MILLION THREE HUNDRED SEVENTY-EIGHT THOUSAND FOUR HUNDRED EIGHTEEN PESOS AND SEVENTY-ONE CENTAVOS (Php 11,378,418.71) representing VAT for the electricity purchased.
- c) Immediately pay PCPC the amount of SIX MILLION FOUR HUNDRED FORTYEIGHT THOUSAND FIVE HUNDRED SIXTY-ONE PESOS AND NINETY-EIGHT CENTAVOS (Php 6,448,561.98) representing the accrued interest as of 31 May 2021 on the unpaid power bills and thereafter the stipulated interest rate under the EPPA until the date of actual payment by PECO.

Petitioner PCPC prays for all other reliefs just and equitable under the premises.

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The Commission has set the instant *Petition* 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 2020⁷ dated 24 September 2020 and Resolution No. 01, Series of 2021, dated 17 December 2020 (ERC Revised Rules of Practice and Procedure)⁸:

Date and Time	Platform	Activity
12 October 2021 (Tuesday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Teams	Determination of compliance with jurisdictional requirements and Expository presentation
19 October 2021 (Tuesday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Teams	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 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;

⁷ Entitled: 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.

- 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 doctet@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 *Petition* on the Commission's official website at www.erc.gov.ph.

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

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WITNESS, the Honorable Commissioners **ALEXIS M. LUMBATAN, CATHERINE P. MACEDA, FLORESINDA G. BALDO-DIGAL** and **MARKO ROMEO L. FUENTES**, Energy Regulatory Commission, this 1st day of September 2021 in Pasig City.



AGNES VST DEVANADERA
Chairperson and CEO

RCS lsp 3
LS: RCP/LSP/MCCG

ERC

Office of the Chairperson



AVSTD-2021-09-510-0019