

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



IN THE MATTER OF THE JOINT APPLICATION FOR THE APPROVAL OF THE POWER SUPPLY CONTRACT (PSC) ENTERED INTO BY AND BETWEEN DAVAO DEL NORTE ELECTRIC COOPERATIVE, INC. (DANECO) AND SAN MIGUEL CONSOLIDATED POWER CORPORATION (SMCPC) WITH PRAYER FOR PROVISIONAL AUTHORITY OR INTERIM RELIEF AND CONFIDENTIAL TREATMENT OF INFORMATION

ERC CASE NO. 2021-009 RC

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

Promulgated:
April 30, 2021

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NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 29 January 2021, Davao del Norte Electric Cooperative Inc. (DANECO) and San Miguel Consolidated Power Corporation (SMCPC) filed a *Joint Application* seeking the Commission's approval of the Power Supply Contract (PSC) with prayer for provisional authority or interim relief and confidential treatment of information.

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

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1. Joint Applicant DANECO is a non-stock, non-profit electric cooperative, duly organized and existing under Philippine laws, with principal address at Km. 100 National Highway, Montevista, Davao de Oro Province. It has the exclusive franchise to supply and distribute electricity in all the Municipalities in the Province of Davao de Oro, namely: Compostela, Laak, Mabini, Maco, Maragusan, Mawab, Monkayo, Montevista, Nabunturan, New Bataan and Pantukan, and in the City of Tagum and Island Garden City of Samal (“IGACOS”) and certain Municipalities in the Province of Davao del Norte, namely: Asuncion, Kapalong, New Corella, San Isidro and Talaingod (the “Franchise Area”);
2. Joint Applicant SMCPC is a corporation duly created and existing by and under the laws of the Republic of the Philippines, with business address at Sitio Inaburan, Barangay Culaman, Malita, Davao Occidental 8012.
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. This Joint Application for Approval of the Power Supply Contract (“PSC”) dated 31 August 2017 entered into by and between DANECO and SMCPC is being submitted to the Honorable Commission for its review and approval pursuant to Sections 25 and 45 (b) of Republic Act No. 9136, otherwise known as the “*Electric Power Industry Reform Act of 2001*” or the EPIRA, Rule 5, Section 4 (e) and Rule 11, Section 5 of its Implementing Rules and Regulations (IRR), Rule 20 (B) of its Rules of Practice and Procedure, and other pertinent rules and regulations.

Statement of Facts

5. DANECO currently sources its electricity requirements from the following power suppliers:

EXISTING SUPPLIERS	CONTRACTED CAPACITY as of 2018 (MW)	TERM	YEAR	PLANT TYPE
PSALM ¹	15	4	2017-2020	MIXED
EEIP ²	15	10	2013-2023	BUNKER FUEL
TSI ³	15	25	2015-2040	COAL
SEC ⁴ (NON-FIRM)	15	25	2019-2044	COAL
SMCPC	20	10	2016-2026	COAL

¹ Power Sector Assets and Liabilities Management Corporation;

² Engineering Equipment Incorporated Power;

³ Therma South, Inc.;

⁴ Sarangani Energy Corp.;

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FDC-COAL ⁵	15	25	2017-2042	COAL
MGC ⁶	5	5	2016-2021	DIESEL

6. It is expected that the power requirements of DANECO will significantly increase in the next few years as demonstrated by DANECO’s Actual and Forecasted Load Data, hereunder shown:

YEAR	DEMAND MW (CP ⁷)
2016	86
2017	89
2018	96
2019	101
2020	107
2021	113
2022	119
2023	126
2024	133
2025	141
2026	149
2027	157

7. The expiration of its Power Supply Agreement with Therma Marine, Inc. (“TMI”) in September 2017 and its Contract for the Supply of Electric Energy (“CSEE”) with PSALM in December 2020, and the projected increase in the energy requirements of DANECO’s member-consumers will result in a shortage of the available energy.
8. Given its demand growth, DANECO deemed it appropriate to secure stable, reliable and adequate supply of electricity. Accordingly, DANECO finds it reasonable to enter into bilateral power supply agreements with various generation companies. Thus, the power supply of DANECO is sourced from different power suppliers in order to mitigate the impact of power deficiency in case one power supplier incurs delay in its commercial operation or discontinue the project or when undergoing preventive maintenance or outage.
9. Impelled with the desire to meet the increasing demands of electric power, on 12 December 2016, DANECO conducted a Competitive Selection Process (“CSP”) pursuant to *Resolution No. 13, Series of 2015*⁸ of the Energy Regulatory Commission (“ERC”). However, the CSP resulted in a failure of bidding. Accordingly, DANECO conducted the second round of CSP on 04 January 2017. Unfortunately, the same was likewise declared a failure of

⁵ FDC Misamis Power Corporation;

⁶ Mindoro Grid Corporation;

⁷ Coincident Peak;

⁸ A Resolution Directing All Distribution Utilities (DUs) to Conduct a Competitive Selection Process (CSP) in the Procurement of their Supply to the Captive Market adopted on 20 October 2015;

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bidding due to non-compliance by the participating bidders with the Technical Evaluation (Folder 2).

10. Considering that the CSP already failed twice, DANECO found no other alternative but to conduct a negotiated procurement to address the urgent need for additional power.
11. Prior to the final negotiation, the National Electrification Association (“NEA”) issued *Office Order No. 044, Series of 2017* dated 22 February 2017 creating Task Force Duterte – Northern Davao Power (“NEA-TFDNDP”) for the purpose of rehabilitating DANECO.
12. On 17 April 2017, DANECO together with its Bids and Awards Committee (“BAC”) and members of NEA-TFDNDP invited potential power suppliers for direct negotiations. However, only FDC Misamis Power Corporation (“FDC - Misamis”) and SMCPD expressed interest to participate in the negotiations and offered reasonable power costs in line with DANECO’s state of rehabilitation.
13. DANECO then deemed it advantageous for its member-consumers to secure its power supply from different sources to prevent a total blackout in case of interruptions. Thus, DANECO decided to procure the needed thirty megawatts (30 MW) from the two (2) contending power suppliers at a uniform least cost. As a result, DANECO decided to procure from SMCPD fifteen megawatts (15 MW) of its power supply requirements.
14. Accordingly, on 29 August 2017, the BAC in its *Resolution No. 24, Series of 2017* recommended the award for the supply of 15 MW electric power to SMCPD. On even date, the NEA-TFDNDP Board of Directors in its *Resolution No. 160, Series of 2017* approved the recommendation of the BAC and authorized its Chief Executive Officer (“CEO”) to enter into a PSC with SMCPD, which Board Resolution was confirmed in a subsequent *Board Resolution No. 86, Series of 2018* dated 23 May 2018.
15. On 31 August 2017, DANECO and SMCPD executed the PSC, which is the subject of the instant Joint Application.
16. Prior to the filing of the instant Joint Application, a Certification from the DOE stating compliance with the CSP requirement should be secured and submitted to the Honorable Commission as prescribed the DOE Circular 2018-02-0003. Thus, DANECO, in its *Letter dated 13 February 2020*, requested for the issuance of such Certification from the DOE.

17.

Salient Features

17.1. Contract Capacity. The Contract Capacity for the duration of the PSC shall be 15,000 kW. DANECO shall maintain a minimum hourly nomination of at least forty percent (40%) of the Contract Capacity for the duration of the PSC, as its share in the minimum stable load of the Power Plant.

17.2. Generation Source. The source of the supply shall be the 2 x 150 MW Circulating Fluidized Bed Coal-Fired Power Plant (“the Plant”) owned and operated by SMCP and located in Barangay Culaman, Malita, Davao Occidental.

17.3 Contract Term. The PSC shall take effect between the Parties on the date of signing (“Execution Date”) and shall remain effective for a period of fifteen (15) years from Supply Effective Date;

17.4 Contract Charges. Under the PSC, DANECO shall pay the following Contract Charges for the duration of the PSC, subject to the applicable value-added tax (“VAT”), and computed as follows:

Particulars	Unit	Amount
Capacity Fees		
A. Capital Recovery Fee	PhP/kW-month	1,530.2100
B. Fixed Operation and Maintenance Fee	PhP/kW-month	383.8079
Total Capacity Fee		1,914.0179
Energy Fees		
C. Variable Operation and Maintenance Fee	PhP/kWh	0.2831
D. Fuel Fee	PhP/kWh	1.6566
Total Energy Fee		1.9397

17.5 Other Charges. DANECO shall bear all other costs and charges incurred after the Delivery Point, including but not limited to transmission line losses, interconnection charges and site specific loss adjustments, among others;

17.6 Adjustment Formula. The Contract Charges shall be adjusted on a monthly basis in accordance with the following Adjustment Formula (Annex II-B of the PSC):

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

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Where:

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

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

I. CAPITAL RECOVERY FEE (CRF_{month})

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

Where:

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

CC = Contract Capacity in kW contained in Annex I of the PSC

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

$$FOM_{month} = FOM \times \frac{PHCPI_m}{PHCPI_o} \times CC$$

Where:

FOM = Fixed Operation and Maintenance Fee in PhP/kW-month contained in Annex II-A of the PSC

PHCPI_m = Philippine Consumer Price Index (CPI) for All Income Households in the Philippines – All Items (2006=100), as posted by the Philippine National Statistics Office for the calendar month within which the start of the current Billing Period occurs

PHCPI_o = Philippine CPI for All Income Households in the Philippines – All Items (2006=100), as posted by the Philippine National Statistics Office for the calendar month of the SUPPLY EFFECTIVE DATE

CC = Contract Capacity in kW contained in Annex I of the PSC

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

$$\text{VOM}_{\text{month}} = \left[\left(0.85 \times \text{VOM} \times \frac{\text{USCPI}_m}{\text{USCPI}_o} \times \frac{\text{FX}_m}{\text{FX}_o} \right) + \left(0.15 \times \text{VOM} \times \frac{\text{PHCPI}_m}{\text{PHCPI}_o} \right) \right] \times \text{AE}$$

Where:

VOM = Variable Operation and Maintenance Fee in PhP/kWh contained in Annex II-A of the PSC

USCPI_m = United States (US) CPI for All Urban Consumers – All Items (1982-84=100), as posted by the United States Bureau of Labor Statistics (USBLS) for the calendar month within which the start of the current Billing Period occurs

USCPI_o = US CPI for All Urban Consumers – All Items (1982-84=100) for the calendar month of the SUPPLY EFFECTIVE DATE

FX_m = The average daily exchange rate of the Philippine Peso to the US Dollar, as posted by the BSP for the calendar month within which the start of the current Billing Period occurs

FX_o = Exchange rate of the Philippine Peso to the US Dollar, Base=PhP44.00

PHCPI_m = Philippine CPI for All Income Households in the Philippines – All Items (2006=100), as posted by the Philippine NSO for the calendar month within which the start of the current Billing Period occurs

PHCPI_o = Philippine CPI for All Income Households in the Philippines – All Items (2006=100), as posted by the Philippine NSO for the calendar month of the SUPPLY EFFECTIVE DATE

AE = Associated Energy in kWh delivered to the BUYER by the SELLER during the current Billing Period at the Delivery Points stated in Annex III of the PSC

The Parties agree to adopt changes in any of the inflationary indices subject to prior notification by the SELLER to the BUYER for the occurrence of any of the following events: a) shift made in the base year and other adjustments to such inflation index made by the relevant authorized entity; or b) the inflation index: i) becomes unavailable, ii) is replaced by a new benchmark rate as determined by the relevant authorized entity or its successor-in-interest, iii) ceases to exist, or iv) in the reasonable determination of either Party, fails to reflect the real costs and forms an integral part of this price adjustment formula;

IV. FUEL FEE (Fuel_{month})

$$\mathbf{Fuel_{month}} = \left[\left(\frac{\mathbf{FuelCost + FreightCost}}{1,000} \right) \times \mathbf{CR} \times \mathbf{FX}_m \right] \times \mathbf{AE}$$

Where:

Fuel Cost = Base Fuel Cost, in USD/MT $\times \frac{\text{Newcastle}_m}{\text{Newcastle}_0}$

Newcastle_m = Average monthly coal price index in USD/MT as posted by global coal on the website www.globalcoal.com for the calendar month within which the start of the current Billing Period occurs

Newcastle₀ = Coal price index equivalent to USD74.00/MT

Base Fuel Cost = Blended Cost equivalent to USD62.69/MT

Freight Cost = Actual Transport Costs in USD/MT which includes but not limited to port charges, fuel insurance, wharfage fees, excise tax, handling, customs brokerage fees, custom duties, stevedores and arrastre costs, tuggage costs, survey fee, towage, pilotage, light dues, mooring and unmooring, berthing and de-berthing, and tonnage dues and sundries on the coal used during the current

Billing Period. Freight costs shall include all other existing and future taxes, fees, imposts and other charges that may be imposed on the transport of coal

- CR = Consumption rate at 0.70kg/kWh escalated annually by one percent (1%) or the actual plant fuel consumption rate, whichever is lower
- FX_m = The average daily exchange rate of the Philippine Peso to the US Dollar, as posted by the BSP for the calendar month within which the start of the current Billing Period occurs
- FX_o = Exchange rate of the Philippine Peso to the US Dollar, Base=PhP44.00
- AE = Associated Energy in kWh delivered to the BUYER by the SELLER during the current Billing Period at the Delivery Points stated in Annex III of the PSC

The Parties further agree that when any or all of the above components of the Fuel Cost no longer reflect the SELLER's actual cost of coal (including the FOB price, coal indexation, premiums, among others), the Fuel Cost shall be computed based on the SELLER's actual cost of fuel subject to the SELLER's prior notification to the BUYER and subject to the approval of the Honorable Commission prior to implementation.

V. Start-up Charge (per Unit and per Start-up) - to be added on top of VOM & Fuel charges

Cold Start-up – downtime of eight (8) hours and above

$$\text{Start-up Charge} = 130,000 \text{ liters} \times \text{LFO}_m \times \frac{\text{CC}}{\text{TPC}}$$

Warm Start-up – downtime of less than eight (8) hours

$$\text{Start-up Charge} = 36,000 \text{ liters} \times \text{LFO}_m \times \frac{\text{CC}}{\text{TPC}}$$

Where:

- LFO_m = The actual price of diesel oil in PhP/liter as billed by supplier of diesel oil applicable for the Billing Period
- CC = Contract Capacity in kW contained in Annex I of the PSC
- TPC = Total plant capacity (net) per unit in kW

17.7 Discounts. SMCPD provides for both Prompt Payment Discount (“PPD”) and Collection Efficiency Discount (“CED”);

- a) **PPD.** DANECO may avail of the PPD equivalent to one percent (1%) of the total of the Capacity and Energy Charges of the current power bill
- b) **CED.** DANECO shall be entitled to the following CED:

Collection Efficiency Levels	Discount, PhP/kWh
Below 65%	None
66% to 75%	0.05
76% to 85%	0.10
86% to 95%	0.15
96% and above	0.20

17.8 Outages.

17.8.1 Annual Outage Allowance Per Unit.

SMCPD shall be entitled to an Annual Outage Allowance of one thousand one hundred fifty-eight (1,158) cumulative outage hours for each Contract Year at the cost specified in Annex II-A of the PSC. During this period, SMCPD shall not be obligated to deliver energy to DANECO;

17.8.2 Major Maintenance Outage Hours Per Unit.

SMCPD shall be allowed an additional outage allowance of seven hundred twenty (720) cumulative outage hours for Major Maintenance once every five (5) years counted from the first Major Maintenance of each Unit of the Plant. SMCPD is not obligated to deliver energy during Major Maintenance Outage; and

17.8.3 Unutilized Outage Allowance hours or Major Maintenance Outage hours shall not be carried forward to any subsequent Contract Year; and

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17.9 Replacement Power. To ensure the uninterrupted supply of energy to DANECO during the Annual Outage Allowance or Major Maintenance Outage hours, SMCPD may procure replacement power from other sources, the cost of which shall be passed-on to the BUYER.

18. Copies of the following documents and/or information are attached to the Joint Application as annexes and made integral parts hereof:

Annex	Documents/Information
“A”	PSC between DANECO and SMCPD.
“B”	<i>Resolution No. 08 Series of 2020</i> of the TASKFORCE DUTERTE-NORTHERN DAVAO POWER (“NEA-TFDNDP”) Board of Directors.
“C”	Secretary’s Certificate of SMCPD.
“D”	Local Government Unit (“LGU”) Certification from the Municipality of Montevista.
“E”	LGU Certification from the Province of Davao de Oro.
“E-1”	LGU Certification from the Province of Davao del Norte.
“F”	LGU Certification from the Municipality of Malita, Davao Occidental.
“F-1”	LGU Certification from the Province of Davao Occidental
“G”	Complete issue of the newspaper of general circulation where the Verified Joint Application was published.
“H”	Affidavit of Publication of the newspaper of general circulation where the Verified Joint Application was published.
“I”	Competitive Selection Process (“CSP”) Documents of DANECO.
“J”	Articles of Incorporation of DANECO.
“K”	By-Laws of DANECO.
“L”	List of Board of Directors of DANECO
“M”	Alternative Demand Side Management (“DSM”) Program.
“N”	Articles of Incorporation of SMCPD.
“O”	By-Laws of SMCPD.
“P”	Securities and Exchange Commission (“SEC”) Certificate of Registration.
“Q”	Amended General Information Sheet (“GIS”) of SMCPD.
“R”	Document showing information related to the Ultimate Parent Company, its Subsidiaries, and all its Affiliates.
“R-1”	Write Up on the Shareholders’ Agreement
“S”	Board of Investment (“BOI”) Certificate of Registration.
“T”	Environmental Compliance Certificate (“ECC”).
“U”	Certificate of Compliance (“COC”) issued by the ERC.
“V”	Certificate of Endorsement (“COE”) issued by the DOE.
“W”	Supply-Demand Scenario including the Average Daily Load Curve of DANECO.
“X”	Latest Distribution Development Plan (“DDP”) and Load Forecast Projections of DANECO.
“Y”	Decision of the Point-to-Point Limited Transmission Facilities of the Malita Plant with NGCP.

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“Z”	Transmission Service Agreement (“TSA”) between NGCP and DANECO.
“Z-1”	Connection Agreement between NGCP and SMCPC.
“AA”	Executive Summary of the PSC.
“BB”	Details of the Power Rate Calculations and Financial Model (Confidential).
“CC”	Write up on the Fuel Supply Contract (Confidential).
“DD”	Affidavit of the Competitive Fuel Procurement Process.
“EE”	Relevant technical and economic characteristics of the generation capacity, installed capacity, mode of operation and dependable capacity.
“FF”	Costs analysis of the proposed pricing provisions of the PSC.
“GG”	Details of the Interconnection Facility of the SMCPC Power Plant.
“HH”	SMCPC Audited Financial Statements (“AFS”) for the year 2019.
“II”	Certification (from Engine manufacturer or IPP) of the heat rate in liters per kWh.
“JJ”	Simulation of the number of operating units necessary to meet the MEOT and/or additional energy/demand requirements of DANECO.
“KK”	Potential Cost (absolute amounts and PhP/kWh) of Ancillary Services as and when SMCPC or DANECO is connected to the main grid.
“LL”	Certification of Non-Applicability of a Certificate of Commerciality by an RE Developer After Due Confirmation with the DOE
“LL-1”	Certification of Non-Applicability of a Renewable Energy Service/Contract from the DOE.
“LL-2”	Write-up on the Non-Applicability of the Certification from the National Power Corporation (“NPC”) on DANECO’s Transition Supply Contract (“TSC”).
“MM”	Rate Impact Analysis.

Indicative Rate Impact on DANECO’s Generation Rate

19. The indicative rate impact on DANECO’s generation rate is hereunder shown, to wit:

	2018 - 2019	2020 - 2033
	10 MW Firm; 5 MW Non-Firm	15 MW
Without SMCPC	5.771	5.828
With SMCPC	5.757	5.562
Rate Impact (PhP per kWh)	(0.014)	(0.266)

Allegations in Support of the Confidential Treatment of Annexes “BB” and “CC”

20. *Section 1, Rule 4 of the ERC Rules of Practice and Procedure* provides that a party to any proceeding before the Commission may request that certain information in

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the Honorable Commission's possession be treated as confidential and thus, should not be disclosed to the public.

21. In line with this, SMCPCC, prays for the confidential treatment of the information contained in the following annexes, and that the said information should not be disclosed except to the officers and staff of the Honorable Commission:

Annex	Documents and/or Information
"BB"	Details of the Power Rate Calculations and Financial Model. (Confidential)
"CC"	Write-Up on the Fuel Supply Contract. (Confidential)

22. Annexes "BB" and "CC" contain the details of power rate calculations and financial model of SMCPCC as well as the manner by which these were derived. Said 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.*⁹, 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;

⁹ G.R. No. 172835, December 13, 2007;

- (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)
23. The interest of the consuming public is sufficiently protected by the review and evaluation of the rates under the PSC by the Honorable Commission, without the need to disclose the contents of **Annexes “BB”** and **“CC”**. The reasonableness and transparency of the prices of electricity is to be assured by the Honorable Commission through its own review and verification of the generation and operating costs of SMCP;C;
24. More importantly, the competitors of SMCP;C, should they obtain the information in **Annexes “BB”** and **“CC”**, will gain undue advantage thereon and have the opportunity to use the same in their operations. The negotiating power of SMCP;C 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;
25. Accordingly, one (1) copy each of **Annexes “BB”** and **“CC”**, is placed in a sealed envelope, with the said envelope and each page of the documents and/or information stamped with the word *“Confidential”*.
26. Lastly and corollary to the foregoing, SMCP;C would like to implore the discerning wisdom of the Honorable Commission to include in its Order the ***“procedures for the handling or returning the confidential information, as appropriate, upon the close of the proceedings or at the end of the period for which the information is to be treated as confidential”*** pursuant to Letter (d), Section 4, of the ERC Rules and Practice and Procedure.
27. This is guided by the fact that SMCP;C 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 SMCPG enclosed in the subject annexes.

Allegations in Support of the Prayer for Provisional Authority or Interim Relief

24. The foregoing discussions / arguments are hereby repleaded and incorporated by way of reference in the efforts of the joint applicants to substantiate the prayer for the issuance of Provisional Authority (“PA”) or Interim Relief (“IR”).
25. The plea for the subject reliefs which will allow the immediate implementation of the subject PSC upon the filing hereof and pending the final resolution of the instant case is anchored upon the provisions of Rule 14 of the ERC Rules of Practice and Procedure (“ERC Rules”), to wit:

“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 there be any.”

26. The entreaty based on the mentioned provisions of the ERC Rules is also intended to afford the Honorable Commission ample opportunity to evaluate the instant application as the process thereof may entail months before a final approval can be rendered under the circumstances.
27. Further and most importantly, the interests of the consumer-members of co-applicant DANECO will be served with the issuance of the PA or IR prayed for herein, as the grant thereof by the Honorable Commission will ensure a steady and reliable supply of power at a competitive rate.

PRAYER

WHEREFORE, foregoing premises considered, Joint Applicants **Davao Del Norte Electric Cooperative, Inc. (“DANECO”)** and **San Miguel Consolidated Power Corporation (“SMCPG”)** most respectfully pray before the Honorable Commission that:

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1. An Order be issued by the Honorable Commission immediately upon the filing hereof and before the scheduled hearings/proceedings and/or during the pendency of this case and prior to the final resolution/approval thereof, **GRANTING** the following:
 - a. a ***Provisional Authority or Interim Relief*** allowing the Joint Applicants to immediately implement the PSC subject of this case in its entirety more particularly but not limited to the rates, fees, charges and tariff adjustment mechanisms set out therein;
 - b. that **Annexes “BB” and “CC”**, and the information contained therein be treated as **CONFIDENTIAL**, directing their non-disclosure to persons other than officers and staff of the Honorable Commission, continuously protecting the said information from public disclosure by maintaining the same separate and apart from the records of the case, and ensuring that these are not divulged to unauthorized persons;
 - c. the procedures for handling the confidential information upon the close of the proceedings and its return/delivery to SMCPD be issued by the Honorable Commission pursuant to Letter (d), Section 4, of the ERC Rules and Practice and Procedures;
2. After hearing and trial on the merits, **ISSUE** a ***Decision*** approving the Joint Application and the PSC between DANECO and SMCPD, including all the rates, fees, charges and tariff adjustment mechanisms set out therein at the rates provided in the PSC, and authorizing DANECO to charge and collect fees therein from its customers reckoned from the start supply by SMCPD to DANECO.

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

The Commission hereby sets 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

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platform for the conduct thereof, pursuant to Resolution No. 09, Series of 2020¹⁰, dated 24 September 2020.

Date	Online Platform	Activity
18 June 2021 (Friday) at nine o'clock in the morning (09:00 A.M.)	Microsoft Teams (MS Teams) Application	Determination of compliance with jurisdictional requirements and Expository Presentation
25 June 2021 (Friday) at nine o'clock in the morning (02:00 A.M.)	Microsoft Teams (MS Teams) Application	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;

¹⁰ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before 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 likewise 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 Application on the Commission's official website at www.erc.gov.ph.

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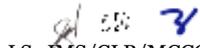
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Finally, all interested persons may be allowed to join the scheduled initial virtual hearing by providing the Commission, thru legal.virtualhearings@erc.ph, with their respective e-mail addresses and indicating therein the case number of the instant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

WITNESS, the Honorable Commissioners **ALEXIS M. LUMBATAN, CATHERINE P. MACEDA, FLORESINDA G. BALDO-DIGAL** and **MARKO ROMEO L. FUENTES**, Energy Regulatory Commission, this 13th day of April 2021 in Pasig City.


AGNES VST DEVANADERA
Chairperson and CEO




LS: JMS/CLB/MCCG