

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City



IN THE MATTER OF THE APPLICATION FOR AUTHORITY TO DEVELOP, OWN AND/OR OPERATE DEDICATED POINT-TO-POINT LIMITED TRANSMISSION FACILITIES TO CONNECT THE ±20MW VILLANUEVA BATTERY ENERGY STORAGE SYSTEM TO THE MINDANAO GRID VIA THE VILLANUEVA 138KV SUBSTATION OF THE NATIONAL GRID CORPORATION OF THE PHILIPPINES, WITH PRAYER FOR PROVISIONAL AUTHORITY AND CONFIDENTIAL TREATMENT OF INFORMATION

ERC CASE NO. 2021-019 MC

UNIVERSAL POWER SOLUTIONS, INC. (UPSI),
Applicant.
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Promulgated:
June 22, 2021

NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 20 May 2021, Universal Power Solutions, Inc. (UPSI) filed an *Application* dated 17 March 2021, seeking the Commission's approval to develop, own and/or operate dedicated point-to-point limited transmission facilities to connect its ±20MW Villanueva Battery Energy Storage System (BESS) to the Mindanao Grid via the Villanueva 138kV Substation of the National Grid Corporation of the Philippines (NGCP), with prayer for provisional authority and confidential treatment of information.

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

THE APPLICANT

1. UPSI (formerly, Limay Power Generation Corporation or “LPGC”) is a corporation duly organized and existing by virtue of and under the laws of the Republic of the Philippines, with principal office address at 40 San Miguel Avenue, Mandaluyong City, Metro Manila, Philippines.

Copies of LPGC’s Certificate of Incorporation, UPSI’s Certificate of Filing of Amended Articles of Incorporation, Amended Articles of Incorporation, Amended By-Laws, and latest General Information Sheet, are attached hereto and made integral parts hereof as Annexes “A,” “B,” “C,” “D,” and “E,” respectively.

2. UPSI may be served orders and other processes through the undersigned counsel.

NATURE OF THE APPLICATION

3. This Application is submitted to this Honorable Commission pursuant to Section 9(f) of Republic Act No. 9136 otherwise known as the Electric Power Industry Reform Act of 2001 (“EPIRA”),¹ Rule 5, Section 5(a)(i) of the EPIRA Implementing Rules and Regulations,² and Section 4.2 of Resolution No. 23 Series of 2016 or the Resolution Adopting Amended Rules on the Definition and Boundaries of Connection Assets for Customers of Transmission Providers³

¹ Section 9. Functions and Responsibilities.

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(f) xxx

A generation company may develop and own or operate dedicated point-to-point limited transmission facilities that are consistent with the TDP: *Provided*, That such facilities are required only for the purpose of connecting to the transmission system, and are used solely by the generating facility, subject to prior authorization by the ERC: xxx

² Section 5. Dedicated Point-to-Point Limited Transmission Facility of a Generation Company.

- (a) Subject to prior authorization from ERC, TRANSCO or its Buyer or Concessionaire may allow a Generation Company to develop, own and/or operate dedicated point-to-point limited transmission facilities; *Provided*, That:

- (i) Such dedicated point-to-point limited transmission facilities are required only for the purpose of connecting to the Grid which will be used solely by the Generation Facility, and are not used to serve End-users or Suppliers directly.

³ 4.2. Connection Assets for Generation Customers of Transmission Provider

Connection Assets for generation customers of Transmission Provider include those assets from the last Single Mechanical Connection of a User System or Equipment of a Generation Company, at its Connection Point, to the last Single Mechanical Connection which is not shared with another Customer within the Grid.

for its consideration and approval of UPSI's proposed development, ownership, and operation of interconnection facilities which shall connect the ±20MW Villanueva Battery Energy Storage System ("Villanueva BESS") to the Mindanao Grid via direct connection to the Villanueva 138kV Substation of the National Grid Corporation of the Philippines ("NGCP") (the "Dedicated Facility Project"). The Villanueva BESS has the capability and is well-equipped for a potential expansion of until ±40MW.

A copy of the Secretary's Certificate authorizing the construction and operation of the Dedicated Facility Project, as well as the filing of the instant Application and appointing the authorized representative/s therefor is attached hereto and made an integral part hereof as Annex "F."

STATEMENT OF FACTS

4. UPSI is a wholly-owned subsidiary of SMC Powergen Inc., and is authorized to engage in the business of producing, generating and storing electricity and processing fuels alternative for power generation.
5. Pursuant to its primary purpose, UPSI is engaged in the development, construction, operation and ownership of the Villanueva BESS, which is targeted to commence commercial operation by 2nd Quarter of 2021 and is intended to provide ancillary services to NGCP as a Regulating Reserve for the Mindanao Grid.

Copies of UPSI's letter dated 22 June 2020 addressed to the Department of Energy requesting for confirmation that the Villanueva BESS is consistent with the Power Development Plan, Project Description of the Villanueva BESS, Project Rationale of the Villanueva BESS, summary of relevant dates indicating the dates of start and completion of construction, testing and commissioning, and commercial operations of both the Villanueva BESS and Dedicated Facility Project, as well as the Environmental Compliance Certificate for the Villanueva BESS and the Dedicated Facility Project issued by the Department of Environment and Natural Resources are attached hereto and made integral parts hereof as Annexes "G," "H," "H-1," "I," and "J," respectively.

6. On 23 June 2020, UPSI submitted a letter to the DOE requesting for the processing of the Certificate of Endorsement as a requirement for the issuance of the Certificate of Compliance by the ERC. On 30 June 2020, the DOE requested UPSI to submit several documents for the

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A Generation Company may develop and own or operate a dedicated point-to-point limited facilities provided, that such facilities are required only for the purpose of connecting to the transmission system, and are used solely by the generating facility, subject to prior authorization by the ERC.

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processing of the Certificate of Endorsement, including a Power Supply Agreement with the offtaker filed before the ERC.

- 6.1. However, we note that as opposed to a Power Supply Agreement which may entered into while the generating plant of the supplier is still being constructed, NGCP requires that the generating plant of an Ancillary Service Provider be certified as capable of providing Ancillary Services. Such certification may only be obtained after UPSI has completed the construction of the generating plant and the same is tested by the NGCP.
- 6.2. UPSI therefore endeavors to submit a copy of the DOE Certificate of Endorsement as soon as the construction of the San Manuel BESS is completed and it receives the certification from the NGCP that the San Manuel BESS is capable of providing Ancillary Services.

A copy of the e-mail from the DOE dated 30 June 2020 is attached hereto and made an integral part hereof as “Annex K.”

- 7. In order to test, commission and dispatch electricity from the Villanueva BESS, UPSI shall develop and construct a dedicated point-to-point facility which will connect the Villanueva BESS to the Villanueva 138kV Substation of NGCP.

- 7.1. The Villanueva BESS shall connect to the Mindanao Grid through a direct connection to the Villanueva 138kV Substation via a 500-meter, 750 *mm*² XLPE direct burial conductors.

A copy of the Project Description and Detailed Single Line Diagram of the Dedicated Facility Project are attached hereto and made integral parts hereof as Annexes “L” and “M,” respectively.

- 7.2. The estimated cost of the construction of the Dedicated Facility Project is PhP121,759,035.00 with the following major cost components:

Project Component	Cost
A. Supply of electrical works, protection, control and communication works, and civil works, and materials, labor, equipment supervision for complete installation, testing and commissioning of the 138kV Villanueva Take-Off Substation Protection System and NGCP San Manuel 69kV Substation	PhP108,301,005.00
B. Supply of materials, labor, equipment supervision for complete installation,	PhP13,458,030.00

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testing and commissioning of the Transmission Line	
TOTAL COST	PhP121,759,035.00

A copy of the detailed breakdown of the Dedicated Facility Project Cost Estimate is attached hereto and made an integral part hereof as Annex “N.”

7.3. The Dedicated Facility Project will be exclusively funded by UPSI and will, therefore, not impact any regulated charges.

8. UPSI respectfully submits that the Dedicated Facility Project is the only viable option for connecting the Villanueva BESS in view of its proximity to the Villanueva 138kV Substation. In addition, in the System Impact Study (“SIS”), NGCP recommended the connection of the Villanueva BESS to the Mindanao Grid through the Dedicated Facility Project.

8.1. The construction of the Dedicated Facility Project, including civil and electromechanical works, may be completed in approximately 4 months.

Copies of the Conceptual Engineering Design and Drawing, and the Gantt Chart for the construction of the Dedicated Facility Project are attached hereto and made integral parts hereof as Annexes “O” and “O-1,” respectively.

9. The Dedicated Facility Project shall be constructed by EBATECH as the contractor of UPSI.

A copy of the Company Profile of EBATECH and matrix of its ongoing and completed projects is attached hereto and made an integral part hereof as Annex “P.”

10. In September 2019, the NGCP performed a SIS to determine the impact of connecting the Villanueva BESS to the Mindanao Grid and evaluate the technical feasibility of the Dedicated Facility Project. The connection of the Villanueva BESS to the Mindanao Grid was found to be technically feasible through the Dedicated Facility Project.

Copies of the SIS and NGCP’s SIS Final Review Report dated 22 October 2019 are attached hereto and made integral parts hereof as Annexes “Q” and “Q-1,” respectively.

10.1. UPSI also engaged Power System Research and Consultancy Group to conduct the Interconnection Facilities Study (“Facilities Study”) to ensure that the equipment to be installed will satisfy the recommendation of the SIS, and that the Dedicated Facility Project complies with the provisions of the Philippine Grid Code.

Copies of the Facilities Study and NGCP's Review Report on the Facilities Study dated 21 January 2020 are attached hereto and made integral parts hereof as Annexes "R" and "R-1," respectively.

11. The Villanueva BESS has been considered in NGCP's Transmission Development Plan. In a Certification dated 2 July 2020, NGCP has confirmed the inclusion of the Villanueva BESS in the formulation of the 2020-2040 Transmission Development Plan.

12. In addition, NGCP and UPSI are currently in the process of finalizing the terms of their Connection Agreement for the interconnection of the Villanueva BESS to the Mindanao Grid through the Dedicated Facility Project.

A Copy of the Certification from NGCP dated 2 July 2020 stating that the Villanueva BESS was considered in the formulation of the Transmission Development Plan and that NGCP and UPSI are finalizing the terms of their Connection Agreement, and the relevant extract of the consultative draft of the Transmission Development Plan for 2020-2040 NGCP and UPSI are finalizing the terms of their Connection Agreement is attached hereto and made integral and part hereof as Annexes "S," and "S-1," respectively.

13. Upon completion of the Dedicated Facility Project and the commercial operation of the Villanueva BESS, UPSI intends to engage NGCP for the operation, service, and maintenance (O&M) services of the Dedicated Facility Project.

A copy of NGCP's Letter dated 22 December 2020 stating that it is capable to undertake the operations and maintenance of the Dedicated Facility Project is hereto attached and made an integral part hereof as Annex "T."

14. As of date, UPSI has secured or is in the process of securing the necessary permits, licenses and authority from the appropriate regulatory agencies for the Dedicated Facility Project.

A copy of the sworn statement of UPSI's authorized representative dated 07 September 2020 attesting to the fact that UPSI obtained all the necessary permits from all concerned agencies that may have an interest in the Dedicated Facility Project is hereto attached and made an integral part hereof as Annex "U."

15. In light of the foregoing, UPSI respectfully seeks the confirmation and approval of the Honorable Commission that the Dedicated Facility Project is the most viable option for the connection of the Villanueva BESS to the Mindanao Grid.

16. In order to provide ancillary services as a regulating reserve to the Mindanao Grid in 2021, there is a need for UPSI to commence operations in 2021. Needless to state, the construction of the Dedicated Facility Project is a prerequisite for the testing and commissioning, and ultimately, the commercial operations of the Villanueva BESS. A provisional authority is thus urgently needed to enable UPSI to achieve the target commercial operations date of the Villanueva BESS by November 2021 and provide ancillary services to the Grid.

A copy of the Affidavit executed by UPSI's authorized representative in support of the prayer for issuance of provisional authority is hereto attached and made an integral part hereof as Annex "V."

17. Considering the foregoing, UPSI submits that there is clear and sufficient basis for the issuance of a provisional authority for the development, ownership, and operation of the Dedicated Facility Project by UPSI to connect the Villanueva BESS to the Mindanao Grid, pending the Honorable Commission's issuance of a final decision on the instant Application.

**ALLEGATIONS IN SUPPORT OF
CONFIDENTIAL TREATMENT OF INFORMATION**

16. UPSI respectfully manifests that Annexes "H," "H-1," "L," "N," "P," "Q," "Q-1," "R," and "R-1" of the instant Application contain valuable, non-public information, and data and insight, and be treated as confidential. These confidential documents contain commercially sensitive information which, if disclosed to the public, might adversely affect UPSI's competitiveness in future projects. It is therefore submitted that Annexes "H," "H-1," "L," "N," "P," "Q," "Q-1," "R," and "R-1" fall within the bounds of proprietary "trade secrets" which are confidential in nature and entitled to protection from disclosure under the Constitution, statutes, and rules and regulations of this Honorable Commission.
17. Rule 4 of the ERC Rules of Practice and Procedure states that the Honorable Commission may, upon request of a party and determination of the existence of conditions which would warrant the remedy, treat certain information submitted to it as confidential. Pursuant to this provision, UPSI respectfully requests for the issuance of a protective order declaring the documents attached as Annexes "H," "H-1," "L," "N," "P," "Q," "Q-1," "R," and "R-1" of this Application as confidential information, as the Applicant intends to present them as evidence in the instant Application.
18. Considering the confidential nature of these documents, UPSI respectfully requests that said annexes not be disclosed to third parties and the public and be treated as confidential documents. In accordance with Section 1(b), Rule 4 of the

ERC Rules of Practice and Procedure, UPSI hereby submits one copy of Annexes “H,” “H-1,” “L,” “N,” “P,” “Q,” “Q-1,” “R,” and “R-1” in a sealed envelope, with the envelope and each page of the documents stamped with the word “Confidential”.

19. The data contained in Annexes “H,” “H-1,” “L,” “N,” “P,” “Q,” “Q-1,” “R,” and “R-1” attached to this Application constitute “trade secrets” of UPSI; thus, UPSI has actual and valuable proprietary interest to protect with respect to such information. The Supreme Court, in the case of Air Philippines Corporation vs. Pennswell, Inc., had the opportunity to discuss the definition of “trade secrets” and the great extent to which the same are protected under our laws. The Supreme Court defined the term “trade secret” as follows:

“A trade secret is defined as a plan or process, tool, mechanism or compound known only to its owner and those of his employees to whom it is necessary to confide it. The definition also extends to a secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade having a commercial value. 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 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.”⁴ (Emphasis supplied.)

20. In the Air Philippines case, the Supreme Court emphasized the status of trade secrets as protected information, shielded from disclosure except for the most pressing of reasons. The Supreme Court stated unequivocally that trade secrets are of a privileged nature, as is evident from the protection that is afforded them in our laws, including the Revised Penal Code, the Securities Regulation Code, the National Internal Revenue Code of 1997, and the Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990. The Supreme Court went on to state:

“Clearly, in accordance with our statutory laws, this Court has declared that intellectual and industrial property rights cases are not simple property cases. Without limiting such industrial property rights to trademarks and trade names, this Court has ruled that all agreements concerning intellectual property are intimately connected with economic development. The protection of industrial property encourages investments in new ideas and inventions and stimulates creative efforts for the satisfaction of human needs. It speeds up transfer of technology and industrialization, and thereby bring about social and economic progress. Verily, the protection of industrial secrets is inextricably linked to the advancement of our economy and fosters healthy competition in trade.

Jurisprudence has consistently acknowledged the private character of trade secrets. There is a privilege not to disclose one's trade secrets. Foremost, this Court has declared that trade secrets and banking transactions are among the recognized restrictions to the right of the people to information as embodied in the Constitution. We said that the drafters of the Constitution also unequivocally affirmed that, aside from national security matters and intelligence information, trade or industrial secrets (pursuant to the Intellectual Property Code and other related laws) as well as banking transactions (pursuant to the Secrecy of Bank Deposits Act), are also exempted from compulsory disclosure.” (Emphasis supplied.)

⁴ G.R. No. 172835, 13 December 2007.

21. Information which falls within the definition of a trade secret as defined by jurisprudence is clearly information which merits the confidential treatment provided for under Rule 4 of the ERC Rules of Practice and Procedure. UPSI respectfully submits that the technical and commercial information contained in the documents qualify as trade secrets, as it reflects commercially sensitive information of UPSI. Annexes “H,” “H-1,” “L,” “N,” “P,” “Q,” “Q-1,” “R,” and “R-1” of this Application should therefore be entitled to the protection of confidential information provided under Rule 4 of the ERC Rules of Practice and Procedure.
22. In view of all the foregoing, Applicant respectfully submits the instant Application for the Honorable Commission’s urgent and utmost consideration.

PRAYER

WHEREFORE, premises considered, Applicant UNIVERSAL POWER SOLUTIONS, INC. respectfully prays that the Honorable Commission:

1. Issue an Order granting provisional authority for the implementation of the development, ownership and operation of the Dedicated Facility Project by UPSI to connect the Villanueva BESS to the Mindanao Grid [.]
2. Issue an Order treating Annexes “H,” “H-1,” “L,” “N,” “P,” “Q,” “Q-1,” “R,” and “R-1” and the information contained therein as confidential information within the purview of Rule 4 of the ERC Rules of Practice and Procedure and prescribing the guidelines for the protection thereof; and
3. After hearing on the merits, a Decision be rendered approving the instant Application.

Other just and equitable reliefs are likewise prayed for.

The Commission has set the *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 2020,⁵ dated 24 September 2020:

(This space is intentionally left blank.)

⁵ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

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Date	Platform	Activity
15 July 2021 (Thursday) at two o'clock in the afternoon (2:00 PM)	Microsoft Teams	Determination of compliance with the jurisdictional requirements and expository presentation
22 July 2021 (Thursday) at two o'clock in the afternoon (2:00 PM)	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, any 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

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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.

Finally, all interested persons may be allowed to join the scheduled initial 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 *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 31st day of May 2021 in Pasig City.


AGNES VST DEVANADERA
Chairperson and CEO

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