

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



**IN THE MATTER OF THE
APPLICATION FOR THE
AUTHORITY TO DEVELOP,
OWN, AND/OR OPERATE
DEDICATED POINT-TO-
POINT LIMITED
TRANSMISSION FACILITIES
TO CONNECT THE +20MW
GAMU BATTERY ENERGY
STORAGE SYSTEM TO THE
LUZON GRID VIA THE
GAMU 69KV SUBSTATION
OF THE NATIONAL GRID
CORPORATION OF THE
PHILIPPINES, WITH
PRAYER FOR PROVISIONAL
AUTHORITY AND
CONFIDENTIAL
TREATMENT OF
INFORMATION**

ERC CASE NO. 2021-013 MC

**UNIVERSAL POWER
SOLUTIONS, INC. (UPSI),
Applicant.**

Promulgated:
June 24, 2021

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NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 22 April 2021, Universal Power Solutions, Inc. (UPSI) filed an *Application* dated 17 March 2021 seeking the Commission's authority to develop, own and operate a dedicated point-to-point limited transmission facility to connect the Gamu Battery Energy Storage System (BESS) to the Luzon Grid via direct connection to the Gamu 69kV Substation of the National Grid Corporation of the Philippines (NGCP), with prayer for the issuance of provisional authority and confidential treatment of information.

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

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 By-Laws, Amended Articles of Incorporation, Amended By-Laws, and latest Amended General Information Sheet are hereto attached 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 Providers*³

¹ Section 9. Functions and Responsibilities.

xxx

(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 ± 20 MW Gamu Battery Energy Storage System ("**Gamu BESS**") to the Luzon Grid via direct connection to the Gamu 69kV Substation of the National Grid Corporation of the Philippines ("**NGCP**") (the "**Dedicated Facility Project**"). It should be noted that the Gamu BESS has a potential expansion to make it a total of ± 40 MW.

*Copies of the Secretary's Certificates authorizing the filing of the instant Application for the construction and operation of the Dedicated Facility Project and appointing the authorized representative/s therefor, and the Delegation Letter appointing the undersigned counsel are attached hereto and made an integral part hereof as **Annexes "F" to "F-2"**.*

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 Gamu BESS, which is targeted to commence commercial operation by 4 November 2021 and is intended to provide ancillary services to NGCP as a Regulating Reserve for the Luzon Grid.

*Copies of UPSI's letter dated 22 June 2020 addressed to the Department of Energy ("**DOE**") requesting for confirmation that the Gamu BESS is consistent with the Power Development Plan, Project Description of the Gamu BESS, Project Rationale of the Gamu BESS, Summary of Relevant Dates indicating the dates of start and completion of construction, testing, and commissioning, and commercial operations of both the Gamu BESS and Dedicated Facility Project, as well as the Environmental Compliance Certificate for the Gamu BESS, including 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," "I," "J," and "K,"** respectively.*

6. On 23 June 2020, UPSI submitted a letter of even date to the DOE requesting the issuance of a Certificate of Endorsement

to be submitted to this Honorable Office to support UPSI’s application for the issuance of a Certificate of Compliance. On 30 June 2020, the DOE requested UPSI to submit additional documents for the processing of its request for the issuance of a Certificate of Endorsement, including a Certification/Acknowledgment from NGCP that the Gamu BESS has an on-going Ancillary Services Procurement Agreement (“**ASPA**”) application with NGCP.

- 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 for the execution of an ASPA that the generating plant of an Ancillary Service Provider be certifies as capable of providing Ancillary Services. Such certification may only be obtained after the generating plant’s construction is completed and the same is tested by NGCP.
- 6.2. UPSI, therefore, endeavors to submit a copy of the DOE Certificate of Endorsement as soon as the construction of the Gamu BESS is completed and it receives the certification from NGCP that the Gamu BESS is cable of providing Ancillary Services.

*A copy of UPSI’s letter to the DOE dated 23 June 2020 is attached hereto and made an integral part hereof as “**Annex L.**”*

- 7. In order to test, commission, and dispatch electricity from the Gamu BESS, UPSI shall develop and construct a dedicated point-to-point facility, which will connect the Gamu BESS to the Gamu 69kV Substation of NGCP.

- 7.1. The Gamu BESS shall connect to the Luzon Grid through a direct connection to the Gamu 69kV Substation via an approximately 150-meter connection line and shall utilize 1-336.4 MCM Aluminum Conductor Steel Reinforce (ACSR) conductor.

*Copies of the Project Description and Single Line Diagram of the Dedicated Facility Project are attached hereto and made integral parts hereof as **Annexes “M” and “N,”** respectively.*

- 7.2. The estimated cost of the construction of the Dedicated Facility Project is Sixty-Nine Million Six Hundred Eighty-Nine Thousand Six Hundred Forty-Six Pesos (PhP69,689,646.00) with the following major cost components:

Project Component	Estimated Cost (in PhP)
A. Supply of electrical works, protection, control and	66,626,960.00

communication works, and civil works, and materials, labor, equipment supervision for complete installation, testing and commissioning of the Gamu 69kV BESS Take-Off Substation Protection System and NGCP Gamu 69kV Substation	
B. Supply of materials, labor, equipment supervision for complete installation, testing, and commissioning of the Transmission Line	3,060,686.00
TOTAL ESTIMATED COST	69,689,646.00

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

- 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 Gamu BESS to the Luzon Grid in view of its proximity to the Gamu 69kV Substation. In the System Impact Study (“**SIS**”), NGCP recommended that the Gamu BESS shall directly connect to the Gamu 69kV Substation via a 0.15-kilometer (150-meter) connection line and utilizing 1-336.4 MCM ACSR conductor. The Dedicated Facility Project is the most cost-effective and viable option for the immediate connection of the Gamu BESS.
- 8.1 The construction of the Dedicated facility Project, including civil and electromechanical works, may be completed in approximately eight (8) 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 “P,” and “P-1,”** respectively.*

9. The Dedicated Facility Project shall be constructed by Energy & Building Applications Technologies Corporation (“**EBATECH Corp.**”) as the contractor of UPSI.
- A copy of the Company Profile of EBATECH Corp. with a matrix of its ongoing and completed projects is attached hereto and made an integral part hereof as **Annex “Q”**.*
10. In November 2019, the NGCP performed a SIS to determine the impact of connecting the Gamu BESS to the Luzon Grid and evaluate the technical feasibility of the Dedicated Facility

Project. The connection of the Gamu BESS to the Luzon Grid was found to be technically feasible through the dedicated Facility Project with the recommendation that the Gamu 100MVA 230/69kV Transformer be completed in time with the Dedicated Facility Project.

*Copies of the SIS Report and NGCP's SIS Final Review Report dated 12 December 2019 are attached hereto and made integral parts hereof as **Annexes "R" and "R-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 in the SIS, and that the Dedicated Facility Project complies with the provisions of the Philippine Grid Code.

*Copies of the Facilities Study and the NGCP's Review Report on the Facilities Study dated 4 February 202 are attached hereto and made integral parts hereof as **Annexes "S" and "S-1,"** respectively.*

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

*Copies of the Certification from NGCP dated 2 July 2020 and the relevant extract of the consultative draft of the Transmission Development Plan for 2020-2040 showing the inclusion of the Gamu BESS as a prospective power plant⁴ are attached hereto and made integral parts hereof as **Annexes "T," and "T-1,"** respectively.*

12. NGCP and UPSI are currently in the process of finalizing the terms of their Connection Agreement for the interconnection of the Gamu BESS to the Luzon Grid through the Dedicated Facility Project.

A copy of the NGCP Certification dated 2 July 2020, hereto attached as Annex T, likewise attests to the fact that NGCP and UPSI are in the process of negotiating and finalizing the terms of the Connection Agreement.

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

⁴ The inclusion of Gamu BESS in the Transmission Development Plan is under the name of Limay Power Generation Corporation, the previous name of UPSI.

*A copy of the NGCP Letter dated 22 December 2020 in response to UPSI's Letter of Intent dated 23 June 2020, informing NGCP of UPSI's intent to engage NGCP for the operations and maintenance of the Dedicated Facility Project is attached hereto and made an integral part hereof as **Annex "U."***

14. As of date, UPSI has secured, UPSI has secured or is in the process of securing all 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 10 March 2021, attesting to the fact that UPSI obtained and shall obtain 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 "V."***

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 Gamu BESS to the Luzon Grid.

**ALLEGATIONS IN SUPPORT OF
PRAYER FOR PROVISIONAL AUTHORITY**

16. In order to provide ancillary services as a regulating reserve to the Luzon 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 pre-requisite for the testing and commissioning, and ultimately, the commercial operations of the Gamu BESS. A provisional authority is, thus, urgently needed to enable UPSI to achieve the target commercial operations date of the Gamu 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 attached hereto and made an integral part hereof as **Annex "W."***

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 Gamu BESS to the Luzon Grid, pending the Honorable Commission's issuance of a final decision on the instant Application.

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**ALLEGATIONS IN SUPPORT OF
PRAYER FOR CONFIDENTIAL TREATMENT**

18. UPSI respectfully manifests that **Annexes “H,” “I,” “M,” “O,” “S,” and “S-1”** of the instant Application contain valuable, non-public information, and data and insight, and prays that said documents 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,” “I,” “M,” “O,” “S,” and “S-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 the Honorable Commission.
19. 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 protective order declaring the documents attached as **Annexes “H,” “I,” “M,” “O,” “S,” and “S-1,”** of this Application as confidential information, as the Applicant intends to present them as evidence in the instant Application.
20. 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,” “I,” “M,” “O,” “S,” and “S-1”** in a sealed envelope, with the envelope and page of the documents stamped with the word “Confidential”.
21. The data contained in **Annexes “H,” “I,” “M,” “O,” “S,” and “S-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 an information is a trade secret, to wit:

- (1) the extent to which the information is known outside of the employer's business;
- (2) the extent to which the information is known by employees and others involved in the business;
- (3) the extent of measures taken by the employer to guard the secrecy of the information;
- (4) the value of the information to the employer and to competitors;
- (5) the amount of effort or money expected 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.⁵ (Emphasis supplied.)

22. 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

⁵ G.R. No. 172835, 13 December 2007.

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.)

23. 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," "I," "M," "O," "S," and "S-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.**
24. 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 Gamu BESS to the Luzon Grid;
2. Issue an Order treating Annexes "H," "I," "M," "O," "S," and "S-1" and the information contained therein as

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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 hereby sets the instant *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 09, Series of 2020⁶, dated 24 September 2020 and Resolution No. 1, Series of 2021, dated 17 December 2020 (ERC Revised Rules of Practice and Procedure):⁷

Date	Platform	Activity
15 July 2021 (Thursday) at nine o'clock in the morning (9:00 AM)	Microsoft Teams	Determination of compliance with the jurisdictional requirements and expository presentation
22 July 2021 (Thursday) at nine o'clock in the morning (9:00 AM)	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

⁶ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

⁷ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

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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 Application on the Commission's official website at www.erc.gov.ph.

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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 11th day of June 2021 in Pasig City.



AGNES VST DEVANADERA
Chairperson and CEO




LS: MBVM/CLB/MCCG