

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



**IN THE MATTER OF PETITION
FOR DISPUTE RESOLUTION
ARISING FROM THE ONE
BOHOL POWER
DISTRIBUTION UTILITIES
("1BP DU") JOINT
COMPETITIVE SELECTION
PROCESS ("JCSP") THROUGH
AN OPEN BIDDING FOR THE
LONG-TERM (2024-2033)
SUPPLY OF THE BASELOAD
POWER REQUIREMENTS OF
1BP DU, WITH PRAYER FOR
STATUS QUO ANTE ORDER,
BY WAY OF INTERIM RELIEF,**

**SMC GLOBAL POWER
HOLDINGS CORP.,**
Petitioner,

-versus-

ERC CASE NO. 2021-004 DR

1BP DU JCSP COMMITTEE,
Respondent.

Promulgated:
October 01, 2021

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NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on On August 23, 2021, SMC GLOBAL POWER HOLDINGS CORP. (SMCGPH), filed a Petition for Dispute Resolution dated 25 May 2021 (Petition), seeking the Commission to resolve its dispute arising from One Bohol Power Distribution utilities (1BP-DU) Joint Competitive Selection Process (JCSP) through an open bidding for the long-term (2024-2033) supply of the baseload power requirements of 1BP-DU, with prayer for status quo ante order, by way of interim relief.

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

I. Nature and Bases of Jurisdiction

1. The instant Petition for Dispute Resolution (the “Petition for Dispute”) is hereby filed by SMCGPH before the Honorable Energy Regulatory Commission (to be referred to as the “Honorable Commission” and/or the “ERC”) to assail the validity and to secure the consequential reversal /invalidation of a Resolution dated 19 May 2021 (the “May 2021 Resolution”) issued by herein Respondent 1BP DU JCSP Committee (to be referred to as the “Respondent” for brevity), in relation to the JCSP for the long term supply of the baseload power requirements of 1BP DU.
2. The May 2021 Resolution (a copy of which is attached as **Annex “A”** hereof) denied the protest of SMCGPH which the latter has filed before the Respondent via a Verified Position Paper (to be referred herein as the “Protest” and / or the Verified Position Paper). The Protest dated 12 May 2021 (a copy of which is attached as **Annex “B”**) assailed the Notice of Denial of the Request for Reconsideration (the “NDRR”) dated 06 May 2021 issued by the Third-Party Bids and Awards Committee (the “TPBAC”) of the 1BP DU JCSP (the “1BP TPBAC”). The pertinent provisions of the NDRR (a copy of which is attached as **Annex “C”**) provide:

*“Finally, premises considered, the 1BP TPBAC DENIES the request for reconsideration of SMCGPH and reiterates its finding that the said bidder is **NON-RESPONSIVE**”.*

3. The **original and exclusive jurisdiction** of the Honorable Commission over the instant Petition for Dispute is hereby invoked for the reversal of the May 2021 Resolution issued by the Respondent based on the following provisions of Electric Power Industry Reform Act of 2001¹ - - -

“SEC. 43. Functions of the ERC. –The ERC shall promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry. In appropriate cases, the ERC is authorized to issue cease and desist order after due notice and hearing. Towards this end, it shall be

¹ Republic Act 9136.

responsible for the following key functions in the restructured industry:”

xxx xxx xxx

*(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 supplied)*

4. The jurisdiction of the ERC over the parties in this case was likewise established by the provisions² of the EPIRA Law to wit:

“Electric Power Industry Participant” refers to any person or entity engaged in the generation, transmission, distribution or supply of electricity;

xxx xxx xxx”

5. Further, the filing of this petition is also anchored on the provisions of the Revised Rules of Practice and Procedure of the Honorable Commission (the “ERC Rules”). Rule 5, Section 4 of the ERC Rules provides that: *“By means of a petition, a person, other than an applicant or complainant, seeks an affirmative relief under any statute or other authority delegated to the Commission”.*
6. Conclusively with the foregoing, the Honorable Commission has jurisdiction over this case.

II. The Parties

7. Petitioner SMCGPH is an entity duly organized, registered and is existing in accordance with the prevailing laws of the Republic of the Philippines with principal office address at 155 EDSA, Brgy., Wack-Wack, Mandaluyong City. As will be discussed below, petitioner passed the required Pre-Qualification Documents for bidders pursuant to the Final Instructions to Bidders³ (“FITB”) and related issuances by the 1BP DU JCSP. SMCGPH can be served with summons, orders, and other correspondence by the Honorable Commission through the undersigned counsel and his electronic mail (email) address indicated below.

² Letter (s), Chapter I (Title and Declaration of Policy), Section 4 (Definition of Terms).

³ Attached as **Annex “D”** herein.

8. Respondent 1BP DU JCSP Committee “refers to the association composed of the General Managers, Board Presidents and authorized representatives of 1BP tasked to ratify and confirm all previous actions of the 1BP DU JCSP TPBAC⁴”.
- a. Pursuant to Section 13.1 of Department Circular No. 2018-02-0003 (“DC 2018”) issued by the Department of Energy (the “DOE”), 1BP DU is the so called “governing board of the DU or its duly authorized office/s⁵”.
- b. As reflected in the assailed May 2021 Resolution, the following are the members of the Respondent represented by their respective board presidents and general managers:
- i. Bohol I Electric Cooperative, Inc. (“BOHECO I”) by -
1. Board President – Marcial P. Degamo; and,
 2. General Manager – Dino Nicolas F. Roxas;
- ii. Bohol II Electric Cooperative, Inc. (“BOHECO II”) by -
1. Board President – Rodolfo O. Tutor; and
 2. General Manager - Eugenio R. Tan;
- iii. Bohol Light Company, Inc. (“BLCI”) by –
1. Acting General Manager – Eleuterio C. Regis; and,
 2. Corporate Secretary – Remegio Michael A. Ancheta II.
- c. Respondent and its members can be served with summons, orders and other correspondence by the Honorable Commission in its designated address at BOHEC I Main Office Bldg., Cabulijan, Tubigon, Bohol 6329 and at its electronic mail (“e-mail”) address at iboholpowerdu@gmail.com.

III. Factual Antecedents

9. In response to the invitation to bid published on 30 August 2020 by 1BP DU JCSP for the “*1BP DU JCSP Competitive Selection Process through an Open Bidding for the long-term (2024-2033) supply of the baseload power requirements of 1BP DUs*” (the “Bidding⁶”), SMCGPH submitted its Letter of Intent (“LOI”) to Participate and Submit Offer and proof of

⁴ Page seven (7) of the FITB (Annex D).

⁵ Paragraph three of DC 2018.

⁶ Page eight (8) of ninety-one (91) of the Final Instructions to Bidders (“FITB”), which can or may also be regarded as the “name of project” pursuant to fourth paragraph of Section 13.1 of DC 2018

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payment of the Bidding Document Fee on 08 September 2020.

10. On 30 October 2020, the 1BP DU JCSP TPBAC (to be referred to as “1BP TPBAC” for brevity) issued the FITB. The particular portion of the FITB relevant to this protest is “*ITB-Annex A: Terms of Reference*”, to wit:

ITB-ANNEX A: TERMS OF REFERENCE

TERMS OF REFERENCE	DESCRIPTION	REQUIREMENT			
		Firm	Non-firm		
Type of Contract	<input checked="" type="checkbox"/> Base load <input type="checkbox"/> Emergency replacement power <input type="checkbox"/> Full load requirement	<input type="checkbox"/> Peaking (or take and pay)			
Contracted Capacity (MW)	COMMITTED BASELOAD DEMAND (MW) FOR PROCUREMENT (2024-2033)				
	YEAR	BOHECO I	BOHECO II	BLCI	TOTAL
	2024	28	12	12	50
	2025	28	14	12	54
	2026	44	16	12	72
	2027	46	17	13	76
	2028	48	18	13	79
	2029	50	18	13	81
	2030	50	18	14	82
	2031	50	18	14	82
	2032	50	18	14	82
2033	50	18	15	83	
Contracted Energy (@ Minimum Energy, 70% CUF, MWh per year)	Year	BOHECO I	BOHECO II	BLCI	TOTAL
	2024	159,868.80	73,785.60	73,785.60	307,440.00
	2025	171,696.00	85,848.00	73,584.00	331,128.00
	2026	269,808.00	98,112.00	73,584.00	441,504.00
	2027	282,072.00	104,244.00	79,716.00	466,032.00
	2028	295,142.40	110,678.40	79,934.40	485,755.20
	2029	306,600.00	110,376.00	79,716.00	496,692.00
	2030	306,600.00	110,376.00	85,848.00	502,824.00
	2031	306,600.00	110,376.00	85,848.00	502,824.00
	2032	307,440.00	110,678.40	86,083.20	504,201.60
2033	306,600.00	110,376.00	91,980.00	508,956.00	
Dependable Capacity	One Hundred Percent (100%) of the Contracted Capacity.				

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11. SMCGPH prepared its Bid Proposal strictly in accordance with “ITB-1 BIDDING DOCUMENTS” provided under the FITB more particularly but not limited to “ITB-Annex A”.
12. During the Opening of Bids held on 12 February 2021, the Bid Proposal of SMCGPH appeared to be compliant with all the required Pre-Qualification Documents pursuant to the FITB and related issuances by the 1BP DU JCSP.

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13. On 26 April 2021, SMCGPH received the Notice of Post Disqualification⁷ (the “NPD”) which states - - - “xxx xxx based on the Post-Qualification conducted by the 1BP JCSP TPBAC, your bid was found to be Non-Responsive”. The relevant portions of the NDP provides:

Based on the detailed evaluation of the technical proposal of SMC Global Power Holdings Corp. (“SMC”), their offer is a ‘multiple IN-Island power plants’ with the following information:

OFFERED POWER PLANT	PLANT TYPE	CAPACITY (MW)	DELIVERY PERIOD
LNG POWER PLANT	NATGAS	60 (Net)	01/11/2023
BESS Phase 1	Battery	20 (4 hours duration/day)	01/11/2025
BESS Phase 2	Battery	5 (4 hours duration/day)	01/11/2028

Based on the above information, the total capacity of 25-MW Battery Energy Storage System with discharge operation of only equivalent to 4 hours per day, as clearly specified by SMC in its technical proposal, would result to a deficiency to the 24/7 83-MW 1BP baseload demand requirement.

It would mean that the technical proposal of SMC Global Power Holdings Corp. is not compliant to the zero outage provision, 24/7 resiliency and baseload requirements as specified and clarified in the bidding documents.

14. SMCGPH timely filed its Request for Reconsideration (“Request for Recon.”) dated 06 May 2021 (attached as **Annex “F”**) and maintains among others that the technical proposal:
- a. meets the generation requirements of 1BP DU and thus be considered responsive for the purpose of JCSP;
 - b. is compliant with the demand and energy profile provided in ITB-Annex A considering that the proposal is to develop a proposed facility consisting of **1 x 60 MW (net) Simple Cycle Natural Gas Unit (“Nat Gas”) and ultimately 25 MW, 4-hour Battery Energy Storage System (“BESS”),** (collectively referred to as the “Plant”); and,
 - c. consists of a Plant that can run its net rated capacity with plant availability factors of 98% and 100% for Nat Gas and BESS, respectively. It is important to clarify that the operating capability of the latter (i.e., BESS) entails **running at a rated capacity of**

⁷ A copy of the NPD is attached as **Annex “E”**.

25 MW for four (4) hours in one full cycle with up to three (3) cycles in a day. This means four (4) hours of discharge and charge operations per cycle in a day.

15. Further and most importantly, SMCGPH argues in its Request for Recon. that - - -

“Comparing the annual Contracted Energy at 70% CUF as provided in the FITB for the entire duration of the supply period and with the available generation of the proposed Plant, it is self-evident that our technical proposal meets the generation requirements of 1BP DU and should thus be considered responsive for the purpose of this JCSP as shown in Annex “B” hereof. It can be reasonably assumed that the available generation from the Nat Gas unit operating on a baseload basis can support the charging of the BESS component running whether at one (1) or up to three (3) cycles per day.”

16. Despite the elucidating arguments posited by SMCGPH, 1BP TPBAC issued the NDRR where it reiterated its findings that SMCGPH as a “bidder is NON-RESPONSIVE”.

17. SMCGPH elevated the NDRR before the Respondent via a Verified Position Paper in accordance with the provisions of Section 13.1 of DC 2018 issued by the “DOE”, coupled with the payment of the “*non-refundable protest fee of Php5,000,000.00 on May 12, 2021, within the seven-day reglementary period xxx xxx⁸*”.

18. However, in the afternoon of 19 May 2021, SMCGPH received via e-mail the assailed resolution of equal date, the dispositive portions of which provide:

“The Committee therefore affirms the assailed NDRR.

WHEREFORE, premises considered, the instant Protest is hereby DENIED.

APPROVED this 19th day of May 2021 by the following members of the 1BP Joint CSP Committee:

xxx xxx xxx”.

19. Hence, this Petition for Dispute Resolution for the reversal and or nullification of the May 2019 Resolution issued by the Respondent.

⁸ First paragraph of the assailed May 2021 Resolution.

IV. Grounds for the grant of this petition.

20. SMCGPH maintains and so holds that its Bid Proposal more particularly the technical aspect thereof is responsive and compliant with the FITB for the 1BP DU JCSP. In support thereof, SMCGPH humbly submits the following as the entrenching justifications for the grant of this petition, thus:
- a. The dependable capacity of the proposed Plant of SMCGPH is sufficient to meet the Contracted Energy requirement of 1BP DU as stated in the FITB.
 - b. The Contracted Energy requirement stated in the NPD, NDRR and in the assailed May 2019 Resolution is inconsistent with the 24/7 flat-out supply of the required capacity of 83MW and zero-outage plant to supply 1BP as specified in the FITB which is the sole basis of SMCGPH in its Bid Proposal.
 - c. The Respondent erred when it affirmed the ruling of 1BP TPBAC in the latter's interpretation of 1BP DU's required "In-island Resiliency".
 - d. Credit Factor of the BESS should be treated as 100% contrary to the assailed NDRR's claim of 50% as erroneously affirmed by the May 2021 Resolution.
 - e. The reversal of the May 2021 Resolution will best serve the interests of the consumer-members of 1BP DU.

V. Arguments / Discussions

21. SMCGPH staunchly argues that the Respondent erred when it affirmed the findings in the NDRR that the Bid Proposal (i.e., technical proposal) of SMCGPH is Non-Responsive.
22. It is for this reason that the discerning wisdom of the Honorable Committee is hereby earnestly sought through this petition for the reversal of such findings based on the following disquisitions.

The dependable capacity of the proposed Plant of SMCGPH is sufficient to meet the Contracted Energy requirement of 1BP DU.

23. Pursuant to the bidding documents, the "ITB-ANNEX A: TERMS OF REFERENCE" of the Final Instructions to Bidders ("FITB") issued by 1BP DU JCSP TPBAC, the

demand and energy profile can be supplied sufficiently by SMCGPH's proposed Plant, 1 x 60 MW (net) Simple Cycle Natural Gas Unit ("Nat Gas") and 25 MW, 4-hour Battery Energy Storage System ("BESS").

24. As stated in the technical proposal, the Plant can run its net rated capacity with plant availability factors of 98% and 100% for Nat Gas and BESS, respectively. It is important to clarify that the operating capability of the latter (i.e., BESS) entails running at a rated capacity of 25 MW for four (4) hours in one full cycle with up to three (3) cycles in a day.
25. To reiterate, comparing the annual Contracted Energy at 70% Capacity Utilization Factor ("CUF") as provided in the FITB for the entire duration of the supply period and with the available generation of the proposed Plant, it is self-evident that SMCGPH's technical proposal meets the generation requirements of 1BP DU and should thus be considered responsive for the purpose of the JCSP. For a better appreciation of these technical elucidations, attached as **Annex "G"** is the Comparison of Contracted Energy of 1BP DUs with Available Net Generation from the SMCGPH Proposed Plant.
26. Hence, it can be reasonably assumed that the available generation from the Nat Gas unit operating on a baseload basis can support the charging of the BESS component running whether at one (1) or up to three (3) cycles per day.
27. The configuration of the Plant ensures that it has an adequate supply of generation capacity to reliably meet the 1BP DUs' combined energy demand (whether coincident or non-coincident in nature) during the highest-demand periods in any given year over the power supply period.
28. Further, the proposed BESS facility will be able to adequately and adeptly supply the load following or peak portion of 1BP DUs demand regardless of the actual dispersion of their individual peak hours because the BESS could react to load changes at the millisecond level (typically guaranteed to a minimum of 200 ms). BESS can shift its generation to perfectly match with the peak demand requirement thus resulting to levelling the load of the DUs for a more efficient balance of the demand and supply.

The Contracted Energy requirement stated in the NPD, NDRR and in the assailed May 2019 Resolution is inconsistent with the 24/7 supply of the required capacity of 83 MW and zero-outage plant to supply 1BP as specified in the

FITB which is the sole basis of SMCGPH in its Bid Proposal.

29. It must be stressed at this juncture that Respondent should realize that the proposed 83 MW contracted capacity will not be consumed 24/7 flat-out at 100% CUF. Suffice to say that this understanding of the TPBAC is contrary to what the FITB contains in (a) above (i.e., 70% CUF).
30. SMCGPH made a careful assessment and evaluation of the **true** requirement of 1BP following the FITB as well as its **realistic** power requirement. Based on the historical hourly demand provided by 1BP for the years 2017, 2018 and 2019, the load factors of 1 BP DU were only at 64%, 68% and 70% respectively, thus strongly fortified the requirement under the FITB which is 70% CUF.
31. For this purpose, attached are the aggregated yearly load profiles and average hourly load profiles of 1BP DU for reference as **Annex “H”**. These suggest that the 1BP DU operationally will not require the 24/7 flat-out supply of the 83 MW but instead, has varying demand requirement per hour. And again, the historical consumption is consistent with the indicated 70% CUF which is the basis of minimum energy or contracted energy.
32. To fortify our position on this, based on the historical demand consumption of 1BP, the actual average flat-out capacity utilized by 1BP DU were about 31 MW, 36 MW and 45 MW in 2017, 2018 and 2019 respectively and actual results do not support the TPBAC’s interpretation that the 83MW will be used flat-out, 24/7 at 100% CUF.
33. Concerning the “zero-outage power supply” requirement as stated in the NRDD as affirmed by the May 2021 Resolution, from a technical standpoint there is no standalone power plant designed on the basis of the contracted energy provided that can operate without any outage particularly in connection with regular maintenance. If 1BP DU will insist on a demand profile based on the following: 83MW, 24/7 flat-out and 100% CUF, and zero-outage, the appropriate power plant design will require two (2) units of the 83MW power blocks.
34. But in this case, 1BP DU should have just indicated such demand profile in the FITB as its Contracted Energy requirement. However, as discussed above, 1BP DU, effectively its constituents, will just overpay for such an overbuilt power plant which is not necessary given its historical demand profile.

35. The implication of blindly requiring the 24/7 requirement and the utter disregard of SMCGPH's optimal plant design based on the declared Contracted Capacity as stated in the FITB is relatively simple: ***the electricity costs for the Boholanos will unnecessarily increase considerably!***
36. For the sake of discussion, requiring a 24/7 power supply in the parlance of the local power industry, actually means a financial commitment on the part of the supplier to guarantee supply over such period rather than building an oversized power plant in order to accommodate the 24/7 demand requirement without the benefit of any outage, whether for planned or unplanned maintenance.
37. The preceding arrangement normally requires the generator to provide replacement power during the time when the nominated power plant is out for maintenance. The financial risks on the replacement power will be for the account of the generator. The "zero-outage power supply" should be interpreted as the capability of the generator to provide the replacement power when the main Plant is unavailable due to either planned or unplanned outages.
38. The proposed Plant of SMCGPH has been designed optimally to achieve the lowest possible cost of power for the Boholanos based on a configuration and plant specifications that are sufficient to meet the energy requirements of 1BP DU and other technical requirements under the FITB for the Bidding.
39. The BESS component was integrated in the proposed Plant to ensure an accurate, fast and cost-effective response to the load following or peaking changes, as well as improve significantly the power quality delivered to 1BP DU that can be the anchor for industrialization in the Bohol island.
40. Over the supply period, the Plant is also expected to provide the required power stability and security of the Bohol grid interconnection, and at the same time ensure the island's power independence in the event that it is disconnected from the Visayas Grid.
- The Respondent erred when it affirmed the ruling of 1BP TPBAC in the latter's interpretation of 1BP DU's required "In-island Resiliency".***
41. The judicious wisdom of the Honorable Committee is hereby invited to a more accurate definition of the technical term "resiliency".

42. It is the ability of the power system to anticipate, resist, absorb, respond to and adapt to and recover from a disturbance based on local and international power systems parlance. ***Unfortunately***, 1BP TPBAC (*as affirmed by the Respondent in the assailed May 2021 Resolution*) has misused the technical term by concluding that “resiliency” pertains to the capacity of the generating plant installed under the “in-island resiliency” concept.
43. With due respect, Respondent must be guided on the foregoing point that ***“power generation is only a part of a resilient power system”***. Metrics for a well resilient power system actually involve the ability of transmission, sub-transmission and distribution systems to recover from a typhoon as an example.
44. Such systems are vulnerable to outages due to natural disturbances. Resiliency is not 100% anchored to the availability of the generating plant and in fact most resilient power systems globally have strong transmission and distribution grids and these systems have the ability to respond efficiently after calamities and even cyber-attacks.
45. To emphasize the contribution of the BESS in resiliency, the proposed SMCGPH’s Plant coupled with BESS will help increase the resiliency of the system during grid outage as well as distribution system outages of the 1BP DU.
46. The subject Plant can stand on its own without the operational assistance from the grid since it is designed to have black-start (through the BESS) and fast start capabilities (both BESS and NatGas). The response of the Plant will be optimized to efficiently dispatch in a timely manner to support the restoration strategies of 1BP DU.
47. It must be highlighted also at this point that SMCGPH’s proposal includes the construction of additional 69 kV sub-transmission lines that will connect the sub-transmission backbones of the three (3) Bohol DUs to further improve power exchanges within the Bohol Island and increase reliability (thus support to resiliency also) during times of outages of some parts of the sub-transmission backbone.

Credit Factor of the BESS should be treated as 100% contrary to the assailed NDRR’s claim of 50% as erroneously affirmed by the May 2021 Resolution.

48. The credit factor of the BESS facility is 100% on the basis of dependable capacity. The BESS with rated capacity of 25MW has a dependable capacity of 25MW when dispatched following its technical specifications.
49. Similarly, like conventional power plants, the 25MW in whole or in part can be spread to support 1BP's consumption profile. To reiterate, BESS was incorporated to the design of the Plant considering the contracted energy requirement of 1BP DU at 70% CUF. On this basis, the BESS is capable to provide supply during peak hours when it is actually needed.
50. Hence, contrary to the assailed May 2021 Resolution, NDRR and NPD, the total effective capacity of the BESS is 25MW and the Plant is 85MW. Thus, SMCGPH's Bid Proposal should have been ruled as **RESPONSIVE** in the Bidding that was conducted.

The reversal of the May 2021 Resolution will best serve the interests of the consumer-members of 1BP DU.

51. SMCGPH would like to seek solace to the compassionate and astute wisdom of the Honorable Commission to the utter disregard by Respondent of the welfare and interest of the consumer-members of the 1BP DU when it issued the repudiated May 2021 Resolution. It is worthy to be quoted that should the technical discussions/justifications of SMCGPH have been considered by the Respondent, it will definitely improve the power supply within the island.
52. Thence, SMCGPH hereby ardently would grab this opportunity to implore upon the Honorable Commission's sagacity in the evaluation of this Petition for Dispute. While technical justifications are already present for the reversal of the May 2021 Resolution, SMCGPH pleads before the Honorable Commission that the interests of the Boholanos should also be placed at the forefront hereof.
53. The attention of the Honorable Commission is hereby invited to the opportunity that will be available to the consumer-members of 1BP DU with the grant of a favorable ruling on this petition. The proposed Plant with a correlative technical proposal of SMCGPH is optimally designed to achieve the lowest possible cost of power based on a configuration and plant specifications that are sufficient to meet the energy requirements of 1BP DU and other technical requirements under the FITB.
54. To reiterate at the brink of being repetitive but for purposes of emphasizing prominence of SMCGPH's Bid

Proposal, the BESS component was integrated in the proposed Plant to ensure an accurate, fast, and cost-effective response to the load following or peaking changes, as well as to significantly improve the quality of power to be delivered by 1BP DU that can be the catalyst for industrialization in their respective franchise areas.

55. The immediately preceding disquisitions were even fortified by SMCGPH's proposal to construct an additional 69 kV sub-transmission lines that will connect the sub-transmission backbones of the three (3) Bohol DU to further improve the quality of power in the Island.
56. Over the supply period, the Plant is expected to provide the required power security of the Bohol grid interconnection for stability and resiliency, and at the same ensure the island's power independence in the event that it is disconnected from the Visayas Grid.
57. Guided by the interest and welfare of the Boholanos which is a shared responsibility between 1BP DU and the Provincial Government of Bohol ("Bohol LGU"), it must be emphasized that the JCSP for the Bidding was made possible not only by the cooperation of the members of the 1BP DU but also through the initiative of the Bohol LGU with the creation of the Bohol Energy Development Advisory Group ("BDEAG").
58. As reflected in the Memorandum of Agreement⁹ between the members of the 1BP DU (as amended by a Supplemental Agreement executed in the year 2019¹⁰), the Bidding was conducted *"in order to achieve affordability, reliability and resiliency of power supply in the island of Bohol"*¹¹.
59. Succinctly, the refuted May 2019 Resolution (which affirmed the NDRR) is nothing but an affront not only against the Boholanos but likewise to Bohol LGU which has diligently performed its mandate by ensuring that the consumer-members of the 1BP DU will have an opportunity to enjoy an affordable reliable and resilient power supply within the island. To this, SMCGPH humbly asseverates that the reversal of the May 2019 Resolution is not only proper under the circumstances but is in keeping with the efforts that were exerted/performed by the members of 1BP DU and Bohol LGU for the interests and welfare of the Boholanos.

⁹ A copy of the Memorandum of Agreement is attached as **Annex "I"**.

¹⁰ A copy of the Supplemental Agreement is attached as **Annex "J"**.

¹¹ 9th Whereas Clause of the Memorandum of Agreement between BOHECO I, BOHECO II and BLCI.

60. The favorable action of the Honorable Commission to this petition will not only redound to the interests of SMCGPH as a veritable bidder but most importantly to the welfare/interests of the consumer-members of 1BP DU. The benefits that can be sourced from the objectives of SMCGPH in its Bid Proposal (i.e., stable supply and minimized costs of power) will be denied to the consumer-members of 1BP DU if this Petition for Dispute Resolution will not be favorably acted upon.
61. Simply put it, the denial of this plea is tantamount to the forfeiture of the opportunities as discussed, of no less than the concerned consumer-members, which is not aligned to one of the primary objectives of **Bohol LGU** and the prevailing government issuances on competitive selection process.

VI. Justifications for the issuance of Status Quo Ante Order

62. SMCGPH by way of incorporation hereby repleads the foregoing discussions to fortify its grounds for the issuance of a Status Quo Ante Order (the “SQAQO”) by way of a provisional remedy and or interim relief pending the resolution of this case.
63. Peremptorily, SMCGPH would like to stress that its plea for SQAQO is not intended to prevent or restrain the Bidding or any proceeding related thereto or the selection of the Winning Bidder and the execution of the power supply agreement.
64. Instead, SMCGPH is seeking for a writ to maintain the status quo prior to the issuance of the NPD, NDRR and the assailed May 2019 Resolution, which will reinstate SMCGPH’s Bid Proposal to its “Responsive Status” in the JCSP for 1BP DU power requirements.
65. Under the Rules of Court, which is suppletorily applicable herein¹², a preliminary injunction can be an order which “may also require the performance of a particular act or acts, in which case it shall be known as a preliminary mandatory injunction¹³”.
66. By way of analogy, in the case of Solid Builders Inc., vs. China Banking Corporation ¹⁴ (the “SBI Case”), the Supreme Court ruled that “*mandatory injunction is rather to establish and maintain a pre-existing continuing relation between the parties, recently and arbitrarily interrupted by the defendant, than to establish a new relation*”. Further, it was echoed in the SBI case that a writ of preliminary injunction is issued

¹² Section 5, Rule 1 of the ERC Rules.

¹³ Section 1, Rule 58 of the Rules of Court.

¹⁴ Solid Builders, Inc. et.al., vs. China Banking Corporation, G.R. No.179665, 03 April 2013

“to preserve the status quo ante¹⁵, upon the applicant’s showing of two important requisite conditions, namely: (1) the right to be protected exists prima facie, and (2) the acts sought to be enjoined are violative of that right. It must be proven that the violation sought to be prevented would cause an irreparable injury”.

67. Gauged from the preceding dictum by analogy, SMCGPH is entitled to a SQAQO. As discussed above, SMCGPH’s right as a Bidder (with a responsive bid) exists which was frivolously affected and has been violated by the erroneously issued May 2019 Resolution by the Respondent.
68. SMCGPH will definitely suffer irreparable injury should its bid will not be reinstated as a “responsive bid” during the pendency of this case, more so in view of the merits thereof.
69. As of date and in the coming days, the 1BP DU TPBAC will continue in the evaluation of the other bids without the valid and responsive Bid Proposal of SMCGPH, which as discussed above is far more beneficial to the consumer-members of the 1BP DU. It should be emphasized in this case that SMCGPH will not be the only party who will definitely suffer an irreparable injury, but most importantly the power consumers of Bohol Island who will be deprived of the opportunity to be supplied with a reliable, sustainable and reasonable cost of energy.
70. SMCGPH instituted this case before the Honorable Commission unarguably because it has the power to grant provisional remedies as settled in the case of BF Homes, Inc., et.al., vs, Meralco¹⁶.
71. Faith and reliance of SMCGPH to the mandate of the Honorable Commission to provide an immediate remedy hereof was fortified by the provisions of Rule 14 of the ERC Rules which authorizes the grant of an interim relief with or without hearing on the basis of the allegations in the petition or supporting documents that a petitioner has submitted for the evaluation of the ERC.
72. SMCGPH is ready and is willing to post a bond in an amount to be fixed by the Honorable Commission which will be answerable to damages that may be sustained by the Respondent in the remote possibility that it may be adjudged to be not entitled to the SQAQO prayed for herein.

¹⁵ Emphasis supplied.

¹⁶ G.R. No. 171624

73. Guided the foregoing, SMCGPH humbly seeks the benevolent wisdom of the Honorable Commission to issue SQAQO by way of an interim relief pursuant to the ERC Rules.

PRAYER

WHEREFORE, premises considered, petitioner SMC Global Power Holdings Corp., respectfully prays before the Honorable Commission to:

1. Immediately issue upon filing of this Petition for Dispute, a Preliminary Mandatory Injunction (Status Quo Ante Order) by way of an Interim Relief, reinstating SMCGPH's Bid Proposal to its Responsive Status pending the resolution of this case;
2. Convert the Preliminary Mandatory Injunction (Status Quo Ante Order) to a Permanent Injunction after hearing on the merits; and,
3. Render judgment declaring the Bid Proposal of SMCGPH, more particularly the technical proposal thereof to be **RESPONSIVE** for all intents and purposes.

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

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 09, Series of 2020¹⁷, dated 24 September 2020 and Resolution No. 01, Series of 2021, dated 17 December 2020 (ERC Revised Rules of Practice and Procedure)¹⁸:

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

¹⁷ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

¹⁸ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

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29 October 2021 (Friday) at nine o'clock in the morning (9:00 AM)	Microsoft Teams	Pre-trial Conference and presentation of evidence
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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;
- 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;

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- 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.

WITNESS, the Honorable Commissioners **ALEXIS M. LUMBATAN**, **CATHERINE P. MACEDA**, **FLORESINDA G. BALDO-DIGAL** and **MARKO ROMEO L. FUENTES**, Energy Regulatory Commission, this 20th day of September 2021 in Pasig City.


AGNES VST DEVANADERA
Chairperson and CEO