

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



**IN THE MATTER OF THE
APPLICATION FOR
APPROVAL OF THE POWER
SUPPLY AGREEMENT (PSA)
BETWEEN PROVINCE OF
SIQUIJOR ELECTRIC
COOPERATIVE, INC.
(PROSIELCO) AND S.I.
POWER CORPORATION
(SIPCOR), WITH PRAYER
FOR PROVISIONAL
AUTHORITY OR INTERIM
RELIEF**

ERC CASE NO. 2019-003 RC

**PROVINCE OF SIQUIJOR
ELECTRIC COOPERATIVE,
INC. (PROSIELCO) AND S.I.
POWER CORPORATION
(SIPCOR),**

Applicants.

Promulgated:
MAR 07 2019

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NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 10 January 2019, Applicants Province of Siquijor Electric Cooperative, Inc. (PROSIELCO) and S.I. Power Corporation (SIPCOR) filed an *Application* dated 15 November 2018, seeking the Commission's approval of their Power Supply Agreement (PSA), with prayer for provisional authority or interim relief.

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

1. PROSIELCO is a non-stock, non-profit electric cooperative duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at Nonoc, Larena, Siquijor. It holds an exclusive franchise to operate an

electric light and power distribution service in the Municipalities of Enrique Villanueva, Larena, Lazi, Maria, San Juan and Siquijor, all in the Province of Siquijor (collectively, the Franchise Area). Copy of its Certificate of Franchise issued by the National Electrification Commission is hereto attached as Annex "A", while PROSIELCO's list of current members of its Board of Directors is attached as Annex "B" to form integral parts hereof;

2. SIPCOR is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with principal office address at Worldwide Corporate Center, Shaw Boulevard, Mandaluyong City. SIPCOR is engaged in the business of buying, acquiring, leasing, constructing, operating and maintaining plants and work systems, among others, for the production, supply and sale of electricity for light and power. Certified true copies of relevant documents showing SIPCOR's due incorporation and registration are hereto attached to form integral parts hereof, as follows:

| ANNEX | DOCUMENT |
|-------|--|
| "C" | Certificate of Incorporation from the Securities and Exchange Commission (SEC) |
| "C-1" | Articles of Incorporation |
| "C-2" | By-Laws |
| "C-3" | Amended Articles of Incorporation |
| "D" | General Information Sheet for the Year 2018 |

3. PROSIELCO and SIPCOR may be served with orders, notices and other legal processes of this Honorable Commission through the undersigned Firm at its address indicated hereunder;
4. Following a Competitive Selection Process (CSP) through Swiss Challenge, PROSIELCO and SIPCOR signed their 20-year Power Supply Agreement (PSA) dated 24 September 2018, for the provision of additional base load capacity to PROSIELCO. A copy of the PSA is herewith attached to form an integral part hereof as Annex "E";
5. By and pursuant to *Sections 25, 43 (u) and 45 (b) of Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA)*, its Implementing Rules and Regulations, and other pertinent guidelines and rules, PROSIELCO and SIPCOR submit the instant *Application* to the Honorable Commission for its due consideration and approval of their PSA;

I. STATEMENT OF FACTS

6. PROSIELCO and SIPCOR have an existing, ERC-approved PSA¹, with a term of twenty (20) years, for the delivery of generated power from SIPCOR's 6.4 MW bunker-fired generating facilities in the Municipalities of Siquijor and Lazi, which were granted the following permits and certifications:

| ANNEX | DOCUMENT |
|--------------|--|
| "F" | Certificate of Registration issued by the Board of Investments (BOI) ² |
| "G" | Environmental Compliance Certificate (ECC) issued by the Department of Environment and Natural Resources (DENR) ³ |
| "H" | Certificate of Compliance issued by the Energy Regulatory Commission (ERC) |
| "I" | Certificate of Endorsement issued by the Department of Energy (DOE) ⁴ |

7. SIPCOR is the sole power supplier of PROSIELCO, replacing the National Power Corporation (NPC) in the area;
8. Meanwhile, the power situation in PROSIELCO's franchise area has been problematic since 2016. There was a drastic increase in load demand at 19.03% starting March 2016, which is already beyond the average trend of increase of 4.42% from 2005 to 2014. Based on PROSIELCO's Historical and Forecasted Load Data, in May 2016, its system peak demand was 4.628 MW, when at that time, the actual capability of SIPCOR's 6.4 MW bunker facilities was only at 85%. It was then forecasted that by 2018, the average demand would be 6.723 MW, which already exceeds the 6 MW total power capability of SIPCOR's plant.

Copies of PROSIELCO's Historical and Forecasted Supply and Demand from 2012-2037, Distribution Development Plan, Average Daily Load Curve from October 2017 to September 2018, and Simulation of the Number of Operating Units versus Demand are hereto appended as Annexes "J", "K", "L", "L-1", respectively. Further, a copy of PROSIELCO's

¹ ERC Case No. 2012-018 RC, *Decision* dated January 4, 2013;

² Copy of letter to BOI inquiring if SIPCOR can still avail of the incentives provided by law for its expansion is herewith attached as Annex "F-1" to form an integral part hereof;

³ Copy of letter to DENR requesting for the amendment of SIPCOR's ECC is herewith attached as Annex "G-1" to form an integral part hereof;

⁴ Copies of letter-request to DOE for a Certification stating that the expansion is consistent with the Missionary Electrification Development Plan and of letter-request to DOE for the issuance of a Certification on the Conduct of CSP are herewith attached as Annexes "I-1" and "I-2", respectively to form integral parts hereof;

compliance with the Honorable Commission's directive dated 16 October 2018 to submit list of suppliers, supply-demand scenario and approved generation charges is hereto appended as Annex "L-2" to form an integral part hereof;

9. In a letter dated 04 July 2016, SIPCOR submitted an unsolicited proposal to PROSIELCO to supply electricity, in addition to its existing capacity, for a total fee of PhP11.8071/kWh. A copy of SIPCOR's proposal is herewith attached as Annex "M" to form an integral part hereof;
10. As an immediate solution to its power woes, PROSIELCO passed on 09 July 2016, Board Resolution No. 26, Series of 2016, to launch a Competitive Selection Process (CSP) through Swiss Challenge for the additional power requirement in the Province of Siquijor. A copy of Board Resolution No. 26, Series of 2016 is herewith attached as Annex "N" to form an integral part hereof;
11. On 30 September 2016, PROSIELCO passed Board Resolution No. 42, Series of 2016 creating the Bids and Awards Committee (BAC), Technical Working Group (TWG) and Secretariat for the bidding of additional power supply for the Province of Siquijor. A copy of Board Resolution No. 42, Series of 2016 is herewith attached as Annex "N-1" to form an integral part hereof;
12. In December 2016, the BAC proceeded to publish a Notice to Bid for 6 MW diesel/bunker fuel-driven generating sets. However, following discussions with stakeholders, including the Provincial Government of Siquijor and the NEA, PROSIELCO's procurement plan for additional supply was modified to refer to 3 MW supply from fuel-driven generating sets and 3 MW from renewable energy. The CSP for the 3 MW diesel/bunker -driven generating sets was conducted first through Swiss Challenge, considering that time was of the essence due to PROSIELCO's urgent need for electricity;
13. Subsequently, in a letter dated 31 August 2017, NEA advised PROSIELCO to republish its Notice to Bid due to the reduction of capacity, from 6 MW to 3 MW, of the bunker diesel plant subject of the initial bidding, and other considerations of NEA in its evaluation and review of the Final Terms of Reference (TOR) for CSP through Swiss Challenge, including modification of the tariff structure, weight of indexation and equations, and alteration of the Base Price of the Capacity Recovery Fee, Fixed and Variable Operations and Maintenance Fees and Fuel Recovery

Fee of the unsolicited proposal of SIPCOR, the original proponent. A copy of the said NEA Letter is herewith attached as Annex "N-2", while the Final TOR showing a total fee of PhP11.2975/kWh, a reduction from SIPCOR's original proposal of PhP11.8071/kWh, is also attached as Annex "N-3" to form an integral part hereof;

14. On 09 September 2017, PROSIELCO passed Board Resolution No. 46, Series of 2017 approving the resumption of the CSP through Swiss Challenge for 3 MW fuel-driven generating sets as additional power supply for the Province of Siquijor. A copy of Board Resolution No. 46, Series of 2017 is herewith attached as Annex "N-4" to form an integral part hereof;
15. PROSIELCO then published in the 05 October 2017 issue of the BusinessWorld its *Invitation to Participate in the CSP through Swiss Challenge*, to invite interested parties to submit comparative proposals to SIPCOR's unsolicited offer, as shown by herewith attached Annex "O";
16. In a letter dated 13 March 2018, NEA allowed PROSIELCO to proceed with its power supply procurement and continue compliance with NEA's policy per Memorandum No. 2014-003 on the conduct of CSP by electric cooperatives. A copy of NEA's letter is herewith attached as Annex "P" to form integral parts hereof;
17. In a letter dated 28 March 2018, the BAC informed PROSIELCO's Board President that out of the seven (7) prospective bidders, only Bantayan Island Power Corporation (BIPCOR) and King Energy Generation, Inc. (KEGI) submitted qualification documents, which were found to have complied satisfactorily with the pre-qualification requirements. A copy of the BAC letter is herewith attached as Annex "Q" to form an integral part hereof;
18. PROSIELCO's BAC conducted a Pre-Bid Conference on 03 April 2018 attended by the NEA and the two participating bidders, BIPCOR and KEGI. A copy of the Minutes of the Pre-Bid Conference is herewith attached as Annex "R" to form an integral part hereof;
19. On 05 June 2018, KEGI and BIPCOR submitted their respective bids. Upon thorough evaluation of the bids, the BAC found that BIPCOR has the Lowest Calculated and Responsive Bid at PhP9.0737/kWh. A comparative evaluation of the bids is herewith attached and made an integral part hereof as Annex "S".

20. In a letter dated 30 July 2018, PROSIELCO informed SIPCOR, the original proponent, of BIPCOR's bid so that SIPCOR may exercise its right to match. A copy of the letter dated 30 July 2018 is herewith attached as Annex "S-1" to form an integral part hereof;
21. SIPCOR matched and even lowered BIPCOR's bid, offering a rate equivalent to PhP9.0725/kWh, as shown in its letter dated 01 August 2018, a copy is herewith attached as Annex "S-2". Thus, the BAC recommended that SIPCOR be awarded the PSA, which was confirmed by PROSIELCO's Board of Directors in their Resolution No. 41, Series of 2018 dated 04 August 2018. The BAC's recommendation with attached Abstract of the CSP and Comparative Evaluation of Offers is herewith attached as Annex "T", while PROSIELCO's Board Resolution confirming such recommendation is herewith attached as Annex "U", to form integral parts hereof;
22. Thereafter, on 6 August 2018, PROSIELCO issued a Notice of Award in favor of SIPCOR for the additional 3 MW supply in the Province of Siquijor. A copy of the Notice of Award is hereto attached as Annex "V" to form an integral part hereof;
23. PROSIELCO and SIPCOR signed the subject PSA dated 24 September 2018 that shall govern the terms and conditions of SIPCOR's provision of 3 MW additional supply to PROSIELCO's franchise area;

**II. SALIENT FEATURES OF THE PSA AND
OTHER RELATED INFORMATION**

24. The following are the salient features of the PSA:
 - a. **Cooperation Period.** Period commencing on the Completion Date (to be within six (6) months from the ERC's approval of the PSA), or the issuance by the ERC of the Certificate of Compliance (COC), whichever is later, and thereafter, ending on the twentieth (20th) year. The Cooperation Period may be extended pursuant to this Agreement, in which case, "Cooperation Period" shall include the period of such extension.
 - b. **Contracted Capacity and Guaranteed Dependable Capacity (GDC).** The Contracted Capacity shall be 3 MW while the GDC shall be 2.6 MW that SIPCOR is required to make available for dispatch by PROSIELCO beginning Commercial Operation Date (COD), which refers to the Completion Date of the power station, until the end of the Cooperation Period.

- c. **Supply of Electricity.** SIPCOR agrees to supply to PROSIELCO electricity generated by the power station based on the Energy and Demand Projection by PROSIELCO, in accordance with the Dispatch/Loading Procedures in Schedule D of the PSA, and PROSIELCO shall pay SIPCOR subject to the energy delivered, used and registered in the revenue meter based on the formula and tariff approved by the Honorable Commission. For the avoidance of doubt, SIPCOR shall be allowed to displace the energy it supplies to PROSIELCO with energy sourced from renewable sources, provided that such energy shall not exceed the capacity under the PSA.

- d. **Delivery Point.** The delivery point shall be the Line Side Terminal of the Current Transformers used for Revenue Metering. The Delivery Point shall also be the “Point of Common Coupling” (PCC) between the PROSIELCO Distribution System and SIPCOR. The PCC shall also be the reference basis of the Distribution Impact Study. Title to and all risks associated with electricity from the power plant shall pass to PROSIELCO at the Delivery Point. Each Party shall be responsible for the maintenance and operation of the equipment owned by it or under its dominion and control.

- e. **Prompt Payment Discount.** PROSIELCO shall be entitled to a discount at the rate of three percent (3%) of the SAGR, which discount will be deducted from the applicable fees automatically upon PROSIELCO’s payment, provided that such payment was made on or before the tenth day of the calendar month succeeding the applicable Billing Month, and provided further that PROSIELCO does not have any overdue payment of any payable amount under the PSA.

- f. **Total Electricity Fees.** PROSIELCO will only pay the Total Power Bill based on the Subsidized Approved Generation Rate (SAGR) including the Deferred Accounting Adjustment (DAA) required by the NPC, until such time that the total amount of DAA is fully collected.

- g. **Fees and Adjustments.** The Parties agree that the fees shall reflect specific and variable fluctuations on inflation, fuel, and foreign exchange for the duration of the Cooperation Period.

Levelized Tariff Computation. The project tariff structure shall have at least the following components:

Capital Recovery Fee, a capital-related component to recover investment cost over the life of the plant plus a reasonable rate of return;

Operation and Maintenance Fees composed of (a) Fixed Component to recover fixed operating and maintenance costs; and (b) Variable Component to recover variable operation and maintenance costs and spare parts; and

Fuel Recovery Fee to recover fuel cost, and which shall be treated as pass-through billing to cover the cost of bunker, diesel and lubes consumed in the generation of electricity.

Given the foregoing, the **Total Tariff Formula**, which is the Monthly Electricity Fee (MEF), is as follows:

Monthly Electricity Fee (MEF) = Capital Recovery Fee (CRF) + Operation & Maintenance Fee-Fixed (FOMF) + Operation & Maintenance Fee-Variable, Spare Parts (VOMF1) + Operation and Maintenance Fee-Variable, Consumables (VOMF2) + Fuel Recovery Fee

Capital Recovery Fee (CRF) Formula

$$CRF = CC \times CRFR$$

Where:

$$\begin{aligned} CC &= \text{Contracted Capacity} = 3.000 \text{ MW} \\ CRFR &= \text{Capital Recovery Fee Rate} \\ &= \text{PhP}1,865.05 / \text{kW-month} \end{aligned}$$

Operation and Maintenance (O&M) Fee Formula

$$\text{Fixed Operation \& Maintenance Fee (FOMF)} = CC \times \text{FOMFR}$$

Where:

$$\begin{aligned} CC &= \text{Contracted Capacity} = 3.000 \text{ MW} \\ \text{FOMFR} &= \text{Fixed O\&M Fee Rate} = \end{aligned}$$

PhP255.19

Variable1 Operation & Maintenance Fee
(VOMF1) = ED x VOMFR1

Where:

ED = Energy Delivered to Client in MWh, as delivered and metered
VOMFR1 = Variable1 O&M Fee Rate, PhPo.1676/kWh

The formula for Operation and Maintenance Fee – Variable Local Cost is as follows:

Variable2 Operation & Maintenance Fee
(VOMF2) = ED x VOMFR2

Where:

ED = Energy Delivered to Client in MWh, as delivered and metered
VOMFR2 = Variable O&M Fee Rate, PhPo.2312/kWh

Fuel Recovery Fee Formula

$$\text{Fuel Fee (FF)} = \text{ED} \times \text{SFOC} \times (1 + \text{FRDF})(n-1) \times (95\% \times \text{HFO}) + 5\% \times \text{LFO}$$

Where:

ED = Energy Delivered to Client in MWh, as delivered and metered
SFOC = Specific Fuel Oil Consumption Rate, liter/kwh
SFOC = 0.2618 liter/kWh
HFO = The delivered price of Heavy Fuel Oil Cost, PhP/liter, on the applicable billing month
HFO = PhP 19.8/liter, without VAT based on the 2016 average price
LFO = The delivered price of Light Fuel Oil Cost, PhP/liter, at time of billing, 30-day average
LFO = PhP29.20/liter, without VAT based on the 2016 average price

FRDF = Fuel Rate Degradation
Factor
FRDF = 1.00%

- h. **SIPCOR Submitted Levelized Tariff.** SIPCOR's Submitted Levelized Tariff shall be PhP9.0725/kWh, broken down as follows:

| | | |
|----------------------|---|------------------------|
| Capital Recovery Fee | - | PhP 2.9513 /kWh |
| Fixed O&M Fee | - | PhP 0.4038 /kWh |
| Variable O&M | - | PhP 0.3988 /kWh |
| Fuel Recovery Fee | - | <u>PhP 5.3186 /kWh</u> |
| TCGR | - | PhP 9.0725 /kWh |

- i. **Request for Approval of Appropriate Adjustments**

Based on Clause 26 of the PSA, the Parties agree that the fees shall reflect specific and verifiable fluctuations on inflation, fuel, and foreign exchange for the duration of the Cooperation Period.

Thus, pursuant to the Honorable Commission's policy allowing pass through of local inflation and foreign exchange (FOREX) rate variations, and in accordance with *Section 43 (f)* of the EPIRA providing that rates must be such as to allow the recovery of just and reasonable costs to enable the entity to operate viably, Applicants most respectfully defer to the Honorable Commission the determination and approval of appropriate adjustments, which shall form part of the cost components and rate computation under the subject PSA.

**III. COMMERCIAL ADVANTAGE OF THE
GENERATION RATE AND IMPACT ON
PROSIELCO'S RETAIL RATES**

25. PROSIELCO needs to immediately address its abrupt increase in demand which started in May 2016 due to the influx of tourists in the Province. The completion of SIPCOR's Power Station, which will deliver additional 3 MW supply to the Province of Siquijor will guarantee stable and efficient supply of electricity that will cater to the increasing demand in the island;
26. While additional capacity from SIPCOR contributes to the stabilization of the power supply within PROSIELCO's franchise area, the electricity fees under the PSA will not adversely affect the existing generation rate which PROSIELCO bills to its member-consumers considering that they will still be charged the ERC-approved SAGR, which may even be reduced when the Prompt Payment Discount is applied, subject to appropriate conditions;

27. On the other hand, there will be a reduction in the government's missionary subsidy due to savings in generation costs given SIPCOR's lower True Cost of Generation Rate under the subject PSA. The proposed TCGR is at PhP9.0725/kWh, which is lower by around PhP6.6975/kWh than the current cost of generating power for PROSIELCO. This difference translates to annual savings in the UC-ME subsidy by approximately PhP30 Million. A copy of PROSIELCO's Rate Impact Computation is herewith attached to form an integral part hereof as Annex "W";
28. Meantime, in compliance with *Rule 20* of the *ERC Rules of Practice and Procedure* relative to the submission of supporting documents and information for the approval of the PSA and the rate structure embodied therein, Applicants PROSIELCO and SIPCOR also attach the following documents to form integral parts hereof:

| ANNEX | DOCUMENT |
|--------------|---|
| "X" | Joint Affidavit on PROSIELCO's conduct of a transparent, open, public and efficient CSP in the procurement of additional power supply |
| "Y" | Executive Summary of the PSA |
| "Z" | Sources of Funds with Details on the Debt/Equity Ratio |
| "AA" | Project Cost Breakdown |
| "BB" | Bank Certification |
| "CC" | Financial Model containing the derivation of rates |
| "DD" | Breakdown of the Base Price for the Additional 3 MW Power Supply |
| "EE" | Breakdown of O&M Cost |
| "FF" | Project Cash Flow showing Income Statement and Cash Flow |
| "GG" | SIPCOR's Sample Computation of Power Rates |
| "HH" | Executive Summary of the Distribution Impact Study |
| "II" | Original Sworn Statement on the Details of SIPCOR's Fuel Procurement Process with Copy of Fuel Sales Agreement |
| "JJ" | Relevant Technical and Economic Characteristics of the Power Station |
| "KK" | Certification of Plant Specific Fuel Oil Consumption and Net Heat Rate |
| "LL" | Single Line Diagram showing SIPCOR's |

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| | |
|------|--|
| | existing 6.4 MW Bunker Plant, with the Additional Capacity under the subject PSA |
| “MM” | NPC’s Letter informing SIPCOR that the Certification on Transition Supply Contract (TSC) is issued only for supply located in the main grid, and not in SPUG areas |
| “NN” | SIPCOR’s Audited Financial Statements as of 31 December 2017 |
| “OO” | PROSIELCO’s Demand Side Management |
| “PP” | Original SIPCOR’s Secretary’s Certificate attesting that its Board of Directors resolved to authorize Engr. Fe T. Rebancos, Director, and Engr. Jose Rommel C. Orillaza, Technical Head, to sign the subject PSA with PROSIELCO |
| “QQ” | Original SIPCOR’s Board Resolution authorizing the filing of an application with the ERC for the approval of the PSA and designating its Technical Head as SIPCOR’s authorized representative |
| “RR” | Original SIPCOR’s Board Resolution designating Diccion Law Firm to represent SIPCOR in the PSA Application before the ERC |
| “SS” | Copy of PROSIELCO’s Board Resolution No. 52-A authorizing the execution of the subject PSA with SIPCOR and designating President Emely B. Gom-os and General Manager Laureen B. Malolot as signatories thereto |
| “TT” | Original PROSIELCO’s Board Resolution No. 57, Series of 2018 designating its Board President as PROSIELCO’s representative to the PSA Application, and its General Manager as a witness with the power to designate other witnesses, in the proceedings before the ERC |
| “UU” | Original PROSIELCO’s Board Resolution No. 56 Series of 2018 authorizing Diccion Law Firm to represent PROSIELCO in the PSA Application before the ERC. |

29. Applicants PROSIELCO and SIPCOR reserve their right to submit other documents, either in the course of the hearing or as may be required by this Honorable Commission.

IV. COMPLIANCE WITH PRE-FILING REQUIREMENTS

30. Applicants manifest compliance with the pre-filing requirements mandated under the *Implementing*

Rules and Regulations of the EPIRA and Rule 6 of the ERC Rules of Practice and Procedure, to be established by the following:

- 30.1 Certifications acknowledging receipt of the *Application* with annexes to be issued by the Legislative Bodies of the City of Mandaluyong, Municipalities of Larena and Siquijor, and the Province of Siquijor, to be appended as Annexes “VV”, “VV-1”, “VV-2” and “VV-3”, respectively;
- 30.2 Notarized Affidavit of Publication stating that the *Application* was published in a newspaper of general circulation within PROSIELCO’s Franchise Area, to be appended herein as Annex “WW”; and
- 30.3 Complete newspaper issue where the *Application* was published, to be appended herein as Annex “WW-1”, and the relevant page thereof where the *Application* appears, as Annex “WW-2”.

V. MOTION FOR CONFIDENTIAL TREATMENT OF ANNEXES “Z”, “AA”, “BB”, “CC”, “DD”, “EE” and “FF”

- 31. Pursuant to *Rule 4 of the ERC Rules of Practice and Procedure*, Applicant SIPCOR most respectfully moves for the confidential treatment of the following documents:

| ANNEX | DOCUMENT |
|--------------|--|
| “Z” | Sources of Funds with Details on the Debt/Equity Ratio |
| “AA” | Project Cost Breakdown |
| “BB” | Bank Certification |
| “CC” | Financial Model containing the derivation of rates |
| “DD” | Breakdown of the Base Price for the Additional 3 MW Power Supply |
| “EE” | Breakdown of O&M Cost |
| “FF” | Project Cash Flow showing Income Statement and Cash Flow |

- 32. Annexes “Z”, “AA”, “CC”, “DD”, “EE”, and “FF”, exclusively owned and prepared by Applicant SIPCOR, contain confidential information critical to its business operation, including trade secrets and business calculations, assumptions and projections. As such, SIPCOR has sole and actual proprietary interest thereon that must be protected and not disclosed to the public;

33. SIPCOR, likewise, seeks confidential treatment of Annex “BB” based on the confidentiality provision thereof, which explicitly provides that it shall be privileged and strictly confidential and shall not be disclosed or publicly announced. As a party thereto, SIPCOR is bound to observe confidentiality as part of its negotiations with its lender, otherwise, SIPCOR may be held liable for damages on account of breach. Moreover, Annex “BB” embodies the terms of negotiation between SIPCOR and its lender, intended only for their restrictive use;
34. The numbers, formula used, methodology, calculations and other sensitive commercial and financial information contained in Annexes “Z”, “AA”, “BB”, “CC”, “DD”, “EE”, and “FF”, constitute “trade secrets” for which SIPCOR has actual and valuable proprietary interest. As explained by the Supreme Court in *Air Philippines Corporation vs. Pennswell Inc.*⁵, a trade secret may consist of any formula, pattern, device, or compilation of information that is used in one’s business and gives him an opportunity to obtain an advantage over competitors who do not possess the information. It is indubitable that trade secrets constitute proprietary rights and jurisprudence has consistently acknowledged the private character of trade secrets⁶. Further, as ruled in *Garcia vs. Board of Investments*⁷ trade secrets and confidential, commercial and financial information are *exempt* from public scrutiny;
35. Meanwhile, the public disclosure of Annexes “Z”, “AA”, “BB”, “CC”, “DD”, “EE”, and “FF” would unduly prejudice Applicant SIPCOR in the conduct of its business. Other players in the electric power industry, such as, but not limited to SIPCOR’s competitors and prospective customers, may utilize to their own benefit information in said documents, thereby diminishing SIPCOR’s commercial and bargaining advantage and proprietary interest thereon;
36. Finally, the information contained in Annexes “Z”, “AA”, “BB”, “CC”, “DD”, “EE”, and “FF”, at the time of herein request, are neither generally available to the public nor available to or already in the possession of the Honorable Commission on a non-confidential basis;
37. In view thereof, the kind indulgence of the Honorable Commission is respectfully sought to accord confidential treatment to Annexes “Z”, “AA”, “BB”, “CC”, “DD”, “EE”, and “FF”. As such, they are to be

⁵ G.R. No. 172835, December 13, 2007;

⁶ *Ibid*;

⁷ 177 SCRA 374 (1989);

seen and used *exclusively* by the Honorable Commission and for the *sole* purpose of evaluating the instant *Application*, thereby protecting information therein from unnecessary public disclosure;

38. In accordance with *Section 1(b), Rule 4* of the *ERC Rules of Practice and Procedure*, Applicant SIPCOR hereby submits one (1) copy each of Annexes "Z", "AA", "BB", "CC, "DD", "EE", and "FF" in a sealed envelope, with the envelope and each page of the documents stamped with the word "*Confidential*".

VI. PRAYER FOR PROVISIONAL AUTHORITY OR INTERIM RELIEF

39. All the foregoing allegations are re-pleaded by reference in support of herein *Prayer* for the issuance of Provisional Authority or Interim Relief to implement the subject PSA;
40. PROSIELCO and SIPCOR pray for the issuance of a Provisional Authority or Interim Relief prior to final decision pursuant to *Rule 15* of the *ERC Rules of Practice and Procedure*, 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."

41. The steady growth of PROSIELCO's peak demand cannot be sufficiently addressed by its existing contracted supply from SIPCOR. Since 2016, SIPCOR's power plant is already critically loaded and insufficient to satisfy PROSIELCO's requirements. Without additional supply from the subject PSA, PROSIELCO's deficit in 2019 and 2020 will be about 0.14 MW and 0.55 MW, respectively, and will continue to increase⁸;
42. Hence, the subject PSA must be immediately implemented to allow SIPCOR to deliver more capacity and ensure continuous and uninterrupted power supply to PROSIELCO's franchise area;

⁸ Per hereto attached Annex "L-2"

43. As provided in Clause 3.1 of the PSA, the Target Completion Date of the Power Station is within six (6) months from the approval by the Honorable Commission of the PSA. Thus, even if SIPCOR's additional bunker generating sets can be easily deployed, the approval of the Honorable Commission is still indispensable for SIPCOR to start generating power therefrom;
44. The Prayer for Provisional Authority or Interim Relief will be further supported by a Judicial Affidavit emphasizing the necessity thereof to be attached as Annex "XX", to form an integral part hereof;
45. In light of the foregoing and in recognition of the fact that a substantial amount of time is customarily needed to evaluate the documents submitted to support the approval of herein *Application*, Applicants PROSIELCO and SIPCOR seek the kind consideration of the Honorable Commission to approve the instant *Application*, immediately, albeit, provisionally, at the soonest opportune time.

PRAYER

WHEREFORE, premises considered, the following are most respectfully prayed for of the Honorable Commission:

- a. Pending hearing on the merits, **DULY ISSUE** a Provisional Authority or Interim Relief authorizing the immediate implementation of the subject *Power Supply Agreement*, including the rate structure therein, as applied;
- b. **APPROVE** necessary indexation to reflect specific and verifiable fluctuations on inflation, fuel, and foreign exchange for the duration of the Cooperation Period; and
- c. After due notice and hearing, the instant *Application*, the *Power Supply Agreement* and the rate structure contained therein be **DULY APPROVED**. In the event that a Final Authority is issued after SIPCOR starts actual delivery of power to PROSIELCO under the terms of the subject PSA, said Final Authority be retroactively applied to the date of such actual delivery.

Other reliefs as may be just and equitable under the premises are, likewise, most respectfully prayed for.

The Commission has set the *Application* for determination of compliance with the jurisdictional requirements, expository presentation, pre-trial conference, and evidentiary hearing on **04 April 2019 (Thursday) at ten o'clock in the morning (10:00 A.M.) at PROSIELCO's Principal Office at Nonoc, Larena, Siquijor.**

All persons who have an interest in the subject matter of the instant case may become a party by filing with the Commission a verified Petition to Intervene at least five (5) days prior to the initial hearing and subject to the requirements under Rule 9 of the 2006 Rules of Practice and Procedure, indicating therein the docket number and title of the case and stating the following:

- 1) The petitioner's name and 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.

All other persons who may want their views known to the Commission with respect to the subject matter of the case may file their Opposition or Comment thereon at any stage of the proceeding before Applicants rest their case, subject to the requirements under Rule 9 of the 2006 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 and address of such person;
- 2) A concise statement of the Opposition or Comment; and
- 3) The grounds relied upon.

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All such persons who wish to have a copy of the *Application* may request from Applicants that they be furnished with the same, prior to the date of the initial hearing. Applicants are hereby directed to furnish all those making such request with copies of the *Application* and its attachments, subject to the reimbursement of reasonable photocopying costs. Any such person may likewise examine the *Application* and other pertinent records filed with the Commission during the standard office hours.

WITNESS, the Honorable Chairperson and CEO **AGNES VST DEVANADERA** and the Honorable Commissioners **ALEXIS M. LUMBATAN**, **CATHERINE P. MACEDA**, and **PAUL CHRISTIAN M. CERVANTES**, Energy Regulatory Commission, this 22nd day of February 2019 in Pasig City.


JOSEFINA PATRICIA A. MAGPALE- ASIRIT
Commissioner

LS: MFD/ARG/GLO
