

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



**IN THE MATTER OF THE  
APPLICATION FOR  
APPROVAL OF THE POWER  
SALES AGREEMENT  
BETWEEN DAVAO DEL SUR  
ELECTRIC COOPERATIVE,  
INC. AND MAPALAD  
PARTNERS, INC., WITH  
PRAYER FOR  
PROVISIONAL AUTHORITY,**

**ERC CASE NO. 2017-085 RC**

**DAVAO DEL SUR ELECTRIC  
COOPERATIVE, INC. AND  
MAPALAD PARTNERS, INC.,  
Applicants.**

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**D O C K E T E D**  
Date: DEC 27 2017  
By: [Signature]

**NOTICE OF PUBLIC HEARING**

**TO ALL INTERESTED PARTIES:**

Notice is hereby given that on 22 September 2017, Davao del Sur Electric Cooperative, Inc. (DASURECO) and Mapalad Partners, Inc. (MPI) filed their Application seeking the Commission's approval of their Power Sales Agreement (PSA), with prayer for the issuance of a provisional authority.

DASURECO and MPI alleged in their Application the following:

**THE APPLICANTS**

1. Davao del Sur Electric Cooperative, Inc. ("DASURECO") is a non-stock, non-profit electric cooperative organized and existing under Presidential Decree No. 269, as amended, with office address at Brgy. Cogon, Digos City, Davao del Sur. DASURECO has a franchise to distribute electricity in Digos City and the Municipalities of Magsaysay, Sulop, Sta. Cruz, Hagonoy, Malalag, Bansalan, Padada, Matanao and

Kibalawan in the province of Davao del Sur, and the Municipalities of Don Marcelino, Jose Abad Santos, Malita, Santa Maria and Sarangani in the province of Davao Occidental.

2. Mapalad Partners, Inc. ("MPI") is a corporation duly authorized and existing under the laws of the Republic of the Philippines, with principal address at 4<sup>th</sup> Floor, Alphaland Southgate Tower, corner EDSA and 2258 Chino Roces Avenue extension, Makati City.

Copies of MPI's Certificate of Incorporation, Articles of Incorporation ("AOI"), Certificate of Filing of Amended AOI with the attached Amended AOI, By-Laws, latest General Information Sheet, Audited Financial Statements, and MPI's corporate structure are attached hereto as **Annexes "A" and series**.

3. Joint Applicants may be served orders and other processes through the undersigned counsel.

#### **NATURE OF THE APPLICATION**

4. Pursuant to Rule 20 (B) of the ERC Rules of Practice and Procedure, approved by this Honorable Commission on 22 June 2006 in Resolution No. 38, Series of 2006, this Application is submitted to this Honorable Commission for its review and approval of the Power Sales Agreement ("PSA") dated 22 November 2016 between DASURECO and MPI.

A copy of the PSA is attached hereto as **Annex "B."**

#### **COMPLIANCE WITH PRE-FILING REQUIREMENTS**

5. In compliance with Rule 6 of the ERC Rules of Practice and Procedure, Joint Applicants have furnished the legislative bodies of each of the local government units where they principally operate a copy of the present Application with all its annexes and accompanying documents.

The corresponding proofs of receipt are attached hereto as **Annexes "C" and series**.

6. Furthermore, Joint Applicants have caused the publication of the present Application in its entirety, excluding its annexes, in a newspaper of general circulation within DASURECO's franchise area.

Copies of the newspaper and the corresponding affidavit of publication are attached hereto as **Annexes "D" and "D-1,"** respectively.

**STATEMENT OF FACTS**

7. **Necessity for Power Supply.** MPI currently supplies 15 MW to DASURECO under an existing Power Sales Agreement dated 16 October 2013 (the “First PSA”) from the generation facilities located in the premises of DASURECO in Brgy. Cogon, Digos City, Davao del Sur (the “MPI Power Station”).
8. The First PSA is expiring on 28 December 2017, or until receipt of a provisional or final approval of the PSA from this Honorable Commission, whichever is earlier. Upon the expiration of the First PSA, DASURECO will immediately lose 15 MW of supply.
9. **Procurement Process for Supply.** Thus, DASURECO executed efforts to procure the appropriate power supply to replace the 15 MW.
10. In compliance with ERC Resolution No. 13, Series of 2015, DASURECO conducted a competitive selection process (“CSP”) in the procurement of its supply.

Copies of a write-up on the process and the relevant CSP documents are hereto attached as **Annexes “E” and series.**

11. **NPC Certification.** DASURECO has formally requested the National Power Corp. (“NPC”) for a certification on whether it will have available capacity and energy to supply DASURECO during the term of the PSA. NPC has not yet formally responded to such request.

A copy of the said request is attached hereto as **Annex “F.”**

12. **Supply from PSALM.** DASURECO and the Power Sector Assets and Liabilities Management Corporation (“PSALM”) have a Contract for the Supply of Electric Energy (“CSEE”). The CSEE is in force until 25 December 2017 only based on the Letter of Agreement dated 1 December 2016.

A copy of the said Letter of Agreement is attached hereto as **Annex “G.”**

13. **Urgency of Supply.** In order to help ensure sufficiency of power supply to DASURECO’s customers, the supply under the PSA must be already available at the expiration of the aforementioned supply agreement.

14. Since the MPI Power Station is already existing and operating, it can readily supply power to DASURECO immediately after the expiration of the First PSA provided the prayer for provisional authority is granted.

15. **Demand Projections.** Moreover, the supply from the MPI Power Station will help address the expected steady increase in the power demand in DASURECO's franchise area. The expected increase is indicated in DASURECO's Distribution Development Plan ("DDP") and supply-demand projections.

Copies of DASURECO's DDP and supply-demand projections are attached to the Application as **Annexes "H" and "I,"** respectively.

16. **Demand Side Management.** A certification from DASURECO as regards demand side management is attached hereto as **Annex "J."**

17. Under the law, no contract for the supply of power can become legally effective unless approved by this Honorable Commission. Hence, this Joint Application.

**ABSTRACT OF THE POWER SALES AGREEMENT**  
**AND RELATED INFORMATION**

18. **The Generation Facilities.** MPI shall supply power under the PSA using leased modular diesel-fired power generating plants with a total net output of fifteen (15) MW located in the premises of DASURECO in Brgy. Cogon, Digos City, Davao del Sur.

19. The MPI Power Station consists of 16 units of diesel generator sets and auxiliaries, with a total installed capacity of 1,070 kW per unit; 4 units of transformer package; 1 unit each of control room, switch gear, and oil water separator; diesel fuel tanks with auxiliaries and water tanks; 1 unit each of workshop and of office; and a transmission line from the MPI Power Station to DASURECO's substation.

A brief description of the technical characteristics of the MPI Power Station is attached hereto as **Annex "K."**

20. The Specific Fuel Oil Consumption ("SFOC") rate of the MPI Power Station shall not be greater than 0.265 liter/kWh at site condition of 32 deg. C ambient temperature, and is based on the Plant's use of diesel fuel with a density of 0.85 kilogram/liter.

A copy of a certification on the MPI Power Station's SFOC rate is attached hereto as **Annex "L."**

21. **Salient Features of the PSA.**

21.1. **Supply of Power Requirements.** Under the PSA, MPI shall make available, reserve, guarantee and deliver to DASURECO the contracted electric power ("Contracted Capacity") of fifteen (15) MW and the Dispatchable Energy, as indicated in and subject to the terms and conditions of the PSA.

21.2. MPI shall have the option of supplying the Contracted Capacity or any part thereof, from other sources, provided that the cost of such supply is lower than or equal to the cost of supply from the MPI Power Station. The cost of such alternative supply to DASURECO shall be a full pass-through cost to DASURECO.

21.3. **Commencement of Supply.** MPI shall commence supplying power on the date designated by MPI to DASURECO in writing as the date on which the MPI Power Station is ready to commence supply ("Commencement Date").

21.4. **Term.** The term of supply and purchase under the PSA shall be for ten (10) years from the Commencement Date, unless otherwise extended or renewed by mutual agreement of the parties in writing.

21.5. **Effective Date.** The obligations under the PSA shall become effective on the Effective Date, which shall be upon this Honorable Commission's approval of the PSA, including the pricing structure therein.

21.6. **Transfer of Ownership.** Ten (10) years after the Commencement Date, MPI shall transfer to DASURECO, the ownership of the MPI Power Station, free from any lien or encumbrance.

22. **Purchased Power Rate.** For the capacity drawn by DASURECO to MPI, DASURECO shall pay the monthly payments based on the following formulae:

1. **Monthly Payments**

The Monthly Payments shall be paid to the Seller on a monthly basis in accordance with the following formula:

$$\text{Monthly Payments} = \text{CRF} + \text{FOMF} + \text{VOMF} + \text{AFC} + \text{SC} + \text{Taxes}$$

where:

CRF = Capital Recovery Fees  
FOMF = Fixed Operation and Maintenance Fee

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VOMF	=	Variable Operation and Maintenance Fee
AFC	=	Actual Fuel Cost
SC	=	Start-Up Costs
Taxes	=	Value-Added Tax and other applicable taxes, if any

**1.1 Capital Recovery Fee (CRF)**

CRF shall be computed as follows:

$$CRF = \left\{ CRFR \times \left[ \left( 0.84 \times \frac{USD_n}{USD_o} \times \left( \frac{FCP_n}{FCP_o} \right) \right) + (0.16) \right] \right\} \times CC \times F$$

Where:

CRFR	=	Capital Recovery Fee Rate of PHP 488.21/kW/month
CC	=	15,000kW
USDn	=	Average USD-Peso Exchange Rate for the month as published by Bangko Sentral ng Pilipinas
USD0	=	USD-Peso Exchange Rate is at Php43/USD1
FCPn	=	The arithmetic average of the values of the United States Consumer Price Index for all Items, as last published on or before the last day of such billing month by the International Monetary Fund; provided that if the International Monetary Fund ceases to publish such indices, the relevant indices as published by the U.S. Department of Labor Bureau of Labor Statistics shall apply.
FCP0	=	The arithmetic average of the values as of the December 31, 2015 of the United States Consumer Price Index for all Items; as published by the International Monetary Fund, provided that if the International Monetary Fund ceases to publish such indices, the relevant indices as published by the U.S. Department of Labor Bureau of Labor Statistics shall apply.
F	=	Outage Factor as derived using the following formula to be used.

Where:

$$F = \frac{\text{Monthly Actual Energy Delivered}}{TMED}$$

Where:

TMED	=	Theoretical Maximum Energy Delivered being the Contracted Capacity multiplied by the hours in the relevant month, limitation due to dispatch order, Force Majeure of the Power Station, transmission line downtime due to Buyer's fault, and any other hours as a consequence of Buyer's failure to perform any of its obligations
F	=	1 if the foregoing formula results in F being greater than 1

A summation of the ED & TMED for a given Contract Year shall be made to determine true F during the Contract Year. Such yearly F factor shall be basis for adjustment of the CRF for the Contract Year. The adjustment shall be guided by the following conditions:

If  $\sum ED = \sum TMED, F = 1$

If  $\sum ED > \sum TMED, F > 1$ , excess will be carried over to the next year, if the excess is attributed to an event initiated by the Buyer calling for the dispatch of the Power Station to deviate from the agreed Dispatch and Nomination Procedures (Schedule D), and which applies only on to scheduled maintenance of these generating units.

If  $\sum ED < \sum TMED, F < 1$

### 1.2 Fixed Operation & Maintenance Fee (FOMF)

The Fixed Operation and Maintenance Fee (FOMF) covers the operating and maintenance costs of the Power Station. It shall be computed according to the following formula:

$$FOMF = \left\{ FOMR \times \left[ \left( 11\% \times \frac{CPI_n}{CPI_o} \right) + \left( 89\% \times \frac{USD_n}{USD_o} \times \frac{CPI_n}{CPI_o} \right) \right] \right\} \times CC \times F$$

Where:

FOMR	=	Fixed O&M Fee Rate of PHP 194.3778/kW/month
CPI <sub>n</sub>	=	Consumer Price Index for Metropolitan Manila Area (National Capital Region), all items published by NEDA/NSO for the period of price determination
CPI <sub>o</sub>	=	Consumer Price Index for Metropolitan Manila Area (National Capital Region), all items published by NEDA/NSO for September 2013 (at 126.9, 2006 = 100)
USD <sub>n</sub>	=	USD-Peso Exchange Rate for the period of price determination as published by Bangko Sentral ng Pilipinas
USD <sub>o</sub>	=	USD-Peso Exchange Rate is at Php43/USD1

$$F = \frac{\text{Monthly Actual Energy Delivered}}{TMED}$$

TMED = Theoretical Maximum Energy Delivered being the Contracted Capacity multiplied by the hours in the relevant month, limitation due to dispatch order, Force Majeure of the Power Station, transmission line downtime due to Buyer's fault, and non-generation due to a Buyer dispatch order, and any other hours as a consequence of Buyer's failure to perform any of its obligations

F = 1 if the foregoing formula results in F being greater than 1

A summation of the ED & TMED for a given Contract Year shall be made to determine true F during the Contract Year. Such yearly F factor shall be basis for adjustment of the CRF

for the Contract Year. The adjustment shall be guided by the following conditions:

If  $\Sigma ED = \Sigma TMED, F = 1$

If  $\Sigma ED > \Sigma TMED, F > 1$ , excess will be carried over to the next year, if the excess is attributed to an event initiated by the Buyer calling for the dispatch of the Power Station to deviate from the agreed Dispatch and Nomination Procedures (Schedule D), and which applies only on to scheduled maintenance of these generating units.

If  $\Sigma ED < \Sigma TMED, F < 1$

### 1.3 Variable Operation & Maintenance Fee (VOMF)

The Variable Operation and Maintenance Fee (VOMF) covers the cost of the use of, among other items, chemicals, lubricants and spare parts, that are directly related to the generation of the Power Station. It shall be computed according to the following formula:

$$VOMF = \left\{ VOMFR \times \left[ \left( \frac{USDn}{USD0} \times \frac{CPIn}{CPI0} \right) \right] \right\} \times ED$$

Where:

VOMF	=	Variable O&M Fee, in Pesos
VOMFR	=	Variable O&M Fee Rate of Php 0.59/kWh
ED	=	kWh delivered during the billing period
USDn	=	USD-Peso Exchange Rate for the period of price determination as published by Bangko Sentral ng Pilipinas
USD0	=	USD-Peso Exchange Rate is at Php43/USD1
CPIn	=	Consumer Price Index for Metropolitan Manila Area (National Capital Region), all items published by NEDA/NSO for the period of price determination
CPI0	=	Consumer Price Index for Metropolitan Manila Area (National Capital Region), all items published by NEDA/NSO for September 2013 (at 126.9, 2006 = 100)

### 1.4 Actual Fuel Cost (AFC)

The Actual Fuel Cost (AFC) is the fee paid to the Seller as payment for the procurement and delivery of the fuel oil (Diesel) used in the operation of the Modular Power Station. The Actual Fuel Cost shall be computed as follows:

$$AFC = FCR \times \text{Specific Fuel Oil Consumption} \times ED$$

Where:

FCR	=	Fuel Price of Diesel Fuel Oil based on the weighted average of all fuel delivered during the billing period.
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Specific Fuel Oil Consumption = 0.265 liter/kWh  
 ED = kWh delivered during the billing period

**1.5 Value Added Tax**

The relative Value Added Taxes (“VAT”) of the above fee payments 12% shall be computed as follows:

$$VAT = (CRF + FOMF + VOMF + AFC + Start - Up Cost) \times 0.12$$

**1.6 Start-Up Costs (SC)**

The Buyer, on a pro rata basis of the capacity of the Power Station allocated to the Buyer, shall pay the Seller Start-Up Costs for the cost of starting up the Modular Power Station after a period of shutdown due to any reason attributable to the Buyer of the Seller. The Start-Up Costs shall be computed based on the prevailing price of diesel fuel at the time of the Start Up and paid in accordance with the following formula and schedule:

$$SC = \left( \begin{array}{l} \text{No. Of Cold Start Up} \times \text{Liters of fuel consumed} \\ \times \text{No. of Generator Set} \times \text{Fuel Price} \end{array} \right) + \left( \begin{array}{l} \text{No. Of Warm Start Up} \times \text{Liters of fuel consumed} \\ \times \text{No. of Generator Set} \times \text{Fuel Price} \end{array} \right)$$

<b>Type of Start-Up</b>	<b>Liters of Diesel Fuel Per Generator Set</b>
Cold Start-up (more than 10 hours of shutdown)	60
Warm Start-up (less than 10 hours of shutdown)	40

22.1. **Sample computation.** For reference, a sample computation of the rate is contained in Schedule C of the PSA.

22.2. **Equivalent PhP/kWh computation.** A computation of the equivalent PhP/kWh for the fixed fees is attached hereto as **Annex “M.”**

22.3. **Basis for indexation.** As indicated in the formulas above, the monthly fees to be paid by DASURECO are subject to adjustments based on various indices or factors in order to properly reflect the fluctuation of MPI’s costs in producing electricity.

22.4. The components of the fees representing foreign currency-denominated costs are adjusted based on the foreign exchange rate and the appropriate price indices; those representing local costs are adjusted based on local price indices. The Actual Fuel Costs vary based on the cost of fuel purchases.

- 22.5. **Financial Model.** A copy of MPI's financial model for the tariff is attached hereto as **Annex "N."** As discussed below, the financial model is the subject of a Motion for Confidential Treatment of Information.
23. **Sources of Funds/Financial Plans.**
- 23.1. **Cost of Equity.** The project will be funded by equity. A breakdown of the cost of equity is attached here to as **Annex "O."**
- 23.2. **Project Cost.** A breakdown of the total project cost for the MPI Power Station is attached hereto as **Annex "P."**
24. **Cash Flow.**
- 24.1. **Breakdown of Operating and Maintenance Expenses.** A breakdown of the projected operating expenses is attached hereto as **Annex "Q."**
- 24.2. **Offtake Arrangement.** Under the PSA, MPI shall make available, reserve, guarantee and deliver to DASURECO the Contracted Capacity, and DASURECO shall pay for such quantity of electric power. MPI shall utilize such Contracted Capacity to generate energy for DASURECO.
- 24.3. There is no minimum energy offtake under the PSA. As MPI will dedicate the Contracted Capacity to DASURECO, the Capital Recovery and the Fixed Operations and Maintenance Fees are computed based on the Contracted Capacity as well as on the proportion of actual energy delivered to the energy that could have been delivered.
- 24.4. Also, the capacity to be provided by MPI shall always be the Contracted Capacity. In case the actual capacity delivered by MPI, as per dispatch order or limitation of DASURECO for a given billing month is less than the Contracted Capacity, the difference between the actual capacity utilized by DASURECO and Contracted Capacity for that billing month shall be deemed delivered to and utilized by DASURECO.
25. **Fuel supply.** The fuel necessary for the operations of the MPI Power Station will be supplied by the supplier who offered the best terms after offers were solicited from reputable suppliers in the area.

A copy of the relevant fuel supply agreement is attached hereto as **Annexes "R."**

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26. **Environmental Compliance Requirements.** The Department of Environment and Natural Resources has issued the necessary Environmental Compliance Certificate (“ECC”) covering the MPI Power Station.

A copy of the ECC is attached hereto as **Annex “S.”**

27. **DOE Certification.** The Department of Energy (“DOE”) has certified that the capacity of the MPI Power Station is consistent with the DOE’s Power Development Plan.

A copy of the said certification is attached hereto as **Annex “T.”**

28. **Certificate of Compliance.** This Honorable Commission has issued the necessary Certificate of Compliance (“COC”) for the power station subject of the present Joint Application. The said COC was issued under the name of Mapalad Power Corporation (“MPC”), which previously had the rights over the power station prior to its assignment to MPI. Although a transfer of COC from MPI to MPC is not required under the 2014 Revised Rules for the Issuance of Certificates of Compliance, MPI nevertheless filed an application for the said transfer.

A copy of the COC and the application for its transfer are attached hereto as **Annexes “U” and “U-1,”** respectively.

**RATE IMPLICATIONS OF THE POWER SALES AGREEMENT**

29. In order to determine the impact of the implementation of the PSA on DASURECO’s generation costs, an analysis was conducted taking into consideration DASURECO’s projected demand for 2017 and available supply from other suppliers.
30. The procurement of additional supply from MPI will help provide much needed peaking power to DASURECO and, based on the analysis, will result in a downward adjustment of over 10 centavos per kWh in DASURECO’s total generation costs.
31. The results of the said analysis are summarized in the table below.

SUPPLIER	Percent Share	Energy (kWh)	Amount (Php)	Rate (Php/kWh)
<b>YEAR 2017</b>				
<b>Scenario 1</b>				
Average Generation Mix without MPI				
PSALM	16.85%	5,040,000.00	15,120,000.00	3.0000
FDC	23.73%	7,100,000.00	41,088,440.00	5.7871
TSI	23.50%	7,030,000.00	35,173,641.76	5.0034
SMCPC	20.16%	6,030,000.00	33,561,300.00	5.5657
TUDAYA 2	6.69%	2,000,000.00	10,136,917.16	5.0685

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OTHER SUPPLIER	9.07%	2,714,464.00	16,539,922.85	6.0933
Total	100.00%	29,914,464.00	151,620,221.78	5.0685
<b>Scenario 2</b>				
MPI considering its new proposed rates				
PSALM	16.85%	5,040,000.00	15,120,000.00	3.0000
FDC	23.73%	7,100,000.00	41,088,440.00	5.7871
TSI	23.50%	7,030,000.00	35,173,641.76	5.0034
SMCPC	20.16%	6,030,000.00	33,561,300.00	5.5657
TUDAYA 2	6.69%	2,000,000.00	9,919,879.97	4.9599
MPI	9.07%	2,714,464.00	13,510,684.45	4.9773
Total	100.00%	29,914,464.00	148,373,946.19	4.9599
<b>Impact:</b>				
Average Generation Mix without MPI				5.0685
With MPI considering its new proposed rates				4.9599
Generation Costs Increase/(Decrease)				<b>(0.1085)</b>

Remarks:

1. VAT excluded.
2. Total Energy is the average of the forecasted monthly energy for the year 2017.
3. FDC/TSI/SMCPC at average of 86% Load Factor.
4. Energy from Tudaya 2 is the average monthly energy delivered. Rate applied is based on FIT.
5. MPI at 24% Load Factor.
6. Other supplier will cover deficit energy if MPI contract will not be renewed. Rate applied is based on the old MPI rate.
7. Fuel price for MPI at Php 22.00.

A copy of the said analysis is attached hereto as **Annex "V."**

**MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION**

32. As mentioned above, the financial model attached as **Annex "N"** is hereby submitted under a motion to treat information confidential.
33. The financial model discloses the basis for the tariff under the PSA. It includes all the formulas and calculations as well as the assumptions and values considered therein.
34. In accordance with Section 1, Rule 4 of this Honorable Commission's Rules of Practice and Procedure ("ERC Rules"), Applicant MPI respectfully moves that the financial model be treated as confidential information for the following reasons:
  - 34.1. The financial model qualifies as a "trade secret" as contemplated under existing jurisprudence.
  - 34.2. In the case "Air Philippines Corporation vs. Pennswell Inc,"<sup>1</sup> the Supreme Court defined "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 commercial value. A trade secret may consist of any

<sup>1</sup> G. R. No. 172835, 13 December 2007.

formula, pattern, device, or compilation of information that (1) is used in one's business; and (2) gives the employer an opportunity to obtain advantage over competitors who do not possess the information. Generally, a trade secret is a process or device intended for continuous 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."

35. Also, the financial model was prepared and developed for the exclusive use of MPI, and is designed for the specific use of the company in its power generation business. Consequently, should the financial model be disclosed to the public, it could easily be copied or used by MPI's competitors or other entities engaged in the power business for their own benefit, and to the prejudice of MPI. Thus, the commercial value of the said model will be diminished significantly.
36. Given the foregoing, the financial model qualifies as "confidential information" as defined under Section 2, Rule 4 of the ERC Rules.
37. In accordance with Section 1 (b), Rule 4 of the ERC Rules, an electronic copy of the financial model is contained in one compact disc and submitted in a sealed envelope marked with the word "Confidential."
38. Further, all parties furnished copies of the present Application are not furnished copies of the documents subject of the present motion.
39. In accordance with Sections 3 and 4, Rule 4 of the ERC Rules, Applicant MPI reserves the right to use the financial model and its contents as evidence, and respectfully moves for the issuance of a Protective Order.

**ALLEGATIONS IN SUPPORT OF**  
**THE MOTION FOR PROVISIONAL AUTHORITY**

40. As discussed above, DASURECO and MPI have an existing supply agreement dated 16 October 2013 for the supply of 15 MW from the MPI Power Station.
41. The aforementioned supply contract will expire on 28 December 2017, or until receipt of a provisional or final approval of the PSA from this Honorable Commission, whichever is earlier. Upon the expiration of the said supply contract, DASURECO will immediately lose 15 MW of supply.
42. Hence, unless a provisional approval is received before 28 December 2017, DASURECO will immediately lose 15 MW of

supply after the said date. Thus, in order to help ensure sufficiency of power supply to DASURECO's customers, a provisional approval of the supply under the PSA must be already available before the said date.

43. Since the issuance of a final approval the Joint Application may take some time due to the time needed by the ERC in evaluating the said Application, it would be best for DASURECO to have an available provisional authority by the time the PSA expires.
44. Since the MPI Power Station is already existing and operating, it can readily supply power to DASURECO under the PSA as soon as the prayer for provisional authority is granted.
45. In view of the foregoing, Joint Applicants respectfully move for the provisional approval of the instant Application pursuant to Rule 14 of the ERC Rules of Practice and Procedure.

A copy of a sworn statement supporting the said motion is attached hereto as **Annex "W."**

#### **INAPPLICABILITY OF CERTAIN REQUIREMENTS**

46. Certain documentary requirements contained in this Honorable Commission's Checklist of Pre-Filing Requirements for Applications for Approval of Power Supply Agreement are not applicable to the present Joint Application.

A written explanation on the inapplicability of the said requirements is attached hereto as **Annex "X."**

#### **PRAYER**

**WHEREFORE**, premises considered, Joint Applicants DASUERCO and MPI respectfully pray that this Honorable Commission:

1. issue an Order declaring the financial model attached hereto as **Annex "N"** as confidential information within the purview of Rule 4 of the ERC Rules, as well as directing that the financial model be treated with confidentiality and be protected from public disclosure;
2. issue the corresponding Protective Order in accordance with Section 2 and 4 of the said Rule 4;
3. immediately issue an Order provisionally approving the present Joint Application; and

4. after due hearing, render judgment approving the Power Sales Agreement subject of the instant Joint Application, as well as the generation rate and adjustment mechanisms indicated therein.

Joint Applicants pray for other just and equitable relief under the premises.

The Commission has set the Application for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on **30 January 2018 (Tuesday) at ten o'clock in the morning (10:00 A.M.) at DASURECO's Main Office in Brgy. Cogon, Digos City, Davao del Sur.**

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.

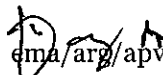
All such persons who wish to have a copy of the Application may

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 **ALFREDO J. NON**, **GLORIA VICTORIA C. YAP-TARUC**, and **GERONIMO D. STA. ANA**, Energy Regulatory Commission, this 11<sup>th</sup> day of December 2017 in Pasig City.

FOR AND BY AUTHORITY  
OF THE COMMISSION:

  
**JOSEFINA PATRICIA A. MAGPALE-ASIRIT**  
*Oversight Commissioner for Legal*

 2017-085 RC DASURECO & TMI doc.