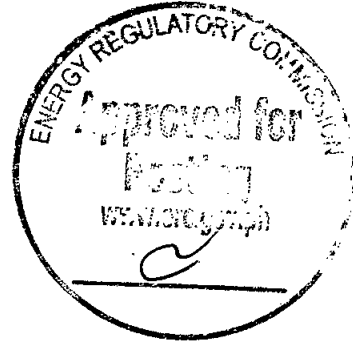


Republic of the Philippines  
**ENERGY REGULATORY COMMISSION**  
San Miguel Avenue, Pasig City



**IN THE MATTER OF THE  
JOINT APPLICATION FOR  
APPROVAL OF THE POWER  
SUPPLY CONTRACT (PSC)  
ENTERED INTO BY AND  
BETWEEN CAMARINES  
SUR II ELECTRIC  
COOPERATIVE, INC.  
(CASURECO II) AND LIMAY  
PREMIERE POWER  
CORPORATION (LPPC),  
WITH PRAYER FOR  
CONFIDENTIAL  
TREATMENT OF  
INFORMATION**

**ERC CASE NO. 2016-117 RC**

**CAMARINES SUR II  
ELECTRIC COOPERATIVE,  
INC. (CASURECO II) AND  
LIMAY PREMIERE POWER  
CORPORATION (LPPC),  
Applicants.**

**DOCKETED**  
Date: **SEP 05 2016**  
By: *W*

X-----X

**NOTICE OF PUBLIC HEARING**

**TO ALL INTERESTED PARTIES:**

Notice is hereby given that on 29 April 2016, Camarines Sur II Electric Cooperative, Incorporated (CASURECO II) and Limay Premiere Power Corporation (LPPC) filed a *Joint Application with Prayer for Confidential Treatment of Information* asking for the Commission's approval of their Power Supply Contract (PSC).

In their *Joint Application*, CASURECO II and LPPC alleged the following:

**The Joint Applicants**

1. CASURECO II is an electric cooperative duly registered and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at Del Rosario, Naga City, Camarines Sur. It holds a franchise to operate light and power services in the City of Naga and in the Municipalities of Bombon, Calabanga, Canaman, Magarao, Milaor, Minabalac, Pili, Siruma, and Tinambac, all in the Province of Camarines Sur (Franchise Area). It shall also be herein referred to as the "Buyer";
2. LPPC is a corporation duly created and existing by and under the laws of the Republic of the Philippines, with business address at the No. 40 San Miguel Avenue, Mandaluyong City. It shall also be herein referred to as the "Seller";
3. The Joint Applicants may be served with the orders, notices and other processes of the Honorable Commission through their respective undersigned counsels at the addresses indicated herein;

#### **Nature of the Application**

4. The Joint Application for approval of the Power Supply Contract (PSC) dated 26 January 2015 entered into by and between CASURECO II and SMC Consolidated Power Corporation (SCPC) which was subsequently assigned to LPPC, is being submitted to the Honorable Commission for its review and approval pursuant to Sections 25 and 45(b) of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 or the EPIRA, Rules 5, Section 4(e) and 11, Section 5 of its Implementing Rules and Regulations (IRR), Rule 20(B) of its Rules of Practice and Procedure, and other pertinent rules and regulations;

#### **Statement of Facts**

5. **Competitive Selection Process (CSP).** CASURECO II had come up with an analysis as regards the increase in its load growth for the year 2014 and onwards. It anticipated that by the end of 2014, the demand will surge due to connection of new big load customers in its distribution system, the expected total increase of which is 11.4 MW. CASURECO II cannot risk sourcing thirty-five percent (35%) to forty percent (40%) of its power requirements from the Wholesale Electricity Spot Market (WESM) given the fact that during summer season, prices in the spot market is higher;

- 5.1 It deemed necessary that the projected requirements be sourced from a new power provider or at least to request its existing suppliers, Bac-Man Geothermal, Incorporated (BGI) and Masinloc Power Partners Company, Incorporated (MPPCL), to increase their respective contract capacities. CASURECO II's Management sent invitations from various generation companies for the supply of approximately 10 MW during peak hours, however, only FDC Utilities, Incorporated (FDCUI) and SMC Global Power Holdings Corporation (SMC GLOBAL), the parent company of SCPC, responded;
- 5.2 FDCUI and SMC GLOBAL) presented their respective proposals before CASURECO II's Board and Management. Based on said proposals, CASURECO II's Corporate Planning (CORPLAN) Department made a comparative analysis and found that SMC GLOBAL has a better offer, particularly, the rates and terms of the bilateral contract, which are beneficial to its member-consumers;
- 5.3 On 25 September 2014, CASURECO II's Board issued Resolution No. 2014-246b awarding and approving the PSC with SCPC as well as authorizing its Board President to sign the same for and in behalf of CASURECO II; and
- 5.4 Thus, on 26 April 2015, CASURECO II and SCPC executed a PSC, subject of the Joint Application;
6. **Assignment of the PSC to LPPC.** Article 17.2 (Assignability) of said PSC expressly states, that: *"This Contract shall be binding between the Parties, their successors-in-interest and assigns. A Party may not assign this Contract or its rights and obligations therein to a third party without the other Party's written consent. However, the BUYER acknowledges that the SELLER has, without the need to secure the BUYER's consent, the right to a) assign or transfer this Contract any affiliate of the SELLER and b) to pledge, transfer, sell, encumber or assign this Contract or the accounts, revenues or proceeds hereof in connection with any project financing or financial arrangements; provided that the assignee under (a) and (b) hereof shall agree in writing to assume and be bound by the terms and conditions of this Contract, and upon such assumption, the assignor shall be relived from any further liability under this Contract."*;

- 6.1 On 23 December 2015, SCPC and LPPC executed a Deed of Assignment whereby the Assignor SCPC assigned and transferred all its rights, interests, and obligations under the PSC it executed with CASURECO II in favor of the Assignee LPPC. LPPC, likewise, agreed to acquire all of said rights and interests and assumed all of said obligations under the same PSC for the supply of electric energy to CASURECO II from its 2 x 150 MW Circulating Fluidized Bed Coal-Fired Thermal Power Plant located in Barangay Lamao, Limay, Bataan; and
- 6.2 CASURECO II is fully aware of the import of the aforementioned assignability clause under Article 17.2 of the PSC it executed with SCPC. As such, it interposed no objection to the implementation of its PSC with LPPC as its new power supplier inasmuch as LPPC agreed to acquire all of the rights and interests and assumed all of the obligations of SCPC under said PSC for the supply of electric energy to CASURECO II;

**7. Salient Features of the PSC.**

- 7.1 **Contract Capacity.** The Contracted Capacity for the duration of the PSC shall be 10,000 kW. The Buyer shall maintain a minimum hourly nomination of at least forty percent (40%) of the Contract Capacity for the duration of the said PSC. The Contract Capacity shall be subject to a separate Nomination Protocol;
- 7.2 **Generation Source.** LPPC is constructing a 2 x 150 MW Circulating Fluidized Bed Coal-Fired Thermal Power Plant (the Plant) located in Barangay Lamao, Limay, Bataan, which is expected to be commercially operational by the 3<sup>rd</sup> quarter of calendar year 2016;
- 7.3 **Contract Term.** The PSC shall take effect between the Parties on the date of signing (Execution Date) and shall remain effective for a period of ten (10) years from Commercial Operations Date (COD). The supply of electric power by the Seller shall commence on COD and shall continue until the end of the Contract Term;
- 7.4 **Contract Charges.** Under the PSC, the Buyer shall pay the following Contract Charges

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for the duration of the Contract, subject to the applicable value-added tax (VAT), and computed as follows:

Particulars	Unit	Amount
Capacity Fee		
Capital Recovery Fee	PhP/kW-month	1,371.2920
Fixed Operation and Maintenance Fee	PhP/kW-month	383.8079
Total Capacity Fee		1,755.0999
Energy Fee		
Variable Operation and Maintenance Fee	PhP/kWh	0.2831
Fuel Fee (pass through)	PhP/kWh	1.6566
Total Energy Fee		1.9397

7.5 **Other Charges.** The Buyer shall bear all other costs and charges including but not limited to transmission line losses, any interconnection charges, and site specific loss adjustments, among others;

7.6 **Adjustment Formula.** The Contract Charges are adjusted on a monthly basis in accordance with the following Adjustment Formula (Annex II-B of the PSC):

$$\text{MONTHLY CONTRACT CHARGES} = \text{Capacity Charges}_{\text{month}} + \text{Energy Charges}_{\text{month}}$$

Where:

$$\text{Capacity Charges} = \text{Capital Recovery Fee (CRF)} + \text{Fixed Operation and Maintenance Fee (FOM)}$$

$$\text{Energy Charges} = \text{Variable Operation and Maintenance Fee (VOM)} + \text{Fuel Fee} + \text{Start-up Charge}$$

**I. CAPITAL RECOVERY FEE (CRF<sub>month</sub>)**

$$CRF_{\text{month}} = CRF_{\text{adjusted}} \times CC$$

Where:

$$CRF_{\text{adjusted}} = (CRF_{\text{base}} \times 0.30) + (CRF_{\text{base}} \times 0.70 \times \frac{FX_m}{FX_o})$$

$CRF_{\text{base}}$  = Capital Recovery Fee in PhP/kW-month contained in Annex II-A of the PSC

$FX_m$  = The simple average of the daily exchange rate of the Philippine Peso to the US Dollar, as posted by the *Bangko Sentral ng Pilipinas* (BSP) for the calendar month within which the start of the current Billing Period occurs

$FX_o$  = Exchange rate of the Philippine Peso to the US Dollar, Base = PhP44.00

CC = Contract Capacity in kW

**II. FIXED OPERATION AND MAINTENANCE FEE ( $FOM_{\text{month}}$ )**

$$FOM_{\text{month}} = FOM \times \frac{PHCPI_m}{PHCPI_o} \times CC$$

Where:

FOM = Fixed Operation and Maintenance Fee in PhP/kW-month contained in Annex II-A of the PSC

$PHCPI_m$  = Philippine Consumer Price Index (CPI) for All Income Households in the Philippines – All Items (2006=100), as posted by the Philippine National Statistics Office (NSO) for the calendar month within which the start of the current Billing Period occurs

PHCPI<sub>0</sub> = Philippine CPI for All Income Households in the Philippines – All Items (2006=100), as posted by the Philippine NSO for the calendar month of the COD

CC = Contract Capacity in kW

**III. VARIABLE OPERATION AND MAINTENANCE FEE (VOM<sub>month</sub>)**

$$\left[ \left( 0.85 \times \text{VOM} \times \frac{\text{USCPI}_m}{\text{USCPI}_0} \times \frac{\text{FX}_m}{\text{FX}_0} \right) + \left( 0.15 \times \text{VOM} \times \frac{\text{PHCPI}_m}{\text{PHCPI}_0} \right) \right] \times \text{AE}$$

Where:

VOM = Variable Operation and Maintenance Fee in PhP/kWh contained in Annex II-A of the PSC

USCPI<sub>m</sub> = United States (US) CPI for All Urban Consumers – All Items (1982-84=100), as posted by the United States Bureau of Labor Statistics (USBLS) for the calendar month within which the start of the current Billing Period occurs

USCPI<sub>0</sub> = US CPI for All Urban Consumers – All Items (1982-84=100) for the calendar month of the COD

FX<sub>m</sub> = The average daily exchange rate of the Philippine Peso to the US Dollar, as posted by the BSP for the calendar month within which the start of the current Billing Period occurs

FX<sub>0</sub> = Exchange rate of the Philippine Peso to the US Dollar, Base=PhP44.00

PHCPI<sub>m</sub> = Philippine CPI for All Income Households in the Philippines – All Items (2006=100), as posted by the Philippine NSO for the calendar month within which the start of the current Billing Period occurs

PHCPI<sub>o</sub> = Philippine CPI for All Income Households in the Philippines – All Items (2006=100), as posted by the Philippine NSO for the calendar month of the COD

AE = Associated Energy in kWh delivered to the Buyer by the Seller during the current Billing Period at the Delivery Points stated in Annex III of the PSC

The Parties agree to adopt changes in any of the inflationary indices subject to prior notification by the Seller to the Buyer for the occurrence of any of the following events: a) shift made in the base year and other adjustments to such inflation index made by the relevant authorized entity; or b) the inflation index: i) becomes unavailable, ii) is replaced by a new benchmark rate as determined by the relevant authorized entity or its successor-in-interest, iii) ceases to exist, or iv) in the reasonable determination of either Party, fails to reflect the real costs and forms an integral part of this price adjustment formula;

**IV. FUEL FEE (Fuel<sub>month</sub>)**

$$\text{Fuel}_{\text{month}} = \left[ \left( \frac{\text{FuelCost} + \text{FreightCost}}{1,000} \right) \times \text{CR} \times \text{FX}_m \right] \times \text{AE}$$

Where:

Fuel Cost = Base Fuel Cost, in USD/MT  $\times \frac{\text{Newcastle}_m}{\text{Newcastle}_0}$



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Newcastle<sub>m</sub> = Average monthly coal price index in USD/MT as posted by global coal on the website [www.globalcoal.com](http://www.globalcoal.com) for the calendar month within which the start of the current Billing Period occurs

Newcastle<sub>o</sub> = Coal price index equivalent to USD74.00/MT

Base Fuel Cost = Blended Cost equivalent to USD62.69/MT

Freight Cost = Actual Transport Costs in USD/MT which includes but not limited to port charges, fuel insurance, wharfage fees, excise tax, handling, customs brokerage fees, custom duties, stevedores and arrastre costs, tuggage costs, survey fee, towage, pilotage, light dues, mooring and unmooring, berthing and de-berthing, and tonnage dues and sundries on the coal used during the current Billing Period. Freight costs shall include all other existing and future taxes, fees, imposts and other charges that may be imposed on the transport of coal

CR = Consumption rate at 0.70kg/kWh escalated annually by one and a half percent (1.5%) or the actual plant fuel consumption rate, whichever is lower

FX<sub>m</sub> = The average daily exchange rate of the

Philippine Peso to the US Dollar, as posted by the BSP for the calendar month within which the start of the current Billing Period occurs

FX<sub>o</sub> = Exchange rate of the Philippine Peso to the US Dollar, Base=PhP44.00

AE = Associated Energy in kWh delivered to the Buyer by the Seller during the current Billing Period at the Delivery Points stated in Annex III of the PSC

The Parties further agree that when any or all of the above components of the Fuel Cost no longer reflect the Seller's actual cost of coal (including the FOB price, coal indexation, premiums, among others), the Fuel Cost shall be computed based on the Seller's actual cost of fuel subject to the Seller's prior notification to the Buyer;

**V. Start-up Charge (per Unit and per Start-up) - to be added on top of VOM & Fuel charges**

**Cold Start-up – downtime of eight (8) hours and above**

Start Up Charge = 130,000 liters x  $LFO_m \times \frac{CC}{TPC}$

**Warm Start-up – downtime of less than eight (8) hours**

Start Up Charge = 36,000 liters x  $LFO_m \times \frac{CC}{TPC}$

Where:

LFO<sub>m</sub> = The actual price of diesel oil in PhP/liter as billed by supplier of diesel oil applicable for the Billing Period

CC = Contract Capacity in kW  
 TPC = Total plant capacity (net) per unit in kW

7.7 **Sources of Funds.** SMC Global Power Holdings Corporation, LPPC's parent company, advances the funds allowing for the on-going construction of the Plant. LPPC is working on having a financial close by March 30, 2015 with a target Debt to Equity ratio of 70%:30%;

7.8 **Discounts.** The Seller provides for both Prompt Payment Discount (PPD) and Collection Efficiency Discount (CED);

a) **PPD.** The Buyer may avail of the PPD equivalent to one percent (1%) of the total of the Capacity and Energy Charges and other components of the current power bill, provided that:

- i. The Buyer has no arrears from previous power billings including the Security Deposit or any unpaid charges or penalties including VAT;
- ii. The Buyer has submitted all necessary Bureau of Internal Revenue (BIR) Tax Certificates for all taxes withheld;
- iii. The Buyer pays the power bill in full on or before the 10<sup>th</sup> day of the calendar month following the current Billing Period; and
- iv. The Buyer complies with other policies and procedures as may be required by the Seller, subject to prior notification by the Seller to the Buyer;

b) **CED.** The Buyer shall be entitled to the following CED:

Collection Efficiency Levels	Discount, PhP/kWh
Below 65%	None
66% to 75%	0.05
76% to 85%	0.10
86% to 95%	0.15
96% and above	0.20

In order for the Buyer to avail of the CED, it must comply with the following conditions:

- i. The Buyer has no outstanding obligations to the Seller from previous power bills including VAT; and
- ii. The Buyer shall submit to the Seller: a duly accomplished CED Availment Form; a copy of its Monthly Financial and Statistical Report (MFSR)/Collection Efficiency Report signed by its Finance Manager and General Manager, stamped "received" by the NEA; Audited Financial Statements (AFS) stamped "received" by the BIR (to be submitted to the Seller within three (3) calendar days from receipt of the BIR; and zero (0)-rated VAT certificates as updated monthly; and

**7.9 Outages.** The Seller shall not be obligated to deliver energy to the Buyer during the Annual Outage Allowance of: seven hundred twenty (720) cumulative outage hours for each Contract Year for each Unit of the Power Plant for Scheduled Outages, and four hundred thirty eight (438) cumulative outage hours for each Contract Year for each Unit of the Power Plant for Forced Outages;

The Seller shall be allowed an additional Major Maintenance Outage Allowance of seven hundred twenty (720) cumulative outage hours once every five (5) years from the first Major Maintenance of each Unit of the Power Plant. The Seller is not obligated to deliver energy during the said Major Maintenance Outage;

Unutilized Outage Allowance or Major Maintenance Outage hours shall not be carried forward to any subsequent Contract Year; and

**7.10 Replacement Power.** During the Annual Outage Allowance or Major Maintenance Outage hours, the Seller may procure Replacement Power from other sources, the cost of which shall be passed-on to the Buyer;

**Rate Impact on CASURECO II's Overall  
Generation Rate**

**8.** The indicative rate impact on CASURECO II's overall generation rate with and without the supply from LPPC are as follows:

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Scenario A: Generation Rate and Supply Mix WITHOUT LPPC

Supplier	Contracted Capacity / Energy (kWh) a	Actual Peak Demand (MW) b	Actual kWh Purchased (kWh) c	Supply Mix Based on Actual kWh Purchase (%) d	Total Generation Cost (PhP) e	Generation Rate (PhP/kWh) f=e/c
AES	12,135,800	18.500	12,135,800	57	52,097,934.22	4.29
BGI	8,236,000	20.000	8,236,000	38	33,169,760.00	4.03
BHPC			133,000	1	631,750.00	4.75
WESM			970,990	5	8,724,159.96	8.98
Total/Blended Rate			21,475,790	100	94,623,604.18	4.41

Scenario B: Generation Rate and Supply Mix WITH LPPC

Supplier	Contracted Capacity / Energy (kWh) a	Actual Peak Demand (MW) B	Actual kWh Purchased (kWh) C	Supply Mix Based on Actual kWh Purchase (%) d	Total Generation Cost (PhP) e	Generation Rate (PhP/kWh) f=e/c
AES	12,135,800	18.500	12,135,800	49	52,097,934.22	4.29
BGI	8,236,000	20.000	8,236,000	33	33,169,760.00	4.03
BHPC		0.868	133,000	1	631,750.00	4.75
LPPC		10.000	3,124,000	13	21,081,292.69	6.75
WESM			970,990	4	8,724,159.96	8.98
Total/Blended Rate			24,599,790	100	115,704,896.87	4.70

Difference: Scenario A and B      PhPo.43/kWh

*Supporting Documents:*

- a. *Sample monthly electricity bill from CASURECO II to its customers*
  - b. *Monthly power bills from suppliers to CASURECO II including its attachments and detailed calculation, which contain the following information:*
    - i. *Contracted Demand or Minimum Energy Off-take (MEOT)*
    - ii. *Actual Demand/Energy for the month*
    - iii. *Calculation of the monthly CRF, Fixed O&M, Variable O&M, and Fuel Fee*
  - c. *Monthly transmission bill from NGCP including its attachments*
9. **Environmental Compliance Certificate (ECC).** On 17 September 2013, the Department of Environment and Natural Resources (DENR) has issued ECC No. ECC-CO-1305-0019 in favor of LPPC;
  10. **Board of Investments (BOI) Certificate.** On 22 January 2015, LPPC filed an application for

registration with BOI for its Limay Power Plant Project;

11. **Certificate of Compliance (COC).** The Power Plant is still under construction and the target/estimated COD is sometime in March 2017. Hence, it is not yet covered by a COC. Nonetheless, LPPC undertakes to file the necessary application for a COC at least three (3) months before the target COD;
12. Further, LPPC's Power Plant is considered as a committed project, and is in the process of securing a certification from the Department of Energy (DOE) that the same is consistent with the Power Development Plan (PDP). It undertakes to submit the certification as soon as the same becomes available;
13. Furthermore, LPPC undertakes to submit a certification from the National Power Corporation (NPC) on the insufficiency of supply within the Luzon Region during the term of the PSC;

**Compliance with the Pre-filing Requirements**

14. Copies of the foregoing documents and/or information are attached to the Joint Application as annexes and made integral parts hereof:

<b>Annex</b>	<b>Documents/Information</b>
<b>A</b>	LPPC's Articles of Incorporation
<b>B</b>	LPPC's Certificate of Registration issued by the Securities and Exchange Commission (SEC)
<b>C</b>	LPPC's Latest General Information Sheet (GIS)
<b>D</b>	LPPC's Certificate of Registration with the BOI
<b>E</b>	ECC issued by the DENR to the Circulating Fluidized Bed Coal-Fired Thermal Power Plant Project of LPPC
<b>F</b>	PSC entered into by and between CASURECO II and LPPC

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<b>G and Series</b>	Details of the PSC: <ul style="list-style-type: none"> <li>a. Executive Summary</li> <li>b. Sources of Funds/Financial Plans <ul style="list-style-type: none"> <li>▪ Debt/Equity Ratio</li> <li>▪ Project Cost</li> <li>▪ Computation of Return on Investment (ROI)/Weighted Average Cost of Capital (WACC)</li> <li>▪ Certification from the Bank/Lending Institution specifying the principal amortization, term and interest during the cooperation period of the loan agreement</li> </ul> </li> <li>c. Purchased Power Rate <ul style="list-style-type: none"> <li>▪ Breakdown of the base prices</li> <li>▪ Sample Computation of Power Rates with the supporting documents on the assumptions taken</li> <li>▪ Rate Impact Study/Simulation</li> <li>▪ Statement of impact on the overall rates of CASURECO II once the contract is approved</li> <li>▪ Basis/Rationale of indexation and level of indexation</li> </ul> </li> <li>d. Cash Flow <ul style="list-style-type: none"> <li>▪ Initial Costs</li> <li>▪ Breakdown of Operating and Maintenance expenses</li> <li>▪ Minimum Energy Off-take (MEOT)</li> </ul> </li> </ul>
<b>H</b>	Details of the Power Rate Calculations and Financial Model <b>(Confidential)</b>
<b>I, I-1 and I-2</b>	Contracts for the Supply, Construction and Supervision for the Power Plant <b>(Confidential)</b>
<b>J</b>	Details of the Fuel Procurement Process
<b>K</b>	Transmission Service Agreement

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	(TSA) between the National Grid Corporation of the Philippines (NGCP) and CASURECO II
<b>L and Series</b>	Acknowledgment receipts by the <i>Sangguniang Panlalawigan</i> of Camarines Sur, and the <i>Sangguniang Panlungsod</i> of Naga City, of copies of the Joint Application (including annexes)

15. Further, in compliance with Article VI, Sections 1 and 2 of the Honorable Commission's *Guidelines for the Recovery of Costs for the Generation Component of the Distribution Utilities' (DU) Rates*, copies of the foregoing are, likewise, attached to the Joint Application as annexes and made integral parts hereof:

<b>Annex</b>	<b>Documents/Information</b>
<b>N</b>	Relevant technical and economic characteristics of the generation capacity, installed capacity, mode of operation, and dependable capacity
<b>O</b>	Costs analysis of the proposed pricing provisions of the PSC
<b>P and Series</b>	Details of the Competitive Selection Process (CSP) undertaken by CASURECO II leading to the selection of LPPC as its supplier, including invitations to participate and submit proposals, Terms of Reference (TOR), proposals and/or tender offers received by CASURECO II, CASURECO II's Special Bids and Awards Committee (SBAC) Evaluation Report; CASURECO II's Board Resolution confirming the said SBAC Evaluation Report, and the Notice of Award to LPPC
<b>Q and Series</b>	Details of the interconnection facility of the LPPC Power Plant
<b>R</b>	CASURECO II's latest Distribution Development Plan (DDP) and Load Forecast Projections
<b>S</b>	Demand Side Management (DSM) Program that could be implemented by CASURECO II if approved by the Honorable Commission
<b>T</b>	LPPC's latest Audited Financial Statements (AFS), Balance Sheet, Income Statement, and Statement



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	of Cash Flows
<b>T-1</b>	Bank Certification of Long-term Loans, including Schedule of Original Loan (principal amount, interest payable and term of the loan) and Updated Balances (principal amount, interest payable and penalties, if any and remaining term of the loan)
<b>T-2</b>	Operating Expenses for the Power Plant and General and Administrative Expense
<b>T-3</b>	Certification from the engine manufacturer or LPPC of the net heat rate in liters per kWh
<b>T-4</b>	Simulation on the number of operating units necessary to meet the MEOT and/or additional energy/demand requirements of CASURECO II
<b>T-5</b>	Potential Cost (absolute amounts and PhP/kWh) of Ancillary Services as and when LPPC or CASURECO II is connected to the main grid
<b>U</b>	Deed of Assignment between SCPC and LPPC

16. Furthermore, the Joint Application is consistent and in accordance with the first (1<sup>st</sup>) and fifth (5<sup>th</sup>) "Whereas clauses" of the DOE Circular No. 2003-12-11 which are quoted hereunder:

"WHEREAS, Section 2 of Republic Act No. 9136, also known as the Electric Power Industry Reform Act of 2001 or EPIRA, declared as a policy of the State, among others, [to ensure the quality, reliability, security and affordability of the supply of electric power;]" (first "whereas clause", Department of Energy Circular No. 2003-12-11. *Underscoring supplied.*)

"WHEREAS, pursuant to Section 23 of EPIRA, all distribution utilities, as defined in the law, SHALL HAVE THE OBLIGATION TO SUPPLY ELECTRICITY IN THE LEAST COST MANNER TO ITS CAPTIVE MARKET subject to the collection of retail rate duly approved by the Energy Regulatory Commission;" (fifth "whereas clause", *ibid.* *Underscoring supplied.*)

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17. The Joint Application is, likewise, consistent with Section 1 of the same Department Circular which declares as State policy, that:

“All distribution utilities must henceforth take cognizance and assume full responsibility to forecast, assure and contract for the supply of electric power in the respective franchise areas to meet their obligations as a distribution utility.”  
*(Underscoring supplied.)*

18. By way of emphasis, Resolution No. 21, Series of 2005 of the Honorable Commission dated 19 October 2005 had directed all Distribution Utilities (DUs) “to enter into future bilateral power supply contract with power producers to be subjected to a review by the Commission.” *(Underscoring supplied.)*
19. The PSC with LPPC was made to ensure the continuous supply of power to CASURECO II and due to the former’s competitive pricing structure and other favorable terms of its contract, which will redound to the benefit of the latter and its end-consumers in terms of reliable and affordable power supply;

**Allegations in Support of the Confidential Treatment of Annexes “H”, and “I”, “I-1”, and “I-2”**

20. Rule 4 of the Honorable Commission’s Rules of Practice and Procedure provides that CASURECO II and LPPC may request that information may not be disclosed;
21. LPPC prays for the confidential treatment of the information contained in the following annexes, and not disclosed except to the officers and staff of the Honorable Commission and its staff:

<b>Annex</b>	<b>Documents and/or Information</b>
<b>H</b>	Details of the Power Rate Calculations and Financial Model <b>(Confidential)</b>
<b>I, I-1 and I-2</b>	Contracts for the Supply, Construction and Supervision for the Power Plant <b>(Confidential)</b>

22. **Annex “H”** contains the details of LPPC’s power rate calculations and financial model as well as the manner by which these were derived. These

information are proprietary in nature and should be protected as trade secrets as contemplated by law and jurisprudence. In the case of *Air Philippines Corporation vs. Pennswell, Inc.*<sup>1</sup>, the Supreme Court defined a trade secret, as follows:

“A trade secret may consist of any formula, pattern, device, or compilation of information that: **(1) is used in one's business; and (2) gives the employer an opportunity to obtain an advantage over competitors who do not possess the information.** Generally, a trade secret is a process or device intended for continuous use in the operation of the business, for example, a machine or formula, but **can be a price list or catalogue or specialized customer list.** It is indubitable that trade secrets constitute proprietary rights. The inventor, discoverer, or possessor of a trade secret or similar innovation has rights therein which may be treated as property, and ordinarily an injunction will be granted to prevent the disclosure of the trade secret by one who obtained the information "in confidence" or through a "confidential relationship". American jurisprudence has utilized the following factors to determine if an information is a trade secret, to wit:

- (1) the extent to which the information is known outside of the employer's business;
- (2) the extent to which the information is known by employees and others involved in the business;
- (3) the extent of measures taken by the employer to guard the secrecy of the information;
- (4) the value of the information to the employer and to competitors;
- (5) the amount of effort or money expended by the company in developing the information; and
- (6) the extent to which the information could be easily or readily obtained through an independent

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

source.”(citations omitted,  
emphasis supplied)

23. The interest of the consuming public is sufficiently protected by the review and evaluation of the rates under the PSC by the Honorable Commission, without the need to disclose the contents of **Annex “H”**. The reasonableness and transparency of the prices of electricity is to be assured by the Honorable Commission through its own review and verification of LPPC’s operating costs and expenses;
24. More importantly, LPPC’s competitors, should they obtain the information in **Annex “H”**, will gain undue advantage thereon and have the opportunity to use the same in their operations. The negotiating power of LPPC with parties it plans to contract with or who it is currently doing business with, will clearly be thwarted if it is compelled to disclose such information;
25. Further, **Annexes “I”, “I-1”, and “I-2”** pertain to the Supply, Construction, and Supervision Contracts, respectively, for the Power Plant. These contracts have counter-parties who are not parties to the Joint Application. They contain highly technical designs, drawings and other information which are the intellectual property and trade secrets of the counter-parties, and therefore should not be disclosed to the public. CASURECO II and LPPC, likewise, pray for the confidential treatment of **Annexes “I”, “I-1”, and “I-2”**, under the same premises above; and
26. Accordingly, CASURECO II and LPPC submit one (1) copy each of **Annexes “H”, “I”, “I-1”, and “I-2”**, in a sealed envelope, with the said envelope and each page of the documents and/or information stamped with the word “*Confidential*”.

#### Prayer

**WHEREFORE**, the foregoing premises considered, the Joint Applicants Camarines Sur II Electric Cooperative, Incorporated (CASURECO II) and Limay Premiere Power Corporation (LPPC) most respectfully pray that after due notice and hearing, the Honorable Commission:

1. **ISSUE** an Order treating **Annexes “H”, “I”, “I-1”, and “I-2”**, and all the information contained therein as confidential, directing their non-disclosure to persons other than the officers and staff of the Honorable Commission, **continuously protecting the said information from public disclosure by maintaining the same separate and apart from**

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the records of the case, and ensuring that these are not divulged to unauthorized persons, pursuant to Rule 4 of its Rules of Practice and Procedure; and

2. **ISSUE** a Decision approving the Joint Application and the PSC between CASURECO II and LPPC, and authorizing CASURECO II to charge and collect the fees therein from its member-consumers.

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

The Commission has set the Application for initial hearing, expository presentation, pre-trial conference and evidentiary hearing on **29 September 2016 at nine o'clock in the morning (9:00 A.M.) at CASURECO II's Principal Office at Del Rosario, Naga City, Camarines Sur.**

All persons who have an interest in the subject matter of the proceeding may become a party by filing, at least five (5) days prior to the initial hearing and subject to the requirements in the ERC's Rules of Practice and Procedure, a verified petition with the Commission giving the docket number and title of the proceeding and stating: (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.

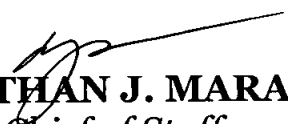
All other persons who may want their views known to the Commission with respect to the subject matter of the proceeding may file their opposition to the Application or comment thereon at any stage of the proceeding before the Applicants conclude the presentation of their evidence. No particular form of opposition or comment is required, but the document, letter or writing should contain the name and address of such person and a concise statement of the opposition or comment and the grounds relied upon.


All such persons who wish to have a copy of the Application may request from the Applicants that they be furnished with the same, prior to the date of the initial hearing. The 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.

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**WITNESS**, the Honorable Chairman **JOSE VICENTE B. SALAZAR**, and the Honorable Commissioners **ALFREDO J. NON**, **GLORIA VICTORIA C. YAP-TARUC**, **JOSEFINA PATRICIA A. MAGPALE-ASIRIT**, and **GERONIMO D. STA. ANA**, **Energy Regulatory Commission**, this 22<sup>nd</sup> day of July 2016 at Pasig City.

  
**ATTY. NATHAN J. MARASIGAN**  
*Chief of Staff*  
Office of the Chairman and CEO

  
LS: ICG APV