

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)
BETWEEN DAVAO LIGHT
AND POWER COMPANY,
INC. (DLPC) AND SAN
MIGUEL CONSOLIDATED
POWER CORPORATION
(SMCPC), WITH PRAYER
FOR CONFIDENTIAL
TREATMENT OF
INFORMATION AND THE
ISSUANCE OF
PROVISIONAL AUTHORITY,**

ERC CASE NO. 2017-029 RC

**DAVAO LIGHT AND POWER
COMPANY, INC. (DLPC)
AND SAN MIGUEL
CONSOLIDATED POWER
CORPORATION (SMCPC),
Applicants.**

D O C K E T E D
Date: JUL 18 2017
By: W

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NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 07 April 2017, Davao Light Power Company, Inc. (DLPC) and San Miguel Consolidated Power Corporation (SMCPC) filed a *Joint Application with Prayer for Confidential Treatment of Information and the Issuance of Provisional Authority* dated 13 March 2017 (Joint Application) seeking the Commission's approval of their Power Supply Contract (PSC) with prayer for confidential treatment of information and the issuance of provisional authority.

DLPC and SMCPC alleged the following in their *Joint Application*:

The Joint Applicants

1. DLPC is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with office address at C. Bangoy Sr. St., Davao City. It is a grantee of a legislative franchise under Republic Act No. 8960 to maintain and operate an electric light and power system for the purpose of distributing electric light, heat and power, in Davao City, Panabo City and the Municipalities of Carmen, Sto. Tomas and Braulio Dujali, Province of Davao del Norte. It is also referred to herein as "BUYER".
2. SMCPD is a corporation duly created and existing by and under the laws of the Republic of the Philippines, with business address at No. 40 San Miguel Avenue, Mandaluyong City 1550. It is also 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.

Statement of Facts

4. During the first quarter of 2016, DLPC projected a deficit between its then supply portfolio and projected demand requirements for the remaining months of 2016 up to 2020. This deficit was projected at an average of 83.72 MW with a projected peak deficit of 142.47 MW.
5. To augment its supply requirements, DLPC sought separate competitive offers from any peak load generation source and base load generation source from prospective suppliers. For the base load generation source requirement, only one bid was received for each of the two competitive biddings conducted by DLPC, resulting in a failed bid. Thus, DLPC entered into direct negotiations with SMCPD.
6. Accordingly, DLPC and SMCPD entered into a Power Supply Contract (PSC), which is the subject of the instant Joint Application.
7. Section 45 (b) of Republic Act No. 9136, or the Electric Power Industry Reform Act of 2001, provides that distribution utilities may enter into bilateral power supply contracts subject to review by the Honorable Commission In connection with this, ERC Resolution No. 2, Series of 2015 provides that the distribution utilities and generation companies jointly file with the Honorable Commission their respective power supply agreements.
8. Thus, this instant Joint Application.

9. Salient Features of the PSC.

- 9.1. **Contract Capacity.** The Contract Capacity for the duration of the PSC shall be 60,000 kW. The BUYER shall maintain a minimum hourly nomination of at least forty percent (40%) of the Contract Capacity for the duration of the PSC, as its share in the minimum stable load of the Power Plant. The Contract Capacity shall be subject to a separate nomination protocol set forth in Annex V of the said PSC.
- 9.2. **Generation Source.** SMCP's 2 x 150 MW Circulating Fluidized Bed Coal-Fired Thermal Power Plant (the Plant) located in Barangay Culaman, Malita, Davao Occidental.
- 9.3. **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) as defined in Section 2.3 of the PSC. The supply of electric power by the SELLER shall commence upon COD and shall remain effective for a period of ten (10) years from COD, subject to Section 2.1.1, Section 2.1.2, Section 2.2, and Section 2.3 of the PSC. The PSC shall be deemed terminated upon the expiration of the Contract Term unless renewed by mutual written agreement of the Parties or unless earlier terminated in accordance with the provisions of the Contract.
- 9.4. **Contract Charges.** Under the PSC, the BUYER shall pay the following Contract Charges for the duration of the Contract, subject to the applicable Value-Added Tax (VAT), and computed as follows:

Particulars	Unit	Amount
Capacity Fee		
A. Capital Recovery Fee	PhP/kW -month	1,386.8021
B. Fixed Operation and Maintenance Fee	PhP/kW-month	383.8079
Total Capacity Fee		1,770.6100
Energy Fee		
C. Variable Operation and Maintenance Fee	PhP/kWh	0.2831
D. Fuel Fee	PhP/kWh	1.6566*
Total Energy Fee		1.9397*

*Indicative Figures

- a. Monthly adjustments in the Capacity and Energy Charges based on the adjustment formula contained in Annex II-B.

- b. Cost of Replacement Power, if provided by the Seller, subject to Article 7.
 - c. All IMEM or WESM Charges, if any, as billed by PEMC to SELLER and solely attributable to the Contract with the BUYER.
- 9.5. **Other Charges.** The BUYER shall bear all other costs and charges incurred after the Delivery Point, including but not limited to transmission line losses, any interconnection charges and site specific loss adjustments, among others.
- 9.6. **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:

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

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

I. CAPITAL RECOVERY FEE (CRF_{month})

$$\text{CRF}_{\text{month}} = \text{CRF}_{\text{adjusted}} \times \text{CC}$$

Where:

$$\text{CRF}_{\text{adjusted}} = (\text{CRF}_{(\text{base})} \times 0.30) + (\text{CRF}_{(\text{base})} \times 0.70 \times \frac{\text{FX}_m}{\text{FX}_o})$$

$$\text{CRF}_{\text{base}} = \text{Capital Recovery Fee in PhP/kW-month contained in Annex II-A}$$

$$\text{FX}_m = \text{The simple average of the daily exchange rate of the Philippine Peso to the US Dollar as posted by the Bangko Sentral ng Pilipinas for the calendar month within which the start of the current Billing Period occurs}$$

$$\text{FX}_o = \text{Exchange rate of the Philippine Peso to the US Dollar, Base = PhP44.00}$$

$$\text{CC} = \text{Contract Capacity in kW}$$

II. FIXED OPERATION AND MAINTENANCE FEE (FOM_{month})

$$\text{FOM}_{\text{month}} = \text{FOM} \times \frac{\text{PHCPI}_m}{\text{PHCPI}_o} \times \text{CC}$$

Where:

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

PHCPI_m = Philippine Consumer Price Index for All Income Households In the Philippines-All Items (2006=100) as posted by the Philippine Statistics Authority for the calendar month within which the start of the current Billing Period occurs

PHCPI_o = Philippine Consumer Price Index for All Income Households in the Philippines-All Items (2006=100) as posted by the Philippine Statistics Authority for the calendar month of the COD

CC = Contract Capacity in kW

III. VARIABLE OPERATION AND MAINTENANCE FEE (VOM_{month})

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

Where:

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

USCPI_m = US Consumer Price Index for All Urban Consumers- All Items (1982-84=100) as posted by the US Bureau of Labor Statistics for the calendar month within which the start of the current Billing Period occurs

USCPI_o = US Consumer Price Index for All Urban Consumers-All Items (1982-84=100) for the calendar month of the COD

FX_m = The average daily exchange rate of the Philippine Peso to the US Dollar as posted by the Bangko Sentral ng Pilipinas 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

PHCPI_m= Philippine Consumer Price Index for All Income Households in the Philippines-All Items (2006=100) as posted by the

Philippines National Statistics Office for the calendar month within which the start of the current Billing Period occurs.

PHCPI₀= Philippine Consumer Price Index for All Income Households in the Philippines- All Items (2006=100) as posted by the Philippines National Statistics Office 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.

Subject to (1) prior notification by the SELLER to the BUYER and (2) approval of the ERC prior to implementation for the occurrence of any of the following events, the Parties agree to adopt changes in any of the inflationary indices for 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 (Fuelmonth)

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

Where:

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

- a. Newcastle_m = Average monthly coal price index in USD/MT as posted by global coal on the website www.globalcoal.com for the calendar month within which the start of the current Billing Period occurs.
- b. Newcastle₀= coal price index equivalent to USD74.00/MT
- c. Base Fuel Cost = Blended Cost equivalent to USD62.69/MT
- d. Fuel Cost shall be charged based on the foregoing formula or based on the actual cost of fuel, whichever is lower

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 fees, imposts and other charges that may be imposed on the transport of coal under the Statement of Settlement of Duties and Taxes issued by the Bureau of Customs and shall exclude any surcharges, penalties and/or interests such as, but not limited to, demurrage attributable to SELLER.

CR = actual fuel consumption rate capped at 0.70kg/kWh

FX_m = The average daily exchange rate of the Philippine Peso to the US Dollar as posted by the Bangko Sentral ng Pilipinas 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

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.

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 SELLER's actual cost of fuel subject to SELLER's prior notification to the BUYER and subject to approval of the ERC prior to implementation.

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

Start-up Charge shall be the BUYER's share of the cost incurred in starting up the Plant. This shall be paid by BUYER on top of VOM & Fuel charges. However, Start up Charges to be charged to BUYER shall only be limited to two (2) Cold start ups and four (4) Warm start ups per unit per year.

The cost for starting up the Plant after a period of Outage attributable to the BUYER shall be charged according to the formula:

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

$$\text{Start-up Charge} = 130,000 \text{ liters} \times \text{LFO}_m \times \frac{\text{CC}}{\text{TPC}}$$

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

$$\text{Start-up Charge} = 36,000 \text{ liters} \times \text{LFO}_m \times \frac{\text{CC}}{\text{TPC}}$$

Where:

LFO_m = 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

9.7. **Discounts.** The SELLER provides for both Prompt Payment Discount (PPD) and Collection Efficiency Discount (CED).

9.7.1. **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 except the Interim Mindanao Electricity Market (IMEM) or the Wholesale Electricity Spot Market (WESM) charges (as applicable) and Replacement Power Cost, if any, provided that:

- i. BUYER has no arrears from previous power billings, including the Security Deposit if applicable, or any unpaid charges or penalties, including the remittance of VAT as actually collected from the BUYER's customers;

- ii. BUYER has forwarded to SELLER before the end of the first (1st) quarter of each year the following documents it has received from its customers:
 - a. For BUYER's customers located within economic zones;
 - i. BIR Form 2303-Certificate of Registration of a Business;
 - ii. When applicable – PEZA or BOI Certificate of Registration or Accreditation from an Export Organization;
 - iii. When applicable – Certification of VAT Exemption issued by the PEZA, BOI or other export organization;
 - b. For BUYER's customers outside economic zones with VAT-zero rating or VAT-exempt incentives, the relevant BIR Certificates.
- iii. BUYER pays the Capacity and Energy Charges in full for each Billing Period on or before the tenth (10th) day of the calendar month following the current Billing Period.
- iv. BUYER remits the VAT as collected on or before the twenty-fifth (25th) day of the calendar month

ERC CASE NO. 2017-029 RC
NOTICE OF PUBLIC HEARING/06 JULY 2017
PAGE 10 OF 20

following the current Billing Period.

- v. BUYER submits all necessary BIR Tax Certificates for all taxes withheld as well as for all zero-rated VAT end-consumers on or before the twenty-fifth (25th) day of the calendar month following the current Billing Period as follows:
- a. BIR 2306: Certificate of Taxes Withheld on Government Sales;
 - b. Certification/Schedule of Allocated Generation on Zero-Rated VAT Sales;
 - c. Certification/Schedule of Uncollected VAT on Delinquent Accounts Sample Certification attached as Annex VII; and
 - d. Other documents as may be required by BIR in connection with this Contract.

9.7.2. **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. BUYER has no outstanding obligations to SELLER from

previous power bills including Value Added Tax (VAT) as actually collected from the BUYER's customers;

- ii. The BUYER shall submit to the SELLER: 1) a duly accomplished CED Availment Form; 2) a copy of its Monthly Collection Efficiency Report signed by its General Manager or Chief Operating Officer; 3) zero (0)-rated VAT certificates as updated monthly for end-users of the Buyer, if any; and, 4) Audited Financial Statements (AFS) stamped "received" by the BIR (to be submitted to the Seller within three (3) calendar days from receipt of BIR).

9.7.3. In case the BUYER will have a restructured account, the discounts under the Contract shall not be granted during the restructuring period.

9.8. **Outages.** During the term of the PSC, Capacity Charges shall be applicable for every Billing Period, except as otherwise provided in the PSC. SELLER shall not be obligated to deliver energy during the Annual Outage Allowance of:

- i. For Scheduled Outage, seven hundred twenty (720) cumulative outage hours for each Contract Year for the Plant.
- ii. For Forced Outages, four hundred thirty eight (438) cumulative outage hours for each Contract Year for the Plant.

9.8.1. **Major Maintenance Outage Allowance.** SELLER shall be allowed an additional outage allowance of seven hundred twenty (720) cumulative outage hours for the purpose of Major Maintenance, which schedule should be approved by the System Operator, once every five (5) years counted from the first Major Maintenance of the Plant. SELLER is not obligated to

deliver energy during Major Maintenance Outage within the allowance but Capacity Charges shall still apply.

9.8.2. During Outages within the Annual Outage Allowance or Major Maintenance Outage Allowance, the BUYER shall procure Replacement Power at its own cost. This notwithstanding, the SELLER may offer Replacement Power during Outages within Annual Outage Allowance or Major Maintenance Outage Allowance priced at Contract Charges.

9.8.3. For any Outage beyond the Annual Outage Allowance and Major Maintenance Outage Allowance, if applicable, SELLER shall provide Replacement Power at Contract Charges. If SELLER is unable to provide Replacement Power during this period, SELLER shall be liable for the actual cost of Replacement Power procured by BUYER, and SELLER shall timely pay the actual cost to the third party supplying the Replacement Power.

9.8.4. If both Parties are unable to procure Replacement Power during the Outages beyond the Annual Outage Allowance, and Major Maintenance Outage Allowance, if applicable, the Monthly Capacity Charges for the Billing Periods affected shall be adjusted in accordance with the following formula:

Adjusted Monthly Capacity Charges = Monthly Capacity Charges x [(Mhours – OH) / Mhours]

Where:

Mhours = number of hours in a Billing Period

OH = Actual Outage Hours beyond Outage Allowance, and Major Maintenance Outage

ERC CASE NO. 2017-029 RC
NOTICE OF PUBLIC HEARING/06 JULY 2017
PAGE 13 OF 20

Allowance if applicable, without provision of Replacement Power within the Billing Period

9.8.5. Unutilized Annual Outage Allowance or Major Maintenance Outage Allowance shall not be carried forward to any subsequent Contract Year.

10. **Estimated Rate Impact.** The indicative rate impact on DLPC's overall generation rate with and without the supply from SMCPC after COD are as follows:

Estimated Generation Charge¹		
(Year 2017, PhP/kWh)		
Without SMCPC	With SMCPC	Impact
4.1628	4.3990	0.2362

11. **Grid Connection.** Pursuant to the Honorable Commission's Decision dated 17 November 2014 in ERC Case No. 2014-060 RC², the National Grid Corporation of the Philippines (NGCP) was authorized to construct the 230 kV Malita-Matanao Transmission Line, which runs from Davao Occidental to Davao del Sur. Upon completion of the said Transmission Line, SMCPC will execute the necessary Service Agreement with NGCP and undertakes to submit the same to the Honorable Commission.
12. **Sources of Funds.** The total estimated Project Cost of the Power Plant is PhP30,823.62 Million. SMC Global Power Holdings Corporation, SMCPC's parent company, advanced a total amount of US\$300 Million to commence and allow the on-going construction of the said Power Plant. It was initially financed through one hundred percent (100%) equity since the funding thereof was undertaken by the said parent company without interest payments. SMCPC intends to undertake project financing with a target Debt to Equity ratio of 70%:30%.
13. **Environmental Compliance Certificate (ECC).** On 7 June 2013, the Department of Environment and Natural Resources (DENR) has issued ECC No. ECC-CO-1304-0010 in favor of SMCPC.
14. **Board of Investments (BOI) Certificate.** On 24 June 2013, the Power Plant Project was registered with the BOI which issued Certificate of Registration No. 2013-137.
15. **Certificate of Compliance (COC).** On 26 May 2016, SMCPC filed an Application for the Issuance of COC for Units

¹ Assumptions: (i) SMCPC projected to enter in 2017; (ii) Power Cost used is based on ERC approved rate per supplier; (iii) SMCPC will cater to the forecasted demand growth and shortfall of PSALM in 2017 and thereafter; and (iv) SMCPC load factor at 90%.

² In the Matter of the Application for Approval of the Malita-Matanao 230 kV Transmission Project, with Prayer for the Issuance of a Provisional Authority, NGCP – Applicant

ERC CASE NO. 2017-029 RC
NOTICE OF PUBLIC HEARING/06 JULY 2017
PAGE 14 OF 20

1 and 2 of its Malita Plant. Relative thereto, on 28 October 2016, the Honorable Commission has issued a Provisional Authority to Operate (PAO) Unit 1 SMCP's ("Malita Plant") valid from 5 October 2016 to 4 April 2017.

16. Further, SMCP'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.
17. Copies of the following documents and/or information are attached to the Joint Application as annexes and made integral parts hereof:

Annex	Documents/Information
"A"	SMCP's Articles of Incorporation
"B"	Write-up on SMCP's Shareholders' Agreement
"C"	SMCP's Certificate of Registration issued by the Securities and Exchange Commission (SEC)
"D"	SMCP's Latest General Information Sheet (GIS)
"E"	Corporate Structure of SMC Global Power and its Subsidiaries
"F"	SMCP's Certificate of Registration with the BOI
"G"	ECC issued by the DENR to the Circulating Fluidized Bed Coal-Fired Thermal Power Plant Project of SMCP
"H"	Certificate of Compliance (COC) Application
"I"	Memorandum of Agreement between SMCP and DOE that signifies our participation in the Philippine Development Plan (PDP)
"J"	PSC dated 28 November 2016 entered into by and between DLPC and SMCP
"K"	Executive Summary of the DLPC and SMCP Joint Application
"L"	San Miguel Consolidated Power Corporation (SMCP) and National Grid Corporation of the Philippines ("NGCP") Malita Interconnection Plan Layout
"M"	SMCP Point-to-Point Application in Malita, Davao del Sur to the 230 KV Malita-Matanao Transmission Line of the NGCP
"N"	Connection Agreement Between NGCP and SMCP
"O and Series"	Details of the Power Rate Calculations and Financial Model (Confidential)
"P"	Details of the Fuel Procurement Process
"P-1"	Explanation on the Fuel Supply Agreement (Confidential)
"Q"	Relevant technical and economic characteristics of the generation capacity, installed capacity, mode of operation, and dependable capacity
"R"	Details of the interconnection facility of the SMCP Power Plant
"S and"	SMCP's latest Audited Financial Statements (AFS), Balance

ERC CASE NO. 2017-029 RC
NOTICE OF PUBLIC HEARING/06 JULY 2017
PAGE 15 OF 20

Series"	Sheet, Income Statement, and Statement of Cash Flows
	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)
	Certification from the engine manufacturer or SMCPD of the net heat rate in liters per kWh
	Simulation on the number of operating units necessary to meet the MEOT and/or additional energy/demand requirements of DLPC
	Potential Cost (absolute amounts and PhP/kWh) of Ancillary Services as and when SMCPD or DLPC is connected to the main grid
"T"	DLPC's Amended Articles of Incorporation
"U"	DLPC's General Information Sheet (GIS)
"V"	PSALM's Certification dated 22 December 2016
"W"	DLPC's Historical and Forecasted Supply and Demand Scenario
"X"	1 st Invitation to Submit Proposal for the Supply of Power published on 11 January 2016
"Y"	2 nd Invitation to Submit Proposal for the Supply of Power published on 20 January 2016
Z"	SMCPD letter dated 14 January 2016 with Subject: Letter of Intent to Submit Offer, with attachments
"Z-1"	SMCPD letter dated 25 January 2016 with Subject: Letter of Intent to Submit Offer, with attachments
"AA"	DLPC BAC Letter Re: The Supply to Davao Light and Power Company, Inc. of 30 MW up to 80 MW of Power (Base load) to Rodger S. Velasco dated 19 January 2016 with attached BAC Minutes of Meeting
"AA-1"	DLPC BAC Letter Re: The Supply to Davao Light and Power Company, Inc. of 30 MW up to 80 MW of Power (Base load) to Rodger S. Velasco dated 28 January 2016 with attached BAC Minutes of Meeting
"AA-2"	The DLPC Letter with Subject Re: Request to Negotiate a Power Supply Agreement to SMC Global Power Holdings Corporation for SMCPD dated 29 January 2016
"BB"	Write-up on the Competitive Selection Process Conducted by DLPC
"CC"	Secretary's Certificate re Board Resolution on DLPC's BAC Evaluation Reports
"DD"	Secretary's Certificate re Board Resolution on the authority of DLPC to enter into a supply agreement with SMCPD and DLPC's authorized signatory
"EE"	Rate Impact Analysis
"FF"	Summary of DLPC's Distribution Development Plan (DDP)
"GG"	Demand Side Management (DSM) Programs of DLPC
"HH and Series"	Proof of Service to the Sanggunians within the franchise area of DLPC and Sangguniang Panlungsod of Mandaluyong City, of copies of the Joint Application (including annexes)
"II and series"	Affidavit of Publication and complete issue of the newspapers where the Joint Application was published
"JJ"	Judicial Affidavit of Mr. Reynold B. Felix of DLPC

"KK"	Judicial Affidavit of Mr. Alberto B. Reyes, III in support of the Prayer for the Issuance of Provisional Authority
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18. The PSC was executed to serve the power/energy requirements of DLPC's customers.

Allegations in Support of the Motion for Provisional Authority

19. SMPCPC and DLPC replead the foregoing allegations in support of their prayer for the immediate issuance of provisional authority, anchored on the following grounds:
- a. The testing and commissioning power to be generated by SMPCPC during its Plant's pre-commercial operations may readily be used by DLPC when it needs to augment its power supply requirements.
 - b. The purchase of the testing and commissioning power from SMPCPC will further redound to the benefit of DLPC as it is only subject to the payment of Energy Fees, which is lower than the Commission-approved National Power Corporation – Time-of-Use (NPC-TOU) rates for the Mindanao Region.
 - c. At the same time, this will allow SMPCPC to partially recover its investments since SMC Global Power Holdings Corporation, SMPCPC's parent company, has advanced a total amount of US\$300 Million to commence and allow the construction of said Power Plant.
 - d. To be able to augment the supply requirements of DLPC by providing 60 MW of contracted capacity and to timely recover the cost of such supply, there is a necessity for the immediate and provisional approval of the Joint Application in order for DLPC to deliver the much needed power to its customers.
20. It bears stressing that pursuant to Rule 14, Section 3 of the Honorable Commission's Rules of Practice and Procedure, the Honorable Commission may issue a provisional authority pending approval of the Joint Application, 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.” (Emphasis provided.)

Allegations in Support of the Confidential Treatment of Annexes “O and Series”, and “P-1”

21. Section 1, Rule 4, of the Honorable Commission’s Rules of Practice and Procedure provides that a party to any proceeding before the Commission may request that information about that party in the Commission’s possession not be disclosed.
22. In line with this, SMCPD 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:

Annex	Documents and/or Information
“O and Series”	Details of the Power Rate Calculations and Financial Model (Confidential)
“P-1”	Explanation on the Fuel Supply Agreement (Confidential)

23. **Annexes “O and Series” and “P-1”** contain the details of SMCPD’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.*³, 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:

³ G.R. No. 172835, December 13, 2007

- (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 source.”
(citations omitted, emphasis supplied)
24. 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 “O and Series” and “P-1”**. The reasonableness and transparency of the prices of electricity is to be assured by the Honorable Commission through its own review and verification of SMCP’s operating costs and expenses.
25. More importantly, SMCP’s competitors, should they obtain the information in **Annex “O and Series” and “P-1”**, will gain undue advantage thereon and have the opportunity to use the same in their operations. The negotiating power of SMCP 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.
26. Accordingly, one (1) copy each of **Annexes “O and Series” and “P-1”**, are placed 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, applicants Davao Light and Power Company, Inc. (DLPC) and San Miguel Consolidated Power Corporation (SMCP) most respectfully pray that the Honorable Commission:

1. **ISSUE** an Order treating Annexes **“O and Series”** and **“P-1”**, 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 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;

2. Pending the hearing and final resolution of the Joint Application, **ISSUE** an Order provisionally approving the Power Supply Contract (PSC), including all the rates, fees, charges and tariff adjustment mechanisms set out therein, as well as the sale and purchase of testing and commissioning power during the pre-commercial operations period at the rates provided in the PSC, and authorizing DLPC to charge and collect the provisionally approved rates to its customers reckoned from the start of supply from SMCPD;
3. After hearing and trial on the merits, **ISSUE** a Decision approving the Joint Application and the PSC between DLPC and SMCPD, including all the rates, fees, charges and tariff adjustment mechanisms set out therein at the rates provided in the PSC, and authorizing DLPC to charge and collect the fees therein from its customers reckoned from the start of supply by SMCPD to DLPC.

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

The Commission has set the *Joint Application* for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on **19 September 2017 (Tuesday) at ten o'clock in the morning (10:00 A.M.), at the Commission's Mindanao Field Office Mintrade Bldg., Monteverde Ave. cor. Sales St., Davao City.**

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 *Joint 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 *Joint Application* and its attachments, subject to the reimbursement of reasonable photocopying costs. Any such person may likewise examine the *Joint Application* and other pertinent records filed with the Commission during the standard office hours.

WITNESS, the Honorable Officer-in-Charge of ERC **ALFREDO J. NON**, and the Honorable Commissioners **GLORIA VICTORIA C. YAP-TARUC** and **GERONIMO D. STA. ANA**, Energy Regulatory Commission, this 6th day of July 2017 in Pasig City.

FOR AND BY AUTHORITY
OF THE COMMISSION:


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Oversight Commissioner for Legal

LS: 
LS: JMH/LSI/APV