

Republic of the Philippines
ENERGY REGULATORY COMMISSION
 Pasig City

IN THE MATTER OF THE APPLICATION FOR APPROVAL OF THE CONTRACTS FOR THE SUPPLY OF ELECTRIC ENERGY AND LETTERS OF AGREEMENT WITH DISTRIBUTION UTILITIES LOCATED IN THE VISAYAS GRID, WITH PRAYER FOR ISSUANCE OF PROVISIONAL AUTHORITY

ERC CASE NO. 2022-004 RC

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION (PSALM), Applicant.

Promulgated:
 February 08, 2022

NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 24 January 2022, Power Sector Assets and Liabilities Management Corporation (PSALM) filed an *Application*, seeking for the Commission's approval of its Contracts for the Supply of Electric Energy (CSEEs) and Letters of Agreement (LOAs) with Distribution Utilities (DUs) in the Visayas Grid, with prayer for issuance of provisional authority.

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

1. This is an Application for the approval of the terms and conditions of the Contracts for the Supply of Electric Energy ("CSEE") entered into by and between PSALM and Guimaras Electric Cooperative, Inc. ("GUIMELCO")¹ and Northern Samar Electric Cooperative, Inc. ("NORSAMELCO"),² as well as the Letters of Agreement ("LOA") between PSALM and Don Orestes Romualdez Electric Cooperative, Inc. ("DORELCO"),³ Eastern Samar Electric Cooperative, Inc. ("ESAMELCO"),⁴ and MORE Electric and Power Corporation ("MORE Power")⁵, pursuant to Section 67 of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" ("EPIRA").

2. Applicant PSALM is a government-owned and controlled corporation created by virtue of the EPIRA, with principal office address at 24th Floor Vertis North Corporate Center 1, Astra corner Lux Drives, North Avenue, Quezon City.

3. Pursuant to Section 49 of the EPIRA and the consequent assignment via an Assignment Letter dated 11 May 2009 of all National Power Corporation ("NPC") power supply contracts to PSALM, NPC assigned and transferred to PSALM all its rights and obligations in, to, and under its CSEEs and other similarly or substantially equivalent power supply contracts with NPC power customers (collectively referred to as the "Power Supply Contracts").

A copy of the Assignment Letter dated 11 May 2009 is attached as Annex "A".

4. On and from 11 May 2009, the Power Supply Contracts were deemed amended as follows:

- (i) all references to NPC therein shall be treated as references to PSALM;
- (ii) PSALM shall be deemed the SUPPLIER under said Power Supply Contracts; and
- (iii) the rights and obligations of the Parties shall be governed by and construed in accordance with said Power Supply Contracts, as amended by the 11 May 2009 Letter Agreement.

Thus, this instant application by PSALM.

5. The subject CSEEs were executed based on the ERC-approved template under ERC Resolution No. 08, Series of 2005 issued on 07 July 2005. On 09 August 2005, said template was subsequently amended by this Honorable Commission in its Resolution No. 15, Series of 2005.

6. In ERC Resolution No. 33, Series of 2006,⁶ the ERC clarified that the Transition Supply Contract ("TSC") Template should merely serve as a guide for the Distribution Utilities ("DUs") and NPC and should not be construed as the contract contemplated under Section 67 of the EPIRA.

7. PSALM filed similar Applications in 2011, 2012, 2013, and 2014 for the approval of the terms and conditions of CSEEs effective 26 December 2010 to 25 December 2011, 26 December 2011 to 25 December 2012, 26 December 2012 to 25 December 2013, and 26 December 2013 to 25 December 2014, respectively.

8. By reason of the public bidding to privatize the rights to the contracted energy under the Unified Leyte Geothermal Power Plant ("ULGPP") and the asset sale of the Naga Power Plant Complex, PSALM no longer renewed the CSEEs that expired on 25 December 2014.

9. On 08 June 2018, PSALM filed its application docketed as ERC Case No. 2018-055 RC for the approval of the CSEEs for the duration of 26 December 2017 to 25 December 2020, duly executed and negotiated with the following:

- Leyte III Electric Cooperative, Inc. ("LEYECO III"); and
- Leyte V Electric Cooperative, Inc. ("LEYECO V").

10. The foregoing CSEEs were executed based on the template approved by this Honorable Commission under Resolution No. 08, Series of 2005 as amended by Resolution No. 15, Series of 2005. Likewise, the CSEEs incorporated the minor changes previously proposed by PSALM and approved by the DUs, which changes were contained in the CSEEs approved by this Honorable Commission in PSALM's applications in ERC Case No. 2012-008 RC, ERC Case No. 2013-044 RC, ERC Case No. 2013-169 RC, and ERC Case No. 2014-173.

11. The revisions made in the CSEEs under said application consist of: (a) those found in Annex 1 of the CSEEs (which reflects the Contracted Energy and the corresponding Equivalent Demand); and (b) the amendment of Section 3.1 on Contract Duration.

12. In a Decision dated 20 January 2021, the Honorable Commission confirmed and approved the CSEEs entered into by PSALM with LEYECO III and LEYECO V for a contract term of three (3) years from 26 December 2017 to 25 December 2020.

13. On 31 May 2019, PSALM filed a similar application docketed as ERC Case No. 2019-040 RC for the approval of several duly executed and negotiated CSEEs in the Visayas Grid with the following DUs:

- 13.1. Biliran Electric Cooperative, Inc. ("BILECO");
- 13.2. Bohol Electric Cooperative, Inc. ("BOHECO");
- 13.3. Bohol II Electric Cooperative, Inc. ("BOHECO II");
- 13.4. DORELCO;

- 13.5. ESAMELCO;
- 13.6. Leyte II Electric Cooperative, Inc. ("LEYECO II");
- 13.7. Leyte IV Electric Cooperative, Inc. ("LEYECO IV");
- 13.8. NORSAMELCO;
- 13.9. Samar I Electric Cooperative, Inc. ("SAMELCO I");
- 13.10. Samar II Electric Cooperative, Inc. ("SAMELCO II"); and
- 13.11. Southern Leyte Electric Cooperative, Inc. ("SOLECO").

14. These CSEEs had a duration from 26 December 2018 to 25 December 2019.

15. The foregoing CSEEs were executed based on the template approved by this Honorable Commission under Resolution No. 8, Series of 2005 as amended by Resolution No. 15, Series of 2005. Likewise, the CSEEs incorporated the minor changes previously proposed by PSALM and approved by the DUs, which changes were contained in the CSEEs approved by this Honorable Commission in PSALM's applications in ERC Case No. 2012-008 RC, ERC Case No. 2013-044 RC, ERC Case No. 2013-169 RC, and ERC Case No. 2014-173 [RC].

16. The revisions made in the CSEEs under said application consist of (i) those found in Annex 1 of the CSEEs (which reflects the Contracted Energy and the corresponding Equivalent Demand); and (ii) the amendment of Section 3.1 on Contract Duration.

17. Also included in the said application were the LOAs of LEYECO III and LEYECO V. The LOAs were necessary to accommodate LEYECO III's and LEYECO V's requests for an increase in contract demand and energy.

18. In a Decision dated 21 July 2021, the Honorable Commission confirmed and approved the CSEEs entered into by PSALM with the eleven (11) DUs enumerated above as well as the LOAs entered into by PSALM with LEYECO III and LEYECO V.

PSALM'S PENDING CSEE AND LOA APPLICATIONS WITH THE ENERGY REGULATORY COMMISSION

19. PSALM filed similar applications for the approval of duly executed and negotiated CSEEs and LOAs in the Visayas Grid, which were docketed by this Honorable Commission as follows:

Date Filed	Docket Number	Type of Contract
06 July 2020	ERC Case No. 2020-014 RC	CSEE
20 September 2021	ERC Case No. 2021-074 RC	LOA
23 September 2021	ERC Case No. 2021-076 RC	CSEE
23 September 2021	ERC Case No. 2021-078 RC	CSEE
30 September 2021	ERC Case No. 2021-081 RC	CSEE
05 November 2021	ERC Case No. 2021-089 RC	CSEE

20. The CSEEs in the foregoing applications were executed based on the ERC-approved template under ERC Resolution No. 08, Series of 2005. Likewise, the CSEEs incorporated the minor changes previously proposed by PSALM and approved by the DUs, which changes were contained in the CSEEs approved by this Honorable Commission in PSALM's applications in ERC Case Nos. 2012-008 RC, 2013-044 RC, 2013-169 RC, and 2014-173 RC.

21. In general, the revisions made in the CSEEs and LOAs under the foregoing applications primarily consist of (i) those found in Annex 1 of the CSEEs (which reflects the Contracted Energy and the corresponding Equivalent Demand); and/or (ii) the amendment of Section 3.1 on Contract Duration.

22. The foregoing applications are pending resolution by this Honorable Commission.

The CSEEs and LOAs subject of this Application

23. Pursuant to Section 5, Article III of the ERC's Guidelines for the Recovery of Costs for the Generation Component of the Distribution Utilities' Rate, PSALM is filing the instant Application for the approval of the CSEEs duly negotiated with GUIMELCO and NORSAMELCO as well as the LOA's duly negotiated with DORELCO, ESAMELCO, and MORE Power.

The CSEEs duly negotiated with GUIMELCO and NORSAMELCO are attached as Annexes "B" and "B-1," respectively.

The LOAs duly negotiated with DORELCO, ESAMELCO, and MORE Power are attached as Annexes "C," "C-1," and "C-2," respectively.

PSALM's CSEEs with GUIMELCO and NORSAMELCO

24. The PSALM-GUIMELCO and PSALM-NORSAMELCO CSEEs were executed based on the ERC-approved template under ERC Resolution No. 08, Series of 2005. Likewise, the CSEEs incorporated the minor changes previously proposed by PSALM and approved by the DUs, which changes were contained in the CSEEs approved by this Honorable Commission in PSALM's applications in ERC Case Nos. 2012-008 RC, 2013-044 RC, 2013-169 RC, and 2014-173 RC.

25. GUIMELCO had a previous CSEE with PSALM covering the period 26 April 2020 to 25 April 2021, which was submitted for approval to this Honorable Commission under ERC Case No. 2021-076 RC.

26. On the other hand, NORSAMELCO has an existing CSEE with PSALM covering the period 26 December 2020 to 25 December 2021, which was submitted for approval to this Honorable Commission under ERC Case No. 2021-081 RC.

Salient Provisions of the PSALM-GUIMELCO and PSALM-NORSAMELCO CSEEs

27. The table below shows the Contract Duration of the PSALM-GUIMELCO and PSALM-NORSAMELCO CSEEs:

CSEE	Contract Duration
PSALM-GUIMELCO CSEE	26 April 2021 to 25 April 2022
PSALM-NORSAMELCO CSEE	26 December 2021 to 25 July 2022

28. The PSALM-GUIMELCO CSEE⁷ has the following salient provisions, apart from the revisions mentioned in the preceding paragraphs:

(i) CONTRACT ENERGY

4.1 Contract Energy and Equivalent Demand as indicated in Annex I may be changed by PSALM due to a change in the projected available capacity of PSALM's power plants and at any time during the duration of the Contract due to the privatization of any of the assets of PSALM pursuant to the EPIRA.

4.1.1 CUSTOMER shall nominate month-ahead its hourly and daily energy quantity requirements three (3) days before the start of the next billing period based on its Daily Load Profile. On a day to day transaction, the CUSTOMER shall confirm the schedule of hourly energy requirements to PSALM on the day ahead. PSALM shall declare to WESM the schedule of hourly energy requirements delivered to customers immediately on the day after.

(ii) ASSIGNABILITY

4.8 PSALM may assign or transfer, part or all of, its rights and obligations in the supply of Contract Energy herein stated, to any such entity, provided that prior written notice is given to CUSTOMER Ninety (90) days before the actual transfer. This Contract shall remain binding to Parties, their successors and assignees. PSALM warrants that any sale, assignments, transfer, or subcontracting of the Contract shall not affect or impair CUSTOMER's rights and obligations with respect to quantity and price of electricity, Contract effectivity, incentives, discounts and other terms and conditions of this Contract. The assignee shall, by written instrument, assume the rights and obligations of PSALM to CUSTOMER. When a CUSTOMER has been assigned by the PSALM to a

Successor Generating Company (SGC) by virtue of the privatization of the PSALM Generating Plant pursuant to the EPIRA, the SGC has the option to renegotiate this Contract with the CUSTOMER within six (6) months from the actual transfer of the CUSTOMER to the SGC. If the CUSTOMER and the SGC fail to reach an agreement, either Party shall have the right to terminate this Contract.

4.9 CUSTOMER may assign, sell or transfer a part or all of its Contract Energy and/or Equivalent Demand either permanently or for a certain number of billing periods, subject to the written consent of PSALM under the following conditions, and which consent shall not be unreasonably withheld:

- a. CUSTOMER has obtained certification from NGCP, that the transmission, sub-transmission, substation and other facilities can accommodate the increase in the power requirements of the assignee/transferee.
- b. CUSTOMER has submitted necessary proof that the buyer, assignee or transferee has no outstanding obligation to PSALM, and undertakes to assume the obligations of CUSTOMER and to pay for the additional expenses necessary or incidental to the transfer.
- c. Assignment of CUSTOMER to assignee shall comply with the forms provided in Annex IVa and Annex IVb of this Contract.
- d. THE ASSIGNEE SHALL ASSUME ALL OBLIGATIONS OF THE CUSTOMER related to Contract Energy that might arise in a pending suit with the ERC or in Arbitration proceedings.

(iii) SECURITY DEPOSIT

5.1 The Security Deposit shall be equivalent to 100% of the average contracted energy indicated in Annex I of the CSEE and shall become valid and effective for the duration of this Contract.

(iv) FORM AND TIME OF POSTING

5.2 The Security Deposit may be required to be posted upon privatization of the generating asset/s to which this Contract is allocated or assigned as provided for in Section 4.8 hereof if the prospective buyer, assignee, transferee or successor-in-interest so requires. It shall be in the form of cash, cash bond, manager's or cashier's check, bank certified check, irrevocable stand-by letter of credit. In the event the Security Deposit of the CUSTOMER becomes nil, the PSALM reserves the right to refuse or discontinue supply of electric energy. In cases of partial depletion of the Security Deposit, the CUSTOMER shall replace the Security Deposit not later than thirty (30) days thereafter. PSALM reserves the right to continue supply of electric energy to the extent of Security Deposit of the CUSTOMER.

(v) RELEASE OF SECURITY DEPOSIT

5.3 The Security Deposit (for the portion that should be settled within the WESM) shall be returned to the CUSTOMER within thirty (30) days upon presentation of proof of compliance with the prudential requirements of the WESM. PSALM shall return or release the Security Deposits to CUSTOMER including interest earned, subject to deductions for any amounts owed by CUSTOMER to PSALM. Security Deposits, except those in the form of letter of credit or performance bond, shall earn interest based on prevailing savings deposit rate of the Land Bank of the Philippines (LBP).

(vi) BASIC ENERGY CHARGE

6.1 The Basic Energy Charge (BEC) applied to the CUSTOMER's hourly energy consumption which shall be the ERC-approved NPC/PSALM's Time of Use (TOU) generation rates, hereto attached as Annex III, plus adjustments in the tariff such as, but not limited to Deferred Accounting Adjustments (DAAs) and the Incremental Currency Exchange Rate Adjustments (ICERA), the RA 9136 Mandatory Rate Reduction Adjustments. The BEC to be applied to the contracted energy shall be in accordance with Section 7.1 of this Contract.

Energy consumption higher than the contracted level shall be sourced by the Customer from the Wholesale Electricity Spot Market (WESM) at the WESM rate and paid directly to the Independent Electricity Market Operator of the Philippines (IEMOP).

6.1.1 The BEC shall be applied to the CUSTOMER's hourly energy consumption based on the hourly nominated energy quantity mentioned in Section 4.1.1.

(vii) MINIMUM CHARGES

6.2 CUSTOMER shall pay the minimum charge based on the Contract Energy per billing period as indicated in Section 4.1 of this Contract using the basic energy charge if CUSTOMER has not fully taken or failed to consume the Contract Energy, subject to deductions and adjustments as expressly provided for in this Contract.

(viii) SERVICE INTERRUPTION ADJUSTMENT

6.4 Should the supply of electricity be interrupted or curtailed to a level below the Contract Energy due to the fault or lack of generation capacity of the PSALM, even if CUSTOMER was at that time unable to take or consume electricity, the Contract Energy shall be adjusted to actual off-take below contract level for all hours when service was curtailed or interrupted based on declaration of power curtailment issued by the NGCP.

(ix) MAINTENANCE SERVICE ADJUSTMENT

6.6 CUSTOMER may avail of the service adjustment during the scheduled maintenance of its facilities, not to exceed two (2) billing periods in one year. The minimum charge on the energy consumption shall be fifty percent (50%) of the Contract Energy. To be able to avail of this adjustment, CUSTOMER must inform PSALM in writing thirty (30) days prior to the commencement of the scheduled maintenance.

(x) PROMPT PAYMENT DISCOUNT

6.10 Subject to ERC's approval, the Prompt Payment Discount (PPD) shall be in accordance with the PSALM's credit and collection policies duly approved by the PSALM Board.

The latest PSALM's credit and collection policies duly approved by the PSALM Board is provided below, unless otherwise amended:⁸

(xi) DISPUTED BILLS

6.11 Should there be any dispute on bills, any such dispute would be considered as waived unless CUSTOMER questions the same in writing within sixty (60) days from CUSTOMER's receipt thereof. On a "best-efforts basis", PSALM commits to resolve such disputed bills within a period of sixty (60) days upon PSALM's receipt of said disputed bills' complete supporting documents, from the date of filing of the claim.

(xii) OVERDUE ACCOUNT

6.15 In the event that a power bill remains unpaid within five (5) days after its due date, PSALM has the option to call on or draw against the Security Deposit as provided for under Section 5 (Security Deposit) of this Contract.

6.16 Any power bill or account of CUSTOMER not paid on due date shall bear a floating rate of interest computed from the first day after it becomes due and payable, based on the highest non-prime lending rate of PSALM's depository banks for every quarter ending March, June, September and December of each year. Interest on overdue accounts shall be computed based on a 360-day year.

6.17 A restructuring agreement of the overdue account shall be executed by the CUSTOMER, with the following salient terms and conditions...⁹

(xiii) DEDUCTION DUE TO FORCE MAJEURE

9.6 PSALM shall have a maximum of seventy-two (72) hours from the time a force majeure event prevented it from supplying electricity and perform its other obligations under the Contract to resume supply. CUSTOMER shall not be entitled to interruption adjustment for such period, unless interruptions exceed seventy-two (72) hours and the CUSTOMER failed to fully take or consume its Contract Energy.

(xiv) CONTRACT TERMINATION

9.11 Either party will have the right to terminate this Contract upon failure of the other to perform its obligation under this Contract, provided that the party at fault will have to pay all its outstanding account and reimburse the costs incurred by the other party as a result of the termination.