

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

IN THE MATTER OF THE JOINT APPLICATION FOR APPROVAL OF POWER SUPPLY AGREEMENT BETWEEN PAMPANGA I ELECTRIC COOPERATIVE, INC. (PELCO 1) AND MASINLOC POWER PARTNERS CO. LTD. (MPPCL), WITH MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION AND PRAYER FOR PROVISIONAL AUTHORITY OR INTERIM RELIEF,

ERC Case No. 2022-____ RC

PAMPANGA I ELECTRIC COOPERATIVE, INC. (PELCO 1) AND MASINLOC POWER PARTNERS CO. LTD. (MPPCL),

Joint Applicants.

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**JOINT APPLICATION
 (with MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION and PRAYER FOR PROVISIONAL AUTHORITY OR INTERIM RELIEF)**

Joint Applicants, **PAMPANGA I ELECTRIC COOPERATIVE, INC. ("PELCO 1")** and **MASINLOC POWER PARTNERS CO. LTD. ("MPPCL")**, through their respective undersigned counsels, respectfully state:

PARTIES

- Applicant PELCO 1 is an electric cooperative duly organized, incorporated, and registered pursuant to Presidential Decree ("PD") 269, as amended by PD 1645, and further amended by Republic Act ("RA") 10531, with principal office at Sto. Domingo, Mexico, Pampanga 2021, Philippines. It holds an exclusive Certificate of Franchise to operate electric light and power services in the municipalities in the Province of Pampanga, namely: (1) Arayat, (2) Candaba, (3) Magalang, (4) Mexico, (5) San Luis, and (6) Sta. Ana.
- MPPCL is a limited partnership established in the Philippines to invest in, acquire, finance, complete, construct, develop, improve, operate, maintain, and hold power production and electric generating facilities in the country, with business address at Masinloc Coal-Fired Thermal Power Plant, Barangay Bani, Masinloc, Zambales. MPPCL owns the 1 x 330.055 MW (Unit 1), 1 x 343.995 MW (Unit 2) and 351.750 MW (Unit 3) of the Masinloc Coal Fired Thermal Power Plant ("Plant") located in Barangay Bani, Masinloc, Zambales.
- Joint Applicants may be served with notices, orders, and other processes of this Honorable Commission through their respective counsel at the addresses indicated herein.

NATURE OF THE APPLICATION

- The Joint Application for approval of the Power Supply Agreement ("PSA") between PELCO 1 and MPPCL, is being submitted to the Honorable Commission for its review and approval pursuant to Sections 252 and 45(b)3 of Republic Act No. 91364, Rule 20(B) of Honorable Commission's Rules of Practice and Procedure, and other pertinent rules and regulations.

STATEMENT OF FACTS

- Applicant PELCO 1 is in need of 36 Megawatts ("MW") baseload supply starting on September 26, 2022. Consequently, PELCO 1 conducted a Competitive Selection Process ("CSP"), in compliance with the requirements of the Department of Energy ("DOE") Department Circular No. DC2018-02-00035.
- In the CSP conducted by PELCO 1, MPPCL's offer was assessed as having the lowest calculated and most responsive bid based on the evaluation and post-qualification criteria set by the Third Party Bids and Awards Committee ("TPBAC") of PELCO 1 and its Technical Working Group ("TWG"). After deliberation, the TPBAC recommended the awarding of the Power Supply Agreement ("PSA") to MPPCL, which was accepted and approved by PELCO 1's Board of Directors.
- Subsequently, a Notice of Award dated August 10, 2021 was issued by PELCO 1 in favor of MPPCL, informing the latter that MPPCL's bid proposal was compliant with the requirements of PELCO 1 and that the bid price is the most competitive as evaluated and accepted by the TPBAC and approved by PELCO 1's Board of Directors. Thereafter, Applicants executed a PSA on February 11, 2022.
- Hence, PELCO 1 and MPPCL hereby submit the instant *Joint Application* for the evaluation / approval of the PSA by the Honorable Commission.

SALIENT TERMS OF THE PSA

- The PSA between PELCO 1 and MPPCL, a copy of which is attached as ANNEX "A", contains the following salient features:
 - Contracted Capacity.** MPPCL shall supply 36 MW baseload to PELCO 1. (Annex B of the PSA)
 - Contracted Energy.** MPPCL shall guarantee the supply of 66,000,000 kWh energy in 2022 and 308,000,000 kWh energy annually in 2023-2032. (Annex B of the PSA)
 - Contract Period.** MPPCL shall guarantee the supply of energy in 123 Billing Periods starting from September 26, 2022 (Target Delivery Date), or Supply Commencement Date, whichever comes later, until December 25, 2032.
 - Guaranteed Supply.** MPPCL shall supply the Contracted Capacity from Masinloc Coal-Fired Thermal Power Plant, any of its affiliated suppliers, or the Wholesale Electricity Spot Market ("WESM"), in accordance with prudent utility practice and in compliance with applicable law, rules and regulations, at the ERC approved rate of the PSA.
 - Basic Energy Charge ("BEC").** The BEC is composed of the Capital Recovery Fee ("CRF"), Fixed Operation and Maintenance Fee ("FOM"), Variable Operation and Maintenance Fee ("VOM"), and Fuel Fee ("FF"), all on a peso per kilowatt-hour ("Php/kWh") basis, to wit:

Annex A of the PSA
 Basic Energy Charge

Component	BEC Level
Capital Recovery Fee	2.0000
Fixed O&M	0.3493
Variable O&M	0.1000
Fuel Fee	1.0000
Basic Energy Charge	3.4493

- Rate Adjustments.** No escalation or indexation in any components of the BEC in the entire duration of the PSA.
- Monthly Fee.** The Monthly Fee ("MF") shall be computed as follows:

$$MF = [BEC \text{ (in Php/kWh)} + \text{Line Rental Charge (cap or actual, whichever is lower (in Php/kWh))}] \times \text{Billing Energy (in kWh)} \text{ for every Billing Period} + \text{all other applicable charges for the account of the BUYER under Section 4.6 of the PSA.}$$
- Outages.** MPPCL shall guarantee the supply of the Contracted Capacity and Energy to PELCO 1 even during the planned and unplanned outages of the Plant, except during Force Majeure Events.
- Replacement Power.** If MPPCL fails to supply PELCO 1 up to the Contracted Capacity or when the Plant is on planned or unplanned outage not caused by an Event of Force Majeure, MPPCL shall supply PELCO 1 with Replacement Power at the ERC approved contract rate or actual cost, whichever is lower.
- Line Rental.** PELCO 1 shall pay MPPCL a Line Rental either actual cost or cap (Php 0.10/kWh), whichever is lower. All Line Rental costs in excess of Php 0.10/kWh shall be for the account of MPPCL.
- Security Deposit.** PELCO 1 shall post a Security Deposit to MPPCL, in an escrow account, equivalent to 100% of the value of the estimated Monthly Fee based on the average Contracted Energy on the First Contract Year. The Security Deposit is adjusted annually based on the average Monthly Fee paid by PELCO 1 to MPPCL on the previous Contract Year.
- Reduction in Contracted Capacity and Energy due to RCDA or GEOP.** PELCO 1 shall be entitled to a reduction in the Contracted Capacity and Energy if a Contestable/RE Customer procures electricity from: (a) MPPCL's affiliated Suppliers, the reduction is equivalent to the average monthly electricity consumption (in kWh) of such Contestable/RE Customer for the last twelve (12) Billing Periods prior to switching; and (b) any Supplier who is not an affiliate of any generation company that supply electricity to PELCO 1, the reduction is equivalent to the average electricity consumption (in kWh) of such Contestable/RE Customer for the last twelve (12) Billing Periods prior to such switching multiplied by the proportion of the Contracted Capacity to the equivalent energy of the aggregate capacity contracted by PELCO 1 with all of its suppliers of electric power (including MPPCL).

RATE IMPACT ON PELCO 1'S OVERALL GENERATION RATE

- PELCO 1 simulated a rate impact based on its forecast demand and energy requirements. The simulations used the contracted demand and energy prices of its power suppliers, including the supply and prices from WESM. Considering the unpredictable prices in the WESM, the actual hourly local marginal prices at PELCO 1's trading nodes in 2021 were used in the simulations.
- The simulation resulted in an estimated effective rate of Php 4.27/kWh, or a reduction of Php 1.97/kWh with MPPCL supplying 36 MW in Year 1 (2022). Likewise, the simulation resulted in an estimated effective rate of Php 4.50/kWh, or a reduction of Php 1.04/kWh with MPPCL supplying 36 MW in Year 2 (2023). The simulation result in Year 2 (2023) can already represent the simulation results for Year 3 (2024) to Year 11 (2032).

Estimated Generation Charge (Php/kWh) in Contract Year 1

Month Year	Without MPPCL (Blended Rate of BGI and WESM Supply, VAT included) (A)	With MPPCL (Blended Rate of MPPCL, BGI and WESM Supply, VAT included) (B)	Equivalent Rate Reduction (A-B)
October 2022	6.62	4.32	2.30
November 2022	5.61	4.30	1.30
December 2022	6.56	4.16	2.40
Average	6.23	4.27	1.97

Estimated Generation Charge (Php/kWh) in Contract Year 2

Month Year	Without MPPCL (Blended Rate of BGI and WESM Supply, VAT included) (A)	With MPPCL (Blended Rate of MPPCL, BGI and WESM Supply, VAT included) (B)	Equivalent Rate Reduction (A-B)
January 2023	3.53	4.10	(0.57)
February 2023	3.30	4.09	(0.79)
March 2023	4.52	4.28	0.23
April 2023	4.89	4.44	0.25
May 2023	7.55	5.27	2.28
June 2023	6.83	4.94	1.89
July 2023	6.91	4.71	2.20
August 2023	5.04	4.32	0.72
September 2023	4.07	4.23	(0.15)
October 2023	6.67	4.52	2.15
November 2023	5.62	4.45	1.17
December 2023	6.62	4.30	2.32
Average	5.54	4.50	1.04

- As can be gleaned from the October-December 2022 and the January-December 2023 rate simulations, MPPCL's entry as PELCO 1's baseload power supplier would result in a net reduction of generation cost for PELCO 1, which would subsequently redound to the benefit of PELCO 1's consumers.
- Likewise, the Applicants provide the following documents for the evaluation of the *Joint Application*:

Description of Document	Annex
Power Supply Agreement (PSA) between PELCO 1 and MPPCL	"A"
Executive Summary of the PSA	"A-1"
Articles of Incorporation of PELCO 1	"B"
Amended By-Laws of PELCO 1	"C"
Verified Certification showing list of Board of Directors of PELCO 1	"D"
Certificate of Franchise of PELCO 1	"E"

1 Based from the Nameplate Capacity as stated in Annex B of the Provisional Authority to Operate (PAO) issued by the ERC on 10 January 2022.
 2 SEC 25. Retail Rate. – The retail rates charged by distribution utilities for the supply of electricity in their captive market shall be subject to regulation by the ERC based on the principle of full recovery of prudent and reasonable economic costs incurred, or such other principles that will promote efficiency as may be determined by the ERC.
 3 Distribution utilities may enter into bilateral power supply contracts subject to review by the ERC xxx xxx xxx
 4 Electric Power Industry Reform Act of 2001 (EPIRA)
 5 Adopting and Prescribing the Policy for the Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreement for the Captive Market, otherwise known as "CSP Rules".

Demand Side Management Program of PELCO 1	"F"
Transition Supply Contract of PELCO 1	"G"
Load forecast projections in the latest Distribution Development Plan of PELCO 1 and the variability of those projections over the proposed contractual period	"H"
Supply and Demand Scenario, Details of Existing Suppliers, and Average Daily Load Curve of PELCO 1	"I"
Single-line Diagram Connection (including parameters)	"J"
Performance Assessment of the System: 5-Year Reliability Indices (SAIFI and SAIDI)	"K"
Estimated potential reduction in load supplied by PELCO 1 due to Retail Competition	"L"
Invitation to Bid (Publication in a newspaper, etc.)	"M"
Term of Reference (TOR)	"M-1"
Bid Forms Received by PELCO 1 from Other Bidders *	"M-2"
PELCO 1's Third Party Bids and Awards Committee (TPBAC) Evaluation Report. *	"M-3"
PELCO 1's Board Resolution Approving the TPBAC's Evaluation Report and Recommendation	"M-4"
Notice of Award issued by PELCO 1	"M-5"
Matrix and type of Competitive Selection Process (CSP) *	"M-6"
Certification from OIC-General Manager for conducting CSP	"M-7"
PELCO 1 Rate Impact Simulation	"N"
2007 Articles of Partnership of MPPCL	"O"
2021 Amended Articles of Partnership of MPPCL	"O-1"
MPPCL Secretary's Certificate on Ultimate Parent Company	"P"
Write-up – Explanation on the Requirement of Shareholders Agreement	"Q"
Write-up – Explanation on the Requirement of List of Shareholders (GIS Sheet)	"R"
Write-up – Explanation on the Non-applicability of BOI Registration for MPPCL Units 1 and 2	"S"
Certificate of Registration with the Board of Investments (BOI) of MPPCL Units 3 and 4	"T"
Environmental Compliance Certificates for Units 1-3 of MPPCL	"U and series"
Letter of Provisional Authority to Operate issued by the ERC in favor of MPPCL	"V"
Write-up - Explanation on the Non-applicability of the DOE COE for MPPCL Units 1 and 2	"W"
Department of Energy (DOE) Certificate of Endorsement of MPPCL Units 3 and 4	"X"
Write-up – Explanation on the Non-applicability of the Requirements regarding Renewable Energy Plant	"Y"
Write-up - Explanation on the Non-applicability of Water Permit from the National Water Resources Board (NWRB)	"Z"
Transmission Service Agreement (TSA) between the National Grid Corporation of the Philippines (NGCP) and MPPCL	"AA"
Certification by the CFO of MPPCL on items under Sources of Funds/Financial Plans of the Pre-filing Requirements *	"BB"
MPPCL Explanation on Non-applicability of Pre-filing Documents and Calculations for Generation Rate and Derivation, Updated Costs and Cost Analysis	"CC"
Write-up - Explanation on the Requirement/s under Cash Flows	"DD"
Affidavit of Competitive Procurement Process of Fuel executed by the Procurement Manager of MPPCL	"EE"
Relevant technical and economic characteristics of the generation capacity, installed capacity, mode of operation, and dependable capacity	"FF"
Latest Audited Financial Statements (AFS), Balance Sheet, Income Statement, and Statement of Cash Flows of MPPCL	"GG"
Certification from MPPCL Units 1-3 on net heat rate	"HH" – "HH-2"
Write-up - Explanation on the capacity of Units 1-3 of MPPCL to supply the minimum energy requirements of PELCO 1	"II"
Write-up – Explanation on the Non-applicability of Requirements regarding the Ancillary Services Procurement Agreement	"JJ"
Write-up - Explanation on the Non-applicability of the Distribution Wheeling Service	"KK"
Certification from IEMOP on the WESM Registration of MPPCL	"LL"
MPPCL Sample Bill for PELCO 1	"MM"
MPPCL Secretary's Certificates for Signing the PSA and Filing of Joint Application and Delegation Letter to Counsels	"NN" – "NN-2"
MPPCL Monthly Operational Report	"OO"
Write-up – Explanation on the Non-Applicability of Basis/Justification of day used	"PP"
MPPCL Rate Calculation *	"QQ"
Write-up – Certification on the Applicability of a Non-Disclosure Clause on Coal Sale Agreement	"RR"
Secretary Certificate of PELCO 1	"SS"
Affidavit of Engr. Oliver S. Vergara in support of the prayer for Provisional Authority or Interim Relief	"TT"

*** Subject of the Motion for Confidential Treatment of Information**

MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION

- Under the ERC Rules of Practice and Procedure, a party to any proceeding before the Honorable Commission may request that certain information not be disclosed and be treated as confidential. Pursuant to this, Applicants PELCO 1 and MPPCL pray for the confidential treatment of the information contained in the following annexes:

Documents and/or Information	Annex
Bid Forms Received by PELCO 1 from Other Bidders	"M-2"
PELCO 1's Third Party Bids and Awards Committee (TPBAC) Evaluation Report	"M-3"
Matrix and type of Competitive Selection Process (CSP)	"M-6"
Certification by the CFO of MPPCL on items under Sources of Funds/Financial Plans of the Pre-filing Requirements	"BB"
MPPCL Rate Calculation	"QQ"

- Annexes "M-2", "M-3" and "M-6" contain the details of the breakdown of generation costs of other power suppliers who participated and submitted bid prices during the PELCO 1's CSP.
- Annexes "BB" and "QQ" contain the details concerning the financial plans and power rate calculations of MPPCL as well as the manner by which these were derived. The subject 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.*, 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:

- the extent to which the information is known outside of the employer's business;
- the extent to which the information is known by employees and others involved in the business;
- the extent of measures taken by the employer to guard the secrecy of the information;
- the value of the information to the employer and to competitors;
- the amount of effort or money expended by the company in developing the information; and
- the extent to which the information could be easily or readily obtained through an independent source." (citations omitted, emphasis supplied)

The interest of the consuming public is sufficiently protected by the review and evaluation of the rates under the PSA by the Honorable Commission, without the need to disclose the contents of Annexes "BB" and "QQ". The reasonableness and transparency of the prices of electricity is to be assured by the Honorable Commission through its own review and verification of MPPCL's generation costs.

More importantly, competitors of MPPCL, should they obtain the information in Annex "BB" and "QQ" may gain undue advantage to the prejudice of MPPCL.

- Joint Applicants hereby submit one (1) copy of the confidential documents in a sealed envelope, with the envelope and each page of the document stamped with the word "Confidential".
- Further, Joint Applicants would like to implore the discerning wisdom of the Honorable Commission to include in its issuance for this purpose the "procedures for the handling or returning the confidential information, as appropriate, upon the close of the proceedings or at the end of the period provided in this Rule".
- This is guided by the fact that Joint Applicants will seek for the return of these sought to be declared confidential annexes after its utilization as evidence in this case and/or at the close of the proceedings hereof, so as to relieve the Honorable Commission of the burden of safekeeping the trade secrets of MPPCL enclosed in the subject annexes.
- ALLEGATIONS IN SUPPORT OF THE PRAYER FOR PROVISIONAL AUTHORITY OR INTERIM RELIEF**
- Under Rule 14, Section 1 of the ERC Revised Rules of Practice and Procedure, the Honorable Commission may issue a provisional authority or interim relief prior to a final decision, provided the facts and circumstances alleged warrant such remedy.
- The PELCO 1's current 27 MW baseload power supply contract with MPPCL will expire on September 25, 2022.
- With the current limitations on the available capacity in the Luzon Grid, PELCO 1 must immediately source its power from MPPCL to achieve energy security and to avoid potential power outages in PELCO 1's franchise area.
- The latest PELCO 1's DDP shows an increasing demand and energy requirements of its new and current customers in 2022-2031.
- Without the supply of MPPCL, PELCO 1 will be severely exposed to higher prices and volatile supply in the Wholesale Electricity Spot Market ("WESM"). Consequently, the supply of PELCO 1 and its generation charge will be adversely affected to the prejudice of its customers.
- As shown in the rate impact simulations, the subject PSA would provide the PELCO 1's customers up to Php 1.97/kWh average rate reduction in their monthly electricity bill in the last three (3) quarters of 2022. Likewise, the PELCO 1's customers may experience up to Php 1.04/kWh average rate reduction in their monthly electricity bills in 2023-2032.
- The implementation of the PSA with MPPCL will enable PELCO 1 to continuously provide its customers with stable, reliable, and long-term power supply at cheaper electricity rate. The contract energy rate in this PSA is much lower than the ERC-approved National Power Corporation – Time-of-Use (NPC-TOU) rates for Luzon grid.
- The grant of a provisional authority or interim relief will allow PELCO 1 to have a steady, continuous, guaranteed, and reliable source of electricity, which will immediately redound to the benefit of PELCO 1's customers in terms of providing a more affordable rate. To support the Motion for Provisional Authority, the Affidavit of Engr. Oliver S. Vergara, the PELCO 1's Corporate Planning Department Manager, is attached as Annex "TT" of the Application.

6 Section 1, Rule 4, Rules of Practice and Procedure of the Energy Regulatory Commission.
 7 G.R. No. 172835, December 13, 2007
 8 Soft copies of the same to be provided to this Honorable Commission are password protected.
 9 Rule 4, Section 2, paragraph 5 of the 2021 ERC Rules of Practice and Procedure.