

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

IN THE MATTER OF THE APPLICATION FOR APPROVAL OF THE CONTRACT FOR THE SUPPLY OF ELECTRIC ENERGY IN THE MINDANAO GRID WITH FIRST BUKIDNON ELECTRIC COOPERATIVE, INC., WITH PRAYER FOR ISSUANCE OF PROVISIONAL AUTHORITY

ERC CASE NO. 2022-029 RC

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION,

Promulgated:
May 16, 2022

Applicant.

NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 22 April 2022, Power Sector Assets and Liabilities Management Corporation (PSALM) filed an Application dated 18 January 2022, seeking the Commission's approval of its Contract for the Supply of Electric Energy (CSEE) in the Mindanao Grid with First Bukidnon Electric Cooperative, Inc. (FIBECO), with prayer for issuance of provisional authority.

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

- This is an Application for the approval (the "Application") of the terms and conditions of the Contract for the Supply of Electric Energy ("CSEE") in the Mindanao Grid entered into by and between PSALM and First Bukidnon Electric Cooperative, Inc. ("FIBECO") pursuant to Section 67² of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 ("EPIRA") and Section 5.3 Article III of the Energy Regulatory Commission's ("ERC") Guidelines for the Recovery of Costs for the Generation Component of the Distribution Utilities' Rate.
- 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.
- Pursuant to Section 49 of the EPIRA and the National Power Corporation's ("NPC") letter to PSALM dated 11 May 2009 ("NPC Assignment Letter"), 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 "Power Supply Contracts"). The NPC Assignment Letter is hereto attached as Annex "A."
- 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 Assignment Letter. Thus, this instant application by PSALM.
- The PSALM-FIBECO CSEE was 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 later on amended by the ERC in its Resolution No. 15, Series of 2005.
- In ERC Resolution No. 33, Series of 2006, entitled "Resolution Clarifying the Purpose of the Adoption of the Transition Supply Contract ("TSC") Template," the ERC clarified that the TSC Template should merely serve as a guide for Distribution Utilities ("DUs") and NPC and should not be construed as the contract contemplated under Section 67 of the EPIRA.
- PSALM filed similar applications for the approval of the terms and conditions of CSEEs and/or Letters of Agreement ("LOA") of the DUs located in the Mindanao Grid, which were subsequently approved by this Honorable Commission on the following dates:

Date Filed	Docket Number	Type of Contract	Date of Decision
15 March 2011	2011-038 RC	CSEE and LOA	24 January 2012
19 September 2011	2011-128 RC	CSEE	25 February 2013
07 October 2011	2011-139 RC	CSEE	25 February 2013
20 January 2012	2012-007 RC	CSEE	25 February 2013
01 April 2013	2013-055 RC	CSEE	09 December 2013
02 December 2013	2013-218 RC	CSEE and LOA	20 June 2017
02 December 2014	2014-174 RC	CSEE and LOA	Deliberated and approved during this Honorable Commission's meeting on 16 August 2016 ⁴
04 November 2016	2016-186 RC	CSEE and LOA	24 October 2017
27 July 2017	2017-067 RC	LOA	20 January 2021

- On the other hand, PSALM filed applications for the approval of duly executed and negotiated CSEEs and LOAs in the Mindanao Grid, which were docketed by this Honorable Commission as follows:

Date Filed	Docket Number	Type of Contract
08 June 2018	ERC Case No. 2018-054 RC	CSEE
06 July 2020	ERC Case No. 2020-016 RC	LOA
05 November 2021	ERC Case No. 2021-088 RC	CSEE
24 December 2021	ERC Case No. 2021-107 RC	CSEE

- The applications mentioned in the immediately preceding paragraph are pending resolution before this Honorable Commission.

THE PSALM-FIBECO CSEE

- Pursuant to Section 67 of the EPIRA and 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 CSEE duly negotiated with FIBECO.

A copy of the PSALM-FIBECO CSEE is attached hereto as Annex "B".

- Said CSEE was executed based on the ERC-approved template under ERC Resolution No. 08, Series of 2005, as amended by Resolution No.15, Series of 2005. Likewise, the CSEE 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 Application in ERC Case No. 2013-055 RC and subsequent applications.

- The substantial revisions made to the PSALM-FIBECO CSEE are found in (i) Annex I which reflects the Contracted Energy and the corresponding Equivalent Demand; and (ii) amendment of Section 3.1. on the provision on Contract Duration.

Salient Provisions of the PSALM-FIBECO CSEE

- The Contract Duration of the PSALM-FIBECO CSEE is from 26 February 2021 to 25 December 2021.

- The PSALM-FIBECO CSEE 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 as reflected in Annex Ia. 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.

- 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 tire 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 AMOUNT**

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, which is attached as Annex II, 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 basic energy charge 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 at the Wholesale Electricity Spot Market 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, xxxc.

(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 (*sic*) 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: ...⁵

(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 prevent 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.

(xv) **EFFECTIVITY**

9.20 This Agreement shall be executed in counterparts and shall be effective when at least one counterpart shall have been executed by one of the parties herein, and each set of counterparts shall constitute one single and binding agreement.

- A summary of the Contracted Energy, Equivalent Demand, and Load Factor of the PSALM-FIBECO CSEE is attached hereto as Annex "C."

- Further, in compliance with Section 2, Rule 6 (Pre-Filing Requirements) of the ERC Resolution No. 01, Series of 2021,⁶ a copy of the instant Application (including Annexes) was furnished to the offices of the City Mayor and the Sangguniang Panlungsod of Quezon City (see Annexes "D" and series hereof). The Application (excluding Annexes) was also published in a newspaper of general circulation (see Annexes "E" and series hereof).

PSALM is exempted from joining the Competitive Selection Process ("CSP")

- This Honorable Commission recognized that PSALM is exempted from joining the mandatory CSP in the procurement of power supply. In a letter dated 20 September 2016, this Honorable Commission said that PSALM need not participate in the CSP due to the nature of its operations.

A copy of the Honorable Commission's letter dated 20 September 2016 is attached hereto as Annex "F."

- This Honorable Commission also recognized PSALM's exemption from joining the CSP in its Decisions in ERC Case No. 2016- 186 RC⁷ and ERC Case No. 2019-040 RC.⁸ Moreover, in its Decision in ERC Case No. 2019-040 RC, this Honorable Commission referred to Section 2 of the Department of Energy's Department Circular No. 2018-02-0003⁹ to further justify PSALM's exemption from joining the CSP.

ALLEGATIONS IN SUPPORT OF THE ISSUANCE OF PROVISIONAL AUTHORITY

- PSALM acknowledges that the continued operation of the DUs is indispensable to the economic efficiency of the franchise area they service, not to mention the ripple effect of that efficiency on the economic growth of the entire country. In order for these DUs to continue lawfully drawing electricity from the grid, it is imperative that they enter into agreement/s with PSALM as Supplier for the supply of electricity, through a contract of sale for electricity, hence the respective CSEE.

- A grant of Provisional Authority ("PA") to execute the PSALM-FIBECO CSEE will ultimately redound to the benefit of end consumers.

- Attached as Annex "G" is the Judicial Affidavit of Engr. James Marvin A. Mamarado, the Acting Department Manager of the Electricity Trading Department under PSALM's Privatization and Asset Management Group, attesting to the truth of the above matters.

- Pursuant to the ERC Rules of Practice and Procedure, this Honorable Commission may exercise its discretion by granting a PA or an Interim Relief prior to a final decision.

- It is understood that the PA or Interim Relief sought by PSALM, which may be granted by this Honorable Commission, shall be subject to adjustments and other conditions that this Honorable Commission may impose after its hearing and final determination.

PRAYER

WHEREFORE, PSALM most respectfully prays that this Honorable Commission APPROVES the duly negotiated CSEE with FIBECO. It is likewise prayed that a Provisional Authority BE ISSUED authorizing PSALM to implement the subject CSEE with FIBECO.

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

Quezon City for Pasig City, 18 January 2022.

The Commission hereby sets the instant Application for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on the following dates and online platform for the conduct thereof, pursuant to Resolution 09, Series of 2020¹⁰ dated 24 September 2020 and Resolution No. 01, Series of 2021 dated 17 December 2020 (ERC Revised Rules of Practice and Procedure):¹¹

Date	Platform	Activity
23 June 2022 (Thursday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Teams	Determination of compliance with the jurisdictional requirements and expository presentation
30 June 2022 (Thursday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Teams	Pre-trial Conference and presentation of evidence

Any interested stakeholder may submit its comments and/or clarifications at least one (1) calendar day prior to the scheduled virtual hearing, via electronic mail (e-mail) at docket@erc.ph, copy furnish the Legal Service through legal@erc.ph. The Commission shall give priority to the stakeholders who have duly submitted their respective comments and/or clarifications, to discuss the same and propound questions during the expository presentation.

Moreover, all persons who have an interest in the subject matter of the instant case may become a party by filing with the Commission via e-mail at docket@erc.ph, copy furnish the Legal Service through legal@erc.ph, a verified Petition to Intervene at least five (5) calendar days prior to the date of the initial virtual hearing and subject to the requirements under Rule 9 of the ERC Revised Rules of Practice and Procedure, indicating therein the docket number and title of the case and stating the following:

- The petitioner's name, mailing address, and e-mail address;
- 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
- A statement of the relief desired.

Likewise, all other persons who may want their views known to the Commission with respect to the subject matter of the case may file through e-mail at docket@erc.ph, copy furnish the Legal Service through legal@erc.ph, their Opposition or Comment thereon at least five (5) calendar days prior to the initial virtual hearing and subject to the requirements under Rule 9 of the ERC Revised Rules of Practice and Procedure. No particular form of Opposition or Comment is required, but the document, letter, or writing should contain the following:

- The name, mailing address, and e-mail address of such person;
- A concise statement of the Opposition or Comment; and
- The grounds relied upon.

Any of the persons mentioned in the preceding paragraphs may access the copy of the Application on the Commission's official website at www.erc.gov.ph.

Finally, all interested persons may be allowed to join the scheduled initial virtual hearing by providing the Commission, thru legal.virtualhearings@erc.ph, with their respective e-mail addresses and indicating therein the case number of the instant Application. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearing.

WITNESS, the Honorable Commissioners **ALEXIS G. LUMBATAN, CATHERINE P. MACEDA, FLORESINDA M. BALDO-DIGAL, and MARKO ROMEO L. FUENTES,** Energy Regulatory Commission, this 11th day of May 2022 in Pasig City.

AGNES VST DE VANADERA
Chairperson and CEO

[Signature]
LS/CNR/ISP/MCCG



¹ Hereinafter referred to as "PSALM-FIBECO CSEE."
² Section 67, NPC Offer of Transition Supply Contracts. - Within six (6) months from the effectivity of this Act, NPC shall file with the ERC for its approval a transition supply contract duly negotiated with the distribution utilities containing the terms and conditions of supply and a corresponding schedule of rates, consistent with the provisions hereof, including adjustments and/or indexation formulas which shall apply to the term of such contracts.
³ Section 5, Filing and Approval of an Executed TSC- NPC shall file with the ERC, for its approval, all TSCs duly negotiated and executed with any Distribution Utility.
⁴ See page 13 of the Decision dated 24 October 2017 in ERC Case No. 2016-186 RC where this Honorable Commission said that the application in ERC Case No. 2014- 175 RC was "Deliberated and approved during the Commission's meeting on 16 August 2016."
⁵ Please see the detailed list of terms and conditions under 6.17, 110 6.17.12 of the PSALM-FIBECO CSEE.
⁶ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission. (sic)
⁷ Dated 24 October 2017.
⁸ Dated 21 July 2021.
⁹ Entitled "Adopting and Prescribing the Policy for the Competitive Selection Process in the Procurement By the Distribution Utilities of Power Supply Agreement for (sic) the Captive Market."
¹⁰ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.
¹¹ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.
 B.W. June 2 & 9, 2022