

15. GUIMELCO previously executed a CSEE with PSALM dated 06 September 2021 covering the period from 26 April 2021 to 25 April 2022 (the "PSALM-GUIMELCO CSEE"). The PSALM-GUIMELCO CSEE was submitted for approval to the Honorable Commission in ERC Case No. 2022-004 RC.⁷

16. In a letter dated 04 March 2022, GUIMELCO requested for a three (3) month extension of its CSEE from 26 April 2022 to 25 July 2022,⁸ which PSALM was amenable to. Hence, the parties executed the PSALM-GUIMELCO LOA.

The PSALM-GUIMELCO LOA and GUIMELCO's letter dated 04 March 2022 are attached hereto as Annexes "C" and "C-1," respectively.

17. The PSALM-GUIMELCO LOA amended Section 3.1 on Contract Duration of the PSALM-GUIMELCO CSEE. Further, the provisions of the PSALM-GUIMELCO CSEE is hereby incorporated by reference to the PSALM-GUIMELCO LOA, and the terms and conditions not otherwise affected by the above-mentioned amendment shall remain valid and effective.

18. Summaries of the Contracted Energy, Equivalent Demand, and computation of Load Factor of the PSALM-SAMELCO I CSEE and PSALM-GUIMELCO LOA are attached hereto as Annexes "D" and "D-1," respectively.

19. Further, in compliance with Section 2, Rule 6 (Pre-Filing Requirements) of the ERC Resolution No. 01, Series of 2021 (the "ERC Rules of Practice and Procedure"),⁹ 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 "E" and series hereof). The Application (excluding Annexes) was also published in a newspaper of general circulation (see Annexes "F" and series hereof).

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

20. 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 "G."

21. This Honorable Commission also recognized PSALM's exemption from joining the CSP in its Decisions in ERC Case No. 2016-186 RC¹⁰ and ERC Case No. 2019-040 RC.¹¹ 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. 2018-02-0003¹² to further justify PSALM's exemption from joining the CSP.

ALLEGATIONS IN SUPPORT OF THE ISSUANCE OF PROVISIONAL AUTHORITY

22. PSALM acknowledges that the continued operation of the DUs subject of this Application 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 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 and LOA.

23. A grant of Provisional Authority ("PA") to execute the PSALM-SAMELCO I CSEE as well as the PSALM-GUIMELCO LOA will ultimately redound to the benefit of end-users/consumers.

24. The Judicial Affidavit of Engr. James Marvin A. Mamaradlo, the Corporate Staff Officer B of the Electricity Trading Department under PSALM's Privatization and Asset Management Group, attesting to the truth of the above matters is attached as Annex "H" hereto.

25. 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.

26. It is understood that the PA or Interim Relief sought by PSALM shall be subject to adjustments and other conditions that the Honorable Commission may impose.

PRAYER

WHEREFORE, PSALM most respectfully prays that this Honorable Commission APPROVE the Contract for the Supply of Electric Energy between PSALM and SAMELCO I and the Letter of Agreement between PSALM and GUIMELCO. It is likewise prayed that the Honorable Commission ISSUE a Provisional Authority authorizing PSALM to implement the said CSEE and LOA.

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

Quezon City for Pasig City, 01 August 2022.

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION

24th Floor, Vertis North Corporate Center 1, Astra corner Lux Drives, Vertis North, North Avenue, 1105 Quezon City, Philippines. Telefax No. (+632) 82484853
Email address: mardelacruz@psalm.gov.ph

MARIA BELEN P. MONTES-NERA
Vice President and General Counsel
Roll of Attorneys No. 37737

IBP Lifetime No. 03755 / Quezon Province
MCLE Compliance No. VI-0027933 / 07.09.19
Email address: mbmnera@psalm.gov.ph

MARIA ILYN G. GERONIMO-ALBITO
Corporate Legal Counsel
Roll of Attorneys No. 58287
IBP O.R. No. 178998 / 01.05.22 / RSM Chapter
MCLE Compliance No. VII-0019151 / 04.14.2025
Email address: migalbito@psalm.gov.ph



EMIL S. CUYUGAN
Corporate Attorney

Roll of Attorneys No. 67604
IBP Lifetime No. 038717 / 04.04.2018 / Makati City
MCLE Compliance No. VII-0020656 / 06.06.2022
Email address: escuyugan@psalm.gov.ph



IVAN DARWIN G. ZAMORA
Corporate Attorney

Roll of Attorneys No. 72142
IBP O.R. No. 178996 / 01.05.2022 / RSM Chapter
MCLE Compliance No. VII-0020160 / 06.01.2022
Email address: idgzamora@psalm.gov.ph

VERIFICATION AND CERTIFICATION AGAINST NON-FORUM SHOPPING

I, IRENE JOY BESIDO-GARCIA, of legal age, married, with office address at the Power Sector Assets and Liabilities Management ("PSALM") Corporation, 24th Floor, Vertis North Corporate Center 1, Astra corner Lux Drives, North Avenue, Quezon City, after having been duly sworn to in accordance with law, do hereby depose and state for myself and for PSALM, that:

- I am the designated President and Chief Executive Officer of PSALM with authority to commence, initiate, sign and file the foregoing Application entitled, "In the Matter of the Application for Approval of the Contract for the Supply of Electric Energy with Samar I Electric Cooperative, Inc. and a Letter of Agreement with Guimaras Electric Cooperative, Inc., Located in the Visayas Grid, with Prayer for Issuance of Provisional Authority" pursuant to PSALM Board Resolution Nos. 2022-0323-01, 2018-0525-01, and 04-38, copies of which are attached as Annexes "A" to "C," respectively.
- I have read the Application and the allegations therein are true and correct based on my personal knowledge or the authentic records available to PSALM;
- The Application is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- The factual allegations in the Application have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery;
- PSALM submitted its Contract for the Supply of Electric Energy with the Guimaras Electric Cooperative, Inc. dated 06 September 2021 for the Energy Regulatory Commission's approval in ERC Case No. 2022-004 RC;
- Aside from the above, I or PSALM have not commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals or any court, tribunal, or quasi-judicial agency and, to the best of my knowledge, no such other action or claim is pending therein; and
- If I or PSALM should hereinafter learn that the same or a similar action or claim has been filed or is pending in the Supreme Court, the Court of Appeals or any court, tribunal, or quasi-judicial agency, I shall report the said fact within five (5) calendar days from discovery thereof to the Honorable Commission.

IN WITNESS WHEREOF, I have hereunto affixed my signature this day of SEP 21 2022 at Quezon City, Metro Manila.

IRENE JOY BESIDO-GARCIA
Affiant

SUBSCRIBED and SWORN TO before me this day of SEP 21 2022 with affiant IRENE JOY BESIDO-GARCIA having presented to me her Philippine Passport I.D. No. P0087701B, issued at DFA Manila on 03 January 2019, valid until 02 January 2029, as competent and reliable evidence of his identity.

Doc. No. 10;
Page No. 31;
Book No. XXIII;
Series of 2022.

ATTY. TOMAS B. BAGA, JR.
NOTARY PUBLIC
UNTIL DECEMBER 31, 2023
ADM. NO. NP-148 (2022-2023)
IBP NO. 185982 for 2022 / PASIG CITY
PTR NO. CP 1497233 / 02-10-2022 / COT. CITY
MCLE NO. VII-0019901 / 05-04-2022 / PASIG CITY
RGH BLDG. TIMOG COR. PANAY AVE. Q.C.

¹ Hereinafter referred to as the "PSALM-SAMELCO I CSEE."
² Hereinafter referred to as the "PSALM-GUIMELCO LOA."
³ As indicated in SAMELCO I's 01 February 2022 letter:

We refer to the Contract for the Supply of Electric Energy ("CSEE") by and between Samar I Electric Cooperative, Inc. ("SAMELCO I") and Power Sector Assets & Liabilities Management Corporation ("PSALM"), effective 26 December 2020 to 25 December 2021.

Pursuant to the provision of the CSEE, we would like to request for an extension in the Equivalent Demand and Contracted Energy for the following period as follows below:

1. Extension of Contract February to July 2022 of available capacity during off peak (01H-08H and 19H-24H) intervals

xxx

2. Extension of Contract August 2622 to July 2023

⁴ Although the PPA expired on 24 July 2022, PSALM offered a CSEE to SAMELCO I until 25 July 2022 because the reckoning period of PSALM's billing cycle, which follows the Revised OATS Rules, starts on the 26th of the month and ends on the 25th of the following month. On 25 July 2022, PSALM will allocate zero (0) contracted energies for SAMELCO I.

⁵ Please see 6.10.a. to 6.10.h of the PSALM-SAMELCO I CSEE.

⁶ Please see the detailed list of terms and conditions under 6.17.1 to 6.17.12 of the PSALM-SAMELCO I CSEE.

⁷ The PSALM-GUIMELCO CSEE is Annex "B" of the Application filed under ERC Case No. 2022-004 RC.

⁸ Although the PPA expired on 24 July 2022, the PSALM-GUIMELCO LOA was contracted until 25 July 2022 because the reckoning period of PSALM's billing cycle, which follows the Revised OATS Rules, starts on the 26th of the month and ends on the 25th of the following month. On 25 July 2022, PSALM will allocate zero (0) contracted energies for GUIMELCO.

⁹ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

¹⁰ Dated 24 October 2017.

¹¹ Dated 21 July 2021.

¹² Entitled "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."

SEC sets rules on arbitration within firms

THE SECURITIES and Exchange Commission (SEC) has issued guidelines that will allow corporations to resolve intra-corporate disputes through arbitration without going to court.

"The commission on September 19 issued SEC Memorandum Circular No. 8, Series of 2022, which provides for the guidelines on arbitration of intra-corporate disputes for corporations," SEC said in a press release on Thursday.

"The guidelines operationalize Section 181 of Republic Act No. 11232, or the Revised Corporation Code of the Philippines (RCC), which states that an arbitration agreement may be provided in the articles of incorporation or by-laws of a corporation," SEC added.

Section 181 of the RCC provides that an arbitration agreement may be provided in the articles of incorporation or by-laws of a corporation.

The guidelines provide the minimum provisions of the arbitration agreement that a corporation may execute, the place of arbitration, the procedure for the appointment of arbitrators, the composition and powers of the arbitral tribunal, and disclosure requirements, among others.

The rules define arbitration as a voluntary dispute resolution process in which arbitrators, appointed or in accordance with the rules, resolve a dispute by rendering an award.

According to the guidelines, a domestic corporation may provide an arbitration agreement in its articles of incorporation or by-laws or in a separate agreement.

The agreement must state the number of arbitrators, the designated independent third party, the procedure for the appointment of the arbitrator or arbitrators, and the period within which they should be appointed.

The guidelines state that "disputes that involve criminal offenses and interests of third parties shall be excluded from arbitration."

The SEC said that when an intra-corporate dispute is filed with a regional trial court despite the adoption of an arbitration agreement, "the court shall act in accordance with the rules of pro-

cedure that the Supreme Court may promulgate to implement Section 181 of the RCC."

The place of arbitration is presumed to be in the Philippines unless stated otherwise or under a relevant law if it is outside the country.

"Prior to arbitration, parties must comply with alternative forms of dispute resolution, such as negotiation or mediation, as prescribed under the agreement," it said.

The arbitration will proceed after a designated independent party has appointed arbitrators. However, the SEC may appoint should the parties fail to appoint the arbitrators as specified in the arbitration agreement.

The guidelines provide that the arbitrators must be accredited by the Office for Alternative Dispute Resolution under the Department of Justice or the SEC or by organizations accredited by any of the two.

"A person who has been approached for his or her possible appointment as an arbitrator shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence to the case," the SEC rules said.

However, arbitrators may be challenged should there be doubts about their impartiality or independence.

The arbitral tribunal has the power to rule on its own jurisdiction and arbitration agreement and has the power to grant the necessary interim measures "to ensure enforcement of the award, prevent a miscarriage of justice, or otherwise protect the rights of the parties."

"Interim measures include preliminary injunction directed against a party to arbitration and preliminary attachment against property or garnishment of funds in the custody of a bank or third person, among others," the SEC added.

Under Section 181 of the RCC, the final arbitral award is considered a commercial arbitration award and will be executed in accordance with the rules of procedure promulgated by the Supreme Court. — **Justine Irish D. Tabile**

CTA affirms dismissal of firm's appeal on wealth-sharing case

THE COURT of Tax Appeals (CTA) has affirmed its denial of CE Casecan Water and Energy Co., Inc.'s appeal to cancel its supposed national wealth share worth P183.26 million in connection with the development of a multi-purpose resource delivery project from 2002 to 2008.

In a 12-page decision dated Sept. 23 and made public on Sept. 28, the CTA full court ruled it did not have jurisdiction to hear the case.

"Although the original case heard in the lower court seems to pertain to the validity of an assessment, a simple perusal of the aforesaid assessment itself disclosed that it does not involve a tax dispute," according to the ruling penned by Associate Justice Maria Belen M. Ringpis-Liban.

Under the CTA's rules, the tax court can exercise jurisdiction to review by appeal, the decisions, resolutions, or orders of lower courts in local tax cases.

The case stemmed from CE Casecan's agreement with the state-owned National Irrigation Administration that involves the development of an irrigation and power project in Pantabangan, Nueva Ecija and Alfonso Castañeda, Nueva Viscaya.

The CTA First Division ruled in 2020 that it did not have jurisdiction over the case since it did not involve a tax dispute.

In 2008, the treasurer of the Alfonso Castañeda municipality

issued an assessment letter that demanded P183.26 million from the firm, as part of its national wealth share for the development of the irrigation and water delivery facility.

The official added that appropriate judicial remedies would be pursued if the municipality's demand was not met. The dams that supplied the water were located in Alfonso Castañeda.

The project sought to "harness the full potential" of the Pantabangan Dam and divert about 801 million cubic meters of water from the Casecan and Taan rivers of Nueva Viscaya to the Pantabangan reservoir in Nueva Ecija, the CTA noted.

It would benefit several local government units as power plants would be located in two provinces.

Under the Local Government Code of 1991, the national wealth share comes from the proceeds from projects developed by government-owned or controlled corporations.

In 2017, a Nueva Viscaya trial court canceled the treasurer's assessment as it ruled CE Casecan is not a state-owned corporation.

"Accordingly, the court en banc shall no longer discuss the other issues raised by petitioner (CE Casecan) since the CTA has no jurisdiction over the subject matter of the case," said the tax court. — **John Victor D. Ordoñez**