Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pacific Center Building, San Miguel Avenue
Ortigas Center, Pasig City

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,

ERC CASE NO. ___________

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION,
Applicant.
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APPLICATION

Applicant **POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION** ("PSALM"), through the undersigned counsel and unto to this Honorable Commission, most respectfully states:

1. This is an Application for the approval of the terms and conditions of the Contract for the Supply of Electric Energy ("CSEE") entered into by PSALM with Samar I Electric Cooperative, Inc. ("SAMELCO I")[1] and a Letter of Agreement ("LOA") by PSALM with Guimaras Electric Cooperative, Inc. ("GUIMELCO")[2] pursuant to Section 67 of Republic Act No. 9136, otherwise known as the *Electric Power Industry Reform Act of 2001* ("EPIRA") and Section 5, Article III of the Energy Regulatory Commission's ("ERC") Guidelines for the Recovery of Costs for the Generation Component of the Distribution Utilities' Rate.

2. 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. Section 67 of the EPIRA required the National Power Corporation ("NPC") to file before this Honorable Commission its Transition Supply Contracts ("TSCs") or CSEEs duly negotiated with the Distribution Utilities ("DUs") containing the terms and conditions of NPC's energy supply and the corresponding schedule of rates, including adjustments and/or indexation formulas.

4. Notably, Section 49 of the same law created PSALM who took ownership of NPC's generation assets, liabilities, Independent Power Producer contracts, real estate, and all other disposable assets. Accordingly, NPC sent PSALM an Assignment Letter dated 11 May 2009.

A copy of the NPC Assignment Letter is attached hereto as **Annex "A."**

5. In view of such assignment, PSALM is now party to the said CSEEs and thus is the proper party to file the instant Application.

6. In order to facilitate the approval of CSEEs, the ERC issued Resolution No. 8, Series of 2005 dated 07 July 2005, which adopted a template for the CSEEs. On 09 August 2005, said template was later on amended by the ERC in its Resolution No. 15, Series of 2005 dated 09 August 2005.

7. 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 template should merely serve as a guide and should not be construed as the contract contemplated under Section 67 of the EPIRA.

The CSEE and LOA subject of this Application

8. The PSALM-SAMELCO I CSEE was executed based on the ERC-approved template under ERC Resolution No. 08, Series of 2005, as amended by ERC Resolution No. 15, Series of 2005. Likewise, the same CSEE incorporated the 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 and PSALM's subsequent CSEE applications for the Visayas Grid, including ERC Case No. 2019-040 RC.

9. The notable revisions made to the PSALM-SAMELCO I CSEE from the abovementioned template are found in (i) Annex I of the said CSEE, which reflects the Contracted Energy and the corresponding Equivalent Demand; and (ii) amendment of Section 3.1 on Contract Duration.

10. The power to be provided to SAMELCO I and GUIMELCO will be sourced from the Unified Leyte Geothermal Power Plant ("ULGPP").

Salient Provisions of the PSALM-SAMELCO I CSEE

11. SAMELCO I had a CSEE with PSALM which was submitted for the approval of the Honorable Commission under ERC Case No. 2019-040 RC. This CSEE expired on 21 December 2021 without being renewed.

12. In its 01 February 2022 letter, SAMELCO I requested for the extension[3] of its CSEE until 25 July 2023. PSALM is amenable to provide power to SAMELCO I; however, PSALM's Power Purchase Agreement ("PPA") with Energy Development Corporation for the ULGPP expired on 24 July 2022. Thus, in view of the expiration of the PPA for the ULGPP, PSALM can only offer a CSEE until 25 July 2022.[4] Also, since SAMELCO I's previous CSEE already expired, the parties entered into a new CSEE.

The PSALM-SAMELCO I CSEE and SAMELCO I's 01 February 2022 letter are attached hereto as **Annex "B" and "B-1,"** respectively.

13. The Contract Duration of the PSALM-SAMELCO I CSEE is from **26 March 2022 to 25 July 2022**.

14. The PSALM-SAMELCO I CSEE has the following salient provisions:

(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 1a. 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 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, performance bond or bank guarantee "callable on demand" issued by a financial institution, or any other forms of security such as but not limited to escrow account to be administered by a bank acceptable to PSALM. 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 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 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.

The latest PSALM's credit and collection policies duly approved by the PSALM Board is provided below, unless otherwise amended:[5]

(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: ...[6]

(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.

(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.