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 WITH PAMPANGA II ELECTRIC COOPERATIVE, INC. , WITH PRAYER FOR ISSUANCE OF PROVISIONAL AUTHORITY

ERC CASE NO. 2022-072 RC

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION,
Applicant.
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Promulgated:
October 12, 2022

NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 04 October 2022, Power Sector Assets and Liabilities Management Corporation (PSALM) filed an *Application* dated 26 August 2022, seeking the Commission's approval of its Contract for the Supply of Electric Energy (CSEE) with Pampanga II Electric Cooperative, Inc. (PELCO II), with prayer for the issuance of provisional authority.

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

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 Pampanga II Electric Cooperative, Inc. (PELCO II)[1] pursuant to Section 67 of Republic Act No. 9136, otherwise known as the *"Electric Power Industry Reform Act (EPIRA) of 2001"* 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 EPIRA 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 CSEE 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. 08, Series of 2005 issued on 07 July 2005, which adopted a template for the CSEEs. 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 TSC Template,"* the ERC clarified that the 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.

<u>PSALM's Pending PELCO II CSEE and Letter of Agreement Applications with the ERC</u>

8. On 30 September 2021, PSALM filed an application docketed as ERC Case No. 2021-080 RC for the approval of the duly executed and negotiated CSEE with PELCO II covering the period 26 May 2020 to 25 December 2020 and a Letter of Agreement (LOA) covering the period 26 December 2020 to 25 April 2021.

9. On 31 December 2021, PSALM filed an application docketed as ERC Case No. 2021-110 RC for the approval of the duly executed and negotiated LOAs with PELCO II covering the period 26 April 2021 to 25 July 2021 and 26 July 2021 to 25 October 2021.

10. These CSEE and LOA applications are pending resolution before this Honorable Commission.

<u>The PSALM-PELCO II CSEE subject of this Application</u>

11. On 23 March 2022, the PSALM Board of Directors approved the execution of the PSALM-PELCO II CSEE.

12. The PSALM-PELCO II 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 Application in ERC Case Nos. 2018-054 RC, 2020-030 RC and PSALM's subsequent CSEE applications.

13. The notable revisions made to the PSALM-PELCO II 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 as well as the computation of the load factor; and (ii) amendment of Section 3.1 on Contract Duration.

    The PSALM-PELCO II CSEE is attached hereto as Annex "B".

    Salient Provisions of the PSALM-PELCO II CSEE

14. The Contract Duration of the PSALM-PELCO CSEE is from 26 March 2022 to 25 December 2022.

15. The PSALM-PELCO II CSEE has the following salient provisions:

(i) SERVICE SPECIFICATIONS

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.

AVAILABILITY OF SUPPLY

4.2 PSALM shall supply the Contract Energy in accordance with good utility practice and in compliance with appropriate rules and regulations such as the Philippine Grid Code, and Open Access Transmission Service (OATS). Supply of energy shall be available except for interruption or reduction due to: a) causes beyond the control of PSALM despite the exercise of due care, including but not limited to the conditions stated in Section 4.1 of this Contract; b) transmission failure; c) maintenance to ensure system stability and safety reasons as may be provided by laws, rules or regulation. In case of shortage in the generation capacity of PSALM, CUSTOMER shall be informed of the deficiency and allocation of the available supply of electricity to the CUSTOMER which shall be proportionate to the contracted energy and equivalent demand as provided for in this Contract.

CONSUMPTION IN EXCESS OF CONTRACT ENERGY

4.3 Whenever available, in accordance with good utility practice, PSALM may, but shall not be obliged to provide electricity to CUSTOMER in excess of Contract Energy provided that CUSTOMER shall pay the appropriate charges as provided for in Section 6.1 of this Contract.

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.

(i) 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.

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.

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).

(ii) CHARGES AND ADJUSTMENTS

BASIC ENERGY CHARGE

6.1 The Basic Energy Charge (BEC) applied to the CUSTOMER's hourly energy consumption 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.

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.

SERVICE INTERRUPTION ADJUSTMENT

6.3 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 PSALM, even if CUSTOMER was at that time unable to take or consume electricity, the Contract Energy shall be adjusted taking into account the ratio of the number of hours that electric service was interrupted to the total number of hours in the billing period. The adjusted Contract Energy shall be used in the calculation of Minimum Charge.

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 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.

6.5 Should the supply of electricity be interrupted or curtailed to a level below the Contract Energy due to fault or lack of generation capacity of PSALM, the Contract Energy not taken due to CUSTOMER's fault or negligence or other causes affecting CUSTOMER's ability to take or consume electricity shall not entitle CUSTOMER to interruption adjustment.

MAINTENANCE SERVICE ADJUSTMENT

6.6 PELCO II 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, PELCO II must inform PSALM in writing thirty (30) days prior to the commencement of the scheduled maintenance.

FORM OF PAYMENT

6.7 Payment shall be made in the form of cash, fund transfer, checks subject to banks' policies on cut-off and number of clearing days, demand drafts or other cash equivalents. Bank charges shall be borne by the CUSTOMER.

PROMPT PAYMENT DISCOUNT

6.10 Subject to ERC's approval, the Prompt Payment Discount (PPD) shall be in accordance with 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:[2]

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 the claim.

6.12 Disputed bills shall be paid by CUSTOMER without deductions or offsets and PSALM shall evaluate the claim and adjust the billings in accordance with its findings. Disputed billing shall not be an excuse or ground for CUSTOMER to delay payment of succeeding billings or to unilaterally deduct any amount therefrom.

6.13 CUSTOMER and PSALM shall seek to resolve disputed billings. If the dispute cannot be resolved by the Parties, the matter shall be resolved as provided in Sections 9.9 and 9.10 provisions of this Contract.

6.14 The CUSTOMER shall be entitled to a refund of any overpayment plus interest equivalent to the actual interest earned from the date that the payment was made, if such demand is later found to be meritorious.

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 depositary 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:[3]

6.18 To evaluate the CUSTOMER's restructuring proposal, CUSTOMER shall be required to submit its Audited Financial Reports for past three (3) years, Applicable Restructuring Scheme, Statement of Accounts (SOA), Projected Financial Statements, Summary of Annual Collections Report from Distribution Utilities (DUs) for the past three (3) years, Rehabilitation Plan for the next five (5) years for the term of the restructuring period, whichever is longer, that will focus on adopting measures that will result to increase in collection efficiency and reduction of systems loss, as well as, measure to optimize operating costs and professionalize management and staff, etc., and other documents that will show the paying capacity of the customer and the implementation of the restructuring scheme.

ADJUSTMENT DUE TO INACCURATE METERS AND ERRONEOUS BILLINGS WITHIN A BILLING PERIOD.

6.19 In the event that a billing is found erroneous due to wrong reading, incorrect use of kWh meter multiplier, arithmetical mistakes, omissions or typographical error, PSALM shall send CUSTOMER a debit or credit memo to correct the error.

BILLING PROCEDURE FOR A RATE REVISION WITHIN A BILLING PERIOD

6.20 Should the effective date of a new and duly approved rate schedule fall within a billing period, two computation sheets shall be prepared. The first sheet shall be calculated by applying the old rate schedule to CUSTOMER's Billing Energy (as if the old rate schedule was in effect for the entire billing period), and then multiplying the resulting charges including any Billing Adjustments by the ratio of the number of days that the old rate schedule was effective during the billing period to the total number of days in the billing period. The second sheet, on the other hand, shall be calculated by applying the new rate schedule to CUSTOMER's Billing Energy (as if the new rate schedule was in effect for the entire billing period), and then multiplying the resulting charges including any Billing Adjustments by the ratio of the number of days that the new rate schedule was effective during the billing period to the total number of days in the billing period. These shall be consolidated into a single power bill.

DISCONNECTION OF POWER SERVICE

6.21 In addition to the above-stated penalty interest charges and without prejudice to its right under Section 9.11 of this Contract, PSALM shall have the right, subject to not less than seven (7) days advance written notice to CUSTOMER, to discontinue supplying electric services and to refuse to resume electric service for failure of CUSTOMER to post the required Security Deposit, for non-payment of bills, or if any amount including any accrued interest and other charges not necessarily limited to the foregoing, remains unpaid. Notwithstanding such discontinuance of electric service, CUSTOMER shall pay at least the Minimum charge based on the Contract Energy, and failure by CUSTOMER to make full payment within a period of six (6) months shall entitle PSALM to terminate the Contract without prejudice to the right of PSALM to recover unpaid bills and other penalties from CUSTOMER.

(iv) MISCELLANEOUS PROVISIONS

LIABILITIES

9.1 Except as expressly provided, PSALM shall not be liable for any damage suffered by CUSTOMER due to the failure of PSALM to supply electric energy to CUSTOMER in accordance with prescribed standards, except when such failure is caused by PSALM's bad faith, gross negligence or malicious intent. This provision, however, shall not affect the rights of CUSTOMER to applicable deduction in its electricity charges provided in this Contract.

FORCE MAJEURE

9.2 Force majeure is an extraordinary event which cannot be foreseen or which though foreseen, cannot be avoided. The event must render it impossible for a party to fulfill its obligation in a normal manner despite the exercise of due care. Force majeure shall not excuse either party from exercising due care to prevent it or minimize its effects. Force majeure includes a storm, typhoon, lightning, flood, earthquake, tsunami, fire, war, rebellion, insurrection, riot, naval or other blockade, labor disturbance, civil unrest, and other events, which are entirely beyond the control of either or both parties. A party shall not be excused from its failure to perform its obligations under this Contract even if the same is caused by force majeure except as provided in this Section and Sections 9.6 to 9.8.

9.3 Insolvency or business losses shall not be considered as an event of force majeure.

9.4 The affected party shall notify the other in writing of a force majeure situation. The other party shall have sixty (60) days to verify or deny in writing that such situation exists.

9.5 A verified event of force majeure, which prevents a party from supplying or taking electricity for at least six (6) months or agreed upon by both parties to prevent the supply or taking of electricity for a continuous period of at least six (6) months shall entitle either party to terminate this Contract. Buy-out shall not apply to such termination.

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.

9.7 Likewise, CUSTOMER shall have a maximum of seventy-two (72) hours from the time a force majeure event prevented it from fully taking its Contract Energy to resume taking electricity. CUSTOMER shall be entitled to interruption adjustment based on the actual number of hours that it was unable to receive electricity, should its consumption be curtailed below the levels of Contract Energy. The number of hours that CUSTOMER can claim for interruption adjustments is limited to a maximum of 72 hours per force majeure event. However, if both PSALM and CUSTOMER were simultaneously unable to supply and consume electricity by reason of Force Majeure, CUSTOMER shall be entitled to interruption adjustment.

9.8 The number of hours of interruptions or of failure to receive electricity caused by one force majeure event shall be cumulated.

SETTLEMENT OF DISPUTES

9.9 The Parties shall exert reasonable efforts to amicably settle all disputes arising in connection with this Contract, as a condition precedent to dispute resolution, which will be filed by either party with the ERC.

9.10 Any dispute arising in connection with this Contract, which exclusive jurisdiction has not been vested in the ERC or any appropriate government agency, shall be submitted to arbitration in the Philippines in accordance with Republic Act 876 and Republic Act 9285. No court action shall be initiated except as provided under the Philippine Arbitration Law. The proper court having jurisdiction over the place where PSALM 's principal office is located shall have exclusive jurisdiction over such court action.

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.

VALIDITY AND BINDING EFFECT

9.15 This Contract shall bind the Parties, their respective assigns, buyers, transferees, or successors-in-interest. If for any reason, competent courts must declare any provision of this Contract invalid during its effectivity, the other provisions hereof which are not affected thereby shall continue to be in full force and effect.

16. Further, in compliance with Section 2, Rule 6 (Pre-Filing Requirements) of the ERC Resolution No. 01, Series of 2021 (ERC Rules of Practice and Procedure)[4], 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 "C" and series hereof). The Application (excluding Annexes) was also published in a newspaper of general circulation (see Annexes "D" and series hereof).

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

17. 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 "E."