

ERC looks to High Court amid suspended power supply deal

THE Energy Regulatory Commission (ERC) is considering its legal options after the appellate court indefinitely suspended a power supply deal that the regulator wanted the contracting parties to honor at their previously agreed price.

"The Office of the Solicitor General (OSG) is still studying all available legal remedies, including possibly going to the Supreme Court (SC), among others. We defer to the advice of OSG on best legal recourse for ERC and the consumers," ERC Chairperson and Chief Executive Officer Monalisa C. Dimalanta said in a Viber message to *BusinessWorld* last week.

Ms. Dimalanta said the power supply agreement (PSA) between Manila Electric Co. (Meralco) and South Premiere Power Corp. (SPPC) will remain suspended until the Court of Appeals (CA) issues a final decision on the merits of the case.

The CA ruling is the latest development in the deal that power supplier SPPC and electricity distributor Meralco in May last year jointly asked the ERC to approve at a higher rate.

The petition filed by the contracting parties was supposed to prevent further losses to SPPC

to allow it to continue supplying power to Meralco.

SPPC affiliate San Miguel Energy Corp. (SMEC) and Meralco sought a similar rate increase in May last year before the ERC, which the regulator also rejected in September last year. SPPC and SMEC are subsidiaries of SMC Global Power Holdings Corp., the power arm of San Miguel Corp.

The ERC decision prompted SMC Global Power to elevate the cases to the appellate court in November last year.

In a statement last week, Meralco said the CA granted the writ of preliminary injunction sought by SPPC on its PSA with the power distributor.

"With the [writ of preliminary injunction], implementation of the PSA will remain suspended until such time that the Court resolves the petition for certiorari filed by SPPC," Meralco said.

The power distributor also noted that it would exhaust all measures and work with relevant industry stakeholders to mitigate the impact of the injunction to "ensure the continued delivery of stable and reliable power to its 7.6 million customers."

Ms. Dimalanta said: "We are seeking guidance of our counsel, OSG, on this latest resolution of the 13th Division of the CA that granted the permanent injunction in favor of SPPC, while the 16th Division earlier denied the injunction plea of SMEC."

As of last week, she said the regulatory body had not received a copy of the CA order, but she said, "the 13th Division ordered SPPC to post a P100 million bond to cover for any and all damages that may result from the [injunction] should the court later decide against SPPC."

SPPC's contract with Meralco was agreed upon in 2019 for a period of 10 years. It covers about 670 megawatts of capacity and is priced at P4.2455 per kilowatt-hour (kWh).

In August last year, SMC Global Power said its units SPPC and SMEC had incurred a combined loss of P15 billion. The rate increase was meant to recover part or P5 billion of the units' losses.

The company cited a "change in circumstance" when surging fuel costs breached the price range contemplated during the execution of the contracts with Meralco. However, the ERC de-

nied the petition, saying this had no basis as the PSA is a fixed-rate contract.

After the denial of its petition, SMC Global Power appealed the ERC decision by filing a petition for certiorari with the CA, which issued a temporary restraining order last month suspending the PSA with Meralco.

On Dec. 7, 2022, SMC Global Power's SPPC stopped supplying power to Meralco, prompting the electric utility to secure an emergency power supply agreement with Aboitiz Power Corp. (AboitizPower) at a rate of P5.96 per kWh from Dec. 15, 2022 until Jan. 25, 2023.

AboitizPower said it will not renew its deal with Meralco, forcing the latter to source more expensive power from the Wholesale Electricity Spot Market.

Meralco's controlling stakeholder, Beacon Electric Asset Holdings, Inc., is partly owned by PLDT Inc. Hastings Holdings, Inc., a unit of PLDT Beneficial Trust Fund subsidiary Media-Quest Holdings, Inc., has an interest in *BusinessWorld* through the Philippine Star Group, which it controls. — **Ashley Erika O. Jose**

ALLEGATIONS IN SUPPORT OF THE ISSUANCE OF PROVISIONAL AUTHORITY

20. 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.
21. A grant of Provisional Authority ("PA") to execute the PSALM-DASURECO and PSALM-ZAMCELCO CSEEs as well as the PSALM-SIARELCO LOA will ultimately redound to the benefit of end-users/consumers.
22. 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.
23. 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.
24. 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 PSALM-DASURECO and PSALM-ZAMCELCO Contracts for the Supply of Electric Energy as well as the PSALM-SIARELCO Letter of Agreement. It is likewise prayed that the Honorable Commission ISSUE a Provisional Authority authorizing PSALM to implement the said CSEEs and LOA.

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

The Commission has set the *Application* for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on the following dates and online platforms for the conduct thereof, pursuant to Resolution No. 09, Series of 2020¹ dated 24 September 2020, and Resolution No. 01, Series of 2021 dated 17 December 2020 (ERC Revised Rules of Practice and Procedure):²

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Date	Platform	Activity
24 February 2023 (Friday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Teams or Zoom Application	Determination of compliance with the jurisdictional requirements and expository presentation
03 March 2023 (Friday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Teams or Zoom Application	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 course of 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:

- 1) The petitioner's name, mailing address, and e-mail address;
- 2) 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
- 3) 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 likewise 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:

- 1) The name, mailing address, and e-mail address of such person;
- 2) A concise statement of the Opposition or Comment; and
- 3) 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 hearings 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 hearings.

WITNESS, the Honorable Commissioners³ CATHERINE P. MACEDA, and MARKO ROMEO L. FUENTES, Energy Regulatory Commission, this 6th day of January 2023 in Pasig City.

Monalisa C. Dimalanta
MONALISA C. DIMALANTA
Chairperson and CEO



¹ Hereinafter referred to as the "PSALM-DASURECO CSEE".
² Hereinafter referred to as the "PSALM-ZAMCELCO CSEE".
³ Hereinafter referred to as the "PSALM-SIARELCO LOA".
⁴ Please see 6.10.a. to 6.10.h of the PSALM-DASURECO CSEE.
⁵ Please see the detailed list of terms and conditions under 6.17.1 to 6.17.12 of the PSALM-DASURECO CSEE.
⁶ The PSALM-SIARELCO CSEE is Annex B-12 of the Application.
⁷ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.
⁸ Dated 24 October 2017.
⁹ Dated 21 July 2021.
¹⁰ 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".
¹¹ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.
¹² A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.
¹³ Commissioners Alexis M. Lumbatan and Floresinda G. Baldo-Digal were on leave on 06 January 2023.
B.W. February 6 & 13, 2023



Businessman, former trade chief Ongpin passes away at 86

FORMER commerce and industry minister Roberto "Bobby" V. Ongpin, one of the richest Filipinos, passed away peacefully at 86, one of his relatives said.

In a Facebook post, his nephew Rafael "Apa" Ongpin said that the billionaire businessman died in his sleep on the night of Feb. 4 on Balesin Island.

Bobby Ongpin was survived by his wife, four children and four grandchildren.

"His remains will be brought to Manila. The family will make an official announcement when wake details have been decided," the post read.

In 2022, Forbes Magazine named the former government official as the 23rd richest Fili-

pino with a net worth of P830 million as of Aug. 10, 2022.

He served as the minister of commerce and industry, now the Department of Trade and Industry, under President Ferdinand Marcos Sr.

He was the chairman and chief executive officer of listed mining company Atok-Big Wedge Co., Inc., Alphaland Corp. and Alphaland Balesin Island Club, Inc.

He was also the founder and the previous chairman of another listed company, PhilWeb Corp., which has interests in gaming and casinos.

He was a former director of San Miguel Corp., PAL Holdings, Inc. and Petron Corp., as said in his profile on Alphaland's website. — **Justine Irish D. Tabile**

SEC ties up with UP Law for policy making, fintech watch

THE Securities and Exchange Commission (SEC) will be tying up with the University of the Philippines Law Center (UPLC) to improve policy formulation and to better address the regulation of financial technology (fintech).

"At present, we at the SEC have been making use of laws and regulations tailored for traditional securities. Although these principles were laid down in the 1930s, they are considerably effective against cryptocurrency scams that are just run-off-the-mill Ponzi schemes," SEC Chairperson Emilio B. Aquino said in a statement.

The SEC is targeting to issue rules on cryptocurrencies and blockchain technology for the issuance of digital assets and the regulation of digital asset exchanges, said Mr. Aquino.

In the press release, the commission said it signed a memorandum of understanding with UPLC which will conduct joint research projects, capacity building and policy analysis, and resource sharing on fintech.

"Under the partnership, the UPLC will provide aid in the creation of a legal and regulatory framework to initially address issues surrounding cryptocurrencies, before focusing on other fintech products and their corresponding regulation," the SEC said.

Meanwhile, the SEC will provide resources to support the activities conducted by UPLC regarding cryptocurrencies and fintech. The partnership will also make UPLC as an official partner of the regulator in its initiatives.

"With this, the SEC and UPLC aim to further understand the evolving regulatory landscape surrounding fintech, for the formulation of new policies that may be applied in the Philippines," the SEC said.

In 2021, the commission established the PhilFiInnovation Office to better regulate the use of fintech. At present, it is drafting rules on digital asset exchanges to ensure that it is meeting the global standards on protection, market integrity and transparency. — **Justine Irish D. Tabile**

REITs, companies from growth sectors seen to lead this year's listings

INITIAL public offerings (IPOs) this year are seen to be dominated by companies serving consumers, entities in growth sectors, and real estate investment trusts (REITs), as the market further gains strength.

"We see IPOs for this year being dominated by companies in the growth sectors such as renewable energy, fintech, etc. and the consumer sector. We are also seeing more property companies pursuing REIT listings with interest rates expected to peak within the first half of the year," AP Securities, Inc. Equity Research Analyst Carlos Angelo O. Temporal said in a Viber message.

"In general, the IPOs will depend on market conditions. If we see the market to continue to gain strength, then we can expect more IPOs," COL Financial Group, Inc. First Vice-President April Lynn C. Lee-Tan said in a Viber message.

According to Ms. Lee-Tan, the companies' entry into the capital market will rely on stock market conditions. Companies are expected to list as the benchmark Philippine Stock Exchange index continues to go up.

In January, the Philippine Stock Exchange said it is targeting 14 IPOs this year, 11 of which are companies and REITs that will list on the main board and three on the small, medium and emerging board.

Meanwhile, Mr. Temporal said he expects more maiden listings by the second half of this year, with companies that deferred listing last year seen pushing through this year.

"Considering that macro conditions are expected to gradually normalize by the second half while reopening momentum remains intact and high interest rates expected to persist throughout the year, [the] second half is likely to provide an attractive window for IPOs," Mr. Temporal said.

"With that said, companies that were supposed to go pub-

lic last year are likely to push through with their plans this year and other companies that are looking to expand to ride on the country's economic recovery are likely to choose equity financing through IPOs over debt financing," he added.

Mr. Temporal said that the return of foreign inflows and the improvement in the market's liquidity in recent weeks are likely to entice more companies to go public.

Recently, tech retailer Upson International Corp., which deferred its listing last year, secured approval from the stock exchange on its P5.43-billion IPO.

The offering will allow Upson to sell up to 789.47 million primary common shares and up to 98.68 million secondary common shares, with an over-allotment option of up to 98.68 million at P5.50 each.

According to Upson, the gross primary proceeds of around P4.34 billion will be used to fund the expansion of its store network.

The company plans to open 250 new stores or an additional 25,000 square meters of retail space from 2023 to 2027.

According to Mr. Temporal, Upson's IPO is expected to strengthen the company's balance sheet and enable its "aggressive" expansion plan.

"While demand for electronic products, particularly personal computers, is expected to slow down from its pace during the pandemic, growth narrative for Upson remains alluring, backed by sustained momentum of Philippine reopening and its aforementioned expansion plan which could scale up significantly its market share further," Mr. Temporal said.

"It is also good that the company is open to acquisition opportunities as this should aid in increasing market share in a fragmented industry such as electronic retail," he added. — **Justine Irish D. Tabile**

