

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

IN THE MATTER OF THE APPLICATION FOR APPROVAL OF THE LETTERS OF AGREEMENT (LOAs) WITH COTABATO ELECTRIC COOPERATIVE, INC. (COTELCO), AND NORTHERN DAVAO ELECTRIC COOPERATIVE, INC. (NORDECO), LOCATED IN THE MINDANAO GRID, WITH PRAYER FOR ISSUANCE OF PROVISIONAL AUTHORITY,

ERC CASE NO. _____

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION (PSALM),
Applicant.

x-----x

APPLICATION

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

1. This is an Application for the approval of the terms and conditions of the Letters of Agreement ("LOAs") entered into by PSALM with Cotabato Electric Cooperative, Inc. ("COTELCO")¹ and Northern Davao Electric Cooperative, Inc. ("NORDECO")², respectively, 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 Contracts for the Supply of Electric Energy ("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 the party to the CSEEs, and thus filed 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. 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 LETTERS OF AGREEMENT
SUBJECT OF THIS APPLICATION

8. PSALM is filing the instant Application for the approval of the PSALM-COTELCO LOA dated 17 November 2022 and PSALM-NORDECO LOA dated 29 November 2022.

Background of the 17 November 2022
PSALM-COTELCO LOA

9. COTELCO previously executed a CSEE with PSALM (the "PSALM-COTELCO CSEE"), covering the period from 26 December 2020 to 25 December 2022.

10. On 24 December 2021, PSALM filed an application docketed as ERC Case No. 2021-107 RC for the approval of various CSEEs entered into by PSALM with DUs located in the Mindanao Grid, including the PSALM-COTELCO CSEE. Said application is pending resolution before this Honorable Commission.

11. In the letter dated 10 August 2022, COTELCO requested for the extension of PSALM-COTELCO CSEE for a period of two (2) years or until 25 December 2024. The request of COTELCO was granted by PSALM. Hence, the PSALM-COTELCO LOA was executed.

The PSALM-COTELCO LOA and COTELCO letter dated 10 August 2022 are attached hereto as Annexes "B" and "B-1", respectively.

12. The PSALM-COTELCO LOA amended both Section 3.1 (Contract Duration) and Annex I (Capacity Allocation for 2023-2024) of the PSALM-COTELCO CSEE. Further, it is understood that the PSALM-COTELCO LOA shall be an integral part of the PSALM-COTELCO CSEE, and the terms and conditions not otherwise affected by the above-mentioned amendment shall remain valid and effective.

13. Summaries of the corresponding Contracted Energy, Equivalent Demand, and computation of Load Factor are incorporated in the PSALM-COTELCO LOA.

Background of the 29 November 2022
PSALM-NORDECO LOA

14. NORDECO (formerly Davao del Norte Electric Cooperative, Inc. or "DANECO") previously executed a CSEE with PSALM (the "PSALM-DANECO/NORDECO CSEE"), covering the

period from 26 December 2020 to 25 December 2025. The PSALM-DANECO/NORDECO CSEE is one of the CSEEs included in the application filed by PSALM under ERC Case No. 2021-107 RC which is pending resolution before this Honorable Commission.

15. In the letter dated 25 October 2022, NORDECO requested for the increase in its Contracted Energy and Equivalent Demand under the PSALM-DANECO/NORDECO CSEE for the period 2023 to 2032. The request of NORDECO was granted by PSALM but only from 26 December 2022 until 25 December 2025 considering the expiration of the corporate life of PSALM. Hence, the PSALM-NORDECO LOA was executed.

The PSALM-NORDECO LOA and NORDECO letter dated 25 October 2022 are attached hereto as Annexes "C" and "C-1", respectively.

16. The PSALM-NORDECO LOA amended Annex I (Capacity Allocation for 2023-2025) of the PSALM-DANECO/NORDECO CSEE. Further, it is understood that the PSALM-NORDECO LOA shall be an integral part of the PSALM-DANECO/NORDECO CSEE, and the terms and conditions not otherwise affected by the above-mentioned amendment shall remain valid and effective.

17. Summaries of the corresponding Contracted Energy, Equivalent Demand, and computation of Load Factor are incorporated in the PSALM-NORDECO LOA.

PSALM's Exemption from Joining the
Competitive Selection Process ("CSP")

18. 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 "D".

19. This Honorable Commission also recognized PSALM's exemption from joining the CSP in its Decisions in ERC Case No. 2016-186 RC³ and ERC Case No. 2019-040 RC.⁴ Moreover, in its Decision in ERC Case No. 2019-040 RC, this Honorable Commission referred to Section 2 of the Department of Energy's ("DOE") Department Circular No. 2018-02-0003⁵ to further justify PSALM's exemption from joining the CSP.

20. In relation to Section 2.2.1.5 of the DOE Department Circular No. DC2021-09-0030⁶ relative to the provision of power supply by PSALM through bilateral contracts and submission of Certificate of Exemption ("COE") from the conduct of CSP, the DOE through its letter dated 07 March 2022, requested PSALM to include as one of its requirements in entering/renewing a CSEE, a letter from the DOE that the DU has a pending application/request for the issuance of a COE from the conduct of CSP.

Pursuant thereto, COTELCO and NORDECO submitted copies of their respective COEs to PSALM. The COEs of COTELCO and NORDECO are attached hereto as Annexes "E" and "F", respectively.

Compliance with the Honorable
Commission's Pre-Filing Requirements

21. In compliance with Section 2, Rule 6 (Pre-Filing Requirements) of the Honorable Commission's Resolution No. 01, Series of 2021 (the "ERC Revised Rules of Practice and Procedure"), a copy of the instant Application (including its Annexes) will be furnished to the offices of the City Mayor and the Sangguniang Panlungsod of Quezon City and be published (excluding its Annexes) in a newspaper of general circulation.

The proof of compliance with the Pre-Filing Requirements, particularly, the service to the Mayor and the Sangguniang Panlungsod of Quezon City as well as the publication of the instant Application, shall be attached to the instant Application as Annexes "G" and series, pursuant to Section 3, Rule 6 of the ERC Revised Rules of Practice and Procedure.

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 areas 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 for sale of electricity, hence the respective LOAs.

23. A grant of Provisional Authority ("PA") to execute the PSALM-COTELCO and PSALM-NORDECO LOAs will ultimately redound to the benefit of end-users/consumers.

24. The Affidavit of Engr. James Marvin A. Mamaradlo, the Corporate Staff Officer B and designated Officer-in-Charge 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 Revised 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, which may be granted by the Honorable Commission, shall be subject to adjustments and other conditions that the Honorable Commission may impose upon final evaluation of the Application.⁷

PRAYER


WHEREFORE, POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION ("PSALM") most respectfully prays that this Honorable Commission APPROVE its Letters of Agreement (LOAs) with COTABATO ELECTRIC COOPERATIVE, INC. ("COTELCO"), and NORTHERN DAVAO ELECTRIC COOPERATIVE, INC. ("NORDECO"). It is likewise prayed that the Honorable Commission ISSUE a Provisional Authority authorizing PSALM to implement the said LOAs.

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

Quezon City for Pasig City, 18 September 2023.

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

By:


MARIA ILYN C. GERONIMO-ALBITO
Acting Vice-President
Legal Group
Roll of Attorneys No. 58287
IBP O.R. No. 278696 / 01.09.23 / RSM Chapter
MCLE Compliance No. VII-0019151 / 04.14.2022
Email address: migalbito@psalm.gov.ph


GRACIELA MONA LUMANG-GUTIERREZ
Officer-in-Charge
Corporate Legal Department
Roll of Attorneys No. 42822
IBP O.R. No. 286631 / 01.12.2023 / Nueva Ecija
MCLE Compliance No. VII-0019154 / 05.26.2022
gmlgutierrez@psalm.gov.ph


REEVA SHAYNE P. VIADO
Corporate Attorney
Roll of Attorneys No. 70341
IBP O.R. No. 270757 / 05 January 2023 / Quezon City
MCLE Compliance No. VII-001729 / 04.14.2022
rspviado@psalm.gov.ph

Republic of the Philippines)
Quezon City) S.S.

VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING

I, DENNIS EDWARD A. DELA SERNA, of legal age, married, with office address at the Power Sector Assets and Liabilities Management 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 that:

- I am the President and Chief Executive Officer of the Power Sector Assets and Liabilities Management Corporation (PSALM) with authority to commence, initiate, sign and file the foregoing Application entitled, "*IN THE MATTER OF THE APPLICATION FOR APPROVAL OF THE LETTERS OF AGREEMENT (LOAs) WITH COTABATO ELECTRIC COOPERATIVE, INC. (COTELCO), AND NORTHERN DAVAO ELECTRIC COOPERATIVE, INC. (NORDECO), LOCATED IN THE MINDANAO GRID, WITH PRAYER FOR ISSUANCE OF PROVISIONAL AUTHORITY*", pursuant to PSALM Board Resolution No. 2023-0524-06 dated 24 May 2023, in relation to PSALM Board Resolution No. 04-38 dated 25 May 2004, copies of which are attached hereto as Annexes "A" and "B";
- 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;
- On 24 December 2021, PSALM filed an application with the Energy Regulatory Commission (ERC) docketed as ERC Case No. 2021-107 RC for the approval of various Contracts for the Supply of Electric Energy (CSEEs) entered into by PSALM with distribution utilities located in the Mindanao Grid, including the respective CSEEs of COTELCO and NORDECO with PSALM.
- Aside from the above application, 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) days from discovery thereof to the Honorable Commission.

IN WITNESS WHEREOF, I have hereunto affixed my signature this day of _____ at Quezon City, Metro Manila


SEP 18 2023


DENNIS EDWARD A. DELA SERNA
Affiant

SUBSCRIBED and SWORN TO before me this SEP 18 2023, with affiant DENNIS EDWARD A. DELA SERNA presenting to me his Philippine Passport I.D. No. P5991577A, issued at DFA Manila valid until 09 February 2028, known to me and to me known to be the same person who executed the foregoing Verification and Certification Against Forum Shopping.

NOTARY PUBLIC

Doc. No. 221;
Page No. 40;
Book No. XX;
Series of 2023.


ATTY. TOMAS B. BAGA, JR.
NOTARY PUBLIC
UNTIL DECEMBER 31, 2023
ROLL NO. 13003
ADM. NO. NP-148 (2022-2023)
IBP NO. 0289409 / 01-17-2023 / PASIG CITY
PTR NO. 2130125 / 01-16-2023 / CT. CITY
MCLE NO. VII-0019801 / 05-04-2022 / PASIG CITY
RSH BLDG. TIMOG COR. PANAY AVE. Q.C.

¹ Hereinafter referred to as the "PSALM-COTELCO LOA."

² Hereinafter referred to as the "PSALM-NORDECO LOA."

³ Dated 24 October 2017.

⁴ Dated 21 July 2021.

⁵ 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*".

⁶ Entitled "*Amending Certain Provisions of and Supplementing Department Circular No. 2018-02-0003 on the Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreement for the Captive Market*".

⁷ Section 4, Rule 14 of the ERC Revised Rules of Practice and Procedure.