

Republic of the Philippines ENERGY REGULATORY COMMISSION Pasig City

IN THE MATTER OF THE APPLICATION FOR APPROVAL OF EMERGENCY POWER SUPPLY AGREEMENT BETWEEN ZAMBOANGA CITY ELECTRIC COOPERATIVE, INC. (ZAMCELCO) AND MALITA POWER INC. (MPI) WITH PRAYER FOR CONFIDENTIAL TREATMENT OF INFORMATION

ERC CASE NO. 2023-146 RC

ZAMBOANGA CITY ELECTRIC COOPERATIVE, INC. (ZAMCELCO) AND MALITA POWER, INC. (MPI), Applicants.

Promulgated: January 05, 2024

NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 27 December 2023, Zamboanga City Electric Cooperative, Inc. (ZAMCELCO) and Malita Power, Inc. (MPI) filed a Joint Application dated 22 November 2023, seeking the Commission's approval of their Emergency Power Supply Agreement (EPSA), with prayer for confidential treatment of information.

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

- 1. Applicant ZAMCELCO is an electric cooperative duly organized and registered by virtue of P.D. No. 26, as amended, with principal office address at MCLL Highway, Putik, Zamboanga City, Philippines, represented in this instance by the President of the Board of Directors, Jeffrey Russ B. Taripe, General Manager Engr. Gannymede B. Tiu and Chief Management Officer Atty. Rommel S. Agan, all of legal age, with office address at MCLL Highway, Putik, Zamboanga City, Philippines, where ZAMCELCO may be served with notices and other processes of this Honorable Commission through its Counsel at the address indicated herein.

STATEMENT OF FACTS

- 5. On October 6, 2023, Applicant ZAMCELCO received a copy of the Order dated 01 March 2023 in the ERC Case No. 2016-094 RC, denying the Motion for Reconsideration (of the 11 September 2019 Order) dated 11 October 2019, filed by Applicants ZAMCELCO and San Miguel Power Consolidated Power Corporation (SMCPC), now MPI, seeking reconsideration of this Honorable Commission's Order dated 11 September 2019 which dismissed the Applicant's Joint Application for the Approval of the Power Supply Agreement ("PSA") dated March 14, 2016 (the "Order").

Sections 5 and 6 of the ERC CSP Resolution:

Section 5. Exceptions - Conduct of CSP shall not be required under the limited instances specified in Section 2.3 of the DOE CSP Policy, and subject to the compliance parameters in Appendix "A" (Compliance Parameters for CSP Exceptions).

All the instances in Appendix "A" are subject to the ERC's determination of the DU's compliance with its obligation to supply electricity in the least cost manner to its Captive Market, taking into consideration the quality, affordability, sustainability and reliability of the electric power supply.

Section 6. Emergency Power Supply Agreement- The DU may engage in negotiated procurement of an Emergency Power Supply Agreement (EPSA) under the circumstances contemplated in Section 2.3.5 of the DOE CSP Policy.

Section 2.3.5 of the DOE CSP Policy:

SECTION 2: COVERAGE AND EXEMPTIONS

2.3 In the following instances, the conduct of CSP shall not be required:

2.3.5 Negotiated procurement of Emergency Power Supply Agreement (EPSA) shall be filed with the ERC within thirty (30) calendar days from the occurrence of the force majeure/fortuitous events, without the need for any prior clearance or certification from the DOE and shall have a maximum and non-extendible period of one (1) year from its execution. The EPSA shall be immediately implemented to address the emergency, subject to conditions to be defined by the ERC. Provided, that the procurement of emergency power supply shall not be entitled to any form of subsidy; and xxx

- 8. Following the issuance of the Order and to ensure the continuous and reliable electricity supply of its customers, Applicant ZAMCELCO, in separate letters all dated October 11, 2023, formally notified this Honorable Commission, the DOE and the NEA of its intention to engage in the negotiated procurement of an emergency power supply agreement with qualified generators.

10. In response to the invitation letters sent by Applicant ZAMCELCO, three generation companies submitted their proposals, namely, Applicant MPI, GN Power Kauswagan, and Mindanao Energy Systems, Inc.

11. After careful evaluation and review of the offers submitted by the generation companies, Applicant ZAMCELCO deemed the proposal of Applicant MPI as the most advantageous and beneficial for its end consumers. Thereafter, the Applicants executed an Emergency Power Supply Agreement dated October 24, 2023 for the purchase of 85,000 kW power supply (the "EPSA").

12. The Applicants intend to immediately implement the EPSA beginning 12:01 am of October 26, 2023 as there is a need for ZAMCELCO's immediate supply of power due to the emergency nature of the unforeseen cessation of supply of power due to the Order. Furthermore, the absence of a firm power supply agreement will expose Applicant ZAMCELCO and ultimately its customers to the volatility of spot prices in the Wholesale Electricity Spot Market ("WESM").

13. The immediate execution and implementation of the EPSA are warranted under Section 6 of the ERC CSP Rules subject to compliance with the provisions thereof, which is quoted below for ease of reference:

Section 6. Emergency Power Supply Agreement xxx xxx xxx

The DU and the supplier of emergency power may immediately execute and implement the said EPSA provided the following conditions are present:

- (a) The cooperation period of such EPSA shall have a maximum and non-extendible period of one (1) year from its execution;
- (b) The interim rates to be charged under the EPSA shall be capped at the latest ERC-approved generation tariff specific for the plant, if available. Otherwise, it shall be capped at the latest ERC-approved generation tariff for the same technology. Such rates shall apply until the ERC issues its approval of the EPSA;
- (c) The DU shall within five (5) calendar days from the occurrence of the Force Majeure or Fortuitous Event, notify in writing the ERC and the DOE, as well as the NEA (in the case of ERCs) and the NPC (in case of the Off-Grid areas), of such Force Majeure or Fortuitous Event which will require the emergency power supply; and
- (d) The DU and the Captive Market Supplier shall jointly file with the ERC the application for approval of the said EPSA in accordance to with the timeline prescribed in Section 23 of this Guidelines.

14. Applicants come now to this Honorable Commission for the approval of the EPSA, in compliance with the implementing rules and regulations ("IRR") of the EPIRA and the rules and guidelines issued by the ERC.

SALIENT FEATURES OF THE EMERGENCY POWER SUPPLY AGREEMENT (EPSA) AND RELATED INFORMATION

- 15. The ZAMCELCO-MALITA's EPSA, a copy of which is attached as Annex "B" and made an integral part hereof, contains the following salient features:

ARTICLE 1: DEFINITION OF TERMS AND INTERPRETATION

CONTRACT CAPACITY (CC) means the capacity, expressed in Kilowatt (kW) that the BUYER may utilize and the SELLER to supply during each of the Billing Period within the Agreement Term

ARTICLE 2: TERM

2.1 This agreement shall be binding and effective between the parties on the date of the signing ("Execution Date") and the supply duration shall be up to a maximum period of one (1) year or twelve (12) Billing Periods from Supply Effective Date ("SED") unless earlier terminated xxx.

ARTICLE 3: ERC APPROVAL

ERC Approval. The Parties shall jointly file the application for the approval of the Agreement ("ERC Application") with the ERC. The Parties shall exert their best efforts to secure the ERC Approval of the Agreement within a reasonable time.

ARTICLE 5: SALE AND PURCHASE OF CONTRACT CAPACITY AND ASSOCIATED ENERGY

5.1 Contract Capacity and Associated Energy 5.1.1 Beginning SED, the SELLER shall make available to the BUYER, and the BUYER shall purchase from the SELLER the Contract Capacity as stated in Annex I. The quantities specified in Annex I shall not be changed by either Party except in cases provided for this Agreement.

5.1.2 The Contract Capacity and Associated Energy shall be delivered by the SELLER at the high voltage side of the main transformer of the Plant, as provided in Annex V, or from plants owned and/or operated by any of its affiliates, other electricity generators, including the WESM. This will be used for purposes of declaration of BCO's billing and settlement. The risk and risk of loss for the Contract Capacity and Associated Energy, such as but not limited to, Line Rental and other WESM Charges, shall be transferred to the BUYER at the high voltage side of the Plant's transformer.

5.2 Supply

5.2.1 SELLER shall have no obligation to supply more than the Contract Capacity as provided for in Annex I. The BUYER acknowledges that it is obligated to take and pay no less than the Associated Energy.

5.2.2 For Associated Energy, the BUYER shall submit to the SELLER, a month-ahead and week-ahead nomination translated into five (5) minute and daily schedule referred as the BCO in five (5) Days prior to the start of the next Billing Period, in accordance with the "Nomination Protocol" agreed by the Parties. The BUYER may submit revisions on the BCO schedule on day-ahead business. If the BUYER fails or is unable for any reason to submit such nominations, the SELLER shall use the BUYER's best available data for the same hour, day or week, and the BUYER shall be bound by this. In the event that the capability of the SELLER to deliver Contract Capacity or the capability of the BUYER to take the Contract Capacity are each affected by the occurrence of an Event of Force Majeure, the provisions in Article 11 (Force Majeure) shall apply.

ARTICLE 6: OUTAGES

During the term of this Agreement, the SELLER shall guarantee the supply of Contract Capacity and Associated Energy to the BUYER, even during the Scheduled and Unscheduled Outages of the Plant. For avoidance of doubt, an event of Force Majeure as defined in Article 11 shall not be considered as an Outage.

ARTICLE 15: CHANGE IN CIRCUMSTANCES

15.2 Change in circumstances shall include but not be limited to:

- a. Any change in the applicable laws, regulations, resolutions or ordinances, or their application and interpretation, in force or Execution Date.
- b. Amendments, modifications, repeal or revocation of approvals, licenses, permits, consents, registrations or exemptions in force on Execution Date.
- c. Any change in the operating environment of the Plant or in the requirements of the Grid which require modifications in the Plant or Plant operations.
- d. Any extraordinary change in the variables affecting the components of the Fixed Fees that were not contemplated by the Parties from receipt of the Notice of Invitation to submit an offer for an emergency supply by the SELLER up to the Execution Date of the Agreement.

GENERATION RATE IMPACT ANALYSIS

An analysis was conducted to determine the impact of the implementation of the EPSA on Applicant ZAMCELCO's generation cost while taking into account Applicant ZAMCELCO's projected energy, available contracted supply, and supply from the WESM for the previous September 2023 billing data and the projected energy requirement over the next twelve months. Table 1 below, compares the actual generation cost from Applicant MPI to the new proposed MPI rate under EPSA with different utilization factors. On the other hand, Table 2 below, shows the blended generation cost using the September 2023 billing data and compares the actual generation mix versus without the supply coming from Applicant MPI. A copy of the said analysis is attached hereto as Annex "D".

As shown by the analysis, the procurement of supply from Applicant MPI under EPSA will result in a downward adjustment at 100% Capacity Utilization Factor (C.U.F) of the generation costs to be paid by Applicant ZAMCELCO's member-consumer owners (MCOs).

A summary of the said analysis is shown in the Tables 1 & 2 below:

Table 1.

Table 1: FIXED FUEL FEE COMPUTATION. A detailed table showing cost components for 2023 and October, including actual billing without load following, fuel charges, and O&M fees.

Table 2.

Table 2: BLENDED GENERATION RATE IMPACT. A table comparing generation rates with and without Applicant MPI supply, showing a significant cost reduction.

Notes and assumptions:

- 1. Actual data for the year 2023 is used for this simulation.
- 2. Only the Fixed Operating & Maintenance Fee (FOM), Fuel Fee (FF), Line rental were changed for this simulation.
- 3. The following rate for SMCPC/MPI Proposal was used in lieu of their offer relative to the EPSA.

Fixed O&M Fee, PhP/kW/month 3.1000 Fuel Fee, PhP/kWh 3.0770 See sheet "Fuel Fee".

OTHER RELATED DOCUMENTS

- 15. (sic) In further support of the instant application, Applicants most respectfully submit to the Honorable Commission the following documents:

Table with 2 columns: ANNEX and DOCUMENTS. Lists various documents including DU's Supply and Demand Scenario, Duly Signed Emergency PSA, and Board Resolution No. 122 Series of 2023.

REQUEST FOR CONFIDENTIAL TREATMENT OF INFORMATION

- 19. Applicant MPI respectfully requests that the information in the following documents marked as Annex "D-series" and "E" be treated as confidential in nature as these documents contain numbers, methodology, and calculations such as debt or equity ratio, capital costs, the weighted average cost of capital, and fuel cost that provide valuable information and insight on how Applicant MPI arrived at its power generation rate.

PRAYER

WHEREFORE, premises concerned, Applicants ZAMCELCO and MPI respectfully pray of this Honorable Commission of the following:

- a. For the issuance of an Order TREATING all information contained under Annexes "D-series" and "E" as CONFIDENTIAL, directing their non-disclosure to persons other than officers and staff of this Honorable Commission, continuously protecting the said information from public disclosure by maintain the same separate and apart from the records of this Joint Application, and ensuring that these are not divulged to unauthorized persons, and that the same will be returned to Applicant MPI, as applicable, pursuant to Rule 4 of the Revised ERC Rules of Practice and Procedure; and
- b. After hearing on the merits, render a Decision APPROVING the EPSA between Applicant ZAMCELCO and MPI.

Other reliefs, just and equitable, are likewise prayed for.

The Commission hereby sets the instant Joint Application for determination of compliance with the jurisdictional requirements, expository presentation, Pre-Trial Conference and presentation of evidence on the following dates and online platform for the conduct thereof, pursuant to Resolution No. 09, Series of 2020 and Resolution No. 01, Series of 2021 (ERC Revised Rules of Practice and Procedure):

Table with 3 columns: Date, Platform, Activity. Shows dates for virtual hearings on March 05 and March 12, 2024.

Accordingly, ZAMCELCO and MPI are hereby directed to host the virtual hearings at ZAMCELCO's principal office located at MCLL Highway, Putik, Zamboanga City, Philippines, as the designated venue for the conduct thereof, and ensure that the same is open to the public and the community quarantine guidelines are observed at all times. Moreover, Applicants shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

Any interested stakeholder may submit its comments and/or clarifications at least one (1) calendar day prior to the scheduled initial virtual hearing, via electronic mail (e-mail) at docket@erc.ph, and 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, and copy furnishing 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. The verified Petition to Intervene must follow the requirements under Rule 9 of the ERC Revised Rules of Practice and Procedure, indicate therein the docket number and title of the case, and state 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 file through e-mail at docket@erc.ph, and 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. Rule 9 of the ERC Revised Rules of Practice and Procedure shall govern. 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.

All interested parties filing their Petition to Intervene, Opposition or Comment are required to submit the hard copies thereof through personal service, registered mail or ordinary mail/private courier, within five (5) working days from the date that the same were electronically submitted, as reflected in the acknowledgment receipt e-mail sent by the Commission.

Any of the persons mentioned in the preceding paragraphs may access the copy of the Joint 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, their respective e-mail addresses and indicating therein the case number of the instant Joint 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 Commissioners ALEXIS M. LUMBATAN, CATHERINE P. MACEDA, FLORESINDA G. BALDO-DIGAL, and MARKO ROMEO L. FUENTES, Energy Regulatory Commission, this 5th day of January 2024 in Pasig City.

Medialanta MONALISA C. DIMALANTA Chairperson and CEO



LS-CNR/MVM/MCCG

Resolution No. 16, Series of 2023 is entitled Implementing Guidelines for the Procurement, Execution and Evaluation of Power Supply Agreements Entered into by Distribution Utilities for the Supply of Electricity to their Captive Market.

DOE Department Circular No. DC 2023-06-0021 entitled Prescribing the Policy for the Mandatory Conduct of the Competitive Selection Process by the Distribution Utilities for the Procurement of Power Supply for their Captive Market.

A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

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