

Republic of the Philippines  
ENERGY REGULATORY COMMISSION  
Pasig City

IN THE MATTER OF THE APPLICATION FOR APPROVAL OF EMERGENCY POWER SUPPLY AGREEMENT BETWEEN ABRA ELECTRIC COOPERATIVE AND MASINLOC POWER CO. LTD. WITH PRAYER FOR ISSUANCE OF PROVISIONAL AUTHORITY AND MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION

ERC CASE NO. 2024-059 RC

ABRA ELECTRIC COOPERATIVE (ABRECO) AND MASINLOC POWER CO. LTD. (MPCL),  
Applicants.

Promulgated:  
May 03, 2024

NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 23 April 2024, the Abra Electric Cooperative (ABRECO) and Masinloc Power Co. Ltd. (MPCL) filed their Joint Application dated 01 April 2024, seeking the Commission's approval of their Emergency Power Supply Agreement (EPSA), with prayer for issuance of provisional authority and motion for confidential treatment of information.

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

xxx

1. Applicant ABRECO is an electric cooperative duly organized and registered by virtue of P.D. No. 269, as amended, with principal office address at Capitulation St., Calaba, Banzwed, Abra. It is the exclusive franchise holder of a Certificate of Franchise issued by the National Electrification Administration ("NEA") to operate electric light and power services in the Municipalities of Bangued, Lapax, Pidigan, Pilar, Dolores, Lagangilang, Bucay & Manabo in the province of Abra (the "Franchise Area"). It shall also be referred to herein as the "Buyer".

2. Applicant MPCL is a limited partnership duly organized and existing under the laws of the Republic of the Philippines, with principal office address at Masinloc Coal-Fired Thermal Power Plant, Barangay Bani, Masinloc, Zambales. It shall also be referred to herein as the "Seller". Applicant MPCL is the owner of the 1 x 343.995 MW (Unit 1), 1 x 343.995 MW (Unit 2) and 1 x 351.750 MW (Unit 3)<sup>2</sup> coal-fired power plant located in Barangay Bani, Masinloc, Zambales.

3. The Joint Applicants may be served with the orders, notices and other processes of the Honorable Commission through their respective undersigned counsels at the addresses indicated herein.

STATEMENT OF FACTS

4. On September 26, 2023, Applicant ABRECO received a copy of the Order of the Honorable Commission dated April 19, 2023 in ERC Case No. 2015-219 RC, denying the Motion for Reconsideration dated October 14, 2019, filed by Applicants ABRECO and MPCL, seeking reconsideration of this Honorable Commission's Order dated October 14, 2019 which dismissed the Applicant's Joint Application for the Approval of the Power Supply Agreement ("PSA") dated December 23, 2015 (the "Order").

5. The Order resulted in Applicant ABRECO having a deficit power supply requirement of 10,000 kW, necessitating the procurement of a negotiated emergency power supply agreement in accordance with the Energy Regulatory Commission ("ERC") Resolution No. 16, Series of 2023 ("ERC CSP Rules")<sup>3</sup>

6. Pursuant to Sections 5 and 6, Article IV of the ERC CSP Rules in relation to Section 2.3.5 of the Department of Energy ("DOE") CSP Policy,<sup>4</sup> the conduct of a competitive selection process ("CSP") in procuring negotiated emergency power supply agreements by distribution utilities or electric cooperatives shall not be required, subject to compliance of certain parameters set by the Honorable Commission in the ERC CSP Rules, viz:

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.

7. Following the issuance of the Order and to ensure the continuous and reliable electricity supply of its customers, Applicant ABRECO, in separate letters dated November 16, 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.

8. Accordingly, (sic) negotiated with its existing power suppliers. Eventually, Applicant ABRECO deemed the proposal of Applicant MPCL as the most advantageous and beneficial for its end consumers. Thereafter, the Applicants executed an Emergency Power Supply Agreement dated November 8, 2023 for the purchase of 10,000 kW power supply (the "EPSA").

9. The Applicants intend to immediately implement the EPSA beginning 12:01 am of November 26, 2023 as there is a need for ABRECO'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 ABRECO and ultimately its customers to the volatility of spot prices in the Wholesale Electricity Spot Market ("WESM").

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

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

CONTRACT CAPACITY AND CONTRACT ENERGY. The following are the Contract Capacity and monthly Contract Energy as contained in Annex I of the EPSA:

- BUYER's Contract Capacity shall be 10,000 kW
- BUYER shall maintain a minimum monthly baseload energy of seventy-five percent (75%) capacity utilization factor with respect to the Contract Capacity.

No. of Days per Billing Period	Monthly Contract Energy, MWh
29 Days	5,220,000
30 Days	5,400,000
31 Days	5,580,000

CONTRACT TERM. The EPSA shall be for a maximum period of one (1) year or twelve (12) billing periods from Supply Effective Date (SED) or upon approval by the ERC of the power supply agreement that the BUYER has concluded after the conduct of its Competitive Selection Process, whichever comes earlier.

CONTRACT CHARGES. Beginning SED, the BUYER shall pay the following Contract Charges as contained in Article 8 of the EPSA comprising of the following:

CONTRACT PRICE. The Contract Price shall comprise of the following fees including a monthly adjusting Fuel Fee based on the Fuel Fee Formula below:

	Rate PpP/kWh
Capital Recovery Fee ("CRF")	1.9565
Fixed O&M Fee ("FOM")	0.4375
Variable O&M Fee ("VOM")	0.1020
Fuel Fee	3.5800
Contract Price (Gross)	6.0740

$$FFe = FFa \times [A \times \frac{NEWCc}{NEWCa} \times \frac{FXc}{FXa} + B]$$

- FFc = Adjusted Fuel Fee for the current Billing Period in PpP/kWh approximated to nearest four (4) decimals, calculated based on the movement of global COAL Newcastle ("NEWCC") and Foreign Exchange ("FX") indices.
- FFa = Base Fuel Fee set at PpP3.5800/kWh
- A = Percentage of the Base Fuel Fee, set at 65.08%
- NEWCC = Average posted global COAL Newcastle ("NEWCC") index for the calendar month prior to the current Billing Month
- NEWCa = Base NEWCC index set at USD125.00/MT
- FXc = Average of the daily Foreign Exchange ("FX") rate of the Philippine Peso to the US Dollar as posted by the Bangko Sentral ng Pilipinas for the calendar month prior to the current Billing Month
- FXa = Base FX rate set at PpP55.00/USD.
- B = Percentage of the Base Fuel Fee, set at 34.92%

ASSOCIATED CHARGES. The BUYER shall be liable for the Associated Charges including but not limited to, all WESM charges including Line Rental, taxes such as Value Added Tax (VAT) and other applicable pass-through cost/charges after the delivery point.

DISCOUNT. The BUYER may avail of a Prompt Payment Discount (PPD) equivalent to one percent (1.0%) of the prevailing Contract Price excluding Replacement Power Cost, if any, associated charges and Value Added Tax subject to compliance with some requirements.

GENERATION RATE IMPACT ANALYSIS

An analysis was conducted to determine the impact of the implementation of the EPSA on Applicant ABRECO's generation cost while taking into account Applicant ABRECO's projected energy, available contracted supply, and supply from the WESM for the previous November 26 to December 25, 2023 historical data and the projected energy requirement over the next twelve months. Table 1 below, compares the actual generation cost from Applicant WESM to the new proposed MPCL rate under EPSA with different utilization factors. On the other hand, Table 2 below, shows the blended generation cost using the November 26 to December 25, 2023 historical data and compares the actual generation mix versus without the supply coming from Applicant MPCL.

As shown by the analysis, the procurement of supply from Applicant MPCL under EPSA will result to a rate impact/decrease of (3.49).

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

TABLE 1  
Consumption 100% Exposure to WESM

Supplier	Historical Consumption Nov 26-Dec 25,23	Rate	FORECAST January to November 2024	
			Total Generation Charges	Blended Gen Rate Mix
WESM	423,280	67,000,000	9,949.8	666,636,600.00
MPCL	7,128,000			9.9498
TOTAL	7,551,280			666,636,600.00

TABLE 2  
Consumption with EPSA

Supplier	Historical Consumption Nov 26-Dec 25,23	Rate	FORECAST January to November 2024	
			Total Generation Charges	Blended Gen Rate Mix
WESM	423,280	67,000,000	9,949.8	66,663,660.00
MPCL	7,128,000	60,300,000	5.0740	366,262,200.00
TOTAL	7,551,280	67,000,000		432,925,860.00
Rate Impact				(3.49)

OTHER RELATED DOCUMENTS

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

ANNEX	DOCUMENTS
A-series	DU's Supply and Demand Scenario (during the time of emergency situation), Details of Existing Suppliers, Contract Utilization, Average Daily Load Curve, in accordance with the Commission's templates under Annex "1" and "2" of the Pre-filing Checklist Requirement.
B	Duly Signed Emergency PSA
C	Executive Summary of the EPSA
D-series	MPCL Rate Derivation and Related Documents (Confidential)
E-series	Documents related to Fuel (Confidential)
F	Affidavit of Competitive Procurement Process of Fuel
G	Relevant technical and economic characteristics of the generation capacity, installed capacity, mode of operation, and dependable capacity
H	MPCL's Outage Hours from 2018-2023

ANNEX	DOCUMENTS
I	MPCL's Audited Financial Statements on 2018 - year of acquisition of MPCL by San Miguel Global Power Holdings Corp.
J	MPCL's Sample Bill
K	MPCL's Secretary's Certificate
L	MPCL's Certificate of Email Registration
M-series	Proofs that the EPSA was undertaken due to the occurrence of force majeure fortuitous event.
N-series	Board Resolution No. 122 Series of 2023.

REQUEST FOR CONFIDENTIAL TREATMENT OF INFORMATION

- Rule 4 of the Honorable Commission's Rules of Practice and Procedure provides that ABRECO and MPCL may request that information may not be disclosed;
- MPCL prays for the confidential treatment of the information contained in the Annexes "D-series", and "E-series" and not disclosed except to the officers and staff of the Honorable Commission and its staff.
- Annexes (sic) "D-series", and "E-series" contain the details of MPCL's power rate calculations and financial model as well as the manner by which these were derived, and the pertinent details of coal supply contracts. These information are proprietary in nature and should be protected as trade secrets as contemplated by law and jurisprudence. In the case of *Air Philippines Corporation vs. Pennswell, Inc.*,<sup>5</sup> the Supreme Court defined a trade secret, as follows:

"A trade secret may consist of any formula, pattern, device, or compilation of information that: (1) is used in one's business; and (2) gives the employer an opportunity to obtain an advantage over competitors who do not possess the information. Generally, a trade secret is a process or device intended for continuous use in the operation of the business, for example, a machine or formula, but can be a price list or catalogue or specialized customer list. It is indubitable that trade secrets constitute proprietary rights. The inventor, discoverer, or possessor of a trade secret or similar innovation has rights therein which may be treated as property, and ordinarily an injunction will be granted to prevent the disclosure of the trade secret by one who obtained the information "in confidence" or through a "confidential relationship". American jurisprudence has utilized the following factors to determine if an information is a trade secret, to wit:

- The extent to which the information is known outside of the employer's business;
- The extent to which the information is known by employees and others involved in the business;
- The extent of measures taken by the employer to guard the secrecy of the information;
- The value of the information of the employer and to competitors;
- The amount of effort or money expended by the company in developing the information; and
- The extent to which the information could be easily or readily obtained through an independent source." (citations omitted, emphasis supplied)

19. The interest of the consuming public is sufficiently protected by the review and evaluation of the rates under the EPSA by the Honorable Commission, without the need to disclose the contents of Annexes "D-series" and "E-series". The reasonableness and transparency of the prices of electricity is to be assured by the Honorable Commission through its own review and verification of MPCL's operating costs and expenses;

20. More importantly, MPCL's competitors, should they obtain the information in Annexes "D-series", and "E-series", will gain undue advantage thereon and have the opportunity to use the same in their operations. The negotiating power of MPCL with parties it plans to contract with or who it is currently doing business with, will clearly be thwarted if it is compelled to disclose such information;

21. Accordingly, MPCL submits one (1) copy of Annexes "D-series", and "E-series", in a sealed envelope, with the said envelope and each page of the documents and/or information stamped with the word "Confidential".

22. Lastly and corollary to the foregoing, MPCL would like to implore the discerning wisdom of the Honorable Commission to include in its issuance for this purpose the "procedures for the handling or returning the confidential information, as appropriate, upon the close of the proceedings or at the end of the period for which the information is to be treated as confidential".

23. This is guided by the fact that MPCL will seek for the return of these sought to be declared confidential annexes after its utilization as evidence in this case and/or at the close of the proceedings hereof, so as to relieve the Honorable Commission of the burden of safekeeping the trade secrets of MPCL, enclosed in the subject annexes.

ALLEGATIONS IN SUPPORT FOR THE ISSUANCE OF PROVISIONAL AUTHORITY

<sup>5</sup> G.R. No. 172835, December 13, 2007

<sup>6</sup> Letter (d), Section 4, of the ERC Rules and Practice and Procedure.

- While ABRECO intends to account for the deficit supply, this process will take time and ABRECO's members-consumers-consumers will need the assurance of seamless, stable, and reliable power while ABRECO prepares for the CSP.
- Consequently, ABRECO was compelled to enter into the EPSA to ensure an adequate power supply at a rate advantageous to its consumers.
- In order to ensure the sustainability of their operations, ABRECO should be permitted to collect the rates, fees, and charges provided in the EPSA from its customers, and for MPCL to charge ABRECO accordingly.
- The provisional approval of the EPSA will enable both ABRECO and MPCL to fulfill their obligations without compromising the viability of their operations.

PRAYER

WHEREFORE, premises concerned, Applicants ABRECO and MPCL respectfully pray of this Honorable Commission of the following:

- During the pendency of the proceedings/scheduled hearing(s) and before the final resolution/approval of this case, that an Order be issued for the GRANT of:
  - a Provisional Authority or Interim Relief allowing the Joint Applicants to immediately implement the EPSA subject of this case in its entirety so as to allow ABRECO to collect such rates, fees, and charges as provided in the EPSA from its customers reckoned from the start of the supply by MPCL to ABRECO;
  - a Directive affording Annexes "D" and Series, and "E" and Series confidential treatment in the handling and evaluation thereof from the time these annexes are received by the Honorable Commission up to the termination of the instant case by continuously protecting the said information from public disclosure by maintaining the same as separate and apart from the records of the case, and ensuring that these are not divulged to unauthorized persons other than the concerned staff and officers of the Honorable Commission
  - an Issuance concerning the procedures for handling confidential information upon the close of the proceedings and its return/delivery to MPCL.
- After hearing on the merits, render a Decision APPROVING the ABRECO and MPCL EPSA and the terms and conditions thereunder, including the price which will thereby allow/authorize ABRECO to charge and collect the fees from its consumers reckoned from the commencement of the supply to the latter by MPCL; and directing that the rates, terms, and conditions of the ABRECO-MPCL EPSA be retroactively applied for the entire term of the EPSA.

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

The Commission 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 09, Series of 2020<sup>7</sup> and Resolution No. 01, Series of 2021<sup>8</sup> (ERC Revised Rules of Practice and Procedure):

Date	Platform	Activity
07 June 2024 (Friday) at two o'clock in the afternoon (2:00 PM)	Microsoft Teams Application	Determination of compliance with the jurisdictional requirements and expository presentation
14 June 2024 (Friday) at two o'clock in the afternoon (2:00 PM)		Pre-Trial Conference and presentation of evidence

Accordingly, Joint Applicants ABRECO and MPCL are hereby directed to host the virtual hearings at ABRECO's Principal Office at Capitulation St., Calaba, Bangued, Abra, as the designated venue for the conduct thereof, and ensure that the same is open to the public. Moreover, Joint Applicants ABRECO and MPCL 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](mailto:doCKET@erc.ph) and copy furnish the Legal Service through [legal@erc.ph](mailto: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, any person who has 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](mailto:doCKET@erc.ph), and copy furnishing the Legal Service through [legal@erc.ph](mailto: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:

- The petitioner's name, mailing address, and e-mail address;
- 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
- 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](mailto:doCKET@erc.ph), and copy furnish the Legal Service through [legal@erc.ph](mailto:legal@erc.ph), their Opposition or Comment 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:

- The name, mailing address, and e-mail address of such person;
- A concise statement of the Opposition or Comment; and
- 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 through the Commission's official website at [www.erc.gov.ph](http://www.erc.gov.ph).

Finally, all interested persons may be allowed to join the scheduled virtual hearings by providing the Commission, through [legal.virtualhearings@erc.ph](mailto: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 3<sup>rd</sup> day of May 2024 in Pasig City.

*Medinalanta*  
MONALISA C. DIMALANTA  
Chairperson and CEO



LS:JBC/ARG/KFP

<sup>7</sup> A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

<sup>8</sup> A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

<sup>1</sup> Masinloc Power Partners Co. Ltd ("MPPCL") is now known as Masinloc Power Co. Ltd. ("MPCL") pursuant to the Amended Articles of Limited Partnership approved by the Securities and Exchange Commission on 13 November 2023.  
<sup>2</sup> Based on MPCL's Provisional Authority to Operate issued by the ERC on 05 January 2024.  
<sup>3</sup> 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.  
<sup>4</sup> 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.