

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pacific Center Building, San Miguel Avenue
Ortigas Center, Pasig City

**IN THE MATTER OF THE
APPLICATION FOR APPROVAL
OF THE CONTRACTS FOR THE
SUPPLY OF ELECTRIC ENERGY
WITH COTABATO LIGHT AND
POWER COMPANY AND DAVAO
LIGHT AND POWER COMPANY,
AND A LETTER OF AGREEMENT
WITH FIRST BUKIDNON
ELECTRIC COOPERATIVE, INC.,
LOCATED IN THE MINDANAO
GRID, WITH PRAYER FOR
ISSUANCE OF PROVISIONAL
AUTHORITY,**

ERC CASE NO. _____

**POWER SECTOR ASSETS AND
LIABILITIES MANAGEMENT
CORPORATION,**

Applicant.

x -----x

APPLICATION

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

1. This is an Application for the approval of the terms and conditions of the Contracts for the Supply of Electric Energy ("CSEEs") entered into by PSALM with Cotabato Light and Power Company ("CLPC")¹ and Davao Light and Power Company ("DLPC"),² respectively, as well as the Letter of Agreement ("LOA") by and between PSALM and First Bukidnon Electric Cooperative, Inc.

¹ Hereinafter referred to as the "PSALM-CLPC CSEE."

² Hereinafter referred to as the "PSALM-DLPC CSEE."

("FIBECO"),³ pursuant to Section 67⁴ of Republic Act No. 9136, otherwise known as the *Electric Power Industry Reform Act of 2001* ("EPIRA") and Section 5,⁵ 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. Pursuant to Section 49 of the EPIRA and the National Power Corporation's ("NPC") letter to PSALM dated 11 May 2009 ("NPC Assignment Letter"), NPC assigned and transferred to PSALM all its rights and obligations in, to, and under its CSEEs and other similarly or substantially equivalent power supply contracts with NPC power customers (collectively referred to as "Power Supply Contracts").

The NPC Assignment Letter is hereto attached as **Annex "A."**

4. On and from 11 May 2009, the Power Supply Contracts were deemed amended as follows:

- a. all references to NPC therein shall be treated as references to PSALM;
- b. PSALM shall be deemed the Supplier under said Power Supply Contracts; and
- c. the rights and obligations of the parties shall be governed by and construed in accordance with said Power Supply Contracts, as amended by the 11 May 2009 Assignment Letter.

Thus, this instant application by PSALM.

³ Hereinafter referred to as the "PSALM-FIBECO LOA."

⁴ Section 67. NPC Offer of Transition Supply Contracts. - Within six (6) months from the effectivity of this Act, NPC shall file with the ERC for its approval a transition supply contract duly negotiated with the distribution utilities containing the terms and conditions of supply and a corresponding schedule of rates, consistent with the provisions hereof, including adjustments and/or indexation formulas which shall apply to the term of such contracts.

⁵ Section 5 - Filing and Approval of an Executed TSC - NPC shall file with the ERC, for its approval, all TSCs duly negotiated and executed with any Distribution Utility.

5. The PSALM-CLPC and PSALM-DLPC CSEEs were executed based on the ERC-approved template under ERC Resolution No. 08, Series of 2005 issued on 07 July 2005. On 09 August 2005, said template was later on amended by the ERC in its Resolution No. 15, Series of 2005.

6. 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 TSC Template should merely serve as a guide for Distribution Utilities (“DUs”) and NPC and should not be construed as the contract contemplated under Section 67 of the EPIRA.

7. PSALM filed other applications for the approval of the terms and conditions of the CSEEs and the LOAs of the DUs located in the Mindanao Grid, which were subsequently **approved** by this Honorable Commission on the following dates:

Date Filed	Docket Number	Type of Contract	Date of Decision
15 March 2011	2011-038 RC	CSEE and LOA	24 January 2012
19 September 2011	2011-128 RC	CSEE	25 February 2013
07 October 2011	2011-139 RC	CSEE	25 February 2013
20 January 2012	2012-007 RC	CSEE	25 February 2013
01 April 2013	2013-055 RC	CSEE	09 December 2013
02 December 2013	2013-218 RC	CSEE and LOA	20 June 2017
02 December 2014	2014-175 RC	CSEE and LOA	Deliberated and approved during this Honorable Commission’s meeting on 16 August 2016. ⁶
04 November 2016	2016-186 RC	CSEE and LOA	24 October 2017
27 July 2017	2017-067 RC	LOA	20 January 2021

8. On the other hand, the following applications for the approval of the terms and conditions of the CSEEs and the LOA of the DUs located in the Mindanao Grid are **pending** resolution before this Honorable Commission:

Date Filed	Docket Number	Type of Contract
08 June 2018	ERC Case No. 2018-054 RC	CSEE
06 July 2020	ERC Case No. 2020-016 RC	LOA

⁶ See page 13 of the Decision dated 24 October 2017 in ERC Case No. 2016-186 RC where this Honorable Commission said that the application in ERC Case No. 2014-175 RC was “Deliberated and approved during the Commission’s meeting on 16 August 2016.”

05 November 2021	ERC Case No. 2021-088 RC	CSEE
24 December 2021	ERC Case No. 2021-107 RC	CSEE

The CSEEs and LOA subject of this Application

9. Pursuant to Section 67 of the EPIRA and Section 5 Article III of the ERC’s Guidelines for the Recovery of Costs for the Generation Component of the Distribution Utilities’ Rate, PSALM is filing the instant Application for the approval of the CSEEs duly negotiated with CLPC and DLPC, as well as the LOA duly negotiated with FIBECO.

The PSALM-CLPC and PSALM-DLPC CSEEs are attached hereto as **Annexes “B”** and **“B-1,”** respectively, while the PSALM-FIBECO LOA is attached hereto as **Annex “C.”**

10. The PSALM-CLPC and PSALM-DLPC CSEEs were executed based on the ERC-approved template under ERC Resolution No. 08, Series of 2005, as amended by Resolution No. 15, Series of 2005. Likewise, the same CSEEs incorporated the minor 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 No. 2013-055 RC and subsequent applications.

11. The substantial revisions made to the PSALM-CLPC and PSALM-DLPC CSEEs are found in (i) Annex I which reflects the Contracted Energy and the corresponding Equivalent Demand; and (ii) amendment of Section 3.1. on the provision on Contract Duration.

Salient Provisions of the PSALM-CLPC and PSALM-DLPC CSEEs

12. The table below shows the Contract Durations of the PSALM-CLPC and PSALM-DLPC CSEEs .

CSEE	Contract Duration
PSALM-CLPC CSEE	26 December 2020 to 25 December 2022
PSALM-DLPC CSEE	26 December 2020 to 25 December 2022

13. The PSALM-CLPC CSEE has the following salient provisions, apart from the revisions mentioned in the preceding paragraphs:

- (i) **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.

(ii) **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.

(iii) **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.

(iv) **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.

(v) **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).

(vi) **BASIC ENERGY CHARGE**

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

(vii) **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.

(viii) **SERVICE INTERRUPTION ADJUSTMENT**

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 the 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.

(ix) **MAINTENANCE SERVICE ADJUSTMENT**

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

(x) **PROMPT PAYMENT DISCOUNT**

6.10 Subject to ERC's approval, the Prompt Payment Discount (PPD) shall be in accordance with the 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:
...⁷

(xi) **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 of the claim.

(xii) **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 depository 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

⁷ Please see 6.10.a. to 6.10.h of the PSALM-CLPC CSEE.

conditions: ...⁸

(xiii) **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.

(xiv) **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.

(xv) **EFFECTIVITY**

9.20 This Agreement shall be executed in counterparts and shall be effective when at least one counterpart shall have been executed by one of the parties herein, and each set of counterparts shall constitute one single and binding agreement.

14. The **PSALM-DLPC CSEE**⁹ contains the same salient provisions as above; the substantial difference consists of those found in Annex I of the PSALM-DLPC CSEE (which reflects the Contracted Energy and the corresponding Equivalent Demand.)

The PSALM-FIBECO LOA

15. FIBECO previously executed a CSEE with PSALM dated 08 March 2021 covering the period from 26 February 2021 to 25 December 2021 (the "PSALM-FIBECO CSEE").¹⁰

⁸ Please see the detailed list of terms and conditions under 6.17.1 to 6.17.12 of the PSALM-CLPC CSEE.

⁹ See Annex "B-1" hereof.

¹⁰ As of the date of this Application, the application for the PSALM-FIBECO CSEE is still undergoing the Honorable Commission's pre-filing process.

16. In its letter dated 21 October 2021, FIBECO confirmed its intent to extend the term of the PSALM-FIBECO CSEE for one (1) year from 26 December 2021 to 25 December 2022, which PSALM agreed to. Hence, the parties executed the PSALM-FIBECO LOA.

FIBECO's letter dated 21 October 2021 is attached hereto as **Annex "D."**

17. The PSALM-FIBECO LOA amended Section 3.1 on Contract Duration of the PSALM-FIBECO CSEE. Further, it is understood that the PSALM-FIBECO LOA shall be an integral part of the PSALM-FIBECO CSEE, and the terms and conditions not otherwise affected by the above-mentioned amendment shall remain valid and effective

18. Summaries of the Contracted Energy, Equivalent Demand, and computation of Load Factor of the PSALM-CLPC and PSALM-DLPC CSEEs as well as the PSALM-FIBECO LOA are attached hereto as **Annexes "E" to "E-2,"** respectively.

19. Further, in compliance with Section 2, Rule 6 (Pre-Filing Requirements) of the ERC Resolution No. 01, Series of 2021 (the "ERC Rules of Practice and Procedure"),¹¹ 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 "F" and series** hereof). The Application (excluding Annexes) was also published in a newspaper of general circulation (see **Annexes "G" and series** hereof).

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

20. 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 "H."**

¹¹ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

21. This Honorable Commission also recognized PSALM's exemption from joining the CSP in its Decisions in ERC Case No. 2016-186 RC¹² and ERC Case No. 2019-040 RC.¹³ Moreover, in its Decision in ERC Case No. 2019-040 RC, this Honorable Commission referred to Section 2 of the Department of Energy's Department Circular No. 2018-02-0003¹⁴ to further justify PSALM's exemption from joining the CSP.

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 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.

23. A grant of Provisional Authority ("PA") to execute the PSALM-CLPC and PSALM-DLPC CSEEs as well as the PSALM-FIBECO LOA will ultimately redound to the benefit of end consumers.

24. Attached as **Annex "I"** is the Judicial Affidavit of Engr. James Marvin A. Mamaradlo, the Acting Department Manager of the Electricity Trading Department under PSALM's Privatization and Asset Management Group, attesting to the truth of the above matters.

25. 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.

26. It is understood that the PA or Interim Relief sought by PSALM, which may be granted by this Honorable Commission, shall be subject to adjustments and other conditions that this Honorable Commission may impose after its hearing and final determination.

¹² Dated 24 October 2017.

¹³ Dated 21 July 2021.

¹⁴ 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.*"

PRAYER

WHEREFORE, PSALM most respectfully prays that this Honorable Commission **APPROVES** the PSALM-CLPC and PSALM-DLPC CSEEs as well as the PSALM-FIBECO LOA. It is likewise prayed that a PA **BE ISSUED** authorizing PSALM to implement the said CSEEs and LOA.

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

Quezon City for Pasig City, 14 March 2022.

**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



MARIA ILYN C. GERONIMO-ALBITO

Officer-In-Charge of the Legal Group

Roll of Attorneys No. 58287

IBP O.R. No. 178998 / 01.05.2022 / RSM Chapter

MCLE Compliance No. VI-0020686 / 03.05.2019

Email address: migalbito@psalm.gov.ph



FREDERICK R. TAMAYO

Corporate Legal Counsel

Roll of Attorneys No. 46115

IBP O.R. No. 178997 / 01.05.2022 / Bulacan

MCLE Compliance No. VI-0025869 / 04.29.2019

Email address: frtamayo@psalm.gov.ph



EMIL S. CUYUGAN

Corporate Attorney

Roll of Attorneys No. 67604

IBP Lifetime No. 038717 / 04.04.2018 / Makati City

MCLE Compliance No. VI-0025452 / 05.09.2019

Email address: escuyugan@psalm.gov.ph



IVAN DARWIN G. ZAMORA

Corporate Attorney

Roll of Attorneys No. 72142

IBP O.R. No. 178996 / 01.05.2022 / RSM Chapter

MCLE Compliance No. VI-0025466 / 04.15.2019

Email address: idgzamora@psalm.gov.ph

Republic of the Philippines)
Quezon City, Metro Manila) S.S.

**VERIFICATION AND
CERTIFICATION AGAINST FORUM SHOPPING**

I, **IRENE JOY BESIDO-GARCIA**, of legal age, married, with office address at the Power Sector Assets and Liabilities Management ("PSALM") 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 for myself and for PSALM, that:

1. I am the designated President and Chief Executive Officer of PSALM with authority to commence, initiate, sign, and file the foregoing Application entitled, *"In the Matter of the Application for Approval of the Contracts for the Supply of Electric Energy with Cotabato Light and Power Company and Davao Light and Power Company, and a Letter of Agreement with First Bukidnon Electric Cooperative, Inc., all located in the Mindanao Grid, with Prayer for Issuance of Provisional Authority,"* pursuant to PSALM Board Resolution Nos. 2018-0525-01 and 2021-0623-01 in relation with PSALM Board Resolution No. 04-38 as well as PSALM Board Resolution No. 2020-1028-07;
 2. 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;
 3. The Application is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
 4. 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;
 5. PSALM has submitted the Contract for the Supply of Electric Energy ("CSEE") entered into by PSALM with the First Bukidnon Electric Cooperative, Inc. ("FIBECO") dated 08
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