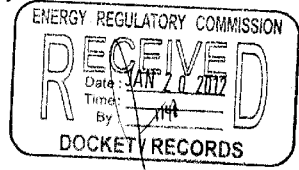


Republic of the Philippines  
Energy Regulatory Commission  
San Miguel Avenue, Pasig City



IN THE MATTER OF THE  
APPLICATION FOR THE APPROVAL  
OF THE CONTRACT FOR THE SUPPLY  
OF ELECTRIC ENERGY (CSEE)  
ENTERED INTO WITH DISTRIBUTION  
UTILITIES (DUs) LOCATED IN THE  
VISAYAS GRID WITH PRAYER FOR  
THE ISSUANCE OF PROVISIONAL  
AUTHORITY (PA)

ERC CASE NO. 2012-0088 RC

POWER SECTOR ASSETS AND  
LIABILITIES MANAGEMENT  
CORPORATION (PSALM),

Applicant.

x-----x

**APPLICATION**

Applicant **Power Sector Assets and Liabilities Management Corporation** (hereinafter, "PSALM"), by counsel and to this Honorable Commission, most respectfully states that:

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 and between Applicant PSALM and twenty (20) Distribution Utilities located in the Visayas Grid pursuant to Section 67 of Republic Act (RA) No. 9136.
2. PSALM filed similar Applications in 2011 for Approval of the terms and conditions of CSEEs effective 26 December 2010 to 25 December 2011.

PSALM OGD- 12-0098

3. Applicant PSALM is a government-owned and controlled corporation created by virtue of Republic Act No. 9136 or the "Electric Power Industry Reform Act of 2001" (EPIRA), with principal office address at 7/F Bankmer Building, 6756 Ayala Avenue, Makati City.
4. Pursuant to Sec. 49 of Republic Act No. 9136 (RA 9136) and the consequent assignment on 11 May 2009 (*Annex "A"*) of all power supply contracts of National Power Corporation to PSALM, NPC assigned and transferred to PSALM all of NPC's rights and obligations in, to, and under its CSEE and other similarly or substantially equivalent power supply contracts with NPC power customers (collectively referred to as Power Supply Contracts).
5. On and from 11 May 2009, the power supply contracts are deemed amended as follows: (i) all references to NPC in the supply contracts shall be treated as references to PSALM; (ii) PSALM shall be deemed the SUPPLIER under the Power Supply Contracts; and (iii) the rights and obligations of the Parties shall be governed by and construed in accordance with the Power Supply Contracts, as amended by the 11 May 2009 Letter Agreement. Thus, this application by PSALM.

**The CSEEs of the Distribution Utilities  
located in the Visayas Grid**

6. Pursuant to Section 5, Article III of the ERC's Guidelines for the Recovery of Costs for the Generation Component of the Distribution Utilities' Rates, Applicant PSALM is filing this Application for the approval of CSEEs duly negotiated and executed with the Distribution Utilities (DUs) located in the Visayas Grid:
  - 6.1 Antique Electric Cooperative, Inc. (ANTECO)—(*Annex "B.1"*)
  - 6.2 Biliran Electric Cooperative, Inc. (BILECO)—(*Annex "B.2"*)

- 6.3 Cebu I Electric Cooperative, Inc. (CEBECO I) - (Annex "B.3")
- 6.4 Cebu II Electric Cooperative, Inc. (CEBECO II)-(Annex "B.4")
- 6.5 Central Negros Electric Cooperative, Inc. (CENECO) – (Annex "B.5")
- 6.6 Eastern Samar Electric Cooperative, Inc. (ESAMELCO)-(Annex "B.6")
- 6.7 Iloilo II Electric Cooperative, Inc. (ILECO II)-(Annex "B.7")
- 6.8 Iloilo III Electric Cooperative, Inc. (ILECO III)-(Annex "B.8")
- 6.9 Leyte I Electric Cooperative, Inc. (LEYECO I)/(DORELCO)-(Annex "B.9")
- 6.10 Leyte II Electric Cooperative, Inc. (LEYECO II)-(Annex "B.10")
- 6.11 Leyte III Electric Cooperative, Inc. (LEYECO III)-(Annex "B.11")
- 6.12 Leyte IV Electric Cooperative, Inc. (LEYECO IV)-(Annex "B.12")
- 6.13 Leyte V Electric Cooperative, Inc. (LEYECO V)-(Annex "B.13")
- 6.14 Negros Occidental Electric Cooperative, Inc. (NOCECO)-(Annex "B.14")
- 6.15 Negros Oriental I Electric Cooperative, Inc. (NORECO I)-(Annex "B.15")
- 6.16 Northern Samar Electric Cooperative, Inc. (NORSAMELCO) - (Annex "B.16")
- 6.17 Samar I Electric Cooperative, Inc. (SAMELCO I)-(Annex "B.17")
- 6.18 Samar II Electric Cooperative, Inc. (SAMECO II)-(Annex "B.18")
- 6.19 Visayan Electric Company (VECO)-(Annex "B.19")
- 6.20 VMC Rural Electric Service Cooperative, Inc. (VRESOCO) (Annex "B.20")

**Highlighted terms and conditions of the CSEE**

7. On 7 July 2005, the Honorable Commission issued Resolution No. 08, Series of 2005 approving and adopting the template for the Transition Supply Contract (TSC). On 9 August 2005, said template for the TSC was later on amended by the Honorable Commission in its Resolution No. 15, Series of 2005.
8. In ERC Resolution No.33, Series of 2006, "Resolution Clarifying the Purpose of the Adoption of the TSC Template", the ERC clarified that the TSC Template

should serve as a mere guide for DUs and NPC and should not be construed as the contract contemplated under Section 67 of the EPIRA.

9. Accordingly, in consultation with the Department of Energy and the National Electrification Administration and the approval of the Distribution Utilities in the Visayas grid, PSALM has proposed revisions to the TSC Template. The revisions aim to address apparent issues that may not have been considered in 2005. Likewise, the amendments are proposed to clarify recurring issues frequently subject of dispute.

10. The said CSEEs were executed based on the template approved by the Honorable Commission under Res. No. 8, Series of 2005 as amended by Res. No. 15, Series of 2005 and incorporating the minor changes as proposed by PSALM and approved by the Distribution Utilities. The above CSEEs provide, among other provisions, the following terms and conditions:

10.1 *Contract Duration* – This Contract consisting of the Transition Supply Contract shall remain in full force and effect from 26 December 2011 to 25 December 2012 or until one year after the declaration of open access by the ERC, whichever comes first. Unless otherwise provided, the applicable provisions of this Contract shall be deemed modified by the applicable WESM Rules, upon commercial operation of the WESM, as declared by DOE.

10.2 *Contract Energy* - The Contract Energy shall not be changed by either party except in cases as provided for in the contract. Upon commercial operation of the WESM, the CUSTOMER shall nominate a month-ahead energy quantity with the hourly and daily quantity requirements three (3) days before the start of the next billing period. On a day to day

transaction, the CUSTOMER shall confirm the schedule of the hourly energy requirement on a day ahead. PSALM shall declare to the WESM the schedule of the hourly nominated energy requirements delivered to CUSTOMER on the day after.

10.3 *Availability of Supply* – SUPPLIER shall supply the Contract Energy in accordance with good utility practice and in compliance with appropriate rules and regulations such as the Philippine Grid Code, and Open Access Transmission Service (OATS). Supply of energy shall be available except for interruption or reduction due to: a) causes beyond the control of SUPPLIER despite the exercise of due care, including but not limited to privatization of the assets of the National Power Corporation pursuant to EPIRA; b) transmission failure; c) maintenance to ensure system stability and safety reasons as may be provided by laws, rules or regulation. In case of shortage in the generation capacity of the SUPPLIER, CUSTOMER shall be informed of the deficiency and allocation of the available supply of electricity to the CUSTOMER shall be proportionate to the contracted energy as provided for in this Contract.

10.4 *Application for Decrease in Contract Energy* - CUSTOMER shall be entitled to a reduction in its Contract Energy only upon written application to SUPPLIER at least sixty (60) days prior to the effectivity of the reduction subject to the approval of the SUPPLIER. CUSTOMER may be allowed to reduce its Contract Energy with the following conditions: xxx The reduction is due to self-generation or transfer to another power supplier. The CUSTOMER must notify the SUPPLIER at least sixty (60) days prior to the effectivity of the reduction in the Contracted Energy.

- 10.5 *Security Deposit* - The Security Deposit shall be equivalent to 100% of the estimated average monthly power bill during the first year of the Contract and shall be updated annually.
- 10.6 *Assignability* - Supplier may assign or transfer part or all of its rights and obligations in the supply of Contract Energy provided that prior written notice is given to Customer thirty (30) days before the actual transfer. xxx When a CUSTOMER has been assigned by the SUPPLIER to a Successor Generating Company (SGC) or Independent Power Producer Administrator (IPPA) by virtue of the privatization pursuant to the EPIRA, the CUSTOMER has the obligation to settle in full its overdue obligation, excluding those accounts already restructured, within thirty (30) days of the assignment. In the event the CUSTOMER fails to settle in full within the given period above, the CUSTOMER may opt to settle its overdue obligation by entering into a restructuring agreement with previous SUPPLIER (in this case, PSALM) based on DOE Circular No. DC 2010-05-0006 and No. DC 2010-08-0010 within forty-five (45) days, provided that CUSTOMER has shown proof it has tried its best to fully settle said obligation, excluding those accounts already restructured. Failure to restructure within the prescribed period will allow the previous SUPPLIER to resort to remedies as provided for the aforementioned DOE Circulars.
- 10.7 *Basic Energy Charge* - The Basic Energy Charge (BEC) applied to the CUSTOMER's hourly energy consumption 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; and upon commercial operation of the WESM, an

adjustment to reflect the WESM line rental cost plus the Site Specific Loss Adjustment (SSLA) added in the meter data on an hourly basis. For energy consumption higher than one hundred twenty percent (120%) of the contracted level (applicable for CUSTOMERS who are Indirect WESM members), the basic energy charge to be applied shall be the prevailing ERC approved rate and other adjustments plus ten percent (10%) of such rate for the incremental increase beyond the one hundred twenty percent (120%) of contract energy. Upon the commercial operation of the WESM, the basic energy charge to be applied to the contracted energy shall be in accordance with Section 8.1 of this Contract. 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. For energy consumption higher than one hundred twenty percent (120%) of the CUSTOMER's hourly nominated quantity (applicable for CUSTOMERS who are Indirect WESM members), the rate to be applied shall be the BEC or the WESM Ex Post Nodal price, whichever is higher.

10.8 *Maintenance Service Adjustment* - Customer may avail of the service adjustment during the scheduled maintenance of its facilities, not to exceed two (2) billing periods in one year.

10.9 *Minimum Charge* - Customer shall pay the minimum charge based on the Contract Energy per billing period as indicated in Section 4.1 of the CSEE 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 in the Contract.

10.10 *Prompt Payment Discount* - Subject to ERC's approval, the Prompt Payment Discount (PPD) prior to the commercial operation of the WESM

shall be in accordance with the PSALM's credit and collection policies duly approved by the PSALM Board. Upon commercial operation of the WESM, as declared by the DOE, the PPD shall no longer be applicable.

*10.11 Overdue Account* - In the event that a power bill remains unpaid within five (5) days after its due date, Supplier has the option to call on or draw against the Security Deposit as provided for under Section 5 (Security Deposit) of the Contract.

*10.12 Contract Termination* - Either party will have the right to terminate the Contract upon failure of the other to perform its obligation under the Contract.

11. In compliance with Section 4(e) of Rule 3 of the EPIRA-IRR and ERC Resolution No. 38- 2006, and in support of the instant Application for the approval of the LOAs, a copy of the instant Application (including Annexes) was furnished to the Sangguniang Panlungsod of Makati City (*Annex "C"*). The Application (excluding Annexes) was also published in a newspaper of general circulation (*Annex "D"*).

**Allegations in support for the issuance of provisional authority**

12. PSALM acknowledges that the continued operation of the Distribution Utilities is indispensable to the economic efficiency of the franchise area they service, not to mention the ripple effect of that efficiency to the economic growth of the entire country. In order for these Distribution Utilities to continue lawfully drawing electricity from the grid, it is imperative that they enter into agreement with PSALM as Supplier, a contract of sale for electricity, hence the respective CSEEs.



13. The CSEEs of the above listed Distribution Utilities expired on 25 December 2011. Accordingly, a grant of provisional authority to execute the CSEEs effective 26 December 2011 will benefit the DUs and will ultimately redound to the benefit of the end consumers.

14. Pursuant to ERC rules of practice and procedures, the Honorable Commission may exercise its discretion by granting provisional authority or interim relief prior to a final decision.

15. It is understood that the interim relief sought by Petitioner PSALM that may be granted by Commission, shall be subject to adjustments and other conditions that the Commission may impose after hearing and final determination of the Honorable Commission.

#### **PRAYER**

**WHEREFORE** Applicant PSALM most respectfully prays that the Honorable Commission approve the duly negotiated CSEEs with the twenty (20) Distribution Utilities in the Visayas Grid. It is likewise prayed that a Provisional Authority (PA) be issued authorizing PSALM to implement the subject CSEEs with the concerned DUs in the Visayas Grid effective 26 December 2011.

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

Makati City for Pasig City, 9 January 2012.

- *signatories on following pages* -



**MARIA LUZ L. CAMINERO**

General Counsel

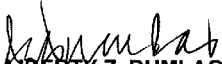
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Roll of Attorney No. 35714



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Roll of Attorney No. 56568

**POWER SECTOR ASSETS AND LIABILITIES  
MANAGEMENT CORPORATION**  
7th Floor, Bankmer Building  
6756 Ayala Avenue, Makati City

(Republic of the Philippines)  
(Makati City ) s.s.

**VERIFICATION AND CERTIFICATION**

I, **CONRAD S. TOLENTINO** of legal age, married, with office address at the Power Sector Assets and Liabilities Management Corporation (**PSALM**), 7<sup>th</sup> Floor, Bankmer Building, 6756 Ayala Avenue, Makati 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 Vice President for Asset Management Group of the Power Sector Assets and Liabilities Management Corporation (**PSALM**) and the duly authorized representative of the President and CEO of **PSALM** pursuant to Board Resolution No. 04-38 dated 25 May 2004, with authority to commence, initiate and file the foregoing Application before the Energy Regulatory Commission;
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. 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
4. 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 Court.

9 January 2012, Makati City, Philippines.

  
**CONRAD S. TOLENTINO**  
Affiant

JAN 12 2012

SUBSCRIBED and SWORN TO before me this \_\_\_th day of January 2012 at Makati City, with affiant presented to me his Driver's License with No. N01-94-171862 issued on 25 August 2009, known to me and to me known to be the same person who executed the foregoing Application with Compliance.

Doc. No. 411 ;  
Page No. 84 ;  
Book No. I ;  
Series of 2012.

  
**RENATO R. VEHEMENTE**

Notary Public Makati City  
Appt. No. M-299 Until 31 Dec 2012  
Roll of Attorney No. 56568  
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