

Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City

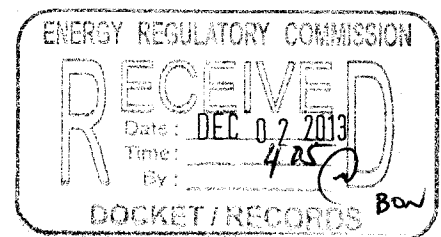
IN THE MATTER OF THE
APPLICATION FOR THE
APPROVAL OF THE CONTRACTS
FOR THE SUPPLY OF ELECTRIC
ENERGY (CSEEs) AND LETTER
OF AGREEMENT (LOA) ENTERED
INTO WITH DISTRIBUTION
UTILITIES (DUs) LOCATED IN THE
MINDANAO GRID WITH PRAYER
FOR THE ISSUANCE OF
PROVISIONAL AUTHORITY (PA)

ERC Case No. 2013-218-RC

POWER SECTOR ASSETS and
LIABILITIES MANAGEMENT
CORPORATION (PSALM),

Applicant.

X ----- X



APPLICATION

**POWER SECTOR ASSETS AND LIABILITIES
MANAGEMENT CORPORATION (PSALM)**, by counsel, unto 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) and Letter of Agreement (LOA) entered into by and between Applicant PSALM and five (5) Distribution Utilities (DUs) located in the Mindanao Grid pursuant to Section 67 of Republic Act (RA) No. 9136.

2. Previously, Applicant PSALM filed similar Applications in 2011 and 2012 for the Approval of the terms and conditions of CSEEs effective 26 August 2011 to 25 December 2012 and 26 December 2011 to 25 December 2012, respectively.

PSALM DEC-13-1907

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 Section 49 of the 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 (NPC) 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.

6. The CSEEs having expired, PSALM filed an Application for the Approval of the terms and conditions of CSEEs entered into by and between Applicant PSALM and the twenty-three (23) DUs located in the Mindanao Grid on 01 April 2013 (ERC Case No. 2013-055 RC), which was provisionally approved by the Honorable Commission on 03 July 2013. This filing was the first of two (2) batches of new CSEEs for Mindanao DUs.

7. Meanwhile, a LOA is executed between the parties in cases of change in the provision of the CSEE other than the terms and conditions appearing in the template for the TSC, as approved by the Honorable Commission in Resolution No. 08, Series of 2005. The LOA covers the change in Annex I of the CSEE.

8. Hence, this Application for the second set of CSEEs entered into by and between Applicant PSALM and four (4) DUs, and the LOA for the increase of contract energy with one (1) DU, in the Mindanao Grid, with prayer for the issuance of a provisional authority.

**Terms and conditions of the
CSEE under ERC Case No.
2013-055RC**

9. 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.

10. In Energy Regulatory Commission (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 the DUs and NPC and should not be construed as the contract contemplated under Section 67 of the EPIRA.

11. In ERC Case No. 2013-055 RC, PSALM introduced the following revisions¹ to the CSEEs executed with the DUs in the Mindanao Grid, which CSEEs were submitted before this Honorable Commission:

11.1 CONTRACT DURATION² - This Contract consisting of the Transition Supply Contract shall remain in full force and effect for a period of *four (4) years from 26 December 2012 to 25 December 2016* or one year after the declaration of open access in Mindanao by the DOE, whichever comes first. xxx.³

11.2 CONTRACT ENERGY - Contract Energy and Equivalent Demand as indicated in Annex I and Annex Ia may be changed by SUPPLIER annually due to a change in the projected available capacity of SUPPLIER's power plants and at any time during the duration of the Contract due to the privatization of any of the assets of SUPPLIER pursuant to the EPIRA.⁴

11.3 AVAILABILITY OF SUPPLY - xxx 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 the conditions stated in Section 4.1 of this Contract*; xxx *In case of excess in the generation*

¹ *Italicized for ease of reference.*

² **NOTE:** 1) DLPC's CSEE will expire on 25 December 2015. Its application is only for the approval of the LOA for the increase in its contract energy; 2) The contract duration of LASURECO and MAGELCO's CSEEs are for the period of only six (6) months, from 26 June 2013 to 25 December 2013 as approved by the PSALM Board; and 3) The contract duration of SOCOTECO-I is from 26 August 2013 to 25 December 2016.

³ Section 3.1 of the CSEE.

⁴ Section 4.1, *ibid.*

capacity of the SUPPLIER, CUSTOMER shall be informed of the excess and allocation of the excess available supply of electricity to the CUSTOMER shall be proportionate to the equivalent contract demand as provided for in this Contract. The CUSTOMER can increase its energy consumption up to but not more than 100% of the allocated excess supply.⁵

11.4 CONSUMPTION IN EXCESS OF CONTRACT ENERGY - Whenever available, in accordance with good utility practice, SUPPLIER may, but shall not be obliged to provide electricity to CUSTOMER in excess of Contract Energy.⁶

11.5 ASSIGNABILITY - When a CUSTOMER has been assigned by the SUPPLIER 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.⁷

11.6 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, xxx 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.⁸

11.7 BASIC ENERGY CHARGE - The ERC-approved generation rates, which are attached as Annex III and other charges exclusive of penalties, bonuses, shall be applied to the CUSTOMER's contracted monthly or hourly energy consumption. Prior to the commercial operation of the WESM, the basic energy charge to be applied shall be the prevailing ERC approved rate and other adjustments. Upon the commercial operation of the WESM, the basic energy charge to be applied to the

⁵ Section 4.2, *id.*
⁶ Section 4.3, *id.*
⁷ Section 4.8, *id.*
⁸ Section 4.9, *id.*

contracted energy shall be in accordance with Section 8.1 of this Contract.⁹

11.8 SERVICE INTERRUPTION ADJUSTMENT - xxx 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.*xxx¹⁰

11.9 OVERDUE ACCOUNT - If the account of the CUSTOMER is overdue for more than six (6) months, xxx a restructuring agreement of the overdue account shall be executed by the CUSTOMER, with the following salient terms and conditions, xxx *Section 6.17.4 Non-renewal of contract for failure to pay the monthly amortization, current bill and other charges.*xxx¹¹

12. The above revisions to the CSEEs were introduced in consultation with the Department of Energy (DOE) and the National Electrification Administration (NEA) and with the approval of the DUs in the Mindanao Grid. The revisions addressed apparent issues that may not have been considered in 2005. Likewise, the amendments were proposed to clarify recurring issues frequently subject of dispute.

The CSEEs and LOA of the Distribution Utilities located in the Mindanao Grid

13. Pursuant to 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 this Application for the approval of CSEEs duly negotiated and executed with the following DUs in the Mindanao Grid:

13.1. Davao del Norte Electric Cooperative (DANECO) – [Annex "B-1"];

13.2. Lanao del Sur Electric Cooperative (LASURECO) – [Annex "B-2"];

⁹ Section 6.1, *id.*
¹⁰ Section 6.4, *id.*
¹¹ Section 6.17, *id.*

13.3. Maguindanao Electric Cooperative, Inc. (MAGELCO) - [Annex "B-3"];

13.4. South Cotabato I Electric Cooperative, Inc. (SOCOTECO-I) - [Annex "B-4"].

14. The said CSEEs were executed based on the template approved by the Honorable Commission under Resolution No. 8, Series of 2005 as amended by Resolution No. 15, Series of 2005. Likewise, the CSEEs incorporated some changes previously proposed by PSALM and approved by the DUs, which changes were contained in the CSEEs provisionally approved by this Honorable Commission in PSALM's Application in ERC Case No. 2013-055 RC.

15. DANECO's CSEE was belatedly executed because of a dispute between its National Electrification Administration (NEA)-appointed Board of Directors and the Cooperative Development Authority (CDA)-appointed Board of Directors. There was a problem as to which Board had the authority to sign the CSEE in behalf of DANECO. The dispute was ultimately resolved in favor of the NEA-appointed Board and the same executed the CSEE. The new CSEE of DANECO is for the period 26 December 2012 to 25 December 2016.

16. MAGELCO had a previous CSEE for the period 26 December 2012 up to 25 June 2013 which was included in ERC Case No. 2013-055 RC and provisionally approved by this Honorable Commission. The PSALM Board approved an extension for MAGELCO's CSEE for the same six-month period, which is one of the CSEEs included in this filing. The new CSEE is for the period 26 June 2013 up to 25 December 2013. The contract extension is subject to the same condition as the first one which is for MAGELCO to improve its payment performance.

17. In the case of LASURECO, in December 2012, PSALM forwarded to LASURECO its CSEE covering the six-month period from 26 December 2012 to 25 June 2013 for signing and notarization. However, LASURECO did not return to PSALM the signed and notarized CSEE for reasons known only to LASURECO, thus, was not included in the first filing by PSALM on 01 April 2013. The second CSEE of LASURECO covering the period of 26 June 2013 to 25 December 2013, which is included in this filing, was also forwarded to LASURECO for signing and notarization. However, same with the previous CSEE, LASURECO did not sign the second CSEE. LASURECO only signed the second CSEE when the DOE required

them to do so or else it will be exposed to the Interim Mindanao Electricity Market (IMEM) price when the IMEM is implemented in Mindanao. Hence, the late filing of the second CSEE covering the period of 26 June 2013 to 25 December 2013.

18. Meanwhile, SOCOTECO-I's CSEE just expired last 25 August 2013, and was renewed, thus, the inclusion of SOCOTECO I's CSEE in this filing. The new CSEE is for the period 26 August 2013 to 25 December 2016.

19. Likewise in the present Application, a LOA was executed to increase the contract energy of Davao Light and Power Company Inc.'s (DLPC) CSEE [**Annex "B-5"**] as a result of its assumption of the responsibility to supply the energy requirements of Holcim Philippines Inc. (HPI) – Davao Plant, when HPI's CSEE with PSALM expired on 26 September 2013. DLPC is the grantee of the franchise for the distribution of electric power in Davao City where HPI-Davao Plant is directly connected. The LOA covers the change in Annex I of the DLPC's CSEE covering the period from 26 September 2013 to 25 December 2015.

20. Finally, in compliance with Section 4(e), Rule 3 of the Implementing Rules and Regulations of the EPIRA and ERC Resolution No. 38-2006, and in support of the instant Application for the approval of the CSEEs and LOA, 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

21. 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 for the supply of electricity, a contract of sale for electricity, hence, the respective CSEEs and LOA.

22. The CSEEs of the four (4) DUs expired on: i) 25 December 2012 for DANECO; ii) 25 June 2013 for LASURECO and MAGELCO; and iii) 25 August 2013 for SOCOTECO-I. Despite the

expiration, PSALM continued to supply electricity to said DUs in order not to disrupt essential public service. Accordingly, a grant of provisionally authority to execute the CSEEs effective 26 December 2012, 26 June 2013, and 26 August 2013, respectively, and the LOA effective 26 September 2013, will benefit the DUs and will ultimately redound to the benefit of the end consumers.

23. 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.

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

RELIEF

WHEREFORE, premises considered, Applicant PSALM respectfully prays that the Honorable Commission **APPROVE** the following:

- i) The duly negotiated CSEEs with the four (4) Distribution Utilities (DUs) located in the Mindanao Grid; and
- ii) The duly negotiated LOA with one (1) Mindanao DU for the increase in contract energy; and

It is likewise prayed that a Provisional Authority (PA) be **ISSUED** authorizing PSALM to implement the subject LOA and CSEEs with the concerned DUs in the Mindanao Grid effective 26 September 2013, 26 December 2012, 26 June 2013, and 26 August 2013, respectively.

Other just or equitable reliefs are likewise prayed for.

Makati City for the City Pasig, 25 November 2013.

- signatories on the next page -



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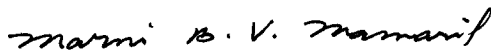
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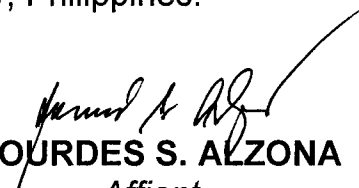
Republic of the Philippines)
Makati City) s.s.

VERIFICATION cum CERTIFICATION


I, **LOURDES S. ALZONA**, of legal age, married, with office address at the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.), 4th Floor, Bankmer Building, 6756 Ayala Avenue, Makati City, after having been duly sworn to in accordance with law, do hereby depose and state that:

1. I am the Vice President - Finance and the duly designated Officer-in-Charge (OIC) of PSALM Corp. with authority to commence, initiate and file the foregoing Application, and to verify and certify under oath the filing of such Application pursuant to PSALM Office Order No. 2013-276 dated 29 November 2013;
2. I have read and understood the contents of the Application which are true and correct based on my own personal knowledge and/or based on authentic records available to PSALM;
3. I 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 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 and status thereof within five (5) days from its discovery to the Honorable Commission.

NOV 29 2013, Makati City, Philippines.


LOURDES S. ALZONA
Affiant
NOV 29 2013

SUBSCRIBED and SWORN TO before me this ____ day of November 2013, with affiant presenting to me her Passport (No. XX3544938 issued on 23 April 2013 at DFA-Manila), known to me and to me known to be the same person who executed the foregoing Verification *cum* Certification.


CAROLINE V. BALÔ-ATENCIA
NOTARY PUBLIC for Makati City
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