

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

**IN THE MATTER OF THE
APPLICATION FOR
APPROVAL OF THE LETTER
OF AGREEMENT WITH
SEVERAL DISTRIBUTION
UTILITIES IN THE VISAYAS
GRID, WITH PRAYER FOR
ISSUANCE OF PROVISIONAL
AUTHORITY**

ERC CASE NO. 2021-074 RC

**POWER SECTOR ASSETS
AND LIABILITIES
MANAGEMENT
CORPORATION (PSALM),
Applicant.**

Promulgated:
October 25, 2021

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NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 20 September 2021, Power Sector Assets and Liabilities Management Corporation (PSALM) filed an *Application* for the approval of the terms and conditions of the Letters of Agreements (LOAs) entered into by and between Applicant PSALM and several distribution utilities (DUs) in the Visayas Grid pursuant to Section 67 of Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001” (EPIRA).

The pertinent provisions of the said *Application* are hereunder quoted as follows:

1. This is an Application for the Approval of the terms and conditions of the Letters of Agreements (LOAs) entered into by and between Applicant PSALM and several distribution utilities (DUs) in the Visayas Grid pursuant to Section 67 of Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001” (EPIRA).

2. Applicant 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 consequent assignment on 11 May 2009 (the Letter of Agreement is hereto attached as **Annex “A”**) of all NPC power supply contracts to PSALM, NPC assigned and transferred to PSALM all its rights and obligations in, to and under its Contracts for the Sale of Electric Energy (CSEEs) and other similarly or substantially equivalent power supply contracts with NPC power customers (collectively referred to as the “Power Supply Contracts”).
4. On and from 11 May 2009, the Power Supply Contracts were deemed amended as follows: (i) all references to NPC therein shall be treated as references to PSALM; (ii) PSALM shall be deemed the SUPPLIER under said Power Supply Contracts; and (iii) 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 Letter Agreement. Thus, this instant application by PSALM.
5. The 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 amended by this Honorable Commission in its Resolution No. 15, Series of 2005.
6. 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 merely serve as a guide for the DUs and NPC, and should not be construed as the contract contemplated under Section 67 of the EPIRA.
7. PSALM filed similar Applications in 2011, 2012, 2013 and 2014 for the Approval of the terms and conditions of the CSEEs and LOAs with the following durations:
 - a. 26 December 2010 to 25 December 2011;
 - b. 26 December 2011 to 25 December 2012;
 - c. 26 December 2012 to 25 December 2013; and
 - e. 26 December 2013 to 25 December 2014
8. By reason of public bidding to privatize rights to the contracted energy under the Unified Leyte Geothermal Power Plant (ULGPP) and the asset sale of the Naga Power Plant Complex, PSALM no longer renewed the CSEEs that expired on 25 December 2014.
9. The ULGPP has a dependable capacity of 400MW out of the 538MW installed capacity.
10. On 08 June 2018, PSALM filed its application docketed as ERC Case No. 2018-055 for the approval of the CSEEs for the duration of 26 December 2017 to 25 December 2020, duly executed and negotiated with the following:

- a. Leyte III Electric Cooperative, Inc. (LEYECO III); and
 - b. Leyte V Electric Cooperative (LEYECO V)
11. The foregoing CSEEs were executed based on the template approved by this Honorable Commission under Resolution No. 8, Series of 2005 as amended by Resolution No. 15, Series of 2005. Likewise, the 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. 2012-008 RC, ERC Case No. 2013-044 RC, ERC Case No. 2013-169 RC and ERC Case No. 2014-173.
 12. The **revisions** made in the CSEEs under said Application consist of: (a) those found in Annex 1 of the CSEEs (which reflects the Contracted Energy and the corresponding equivalent demand); and (b) the amendment of Section 3.1 on **CONTRACT DURATION**, as follows:
 - 3.1.1 This Contract consisting of the Transition Supply Contract shall remain in full force and effect from 26 December 2017 to 25 December 2020. Unless otherwise provided, the applicable provisions of this Contract shall be deemed modified by the applicable WESM Rules.
 13. In a Decision dated 21 January 2021, the Honorable Commission confirmed and approved the CSEEs entered into by PSALM with LEYECO III and LEYECO V for a contract term of three (3) years from 26 December 2017 to 25 December 2020.

**PSALM'S PENDING CSEE/LOA APPLICATIONS
WITH THE ENERGY REGULATORY COMMISSION**

ERC CASE No. 2019-040 RC

14. On 31 May 2019, PSALM filed an application docketed as ERC Case No. 2019-040 for approval of several duly executed and negotiated CSEEs in the Visayas Grid with the following Distribution Utilities:
 1. Biliran Electric Cooperative, Inc. (BILECO);
 2. Bohol Electric Cooperative, Inc. (BOHECO);
 3. Bohol II Electric Cooperative, Inc. (BOHECO II);
 4. Don Orestres Romualdez Electric Cooperative, Inc. (DORELCO);
 5. Eastern Samar Electric Cooperative, Inc. (ESAMELCO);
 6. Leyte II Electric Cooperative, Inc. (LEYECO II);
 7. Leyte IV Electric Cooperative, Inc. (LEYECO IV);
 8. Northern Samar Electric Cooperative, Inc. (NORSAMELCO)
 9. Samar I Electric Cooperative, Inc. (SAMELCO I);
 10. Samar II Electric Cooperative, Inc. (SAMELCO II); and
 11. Southern Leyte Electric Cooperative, Inc. (SOLECO).

15. These CSEEs had a duration of 26 December 2018 to 25 December 2019
16. The **revisions** made in the CSEEs under said Application consist of (a) those found in Annex 1 of the CSEEs (which reflects the Contracted Energy and the corresponding equivalent demand); and (b) the amendment of Section 3.1 on **zCONTRACT DURATION**, as follows:

3.1 This Contract consisting of the Transition Supply Contract shall remain in full force and effect from 26 December 2018 to 25 December 2019. Unless otherwise provided, the applicable provisions of this Contract shall be deemed modified by the applicable WESM Rules.
17. Also included in said application (ERC Case No. 2019-040) were the LOAs of LEYECO III and LEYECO V. The LOAs were necessary to accommodate the requests by LEYECO III and LEYECO V for increase in contract demand and energy. This application is pending resolution by this Honorable Commission.
18. The CSEEs and LOAs were necessary due to delay in the commercial operation of the 1336MW (2 x 668) Coal-Fired Power Plant located in Dinginin, Mariveles, Bataan owned by GNPowr Dinginin Ltd., Co. (GNPD), with which the DUs had power supply contracts.

ERC CASE NO. 2020-014 RC

19. PSALM filed a similar application docketed as ERC Case No. 2020-014 RC for the approval of duly executed and negotiated CSEE in the Visayas Grid with Aklan Electric Cooperative (AKELCO) with a contract duration from 26 February 2020 to 25 November 2020.
20. Said CSEE, which has a duration from 26 February 2020 to 25 November 2020, was executed based on the ERC-approved template under ERC Resolution No. 08, Series of 2005. Likewise, the CSEE 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 Nos. 2012-008 RC, 2013-044 RC, 2012-169 RC and 2014-173 RC.
21. The **revisions** made in the CSEE under the present Application consist of (a) those found in Annex 1 of the CSEE (which reflects the Contracted Energy and the corresponding equivalent demand); and (b) the amendment of Section 3.1 on **CONTRACT DURATION**, as follows:

3.1 This Contract shall be effective for a period of ten (10) months from 26 February 2020 to 25 November 2020, unless modified by the applicable WESM Rules.

22. Likewise, the CSEE incorporated 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 Nos. 2012-008 RC, 2013-044 RC, 2012-169 RC and 2014-173 RC.
23. This application is pending resolution before this Honorable Commission.

ERC CASE NO. 2020-030 RC

24. On 04 September 2020, PSALM filed a similar application docketed as ERC Case No. 2020-030 RC for the approval of several duly executed and negotiated LOAs in the Visayas Grid with the following DUs:
 1. Biliran Electric Cooperative, Inc. (BILECO)
 2. Bohol Electric Cooperative, Inc. (BOHECO I)
 3. Bohol II Electric Cooperative, Inc. (BOHECO II)
 4. Don Orestres Romualdez Electric Cooperative (DORELCO)
 5. Eastern Samar Electric Cooperative, Inc. (ESAMELCO)
 6. Leyte II Electric Cooperative, Inc. (LEYECO II)
 7. Leyte III Electric Cooperative, Inc. (LEYECO III)
 8. Leyte IV Electric Cooperative, Inc. (LEYECO IV)
 9. Northern Samar Electric Cooperative, Inc. (NORSAMELCO)
 10. Samar I Electric Cooperative, Inc. (SAMELCO I)
 11. Samar II Electric Cooperative, Inc. (SAMELCO II)
 12. Southern Leyte Electric Cooperative, Inc. (SOLECO)
25. Notably, as mentioned under ERC Case No. 2019-040 RC, the only revisions PSALM introduced in the CSEEs under said Application consist of (i) those found in Annex 1 of the CSEEs (which reflects the Contracted Energy and the corresponding equivalent demand); and (ii) the amendment of Section 3.1 on CONTRACT DURATION, from 26 December 2018 to 25 December 2019.
26. All the above-mentioned pending Applications can be summarized as follows:

ERC Case No. 2019-040 RC	ERC Case No. 2020-014 RC	ERC Case No. 2020-030 RC
<i>Visayas CSEEs and LOAs (filed together)</i>	<i>Visayas CSEE</i>	<i>Visayas LOAs</i>
BILECO	AKELCO	BILECO
BOHECO I	-	BOHECO I
BOHECO II	-	BOHECO II
DORELCO	-	DORELCO
ESAMELCO	-	ESAMELCO
LEYECO II	-	LEYECO II
LEYECO IV	-	LEYECO III
DASURECO	-	LEYECO IV

NORSAMELCO	-	NORSAMELCO
SAMELCO I	-	SAMELCO I
SAMELCO II	-	SAMELCO II
SOLECO	-	SOLECO
-	-	-
LOA	-	-
-	-	-
LEYECO III	-	-
LEYECO V	-	-

LOAs SUBJECT OF THE PRESENT APPLICATION

27. Pursuant to Section 5, Article III of the Honorable Commission’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 LOAs duly negotiated with the following DUs:
1. **Biliran Electric Cooperative Inc. (BILECO) (Annex “B”)**
 – included under ERC Case Nos. 2019-040 RC (as CSEE) and 2020-030 RC (as LOA)-
 2. **Leyte IV Electric Cooperative Inc. (LEYECO IV) (Annex “B-1”)**
 – included under ERC Case Nos. 2019-040 RC (as CSEE) and 2020-030RC (as LOA)
 3. **Don Orestes Romualdez Electric Cooperative Inc. (DORELCO) (Annex “B-2”)**
 – included under ERC Case Nos. 2019-040 RC (as CSEE) and 2020-030RC (as LOA)
 4. **Eastern Samar Electric Cooperative Inc. (ESAMELCO) (Annex “B-3”)**
 – included under ERC Case Nos. 2019-040 RC (as CSEE) and 2020-030RC (as LOA)
 5. **Northern Samar Electric Cooperative Inc. (NORSAMELCO) (Annex “B-4”)**
 – included under ERC Case Nos. 2019-040 RC (as CSEE) and 2020-030RC (as LOA)
 6. **Samar II Electric Cooperative Inc. (SAMELCO II) (Annex “B-5”)**
 – included under ERC Case Nos. 2019-040 RC (as CSEE) and 2020-030RC (as LOA)
 7. **Leyte V Electric Cooperative Inc. (LEYECO V) (Annex “B-6”)**
 – included under ERC Case Nos. 2018-055 RC (as CSEE) and 2019-040 (as LOA)
 8. **Samar I Electric Cooperative, Inc. (SAMELCO I) (Annex “B-7”)**

– included under ERC Case Nos. 2019-040 RC (as CSEE) and 2020-030RC (as LOA)

9. **Southern Leyte Electric Cooperative, Inc. (SOLECO) (Annex “B-8”)**

– included under ERC Case Nos. 2019-040 RC (as CSEE) and 2020-030RC (as LOA)

28. The above-enumerated DUs have existing CSEEs and LOAs application for approval under ERC Case Nos. 2019-040 RC and 2020-030 RC.

29. The revisions made in the LOAs under the present Application consist of: (a) those found in Annex 1 of the CSEE (which reflects the Contracted Energy and the corresponding equivalent demand); and (b) the amendment of Section 9.10, as follows:

9.10 A dispute arising in connection with this Contract, which exclusive jurisdiction has not been vested in the ERC or any appropriate government agency, shall be submitted to arbitration in the Philippines in accordance with Republic Act 876 and Republic Act 9285. No court action shall be initiated except as provided under the Philippine Arbitration Law. The proper court having jurisdiction over the place where PSALM’s principal office is located shall have exclusive jurisdiction over such court action.

30. Furthermore, the LOAs provide that the following provision be inserted in Section 4.9 of the CSEE:

d. The assignee shall assume all obligations of the CUSTOMER related to Contracted Energy that might arise in a pending suit with the ERC or on Arbitration proceedings.

31. It is further understood that these LOAs shall be an integral part of the CSEE with their respective DUs and the terms and conditions not otherwise affected by the above-mentioned amendments shall remain valid and effective.

32. Finally, in compliance with Section 2, Rule 6 (Pre-Filing Requirements), and in support of the instant Application for the approval of LOAs, a copy of the instant Application (including Annexes) was furnished to the offices of the City Mayor and the *Sangguniang Panlungsod* of Quezon City (**Annexes “C” and “D”** respectively). The Application (excluding Annexes) was also published in a newspaper of general circulation (**Annex “E”**).

ALLEGATIONS IN SUPPORT FOR THE ISSUANCE OF PROVISIONAL AUTHORITY

33. 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/s with PSALM as Supplier for the supply of electricity, through a contract of sale for electricity, hence the respective CSEE. Accordingly, a grant of provisional authority to execute the CSEE will ultimately redound to the benefit of end consumers.

34. Attached as **Annex “F”** is the Judicial Affidavit of Engr. James Marvin Mamaradlo, Corporate Staff Officer B of the Electricity Trading Department (ETD) under the Office of the Vice President - Privatization and Asset Management Group attesting to the truth of the above matters.
35. Pursuant to ERC rules of practice and procedure, this Honorable Commission may exercise its discretion by granting provisional authority or interim relief prior to a final decision.
36. It is understood that the interim relief sought by Applicant PSALM that 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.

PRAYER

WHEREFORE, Applicant PSALM most respectfully prays that this Honorable Commission approve the duly negotiated LOAs with the following DUs:

1. Biliran Electric Cooperative, Inc. (BILECO)
2. Leyte IV Electric Cooperative, Inc. (LEYECO IV)
3. Don Orestres Romualdez Electric Cooperative, Inc. (DORELCO)
4. Eastern Samar Electric Cooperative, Inc. (ESAMELCO)
5. Northern Samar Electric Cooperative, Inc. (NORSAMELCO)
6. Samar II Electric Cooperative, Inc. (SAMELCO II)
7. Leyte V Electric Cooperative, Inc. (LEYECO V)
8. Samar I Electric Cooperative, Inc. (SAMELCO I)
9. Southern Leyte Electric Cooperative, Inc. (SOLECO)

It is likewise prayed that a Provisional Authority be issued authorizing PSALM to implement the subject LOAs with the concerned DU in the Visayas Grid.

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

The Commission hereby sets the same 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 2020¹ dated 24 September 2020 and Resolution No. 1, Series of 2021, dated 17 December 2020 (ERC Revised Rules of Practice and Procedure):²

Date	Platform	Activity
17 November 2021 (Wednesday) at two o'clock in the afternoon (2:00 PM)	Microsoft Teams	Determination of compliance with the jurisdictional requirements and expository presentation
24 November 2021 (Wednesday) at two o'clock in the afternoon (2:00 PM)	Microsoft Teams	Pre-trial Conference and presentation of evidence

Any interested stakeholder may submit its comments and/or clarifications at least one (1) calendar day prior to the scheduled virtual hearing, via electronic mail (e-mail) at doCKET@erc.ph, 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, copy furnish 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 and subject to the requirements under Rule 9 of the ERC Revised Rules of Practice and Procedure, indicating therein the docket number and title of the case and stating 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.

¹ Entitled: A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission;

² A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

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, 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 and subject to the requirements under Rule 9 of the ERC Revised Rules of Practice and Procedure. 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.

Any of the persons mentioned in the preceding paragraphs may access the copy of the 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 hearing by providing the Commission, thru legal.virtualhearings@erc.ph, with 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 hearing.

WITNESS, the Honorable Commissioners **ALEXIS M. LUMBATAN**, **CATHERINE P. MACEDA**, **FLORESINDA G. BALDO-DIGAL** and **MARKO ROMEO L. FUENTES**, Energy Regulatory Commission, this 11th day of October 2021 in Pasig City.


AGNES YST DEVANADERA
Chairperson and CEO


LS: EJS/CLB/MCCG

ERC
Office of the Chairperson

AVSTD-2021-10-510-0074