

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

**IN THE MATTER OF THE
APPLICATION FOR
APPROVAL OF POWER
SUPPLY AGREEMENT
BETWEEN BILIRAN
ELECTRIC COOPERATIVE,
INC. (BILECO) AND SUAL
POWER INC. (SPI) WITH
MOTION FOR
CONFIDENTIAL
TREATMENT OF
INFORMATION AND
PRAYER FOR PROVISIONAL
AUTHORITY AND/OR
INTERIM RELIEF**

ERC CASE NO. 2024-165 RC

**BILIRAN ELECTRIC
COOPERATIVE, INC.
(BILECO) AND SUAL
POWER INC. (SPI),
*Applicants.***

X-----X

**Promulgated:
December 16, 2024**

NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 10 December 2024, the Biliran Electric Cooperative, Inc. (BILECO) and Sual Power Inc. (SPI) filed their *Joint Application* dated 04 November 2024, seeking the Commission's approval of their Power Supply Agreement (PSA), with motion for confidential treatment of information and prayer for issuance of provisional authority and/or interim relief.

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

The Joint Applicants

1. Applicant BILECO is an electric cooperative duly organized and registered by virtue of P.D. No. 269, as amended, with principal office address at Barangay Caray-caray, Naval, Biliran, represented in this instance by its General Manager, Gerardo N. Oledan, of legal age, with office address at Barangay Caray-caray, Naval, Biliran, Philippines, where it may be served with notices and other processes of this Honorable Commission through its Counsel at the address indicated herein.
2. Applicant SPI is a corporation duly organized and existing under the laws of the Republic of the Philippines, represented in this instance by its General Manager, Elenita D. Go, of legal age with office address at 5th Floor C5 Office Building Complex, No. 100 E. Rodriguez Jr. Avenue, C5 Road, Bo. Ugong, Pasig City, Philippines, where Applicant SPI may be served with notices and other processes of this Honorable Commission through its Counsel at the address indicated herein.;
3. SPI is the Administrator¹ of the IPP – Administration Agreement (the “IPP-AA”) executed between SPI and Power Sector Assets and Liabilities Management Corporation (“PSALM”) with the conformity of the National Power Corporation (“NPC”) for the management and control of the 1000 MW Net Contracted Capacity of the Sual Coal-Fired Thermal Power Plant (the “Plant”);
4. 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;

NATURE OF THE APPLICATION

5. The Joint Application for approval of the Power Supply Agreement (“PSA”) entered into by and between BILECO and SPI, is being submitted to the Honorable Commission for its review and approval pursuant to Sections 25² and 45(b)³ of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (the “EPIRA”), Rules 5, Section

¹ At the time of the execution of the PSA and thereafter became the owner of the Plant on 25 October 2024.

² SEC.25. Retail Rate. – The retail rates charged by distribution utilities for the supply of electricity in their captive market shall be subject to regulation by the ERC based on the principle of full recovery of prudent and reasonable economic costs incurred, or such other principles that will promote efficiency as may be determined by the ERC.

³ Distribution utilities may enter into bilateral power supply contracts subject to review by the ERC: xxx xxx xxx.

4(e)⁴ and 11, Section 5⁵ of its Implementing Rules and Regulations (IRR), Rule 20(B) of its Rules of Practice and Procedure, and other pertinent rules and regulations and ;

STATEMENT OF FACTS

6. BILECO has been sourcing its electricity requirements from the Wholesale Electricity Spot Market (WESM) since August 26, 2024, following the expiration of its Emergency Power Supply Agreement with FDCUI which had a capacity of 8MW.

THE CONDUCT OF COMPETITIVE SELECTION PROCESS

7. Through a Memorandum of Agreement (MOA), ten (10) Electric Cooperatives (EC) of Region 8, including BILECO, agreed to conduct a joint procurement for their baseload requirement for the period of 2024 to 2033. The joint procurement was referred to as the Region 8 Joint Competitive Power Supply Procurement (R8 JCPSP).

8. Under the MOA, the Federation of Rural Electric Cooperatives in Region 8 Association, Inc. (FRECOR 8) was tasked to supervise and facilitate the transaction process, documentary requirements, and operational coordination among the member ECs of the R8 JCPSP.

9. A Joint Board of Directors (JBOD) was also created composed of General Managers and Board Presidents of the member ECs, which acts as the governing and policy-making body of the R8 JCPSP.

10. The JBOD passed Board Resolution No. 2023-11-002, Series of 2023 constituting the R8 Joint Bids and Awards Committee (JBAC) for the R8 JCPSP. A Joint Technical Working Group (JTWG) and a Joint Secretariat was also created.

11. The R8 JCPSP was for the procurement of an aggregate power supply of 190 MW, divided into two (2) lots: Lot 1 for 162 MW, which commences in 2024, and Lot 2 for 28 MW, which commences in 2027. The R8 JCPSP followed the policy and rules prescribed under Department of Energy (DOE) Department Circular No. DC2023-06-0021,⁶ and Energy Regulatory Commission (ERC) Resolution No. 16, Series of 2023.⁷

⁴ Prior to the implementation of Open Access and Retail Competition, the prices charges by a Generation Company for the Supply of Electricity shall be subject to ERC regulation on the Retail Rates charged by Distribution Utilities and transition supply contracts (TSCs) as specified in Section 67 of the Act.

⁵ Limits on Bilateral Supply Contracts by a Distribution Utility.

⁶ 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.

⁷ 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 (“2023 CSP Guidelines”).

12. On 15 December 2023, R8 JCPSP Bidding Documents, including Invitation to Bid, Terms of Reference, and Instructions to Bidders, were submitted to NEA. NEA then issued a Certificate of Conformity No. NEA-RAO-COC-2024-02 dated 22 March 2024 when it found the R8 JCPSP's Bidding Documents to be consistent with the latest posted 2023-2032 Power Supply Procurement Plan of the member ECs of the R8 JCPSP. NEA likewise allowed the member ECs of the R8 JCPSP to proceed with the CSP.

13. Thereafter on 6 and 13 April 2024, the Invitation to Bid and Terms of Reference were published in the Manila Bulletin newspaper.

14. There was likewise a local publication under the Leyte Samar Daily Express and the EV Mail.

15. Invitations to power suppliers were also sent through electronic mail and postings were made in the DOE CSP Portal and respective EC websites.

16. On 12 April 2024, Invitations to CSP Observers were sent to attend the Pre-Bid Conference, including NEA, DOE, ERC, consumer representatives, community representatives, interested civil society organizations and consumers, and regional development council for Eastern Visayas.

17. On 23 April 2024, the JBAC conducted its Pre-bid Conference 1. During the Pre-bid Conference 1, the comments and questions submitted by the bidders were reviewed and discussed.

18. On 18 May 2024, Supplemental Bid Bulletin Nos. 03 to 05 were issued and were posted on the DOE CSP Portal. They referred to amendments to the Terms of Reference, amendments to instruction to bidders, and amendments to the draft power supply agreement based on the comments and clarifications from the bidders of Pre-Bid Conference 1.

19. On 22 May 2024, the JBAC conducted the Pre-Bid Conference 2 to provide another opportunity for the bidders to seek clarification on the Bidding Documents and revisions made therein. CSP Observers were invited again.

20. On 08 June 2024, the JBAC issued the Final Instructions to Bidders, Final Terms of Reference, Supplemental Bid Bulletin Nos. 06 and 07 and other documents as requested by bidders in preparation for the submission and opening of bids. Invitations to CSP Observers were sent to attend the submission and opening of bids on 25 to 26 June 2024.

21. On 25 June 2024, bidders submitted their respective bids for Lot 1 and Lot 2. The bids were opened on 25 June 2024 for Lot 1, and on 26 June 2024 for Lot 2 in the presence of JBAC,

participating bidders, CSP Observers and an Independent Auditor.

22. On 1 to 3 July 2024, the JBAC conducted a post-qualification evaluation of the lowest calculated bids for Lot 1 and Lot 2.

23. On 3 July 2024, the JBAC issued Resolution No. 02, Series of 2024, recommending to the JBOD to award the power supply agreements to the following bidders for Lot 1 for the period of supply of 2024-2033:

Bidder	Capacity (Lot 1)
Therma Luzon Inc.	81 MW
Sual Power, Inc.	50 MW
KEPCO SPC Power Corp	31 MW

24. Further, the JBAC issued Resolution No. 03, Series of 2024, recommending to the JBOD to award the capacity of 50 MW for the period of supply of 2024-2033 to SPI as the bidder having the lowest calculated responsive bid.

25. Consequently, on 3 July 2024, JBOD approved JBAC's Recommendation to award the Power Supply Agreements to the bidders with the lowest calculated responsive bids.

26. After its receipt of NEA's Notice to Issue Award dated 13 August 2024 last 14 August 2024, on 19 August 2024, the JBAC issued a Notice of Award to SPI for the 50 MW baseload demand under Lot 1 of the R8 JCPSP, which was acknowledged by SPI on 20 August 2024.

27. On 29 August 2024, FRECOR 8 timely submitted to NEA the finalized draft PSA together with the Board Resolution and the justifications to the changes made in the PSA, for the issuance of the Notice to Execute Agreement. However, it was only on 13 September 2024 when FRECOR 8 received NEA's Notice to Execute Agreement dated 12 September 2024.

28. Thus, on 13 September 2024, BILECO and SPI executed the Power Supply Agreement (PSA), commencing on the Effectivity Date and from such date, shall remain in force and effect until 25 December 2033 with a contract capacity of 2 MW, unless sooner terminated in accordance with the PSA and upon approval by the ERC.

29. Hence, this instant Joint Application for the approval of the PSA between BILECO and SPI.

Salient Features of the PSA

30. The PSA between BILECO and SPI contains the following salient features:

Sale and Purchase of Energy/Capacity

Subject to and in accordance with the terms of this Agreement, Seller shall make available and sell to Buyer, and Buyer shall purchase from the Seller for the consideration described in Section 6, the energy and capacity from and after the Delivery Date until the expiry of the Term.

Contract Term

This Agreement shall take effect immediately from Effective Date, and from such date, shall remain in force and effect until December 25, 2033, unless sooner terminated in accordance with this Agreement and upon approval by the ERC.

Effectivity Date

The Parties' rights and obligations under this Agreement shall commence on Effective Date, which shall be the date upon which all of the following conditions are satisfied:

a.) Corporate Approvals. The receipt of the Seller of a certificate executed by the corporate or partnership, as applicable, or a resolution duly and validly issued by the board of directors of Buyer, attesting to the fact that the board of directors of Buyer has adopted resolutions (i) authorizing Buyer to execute and to enter into and deliver this Agreement and perform all its obligation hereunder, and (ii) designating the person authorized to execute this Agreement on behalf of the Buyer; and

b.) Government Authorizations. All governmental authorizations (except ERC) which are required to have been obtained in connection with the execution, delivery, and commencement of performance of this Agreement, shall have been obtained and be in full force and effect.

Within five (5) Days after the satisfaction of the conditions referred to in this Section, each Party shall send a written notice to the other Party confirming satisfaction of such conditions. Within five (5) Days from receipt of written notice from the Seller, the Buyer shall then inform the Seller of the Effective Date, which date shall be confirmed by the Seller.

ERC Approval

4.1 The Parties shall jointly file the application for the approval of the Agreement ("ERC Application") with the ERC. Parties shall exert its best efforts to secure the ERC approval of the Agreement within a reasonable time.

4.2 In the event that ERC issues any decision on the ERC Application which effectively modifies or amends any of the

terms of the Agreement including provisions on amounts payable under the Agreement, and which requires an amendment thereof, the Seller may file a motion for reconsideration of such decision within fifteen (15) Days from receipt thereof, and before the decision attains finality.

4.3 In the meantime, upon receipt of the ERC decision requiring amendments to the Agreement, the Parties shall cooperate in good faith to address the ERC modification of the Agreement and/or to negotiate amendments to the Agreement. In the event that the Parties agree to an amended Agreement, the Parties shall file the amended Agreement for approval by the ERC within thirty (30) Days from the execution of such amended Agreement.

Reduction of Contract Capacity

From time to time upon and after the implementation of Retail Competition and Open Access (RCOA), Green Energy Option Program (GEOP), Renewable Portfolio Standards (RPS), Metering programs, and other similar government programs, Buyer shall deliver to Seller written notice within thirty (30) Days prior to the target effectivity specifying the name of the affected customer, capacity and when such reductions shall take place, provided that actual reduction of Contract Capacity shall take place upon the receipt of ERC approval. Any such reduction shall be implemented pursuant to Schedule 6 of this Agreement. All other terms and conditions of this Agreement shall remain in full force and effect.

Outages

Except in cases of Force Majeure events, the Seller shall guarantee continuous supply even during Scheduled and Unscheduled Outages of its Facility throughout the term of this Agreement.

Replacement Power

In case of Force Majeure, the Seller may provide replacement power from its affiliate, subject to availability. The cost of which shall be for the account of the Buyer.

Other Charges

Buyer shall bear all other costs and charges incurred after the Delivery Point, such as WESM charges including line rental, transmission line losses, any interconnection charges and site specific loss adjustments, among others, as applicable.

Prompt Payment Discount (“PPD”)

The Seller shall extend PPD equivalent to PhPo.9000/kWh of Associated Energy to the Buyer if full payment of the power bill invoice is made within ten (10) Days from receipt thereof. Provided further, that the Buyer has no outstanding payables to the Seller including any required posting/replenishment of Security Deposit under this Agreement.

The Buyer shall not automatically deduct the PPD from the payment of its current power bill invoice and any unilateral deduction shall be considered a breach of its obligations under this Agreement. The PPD for the current power bill invoice will be made available to the Buyer in the succeeding power bill invoice. The Buyer with an expiring Agreement who is qualified to avail the PPD under its power bill invoice, shall receive its discount upon final settlement and clearance of its Agreement with the Seller.

Schedule 2 of the PSA
 Contract Capacity and Contract Energy

SCHEDULE 2

CONTRACT CAPACITY AND CONTRACT ENERGY

Billing Month	Hours	Contract Capacity (kW)	Maximum Contract Energy (kWh)	Minimum Contract Energy (kWh)
January	744	2000	1,488,000	967,200
February	744	2000	1,488,000	967,200
March*	672	2000	1,344,000	873,600
	696*	2000	1,392,000	904,800
April	744	2000	1,488,000	967,200
May	720	2000	1,440,000	936,000
June	744	2000	1,488,000	967,200
July	720	2000	1,440,000	936,000
August	744	2000	1,488,000	967,200
September	744	2000	1,488,000	967,200
October	720	2000	1,440,000	936,000
November	744	2000	1,488,000	967,200
December	720	2000	1,440,000	936,000

*Number of hours for March billing period during leap year.

The Buyer shall be allowed to nominate at least 50% of the Contract Capacity per interval divided by twelve (12) on all 5-minute Trading Intervals, but at the end of the relevant billing period, the Buyer shall be obligated to pay for the Product at 65% monthly minimum CUF or actual energy purchased, whichever is higher. The Buyer will be billed based on Monthly CUF if, at the end of the billing period and after reconciliation, the nomination falls below the Monthly CUF for reasons other than FM.

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Schedule 3 of the PSA
Electricity Fees

SCHEDULE 3

ELECTRICITY FEES

Capacity Utilization Factor ("CUF")	CAPACITY FEES, PHP/kWh	
	Capital Recovery Fee	Fixed Operations & Maintenance Fee
100%	2.2933	0.2120
99%	2.3165	0.2141
98%	2.3401	0.2163
97%	2.3642	0.2186
96%	2.3889	0.2208
95%	2.4140	0.2232
94%	2.4397	0.2255
93%	2.4659	0.2280
92%	2.4927	0.2304
91%	2.5201	0.2330
90%	2.5481	0.2356
89%	2.5767	0.2382
88%	2.6060	0.2409
87%	2.6360	0.2437
86%	2.6666	0.2465
85%	2.6980	0.2494
84%	2.7301	0.2524
83%	2.7630	0.2554
82%	2.7967	0.2585
81%	2.8312	0.2617
80%	2.8666	0.2650
79%	2.9029	0.2684
78%	2.9401	0.2718
77%	2.9783	0.2753
76%	3.0175	0.2789
75%	3.0577	0.2827
74%	3.0991	0.2865
73%	3.1415	0.2904
72%	3.1851	0.2944
71%	3.2300	0.2986
70%	3.2761	0.3029
69%	3.3236	0.3072
68%	3.3725	0.3118
67%	3.4228	0.3164
66%	3.4747	0.3212
65%	3.5282	0.3262

Note: FOM shall be 100% indexed to PH CPI

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CAPACITY UTILIZATION FACTOR FORMULA

The Capacity Utilization Factor shall be calculated in accordance with the formula below:

$$CUF = \frac{AE}{CC \times (BPD - FMDT) \times 24}$$

Where:

- CUF** = Capacity Utilization Factor
- AE** = Associated Energy refers to the supplied energy in kiloWatt-hours ("kWh") for the relevant Billing Period.
- CC** = Contract Capacity in kilo-Watt ("kW").
- BPD** = Billing Period Days, the number of Days within the relevant Billing Period.
- FMDT** = Force Majeure Days Taken within the relevant Billing Period.

Note: Calculated CUF for each relevant Billing Period shall be rounded-off to the nearest whole percentage/number.

ENERGY FEES, PhP/kWh	Percentage to be indexed	
Fuel Fee	3.6467	100%
Variable Operations & Maintenance Fee	0.1071	100%

Compliance with the Pre-filing Requirements

31. Copies of the foregoing documents and/or information are attached to the Joint Application as annexes and made integral parts hereof:

Annex	Documents/Information
"A"	Certified True Copy of the (a) Certificate of Registration (b) Certificate of Franchise (c) Articles of Incorporation (d) Constitution and By-laws (e) Company Profile
"B"	Verified Certification of the EC showing list of Board of Directors of BILECO.
"C"	(a) Power Supply Agreement (PSA) between SPI (b) SPI Sec Amended By-Laws (c) SPI Sec AOI (d) SPI SEC GIS
"D"	Verified Certification of SPI showing list of Board of Directors and Board Members of the ultimate parent company, its subsidiaries, and all its affiliates.
"E"	SPI Certification invoking Section 22 of ERC Resolution 16 Series of 2023 on Documents Previous Submitted

	<ul style="list-style-type: none"> - Write-up on the non-applicability of a Shareholders' Agreement of SPI - Write-up on the non-applicability of the BOI Registration of SPI - Environmental Compliance Certificate of SPI - Write-up on the non-applicability of the DOE-PDP - Write-up on the non-applicability of the requirements regarding a renewable energy plant - Write-up on the non-applicability of the requirement regarding an RE Service Contract - Write-up on the non-applicability of a water permit from the National Water Resources Board - Documents Related to Fuel (confidential) - Certification from the Independent Electricity Market Operator of the Philippines on the WESM Registration of SPI - WESM Registration of SPI - Relevant Technical and economic characteristics of the generation capacity, installed capacity, mode of operation, and dependable capacity - Transmission Service Agreement between the National Grid Corporation of the Philippines and SPI - Heat Rate Test Certificate of the SPI Plant
"F"	<p>Certificate of Compliance (COC) or Provisional Authority to Operate (PAO) or any Certification coming from the ERC of the ongoing COC/PAO application or renewal, pursuant to the Guidelines for the issuance of COC for Generation Companies/Facilities including Annexes of the SPI Plant.</p>
"G"	<p>Write-up on the Demand Side Management Program of BILECO</p>
"H"	<p>Write-up on the certification by National Power Corporation (NPC) whether Transition Supply Contract (TSC) capacity and energy are expected to be available during the contractual period.</p>
"I"	<p>BILECO's DDP and PSPP; Average Daily Load Curve; Supply and Demand Scenario</p>
"J"	<p>Single-line Diagram Connection</p>
"K"	<p>Performance Assessment of the System:</p> <ol style="list-style-type: none"> a. SAIDI and SAIFI. b. Historical [for the past five (5) years]

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	c. Current Year
"L"	An estimation of the potential for a reduction in load supplied of BILECO due to retail competition, GEOP, etc.
"M"	Power Supply Agreement of SPI and the BILECO
"N"	Transmission Service Agreement of SPI and/or the EC
"O"	Write-up on the Related Agreements such as: a. Transmission Wheeling Contract; b. IPPA Agreement; c. EPC Contract; d. O&M Contract; e. Project Feasibility Study; f. Wholesale Aggregator Agreement.
"P"	Executive Summary of the PSA between SPI and the EC
"Q"	Rate Generation Calculations and Derivations (confidential) Sample Bill Rate Impact Analysis
"R"	Write-up, certifications and documents: a. Certified True Copy of the Latest and Complete Set of Audited Financial Statements of the Generation Company (Balance Sheet, Income Statement, and Statement of Cash Flows). b. For conventional power plants utilizing fuel: Certification (from the engine manufacturer or IPP) of the net heat rate (initial and every after major maintenance schedule) in liters per kWh. c. Simulation of the number of operating units necessary to meet the MEOT d. Certified True Copy of the Distribution Wheeling Service (DWS) Agreement (for embedded generators), if applicable. e. Certified True Copy of the Wholesale Electricity Spot Market (WESM) Registration
"S"	Details and Documents on the Competitive Selections Process (CSP): a. Memorandum of Agreement of the ten ECs in Region 8; b. Board Resolution No. 2023-11-002; c. Invitation to Bid; d. Terms of Reference; e. Instruction to Bidders;

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	f. NEA Certificate of Conformity; g. Affidavit of Publication by the Manila Bulletin; h. Copy of the Manila Bulletin dated 6 and 13 April 2024; i. Affidavit of Publication issued by EV Mail and Leyte Samar Daily Express; j. Copy of the EV Mail dated 6 and 13 April 2024; k. Copy of the Leyte Samar Daily Express dated 6 and 13 April 2024; l. Proof of Posting of Invitations to Bid
"T"	Affidavit in support of the Provisional Authority/Interim Relief

32. The Joint Application is likewise consistent with Section 1 of the same Department Circular No. DC2021- 09-0030 which declares as State policy, that:

“All distribution utilities must henceforth take cognizance and assume full responsibility to forecast, assure and contract for the supply of electric power in the respective franchise areas to meet their obligations as a distribution utility.” (Underscoring supplied.)

33. By way of emphasis, Resolution No. 21, Series of 2005 of the Honorable Commission dated 19 October 2005 had directed all Distribution Utilities (DUs) “to enter into future bilateral power supply contract with power producers to be subjected to a review by the Commission.” (Underscoring supplied.)

34. The PSA with SPI was made to ensure the continuous supply of power to the EC and due to the former’s competitive pricing structure and other favorable terms of its contract, which will redound to the benefit of the latter and its end-consumers in terms of reliable and affordable power supply;

GENERATION RATE IMPACT ANALYSIS

35. An analysis was conducted to determine the impact of the implementation of the PSA on Applicant’s generation rate while taking into account Applicant's projected energy, available contracted supply for the next two (2) years and WESM final price using the monthly average WESM price from January 2024 to present. Table 1 below, shows the average WESM price at PhP6.6899/kWh. Table 2 shows the average generation rate with SPI PSA at PhP6.3575/kWh.

Annex “Q” is shown below:

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Table 1:

BILECO RATE IMPACT ANALYSIS
With SPI

	Forecasted 2025 (kWh)	Amount (Php.)	Percent Share (%)	Resulting Capacity Factor (%)	Average Rate (P/kWh)	Weighted Average Rate (kWh)
SPI	17,520,000.00	109,659,432.00	26.40%	100%	6.2591	6.3575
WESM	48,833,963.47	309,636,504.65	73.60%		6.3406	
TOTAL	66,353,963.47	419,295,936.65	100%		6.3191	

Table 2:

Without SPI

	Forecasted 2025 (kWh)	Amount (Php.)	Percent Share (%)	Resulting Capacity Factor (%)	Average Rate (P/kWh)	Weighted Average Rate (kWh)
SPI	0.00	0.00	0.00%	0%	#DIV/0!	6.6899
WESM	66,353,963.47	442,541,184.86	100.00%		6.6694	
TOTAL	66,353,963.47	442,541,184.86	100.00%		6.6694	

GENERATION RATE IMPACT (0.3324)

As shown by the analysis, the procurement of supply from Applicant SPI under the PSA will result to a rate impact/decrease of about PhPo.3324/kWh.

Prayer for Provisional Authority or Interim Relief

36. Under Rule 14 of the Honorable Commission’s 2021 Revised Rules of Practice and Procedure (2021 RRPP), the Honorable Commission is authorized to issue provisional authority or interim relief prior to a final decision, provided the facts and circumstances alleged warrant such remedy.

37. As shown in the BILECO’s Supply and Demand Scenario, the peak demand ranges from 10.58 to 15.62 MW, and our existing contract capacity is limited to only 8 which has a maximum period of one (1) year. Without the issuance of Provisional Authority (PA) or Interim Relief [IR], the 8 MW contracted capacity will be exposed to market fluctuations, resulting in volatile power rates that could negatively impact consumers. Therefore, the issuance of PA or IR is crucial to protect the interest of BILECO’s consumers, particularly captive customers. It will ensure a continuous and reliable electricity supply at stable rates, which is vital for public welfare, economic stability, and growth.

38. Further, from the BILECO’s rate impact simulation, it is clear that the implementation of the PSA with SPI would reduce BILECO’s rate by Php0.3324/kWh, as compared to if the same power requirements are purchased from the Wholesale Electricity Spot Market (WESM).

39. As such, the early implementation of this PSA with SPI would benefit BILECO’s consumers, as it will ensure the provision of reliable, secure, and quality supply of electricity in the least cost manner.

40. To support the prayer for provisional authority or interim relief, the Judicial Affidavit of Engr. Jasper Y. Bagdoc is attached hereto as ANNEX T of the Joint Application.

Allegations in Support of the Confidential Treatment of
Annex “E” and Series and “Q”

41. Rule 4 of the Honorable Commission’s Rules of Practice and Procedure provides that the EC and SPI may request that information may not be disclosed;

42. SPI prays for the confidential treatment of the information contained in the Annexes “E” and “Q”, and not disclosed except to the officers and staff of the Honorable Commission and its staff.

43. Annexes “E” and “Q” contain the details of SPI’s fuel procurement processes, power rate calculations and financial model as well as the manner by which these were derived. This information is 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.*⁸, 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:

- (1) the extent to which the information is known outside of the employer's business;
- (2) the extent to which the information is known by employees and others involved in the business;

⁸ G.R. No. 172835, December 13, 2007.

- (3) the extent of measures taken by the employer to guard the secrecy of the information;
- (4) the value of the information to the employer and to competitors;
- (5) the amount of effort or money expended by the company in developing the information; and
- (6) the extent to which the information could be easily or readily obtained through an independent source.” (citations omitted, emphasis supplied)

44. The interest of the consuming public is sufficiently protected by the review and evaluation of the rates under the PSA by the Honorable Commission, without the need to disclose the contents of Annexes “E” and “Q”. The reasonableness and transparency of the prices of electricity is to be assured by the Honorable Commission through its own review and verification of SPI’s operating costs and expenses;

45. More importantly, SPI’s competitors, should they obtain the information in Annexes “E” and “Q”, will gain undue advantage thereon and have the opportunity to use the same in their operations. The negotiating power of SPI 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;

46. Accordingly, SPI submits one (1) copy of Annexes “E” and “Q”, in a sealed envelope, with the said envelope and each page of the documents and/or information stamped with the word “Confidential”.

47. Lastly and corollary to the foregoing, SPI 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 confidential⁹”.

48. This is guided by the fact that SPI 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 SPI enclosed in the subject annexes.

PRAYER

⁹ Letter (d), Section 4, of the ERC Rules and Practice and Procedure.

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WHEREFORE, premises considered, Joint Applicants BILECO and SPI most respectfully pray that the Honorable Commission:

- i. a Provisional Authority of Interim Relief confirm the authority of the Joint Applicants to immediately implement the PSA subject of this case in entirety;
- ii. ISSUE an Order treating Annexes “E” and “Q” as confidential in perpetuity, directing its non-disclosure to persons other than the officers and staff of the Honorable Commission, perpetually protecting the said information from public disclosure by maintaining the same separate and apart from the records of the case, ensuring that these are not divulged to unauthorized persons, and that these confidential documents are returned to SPI after the termination of this case pursuant to Rule 4 of its Rules of Practice and Procedure;
- iii. After due notice and hearing, ISSUE a Decision approving the instant Joint Application in toto which will thereby allow/authorize BILECO to charge and collect the fees from its customers reckoned from the commencement of the supply to the latter by SPI.

Other reliefs just and reasonable under the premises 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 2020¹⁰ and Resolution No. 01, Series of 2021¹¹ (ERC Revised Rules of Practice and Procedure):

Date	Platform	Activity
11 February 2025 (Tuesday) at two o'clock in the afternoon (2:00 PM)	Microsoft Teams Application	Determination of compliance with the jurisdictional requirements and expository presentation

¹⁰ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

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

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Date	Platform	Activity
18 February 2025 (Tuesday) at two o'clock in the afternoon (2:00 PM)		Pre-Trial Conference and presentation of evidence

BILECO and SPI are directed to host the virtual hearings at **BILECO's Principal Office at Barangay Caray-caray, Naval, Biliran**, as the designated venue for the conduct thereof, and ensure that the same is open to the public. Moreover, BILECO and TLI 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 and 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, 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, and copy furnishing 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. 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:

- 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.

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, and copy furnish the Legal Service through legal@erc.ph, their Opposition or Comment **at least five (5) calendar days** prior to the initial virtual hearing. Rule 9 of the ERC

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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:

- 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.

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.

Finally, all interested persons may be allowed to join the scheduled virtual hearings by providing the Commission, through 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 Chairperson and CEO **MONALISA C. DIMALANTA**, and Honorable Commissioners **ALEXIS M. LUMBATAN**, **CATHERINE P. MACEDA**, **FLORESINDA G. BALDO-DIGAL** and **MARKO ROMEO L. FUENTES**, Energy Regulatory Commission, this 16th day of December 2024 in Pasig City.

FOR AND BY AUTHORITY
OF THE COMMISSION:


KRISHA MARIE T. BUELA
Director III, Legal Service