

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Exquadra Tower, 1 Jade Drive
Ortigas Center, Pasig City

IN THE MATTER OF THE JOINT APPLICATION FOR THE APPROVAL OF THE POWER SUPPLY AGREEMENT (PSA) BETWEEN ILOILO III ELECTRIC COOPERATIVE, INC. (ILECO III) AND SUAL POWER, INC. (SPI), WITH MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION AND MOTION FOR PROVISIONAL AUTHORITY OR INTERIM RELIEF,

2025-034 RC

ERC Case No. 2024-__ RC

ILOILO III ELECTRIC COOPERATIVE, INC. (ILECO III) AND SUAL POWER, INC. (SPI),
Applicants.

February 04, 2025

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JOINT APPLICATION
(with Motion for Confidential Treatment of Information and Motion for Provisional Authority or Interim Relief)

Applicants, **ILOILO III ELECTRIC COOPERATIVE, INC. (ILECO III)** and **SUAL POWER, INC. (SPI)**, through their respective undersigned counsels, respectfully state:

THE APPLICANTS

1. ILECO III is a non-stock, non-profit electric cooperative duly organized and existing under and by virtue of the laws of the Republic of the Philippines, particularly Presidential Decree (PD) No. 269 as amended by PD 1645, Republic Act (RA) No. 9136, otherwise known as the Electric Power Industry Reform Act (EPIRA), and RA 10531, otherwise known as the National Electrification Administration Reform Act of 2013 (NEARA), with principal office at Brgy. Preciosa, Sara, Iloilo.

2. ILECO III is a distribution utility engaged in distribution of light and power within its franchise area covering the municipalities of Ajuy, Anilao, Balasan, Banate, Barotac Viejo, Batad, Carles, Concepcion, Estancia, Lemery, San Dionisio, San Rafael and Sara, all in the province of Iloilo.

3. SPI is a private corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at 5th Floor, C5 Office Building Complex, #100 E. Rodriguez Jr. Ave., C5 Road, Bo. Ugong, Pasig City 1604.

4. SPI is a subsidiary of San Miguel Global Power Holdings Corp. (SMGPHC) and was the Independent Power Producer Administrator¹ of the 1,000 MW contracted capacity (net) of the Sual Coal-Fired Thermal Power Plant located in Barangay Pangascasan, Sual, Pangasinan. On 25 October 2024 Team Sual Corporation and the Power Sector Assets and Liabilities Management Corporation turned over the power plant to SPI, which assumed full control of the entire plant capacity of 1,294 MW².

5. Applicants may be served with notices, orders, and other processes of this Honorable Commission through their respective counsels at the addresses hereinbelow indicated.

NATURE OF THE APPLICATION

6. This Joint Application is being submitted to this Honorable Commission pursuant to Rule 20 (B) of the ERC Resolution No. 01, Series of 2021, or the Revised Rules of Practice and Procedure (ERC Rules), for the review and approval of the Power Supply Agreement (PSA) between ILECO III and SPI.

7. The subject PSA was a result of a Negotiated Procurement, after two (2) failed Joint Competitive Selection Process (CSP), in accordance with the Department of Energy (DOE) Department Circular

¹ at the time of signing of the Power Supply Agreement

² Aggregated Dependable Capacity based on the Provisional Authority to Operate dated 02 April 2024.

(DC) No. DC2018-02-0003³, as amended by DOE DC No. DC2021-09-0030⁴.

STATEMENT OF FACTS

8. In April 2022, ILECO III, together with the other members of the aggregation known as Panay-Guimaras Electric Cooperatives Power Consortium, Inc. (PGECPCI), conducted a Joint CSP through a Joint Third-Party Bids and Awards Committee (TPBAC) in order to procure a more stable and reliable power supply for the full load requirements and the anticipated increase in the demand of its member-consumer owners (MCOs) in the franchise area.

9. After two (2) failed biddings, the PGECPCI solicited and conducted direct negotiations, pursuant to and in compliance with the DOE DC No. DC2018-02-003, as amended by DOE DC No. DC2021-09-0030, for the supply of the required capacity and/or energy of its member electric cooperatives (ECs) from various generation companies, including SPI.

10. All offers received were carefully reviewed and evaluated by the Joint Technical Working Group (TWG), and based therefrom, the Joint TPBAC issued Resolution No. 1, series of 2024, determining the offer of SPI to be the lowest calculated rate, and thus, the most advantageous and beneficial for all five (5) member ECs of PGECPCI, including ILECO III, in terms of the availability of the required supply, reliability, cost-effectiveness and sustainability.

11. On 19 January 2024, PGECPCI Board issued Resolution No. 1, Series of 2024, adopting and approving the recommendations of PGECPCI Joint TPBAC in Resolution No. 1, series of 2024, thereby declaring SPI as the winning offer with the lowest calculated rate.

12. Negotiations on the terms and conditions of the PSA ensued between ILECO III and SPI. Thereafter, on 28 August 2024, ILECO III submitted the final copy of the PSA to the Energy Virtual One-Stop Shop (EVOSS) System for the review and approval of the National Electrification Administration (NEA).

³ Adopting and Prescribing the Policy for the Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreement for the Captive Market otherwise known as "CSP Rules".

⁴ Amending Certain Provisions of and Supplementing Department Circular No. DC2018-02-0003 on the Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreement for the Captive Market.

13. On 26 September 2024, the NEA approved the subject PSA, directing ILECO III to proceed with the signing of the PSA with SPI. Thus, on 25 October 2024, ILECO III and SPI executed the subject PSA with a term of nine (9) years, starting from the initial date of delivery or the approval of the ERC, whether provisional, interim or final, whichever comes later, and ending on 25 December 2032.

14. Hence, this instant Joint Application for the approval of the PSA between ILECO III and SPI.

SALIENT TERMS OF THE PSA

15. The PSA between ILECO III and SPI contains the following salient features:

- 15.1. **The Generation Facilities.** The power required under the subject PSA will be supplied from the Sual Coal-Fired Thermal Power Plant of SPI located in Brgy. Pangascasan, Sual, Pangasinan.
- 15.2. **Cooperation Period.** The cooperation period is from the initial date of delivery or the approval of the ERC, whether provisional, interim or final, whichever comes later, and ending on 25 December 2032.
- 15.3. **Contracted Capacity and Contracted Energy.** The Contracted Capacity under the PSA is four thousand kilowatts (4,000 kW) starting year 2023 and shall increase to seven thousand kilowatts (7,000 kW) starting year 2025 reserved by the SELLER for the BUYER for the duration of the Cooperation Period. The buyer shall commit a monthly Minimum Energy Off-Take (MEOT) of seventy percent (70%) up to one hundred percent (100%) Maximum Capacity Utilization Factor (CUF), in kWh, as indicated in Schedule 1 (Contracted Capacity and Contracted Energy) of the PSA.

SCHEDULE 1
CONTRACTED CAPACITY AND CONTRACTED ENERGY

BILLING PERIOD	2024		2025 Onwards	
	CONTRACTED CAPACITY (kW)	CONTRACTED ENERGY (kWh) (100%)	CONTRACTED CAPACITY (kW)	CONTRACTED ENERGY (kWh) (100%)
December 26 - January 25	4,000	2,976,000	7,000	5,208,000
January 26 – February 25	4,000	2,976,000	7,000	5,208,000
February 26 – March 25	4,000	2,688,000 (non-leap year) 2,784,000 (leap year)	7,000	4,704,000 (non-leap year) 4,872,000 (leap year)
March 26 – April 25	4,000	2,976,000	7,000	5,208,000
April 26 – May 25	4,000	2,880,000	7,000	5,040,000
May 26 – June 25	4,000	2,976,000	7,000	5,208,000
June 26 – July 25	4,000	2,880,000	7,000	5,040,000
July 26 – August 25	4,000	2,976,000	7,000	5,208,000
August 26 – September 25	4,000	2,976,000	7,000	5,208,000
September 26 – October 25	4,000	2,880,000	7,000	5,040,000
October 26 – November 25	4,000	2,976,000	7,000	5,208,000
November 26 –December 25	4,000	2,880,000	7,000	5,040,000

15.4. **Allowed Outages.** The SELLER is allowed the following outages under the PSA:

15.4.1. **Scheduled Outage** of three hundred sixty (360) consecutive hours per Billing Year.

15.4.2. **Unscheduled Outage** of three hundred sixty (360) cumulative hours per Billing Year.

15.5. **Replacement Power.** The PSA provides for replacement power as follows:

15.5.1. **During Allowed Outage,** SELLER shall have the option, but not the obligation, to provide the Replacement Power to the BUYER. For this purpose, Replacement Power during Allowed

Outage shall be billed at Contract Charges, or WESM rates, whichever is applicable.

15.5.2. **In Excess of Allowed Outage**, SELLER shall supply or cause the supply to the BUYER of Replacement Power at its own cost. However, the BUYER shall pay the SELLER for the Replacement Power at its actual price, or at Contract Charges, whichever is lower.

15.5.3. **In Case of Force Majeure**, SELLER shall have the option, but not the obligation, to supply Replacement Power to the BUYER. For this purpose, Replacement Power supplied by the SELLER to be paid by the BUYER at Contract Charges.

15.6. **Contract Charges**. The PSA provides for the following charges:

15.6.1. **Electricity Fees**. The Electricity Fees in PhP/kWh, as contained in Schedule 4.1, is as follows:

SCHEDULE 4.1
ELECTRICITY FEES

Component of Electricity Fees	Rate, PhP/kWh
Capital Recovery Fee ("CRF")	1.9407
Fixed Operations and Maintenance Fee ("FOM")	0.3500
Variable Operations and Maintenance Fee ("VOM")	0.1000
Fuel Fee	3.5700

NOTE:

1. CRF and FOM at 100% CUF.
2. Fuel Fee is subject to monthly adjustments.
3. The BUYER may avail of Prompt Payment Discount ("PPD") pursuant to Section 4.3.

The computations for the Electricity Fees are contained in Schedules 4.2 to 4.4 of the PSA is as follows:

SCHEDULE 4.2
MONTHLY BILLING OF CONTRACT CHARGES

$$CC_{BP} = [(CP_{BP} * AE_{BP} + EP_{BP} * DE_{BP})] + OAC_{BP} + T_{BP}$$

Where:

CC_{BP}	=	Contract Charges for the current Billing Period, in PhP.
CP_{BP}	=	Capacity Payment comprising of CRF and FOM for the current Billing Period, in PhP, based on actual Capacity Utilization Factor under Schedule 4.3, as follows: CRF _{CUF} + FOM _{CUF}
AE	=	Associated Energy during the current Billing Period subject to the Contracted Energy.
EP_{BP}	=	Energy Payment comprising of VOM and Fuel for the current Billing Period, in PhP, based on VOM under Schedule 4.1 and current Fuel Fee (FF _C) computed under Schedule 4.4, as follows: VOM + FF_C
DE	=	Actual Delivered Energy during the current Billing Period.
OAC_{BP}	=	Other Associated Charges for the current Billing Period, in PhP.
T_{BP}	=	Applicable Taxes for the current Billing Period, in PhP.

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SCHEDULE 4.3
CAPITAL RECOVERY FEE (“CRF”) and
FIXED OPERATIONS & MAINTENANCE FEE (“FOM”), in PHP/KWH
AT VARIOUS CAPACITY UTILIZATION FACTORS (“CUF”)

CUF	CRF	FOM
100%	1.9407	0.3500
99%	1.9603	0.3535
98%	1.9804	0.3571
97%	2.0008	0.3608
96%	2.0216	0.3646
95%	2.0429	0.3684
94%	2.0646	0.3723
93%	2.0868	0.3763
92%	2.1095	0.3804
91%	2.1327	0.3846
90%	2.1564	0.3889
89%	2.1806	0.3933
88%	2.2054	0.3977
87%	2.2307	0.4023
86%	2.2567	0.4070
85%	2.2832	0.4118
84%	2.3104	0.4167
83%	2.3382	0.4217
82%	2.3668	0.4268
81%	2.3960	0.4321
80%	2.4259	0.4375
79%	2.4566	0.4430
78%	2.4881	0.4487
77%	2.5204	0.4545
76%	2.5536	0.4605
75%	2.5877	0.4667
74%	2.6226	0.4730
73%	2.6586	0.4795
72%	2.6955	0.4861
71%	2.7334	0.4930
70%	2.7725	0.5000

CAPACITY UTILIZATION FACTOR FORMULA

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

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

Where:

- CUF** = Capacity Utilization Factor
- AE** = Associated Energy refers to the supplied energy, in kWh, nominated by the BUYER and declared by the SELLER within the relevant Billing Period
- CC** = Contract Capacity in kW
- BPD** = Billing Period Days, the number of Days within the relevant Billing Period
- FMDT** = Force Majeure Days Taken within the relevant Billing Period
- AO** = Actual Outage days Taken within the relevant Billing Period up to the Allowable Scheduled or Unscheduled Maintenance.

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

SCHEDULE 4.4
FUEL FEE ADJUSTMENT FORMULA

$$FF_C = FF_B \times \left[A \times \left\{ \frac{NEWC_C}{NEWC_B} \right\} \times \left\{ \frac{FX_C}{FX_B} \right\} + B \right]$$

Where:

- FF_C = Adjusted Fuel Fee for the current Billing Period, in PhP/kWh approximated to nearest four (4) decimals, calculated based on the movement of global COAL Newcastle (“NEWC”) and Foreign Exchange (“FX”) Indices.
- FF_B = Base Fuel Fee set at PhP3.5700/kWh
- A = Percentage of the Base Fuel Fee portion that is adjusting based on the the movement of NEWC and FX, set at 67.79%.
- $NEWC_C$ = Average posted NEWC index for the calendar month within which the start of the current Billing Period occurs.
- $NEWC_B$ = Base NEWC index set at USD129.16/MT.
- FX_C = Average of the daily FX rate of the Philippine Peso to the US Dollar as posted by the Bangko Sentral ng Pilipinas for the calendar month within which the start of the current Billing Period occurs.
- FX_B = Base FX rate set at PhP55.895/USD.
- B = Percentage of the Base Fuel Fee that is not adjusting and fixed for the entire contract term, set at 32.21%

15.6.2. **Other Associated Charges.** WESM Charges other than Line Rental, transmission line loss, site specific loss adjustment and any interconnection charges, among others, shall be for the account of the BUYER. Line Rental charges from the power plant gate (Nodal Point), which is the lower between actual and up to PhP0.5000/kWh (“LR Cap”), shall be for the account of the SELLER. Line Rental charges beyond the LR Cap, shall be for the account of the BUYER.

15.7. **Government Taxes.** All applicable existing taxes including Value Added Tax (“VAT”), as well as all other future taxes, that may be imposed by the government, and which may be legally passed on by the SELLER to the BUYER in connection with the SELLER’s performance of its obligation under the Agreement, including any increase or adjustments thereon, shall be for the account of the BUYER.

15.8. **Prompt Payment Discount.** The BUYER shall avail of a three and 2/10 percent (3.2%) Prompt Payment Discount ("PPD") applicable to the Electricity Fees (excluding Other Associated Charges, Replacement Power cost, if any, and Taxes) if it pays in full within ten (10) days after receipt of the invoice.

15.9. **Security Deposit.** The BUYER shall not be required by the SELLER to post a Security Deposit upon the execution of the Agreement. In any case that the BUYER should fail to pay in full its current invoice on or before its Due Date, it shall be required to post a Security Deposit at the immediately succeeding Billing Period after the Due Date equivalent to one hundred percent (100%) of the average monthly invoice for the Billing Periods from Initial Delivery Date up to the current Billing Period.

RATE IMPLICATIONS

16. ILECO III calculated the rate impact of the implementation of the subject PSA with SPI and compared it with the generation rate if ILECO III purchases its demand requirements from the WESM, as follows:

RATE IMPACT ANALYSIS					
SIMULATION WITHOUT SPI					
January 2024 - September 2024					
Power Supplier	kWh Energy Purchased	Amount (Php) without VAT	Percent Share	Rate	Weighted Average Rate (kWh)
Panay Energy Development Corp. (PEDC) - Unit 1 & 2	10,262,964.15	91,193,799.58	8%	8.8857	7.1813
Green Core Geothermal, Inc. (GCGI)	36,241,259.28	233,404,326.53	27%	6.4403	
Panay Energy Development Corp. (PEDC) - Unit 3	14,723,739.72	98,350,024.24	11%	6.6797	
GNPower Dinginin Ltd Co. (GNPD)	12,267,524.36	61,528,267.98	9%	5.0155	
GNPower Kauswagan Ltd Co. (GNPK)	13,233,600.00	87,861,516.17	10%	6.6393	
WESM	48,701,990.00	459,120,131.19	36%	9.4271	
TOTAL	135,431,077.51	1,031,458,065.69	100%		
SIMULATION WITH SPI					
May 2025 (Peak Month)					
Power Supplier	kWh Energy Purchased	Amount (Php) without VAT	Percent Share	Rate	Weighted Average Rate (kWh)
Panay Energy Development Corp. (PEDC) - Unit 1 & 2	1,440,000.00	12,795,408.00	9%	8.8857	7.0682
Green Core Geothermal, Inc. (GCGI)	3,960,000.00	25,503,588.00	24%	6.4403	
Panay Energy Development Corp. (PEDC) - Unit 3	2,160,000.00	14,428,152.00	13%	6.6797	
GNPower Dinginin Ltd Co. (GNPD)	1,440,000.00	7,222,320.00	9%	5.0155	
Sual Power Inc. (SPI)	2,880,000.00	17,166,816.00	18%	5.9607	
WESM	4,302,649.08	40,561,503.15	27%	9.4271	
TOTAL	16,182,649.08	104,882,379.15	100%		
				Decrease in Php/ kWh	0.1131
				Forecasted kWh Sales for May 2025	14,064,246.78
				Deficit/ Savings	1,590,666.31

17. As shown in the Rate Impact Calculation, the implementation of the PSA between ILECO III and SPI will be beneficial to its MCOs with an estimated **generation rate reduction of**

Php0.1131/kWh as compared to sourcing the same power requirements from the WESM. Thus, the PSA subject of this Joint Application will ultimately redound to the benefit of the MCOs, providing a continuous and reliable supply of electricity at affordable rates.

SUPPORTING DOCUMENTS

18. In support of this Joint Application, the following documents are hereby submitted for the evaluation of the Honorable Commission:

Description of Document	Annex
Power Supply Agreement (PSA) between ILECO III and SPI dated 25 October 2024 and the Executive Summary of the PSA	“A” to “A-1”
ILECO III’s Certificate of Franchise and Certificate of Registration of Articles of Incorporation, both issued by the National Electrification Administration (NEA), and Latest General Information Sheet	“B” and series
ILECO III’s Secretary’s Certificate showing the list of Board of Directors and Board Members	“C”
ILECO III’s Distribution Development Plan (DDP) for 2023 to 2032	“D”
ILECO III’s Certification on Demand Side Management (DSM) Program	“D-1”
ILECO III’s Supply and Demand Scenario and Average Daily Load Curve	“E” to “E-1”
ILECO III’s Power Supply Contract Utilization	“E-2”
ILECO III’s Data on Potential Load Reduction due to Retail Competition, GEOP, etc.	“E-3”
ILECO III’s DDP 2024-2033	“E-4”

ILECO III's PSPP 2024-2033	"E-5"
ILECO III's Single Line Diagram (SLD) Connection	"F"
ILECO III's Performance Assessment of the System (SAIFI and SAIDI)	"G"
Proof of Joint TPBAC Establishment (Memorandum of Agreement, PGECPCI Board Resolution No. 01, Series of 2020, and ILECO III Board Resolution No. 65, Series of 2020)	"H" and series
PGECPCI's Invitation to Bid with Terms of Reference and Proof of Publication (1 st Round of CSP)	"I" and series
PGECPCI's Invitation to Bid with Terms of Reference and Proof of Publication (2 nd Round of CSP)	"J" and series
Final Instructions to Bidders with Eligibility Requirements (1 st Round of CSP)	"K"
Final Instructions to Bidders with Eligibility Requirements (2 nd Round of CSP)	"K-1"
Proof of service of invitation to CSP Observers (1 st Round of CSP)	"L" and series
Proof of service of invitation to CSP Observers (2 nd Round of CSP)	"M" and series
PGECPCI's Minutes of Pre-Bid Conference and Supplemental Bid Bulletins (1 st Round of CSP)	"N" and series
PGECPCI's Minutes of Pre-Bid Conference and Supplemental Bid Bulletins (2 nd Round of CSP)	"O" and series
PGECPCI's Joint Third-Party Bids and Awards Committee (TPBAC) Resolution No. 01, Series of 2022, declaring the failure of bidding for the 1 st Round of the CSP	"P"

PGECPCI's Joint Third-Party Bids and Awards Committee (TPBAC) Resolution No. 03, Series of 2023, declaring the failure of bidding for the 2 nd Round of the CSP	"Q"
Postings on the DOE CSP Portal during the 1 st Round of the CSP	"R"
Postings on the DOE CSP Portal during the 2 nd Round of the CSP	"R-1"
Postings on the NEA Website during the 1 st Round of the CSP	"S"
Postings on the NEA Website during the 2 nd Round of the CSP	"S-1"
PGECPCI's Solicitation Letters with Proof of Transmittal to Generation Companies and TOR (Direct Negotiation)	"T" and series
Offers Received by PGECPCI (Direct Negotiation)	"U" and series
PGECPCI's Joint Third-Party Bids and Awards Committee (TPBAC) Resolution No. 01, Series of 2024, determining SPI as the successful proponent on the Direct Negotiation for the procurement of the power supply requirement of five (5) Electric Cooperatives including ILECO III	"V"
PGECPCI's Joint Third-Party Bids and Awards Committee (TPBAC) Evaluation and Post Qualification Report recommending SPI as the successful proponent on the Direct Negotiation for the procurement of the power supply requirement of five (5) Electric Cooperatives including ILECO III	"V-1"
PGECPCI' Head of Procuring Entity (HOPE) Board Resolution No. 01, Series of 2024, approving the recommendation of the PGECPCI's Joint TPBAC declaring SPI as the successful proponent on the Direct Negotiation for the procurement of the power supply	"V-2"

requirements of five (5) Electric Cooperatives, including ILECO III	
Notice to Proceed from NEA dated 26 September 2024	“V-3”
Notice of Award issued by PGECPCI’s Joint TPBAC	V-4
PGECPCI’s Joint Sworn Statement on the Conduct of CSP dated 31 January 2024	“W”
JTPBAC Chairman’s Affidavit on the Conduct of CSP dated 7 November 2024	“W-1”
ILECO III’s Board Resolution No. 145, Series of 2024, Approving the Execution of the PSA with SPI	“X”
ILECO III’s Rate Impact Simulation	“Y”
ILECO III’s Proof of WESM Membership	“Z”
ILECO III’s Write-up on Non-Applicability of Certain Requirements	“AA”
SPI’s Certificate of Incorporation, Articles of Incorporation and By-Laws	“BB” and series
SPI’s Verified Certification showing the list of Board of Directors and the Board Members of the Ultimate Parent Company	“CC”
SPI’s General Information Sheet (“GIS”)	“DD”
SPI’s Certification On Documents Previously Submitted (Section 22, ERC Resolution 16, series of 2023)	“EE”
SPI’s Provisional Authority to Operate (“PAO”) for the Sual Coal Fired Thermal Power Plant	“FF”
Affidavit of Undertaking on the Transmission Service Agreement of SPI	“GG”

SPI's Generation Rate, Derivation, and Related Documents (Confidential)*	"HH" and series
SPI's Sample Bill to ILECO III (Confidential)*	"II"
SPI's Latest Audited Financial Statement	"JJ"
SPI's Write-up on the Capability to Supply ILECO III's Supply Requirement	"KK"
SPI's Data on Outages	"LL"
SPI's Write-Ups on the Non-Applicability of Requirements	"MM" and Series
SPI's Affidavit of Undertaking on the Operation and Maintenance Agreement	"NN"
SPI's Secretary's Certificate	"OO"
SPI's Certificate of Email Registration	"PP"
Affidavit in Support of the Issuance of Provisional Authority	"QQ"
Proof of Publication of the Undocketed Application in a newspaper of general circulation in the franchise area of ILECO III and/or where Applicants principally operate	"RR" and series
Proof of furnishing copies of the Undocketed Application to the Offices of the Governor and Sangguniang Panlalawigan of Iloilo, the Mayor and the Sangguniang Bayan of Sara, and the Mayor and the Sangguniang Panlungsod of Pasig City	"SS" and series

*** Subject of the Motion for Confidential Treatment of Information**

MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION

19. Under the ERC Rules of Practice and Procedure, a party to any proceeding before the Honorable Commission may request that certain information be not disclosed to the public and be treated as confidential.⁵ Accordingly, SPI prays for the confidential treatment of the information contained in the following annexes:

Documents and/or Information	Annex
SPI's Generation Rate, Derivation, and Related Documents (Confidential)*	"HH" and series
SPI's Sample Bill to ILECO II (Confidential)*	"II"

20. The above enumerated annexes contain information and data where SPI has actual and valuable proprietary interest to protect which fall within the bounds of "trade secrets" that are entitled to protection under the Constitution, statutes, and rules and regulations of this Honorable Commission.

20.1. Foregoing annexes contain non-public, proprietary information and data involving power rate calculations, financial model, as well as the manner by which these were derived. Furthermore, these information and data are not generally available to the public. SPI's competitiveness will seriously be prejudiced if this information is unduly disclosed.

20.2. In the case of *Air Philippines Corporation vs. Pennswell, Inc.*,⁶ the Supreme Court defined "trade secrets" and explained that:

"A trade secret is defined as a plan or process, tool, mechanism or compound known only to its owner and those of his employees to whom it is necessary to confide it. The definition also extends to a secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade having a commercial value. 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

⁵ Section 1, Rule 4, Rules of Practice and Procedure of the Energy Regulatory Commission.

⁶ 564 Phil. 774 (2007), G.R. No. 172835.

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.” (Emphasis supplied.)

20.3. Moreover, the Honorable Commission categorically acknowledged in its Decision in ERC Case No. 2015-111 RC⁷ that formulas and pricing structures of a generation company must be accorded confidential protection, to wit:

“In the case of PNOC RC, the documents sought to be protected from disclosure contain formula and pricing structures used in arriving at their proposed tariff. In fact, all three (3) documents were used by the Commission in evaluating the reasonableness of the proposed rate. In the electric power industry w(h)ere prices is[sic] a major consideration in selecting one’s supplier, it is apparent that the assumptions used in arriving at one’s proposed tariff is considered a competitive leverage by one player against its competitors.

Thus, the Commission resolves to treat the said documents confidential and may not be publicly disclosed.” (Emphasis supplied).

21. Clearly, the Honorable Commission recognizes the importance of treating pricing structures as confidential in order to ensure competitiveness of the generation sector. This information, which falls within the definition of a trade secret as defined by jurisprudence, merits the confidential treatment provided for under Rule 4 of the ERC Rules of Practice and Procedure.

22. In view thereof, in accordance with Section 1 (b), Rule 4 of the ERC Revised Rules of Practice and Procedure, SPI submits one (1) copy of their respective confidential documents to the Honorable Commission in a sealed envelope, with the envelope and each page of the document marked with the word “Confidential”.⁸

23. Further, all parties who are furnished copies of the instant Joint Application are not furnished copies of the documents subject of the present motion.

⁷ Decision, ERC Case No. 2015-111 RC dated 30 May 2017 entitled “*In the Matter of the Application for Approval of the Power Supply Agreement Between Nueva Ecija II Electric Cooperative, Inc.- Area 2 (NEECO II – Area 2) and PNOC Renewables Corporation (PNOC RC).*”

⁸ Electronic copies of the documents subject of the Motion for Confidential Treatment of Information are provided to this Honorable Commission in password protected files.

24. In accordance with Sections 3 and 4, Rule 4 of the ERC Revised Rules of Practice and Procedure, SPI reserves the right to use the documents subject of the present motion and their contents as evidence, and respectfully moves for the issuance of a Protective Order.

MOTION FOR ISSUANCE OF PROVISIONAL AUTHORITY

25. A careful perusal of the supporting documents submitted by ILECO III will reveal that the cooperative joined the PGECPCI's conduct of the Joint CSP with the aim of having the resulting PSA implemented in 2023 until 2032, with a nine (9)-year cooperation period, to secure a more stable and reliable power supply for its member-consumer-owners (MCOs), to ensure its continuous operation and meet the anticipated increasing demand in its franchise area.

26. Regrettably, due to reasons beyond the control of the EC members of PGECPCI, the procurement of supply for their required capacity and/or energy took a longer route than expected since they had to undergo two (2) rounds of the CSP, which both failed, and a negotiated procurement.

27. Though there was an eventual successful negotiated procurement for the power supply requirements of the PGECPCI members, it cannot be denied that the procuring ECs' anticipated implementation of the resulting PSA, based on their projected demands, had already been delayed.

28. As shown in the above Rate Impact Simulation of ILECO III, the implementation of the PSA subject of this Joint Application will ultimately redound to the benefit of the MCOs, providing a continuous and reliable supply of electricity at affordable rates.

29. However, the subject PSA cannot lawfully be implemented absent an approval from this Honorable Commission, whether provisional, interim or final.

30. Hence, in line with ILECO III's duty and mandate to provide a safe, reliable and continuous supply of electricity in the least cost manner, ILECO III moves for the issuance of a provisional authority to allow the cooperative to immediately implement the subject PSA even pending final evaluation from the Honorable Commission.

31. Any further delay in the implementation of the subject PSA will be tantamount to a denial of ILECO III's MCOs opportunity to enjoy its advantageous and beneficial effect, to wit, an estimated **generation rate reduction of Php0.1131/kWh**, as discussed in the Rate Implication of this Joint Application.

32. In view of the foregoing, Applicants respectfully move for the issuance of a provisional approval of the instant Application pursuant to Rule 14 of the ERC Revised Rules of Practice and Procedure.

33. A copy of an Affidavit in Support of the Prayer for Provisional Authority is attached hereto as **Annex "QQ"**.

PRAYER

WHEREFORE, premises considered, Applicants **ILOILO III ELECTRIC COOPERATIVE, INC. (ILECO III)** and **SUAL POWER, INC. (SPI)** respectfully pray that the Honorable Commission:

- (i) Issue an **Order** affording **Annexes "HH" and series, and "II" confidential treatment** in the handling and evaluation thereof from the time these annexes are received by the Honorable Commission up to the termination of the instant case;
- (ii) Issue an **Order** concerning the procedures for handling the confidential information upon the close of the proceedings and its return/delivery to SPI;
- (iii) Immediately issue an Order **GRANTING PROVISIONAL AUTHORITY or INTERIM RELIEF** to the subject PSA, including all the rates, fees, charges, and tariff adjustment mechanisms set out therein; and
- (iv) After due hearing, render a **DECISION APPROVING** with finality the PSA subject of the instant Joint Application, including all the rates, fees, charges, and tariff adjustment mechanisms set out therein, and authorizing ILECO III to charge and collect such rates, fees, charges, and tariff adjustments therein from its customers reckoned from the actual delivery of supply.

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

Pasig City, 17 December 2024.

**DECHAVEZ LERIOS-AMBOY AND EVANGELISTA
LAW OFFICES⁹**

Counsel for the Co-Applicant

Iloilo III Electric Cooperative, Inc. (ILECO III)

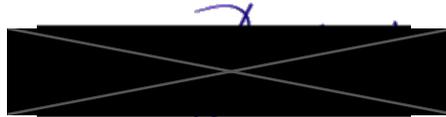
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By:



LORAINÉ B. BOBILES

Roll of Attorneys No. 73213

PTR No. 0173829, January 03, 2024, Pasig City

IBP Member No. 394000, January 03, 2024, RSM Chapter

MCLE Compliance No. VII – 0022637, 20 July 2022

⁹Pursuant to Office of the Court Administrator Circular No. 56-2015, hereunder are the MCLE Compliance Numbers of the undersigned Firm's named partners, to wit:

**Partners
MCLE Compliance No. VI
Date of Issuance**

Joseph Ferdinand M. Dechavez

MCLE Exemption Certificate No. VII-Acad003687
March 23, 2022

Ditas A. Leros-Amboy

Certification No. VII-0022795
August 1, 2022

Nelson V. Evangelista

Certification No. VII-0022649
July 20, 2022

SUAL POWER INC.¹⁰

By:



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PTR No. 5519509 / 08 March 2024 / Mandaluyong City
IBP No. 460997 / 19 August 2024 / Central Luzon Bulacan Chapter
MCLE Compliance No. VII-0027120 / 17 March 2023
Roll No. 39024

¹⁰ Other Registered Email: regulatorycompliance@smcgph.sanmiguel.com.ph

VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING

I, **ATTY. JAMES G. BALSOMO II**, of legal age, Filipino, and with office address at Iloilo III Electric Cooperative, Inc. (ILECO III), Brgy. Preciosa, Sara, Iloilo, after having been duly sworn to in accordance with law, do hereby depose and state that:

1. I am the General Manager and the duly authorized representative of Applicant **ILECO III**, in the instant Joint Application as evidenced by the attached **Board Resolution No. 145, Series of 2024, dated 11 October 2024**.

2. As such, I have caused the preparation of the foregoing Joint Application, which I have read and understood, the contents of which are all true and correct of my personal knowledge and/or based on authentic records.

3. I also attest that the factual allegations in the Joint Application are not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

4. The factual allegations in the Joint Application herein have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery.

5. I further certify that I and/or **ILECO III** have not heretofore commenced any action involving the same issues in the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency; and to the best of my knowledge, no such other action or proceeding is pending in the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency.

6. Should I hereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, I undertake to promptly inform this Honorable Court within five (5) days therefrom.

IN WITNESS WHEREOF, I have hereunto set my hand this day of DEC 17 2024 in MUNICIPALITY OF SARA Philippines.


ATTY. JAMES G. BALSOMO II

Affiant

DEC 17 2024 **SUBSCRIBED AND SWORN TO BEFORE ME** this day of _____, affiant exhibiting to me his Driver's License bearing No. F12-03-001596 valid until 13 July 2033 as competent proof of identity

Doc. No. 53 ;
Page No. 12 ;
Book No. 14 ;
Series of 2024.


ATTY. DONNA MAE B. FERNANDEZ
NOTARY PUBLIC
Notarial Commission Reg. No. 2024-002
Until December 31, 2024
Roll of Attorney's No. 80424
PTR No. 6676924/January 23, 2024 at Sara, Iloilo
IBP No. 407796/January 08, 2024 at Pasig City
MCLE Initial Compliance will end on April 14, 2025
Angel Salcedo St., Poblacion, Sara, Iloilo

**VERIFICATION AND
CERTIFICATION OF NON-FORUM SHOPPING**

I, **ELENITA D. GO**, Filipino, of legal age, and with office address at the 5th Floor, 100 Eulogio Rodriguez Jr. Avenue C5 Road (North Bound) Pasig City, after having been duly sworn to in accordance with law, hereby depose and state, that:

1. I am the authorized representative of Sual Power Inc. ("SPI") a co-applicant in the Joint Application for Approval of the Power Supply Agreement between Iloilo III Electric Cooperative, Inc. ("ILECO III") and SPI;
2. I have caused the preparation and filing of the Joint Application and that I have read the contents thereof and aver that all the factual/legal allegations contained therein are true and correct based on my personal knowledge and/or on authentic documents/official records;
3. The Joint Application is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation and that the factual allegations therein have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery; and,
4. I hereby certify that SPI has not filed/commenced any action or proceeding arising from the same issues raised in the Joint Application before the Supreme Court, Court of Appeals, or any other courts or tribunals or quasi-judicial bodies/agencies and to the best of my knowledge, no such other similar action or claim is pending therein. If ever there is a case pending before the said courts or tribunals involving the same issues, I undertake to inform the Honorable Energy Regulatory Commission of such fact within five (5) calendar days from knowledge thereof.

I am executing this undertaking in support of the Joint Application and the veracity of the allegations therein as well as for any other legal purpose this may serve.

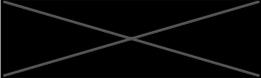
IN WITNESS WHEREOF, I have hereunto set my hand this
DEC. 17 2024 at Pasig City.


ELENITA D. GO
Affiant

SUBSCRIBED AND SWORN to before me this DEC 17 2024 in Pasig City. Affiant personally appeared and exhibited to me her Philippine Passport No. P1876103B issued on June 7, 2019 at the DFA NCR East as her competent proof of identity

Doc. No.: 138 ;
Page No.: 29 ;
Book No.: I ;
Series of 2024.




MARILEN S. VIZCO-ADRIANO
Appointment No. 285 (2024-2025)
Notary Public for Pasig City
Until December 31, 2025
5th Floor C5 Office Building Complex
#100 E. Rodriguez Jr. Ave., C5 Road,
Bo. Ugong, Pasig City 1604 Metro Manila
Roll No. 52532
PTR No. 1650864; January 03, 2024; Pasig City
IBP Lifetime Membership No. 09353; Quezon City Chapter
MCLE Compliance No. VII-0019617; Valid until April 14, 2025