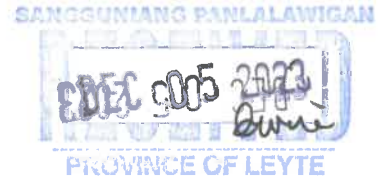




Item No.: 15
Date: 12 2023 DEC

05 December 2023



HON. LEONARDO JAVIER, JR.

Provincial Vice-Governor / Presiding Officer Sangguniang Panlalawigan
4th Floor, Leyte Provincial Government Complex,
West By-pass Road, Brgy. Guindapunan
Palo, Leyte

Re: In the Matter of the Application for the Approval of the Power Supply Agreement (PSA) Between Energy Development Corporation and Bohol Light Company, Inc. (BLCI), with Motion for Confidential Treatment of Information and Motion for Provisional Authority, ERC Case No. 2023-110 RC

Dear Hon. Javier:

We, Energy Development Corporation (“EDC”), the co-applicant for an application for the approval of the Power Supply Agreement (PSA) between EDC and Bohol Light Company, Inc. (“BLCI”) dated 5 November 2021 with Motion for Confidential Treatment of Information and Motion for Provisional Authority (the “**Joint Application**”). The Joint Application was filed on 18 August 2023 before the Energy Regulatory Commission (“ERC”) pursuant to Rule 20(B) of the 2020 Revised ERC Rules of Practice and Procedure.

On 26 October 2023, the ERC issued an Order requiring EDC to furnish your good office with the copies of the following for the appropriate posting on your bulletin board:

- a. Order; and
- b. Notice of Virtual Hearing (attached herein as Annexes “A” and “B”, respectively).

As proof of actual posting of the Order and Notice of Virtual Hearing, we respectfully request for a certification with the official seal of your good office attesting to the fact that the Order and Notice of Virtual Hearing were posted on your bulletin board.

Thank you.

Very truly yours,
ENERGY DEVELOPMENT CORPORATION

By


ANDY T. DUROG
Leyte Site Head

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

**IN THE MATTER OF THE
APPLICATION FOR THE
APPROVAL OF THE POWER
SUPPLY AGREEMENT (PSA)
BETWEEN ENERGY
DEVELOPMENT
CORPORATION AND BOHOL
LIGHT COMPANY, INC., WITH
MOTION FOR CONFIDENTIAL
TREATMENT OF
INFORMATION AND MOTION
FOR PROVISIONAL
AUTHORITY**

ERC CASE NO. 2023-110 RC

**ENERGY DEVELOPMENT
CORPORATION AND BOHOL
LIGHT COMPANY, INC.,**
Applicants.

Promulgated:
October 26, 2023

X-----X

NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 02 October 2023, Energy Development Corporation (EDC) and Bohol Light Company, Inc. (BLCI) filed a *Joint Application [with (a) Motion for Confidential treatment of Information; and (b) Motion for Provisional Authority]* dated 18 August 2023 (Joint Application), seeking the Commission's approval of the Power Supply Agreement (PSA) between EDC and BLCI with motion for confidential treatment of information and motion for provisional authority.

The pertinent portions of the *Joint Application* are hereunder quoted as follows:

1. Applicant EDC is a corporation duly organized and existing under and by virtue of the laws of the Republic of the

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Philippines, with principal office at the 9th floor Rockwell Business Center Tower 3, Ortigas Avenue, Pasig City, Philippines. It may be served with notices and other processes of this Honorable Commission through its counsel at the address indicated below.

- 1.1. EDC is represented by its Vice President, Marvin Kenneth S. Bailon and has been authorized by its Board of Directors to file the Joint Application, as evidenced by the Secretary's Certificate dated July 28, 2023. A copy of EDC's Secretary's Certificate dated July 28, 2023 is attached as Annex "A".
2. Applicant BLCI is a distribution utility duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at BLCI Building, 51 Ramon Enerio Street, Poblacion III, Tagbilaran City, Bohol 6300, Philippines. It may be served with processes and papers through its undersigned counsel at the address indicated below.
 - 2.1. BLCI is represented by its President, Dennis T. Villareal, who is authorized by its Board of Directors to file the Joint Application, as evidenced by the Secretary's Certificate dated March 17, 2022. A copy of BLCI's Secretary's Certificate dated March 17, 2022 is attached as Annex "B."
3. Pursuant to Rule 20(B) of the 2020 Revised Energy Regulatory Commission ("ERC") Rules of Practice and Procedure ("ERC Rules"), and other pertinent rules and regulations, this Joint Application is being submitted to this Honorable Commission to approve the Power Supply Agreement ("PSA") dated November 5, 2021 between EDC and BLCI.
4. EDC owns, operates, manages, and maintains the Unified Leyte Geothermal Power Plants ("ULGPP")¹ located in Leyte, Philippines with a dependable capacity of 591.32 MW and has control over the generated capacity of the Diesel Fired Power Plant to be constructed in Brgy. Imelda, Ubay, Bohol with a dependable capacity of 85.12MW ("In-Island Baseload Plant") (the Outside Bohol Baseload Plant² and In-Island Baseload Plant shall be collectively the "Power Plant").
5. BLCI provides and distributes electricity to its customers in the City of Tagbilaran, Province of Bohol (the "Franchise Area").

¹ ULGPP consists of the following plants: (1) Mahanagdong Geothermal Power Plant (COC No. 17-03-M-13348V), (2) Malitbog Geothermal Power Plant (COC No. 17-03-M-13347V), (3) Upper Mahiao Geothermal Power Plant (COC No. 17-03-M-13346V), (4) Tongonan 1 Topping Cycle Power Plant (COC No. 18-04-M-00152V), (5) Mahanagdong Topping Cycle Power Plant – Site A (COC No. 18-04-M00151V), (6) Malitbog Bottoming Cycle Power Plant (COC No. 18-04-M-00153V).

² Outside Bohol Baseload Plant refers to the ULGPP located in Leyte, Philippines.

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6. Based on BLCI's supply-demand forecast, it foresees a deficit in its power supply due to the increasing demand of its Franchise Area. In order to ensure continuous and reliable electricity for BLCI's customers, BLCI needs to source additional baseload capacity through bilateral power supply contracts.
7. Under Section 45(b) of Republic Act No. 9136, or the Electric Power Industry Reform Act of 2001 ("EPIRA"), it is provided that "[d]istribution facilities may enter into bilateral power supply contracts subject to the review by the ERC xxx".
8. Accordingly, following the conduct of a joint competitive selection process ("Joint CSP" or "JCSP") involving the One Bohol Power Distribution Utilities ("1BP"), EDC executed a PSA with BLCI dated November 5, 2021, for the purchase of up to 15MW of electricity.

8.1. In 2017, BLCI, Bohol I Electric Cooperative, Inc. ("BOHECO I"), and Bohol II Electric Cooperative, Inc. ("BOHECO II") formed 1BP and conducted a joint CSP for their base and peak load requirements, pursuant to Energy Regulatory Commission ("ERC") Resolution No. 13, Series of 2015 and the Department of Energy ("DOE") Department Circular No. DC2018-02-0003, entitled, *"Adopting and Prescribing the Policy for Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreement for the Captive Market"* (the "CSP Rules").

8.2. 1BP constituted the 1BP Third-Party Bids and Awards Committee ("TPBAC") based on the least cost power supply plan. The basic terms of reference ("TOR") and conditions of the proposal of the 1BP ("1BP JCSP") are as follows:

| | |
|----------------------------|--|
| Type of Contract | Firm – Base Load |
| Plant Dependable Capacity | One Hundred Percent (100%) of the Contracted Capacity |
| Contract Duration | The PSA shall take effect for a period of TEN (10) years commencing on the Commercial Operations Date of December 26, 2023 to December 25, 2033, unless earlier terminated in accordance with the provisions of the PSA. |
| Commercial Operation Date | December 26, 2023 |
| Scheduled Date of Delivery | December 26, 2023 (Provided the later shall not exceed thirty-six (36) months after ERC's Final Approval of PSA) |
| Tariff Structure | Maximum price components shall be broken down into the following: - Capacity Fee (PHP/kWh) – Fixed Cost 1 – |

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| | |
|------------------------|--|
| | <p>Capital Recovery Fee; - Fixed O&M (PHP/kWh) – Fixed Cost 2 – Other fixed costs; - Variable O&M (PHP/kWh) – Variable Cost 1 – Non-fuel variable costs; - Fuel fee – Variable Cost 2 – Fuel Fee. The Bidder must also specify the base fee adjustment formula, if any, and applicable adjustment in percent that each component is being affected by factor such as CPI.</p> |
| Plant Outage Allowance | Zero- outage power supply of the committed aggregated capacity of 1BP. ³ |
| Force Majeure | <p>Extraordinary event which is not foreseen, or which though foreseen, is inevitable to happen, such event maybe produced by two general causes: (1) by nature, act of God, such as but not limited to typhoon, storm, tropical depression, flood, drought, volcanic eruptions, earthquake, tidal wave, or landslide; and (2) by the act of man, such as but not limited to war, conflagration, inundation, sabotage, blockade, revolution, riot, insurrection, civil unrest or any violent, or threatening actions; or any system emergency that may affect delivery of power by the Genco.</p> <p>1BP DUs⁴ shall not be required to make payments for:</p> <ul style="list-style-type: none"> - Capacity that is unavailable - Capacity that it cannot accept. |
| Replacement Power | <p>Replacement power shall be the obligation of the supplier. In the event of failure of the supplier to provide the replacement power, the 1BP DUs shall be allowed to source the replacement power at the expense of the supplier.</p> <p>The supplier is responsible to provide replacement power, to include but not limited to the following cases:</p> <ul style="list-style-type: none"> - During any delay of the Start of the Delivery of Supply; and - When its power plant is on schedule or unscheduled outage to ensure continuity of supply in compliance with the cooperation period. |
| Currency | Price offer should be in Philippine Peso. |
| Regulatory Approvals | The Power Supplier shall make the necessary adjustments in accordance with the directive of the ERC. Downward adjustment in the rates shall not be a ground for the termination of the contract |

³ ITB-4.2 of Final Instructions to Bidders state that “The Bidding is designed to trigger an installation of an in-island baseload plant or a combination of in-island plant and outside Bohol baseload plant.”

⁴ One Bohol Power Distribution Utilities.

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| | | |
|-------------------------|-----|--|
| | | and 1BP DUs should not be made to shoulder the incremental difference. |
| Dispatch Utility | by | 1BP DUs shall have the right to Schedule a Dispatch at least 50% of its Contracted Capacity in accordance with the agreed dispatch protocol. |
| Penalties | | <p>- Cure period: Events of Default shall have Cure Periods commensurate to the gravity of the default but in no case shall a Cure Period be longer than 60 calendar days.</p> <p>- Consequences of Event of Default:</p> <p>i. Either Seller or Buyer may initiate termination if the other party is unable to remedy its default within the Cure Period.</p> <p>ii. Parties shall arrange Replacement Contracts. Party in Default shall pay the price difference of the PSA and the Replacement contract for three (3) years.⁵</p> <p>- Termination Procedure: The non-defaulting Party may terminate the PSA subject to prior notice which shall not be less than 15 business days.</p> <p>- The Supplier shall be penalized (monetary, etc.) in cases of the following events and circumstances:</p> <p>i. Delay in Commercial Operation Date (COD);</p> <p>ii. Failure of delivery of power;</p> <p>iii. Failure of provision of replacement power; and</p> <p>iv. Other violations under the resulting PSA.</p> |
| Source of Power | | Open Technology provided that it is compliant with Provincial Ordinance No. 2018-005 "Declaring the official policy of the Provincial Government of Bohol disallowing the building or establishment of any coal-fired power plant in the Province of Bohol" |
| Plant Capacity | | The minimum generating capacity of the Bidder shall be no less than the contracted capacity of 1BP after considering the applicable credit factors. |
| Technical Specification | | The Bidder shall submit a technical proposal for each power plant offered in accordance with the set requirements prescribed in the Instruction to Bidders. |
| Take-Structure | off | These generating capacities may come from any type, size, and number of power plants or generating units that are or will be connected to the Luzon, Visayas Grid or |

⁵ Liquidated damages used in PPAs for Single Buyer Market such as payment for the Net Present Value of the Capacity Fees for the remaining life of the contract does not apply to multiple buyer market with WESM. Three (3) years should be enough time for the parties to arrange for permanent/long-term replacement contracts.

| | |
|--------------------------|--|
| | directly embedded to 1BP's Distribution Network considering the respective limitations of its Substation and Distribution Lines. |
| Experience | The Bidder must exhibit control over generating capacity of power plant(s). Certificate of good performance/track record with other customers shall be required. |
| Eligibility Requirements | Company profile highlighting experiences and expertise of the company and/or key officers in power plant operation. |

Unless specifically defined in this Joint Application, capitalized terms appearing here shall be given the meaning ascribed to them in the PSA.

8.3. On August 30, 2020 and September 6, 2020, the 1BP caused the publication of an Invitation to Bid for Power Supply Agreement, which contained the basic TOR and the conditions of the 1BP JCSP, as well as a summary of the process and timelines of the bidding process, while inviting power generation companies to submit their bids on or before the timelines set out in the said invitation.

8.4. On May 17, 2021, the 1BP JCSP TPBAC successfully conducted its series of "Post-Qualification and Detailed Evaluation of Bids." After finding that the proposal of EDC substantially complied with all the requirements provided in the bidding documents, the 1BP declared that the proposal of EDC is the Lowest Calculated Responsive Bid.⁶

8.5. On May 25, 2021, the 1BP JCSP TPBAC issued a resolution "that the EDC be issued a "Notice of Award" after having been found COMPLIANT to all the requirements set by the 1BP JCSP TPBAC."

8.6. On June 3, 2021, 1BP issued a Notice of Award in favor of EDC.

9. Accordingly, EDC and BLCI executed the PSA subject of this application. The PSA between EDC and BLCI contains the following salient features:

Section 3: EFFECTIVITY AND TERM OF AGREEMENT

3.1 The Agreement shall take effect immediately from Effective Date and shall remain in force and effect until December 25, 2033, subject to extension of the term as may be

⁶ 1BP's TPBAC Resolution 08-2021.

agreed upon by the Parties and if so allowed by Applicable Laws and the ERC. In the event the BUYER intends to extend the Agreement, in those circumstances allowed by the Applicable Laws, it shall send a written notice to the SELLER no later than June 25, 2033.

3.2 The obligation of the SELLER to sell and deliver the Contracted Capacity and its Associated Energy and the obligation of the BUYER to accept and pay for the same shall commence upon receipt by the Parties of the ERC Approval, whether provisional or final, of this Agreement (Delivery Date).

3.3 Notwithstanding the immediately preceding section, the SELLER shall be obligated to provide, at its own expense, Replacement Power to ensure a zero-outage power supply during power interruptions throughout the term of the Agreement or any allowed extension thereof, subject to Section 5.2, and including but not limited to the following cases:

- a. from December 26, 2023, 00:01 A.M., which is the scheduled supply delivery date, upon receipt by the Parties of the ERC Approval, whether provisional or final; or
- b. when the Outside-Bohol Baseload Plant is on Planned Outage or Forced Outage.

Section 4: SUPPLY OF CONTRACTED CAPACITY AND ASSOCIATED ENERGY

Subject to the terms and conditions of this Agreement, the SELLER shall, during the entire term of this Agreement, make available, sell and deliver, or cause to be delivered to the BUYER the Contracted Capacity and Associated Energy in accordance with "Schedule 1" at the Point of Delivery, whether sourced from the Plant or, in case of Replacement Power, from other electricity generators including the WESM.

xxx

Section 5: AVAILABILITY OF CAPACITY

In General

5.1 The SELLER shall supply the Contracted Capacity and its Associated Energy, in whole or in part, from (a) the Outside-Bohol Baseload Plant or, during Islanding, the In-Island Baseload Plant or (b) in so far as

provision of Replacement Power is concerned, the SELLER's Suppliers or third-party Suppliers or other sources, or the WESM, consistent with the technical proposal submitted by the SELLER in the CSP and in accordance with prudent utility practice and in compliance with Applicable Laws.

- 5.2 Supply of Contracted Capacity shall be available at all times except for interruption and/or reduction due to: (a) any Event of Force Majeure involving the In-Island Baseload Plant during Islanding, or (b) other causes, including safety, authorized by law, rule, regulation or order of a competent authority. For the avoidance of doubt, the SELLER shall supply Contracted Capacity during Planned Outage and/or Forced Outage of the Plant.

xxx

Service Interruption Adjustment

- 5.6 In the event that the supply of electricity is interrupted or curtailed to a level resulting in a Capacity Utilization Factor (CUF) of less than seventy percent (70%) due to scheduled maintenance of the BUYER's facilities, the CUF shall be adjusted according to the formula in Schedule 3 to determine the Applicable Capacity Utilization Factor (ACUF), for all hours when service was actually curtailed or interrupted ("Service Interruption Adjustment").

xxx

Section 6: CHARGES AND ADJUSTMENTS

Beginning Delivery Date and subject to the terms and conditions of this Agreement, the Parties shall pay the following:

- 6.1. The BUYER shall pay the Basic Energy Charge and the Adjustment to the Basic Energy Charge shall be as provided in "SCHEDULE 1" for the supply of energy by the SELLER to the BUYER.

xxx

SCHEDULE 1: CONTRACTED CAPACITY, CONTRACT PRICE AND TERMS OF AGREEMENT

1.1 CONTRACTED CAPACITY

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| Contract Year (CY) | Duration | Contracted Capacity |
|--------------------|--|---------------------|
| 2024 | December 26, 2023 to December 25, 2024 | 12 MW |
| 2025 | December 26, 2024 to December 25, 2025 | 12 MW |
| 2026 | December 26, 2025 to December 25, 2026 | 12 MW |
| 2027 | December 26, 2026 to December 25, 2027 | 13 MW |
| 2028 | December 26, 2027 to December 25, 2028 | 13 MW |
| 2029 | December 26, 2028 to December 25, 2029 | 13 MW |
| 2030 | December 26, 2029 to December 25, 2030 | 14 MW |
| 2031 | December 26, 2030 to December 25, 2031 | 14 MW |
| 2032 | December 26, 2031 to December 25, 2032 | 14 MW |
| 2033 | December 26, 2032 to December 25, 2033 | 15 MW |

Subject to the Terms and Conditions of the PSA

1.2 BASIC ENERGY CHARGE

The Basic Energy Charge (BEC) shall be equal to:

$$BEC = CRF_{ALF} + FOMF_{ALF} + VOMF$$

Where:

- a) CRF_{ALF} is the Capital Recovery Fee and $FOMF_{ALF}$ is the Fixed Operation and Maintenance Fee with values for different Capacity Utilization Factors (CUF) or Applicable Load Factors (ALF), effective until December 25, 2033.
- b) The Capital Recovery Fees tabulated below shall be fixed throughout the term of the Agreement. However, the Fixed Operation and Maintenance Fee is subject to escalation as illustrated in the equation for FOMF below.

X X X

$$CRF_{ALF} = CRF_{ALF}$$

$$FOMF_{ALF} = FOMF_{ALF} \times \frac{PHCPI_n}{PHCPI_o}$$

Where:

CRF_{ALF} - is the Capital Recovery Fee in PHP/kWh

$FOMF_{ALF}$ - is the Fixed Operation and Maintenance Fee in PHP/kWh

$PHCPI_n$ - Philippine Consumer Price Index of the calendar month within which the start of the current Billing Period occurs (Source: Philippine Statistics Authority)

$PHCPI_o$ - Base Philippine Consumer Price Index, equivalent to 120.6 (September 2019; 2012=100)

ALF - is the Applicable Load Factor or Applicable Capacity Utilization Factor between 70% and 100%, provided that if the actual CUF is below 70% (the "Minimum Capacity Utilization Factor"), the Capacity Price shall be calculated based on the Capacity Fee and quantity associated with the Minimum Capacity Utilization Factor.

The Applicable Load Factor (ALF) shall be computed as follows:

$$ALF = \left\{ 70\%, \frac{BCQ}{CC \times [H_T - EH_{T0}]} \right\}$$

Where:

BCQ - Bilateral Contract Quantity as defined in Section 1.1.5 of the Agreement, in kWh

CC - Contracted Capacity, in kW, as set forth in Schedule 1

H_T - Total number of hours in such Billing Period

EH_{T0} - the sum of the duration, in Equivalent Hours, of Force Majeure in such Billing Period

XXX

1.3

DERIVATION OF EQUIVALENT ENERGY AT THE MINIMUM CAPACITY UTILIZATION FACTOR

$$EE = CC \times 70\% \times H_T$$

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Where:

EE = Equivalent energy, in kWh

10. Based on the rate computation and analysis, the PSA will have a rate reduction ranging from Php2.4433/kWh to Php4.1393 as shown below:

A. Generation Rate Impact Simulation at 70%

Simulation of Generation Mix Rate without EDC

| Power Supplier | Forecasted Energy (kWh) | Percent Share (%) | Average Rate (Php/kWh) | Capacity Utilization Load Factor | Combined Rate (P/kWh) |
|----------------|-------------------------|-------------------|------------------------|----------------------------------|-----------------------|
| EDC | - | - | - | - | 10.3298 |
| KSPC | 17,520,000 | 10.73% | 9.8453 | 100% | |
| WESM | 145,695,434 | 89.27% | 10.3881 | | |
| TOTAL | 163,215,434 | 100.00% | | | |

Simulation of Generation Mix Rate with EDC

| Power Supplier | Forecasted Energy (kWh) | Percent Share (%) | Average Rate (Php/kWh) | Capacity Utilization Load Factor | Combined Rate (P/kWh) |
|-------------------------------|-------------------------|-------------------|------------------------|----------------------------------|-----------------------|
| EDC | 73,584,000 | 45.08% | 4.9687 | 70% | 7.8865 |
| KSPC | 17,520,000 | 10.73% | 9.8453 | 100% | |
| WESM | 72,111,434 | 44.18% | 10.3881 | | |
| TOTAL | 163,215,434 | 100.00% | | | |
| Generation Rate Impact | | | | | -2.4433 |

Assumption

1. Analysis and simulation is based on BLCT's forecasted 2024 hourly profile
2. WESM prices are based on the average nodal price of Bohol 2022.
3. KSPC 2022 average price
4. EDC hourly prices as offered, May 2019 reference price

B. Generation Rate Impact Simulation at 85%

Simulation of Generation Mix Rate without EDC

| Power Supplier | Forecasted Energy (kWh) | Percent Share (%) | Average Rate (Php/kWh) | Capacity Utilization Load Factor | Combined Rate (P/kWh) |
|----------------|-------------------------|-------------------|------------------------|----------------------------------|-----------------------|
| EDC | - | - | - | - | 10.3298 |
| KSPC | 17,520,000 | 10.73% | 9.8453 | 100% | |
| WESM | 145,695,434 | 89.27% | 10.3881 | | |
| TOTAL | 163,215,434 | 100.00% | | | |

Simulation of Generation Mix Rate with EDC

| Power Supplier | Forecasted Energy (kWh) | Percent Share (%) | Average Rate (Php/kWh) | Capacity Utilization Load Factor | Combined Rate (P/kWh) |
|-------------------------------|-------------------------|-------------------|------------------------|----------------------------------|-----------------------|
| EDC | 89,352,000 | 54.74% | 4.3760 | 85% | 7.0385 |
| KSPC | 17,520,000 | 10.73% | 9.8453 | 100% | |
| WESM | 56,343,434 | 34.52% | 10.3881 | | |
| TOTAL | 163,215,434 | 100.00% | | | |
| Generation Rate Impact | | | | | -3.2913 |

Assumption

1. Analysis and simulation is based on BLCT's forecasted 2024 hourly profile
2. WESM prices are based on the average nodal price of Bohol 2022.
3. KSPC 2022 average price

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4. EDC hourly prices as offered, May 2019 reference price

C. Generation Rate Impact Simulation at 100%

Simulation of Generation Mix Rate without EDC

| Power Supplier | Forecasted Energy (kWh) | Percent Share (%) | Average Rate (Php/kWh) | Capacity Utilization Load Factor | Combined Rate (P/kWh) |
|----------------|-------------------------|-------------------|------------------------|----------------------------------|-----------------------|
| EDC | - | - | - | - | 10.3298 |
| KSPC | 17,520,000 | 10.73% | 9.8453 | 100% | |
| WESM | 145,695,434 | 89.27% | 10.3881 | | |
| TOTAL | 163,215,434 | 100.00% | | | |

Simulation of Generation Mix Rate with EDC

| Power Supplier | Forecasted Energy (kWh) | Percent Share (%) | Average Rate (Php/kWh) | Capacity Utilization Load Factor | Combined Rate (P/kWh) |
|-------------------------------|-------------------------|-------------------|------------------------|----------------------------------|-----------------------|
| EDC | 105,120,000 | 64.41% | 3.9612 | 100% | 6.1905 |
| KSPC | 17,520,000 | 10.73% | 9.8453 | 100% | |
| WESM | 40,575,434 | 24.86% | 10.3881 | | |
| TOTAL | 163,215,434 | 100.00% | | | |
| Generation Rate Impact | | | | | -4.1393 |

Assumption

1. Analysis and simulation is based on BLCI's forecasted 2024 hourly profile
2. WESM prices are based on the average nodal price of Bohol 2022.
3. KSPC 2022 average price
4. EDC hourly prices as offered, May 2019 reference price

11. BLCI anticipates a deficit in its power supply due to the increasing demand in its Franchise Area. Thus, there is an urgent need for the approval of the PSA considering a significant baseload capacity deficit, as well as possible scheduled maintenance shutdowns and forced outage of the power plants of the other suppliers of BLCI.
12. In support of the instant Joint Application, the Applicants provide the following documents:

| Description of the Document | Annex |
|---|----------|
| EDC's Secretary Certificate dated July 28, 2023 | A |
| BLCI's Secretary Certificate dated March 17, 2022 | B |
| BLCI's SEC Certificate of Incorporation, AOI and By-Laws | C |
| BLCI's SEC Certificate of Registration | C-1 |
| BLCI's Amended Articles of Incorporation | C-2 |
| BLCI's General Information Sheet | C-3, C-4 |
| EDC's Articles of Incorporation | D |
| EDC's By-Laws | D-1 |
| EDC's Certificate of Amendment of and Amended Articles of Incorporation | D-2 |
| EDC's Certificate of Amendment of and Amended By-Laws | D-3 |
| EDC's General Information Sheet | D-4 |
| EDC's SEC Certificate of Registration | D-5 |
| EDC's Updated Ownership Structure | E |

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|---|---|
| EDC's BOI Certificate of Registration for the Unified Leyte Power Plant | F |
| EDC's DENR Environmental Compliance Certificates | G, G-1 |
| ERC Certificates of Compliance and Provisional Authorities to Operate for ULGPP | H, H-1, H-2, H-3, H-4, H-5, H-6 |
| DOE Certificate of Endorsement | H-7 |
| EDC's DOE Geothermal RE Contract <i>(Confidential)</i> | I, I-1 |
| EDC's DOE Certificate of Registration | J |
| EDC's NWRB Conditional Water Permit | K |
| BLCI's Demand Side Management Certifications | L, L-1 |
| BLCI's Power Supply Procurement Plan | M, M-1, M-2 |
| BLCI's Supply & Demand Scenario | N, N-1, N-2 |
| BLCI's Single Line Diagram | O |
| BLCI's Performance Assessment of the System | P, P-1 |
| BLCI's Potential Reduction in Load | Q |
| 1BP JCSP's Invitation to Bidders posted in the Philippine Daily Inquirer (Aug 30, 2020) | R |
| 1BP JCSP's Invitation to Bidders posted in the Philippine Daily Inquirer (Sept 06, 2020) | R-1 |
| 1BP JCSP's Approved Terms of Reference (TOR) | R-2 |
| DOE Approval of 1BP JCSP's Selection Process | R-3 |
| Competitive Selection Process Documents <i>(Confidential)</i> | S and series; T and series; U and series; |
| Power Supply Agreement between EDC and BLCI | V |
| EDC's Transmission Service Agreement (NGCP-PSALM) <i>(Confidential)</i> | W |
| Details of PSA between EDC and BLCI Write-Up <i>(Confidential)</i> | X |
| EDC's True Cost of Generation Computation and Writeup <i>(Confidential)</i> | Y, Y-1 |
| BLCI's Generation Rate Impact Simulation | Y-2, Y-3, Y-4 |
| Certification of Loan from different banks <i>(Confidential)</i> | Z and series |
| EDC's Audited Financial Statements | AA, AA-1 |
| Heat Rate Computation of the Plant <i>(Confidential)</i> | BB, BB-1, BB-2 |
| EDC's Simulation of the Number of Units to meet the MEOT and/or additional energy/demand requirements | CC |
| EDC's WESM Registration | DD |
| BLCI's WESM Membership Certificate (Certified True Copy) | EE |
| Affidavit of Service to/Certification Receipt from the Office of the Mayor of Tagbilaran | FF ⁷ |
| Affidavit of Service to/Certification Receipt from the Office of the Sangguniang Bayan of Tagbilaran | FF-1 |

⁷ Annexes "FF" to "FF-11" and "GG and series" are reserved for the Affidavits of Service/Certification Receipt from the Local Government Offices, Affidavit of Publication, and complete issue of the newspaper where the Joint Application will be published.

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| Affidavit of Service to/Certification Receipt from the Office of the Governor of Bohol | FF-2 |
| Affidavit of Service to/Certification Receipt from the Office of the Sanggunian Panlalawigan of Bohol | FF-3 |
| Affidavit of Service to/Certification Receipt from the Office of the Mayor of Pasig | FF-4 |
| Affidavit of Service to/Certification Receipt from the Sangguniang Panglungsod of Pasig | FF-5 |
| Affidavit of Service to/Certification Receipt from the Office of the Mayor of Ormoc | FF-6 |
| Affidavit of Service to/Certification Receipt from the Sangguniang Panglungsod of Ormoc | FF-7 |
| Affidavit of Service to/Certification Receipt from the Office of the Mayor of Kananga | FF-8 |
| Affidavit of Service to/Certification Receipt from the Sangguniang Bayan of Kananga | FF-9 |
| Affidavit of Service to/Certification Receipt from the Office of the Governor of Leyte | FF-10 |
| Affidavit of Service to/Certification Receipt from the Sangguniang Panlalawigan of Leyte | FF-11 |
| Affidavit of Publication and complete issue of the newspapers where the Joint Application was published. | GG and series |

**ALLEGATIONS IN SUPPORT OF
MOTION FOR PROVISIONAL AUTHORITY**

13. The allegations in the preceding paragraphs are reproduced and incorporated herein by reference where applicable.
14. Under Rule 4 of the ERC Rules, the Honorable Commission may, upon request of a party and determination of the existence of conditions which would warrant such remedy, treat certain information submitted to it as confidential. Pursuant to such Rule, the Applicants respectfully pray for the issuance of a protective order declaring Annexes I, I-1, S and series, T and series, U and series, W, X, Y, Y-1, Z and series, BB, BB-1, BB-2 as confidential information, since Applicants intend to present them as evidence in the Joint Application.
15. With respect to these documents marked and attached as Annexes I, I-1, S and series, T and series, U and series, W, X, Y, Y-1, Z and series, BB, BB-1, BB-2 Applicants respectfully move that such be treated as confidential information and not be disclosed to any party because it contains information which are of commercially sensitive nature and may affect price offers. Moreover, such information falls within the bounds of valuable proprietary interest under "trade secrets" which are entitled to protection under the Constitution, statutes, and rules and regulations.
16. Furthermore, some of these documents contain numbers, methodology, and calculations which provide valuable information and insight into how EDC arrived at its power

generation rate and would accordingly reflect EDC's bidding strategy for distribution utilities undertaking CSPs for their power suppliers, and EDC's trading in WESM. It also contains information regarding the debt or equity ratio, capital costs, weighted average cost of capital, and fuel cost, among other information.

17. Information which are within the definition of a trade secret, as defined by jurisprudence, is clearly information which merits the confidential treatment provided for under Rule 4 of the ERC Rules. In the case of *Air Philippines Corp. v. Pennswell, Inc.*,⁸ it was discussed:

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 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;
 - (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.
18. Considering the foregoing, Annexes I, I-1, S and series, T and series, U and series, W, X, Y, Y-1, Z and series, BB, BB-1, BB-2 are therefore entitled to the protection of confidential information provided under Rule 4 of the ERC Rules.
19. Applicants hereby submit one (1) copy of each of the foregoing confidential documents in a sealed envelope, with the envelope and each page of the document stamped with

⁸ G.R. No. 172835, 13 December 2007.

the word "Confidential".

**ALLEGATIONS IN SUPPORT OF
MOTION FOR PROVISIONAL AUTHORITY**

20. The allegations in the preceding paragraphs are reproduced and incorporated herein by reference where applicable.
21. Under Rule 14 of the ERC Rules, and as affirmed by jurisprudence⁹, this Honorable Commission may exercise its discretion to grant provisional authority prior to a final decision should the facts and circumstances justify it.
22. In this case, the facts and circumstances warrant the issuance of a provisional authority. BLCI's members' consumers are exposed to power supply interruptions due to current deficiency in its power supply. Moreover, as discussed above, BLCI's supply-demand forecast showed that there is foreseeable deficit in its power supply due to the increasing demand of its Franchise Area. In all, unless the PSA is granted interim approval, the current deficit and anticipated surge in demand could adversely affect the supply, to the prejudice of BLCI's customers. For this reason, Applicants respectfully move that the Honorable Commission issue a provisional authority upon filing of the Joint Application, or immediately soon thereafter, for the implementation of the PSA pending hearing of the Joint Application and until the Honorable Commission approves the PSA and grants the final authority.

PRAYER

WHEREAS, premises considered, it is most respectfully prayed that this Honorable Commission:

- (i) ISSUE an Order treating Annexes I, I-1, S and series, T and series, U and series, W, X, Y, Y-1, Z and series, BB, BB-1, BB-2 as confidential information pursuant to Rule 4, Section 1 of the ERC Rules of Practice and Procedure and prescribing the guidelines for the protection thereof;
- (ii) ISSUE a Provisional Authority pursuant to Rule 14, Section 1 of the ERC Rules of Practice and Procedure, and permitting the parties to implement the Power Supply Agreement during the pendency of the hearing and until the Honorable Commission grants the final authority; and
- (iii) After hearing on the merits, render a Decision APPROVING the Power Supply Agreement notarized on 5 November 2021.

⁹ Alyansa para sa Bagong Pilipinas, Inc. v. Energy Regulatory Commission, G.R. No. 227670, May 3, 2019.

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

The Commission hereby 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 platforms for the conduct thereof, pursuant to Resolution No. 09, Series of 2020¹⁰ and Resolution No. 01, Series of 2021¹¹ (ERC Revised Rules of Practice and Procedure):

| Date | Platform | Activity |
|--|--|---|
| 11 January 2024 (Thursday) at nine o'clock in the morning (9:00 A.M.) | Microsoft Teams or Zoom Application | Determination of compliance with jurisdictional requirements, and Expository Presentation |
| 18 January 2024 (Thursday) at nine o'clock in the morning (9:00 A.M.) | | Pre-Trial Conference and Presentation of Evidence |

EDC and BLCI are directed to host the virtual hearings at **BLCI Building, 51 Ramon Enerio Street, Poblacion III, Tagbilaran City, Bohol 6300, Philippines**, as the designated venue for the conduct thereof, and ensure that the same is open to the public and the community quarantine guidelines are observed at all times. Applicants shall also 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, 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.

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.

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, 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.

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 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.

All interested parties filing their Petition to Intervene, Opposition or Comment are required to submit the hard/printed copy/ies thereof either through personal service, registered 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* on the Commission's official website at www.erc.gov.ph.

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Finally, all interested persons may be allowed to join the scheduled initial virtual hearings by providing the Commission, through 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 hearings.

WITNESS, the Honorable Commissioners **ALEXIS M. LUMBATAN**, **CATHERINE P. MACEDA**, **FLORESINDA G. BALDO-DIGAL**, and **MARKO ROMEO L. FUENTES**, Energy Regulatory Commission, this 26th day of October 2023 in Pasig City.

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MONALISA C. DIMALANTA
Chairperson and CEO

[Signature]
LS: KACF/MCC/MCCG

ERC
Office of the Chairperson and CEO



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