

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

**IN THE MATTER OF THE
APPLICATION FOR
APPROVAL OF POWER
SUPPLY AGREEMENT
BETWEEN ILOCOS NORTE
ELECTRIC COOPERATIVE,
INC. (INEC) AND MASINLOC
POWER CO. LTD. (MPCL)
WITH PRAYER FOR
ISSUANCE OF A
PROVISIONAL AUTHORITY
AND MOTION FOR
CONFIDENTIAL
TREATMENT OF
INFORMATION**

ERC Case No. 2025-104 RC

**ILOCOS NORTE ELECTRIC
COOPERATIVE, INC. AND
MASINLOC POWER CO.
LTD. (MPCL)**

Promulgated:
May 30, 2025

Applicants.

X-----X

ORDER

On 09 May 2025, Applicants Ilocos Norte Electric Cooperative (INEC) and Masinloc Power Co. Ltd.¹ (MPCL) filed their *Joint Application* dated 31 March 2025, seeking the Commission's approval of their Power Supply Agreement, with prayer for the issuance of a Provisional Authority and Motion for Confidential Treatment of Information.

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

THE APPLICANTS

¹ Formerly known as Masinloc Power Partners Co. Ltd.

1. Applicant **INEC** is an electric cooperative duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at Barangay Suyo, Municipality of Dingras, Province of Ilocos Norte. It is the holder of a franchise issued by the National Electrification Administration (“**NEA**”) under *Certificate of Franchise No. 219* dated August 10, 1977, which will expire on August 11, 2027. INEC supplies electricity to the whole of Ilocos Norte, which is composed of two (2) cities, twenty-one (21) municipalities, and five hundred fifty-nine (559) barangays.. It shall also be referred to herein as the “Buyer”.
2. On the other hand, Applicant **MPCL** is a limited partnership duly organized and existing under the laws of the Republic of the Philippines, with principal office address at 40 San Miguel Avenue, Wack-Wack Greenhills, City of Mandaluyong. It shall also be referred to herein as the “Seller”. Applicant MPCL is the owner of the 1 x 344 MW (Unit 1), 1 x 344 MW (Unit 2) and 1 x 335 MW (Unit 3) coal-fired power plants, comprising the Masinloc Power Plant, (the “Plant”) located in Barangay Bani, Masinloc, Zambales.
3. The 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

4. This Joint Application for approval of the Power Supply Agreement (“PSA”) entered into by and between INEC and **MPCL**, 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 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.

STATEMENT OF FACTS

5. Prior to the execution of the MPCL-INEC PSA, applicant INEC does not have any long-term power supply agreements (“PSAs”), having relied instead on one-year emergency power supply agreements (“EPSAs”) and procurement of power from the Wholesale Electricity Spot Market

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 Prior to the implementation of Open Access and Retail Competition, the prices charged 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.

(“WESM”). Given the volatility of WESM prices and its potential cost impact on consumers, securing a long-term PSA is essential for applicant INEC to fulfill its obligation to provide electricity to its captive market in the least-cost manner.

6. Given the foregoing, applicant INEC intends to secure long-term PSAs for up to 52 MW of additional baseload power supply, as provided in its PSPP. These agreements would ensure a more stable, reliable, and affordable long-term supply for its consumers.
7. According to INEC’s 2025 Power Supply Procurement Plan (“PSPP”), the peak demand within its franchise area is generally projected to grow at a rate of 2% to 4% annually. To address the demand, INEC determined that it needs to procure an additional 52 MW baseload requirement of power supply.
8. Thus, the procurement of the long-term PSA is not only aimed at replacing expiring emergency power supply agreements, but also to ensure a more stable and reliable long term power supply for its consumers.
9. To avoid any irregularity in the conduct of the Competitive Selection Process for the procurement of long-term PSAs, and in view of the failure to complete the CSP at least one (1) year before the scheduled date in the PSPP, INEC joined the joint CSP conducted by the NEA, in accordance with the following laws, rules and regulations, *to wit*:
 - a. Section 23 of the EPIRA mandates that a distribution utility has the obligation to supply electricity in the least cost manner to its captive market, subject to collection of retail rate duly approved by this Honorable Commission. In relation to this, Section 45 (b) of the EPIRA expressly allows distribution utilities to enter into bilateral power supply contracts subject to the review of this Honorable Commission. The same are consistent with the State’s policy to ensure the quality, reliability, security, and affordability of the supply of electric power
 - b. The Department of Energy’s (“DOE”) Department Circular No. DC2023-06-0021⁶ (the “DOE 2023 CSP Policy”) is the prevailing policy on the conduct of a Competitive Selection Process (“CSP”) for the procurement of an Electric Cooperative’s (“EC”) power supply for its captive market. Section 5.2⁷ of the DOE 2023 CSP Policy allows ECs that are unable

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 SECTION 5.2: ECs with limited capability to undertake CSP may request the NEA to provide the necessary assistance and resources to conduct the same, including, but not limited to, the mobilization of competent manpower of the NEA and other ECs, and if necessary, the involvement of NPC and National Transmission Corporation (TransCo) in Off-Grid Areas, which shall be at no expense to the EC

- to undertake a CSP to request assistance from the National Electrification Administration (“NEA”). Meanwhile, Section 5.4⁸ of the same circular states that if an EC fails to complete the CSP at least one (1) year before the scheduled date indicated in its PSPP, the NEA shall undertake or continue the CSP on behalf of the EC.
- c. NEA Memorandum No. 2023-057⁹ (the “NEA 2023 CSP Guidelines”) was issued by the NEA pursuant to the DOE 2023 CSP Policy and in support of the Honorable Commission’s Resolution No. 16, Series of 2023¹⁰, (the “ERC CSP Guidelines”) specifically as it applies to the conduct of the CSPs for ECs.
 - d. Article 13.1 of the NEA CSP Guidelines, consistent with Section 5.4 of the DOE 2023 CSP Policy, provides that if an EC requests assistance from the NEA or fails to complete the CSP at least one (1) year before the scheduled date in the PSPP, the NEA shall undertake or continue the CSP on their behalf.
 - e. In this case, the aggregation of Region 1 Cordillera Administrative Region ECs including applicant INEC, initiated the conduct of CSP for the procurement of their power supply. The joint third-party bids and awards committee declared two (2) failed bidding which paved the way for them to resort to a direct negotiation. However, pursuant the same was flagged as highly irregular by NEA. Pursuant to the NEA CSP Guidelines, and in view of the aggregation of Luzon ECs’ failure to complete the CSP at least one (1) year before the scheduled date in the PSPP, Nea intervened and conducted the joint CSP for the procurement of power supply of the aggregation of Luzon ECs.
10. Accordingly, the joint CSP conducted by NEA, therefore, followed the policy and rules prescribed under the above-mentioned issuances of the DOE, NEA, and the Honorable Commission.
 11. Accordingly, the NEA-SBAC commenced and conducted the Joint CSP for and on behalf of the Member ECs, including applicant INEC.
 12. Particularly, on September 4, 2024, NEA Special Bids and Awards Committee (NEA SBAC) published an invitation to

⁸ SECTION 5.4 The NEA shall advise all ECs to conduct their CSP not later than two (2) years before the scheduled date indicated in their respective PSPPs. In case an EC is unable to complete the CSP one (1) year before said scheduled date as indicated in its PSPP, the NEA shall undertake or continue the CSP on behalf of the EC. For this purpose, the NEA can mobilize its own manpower complement and structure, the manpower of the EC itself, as well as those of other ECs to undertake the CSP process, as necessary.

⁹ Adoption of the National Electrification Administration Competitive Selection Process Guidelines Implementing the Department of Energy’s Department Circular No. DC2023-06-0021 and the Energy Regulatory Commission’ Resolution No. 16, Series of 2023

¹⁰ 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

submit offers for the Joint CSP for the aggregated baseload supply of Luzon On-Grid Electric Cooperatives, in which INEC is a member. Additionally, the Pre-Bid Conference was conducted last September 12, 2024.

13. Six (6) generation companies expressed their interest to participate in the bidding, namely: Sual Power Inc., Masinloc Power Co. Ltd., Therma Luzon, Inc., Therma Visayas, Inc., AP Renewables, Inc., and GNPower Dinginin Ltd. Co..
14. The Final Bidding Documents were issued by the NEA SBAC on November 14, 2024. The deadline for the submission of the bids was on 03 December 2024. On the bid submission deadline, three (3) bidders submitted their respective legal, technical, and financial requirements, namely Sual Power, Inc., Therma Luzon, Inc., and Masinloc Power Co., Ltd..
15. On 03 December 2024, applicant MPCL was declared one of the winning bidders for 300 MW. The EC's allocation is 26 MW. The NEA SBAC issued a Notice of Award dated December 27, 2024.
16. MPCL and the LECA members proceeded to conduct a negotiation to finalize the terms of the Power Supply Agreement (PSA) and on February 3, 2024 MPCL and INEC signed the PSA.
17. Hence, this Joint Application for the approval of the PSA.

SALIENT FEATURES OF THE POWER SUPPLY AGREEMENT (PSA) AND RELATED INFORMATION

18. The EPSA contains the following salient provisions:

3.1 CONTRACT TERM

The PSA shall take effect immediately from Effective Date, and from such date shall remain in force and effect for fifteen (15) years from Delivery Date unless sooner terminated in accordance with the PSA and upon approval by the ERC.

xxx

3.3 Delivery Date.

The Seller shall commence delivery of the Contract Capacity to Buyer on Delivery Date. The Delivery Date shall be the later of either:

- a. October 13, 2024; or
- b. The next immediate 26th day of the month following the ERC's issuance of a Provisional Authority or Interim Relief (as applicable) or Final Authority (if neither Provisional Authority nor Interim Relief was

issued by the ERC) for the implementation of the PSA.

5.1 PERFORMANCE BOND

5.1 The Performance Bond amount shall be calculated as follows:

$$\text{Performance Bond} = 2,190(\text{hr}) \times CC_n \times 65\% \times 6.3527 (\text{Php} / \text{kWhr})$$

Where CC_n shall be the average Contract Capacity of Buyer for the subsequent Contract Year.

The Performance Bond shall be posted by the Seller within ten (10) Days from the execution of this Agreement and shall be valid until the expiration of the Term. The Performance Bond shall be returned to Seller within three (3) Business Days following verification of Seller's compliance with its obligations under this Agreement, including but not limited to the refund of any Prompt Payment Discount for the last month prior to termination or expiration of the Term, if applicable.

6. SECURITY DEPOSIT

6.1 The Buyer shall not be required to post a Security Deposit upon the execution of this Agreement.

6.2 In the event that Buyer fails to fully pay a Seller Invoice after the Cure Period provided in **SECTION 17.1 (a)**, Seller may require the Buyer to post a Security Deposit. Buyer shall act on this request within thirty (30) Days from receipt of Seller's request to post a Security Deposit.

6.3 The amount of the Security Deposit shall be equivalent to the lowest monthly Seller Invoice for the Billing Periods from the Delivery Date, but in no case longer than the most recent twelve (12) Billing Periods from Default. At Buyer's option, the Security Deposit may be in the form of cash, cash bond, manager's or cashier's check, bank certified check, irrevocable stand-by letter of credit, surety bond, or bank guarantee "callable on demand" issued by a financial institution.

If the form chosen by Buyer is an irrevocable stand-by letter of credit, surety bond, or bank guarantee "callable on demand" issued by a financial institution, the same shall be valid for at least six (6) months. xxx

7. SUPPLY OF ENERGY

7.1 Subject to the approval of the ERC, beginning on the Delivery Date and until the termination or expiration

of this Agreement, Seller shall supply and deliver the Contract Capacity to Buyer at the Delivery Point, as provided in **SCHEDULE 2**, and Buyer shall purchase the Contract Capacity and Associated Energy and pay Seller the Total Generation Charges as provided in Section 11.1 under this Agreement.

Contract Capacity

Beginning on the Delivery Date and until the termination or expiration of this Agreement, Seller shall supply and deliver the Contract Capacity to Buyer at the Delivery Point, and Buyer shall purchase and pay Seller the Contract Capacity as provided in Table 1:

TABLE I

CY	26 Dec to 25 Jan	26 Jan to 25 Feb	26 Feb to 25 Mar	26 Mar to 25 Apr	26 Apr to 25 May	26 May to 25 Jun	26 Jun to 25 Jul	26 Jul to 25 Aug	26 Aug to 25 Sep	26 Sep to 25 Oct	26 Oct to 25 Nov	26 Nov to 25 Dec
2024										18.70	26	26
2025	22.38	23.16	25.14	26	26	26	26	26	26	26	26	26
2026	24.87	25.68	26	26	26	26	26	26	26	26	26	26
2027	25.87	26	26	26	26	26	26	26	26	26	26	26
2028	26	26	26	26	26	26	26	26	26	26	26	26
2029	26	26	26	26	26	26	26	26	26	26	26	26
2030	26	26	26	26	26	26	26	26	26	26	26	26
2031	26	26	26	26	26	26	26	26	26	26	26	26
2032	26	26	26	26	26	26	26	26	26	26	26	26
2033	26	26	26	26	26	26	26	26	26	26	26	26
2034	26	26	26	26	26	26	26	26	26	26	26	26
2035	26	26	26	26	26	26	26	26	26	26	26	26
2036	26	26	26	26	26	26	26	26	26	26	26	26
2037	26	26	26	26	26	26	26	26	26	26	26	26
2038	26	26	26	26	26	26	26	26	26	26	26	26
2039	26	26	26	26	26	26	26	26	26	26		

In the event the Delivery Date does not coincide with the Target Delivery Date and that said Delivery Date is delayed by a certain number of Billing Period/s, such number of Billing Period/s of delay shall extend the last Billing Period contained in the table above by the same number of Billing Period/s; provided that the Contract Capacity for such extended Billing Period/s shall be exactly the same Contract Capacity for the same Billing Period/s of the previous Contract Year.

Thus, for example, assuming the Target Delivery Date is on 26 October 2024 and actual Delivery Date commences on 26 April 2025, resulting to a delayed implementation by six (6) Billing Periods. In this case, the last Billing Period to complete the Term under the PSA shall be extended likewise by six (6) Billing Periods. Thus, instead of 26 September 2039 to 25 October 2039 being the last Billing Period, an additional six (6) Billing Periods covering 26 October 2039 to 25 April 2040 shall be considered as part of the Contract Term. The Contract Capacity for 26 October 2039 to 25 April 2040 shall be the Contract Capacity for 26 October 2038 to 25 April 2039.

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CY	26 Oct to 25 Nov	26 Nov to 25 Dec	26 Dec to 25 Jan	26 Jan to 25 Feb	26 Feb to 25 Mar	26 Mar to 25 Apr
2039	26	26				
2040			26	26	26	26

Buyer shall be allowed to nominate the entire Contract Capacity but is only obliged to utilize the Contract Capacity at the 65% Monthly Minimum Capacity Utilization Factor (“CUF”) for every Billing Period.

Notwithstanding the 65% Monthly Minimum CUF, Seller must make available for dispatch the Contract Capacity.

Buyer’s Minimum Hourly Nomination shall be 35% of the Contract Capacity for the Billing Period except in cases of Force Majeure Event.

Should Buyer fail to dispatch the Seller at the Monthly Minimum CUF for a Billing Period, and the Seller has made the same available for dispatch, Buyer shall pay Seller the CRRCUF and FOMRCUF for the equivalent associated energy at 65% CUF level. The formula to calculate the equivalent associated energy is found in **SCHEDULE 7**.

Total Generation Charge

$$Total\ Generation\ Charge = CRF_{CUF} + FOMF_{CUF} + VOMF + FC + VAT$$

A. Capital Recovery Fee (CRF)

The CRF_{CUF} shall be calculated as the product of the Capital Recovery Rate (“ CRR_{CUF} ”), in PhP/kWh, and the actual energy delivered from the Facility during the Billing Period or the equivalent associated energy based on the Monthly Minimum CUF, whichever is higher.

$$CRF_{CUF_t} = CRR_{CUF_t} \times \max (AED_t, AE_t)$$

$$CRR_{CUF_t} = \frac{CRR_{100\%CUF}}{CUF_t}$$

CRF_{CUF_t}	Corresponding CRF_{CUF} to calculate the Total Generation Charge, expressed in PhP
CRR_{CUF_t}	Billing Determinant to calculate CRF_{CUF} , expressed in PhP/kWh, for a Billing Period
$CRR_{100\%CUF}$	Corresponding CRR at 100% CUF, which is 2.0588 PhP/kWh. For reference see Table 1 for the value of CRR per 1% CUF from 65% to 100%: Table 1. Capital Recovery Rate per 1% Capacity Utilization Factor

		Capacity Utilization Factor	CRR PhP/kWh
		100%	2.0588
		99%	2.0796
		98%	2.1008
		97%	2.1225
		96%	2.1446
		95%	2.1672
		94%	2.1902
		93%	2.2138
		92%	2.2378
		91%	2.2624
		90%	2.2876
		89%	2.3133
		88%	2.3395
		87%	2.3664
		86%	2.3940
		85%	2.4221
		84%	2.4510
		83%	2.4805
		82%	2.5107
		81%	2.5417
		80%	2.5735
		79%	2.6061
		78%	2.6395
		77%	2.6738
		76%	2.7089
		75%	2.7451
		74%	2.7822
		73%	2.8203
		72%	2.8594
		71%	2.8997
		70%	2.9411
		69%	2.9838
		68%	3.0276
		67%	3.0728
		66%	3.1194
		65%	3.1674
AE _t	Associated Energy based on the Monthly Minimum CUF of 65% in kWh for a Billing Period		
AED _t	Actual Energy Delivered from the Facility during the Billing Period in kWh		
CUF _t	Actual CUF for a Billing Period <i>t</i> . The CUF shall be calculated in accordance with the formula below		
t	Billing Period		

- The CUF shall be calculated in accordance with the formula below:

$$CUF_t = \frac{Q_t}{CC_t \times (H_T - H_O - H_{FM})}$$

Where:

CUF _t	Capacity Utilization Factor
Q _t	Total Energy delivered in kWh, not exceeding the corresponding Contract Capacity, during the Billing Period, or the equivalent associated energy based on the Monthly Minimum CUF of 65%, whichever is higher
CC _t	Contract Capacity for the current Billing Period in kW as indicated in Schedule 2
H _T	Total number of hours in the Billing Period
H _O	Zero (0) for each Billing Period, as the Seller has no Outage Allowance
H _{FM}	The Equivalent Hours of Force Majeure in the current Billing Period
t	As previously defined

- The formula to calculate the H_{FM} shall be:

$$H_{FM} = \sum_{i=1}^n \left(1 - \frac{\text{Seller BCQ day after}}{CC} \right)$$

Where:

n – Total number of Hours in a Billing Period

- Formula to calculate the Q_t :

$$Q_t = \max(AE_t, TED_t)$$

$$AE_t = 65\% \times CC_t \times (H_T - H_O - H_{FM})$$

Where:

AE _t	As previously defined
CC _t	As previously defined
H _T	As previously defined
H _O	As previously defined
H _{FM}	As previously defined
TED _t	Total Energy Delivered, which is Actual Energy Delivered from the Facility and Replacement Power energy, during the Billing Period in kWh

B. Fixed Operation and Maintenance Fee (FOMF)

The $FOMF_{CUF}$ shall be calculated as the product of the Fixed Operation and Maintenance Rate (“ $FOMR_{CUF}$ ”), in PhP/kWh, and the actual energy delivered from the Facility during the Billing Period or the equivalent Associated Energy based on the Monthly Minimum CUF, whichever is higher.

$$FOMF_{CUFt} = FOMR_{CUFt} \times \max (AED_t, AE_t)$$

$$FOMR_{CUFt} = \frac{FOMR_{100\%CUF}}{CUF_t}$$

FOMF _{CUFt}	Corresponding FOMF _{CUF} component of the Total Generation Charge, expressed in PhP																																																																										
FOMR _{CUFt}	Applicable FOMR to calculate FOMF _{CUF} , expressed in PhP/kWh, for a Billing Period. For reference see Table 2 for the value of FOMR per CUF																																																																										
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FOMR _{100%CUF}	Corresponding FOMR at 100% CUF, which is 0.3500 PhP/kWh. For reference see Table 2 for the value of FOMR per 1% CUF from 65% to 100%:																																																																										
	<p style="text-align: center;">Table 2. Fixed O&M Rate per Capacity Utilization Factor</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>Capacity Utilization Factor</th> <th>FOMR_{LOCAL} Php/kWh</th> </tr> </thead> <tbody> <tr><td>100%</td><td>0.3500</td></tr> <tr><td>99%</td><td>0.3535</td></tr> <tr><td>98%</td><td>0.3571</td></tr> <tr><td>97%</td><td>0.3608</td></tr> <tr><td>96%</td><td>0.3646</td></tr> <tr><td>95%</td><td>0.3684</td></tr> <tr><td>94%</td><td>0.3723</td></tr> <tr><td>93%</td><td>0.3763</td></tr> <tr><td>92%</td><td>0.3804</td></tr> <tr><td>91%</td><td>0.3846</td></tr> <tr><td>90%</td><td>0.3889</td></tr> <tr><td>89%</td><td>0.3933</td></tr> <tr><td>88%</td><td>0.3977</td></tr> <tr><td>87%</td><td>0.4023</td></tr> <tr><td>86%</td><td>0.4070</td></tr> <tr><td>85%</td><td>0.4118</td></tr> <tr><td>84%</td><td>0.4167</td></tr> <tr><td>83%</td><td>0.4217</td></tr> <tr><td>82%</td><td>0.4268</td></tr> <tr><td>81%</td><td>0.4321</td></tr> <tr><td>80%</td><td>0.4375</td></tr> <tr><td>79%</td><td>0.4430</td></tr> <tr><td>78%</td><td>0.4487</td></tr> <tr><td>77%</td><td>0.4545</td></tr> <tr><td>76%</td><td>0.4605</td></tr> <tr><td>75%</td><td>0.4667</td></tr> <tr><td>74%</td><td>0.4730</td></tr> <tr><td>73%</td><td>0.4795</td></tr> <tr><td>72%</td><td>0.4861</td></tr> <tr><td>71%</td><td>0.4930</td></tr> <tr><td>70%</td><td>0.5000</td></tr> <tr><td>69%</td><td>0.5072</td></tr> <tr><td>68%</td><td>0.5147</td></tr> <tr><td>67%</td><td>0.5224</td></tr> <tr><td>66%</td><td>0.5303</td></tr> <tr><td>65%</td><td>0.5385</td></tr> </tbody> </table>	Capacity Utilization Factor	FOMR _{LOCAL} Php/kWh	100%	0.3500	99%	0.3535	98%	0.3571	97%	0.3608	96%	0.3646	95%	0.3684	94%	0.3723	93%	0.3763	92%	0.3804	91%	0.3846	90%	0.3889	89%	0.3933	88%	0.3977	87%	0.4023	86%	0.4070	85%	0.4118	84%	0.4167	83%	0.4217	82%	0.4268	81%	0.4321	80%	0.4375	79%	0.4430	78%	0.4487	77%	0.4545	76%	0.4605	75%	0.4667	74%	0.4730	73%	0.4795	72%	0.4861	71%	0.4930	70%	0.5000	69%	0.5072	68%	0.5147	67%	0.5224	66%	0.5303	65%	0.5385
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65%	0.5385																																																																										

C. Variable Operation and Maintenance Fee (“VOMF”)

The VOMF shall be calculated as the product of the Variable Operation and Maintenance Rate (“VOMR”), in PhP/kWh, and the actual energy delivered for the Billing Period.

$$VOMF_t = VOMR_t \times AED_t$$

VOMF _t	Corresponding VOMF component of the Total Generation Charge, expressed in PhP
VOMR _t	0.3000 PhP/kWh
AED _t	As previously defined

D. Fuel Cost (“FC”)

The FC shall be calculated as follows:

$$FP_t = (FCC_t \times FX_m) + NFCC_t + \text{Applicable Taxes}$$

$$FC = \left(\frac{FP_t \times FCR_t}{1000} \right) \times AED_t$$

Where:

FP _t	Applicable Fuel Price for a Billing Month, expressed in PhP/MT
FC _t	Fuel Commodity Cost in USD/MT calculated using the formula below: $87.1687 \times \left[\left(83\% \times \frac{NFI_{13m\ avg}}{NFI_{1o}} \right) + 17\% \right]$
NFI _{13m avg}	the average value for the three (3) months preceding the Billing Period for which the Invoice is being prepared of the Indonesian Coal Index 3 (5000 GAR / 4600 NAR) as published by the Argus/Coalindo for Indonesian Coal Index Report, in USD/MT
NFI _{1o}	Value of Indonesian Coal Index 3 (5000 GAR / 4600 NAR) for the month of September 2024, which is 72.3500, in USD/MT
AED _t	As previously defined
NFCC _t	Weighted average of the actual Freight Cost, Marine Cargo Insurance, Letter of Credit Opening Charges, Wharfage, Disport Surveyor Fees, and Brokerage Fees, in PhP/MT Seller can only recover the NFCC items listed above and shall submit to the Buyer proof of actual costs in the form of official invoices and supporting documents. When applicable, Seller must disclose actual cost of NFCC in USD/MT and disclose the actual foreign exchange rate used to convert USD denominated costs into PHP.
FX _m	the monthly average of the PhP/USD exchange rate for the month (i.e., first until last day of the month) for which

	the invoice is being prepared, as published in the Bangko Sentral ng Pilipinas website
Applicable taxes	Applicable taxes relating to FC for the Billing Period, in PhP/MT

In the event that the index (a) becomes unavailable, (b) is replaced by a new benchmark rate as determined by the relevant authorized entity, its successor-in-interest, or (c) ceases to exist, the Parties shall agree to adopt a new price index.

The FP_t to be billed by Seller shall be the lower between:

1. The sum of the (i) resulting value using the Fuel Commodity Cost Formula and (ii) the Non-Fuel Commodity Cost;
or
2. The actual fuel price as billed by the fuel supplier/s (i.e., supported by actual invoices) including the Non-Fuel Commodity Cost for the relevant Billing Period.

For this purpose, the Seller's Invoice shall include, subject to confidentiality clause, the relevant fuel supplier's invoice, certified by Seller, which will detail the actual fuel cost incurred to produce the delivered energy to Buyer. If any index or indices are used, the Seller must provide the Buyer with either (a) a screenshot or snapshot of the actual published price from the index provider OR (b) a certification from the publisher of the nominated index/indices certifying the actual published price. The Seller must also attach the monthly fuel inventory report submitted to the DOE.

Buyer reserves the right to refuse payment of the Fuel Cost if Seller fails to provide either the fuel supplier's invoice or the monthly inventory report referred to above.

FCR	<p>The computed Fuel Consumption Rate (FCR) or the actual plant FCR for the relevant Billing Period, whichever is lower, in kg/kWh.</p> <p>The formula to determine the computed FCR shall be:</p> $\frac{(FCR_{CUF2} - FCR_{CUF1}) \times (CUF - CUF1)}{(CUF2 - CUF1)} + FCR_{CUF1}$ <p>If Buyer fails to utilize the Contract Capacity at the Monthly Minimum CUF, Seller may apply the higher of its actual consumption rate or the consumption rate corresponding to the Minimum CUF for that Billing Period.</p>
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CUF = as previously defined
 CUF2 = CUF increment of the nearest upper value, in %
 CUF1 = CUF increment of the nearest lower value, in %
 FCR_{CUF2} = corresponding FCR for CUF2 set forth in the table below:

FCR_{CUF1} = corresponding FCR for CUF1 set forth in the table below:

Illustration: CUF 65.61%

CUF2	66%
CUF1	65%
FCR_{CUF2}	0.5929
FCR_{CUF1}	0.5952

The FCR at CUF levels 65% to 100% are as follows:

CUF	FCR, kg/kWh
100%	0.5441
99%	0.5445
98%	0.5452
97%	0.5459
96%	0.5466
95%	0.5474
94%	0.5483
93%	0.5492
92%	0.5501
91%	0.5511
90%	0.5522
89%	0.5533
88%	0.5545
87%	0.5557
86%	0.5569
85%	0.5582
84%	0.5596
83%	0.5610
82%	0.5625
81%	0.5640
80%	0.5656
79%	0.5672
78%	0.5689
77%	0.5706
76%	0.5724
75%	0.5742
74%	0.5761
73%	0.5780
72%	0.5800
71%	0.5820
70%	0.5841
69%	0.5862
68%	0.5884
67%	0.5906
66%	0.5929
65%	0.5952

Note: For avoidance of doubt, the Buyer shall bear all other applicable costs, charges and taxes pursuant to Section 12 and Section 13.2 of the PSA.

E. Value-added Tax (“VAT”), if any. VAT shall only be chargeable to the Buyer if prevailing laws expressly allow its passing on by the Seller.

Replacement Power Charge

If Seller provides Replacement Power, Seller shall attach to the Seller Invoice the computation showing both the actual rate of the Replacement Power and the generation rate based on the approved tariff for the PSA.

- i. In computing the actual rate of the Replacement Power, Seller shall declare whether the Replacement Energy was procured from a renewable energy source/s or from sources exempt from Value-Added Taxes and shall provide the invoice issued to it by the Replacement Power plant clearly containing the actual breakdown of the rate for the delivered Replacement Power.
- ii. The generation rate based on the PSA shall be computed in accordance with Schedule 7, provided that the CRRCUF and FOMRCUF shall be based on the utilization of the Contract Capacity for the relevant Billing Period. Further, the Fuel Cost shall be calculated using a fuel rate based on the average Fuel Price of Seller for the immediately preceding Billing Period and the Seller’s Fuel Consumption Rate at the CUF level associated with the CRRCUF and FOMRCUF.

Thus, the Replacement Power cost shall be:

$$RP_t = (RP_r, CP_r) \times RE_t$$

$$CP_r = [(CRR_{CUFt} + FOMR_{CUFt} + VOMR_t) + (\frac{FP_{n-1} \times FCR_{CUFt} \times FX_m}{1000})]$$

RPt	Replacement Power cost in PhP for the Billing Period, if any
RPr	Actual rate of the Replacement Power in PhP/kWh
CRr	Generation Rate for the Billing Period in PhP/kWh
REt	Replacement Power Energy supplied by the Seller to the Buyer for the Billing Period, in kWh
CRR _{CUF}	As previously defined
FOMR _{CUF}	As previously defined
VOMR _t	As previously defined
FP _{n-1}	The Fuel Price of Seller for the immediately preceding Billing Period
FCR _t	As previously defined
FXm	As previously defined

7.2 The Delivery Point shall be the point/s specified in **SCHEDULE 3**. Title to and all risks associated with the

electricity from Seller's Facility shall pass to the Buyer at the Delivery Point. XXX.

SECTION 9

9. REDUCTION OF CONTRACT CAPACITY

- 9.1** At the option of Buyer, 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"), Net Metering programs, Distributed Energy Resources ("DER"), and other similar government programs, Buyer shall deliver to Seller written notice specifying the reduction in Contract Capacity and/or Associated Energy resulting from the implementation of RCOA, GEOP, RPS, Net Metering programs, DER, Retail Aggregation Programs ("RAP"), and other similar government programs, indicating the name/s of the affected customer/s, capacity and when such reductions shall take place, subject to ERC notification. Any such reduction shall be limited to an amount that will allow Buyer to comply with its obligation to supply energy electricity in the least cost manner to its consumers.
- 9.2** Except for such reduction of amount of Contract Capacity and/or Associated Energy to be specified by Buyer (including the resulting reduction in payments payable under this Agreement), all other terms and conditions of this Agreement shall remain in full force and effect, subject to the approval of the ERC. XXX

SECTION 10

10. OUTAGES AND REPLACEMENT POWER

- 10.1 Planned Outages.** Every October of each year, Seller shall inform Buyer of its NGCP-approved Planned Outages, ensuring that these are aligned with the most recent DOE-approved Grid Operating and Maintenance Program. Seller shall not be permitted to conduct any plant-level Planned Outages or Preventive Maintenance Schedule on its Facility's units during the months of April, May, and June of any given year, except when required and approved by the system operator and/or the DOE to ensure the reliability of the transmission grid.
- 10.2** Seller is allowed a Planned Outage Allowance and an Unplanned Outage Allowance (taken together, the "Outage Allowance") not to exceed the number of Days for each Contract Year as set forth in **SCHEDULE 6 (Outage Allowance)**, during which times, reduced or no deliveries shall be available to Buyer, subject to ERC rules and regulations on Reliability Performance Indices.
- 10.3 Replacement Power**

10.3.1 The procurement of any Replacement Power shall be the responsibility of Seller, provided that the rates to be paid by the Buyer for the procurement of Replacement Power outside the Facility, if applicable, shall be the lower between:

- i. the actual rate of the Replacement Power; or
- ii. the generation rate based on the approved tariff for this Agreement. XXX

SECTION 11

11. COMPENSATION, PAYMENT, AND BILLING

11.1 Payment of Fees. Commencing on Delivery Date and throughout the entire Term, Buyer shall pay to Seller each Billing Period an amount equal to the Monthly Payment in accordance with **SCHEDULE 7 (Monthly Payment, Indexation and Adjustment)**.

There shall be no offsetting of payment between Buyer and Seller unless expressly provided for in this Agreement.

There shall be no withholding of disputed amounts, except in cases of inadvertent errors in the amount or inadvertent errors in calculating the applicable rule.

If an invoice is not disputed by Buyer within sixty (60) Days of receipt or if the payment is not disputed by Seller within thirty (30) Days of receiving payment from Buyer, the invoice and payment shall be deemed accepted, final, and binding on Seller or Buyer, as applicable.

11.2 Billing to Buyer. Within ten (10) Business Days from the end of each Billing Period commencing on Delivery Date, Seller shall deliver to Buyer the Seller Invoice setting forth the amount that is due to the Seller for the preceding Billing Period.

Seller shall send the Seller Invoice electronically through Seller's online payments portal or through the designated e-mails. The online portal shall send an email notification to Buyer which shall be considered as receipt of the said Seller Invoice.

The Parties shall make the necessary adjustments, if necessary, for the Seller Invoice covering the first and last Billing Periods.

11.3 Payments. Each Seller Invoice shall be due and payable not later than thirty (30) Days from receipt of the Seller Invoice by Buyer ("Due Date"). If the Due Date falls on a Saturday, Sunday, legal/regular holiday or special holiday declared by the applicable local government unit where a Party holds

principal office, then payment shall be made on the immediately succeeding Business Day. XXX

12. LINE RENTAL

- 12.1 For each Billing Period, any positive or negative line rental charges shall be equally (i.e., 50%-50%) shouldered by both Buyer and Seller. On a monthly basis, Buyer shall advance the line rental charges for each Billing Period and issue a statement of account or billing invoice to the Seller, detailing the total line rental charges to be borne by Seller. In the event of negative line rental charges, the Seller shall issue the statement of account or billing invoice to the Buyer. The statement of account or billing invoice issued by either the Seller or Buyer pursuant to this Section shall be offset against or included into the next Seller Invoice. The Parties shall make the necessary adjustments, if required, for the last Billing Period.

Except for line rental charges, all WESM charges duly attributable to the Buyer shall be borne by the Buyer, and all WESM charges duly attributable to the Seller shall be borne by the Seller.

14 PROMPT PAYMENT DISCOUNT

- 14.1 Seller shall extend a three percent (3%) discount based on the total Capital Recovery Fee, Fixed Operations and Maintenance Fee, and Variable Operations and Maintenance Fee for the Billing Period to Buyer as a Prompt Payment Discount if:
- a. Payment by Buyer is made in full within fifteen (15) Days from receipt of Seller's Invoice; and
 - b. The Buyer has no outstanding payment obligations with the Seller under this Agreement; and

The Buyer has submitted all necessary BIR Tax Certificates for all taxes withheld.

16. FORCE MAJEURE

Meaning of Force Majeure

Events of Force Majeure are extraordinary events or circumstances which are not foreseeable or though foreseen, are inevitable and are beyond the will, control, participation, and influence of the affected Party. The affected Party shall be excused from performance to the extent affected by, and shall not be considered to be in default in respect of, any obligation under the Agreement (including any obligation of the Buyer to timely pay the Seller's Invoice due to an Event of Force Majeure) for so long as the failure to perform such an obligation shall be due to an Event of Force Majeure.

XXX

**INEC SUPPLY-DEMAND SCENARIO AND
RATE IMPACT ANALYSIS**

13. INEC’s forecasted supply-demand scenario for the years 2024 to 2039 shows that it is expected to incur a steady rise in electricity demand, with peak demand projected to grow at a rate of 2% to 4% annually.
14. With the implementation of the PSA, INEC expects its blended generation rate to be reduced by Php 5.8302/kWh (effect of PSA). The indicative rate impact on INEC’S overall generation rate with and without the supply from the subject EPSA are as follows:

Without the Subject PSA	
Supplier	Rate (PhP /kWh)
Other Supplier	5.3886
Purchase to Wholesale Electricity Spot Market	6.6344
Generation Rate	5.9943
With the Subject EPSA	
Supplier	Rate (PhP /kWh)
Masinloc Power Co. Ltd. (MPCL)	5.6565
Other Supplier	5.3886
Purchase to Wholesale Electricity Spot Market	9.1703
Blended Generation Rate	5.8302

15. In addition to the rate impact analysis, Applicants underscore that the conduct of CSP was mandated to ensure the provision of least cost supply
16. In the case of *Alyansa Para sa Bagong Pilipinas, Inc. Vs. Energy Regulatory Commission, et. al.*¹¹: (“*Alyansa Case*”), the Supreme Court held that the competitive public bidding is the most efficient, transparent, and effective guarantee that there will be no price gouging by distribution utilities, thus:

As part of its regulation of this monopoly, the State requires distribution utilities to subject to **competitive public bidding** their purchases of electricity from power generating companies. Competitive public bidding is **essential** since the power cost purchased by distribution utilities is entirely passed on to consumers, along with their operating expenses of distribution utilities. **Competitive public bidding is the most efficient, transparent, and effective guarantee**

¹¹ G.R. No. 227670, Decision dated 3 May 2019

that there will be no price gouging by distribution utilities.¹²

17. In the same *Alyansa Case*, the Supreme Court pronounced that **the purpose of the CSP is to ensure transparency and competition in the procurement of power supply by distribution utilities (DUs) so as to provide the least-cost electricity to the consuming public, to wit:**

The 2015 DOE Circular recognized that under the EPIRA, the DOE has the mandate to “**formulate such rules and regulations as may be necessary to implement the objective of the EPIRA,**” where the State policy is to “[p]rotect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power.” The 2015 DOE Circular reiterated the EPIRA’s mandate that “all Distribution Utilities (DUs) shall have the obligation to supply electricity **in the least-cost manner to their Captive Market**, subject to the collection of retail rate duly approved by the [ERC].”

The 2015 DOE Circular mandated that DUs, including electric cooperatives, obtain their PSAs through CSP. Section 1 of the 2015 DOE Circular state the principles behind CSP:

Section 1. General Principles. Consistent with its mandate, the DOE recognizes that Competitive Selection Process (CSP) in the procurement of PSAs by the DUs ensures security and certainty of electricity prices of electric power to end-users in the long-term. **Towards this end, all CSPs undertaken by the DUs shall be guided by the following principles:**

(a) Increase the transparency needed in the procurement process to reduce risks;

(b) Promote and instill competition in the procurement and supply of electric power to all end-users;

(c) Ascertain least-cost outcomes that are unlikely to be challenged in the future as the political and institutional scenarios should change; and

(d) Protect the interest of the general public.
(Boldfacing added).

In sum, the raison d’etre of CSP is to ensure transparency and competition in the procurement of power supply by DUs so as to provide the least-cost electricity to the consuming public.¹³

¹² Emphasis retained.

¹³ Underscoring supplied.

18. Considering that the subject PSA was a result of the conduct of a CSP facilitated by the NEA, pursuant to the prevailing CSP Rules and the *Alyansa Case*, it follows that the rates in the subject PSA and the other provisions contained therein already assure that INEC and its customers will be provided with reliable, secure, and quality supply of power in the least-cost manner. Thus, the rates in the subject PSA should be implemented, as is, based on the subject PSA itself.
19. In support of this Joint Application, copies of the following documents are attached as annexes, which also form part of the Pre-Filing Requirements of the present Application, *to wit*:

COMPLIANCE WITH THE PRE-FILING REQUIREMENTS:

Annex	Documents/Information
"A"	Certified True Copy of the (a) proof of Business Registration or a certified true copy of (b) Board Resolution or Secretary's Certificate that will indicate the list of the Board of Directors and Board Members of the EC.
"B"	Verified Certification of the EC showing list of Board of Directors and Board Members of the ultimate parent company, its subsidiaries, and all its affiliates.
"C"	Certified True Copy of the (a) Articles of Incorporation (AOI), (b) Bylaws, and (c) latest General Information Sheet (GIS) of the EC.
"D"	Verified Certification of MPCL showing list of Board of Directors and Board Members of the ultimate parent company, its subsidiaries, and all its affiliates.
"E"	<p>MPCL Certification invoking Section 22 of ERC Resolution 16 Series of 2023 on Documents Previous Submitted:</p> <ul style="list-style-type: none"> • MPCL's 2007 Articles of Partnership • MPCL's 2023 Articles of Partnership • Write-up/Explanation on the Requirements of By-Laws • Write-up/Explanation on the Requirements of List of Shareholders (GIS Sheet) · Write-up on the non-applicability of a Shareholders' Agreement of MPCL • Certificate of Registration of the BOI of MPCL Units 3 and 4 • MPCL's Secretary Certificate Re: Ultimate Parent Company • Environmental Compliance Certificate of MPCL • MPCL's DOE Certificate of Endorsement ("COE") • 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

Annex	Documents/Information
	<ul style="list-style-type: none"> • Write-up/Certification on the Non-applicability of the Requirements of Related Agreements • Affidavit of Competitive Procurement Process of Fuel • Documents related to Fuel (confidential) • Certification from the Independent Electricity Market Operator of the Philippines on the WESM Registration of MPCL • Certification from the Independent Electricity Market Operation of the Philippine (“IEMOP”) on the WESM Registration of MPCL • 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 MPCL • Test Certification of MPCL Unites 1-3 for heat rate • Write – up on the Non-Applicability of ASPA • Write-up/Explanation on the Non-applicability of the Distribution Wheeling Service
"F"	Certificate of Filing/Ongoing Evaluation issued by Market Operations Service regarding PAO Renewal
"G"	Write-up on the Demand Side Management Program of the EC
"H"	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.
"I"	Supply and Demand Scenario of the EC including the details of Existing Suppliers, Contract Utilization, Average Daily Load Curve, in accordance with Commission’s templates.
"J"	Single-line Diagram Connection
"K"	Performance Assessment of the System: a. SAIDI and SAIFI. b. Historical [for the past five (5) years] c. Current Year
"L"	An estimation of the potential for a reduction in load supplied of the EC due to retail competition, GEOP, etc.
"M"	Power Supply Agreement of MPCL and the EC
"N"	Executive Summary of the PSA
"O"	Rate Generation Calculations and Derivations (confidential) Sample Bill Rate Impact Analysis
"P"	Simulation of the number of operating units necessary to meet the MEOT Copy of the Operation and Maintenance Agreement (“OMA”)

Annex	Documents/Information
	(confidential) Write up on the OMA Schedule
"Q"	Outages
"R"	WESM Registration of the EC
"S"	CSP Documents Financial Bid Forms (confidential)
"T"	Affidavit on the Motion for Provisional Approval and/or Interim Relief
"U"	MPCL's Unit 3 Certificate of Registration from the Board of Investments ("BOI") (confidential)
"V"	Secretary's Certificate of MPCL

PRAYER FOR PROVISIONAL AUTHORITY OR INTERIM RELIEF

20. Pursuant to the *ERC Revised Rules of Practice and Procedure*, the Honorable Commission may exercise its discretion by granting a provisional authority ("PA") or an interim relief prior to a final decision.
21. A provisional approval of the INEC-MPCL PSA is necessary to ensure sufficient and reliable power supply to meet both the current and growing demands of INEC's franchise area.
22. As shown in INEC's Supply and Demand Scenario, its peak demand for 2024 is 77.32 MW. INEC's franchise area is expected to incur a steady rise in electricity demand, with peak demand projected to grow at a rate of 2% to 4% annually. Clearly, INEC's current contracted supply of approximately 52 MW is insufficient to meet this demand. The INEC-MPCL PSA is urgently needed to address the power deficit and prevent service interruptions.
23. The procurement also addresses the imminent expiration of INEC's emergency power supply agreements on November 25, 2025. Without the timely replacement of these agreements, there is a significant risk of INEC being exposed to the volatile prices of the Wholesale Electricity Spot Market ("WESM").
24. If no PA, interim relief, or decision will be issued before said expiration date, INEC's demand of 80.02 MW will be exposed to WESM, having erratic power rates, to the prejudice of the consumers. Thus, the issuance of the PA, interim relief, or decision is in the best interest of INEC's captive customers, as the INEC-MPCL PSA will provide reliable electricity service, with stable rate, which is essential for public welfare, economic stability and growth.
25. Furthermore, from the INEC's rate impact simulation, it is clear that the implementation of the PSA with MPCL would

reduce INEC's rate by Php 0.1641/kWh, as compared to if the same power requirements are purchased from WESM.

26. As such, the timely implementation of the INEC-MPCL PSA would readily benefit INEC and its captive customers as it will ensure the provision of reliable, secure, and quality supply of electricity in the least cost manner.
27. The PSA with MPCL was made to ensure the continuous supply of power to INEC 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.
28. To support the prayer for provisional authority or interim relief, the Judicial Affidavit of **Engr. Leahmel Mansibang** is attached hereto as **Annex "T"** of the Joint Application.

ALLEGATIONS IN SUPPORT OF THE CONFIDENTIAL TREATMENT OF ANNEXES "E", "O", "P", "S, and "U"

29. Section 1, Rule 4 of the Honorable Commission's Rules of Practice and Procedure provides that INEC and MPCL may request that information may not be disclosed;
30. MPCL prays for the confidential treatment of the information contained in the Annexes "E", "O", "P", "S, and "U", and not disclosed except to the officers and staff of the Honorable Commission and its staff.

Annexes "E", "O". "P", "S" and "U" contain the details of MPCL's power rate calculations and financial model as well as the manner by which these were derived. These pieces of information are 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.*,¹⁴ 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

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

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."

(citations omitted, emphasis supplied)

31. The interest of the consuming public is sufficiently protected by the review and evaluation of the rates under the EPSA by the Honorable Commission, without the need to disclose the contents of Annexes "E", "O", "P", "S, and "U". The reasonableness and transparency of the prices of electricity is to be assured by the Honorable Commission through its own review and verification of MPCL's operating costs and expenses;
32. More importantly, MPCL's competitors, should they obtain the information in Annexes "E", "O", "P", "S, and "U", will gain undue advantage thereon and have the opportunity to use the same in their operations. The negotiating power of MPCL 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;
33. Accordingly, MPCL submits one (1) copy of Annexes "E", "O", "P", "S, and "U", in a sealed envelope, with the said envelope and each page of the documents and/or information stamped with the word "Confidential";

34. Lastly and corollary to the foregoing, MPCL 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 confidential”.
35. This is guided by the fact that MPCL 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 MPCL enclosed in the subject annexes.

PRAYER

WHEREFORE, premises concerned, Applicants INEC and MPCL respectfully pray unto this Honorable Commission the following:

- a. During the pendency of the proceedings/scheduled hearing(s) and before the final resolution/approval of this case, that an Order be issued for the **GRANT** of:
 - i. a **Directive** affording Annexes “**E**”, “**O**”, “**P**”, “**S**”, and “**U**, **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 by continuously protecting the said information from public disclosure by maintaining the same as separate and apart from the records of the case, and ensuring that these are not divulged to unauthorized persons other than the concerned staff and officers of the Honorable Commission;
 - ii. an **Issuance** concerning the procedures for handling confidential information upon the close of the proceedings and its return/delivery to MPCL.
- b) Pending trial on the merits, **GRANT** provisional authority or interim relief allowing the implementation of the PSA between INEC and MPCL, including all the rates, fees, charges, and tariff adjustment mechanisms set out therein at the rates provided in the PSA, and authorizing INEC to charge and collect such rates, fees, charges, and tariff adjustments therein from its customers reckoned from the start of the supply by MPCL to INEC under the PSA subject of this Joint Application; and
- c) After hearing on the merits, render a Decision **APPROVING** the INEC and MPCL PSA and the terms and conditions thereunder, including the price which will thereby allow/authorize INEC to charge and collect the fees

from its consumers reckoned from the commencement of the supply to the latter by MPCL; and directing that the rates, terms, and conditions of the INEC-MPCL EPSA be retroactively applied for the entire term of the EPSA.

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

Finding the said *Joint Application* to be sufficient in form and with the required fees having been paid, the Commission hereby sets the same for determination of compliance with the jurisdictional requirements, expository presentation, Pre-Trial Conference and presentation of evidence on the following dates and online platform for the conduct thereof, pursuant to Resolution No. 09, Series of 2020¹⁵ and Resolution No. 01, Series of 2021¹⁶ (ERC Revised Rules of Practice and Procedure):

Date and Time	Platform	Activity
22 July 2025 (Tuesday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Teams Application	Determination of compliance with jurisdictional requirements, and Expository Presentation
29 July 2025 (Tuesday) at nine o'clock in the morning (9:00 A.M.)		Pre-trial Conference and Presentation of Evidence

Accordingly, INEC and MPCL are hereby directed to host mirror virtual hearings to be hosted by the Commission at **INEC's principal office at Barangay Suyo, Dingras, Ilocos Norte**, as the designated venue for the conduct thereof and ensure that the same is open to the public. Moreover, INEC and MPCL shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

RELATIVE THERETO, INEC and MPCL are hereby directed to:

- 1) Cause the publication of the attached *Notice of Virtual Hearing* in two (2) newspapers of nationwide circulation in the Philippines at its own expense twice (2x) within two

¹⁵ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

¹⁶ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

(2) successive weeks, the dates of publication not being less than seven (7) days apart, and the date of the last publication to be made not later than ten (10) days before the date of the scheduled initial virtual hearing;

- 2) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing* the Offices of the Provincial Governors, the Mayors and the Local Government Unit (LGU) legislative bodies, within INEC's franchise area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within INEC's franchise area, by any other means available and appropriate, of the filing of the *Joint Application*, their reasons therefor, and of the scheduled virtual hearing thereon;
- 4) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing*, the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress. They are hereby requested, if they so desire, to send their duly authorized representatives and attend the scheduled hearing; and
- 5) Furnish with copies of the *Joint Application* and its attachments, except those subject of a motion for confidential treatment of information, all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

Within five (5) calendar days prior to the date of the initial virtual hearing, INEC and MPCL must submit to the Commission via electronic mail (e-mail) at docket@erc.ph, and copy furnish the Legal Service through legal@erc.ph, the scanned copies of their **written compliance** with the aforementioned jurisdictional requirements attaching therewith, methodically arranged and duly marked, the following:

- 1) The evidence of publication of the attached *Notice of Virtual Hearing* consisting of affidavits of the Editors or Business Managers of the newspaper where the said *Notice of Virtual Hearing* was published, and the complete issues of the said newspapers;

- 2) The evidence of actual posting of this *Order* and the attached *Notice of Virtual Hearing* consisting of certifications issued to that effect, signed by the aforementioned Governor, Mayors and LGU legislative bodies or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by INEC to inform the consumers within its franchise area of the filing of the *Joint Application*, the reasons therefor, and of the scheduled hearing thereon;
- 4) The evidence of receipt of copies of this *Order* and the attached *Notice of Virtual Hearing* by the OSG, the COA, and the Committees on Energy of both Houses of Congress;
- 5) The evidence of receipt of copies of the *Application* and its attachments, except those subject of a motion for confidential treatment of information, by all those making requests therefor, if any; and
- 6) Such other proof of compliance with the requirements of the Commission.

Moreover, INEC and MPCL are hereby required to post on their bulletin boards, the scanned copies of the foregoing jurisdictional requirements, together with the newspaper publications and certifications issued by the concerned Offices of the Governor, Mayors and Local Legislative Bodies, and to submit proof of posting thereof.

Applicants INEC and MPCL, and all interested parties are also required to submit via e-mail at doCKET@erc.ph, and copy furnish the Legal Service through legal@erc.ph, **at least five (5) calendar days** before the date of the scheduled virtual hearing and Pre-trial Conference, their respective **Pre-Trial Briefs** containing, among others:

- 1) A summary of admitted facts and proposed stipulation of facts;
- 2) The issues to be tried or resolved;

- 3) The documents or exhibits to be presented, stating the purposes and proposed markings thereof; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit from attached to the Pre-Trial Brief.

Applicants INEC and MPCL must ensure that all the documents or exhibits proposed to be presented have already been duly submitted to the Commission **at least five (5) calendar days** before the date of the schedule initial virtual hearing and Pre-trial Conference pursuant to the preceding paragraph.

Failure of INEC and MPCL to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearing.

Applicants INEC and MPCL must also be prepared to make an expository presentation of the instant *Joint Application*, aided by whatever communication medium that they may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties, the nature of the *Joint Application* with relevant information and pertinent details substantiating the reasons and justifications being cited in support thereof.

Applicants INEC and MPCL are hereby directed to file a copy of their **Expository Presentation** via e-mail at doCKET@erc.ph, copy furnish the Legal Service through legal@erc.ph, **at least five (5) calendar days** prior to the scheduled virtual hearing. INEC and MPCL shall also be required, upon the request of any stakeholder, to provide an advance copy of their expository presentations, **at least five (5) calendar days** prior to the scheduled virtual hearing.

Applicants INEC and MPCL are hereby directed to submit, through personal service, registered mail or ordinary mail/private courier, one (1) set of the original or certified true hard/printed copy/ies of their Jurisdictional Compliance, Expository Presentation, Pre-trial Brief, and Judicial Affidavit/s of witness/es, within five (5) working days from the date that the same were electronically submitted, as reflected in the acknowledgement receipt e-mail sent by the Commission.

Finally, INEC and MPCL, including their authorized representatives and witnesses, are hereby directed to provide the

Commission, through legal.virtualhearings@erc.ph, their respective e-mail addresses upon receipt of this *Order*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearing.

SO ORDERED.

Pasig City, 30 May 2025.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ATTY. KRISHA MARIE T. BUELA
Director III, Legal Service


LS: LPS/CAB/JGGW

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Copy Furnished:

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3. Masinloc Power Co. Ltd. (MPCL)
Co-Applicant
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5. Office of the Solicitor General
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Email: citizensdesk@coa.gov.ph
7. Senate Committee on Energy
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Email: senateenergycommittee@gmail.com
8. House of Representatives Committee on Energy
Batasan Hills, Quezon City 1126
Email: committee.energy@house.gov.ph
9. Office of the Governor
Province of Ilocos Norte
10. Office of the LGU Legislative Body
Province of Ilocos Norte
11. Office of the City Mayor
Laoag City, Ilocos Norte
12. Office of the LGU Legislative Body
Laoag City, Ilocos Norte
13. Office of the City Mayor
Batac City, Ilocos Norte
14. Office of the LGU Legislative Body
Batac City, Ilocos Norte
15. Office of the Mayor
Adams, Ilocos Norte
16. Office of the LGU Legislative Body
Adams, Ilocos Norte
17. Office of the Mayor
Bacarra, Ilocos Norte

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Bacarra, Ilocos Norte
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Badoc, Ilocos Norte
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Badoc, Ilocos Norte
21. Office of the Mayor
Bangui, Ilocos Norte
22. Office of the LGU Legislative Body
Bangui, Ilocos Norte
23. Office of the Mayor
Banna, Ilocos Norte
24. Office of the LGU Legislative Body
Banna, Ilocos Norte
25. Office of the Mayor
Burgos, Ilocos Norte
26. Office of the LGU Legislative Body
Burgos, Ilocos Norte
27. Office of the Mayor
Carasi, Ilocos Norte
28. Office of the LGU Legislative Body
Carasi, Ilocos Norte
29. Office of the Mayor
Currimao, Ilocos Norte
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Currimao, Ilocos Norte
31. Office of the Mayor
Dingras, Ilocos Norte
32. Office of the LGU Legislative Body
Dingras, Ilocos Norte
33. Office of the Mayor
Dumalneg, Ilocos Norte
34. Office of the LGU Legislative Body
Dumalneg, Ilocos Norte
35. Office of the Mayor
Marcos, Ilocos Norte
36. Office of the LGU Legislative Body
Marcos, Ilocos Norte
37. Office of the Mayor
Nueva Era, Ilocos Norte
38. Office of the LGU Legislative Body
Nueva Era, Ilocos Norte
39. Office of the Mayor
Pagudpud, Ilocos Norte
40. Office of the LGU Legislative Body

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Paoay, Ilocos Norte
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Paoay, Ilocos Norte
 43. Office of the Mayor
Pasuquin, Ilocos Norte
 44. Office of the LGU Legislative Body
Pasuquin, Ilocos Norte
 45. Office of the Mayor
Piddig, Ilocos Norte
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 47. Office of the Mayor
Pinili, Ilocos Norte
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San Nicolas, Ilocos Norte
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San Nicolas, Ilocos Norte
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Sarrat, Ilocos Norte
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Sarrat, Ilocos Norte
 53. Office of the Mayor
Solsona, Ilocos Norte
 54. Office of the LGU Legislative Body
Solsona, Ilocos Norte
 55. Office of the Mayor
Vintar, Ilocos Norte
 56. Office of the LGU Legislative Body
Vintar, Ilocos Norte
 57. Office of the Governor
Province of Zambales
 58. Office of the LGU Legislative Body
Province of Zambales
 59. Office of the Mayor
Masinloc, Zambales
 60. Office of the LGU Legislative Body
Masinloc, Zambales
 61. Office of the Mayor
Mandaluyong City
 62. Office of the LGU Legislative Body
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63. Regulatory Operations Service (ROS)
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