

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

ERC CASE NO. 2022-_____

IN THE MATTER OF THE JOINT APPLICATION FOR APPROVAL OF THE POWER SUPPLY AGREEMENT BETWEEN MACTAN ELECTRIC COMPANY, INC. AND TOTALPOWER, INC., WITH MOTIONS FOR PROVISIONAL AUTHORITY AND CONFIDENTIAL TREATMENT OF INFORMATION,

MACTAN ELECTRIC COMPANY, INC. AND TOTALPOWER, INC.,

Applicants.

X-----X

APPLICATION

Applicants MACTAN ELECTRIC COMPANY, INC. (MECO) and TOTALPOWER, INC. (TPI), by their counsel, respectfully state:

1. MECO is a private distribution utility duly organized and existing as a corporation under Philippine laws, with SEC Registration No. 31-388, and with principal office address at MECO Building, Sangi Road, Lapu-Lapu City 6015, Cebu City, Philippines. Under Republic Act No. 10890, dated July 17, 2016, MECO has a franchise to construct, install, establish, operate, and maintain a distribution system for the conveyance of electric power to the end-users in the City of Lapu-Lapu and in the Municipality of Cordova, both in the Province of Cebu. MECO also has a Certificate of Public Convenience and Necessity (Certificate No. CPCN-2018-01) issued by the Energy Regulatory Commission (ERC). It may be served with processes and papers through its undersigned counsel.

2. TPI is a corporation duly organized and existing under Philippine laws, with SEC Registration No. CS201202308, and with principal office address at 1216 Acacia Avenue, Ayala Alabang, Muntinlupa City 1780, Philippines. It may be served with processes and papers through its undersigned counsel.

3. MECO's franchise area includes the Barangays of Baring, Caw-oy, Sabang, San Vicente, Santa Rosa, Talima, Tingo, and Tungasan, all on Olango island, which is within the territorial jurisdiction of the City of Lapu-Lapu.

4. The Olango barangays are off-grid communities, with a total population of 30,130 per Census of Population conducted by the Philippine Statistics Authority in 2015.

5. Electricity in Olango island used to be supplied by the National Power Corporation – Small Power Utilities Group (NPC-SPUG) and thereafter by the SPC Island Power Corporation (SIPC).

6. Prior to the CSP, MECO’s only source of energy supply for Olango island was from SIPC’s power plant, which consisted of generating units rated at 2x450kW and 1x450kW, all nearing their end-of-life, and two small Volvo gensets that were more than 15 years in operation. While the peak demand in the island was almost 900 kW, SIPC’s plants were operating without a back-up. As a result, residents suffered from frequent power interruptions. On their behalf, the City Government of Lapu-Lapu demanded a stable and reliable power supply in Olango island.

7. In 2017, MECO adopted a two-phase program to address the energy problem in Olango.

7.1 Phase 1 was designed to immediately address the shortage of supply in the island, through the supply, installation, and commissioning of a prime-rated generator, with 700kW minimum and 800kW maximum, step-up transformer of 13,800y/440, 3 phase, and synchro system.

7.2 Phase 2 was for a Power Supply Agreement (PSA) to address the long-term supply of electricity in Olango island.

8. The Terms of Reference for the PSA, as contained in the published Invitation to Bid (**Doc.¹ 11**), were as follows:

Term	10 Years
Type of Power Plant	Any technology
Plant Operation	24/7
Delivery Voltage	13,800 volts, 3 phase
Installed Capacity	Not less than 1.5MW having no less than 4 generating units
Fuel Rate	0.29 liters/kWh
Guaranteed Dependable Capacity	950 kW
Contracted Energy	None

¹ Documentary Requirement

9. MECO's invitation to bid also provided that bids would be evaluated based on the principle of least cost and most beneficial to MECO and its consumers, as well as based on other characteristics, such as lesser down time period, reserve availability, faster installation of new or additional units, plant capabilities, and track record.

10. MECO, through an ad hoc Bids and Awards Committee (BAC), conducted the CSP based on a projected increase in energy and peaking demand requirements of the Olango communities at 6.15% per annum and 5.07% per annum based, respectively, on its Distribution Development Plan and Power Supply and Demand Scenario.

11. Bantayan Island Power Corporation (BIPCOR), Mindoro Grid Corporation, and the joint venture of TPI and Bussbarr Corporation (BC) submitted their respective bids. (**Docs. 11.1, 11.2, and 11.3**)

11.1 MECO's BAC found the bid/offer of TPI/BC to be the most responsive to the TOR and the most beneficial to MECO and its consumers, as explained in its Evaluation Report (**Doc. 11.4**).

11.2 By way of board resolutions duly approved in a special meeting (**Doc. 11.5**), MECO's board of directors approved the Evaluation Report and the awarding of the PSA to the joint venture of TPI/BC, and authorized its counsel to represent MECO in the ERC application for the PSA's approval.

11.3 Accordingly, MECO issued the Notice to Proceed to TPI/BC (**Doc. 11.6**).

11.4 In a letter dated January 15, 2018 (**Doc. 11.7**), the Department of Energy (DOE) confirmed that the CSP conducted by MECO for the power supply requirement of Olango Island is outside the scope of DOE DC2004-01-001 and a DOE CSP Certification is not required.

12. In February 2018, MECO and TPI² executed the PSA (**Doc. 12**) subject of this application. The PSA's salient features are described in the succeeding paragraphs.

13. Project; Responsibilities; Term; Contract Period. TPI shall procure, construct and install in Barangay Sta. Rosa in Olango island, test and commission, operate and maintain, and control two units of 1,060 kW brand new ABC 6 DZC-900-166 generating units from Anglo Belgian Corporation and two units of 725 kW Cummins silent type generating sets generation facility, including all the necessary auxiliary equipment

² In its Joint Venture Agreement with BC, TPI was designated as the contracting party in the PSA with MECO.

and accessories (“Power Plant”), with obligation to provide interconnection to MECO’s distribution system and access road to the Power Plant, in order to generate a minimum Contracted Capacity of 3,570 kW and to supply electricity to MECO, on 24 hours a day, 7 days a week (24/7), during the Contract Period of ten (10) years from Effective Date.

13.1 MECO and TPI shall jointly determine the Effective Date upon satisfaction of the Conditions Precedent as provided for under the PSA, including an ERC approval (at least a provisional authority).

13.2 Subject to certain conditions, TPI also has the obligation to install additional capacities to address energy requirements during the Contract Period.

13.3 MECO is obligated to purchase the electricity generated by TPI from the Power Plant and shall procure therefrom its energy requirement for Olango island, subject to the terms and conditions of the PSA.

(*cf.* PSA, Sections 2, 3, and 4, including subsections. Hereinafter all references to “Sections” and “Schedules” pertain to the PSA, and the term “party” refers to either MECO or TPI while “parties” refer to both.)

14. Electricity Fees. MECO shall pay, and TPI shall be entitled to, Electricity Fees based on Schedule 5, corresponding to Electricity Fees for Generator Set 1 (ABC Gensets) and to Electricity Fees for Generator Set 2 (Cummins Gensets). Schedule 7 contains sample computations, while Section 5 contains provisions on invoices, manner of payment, interests, taxes, and billing disputes.

15. Other Provisions. The PSA also contains provisions on:

- (a) Security Deposit. Section 5 requires MECO to post a security deposit equivalent to one month of the sum of the average monthly Capacity Recovery Fee, Fixed and Variable O&M Fees, and Fuel Lube Oil Cost Recovery Fee of TPI, in the form and manner provided in Section 5.2.
- (b) Force Majeure. Section 6 contains the provisions on Force Majeure and the effects thereof to the parties.
- (c) Insurance. Section 7 requires the parties to obtain and maintain their respective insurance policies, as applicable to them.

- (d) Liability. Section 8 contains provisions on liabilities and limits thereof.
- (e) Default and Termination. Section 9 enumerates the Events of Default and its effects applicable to each party and Events of Termination and its consequences.
- (f) Representations and Warranties. Section 11 contains the respective representations and warranties of each party.
- (g) Disputes, Jurisdiction, and Governing Law. Sections 12, 13, and 16.1 contain provisions on disputes and the jurisdiction and governing law over them.
- (h) Assignment. Section 14 requires prior written notice to and consent of a party if the other intends to assign its rights and obligations under the PSA.
- (i) Confidentiality. Section 15 defines Confidential Information and the obligation of the parties in relation thereto.

16. Schedules. The Schedules referred in the PSA and attached thereto are as follows:

Schedule	Description
1	Facility Specification (details the engine, generator, and technical specifications and system particulars for Generator Sets 1 and 2)
2	Plant Site and Description
3	Measurement and Recording of Electricity
4	Delivery Points
5	Electricity Fees
6	Annual Contract Energy - Not Applicable
7	Sample Computation of Monthly Contract Electricity Fees
8	Dispatch Protocol
9	Settlement
10	Generation Schedule (Form)
11	Single Line Diagram (MECO's 13.8kV Substation + 3.57MW Embedded Diesel Power Plant of TPI)
12	Operating Parameters
13	Engine Performance Test Procedure

17. Phase 1 energization (2x700kW) commenced in 2017 because of the urgency of the situation. Phase 2 energization (2x1000kW) started on March 13, 2021.

18. The following table shows the rate impact on the generation charge from January to June of the year 2021:

TOTALPOWER INC							
Energy		January	February	March	April	May	June
ABC	KWH					601,727.9100	571,017.8000
CUMMINS	KWH	502,845.0000	417,268.6000	334,024.6000	414,805.0000	41,964.0900	97,443.0000
CRF : 1.84 (FOR ABC) AND 1.47 (FOR CUMMINS)							
ABC	Php	0.0000	0.0000	0.0000	0.0000	1,107,179.3544	1,050,672.7520
CUMMINS	Php	739,182.1500	613,384.8420	491,016.1620	609,763.3500	61,687.2123	143,241.2100
Total CRF	Php	739,182.1500	613,384.8420	491,016.1620	609,763.3500	1,168,866.5667	1,193,913.9620
Operation and Maintenance and Fuel	Php	6,504,078.4000	5,485,544.0600	4,444,776.4600	5,880,601.6400	7,961,708.5200	8,390,818.4300
Total Cost	Php	7,243,260.5500	6,098,928.9020	4,935,792.6220	6,490,364.9900	9,130,575.0867	9,584,732.3920

SCENARIO A: Fuel and O&M recovery (CRF will form part of DSM)		January	February	March	April	May	June
Total Generation Cost	Php	177,407,894.2890	175,960,378.7951	179,833,121.5923	193,814,271.7149	220,718,522.0025	267,550,646.1080
Total KWH (TPG)	KWH	36,746,067.5188	35,345,581.4384	34,910,449.9202	35,532,969.1539	39,755,343.1934	41,202,794.2675
Blended Gen. Rate	Php/KWH	4.8208	4.9681	5.1395	5.4384	5.5355	6.4785
Rate Impact	Php/KWH	0.1126	0.0977	0.0789	0.1032	0.1125	0.1002
SCENARIO B: Total Recovery (CRF, O&M, and Fuel)							
Total Generation Cost	Php	178,147,076.4390	176,573,763.6371	180,324,137.7543	194,424,035.0649	221,887,388.5692	268,744,560.0700
Total KWH (TPG)	KWH	36,746,067.5188	35,345,581.4384	34,910,449.9202	35,532,969.1539	39,755,343.1934	41,202,794.2675
Blended Gen. Rate	Php/KWH	4.8409	4.9855	5.1536	5.4556	5.5649	6.5075
Rate Impact	Php/KWH	0.1327	0.1151	0.0930	0.1204	0.1419	0.1291

If NOT blended to Mainland

SCENARIO C: Fuel and O&M recovery (CRF will form part of DSM)		January	February	March	April	May	June
Total Generation Cost	Php	6,504,078.4000	5,485,544.0600	4,444,776.4600	5,880,601.6400	7,961,708.5200	8,390,818.4300
Total KWH (TPG)	KWH	502,845.0000	417,268.6000	334,024.6000	414,805.0000	643,692.0000	668,460.8000
Olanggo Gen. Rate	Php/KWH	12.9346	13.1463	13.3067	14.1768	12.3688	12.5524
Rate Impact	Php/KWH	8.2263	8.2759	8.2461	8.8416	6.9458	6.1741
SCENARIO D: Total Recovery (CRF, O&M, and Fuel)							
Total Generation Cost	Php	7,243,260.5500	6,098,928.9020	4,935,792.6220	6,490,364.9900	9,130,575.0867	9,584,732.3920
Total KWH (TPG)	KWH	502,845.0000	417,268.6000	334,024.6000	414,805.0000	643,692.0000	668,460.8000
Olanggo Gen. Rate	Php/KWH	14.4046	14.6163	14.7767	15.6468	14.1847	14.3385
Rate Impact	Php/KWH	9.6963	9.7459	9.7161	10.3116	8.7616	7.9602

19. Applicants submit the following Documentary Requirements per *ERC Checklist of Pre-Filing Requirements for Applications for Approval of Power Supply Agreement* (“ERC Checklist”):

Doc.	Description
Government Requirements	
1	MECO’s Certificate of Incorporation, Articles of Incorporation, Bylaws, and Amended Articles of Incorporation
2	MECO’s General Information Sheet for 2020
3	TPI’S Certificate of Incorporation, Articles of Incorporation, and Bylaws
4	TPI’s Shareholders Agreement*
5	TPI/BC’s Joint Venture Agreement*

6	TPI's General Information Sheet for 2021
7	TPI's Environmental Compliance Certificate
8	TPI's ERC Application for a Certificate of Compliance*
9	TPI's DOE Certificate of Endorsement
10	Load Forecast Projections
MECO's Procurement Process	
11	CSP's Invitation to Bid for Power Supply in Olango Island, Lapu-Lapu City, with Terms of Reference
11.1	Bantayan Island Power Corporation's Proposal*
11.2	Mindoro Grid Corporation's Proposal*
11.3	TPI/BC's Proposal*
11.4	BAC's Evaluation Report
11.5	Board Resolutions (a) Approving BAC's Evaluation Report, and (b) Authorizing Counsel for ERC Application and Secretary's Certificate dated August 7, 2018
11.6	Notice to Proceed
11.7	DOE letter dated January 15, 2018
Power Supply Agreement	
12	Power Supply Agreement
Generation / Power Rate	
13	PSA Executive Summary
13.1	TPI Financial Model (Assumptions, Capital Cost Estimation, Schedule of Projected Revenues, Financial Plan, Financial Ratios, Rate Impact Simulation, and Generation Cost) *
13.2	TPI's Financial Basis and Assumptions*
13.3	TPI's Schedule of Liabilities*
14	TPI's Fuel Supply Agreement*
15	Technical and Economic Characteristics of Generation Capacity and Related Matters*
16	TPI's Audited Financial Statements for 2020
17	Engine Manufacturer's Certification on Net Heat Rate (in liters per kWh)

20. Applicants also submit a certification (**Doc. 18**) on the inapplicability of the following ERC Checklist's requirements:

Doc.	Inapplicable Requirements
18	DOE Renewable Energy Service/Operating Contract
	Certificate of Registration or Certificate of Confirmation of Commerciality by a RE Developer
	Alternative Demand Side Management Program
	NPC Certification on Transition Supply Contract
	Details of Transmission or Grid Connection Projects
	Transmission Wheeling Contract, IPPA Agreement, etc.
	Simulation of Operating Units for MEOT, etc.
	Potential Cost of Ancillary Services

21. Applicants also submit the following judicial affidavits of witnesses in support of this application and their motions for provisional authority and confidential treatment of certain information and documents:

Doc.	Description
19	Judicial Affidavit of Julito Jr. O. Gultiano
20	Judicial Affidavit of Maritess C. Bero

**Allegations in Support of Motion
for Confidential Treatment of Information**

22. Pursuant to Rule 4 of the *ERC Revised Rules of Practice and Procedure* (ERC Revised Rules), applicants respectfully move that **Docs. 4, 5, 8, 11.1, 11.2, 11.3, 13.1, 13.2, 13.3, 14, and 15** as described above, shall be treated as confidential information as they contain formula and pricing structures, trade secrets, and other proprietary information that are not generally available to the public, and their undue disclosure will prejudice their owners. Each page of these documents is stamped “Confidential” and signed, and the documents are submitted with this application in a sealed envelope for the perusal of the concerned personnel of the Honorable Commission.

23. Applicants also move that the Honorable Commission will prescribe the proper procedure for the handling and return of the aforesaid confidential information at the close of the proceedings, pursuant to Section 4 of the ERC Revised Rules.

**Allegations in Support of Motion
for Provisional Authority**

24. Pursuant to Rule 14 of the ERC Revised Rules, applicants respectfully move for the issuance of a provisional authority based on the submitted judicial affidavits of witnesses and Documentary Requirements, authorizing the applicants to implement their PSA pending the full hearing of, and subject to the final ruling on, this application.

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RELIEF

25. Applicants pray that the Honorable Commission –
- (a) Issue an Order treating **Docs. 4, 5, 8, 11.1, 11.2, 11.3, 13.1, 13.2, 13.3, 14, and 15**, as described above, as confidential information, prescribing therein the proper procedure for their handling and return;
 - (b) Issue a Provisional Authority pending full hearing of and final ruling on this application;
 - (c) Issue an Order allowing MECO to recover past cost of power payments to TPI through the over/under (OU) recovery mechanism, subject to the filing of the appropriate application; and
 - (d) Render a Decision approving the PSA and this application within sixty (60) calendar days from the submission of all documentary requirements in accordance with Section 3 (e) of the Energy Virtual Online One Stop Shop Law (Republic Act No. 11234).
26. Applicants pray for other equitable relief.

Muntinlupa City for Pasig City, February 14, 2022.

MACTAN ELECTRIC COMPANY, INC.

Applicant

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By:

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MCLE Exempted
(MCLE Governing Board Order No. 1, S. 2008)

-and-

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Co- Applicant
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By:

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MCLE Compliance No. VII – 003745/ valid until April 14, 2025