

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

**IN THE MATTER OF THE
JOINT APPLICATION FOR
APPROVAL OF THE POWER
SUPPLY AGREEMENT (PSA)
BETWEEN EASTERN
SAMAR ELECTRIC
COOPERATIVE
(ESAMELCO) AND KEPCO
SPC POWER CORPORATION
(KSPC), WITH PRAYER FOR
CONFIDENTIAL
TREATMENT OF
INFORMATION AND
MOTION FOR
PROVISIONAL AUTHORITY**

ERC CASE NO. 2024-083 RC

**EASTERN SAMAR
ELECTRIC COOPERATIVE
(ESAMELCO) AND KEPCO
SPC POWER CORPORATION
(KSPC),**

Applicants.

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Promulgated:
July 12, 2024

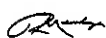
NOTICE OF VIRTUAL HEARING

Notice is hereby given that on 28 June 2024, the Eastern Samar Electric Cooperative (ESAMELCO) and KEPCO SPC Power Corporation (KSPC) filed a *Joint Application* dated 27 May 2024, seeking the Commission’s approval of their Power Supply Agreement (PSA), with prayer for provisional authority and confidential treatment of information.

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

THE APPLICANTS

1. Applicant **EASTERN SAMAR ELECTRIC COOPERATIVE (“ESAMELCO”)** is a non-stock, non-



profit electric cooperative duly organized and existing under and by virtue of Presidential Decree No. 269 (PD 269), as amended, and other laws of the Republic of the Philippines, with principal office at Brgy. Cabong, Borongan City, Eastern Samar, herein represented by its Board President, Reynaldo S. Gerna, and General Manager, Atty. Jose Michael Edwin S. Amancio, CPA evidenced by Board Resolution no. 18- 2024. A copy of which is attached hereto as **Annex "VV"**.

- 2. Applicant **KEPCO SPC Power Corporation ("KSPC")** is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal address at the 7th Floor, Cebu Holdings Center, Cebu Business Park, Cebu City, Philippines, herein represented by its Marketing Assistant Manager, Jude Francis Alphaeus Rendon, and its Market Analysis Assistant Manager, Rovel Tangkay, who has been authorized by its Board of Directors to file the Joint Application as evidenced by the Secretary's Certificate dated February 9, 2023, attached hereto as **Annex "B."**
- 3. Applicant KSPC owns and operates a 2x103 MW Circulating Fluidized Bed Combustor (CFBC) Boiler Coal-Fired base load power plant in the City of Naga, Cebu, which became operational in 2011.
- 4. Applicants may be served notices, orders, and other processes of the Honorable Commission through their respective counsels at their addresses indicated below.

NATURE OF THE APPLICATION

- 5. This is an application for the approval of the Power Sales Agreement ("PSA") between ESAMELCO and KSPC executed on April 25, 2024. A copy of the PSA is attached hereto as **Annex "A"**.

STATEMENT OF FACTS

- 6. ESAMELCO is a duly franchised Distribution Utility engaged in the distribution of electricity with its franchise areas in the city of Borongan and the municipalities of Arteche, Balangiga, Balangkayan, Can-Avid, Dolores, General MacArthur, Giporlos, Guiuan, Hernani, Jipapad, Lawaan, Llorente, Maslog, Maydolong Mercedes, Oras, Quinapondan, Salcedo, San Julian, San Policarpo, Sulat, and Taft, all in Eastern Samar.
- 7. The subject Energy and Capacity of the PSA is needed by ESAMELCO to meet the demand of the captive market in a least cost manner. A copy of its Supply and Demand Scenario, Details of Existing Suppliers, Contract Utilization is attached as **Annex "C"** and the Average Daily Load Curve is attached as **Annex "D"**.



ERC CASE NO. 2024-083 RC
NOTICE OF VIRTUAL HEARING/12 JULY 2024
PAGE 3 OF 13

8. In addition, ESAMELCO's Single Line Diagram is attached as **Annex "E"**, Performance Assessment is attached as **Annex "F"**, and the Estimated Load Qualified Contestable Customer Under RCOA is attached as **Annex "G"**.
9. Pursuant to DOE Circular No. DC2018-02-0003 as amended by DOLE Department Circular No. DC2021-09-0030 ESAMELCO entered into a Joint Competitive Selection Process ("CSP") with other FRECOR 8 DUs. A copy of the Memorandum of Agreement between FRECOR 8 Electric Cooperatives is attached as **Annex "H"**.
10. FRECOR 8 sent a letter dated March 22, 2022 including the proposed "Captive Customer Representative for the Third Party Bids and Awards Committee (TPBAC) Selection Process", copies of which are hereto attached as **Annex "WW" and "WW-1"**, respectively, to the Energy Virtual One-Stop Shop ("EVOSS") portal of the Department of Energy ("DOE").
11. The DOE issued a letter dated April 25, 2022 addressed to Mr. Joey L. Talon, President of FRECOR 8, approving the proposed selection process, a copy of which is attached as **Annex "WW-2"**.
12. After approval of the proposed selection process, FRECOR 8 then started accepting applications for the captive customer representatives who will constitute the two (2) other members of the Joint TPBAC of which Mr. Vida O. Ureña and Atty. Kenneth B. Fabila, a member of the Philippine Institute of Certified Public Accountants (PICPA) Tacloban City Chapter, were recommended. Copies of their submitted resume are hereto attached as **Annex "XX and series"**.
13. FRECOR 8 thereafter duly constituted its JTPBAC, the composition of which was approved by the Board of Directors of FRECOR 8 in Resolution Nos. 2021-06-001, 2022-01-003, 2022-03-002, and 2022-08-001, copies of which are also attached as **Annex "XX and series"**.
14. FRECOR 8 JTPBAC then prepared and submitted for approval to the Department of Energy (DOE) through the National Electrification Administration (NEA) the Power Supply Procurement Plan (PSPP), Distribution Development Plan (DDP) and Bid Documents which include the Terms of Reference (TOR), Invitation to Bid (ITB) and Instructions to Bidders.
15. Finding the TOR for the procurement of power supply in accordance with the comments and recommendations of the DOE and NEA, NEA then issued a Notice to Proceed dated July 19, 2023 including the approved TOR, and Certificate of Posting issued by the DOE dated July 11, 2023, hereto attached as **Annex "YY and series"**.



16. Copies of the issued bidding documents are attached as ***Annex "ZZ and Series"***.
17. With the said Notice to Proceed, the JTPBAC then proceeded with the publication of the ITB in the Philippine Daily Inquirer on July 24, 2023 and July 31, 2023. Likewise, the ITB was posted on the CSP e-based Portal of the DOE website as well as the NEA website. Copies of the pertinent pages of the Philippine Daily Inquirer with the ITB as well as the posting on the CSP e-based Portals of DOE and NEA websites are hereto attached as ***Annex "AAA and series" and "BBB and series", respectively.***
18. Within 14 days from publication and posting, the JTPBAC conducted its Pre-Bid Conference on August 4, 2023 at the Summit Hotel, Tacloban City together with potential bidders and CSP Observers, copies of the attendance sheets are hereto attached as ***Annex "CCC to CCC-3"***. Thereafter, several bid and supplemental bid bulletins were issued in the course of the CSP to clarify all queries and concerns raised during the Pre-Bid Conference, copies of the said bid bulletins as well as the Minutes of the Pre-Bid Conference are hereto attached as ***Annex "DDD and series"***.
19. Thereafter, the submission and opening of bids were then held on August 31, 2023 with CSP observers. Attached as ***Annex "CCC-4 to CCC-11"*** are the Write-up on Posting of Performance Bond and the Attendance of CSP Observers including invitation to observers, print-out of emails confirming receipt of the invitation, and copies of the attendance sheets. Attached as ***Annex "DDD-3-a"*** is the portion of the Minutes showing that representatives from NEA virtually attended the activity.
20. A total of three participants - GNPower Kauswagan Ltd. Co., KEPCO SPC Power Corp., and Sual Power Inc. - purchased bid documents and submitted complete proposals. Copies of their respective Eligibility Requirements and Submission of Bids are hereto attached as ***Annex "EEE and series"*** and ***Annex "FFF and series"***.
21. After careful evaluation, KSPC was found to have submitted the lowest computed bid proposal and was subjected to the next stage of evaluation, which is Post Qualification and Detailed Evaluation of Technical Proposal, wherein it was found to be compliant and responsive to all the specified requirements and conditions. Copies of the Evaluation of Bids are hereto attached as ***Annex "GGG and series"***, likewise copies of the JTPBAC Evaluators Report, Evaluators Post-Qualification Report and the Abstract of Bids are hereto attached as ***Annex "HHH to HHH-2"***.
22. FRECOR 8 then issued a Notice of Award to KSPC which was received by the latter on September 19, 2023, a copy of which is attached as ***Annex "HHH-3"***, likewise a copy of the



Resolution of the JTPBAC recommending the awards is hereto attached as **Annex “HHH-4”**. Attached as **Annex “III”** is a timeline of the activities conducted leading to the issuance of a Notice of Award, including the pre-bidding conferences conducted on August 4, 2023.

23. Joint Affidavits of the members of FRECOR 8 on the conduct of the CSP as well as the Notice to Proceed dated February 26, 2024 issued by NEA are likewise hereto attached as **Annex “JJJ and series”**.
24. Consequently, ESAMELCO and KSPC executed a Power Supply Agreement (“PSA”), subject of this Joint Application.
25. Thus, this instant Joint Application for the approval of the PSA between ESAMELCO and KSPC.

SALIENT FEATURES OF THE PSA

26. Salient Features of the PSA.
 - a. Contracted Capacity shall mean a capacity of 4 MW reserved by the seller for ESAMELCO for the duration of the contract period.
 - b. Contract Period and Effectivity. The Agreement shall take effect immediately from execution date and shall remain in force and effect until December 25, 2026 (the “Contract Period”)
 - c. The obligation of the Seller to supply and deliver the Contracted Capacity shall commence on the date specified on the Initial “Day Ahead Nomination” issued by the Buyer and duly received by the Seller, subject to the provisions of Item 2 of the PSA.
 - d. Effective Date means the date of the execution of the agreement.
 - e. Outages and Replacement Power. The Seller shall guarantee supply and provide the Buyer with the Replacement power sourced from other generating facilities or third parties, including WESM, during Outages of the plant or facility.
 - f. A copy of the Computation of Generation Fee and Contract Price is included in the Power Supply Agreement attached as Annex “A”.
27. Estimated Rate Impact. A Rate Impact Analysis based on the latest available rates would show that there would be a decrease in the rates amounting to **P0.0192/kWh** (a decrease from a blended rate of **P6.0692/kWh** to a blended rate of **P6.0500/kWh**) for 2024. A copy of the Rate Impact Simulation 2024 is hereto attached as **Annex “I”**.



- 28. Environmental Compliance Certificate (ECC). On 10 September 2007, the Department of Environment and Natural Resources (DENR) has issued ECC Transfer of Ownership in favor of KSPC with ECC No. 0511- 013- 206. A copy of the ECC is hereto attached as **Annex “J”**.
- 29. Board of Investments (BOI) Certificate. On 8 May 2008, KSPC’s plants located in Naga City, Cebu were registered with BOI with Certificate of Registration No. 2008-088. A copy of the BOI is hereto attached as **Annex “K”**.
- 30. Certificate of Compliance. The Honorable Commission has issued the Certificate of Compliance (“COC”) with COC no. 24-03-M-00068V dated 26 March 2024, for KSPC’s power plants. A copy of the COC is attached as **Annex “L”**.
- 31. Certificate of Endorsement. The DOE has issued a Certificate of Endorsement with No. 2022- 04-160 dated 19 April 2022 for KSPC’s plant in barangay Colon, Naga City, Cebu, certifying that the Plant is consistent with the Power Development Plan of the Government. A copy of the Certificate of endorsement is hereto attached as **Annex “M”**.
- 32. As further support to the instant Joint Application, the Applicants most respectfully submit to the Honorable Commission the following documents in accordance with the Pre-filing Checklist in Resolution No. 38, Series of 2006¹, Rule 20 B Section 2 of the ERC Rules of Practice and Procedures:

ANNEX	DOCUMENTS/ INFORMATION
N	ESAMELCO Amended Articles of Incorporation
O	ESAMELCO By-Laws
P	ESAMELCO Certificate of Franchise
Q	ESAMELCO Certificate of Registration
R	ESAMELCO Verified Certification showing list of Board of Directors
S	ESAMELCO Write Up NPC Certification
T	ESAMELCO DSM Certification
U	ESAMELCO Transmission Supply Agreement
V	ESAMELCO WESM Membership

¹ Resolution No. 38, Series of 2006 – A Resolution Promulgating the Energy Regulatory Commission’s Rules of Practice and Procedure.



W	KSPC Articles of Incorporation and By-laws
X	KSPC By- Laws
Y	KSPC Verified Certification showing list of Board of Directors
Z	Shareholder's Agreement
AA	KSPC General Information Sheet
BB	KSPC Transmission Service Agreement with NGCP
CC	Executive Summary of the ESAMELCO and KSPC PSA
DD	KSPC's Financial Model
EE	Sworn Statement on Fuel Procurement
FF	Relevant technical and economic characteristics of generation capacity
GG	KSPC's 2022 Audited Financial Statements (AFS), Balance Sheet, Income Statement, and Statement of cash Flows
HH	KSPC's WESM Registration Approval Form
II	KSPC Invoices for VOM
JJ	Narrative on Sources of Funds, Generation Rates, Cash Flow
KK	Sources of Funds (Certification from Banks and Bank Certification)
LL	Sources of Funds (Project Cost, ROI, WACC, Life of Asset vs Term of Loan)
MM, MM-1	Fuel Contract, and Amended Fuel Contract
NN	Derivation of Rates (Excel File)
OO	MEOT Allocation to the generating units
PP	Certifications of Net Heat Rate
QQ	NWRB Water Permit
RR	WRITE UP FOR NON-APPLICABILITY OF DOCUMENTS (KSPC):



	<ul style="list-style-type: none">• Renewable Energy Service Contract• Certificate of Registration or Certification of Commerciality by an RE Developer and after due confirmation by the DOE• Requirements under emergency procurement• BIR Receipts• Seller's Receipts• Purchase Orders with Annotation of Acceptance or Transfers• Deeds of Sale and other Other Forms of Conveyance of Ownership• Potential Cost (absolute amounts and PhP/kWh) of Ancillary Services as and when the IPP or the DU is connected to the main grid.• Basis/rationale/derivation of Other Charges such as replacement, start-up, pre-commercial, and ancillary costs.• Distribution Wheeling Service Agreement
SS	ESAMELCO Certificate of Email Registration
TT	KSPC Certificate of Email Registration
UU	Sample Power Bill

*Subject to the Motion For Confidential Treatment of Information

ALLEGATIONS IN SUPPORT OF THE TION FOR
CONFIDENTIAL TREATMENT OF INFORMATION

33. Section 1, Rule 4, of the ERC Revised Rules of Practice and Procedure provides that a party to a proceeding before the Honorable Commission may move for information to be treated as confidential.
34. KSPC prays that the information contained in the documents attached as *Annexes "CC", "DD", "EE", "FF", "GG", "II", "JJ", "KK", "LL", "MM", and "NN"* be treated as confidential and that the same be continuously protected from public disclosure, except to the officers and staff of the Honorable Commission. In particular, these are the documents for which confidential treatment is sought as they contain trade secrets and/or commercially-sensitive data about KSPC's plant operations and pricing strategies:

ANNEX	DOCUMENT
CC	Executive Summary of the ESAMELCO and KSPC PSA
DD	KSPC's Financial Model



EE	Sworn Statement on Fuel Procurement
FF	Relevant technical and economic characteristics of generation capacity
GG	KSPC's 2022 Audited Financial Statements (AFS), Balance Sheet, Income Statement, and Statement of cash Flows
II	KSPC Invoices for VOM
JJ	Narrative on Sources of Funds, Generation Rates, Cash Flow
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LL	Sources of Funds (Project Cost, ROI, WACC, Life of Asset vs Term of Loan)
MM	Fuel Contract
NN	Derivation of Rates (Excel File)

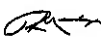
35. The competitors of KSPC will gain undue advantage and use the information in their own operation, if they obtain the information provided in the documents requested to be confidential.

ALLEGATIONS IN SUPPORT OF THE MOTION FOR PROVISIONAL AUTHORITY

36. ESAMELCO and KSPC replead, by reference, all the foregoing allegations.
37. ESAMELCO and KSPC pray for the issuance of a provisional authority prior to final decision pursuant to *Section 1, Rule 14* of the *ERC Revised Rules of Practice and Procedure*, which provides:

Section 1. Provisional Authority or Interim Relief. – For applications or petitions covered by Section 1, Rule 6 of these Rules, the Commission may grant either a provisional authority or an interim relief, upon motion included in the application or petition and indicated in the caption thereof that such relief is requested x x x.

38. In view of the foregoing, there is a need for the issuance of a Provisional Authority in the meantime that this Joint Application is still pending evaluation and resolution of Honorable Commission, for the immediate implementation of this PSA for the benefit of ESAMELCO's member consumers.



39. An Affidavit of Merit in support of the prayer for provisional authority is hereto attached as *Annex "KKK"*.

PRAYER

WHEREFORE, the foregoing premises considered, it is respectfully prayed that this Honorable Commission:

1. Give due course to the instant application.
2. Issue an Order:
 - a. Treating the Confidential Documents and the information contained therein as confidential
 - b. Directing their non-disclosure pursuant to Rule 4 of the ERC Rules, and
 - c. Prescribing guidelines for the protection of the said documents.
3. Upon initial review of this Application and pending hearing on the merits, issue an Order provisionally approving the PSA between ESAMELCO and KSPC, thereby authorizing KSPC to charge and collect from ESAMELCO electricity fees based on rates that this Honorable Commission may provisionally approve, and authorizing ESAMELCO to pass the full amount thereof to its customers; and.
4. After trial on the merits, issue a Decision approving the PSA, thereby confirming the compliance by ESAMELCO and KSPC to the rules governing power supply, and further confirming the effective rate charged, collected, and paid in connection with this PSA.
5. To authorize KSPC to charge and collect from ESAMELCO the electricity fees based on the final rates approved by this Honorable Commission, and to authorize ESAMELCO to pass the full amount thereof to its customers.

Other relief and remedies consistent with law, justice, and equity are likewise prayed for.

xxx

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 platform for the conduct thereof, pursuant to Resolution No. 09, Series of 2020² and Resolution No. 01, Series of 2021³ (ERC Revised Rules of Practice and Procedure):

² A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

³ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.



Date	Platform	Activity
27 August 2024 (Tuesday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Teams Application	Determination of compliance with the jurisdictional requirements and expository presentation
03 September 2024 (Tuesday) at nine o'clock in the morning (9:00 A.M.)		Pre-Trial Conference and presentation of evidence

Accordingly, ESAMELCO and KSPC are hereby directed to host the virtual hearings at **ESAMELCO’s principal office located at Brgy. Cabong, Borongan City, Eastern Samar**, as the designated venue for the conduct thereof, and ensure that the same is open to the public. Moreover, Applicants shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

Any interested stakeholder may submit its comments and/or clarifications at least **one (1) calendar day** prior to the scheduled initial virtual hearing, via e-mail at doCKET@erc.ph, with a copy furnished to the Legal Service through legal@erc.ph. The Commission shall give priority to the stakeholders who have duly submitted their respective comments and/or clarifications, to discuss the same and propound questions during the course of the expository presentation.

Moreover, any person who has an interest in the subject matter of the instant case may become a party by filing with the Commission via e-mail at doCKET@erc.ph, with a copy furnished to the Legal Service through legal@erc.ph, a verified Petition to Intervene at least **five (5) calendar days** prior to the date of the initial virtual hearing. The verified Petition to Intervene must follow the requirements under Rule 9 of the ERC Revised Rules of Practice and Procedure, indicate therein the docket number and title of the case, and state the following:

- 1) The petitioner’s name, mailing address, and e-mail address;
- 2) The nature of petitioner’s interest in the subject matter of the proceeding and the way and manner in which such interest is affected by the issues involved in the proceeding; and
- 3) A statement of the relief desired.



Likewise, all other persons who may want their views known to the Commission with respect to the subject matter of the case may file through e-mail at doCKET@erc.ph, with a copy furnished to the Legal Service through legal@erc.ph, their Opposition or Comment thereon at least **five (5) calendar days** prior to the initial virtual hearing. Rule 9 of the ERC Revised Rules of Practice and Procedure shall govern. No particular form of Opposition or Comment is required, but the document, letter, or writing should contain the following:

- 1) The name, mailing address, and e-mail address of such person;
- 2) A concise statement of the Opposition or Comment; and
- 3) The grounds relied upon.

All interested parties filing their Petition to Intervene, Opposition or Comment are required to submit the hard copies thereof through personal service, registered mail or ordinary mail/private courier, **within five (5) working days** from the date that the same were electronically submitted, as reflected in the acknowledgment receipt e-mail sent by the Commission.

Any of the persons mentioned in the preceding paragraphs may access the copy of the *Joint Application* 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 virtual hearings by providing the Commission, through legal.virtualhearings@erc.ph, their respective e-mail addresses and indicating therein the case number of the instant *Joint Application*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearings.

WITNESS, the Honorable Commissioners **ALEXIS M. LUMBATAN**, **CATHERINE P. MACEDA**, **FLORESINDA G. BALDO-DIGAL**, and **MARKO ROMEO L. FUENTES**, Energy Regulatory Commission, this 12th day of July 2024 in Pasig City.

FOR AND BY AUTHORITY
OF THE COMMISSION:


MONALISA C. DIMALANTA
Chairperson and CEO


LS: CER/ARG/KTB



