

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 NEGROS
OCCIDENTAL ELECTRIC
COOPERATIVE (NOCECO)
AND KEPCO SPC POWER
CORPORATION (KSPC),
WITH PRAYER FOR
CONFIDENTIAL
TREATMENT OF
INFORMATION AND
MOTION FOR
PROVISIONAL AUTHORITY**

ERC CASE NO. 2024-061 RC

**NEGROS OCCIDENTAL
ELECTRIC COOPERATIVE
(NOCECO) AND KEPCO SPC
POWER CORPORATION
(KSPC),**

Promulgated:

08 May 2024

Applicants.

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NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 06 May 2024, Negros Occidental Electric Cooperative (NOCECO) and KEPCO SPC Power Corporation (KSPC) filed a *Joint Application*, dated 20 March 2024, seeking the Commission's approval of their Power Supply Agreement (PSA), with prayer for confidential treatment of information and motion for provisional authority.

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

THE APPLICANTS

1. Applicant Negros Occidental Electric Cooperative (“NOCECO”) is an electric cooperative duly organized and existing under and by virtue of Presidential Decree No. 269 (PD 269) and other laws of the Republic of the Philippines, with principal office at Sitio Naga, Brgy. Binicuil, Kabankalan City, Negros Occidental, herein represented by its Acting General Manager and Project Supervisor Engr. Domingo S. Santiago, Jr., as detailed in ManCom Resolution No. 003, series of 2023, AGM Memorandum No. 2023-002 and ManCom Resolution No. 55, series of 2024, copies of which are attached as *Annex “A”* and its sub markings.
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 09 February 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 NOCECO and KSPC executed on 07 February 2024. A copy of the PSA is attached hereto as *Annex “C.”*

STATEMENT OF FACTS

6. Applicant NOCECO was issued an exclusive franchise by the National Electrification Administration (“NEA”) to operate electric light and power services in southern Negros Occidental, specifically in the towns of Pulupandan, Valladolid, San Enrique, Pontevedra, Hinigaran, Binalbagan, La Castellana, Moises Padilla, Isabela, Ilog, Cauayan, Candoni and Hinoba-an and the cities of La Carlota City, Himamaylan City, Kabankalan City and Sibalay City.
7. The capacity and energy subject of this PSA is very much needed by NOCECO.

- a. NOCECO currently relies on the spot market even for its base load requirement. A copy of its Supply and Demand Scenario, Details of Existing Suppliers, Contract Utilization and Average Daily Load Curve, in accordance with the Commission's templates under Annex "1" and "2" of the Prefiling Checklist Requirement is attached as *Annex "D"*.
 - b. NOCECO is implementing a Demand Side Management ("DSM") program, a copy of which is attached as *Annex "E"*.
 - c. Copies of NOCECO's Single Line Diagram and reliability reports for 2019 to 2023 (data for 2024 is still being finalized) are attached as *Annex "F"* and *Annex "G"*, respectively.
 - d. NOCECO has prepared a summary of its contestable customers, which would indicate a potential reduction in load supplied due to retail competition, which is attached as *Annex "H"*.
8. NOCECO entered into a Competitive Selection Process ("CSP") culminating in the execution of the subject PSA.
- a. NOCECO uploaded a letter dated 13 April 2021 and its proposed "Captive Customer Representative for the Third Party Bids and Awards Committee (TPBAC) Selection Process", copies of which are attached as *Annex "I"* and *Annex "J"*, respectively, to the Energy Virtual One-Stop Shop ("EVOSS") portal of the Department of Energy ("DOE").
 - b. The DOE issued a letter dated 06 May 2021 approving the proposed selection process, a copy of which is attached as *Annex "K"*.
 - c. NOCECO thereafter duly constituted its TPBAC, the composition of which was approved by the NOCECO Board of Directors in its Resolution No. 121, Series of 2021, a copy of which is attached as *Annex "L"*.
 - d. The submission and opening of bids were held on 10 July 2023 with CSP observers. Attached as *Annex "M"* is the copy of the attendance sheets. Attached as *Annex "N"* is the portion of the Minutes showing that representatives from DOE and NEA virtually attended the activity.
9. KSPC was awarded the contract based on the CSP.
- a. Attached as *Annex "O"* and *Annex "P"*, respectively, are copies of the Invitation to Bid ("ITB") and the letter dated 03 April 2023 from the NEA finding "the submitted revised Terms of Reference (TOR) for the procurement of power supply in accordance with the

comments and recommendations of the Department of Energy (DOE) and National Electrification Administration (NEA).”

- b. The ITB was posted on the CSP e-based Portal of the DOE website as well as the NEA website. Copies of the screenshots are attached as *Annex “Q”* and *Annex “R”* respectively.
 - c. The ITB was also published in *“The Philippine Star”* on 14 and 21 April 2023. Copies of the pertinent pages with the ITB are attached as *Annex “S”* and *“S-1”*.
 - d. Copies of the issued bidding documents are attached as *Annex “T”*.
 - e. Attached as *Annex “U”* is a timeline of the activities conducted leading to the issuance of a Notice of Award, including the pre-bidding conferences conducted on 08 May and 09 June 2023.
 - f. Copies of the eight bid bulletins issued in the course of the CSP are attached as *Annex “V”* and its sub markings.
 - g. A total of six (6) participants purchased bid documents, but only two (2) submitted complete proposals.
 - h. KSPC 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.
 - i. NOCECO issued a Notice of Award to KSPC on 17 August 2023, a copy of which is attached as *Annex “W”*.
10. Consequently, NOCECO and KSPC executed a Power Supply Agreement (“PSA”), subject of this Joint Application.
 11. Thus, this instant Joint Application for the approval of the PSA between NOCECO and KSPC.

SALIENT FEATURES OF THE PSA

12. Salient Features of the PSA.
 - a. Contracted Capacity shall mean a capacity of ten (10) MW reserved by the seller for NOCECO for the duration of the cooperation period.
 - b. Cooperation Period means the period of ten (10) years commencing on the Initial Delivery Date and ending on

- the tenth (10th) year anniversary of such commencement date.
- c. Commencement Date/ Commercial Operation Date shall be the date that the Agreement shall start which shall be on
 - i. 26th of December 2023, assuming the ERC approval is acquired by both parties, whether provisional or final, or
 - ii. The next immediate 26th of the month following the approval of the ERC.
 - d. Effective Date means the date of the execution of the agreement.
 - e. Initial Delivery Date means the date when the seller commences delivering the contract energy to NOCECO under this agreement.
 - f. Replacement Power refers to the energy from alternative sources provided by the Seller to NOCECO during outages and, subject to Article 5, Force Majeure events.
 - g. Start of Supply of Electricity. The supply of electricity by the Seller and acceptance by NOCECO shall start no later than the Initial Delivery Date which shall mark the beginning of the cooperation period or such earlier date as the parties may mutually agree upon in writing, and the satisfaction of the conditions precedent provided in Article 8.
 - h. Outage. Seller shall not be entitled to any outage allowance.
 - i. Electricity Fees. A copy of the Tariff Structure is found in Schedule 4 of the PSA.
13. Estimated Rate Impact. A Rate Impact Analysis based on the latest available rates would show that, had NOCECO been procuring energy from KSPC based on the instant PSA, there would be a decrease in the rates charged by NOCECO amounting to P0.035/kWh (a decrease from a blended rate of P7.3440/kWh to a blended rate of P7.3090/kWh). A copy of the Rate Impact Simulation is hereto attached as *Annex "X"*.
14. 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 "Y"*.
15. Board of Investments (BOI) Certificate. On 8 May 2008, KSPC's plants located in Naga City, Cebu were registered with

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BOI with Certificate of Registration No. 2008-088. A copy of the BOI is hereto attached as *Annex "Z"*.

16. Certificate of Compliance. The Honorable Commission has issued the Provisional Authority to Operate dated 03 February 2021, for KSPC's power plants for a period of 19 February 2021 to 20 February 2022. Likewise, the Honorable Commission issued the extension of the Provisional Authority to Operate dated 11 March 2022, for a period of one year from 20 February 2022 to 19 February 2023. On 06 October 2023, ERC issued the second extension of the provisional authority to operate to the generation facility for a period of one (1) year from 20 February 2023 to 19 February 2024. A copy of the PAO, Extension of PAO and second extension of PAO is hereto attached as *Annex "AA", "AA-1", and "AA-2"* respectively.
17. 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 "BB"*.
18. 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
CC	NOCECO Articles of Incorporation
DD	NOCECO By-Laws
EE	NOCECO Verified Certification showing list of Board of Directors
FF*	NEA Order dated 15 June 2023
GG*	NEA Order dated 11 December 2023
HH*	NOCECO TPBAC Minutes
II, II-1	KSPC Articles of Incorporation and By-laws
JJ	Shareholder's Agreement
KK	KSPC General Information Sheet
LL	KSPC Verified Certification showing list of Board of Directors
MM	KSPC Transmission Service Agreement with NGCP
NN*	Executive Summary of the NOCECO and KSPC EPSA
OO*	KSPC's Financial Model
PP*	Sworn Statement on Fuel Procurement
QQ*	Relevant technical and economic characteristics of generation capacity

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

RR*	KSPC's 2022 Audited Financial Statements (AFS), Balance Sheet, Income Statement, and Statement of cash Flows
SS	KSPC's WESM Registration Approval Form
TT*	KSPC Invoices for VOM
UU*	Narrative on Sources of Funds, Generation Rates, Cash Flow
VV*	Sources of Funds (Certification from Banks and Bank Certification)
WW*	Sources of Funds (Project Cost, ROI, WACC, Life of Asset vs Term of Loan)
XX, XX-1, XX-2*	Fuel Contracts
YY*	Derivation of Rates (Excel File)
ZZ	MEOT Allocation to the generating units
AAA, AAA-1, AAA-2	Certifications of Net Heat Rate
CCC	NWRB Water Permit
DDD	<p>WRITE UP FOR NON-APPLICABILITY OF DOCUMENTS (KSPC):</p> <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

*Subject to the Motion For Confidential Treatment of Information

ALLEGATIONS IN SUPPORT OF THE MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION

19. 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.
20. Pursuant thereto, NOCECO prays that the following documents be treated as confidential because these pertain to sensitive internal workings of NOCECO. It thus submits to the Commission one copy of the following documents containing the information sought to be treated as

confidential even after the conclusion of the instant case, placed in a sealed envelope:

ANNEX	DOCUMENT
FF	NEA Order dated 15 June 2023
GG	NEA Order dated 11 December 2023
HH	NOCECO TPBAC Minutes

21. KSPC also prays that the information contained in the documents attached as Annexes “NN”, “OO”, “PP”, “QQ”, “RR”, “TT”, “UU”, “VV”, “WW”, “XX”, “XX-1”, “XX-2”, and “YY” 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
NN*	Executive Summary of the NOCECO and KSPC EPSA
OO*	KSPC’s Financial Model
PP*	Sworn Statement on Fuel Procurement
QQ*	Relevant technical and economic characteristics of generation capacity
RR*	KSPC’s 2022 Audited Financial Statements (AFS), Balance Sheet, Income Statement, and Statement of cash Flows
TT*	KSPC Invoices for VOM
UU*	Narrative on Sources of Funds, Generation Rates, Cash Flow
VV*	Sources of Funds (Certification from Banks and Bank Certification)
WW*	Sources of Funds (Project Cost, ROI, WACC, Life of Asset vs Term of Loan)
XX, XX-1, XX-2*	Fuel Contracts
YY*	Derivation of Rates (Excel File)

22. 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

23. NOCECO and KSPC replead, by reference, all the foregoing allegations.
24. NOCECO 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.

25. 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 NOCECO's member consumers.
26. An Affidavit of Merit in support of the prayer for provisional authority is hereto attached as *Annex "BBB"*.

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 NOCECO and KSPC, thereby authorizing KSPC to charge and collect from NOCECO electricity fees based on rates that this Honorable Commission may provisionally approve, and authorizing NOCECO 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 NOCECO 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 authorizing (*sic*) KSPC to charge and collect from NOCECO the electricity fees based on the final rates approved by this Honorable Commission, and authorizing (*sic*) NOCECO to pass the full amount thereof to its customers.

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

The Commission hereby sets the instant *Joint Application* for determination of compliance with the jurisdictional requirements, expository presentation, Pre-Trial Conference, and presentation of evidence on the following dates, and online platforms for the conduct thereof, pursuant to Resolution No. 09, Series of 2020² and Resolution No. 01, Series of 2021³ (ERC Revised Rules of Practice and Procedure):

Date	Platform	Activity
11 June 2024 (Tuesday) at nine o'clock in the morning (9:00 A.M.)	MS Teams Application	Determination of compliance with jurisdictional requirements and expository presentation
18 June 2024 (Tuesday) at nine o'clock in the morning (9:00 A.M.)		Pre-Trial Conference and Presentation of Evidence

Accordingly, Applicants NOCECO and KSPC are hereby directed to host the virtual hearings at **NOCECO's principal office located at Sitio Naga, Brgy. Binicuil, Kabankalan City, Negros Occidental** as the designated venue for the conduct thereof and ensure that the same is open to the public. Moreover, Applicants NOCECO and KSPC 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 electronic mail (e-mail) at docket@erc.ph, and copy furnish the Legal Service through legal@erc.ph. The Commission shall give priority to the stakeholders who have duly submitted their respective comments and/or clarifications, to discuss the same and propound questions during the course of the expository presentation.

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.

Moreover, all persons who have 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, and copy furnishing 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, and copy furnish 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.

Finally, all interested persons may be allowed to join the scheduled initial virtual hearings by providing the Commission, thru 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 8th day of May 2024 in Pasig City.

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MONALISA C. DIMALANTA
Chairperson and CEO

ERC

Office of the Chairperson and CEO



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LS: ECI/LSP/KTB