

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

**IN THE MATTER OF THE
APPLICATION FOR THE
APPROVAL OF THE POWER
SUPPLY AGREEMENT
BETWEEN MERIDIAN
POWER INC. (MPI) AND
VISAYAN ELECTRIC
COMPANY, INC. (VISAYAN
ELECTRIC), WITH MOTION
FOR CONFIDENTIAL
TREATMENT OF
INFORMATION**

ERC CASE NO. 2024-115 RC

**MERIDIAN POWER INC.
(MPI) AND VISAYAN
ELECTRIC COMPANY, INC.
(VISAYAN ELECTRIC),**
Applicants.

Promulgated:
November 04, 2024

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ORDER

On 16 September 2024, the Meridian Power Inc. (MPI) and the Visayan Electric Company, Inc. (Visayan Electric) filed a *Joint Application* dated 02 September 2024, seeking the Commission's approval of their Power Supply Agreement (PSA), with motion for confidential treatment of information.

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

PARTIES

1. Applicant Visayan Electric is a domestic corporation duly organized and existing under the virtue of the laws of the Republic of the Philippines, with principal office address at J. Panis Street, Banilad, Cebu City. It is a grantee of legislative franchise under Republic Act No. 9339, amending Republic Act No. 3499, to construct, operate, and maintain, in the public interest and commercial purposes, a distribution system for the conveyance of

electric power to the end-users in the cities of Naga, Talisay, Cebu, and Mandaue, and the Municipalities of Minglanilla, San Fernando, Consolacion, and Lilo-an, Province of Cebu (the “Franchise Area”).

2. Applicant MPI is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal place of business at 9th Floor, Oakridge IT Center 3, Oakridge Business Park, A.S. Fortuna Street, Brgy. Banilad, Mandaue City, Cebu. MPI is the owner of the 70.59MW Bunker C-Fired Diesel Power Plant generation facility located in Old VECO Compound, Brgy. Ermita, Carbon, Cebu City. The installed capacity of the generation plant is 70.59 MW while its net dependable capacity is 65 MW.

3. Applicants may be served with notices, orders, and other processes of this Honorable Commission through their respective counsel at the addresses indicated below.

STATEMENT OF FACTS

4. Section 23 of the Electric Power Industry Reform Act of 2001 (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.

Brief Description of the CSP Conducted

5. Visayan Electric is in need of supply of electricity for its power requirements to meet the demand of its captive customers beginning December 2023. In particular, Visayan Electric sought the supply of 30MW of firm capacity within the Franchise Area of Visayan Electric for its peaking requirement.

6. To address this need, Visayan Electric conducted a Competitive Selection Process (CSP) to procure power supply for a period of three (3) years, based on the Department of Energy (DOE) Department Circular No. DC2023-06-0021,¹ and Energy Regulatory Commission (ERC) Resolution No. 16, Series of 2023.²

7. On 16 January 2023, the Board of Directors of Visayan Electric (“BOD”) authorized Visayan Electric to conduct a bidding for its peaking capacity of 30 MW on a three-year term power supply contract. Further, the BOD approved the selection process of its Bids and Awards Committee (“BAC”).

¹ 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.

² 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 (“2023 CSP Guidelines”).

8. Through Invitation Letters, Visayan Electric invited the relevant parties to observe the conduct of the scheduled competitive selection process (CSP) for the supply of its peaking capacity of 30 MW.

9. On 10 and 17 January 2024, Visayan Electric published in The Philippine Star an Invitation to Submit Proposal for the Supply of Power (for the First Round), which includes the Invitation to Bid and Instructions to Bidders.

10. On 2 February 2024, Visayan Electric conducted its Pre-bid Conference. During the Pre-bid Conference, the comments and questions submitted by the bidders were reviewed and discussed. After, Visayan Electric issued a Supplemental Bid Bulletin, which was uploaded in the DOE portal on 16 February 2024.

11. On 4 March 2024, Visayan Electric's BAC declared a failure of bidding (for the First Round) since only one bidder, MPI, submitted the necessary documents for the pre-qualification process, and no proposal was received by the BAC on the bid submission deadline.

12. Thereafter, on 20 and 27 March 2024, Visayan Electric caused again the publication in The Philippine Star of an Invitation to Submit Proposal for the Supply of Power (for the Second Round), which includes the Invitation to Bid and Instructions to Bidders.

13. Again, through Invitation Letters, Visayan Electric invited the relevant parties to observe the conduct of the scheduled CSP (for the Second Round) for the supply of its peaking capacity of 30 MW.

14. On 16 April 2024, Visayan Electric conducted its Pre-bid Conference (for the Second Round). During the Pre-bid Conference (for the Second Round), the queries of the bidders were discussed. After, Visayan Electric issued a Supplemental Bid Bulletin, which was uploaded in the DOE portal on 2 May 2024.

15. On 17 May 2024, Visayan Electric's BAC declared again a failure of bidding (for the Second Round) since MPI was the only bidder that proceeded with the bid submission.

16. Hence, pursuant to DOE Department Circular No. DC2023-06-0021,³ and ERC Resolution No. 16, Series of 2023, Visayan Electric proceeded to direct negotiations for the procurement of its power supply requirements.

17. Visayan Electric's BAC sent a Letter of Invitation to the previous bidder, MPI, inviting the latter to participate in the direct negotiations.

18. Consequently, on 3 July 2024, Visayan Electric's Board of Directors authorized Visayan Electric to enter into a PSA with MPI.

³ 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.

19. Thus, on 15 August 2024, Visayan Electric and MPI executed the Power Supply Agreement (PSA) with a term of three (3) years, commencing on 26 December 2024 or upon the approval of this Honorable Commission, whichever comes first, with a contract capacity of 30MW.

20. Hence, this instant Joint Application for the approval of the PSA between Visayan Electric and MPI.

SALIENT TERMS OF THE PSA

21. The PSA between Visayan Electric and MPI, a copy of which is attached as **ANNEX "A"**, contains the following salient features:

21.1. **Contract Period.** Three (3) years from Commencement Date and subject to the condition precedent to start of supply. Commencement Date is on December 26, 2024 or upon the approval of the ERC, whichever comes first.

21.2. **Contract Capacity.** Contract Capacity refers to the capacity that the Supplier shall make available to the Customer per Interval as set out in item 2 of Schedule 3 (Conditions), to wit:

Capacity: 30,000 kW
Monthly Minimum Energy Off-take: 0 kWh
Maximum Contract Energy: 262,800 MWh/year
(Equivalent MWh at 100% availability per annum less the allowance for Forced and Scheduled outages)

21.3. **Scheduled Outages.** Scheduled Outage refers to a removal of the Plant or any portion thereof from service initiated by the Supplier for regular scheduled inspection, testing, preventive maintenance, corrective maintenance, repairs, replacement or improvement.

MPI shall be allowed Scheduled Outages not to exceed the Allowable Scheduled Outage Days each Contract Year during the Contract Period, during which times reduced or no supply of Contract Capacity will be available to Visayan Electric.

"Allowable Scheduled Outage Days" means 5.0 days or the number of allowed Planned Outage Days set in ERC Resolution No. 10, series of 2020 for the technology of Supplier.

21.4. **Forced Outages.** Forced Outage means (a) any interruption of the Plant's generating capability resulting in an unplanned reduction or suspension of the electrical output from the Plant and/or unavailability of capacity in whole or in part from the Plant; (b) any automatic shutdown of any part of the Plant; and (c) any other unavailability of the Plant for operation (in whole or in

part), maintenance and/or repair, and in each of (a), (b) or (c), that is not a Scheduled Outage and not the result of an event of Force Majeure, and that affects the Plant's ability to generate and export all or any portion of the Contract Capacity or Associated Energy. Any interruption, reduction or suspension of the Plant's output as instructed by the System Operator shall not be considered as a Forced Outage, provided, that, such interruption, reduction or suspension does not arise, directly or indirectly, from any fault or negligence of the Supplier.

MPI shall be allowed Forced Outages not to exceed the Allowable Forced Outage Days each Contract Year during the Contract Period, during which times reduced or no supply of Contract Capacity will be available to the Customer.

"Allowable Forced Outage Days" means 14.0 days or the number of allowed Unplanned Outage Days set in ERC Resolution No. 10, series of 2020 for the technology of Supplier.

21.5. Replacement Power. Replacement Power refers to energy made available to Visayan Electric and supplied to or obtained by Visayan Electric from the WESM, third parties or any other alternative source.

During outages within the Allowable Forced Outage Days and Allowable Scheduled Outage Days for the Contract Year, MPI shall not be required to supply Visayan Electric with Replacement Power. In such circumstances, Visayan Electric, at its own cost, shall source the Replacement Power from the WESM or other sources and MPI shall not bill Visayan Electric for these quantities. In case Visayan Electric fails to source the Replacement Power, MPI, in coordination with Visayan Electric may provide Replacement Power, and shall be paid by Visayan Electric based on the ERC-approved rates.

During any period of Scheduled Outage which is beyond the Allowable Scheduled Outage Days or Forced Outage which is beyond the Allowable Forced Outage Days, MPI shall procure for Visayan Electric and purchase Replacement Power from the WESM or third parties. Replacement Power quantities procured by the Supplier under this Article 8.3.3 shall be declared as BCQ and shall be paid by Visayan Electric at the Contract Price or actual cost of the Replacement Power purchased, whichever is lower.

21.6. Payment of Fees. MPI shall deliver to Visayan Electric an itemized Billing Statement setting out the Contract Price due on account of the Contract Capacity made available and the Associated Energy (or Replacement Power, as the case may be) Delivered during each Billing Period on or before the fifth (5th) Day of the

Payment Month, subject to the conditions under item 4 of Schedule 3.1. The energy levels per interval that will be used for purposes of the Billing Statement will be based on the levels of Associated Energy (or Replacement Power, as the case may be) Delivered by MPI in accordance with Schedule 7.3 (Nomination Procedure).

21.7. Performance Bond. MPI shall deliver to Visayan Electric a security (the "Performance Bond") in the amount equivalent to the three (3)-month contract cost of this PSA within ten (10) calendar days from the execution of this agreement. The Performance Bond shall stand as security for delay or failure in the filing of the application. The Performance Bond shall be in the form of cash, manager's check, or an on-demand irrevocable, unconditional stand-by letter of credit. If the Performance Bond is in the form of an on-demand irrevocable, unconditional stand-by letter of credit, it shall: (i) at the time of the issuance thereof, be issued by an international bank or domestic bank acceptable to Visayan Electric; (ii) have a face value equivalent to not less than the Security Amount; and (iii) be in the form set out in Schedule 5.3.1 (Performance Bond).

21.8. Electricity Fees. Electricity Fees refer to the total amount of charges due from Visayan Electric in respect of the Contract Capacity and all Energy supplied by MPI during a Billing Period computed in accordance with Schedule 7.1 (Rate Schedule).

The computation of Electricity Fees contained in Schedule 6.1.2 (Rates Schedule) of the PSA is as follows:

$$\text{Electricity Fees} = A + B + C + D + E$$

All computations on payments to Supplier shall not be rounded off, except for the final PHP amount, which shall be rounded off to the nearest Philippine centavo.

Where:

$$A = CRF \times CC \times Adj$$

CRF = 265.00 Php/kW/mo
 CC = the contracted capacity in kW for the Billing Period as indicated in the attached Delivery Schedule

$$Adj = \sum_{j=i}^n \sum_{i=1}^{Int} \frac{ACC_{ij}}{CC \times Int \times n}$$

ACC_{ij} = CC less affected capacity due to Force Majeure Outage within allowance for interval i and day j
 Int = the number of Trading Intervals per day

n = the number of days for the current Billing Period

B = FOM x CC x Adj

$$FOM = Base FOM \times \frac{RPCI_m}{RPCI_o}$$

Base FOM = 302.26 Php/kW-mo
 RPCI_m = the Philippine Consumer Price Index for All Income Households in the Philippines – All Items (2018=100) published as the current billing month.
 RPCI_o = the Philippine Consumer Price Index for All Income Households in the Philippines – All Items (2018=100) of 124.10 as of December 2023
 CC = as previously defined
 Adj = as previously defined

C = VOM x TED

$$VOM = Base VOM \times \frac{RPCI_m}{RPCI_o}$$

Base VOM = 0.6435 Php/kWh
 RPCI_m = the Philippine Consumer Price Index for All Income Households in the Philippines – All Items (2018=100) published as the current billing month.
 RPCI_o = the Philippine Consumer Price Index for All Income Households in the Philippines – All Items (2018=100) of 124.10 as of December 2023

TED = the total energy delivered (in kWh) within CC per Trading Interval and within the Maximum Contract Energy per Billing Period during the current Billing Period.

D = Fuel x TED

Fuel = (HFCR x PHFO) + (LOCR x PLO) + (DOCR x PDO) + Related Actual Fuel Cost
 HFCR = Heavy Fuel Oil Consumption Rate of 0.24 li/kWh or actual, whichever is lower
 PHFO = the monthly actual cost per liter of heavy fuel oil (HFO), calculated based on weighted average price using the data of actual monthly invoices of deliveries, inventories and consumption.
 LOCR = Lube Oil Consumption Rate of 0.0016 li/kWh or actual, whichever is lower
 PLO = the monthly actual cost per liter of lube oil (LO), calculated based on weighted average price using the data of actual monthly invoices of deliveries, inventories and consumption.

DOCR = Diesel Oil Consumption Rate of 0.0070 li/kWh or actual, whichever is lower

PDO = the monthly actual cost per liter of diesel oil (DO), calculated based on weighted average price using the data of actual monthly invoices of deliveries, inventories and consumption.

Related Actual Fuel Cost = other fuel costs including start-up and shutdown costs that the Supplier/Seller may incur in relation to fuel for a corresponding Billing month

TED = as previously defined

E = all future taxes, fees and imposts (including increases, or adjustments thereon and increases, or adjustments on existing taxes, fees and imposts), such as but not limited to real property taxes, excise taxes, and other future charges imposed on the Power Plant for the generation of electricity, in Philippine Pesos

22. Visayan Electric simulated a rate impact analysis based on assumed quantities, the indicative rate impact on its overall generation rate with and without supply from MPI under the PSA are as follows:

Visayan Electric Generation Rate (Php/kWh)		
Without MPI PSA	With MPI PSA	Rate Impact
6.3197	6.3124	-0.0073

**Note: Actual WESM prices and indices for the first seven months of 2024*

23. As shown in the rate impact analysis, the implementation of the PSA between MPI and Visayan Electric will benefit Visayan Electric and its consumers with an estimated generation rate reduction of Php0.0073/kWh. Thus, the PSA subject of this Application will ultimately provide Visayan Electric’s end-users with a continuous and reliable supply of electricity at affordable rates.

24. The Applicants submit the following documents for the evaluation of the Joint Application:

Description of Document	Annex
Power Supply Agreement (PSA) between Visayan Electric and MPI dated 15 August 2024.	“A”
Visayan Electric’s Amended Articles of Incorporation	“B”
Visayan Electric’s Amended By-Laws	“B-1”
Visayan Electric’s Latest General Information Sheet	“C”

Visayan Electric's Verified Certification showing the list of Board of Directors and Board Members	"D"
Visayan Electric's Demand Side Management Program	"E"
Visayan Electric's Write-up on Non-Applicability of Certain Document/s: <ul style="list-style-type: none"> • Transition Supply Contract with the National Power Corporation 	"F"
Visayan Electric's Supply and Demand Scenario and Average Daily Load Curve (Confidential)*	"G and series*"
Visayan Electric's Single-line Diagram Connection	"H"
Visayan Electric's Performance Assessment of the System (Confidential)*	"I*"
Visayan Electric's Estimated Potential Reduction in Load Supply (Confidential)*	"J*"
Visayan Electric's Secretary's Certificate showing the Board Resolution authorizing the conduct of the CSP and Bids and Awards Committee ("BAC") selection	"K"
Invitation Letters to CSP Observers (First Round)	"L and series"
Invitation Letters to CSP Observers (Second Round)	"M and series"
Certificate of Conformity (First Round)	"N"
DOE Letter (Re: Re-Issuance of Certificate of Conformity) dated 13 March 2024 (Second Round)	"N-1"
Visayan Electric's Invitation to Bid with Instructions to Bidders, and Proofs of Publication and Posting (First Round)	"O and series"
Visayan Electric's Invitation to Bid with Instructions to Bidders, and Proofs of Publication and Posting (Second Round)	"P and series"
Visayan Electric's Terms of Reference and Invitation to Submit Proposal (First Round)	"Q"
Visayan Electric's Terms of Reference and Invitation to Submit Proposal (Second Round)	"Q-1"
Supplemental Bid Bulletin No. 1 dated 9 February 2024 and proof of posting (First Round)	"R"
Supplemental Bid Bulletin No. 1 dated 2 May 2024 and proof of posting (Second Round)	"R-1"

Visayan Electric's BAC Letter dated 6 March 2024 declaring the failure of bidding (First Round)	"S"
Visayan Electric's BAC Letter declaring the failure of bidding (Second Round)	"S-1"
Visayan Electric's Secretary's Certificate showing the Board Resolution authorizing Visayan Electric to enter into Direct Negotiations	"T"
Visayan Electric's Letter of Invitation (Direct Negotiations)	"U"
Visayan Electric's Secretary's Certificate showing the Board Resolution authorizing Visayan Electric to enter into a PSA with MPI (Direct Negotiations)	"V"
Visayan Electric's Notice to Proceed	"W"
Visayan Electric's Certification on the Conduct of CSP	"W-1"
Visayan Electric's Protest Mechanism	"X"
Visayan Electric's Indicative Rate Impact	"Y"
Visayan Electric's Wholesale Electricity Spot Market (WESM) Registration	"Z"
MPI's Certificate of Registration of Articles of Incorporation	"AA"
MPI's Amended Articles of Incorporation	"AA-1"
MPI's By-Laws	"AA-2"
MPI's Latest General Information Sheet	"BB"
MPI's Verified Certification showing the list of Board of Directors and Board Members of the Ultimate Parent Company dated 07 August 2024	"CC"
MPI's Amended Environmental Compliance Certificate Ref. No. ECC-CO-9702-001-207C	"DD"
MPI's Provisional Authority to Operate Certification dated 07 June 2024	"EE"
MPI's Amended Certificate of Endorsement from Department of Energy (DOE) PDP No. 2024-04-047	"FF"
MPI's Single-line Diagram Connection	"GG"
NGCP's Certification on MPI's Transmission Service Agreement (TSA) and Metering Service Agreement (MSA) dated 23 May 2024	"HH"
MPI's Interconnection Agreement dated 13 May 2024	"II"

Executive Summary of Visayan Electric-MPI PSA	“JJ”
MPI’s Sources of Funds (Confidential)*	“KK*”
MPI’s Generation Rate and Derivation (Confidential)*	“LL*”
MPI’s Financial Model (Confidential)*	“MM*”
MPI’s Cash Flow (Confidential)*	“NN*”
MPI’s Sample Bill	“OO”
MPI’s Write-up on its Fuel Supply Agreement (Confidential)*	“PP*”
Sworn Statement Re: MPI’s Explanation on Fuel Supply Agreement (Confidential)*	“QQ*”
MPI’s Write-up on Relevant Technical and Economic Characteristics of the Generation Capacity	“RR”
MPI’s Latest Audited Financial Statements	“SS”
MPI’s Net Heat Rate Certification (Confidential)*	“TT*”
MPI’s WESM Registration as Direct WESM Member and Trading Participant	“UU”
MPI’s WESM Registration as Ancillary Services Provider	“UU-1”
Wheeling Service Agreement (Confidential)*	“VV*”
MPI’s Omnibus Certification on the Non-Applicability of Certain Documents: <ul style="list-style-type: none"> ● Shareholders Agreement; ● Certificate of Registration with attached Terms and Conditions issued by the DTI – Board of Investments (BOI); ● Renewable Energy Service and Operating Contract from the DOE; ● Certificate of Confirmation of Commerciality issued by the DOE to the developer; ● Certificate of Confirmation of Commerciality issued by the DOE to the developer ● Water Permit from the National Water Resources Board (NWRB); ● Copy of any Related Agreements (such as: EPC Contract, IPPA Agreement, Project Feasibility Study, Wholesale Aggregator Agreement; ● Certification from the Bank or Lending Institution specifying the principal amortization, term, and interest during the cooperation period of the loan agreement; 	“WW”

<ul style="list-style-type: none"> • Life of Asset versus Term of Loan (Computation Levelized Cost); • Bank Certification of Long-Term Loans, including Schedule of Original Loan (principal amount, interest payable, term of the loan) and updated balances (principal Amount, interest payable, and term of the loan); • If the cost is different from previously filed PSA, Applicant/s should include all updated costs (such as BIR Receipts, Seller’s Receipt, Purchase Orders with Annotations of Acceptance or Transfers of Materials/Services, Deeds of Sale and other forms of Conveyance of Ownership (Build Operate Transfer), Costs that will justify / explain the reasons for the different cost in the PSA versus other PSAs submitted to the Commission • Simulation for MEOT 	
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**Subject of the Motion for Confidential Treatment of Information*

MOTION FOR CONFIDENTIAL TREATMENT OF ANNEXES “G and series”, “I”, “J”, “KK”, “LL”, “MM”, “NN”, “PP”, “QQ”, “TT”, and “VV”

25. Under the ERC Rules of Practice and Procedure, a party to any proceeding before the Honorable Commission may request that certain information not be disclosed and be treated as confidential.⁴ Pursuant to this, Applicants pray for the confidential treatment of the information contained in the following annexes:

Documents and/or Information	Annex
Visayan Electric’s Supply and Demand Scenario and Average Daily Load Curve (Confidential)*	“G and series*”
Visayan Electric’s Performance Assessment of the System (SAIFI and SAIDI) (Confidential)*	“I*”
Visayan Electric’s Certification on Potential for a Reduction in Load Supply (Confidential)*	“J*”
MPI’s Sources of Funds (Confidential)*	“KK*”
MPI’s Generation Rate and Derivation (Confidential)*	“LL*”
MPI’s Financial Model (Confidential)*	“MM*”
MPI’s Cash Flow (Confidential)*	“NN*”
MPI’s Write-up on its Fuel Supply Agreement (Confidential)*	“PP*”

⁴ Section 1, Rule 4, Rules of Practice and Procedure of the Energy Regulatory Commission.

Sworn Statement Re: MPI's Explanation on Fuel Supply Agreement (Confidential)*	"QQ"
MPI's Net Heat Rate Certification (Confidential)*	"TT"
Wheeling Service Agreement (Confidential)*	"VV"

26. **Annexes "G and series", "I", and "J"** contain sensitive business information and data that impacts Visayan Electric's planning, operations, and negotiations including the competitiveness of its CSPs; and **Annexes "KK", "LL", "MM", "NN", "PP", "QQ", "TT", and "VV"** contain financial models, computation/calculation for rate determination and cost components. Hence, Applicants have actual and valuable proprietary interest to protect such information and data, which fall within the bounds of "trade secrets" that are entitled to protection under the Constitution, statutes, and rules and regulations of this Honorable Commission.

26.1. The foregoing annexes contain non-public, proprietary information and data involving Applicants' investments, business operations, and financial calculations. Applicants determine, among others, their competitive rates through its power rate calculations, and its financial model through these information. Thus, the methodology thereof is privileged and confidential in nature. Furthermore, these information and data are not generally available to the public. Applicants' competitiveness will seriously be prejudiced if these information are unduly disclosed.

27. In the case of Air Philippines Corporation vs. Pennswell, Inc.,⁵ the Supreme Court defined "trade secrets" and explained that:

"A trade secret is defined as a plan or process, tool, mechanism or compound known only to its owner and those of his employees to whom it is necessary to confide it. The definition also extends to a secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade having a commercial value. A trade secret may consist of any formula, pattern, device, or compilation of information that: (1) is used in one's business; and (2) gives the employer an opportunity to obtain an advantage over competitors who do not possess the information. Generally, a trade secret is a process or device intended for continuous use in the operation of the business, for example, a machine or formula, but can be a price list or

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

catalogue or specialized customer list. **It is indubitable that trade secrets constitute proprietary rights.**” (*Emphasis supplied.*)

27.1. Moreover, the Honorable Commission categorically acknowledged in its Decision in ERC Case No. 2015-111 RC⁶ that formulas and pricing structures of a generation company must be accorded confidential protection, to wit:

“In the case of PNOC RC, the documents sought to be protected from disclosure contain formula and pricing structures used in arriving at their proposed tariff. In fact, all three (3) documents were used by the Commission in evaluating the reasonableness of the proposed rate. **In the electric power industry w(h)ere prices is[sic] a major consideration in selecting one’s supplier, it is apparent that the assumptions used in arriving at one’s proposed tariff is considered a competitive leverage by one player against its competitors.**

Thus, the Commission resolves to treat the said documents confidential and may not be publicly disclosed.” (*Emphasis supplied.*)

27.2. Clearly, the Honorable Commission recognizes the importance of treating pricing structures as confidential in order to ensure competitiveness of the generation sector. This information, which falls within the definition of a trade secret as defined by jurisprudence, merits the confidential treatment provided for under Rule 4 of the ERC Rules of Practice and Procedure.

28. Further, the treatment of the information contained in Annexes “KK”, “LL”, “MM”, “NN”, “PP”, “QQ”, “TT”, and “VV” as confidential information is consistent with the Honorable Commission’s Matrix of Confidential and Non-Confidential Document and Information (as of 13 November 2023) (“Matrix”). In the Matrix, financial models, computation/calculation for rate determination and cost components should be treated with confidentiality because they have proprietary value that constitute trade secrets. Therefore, as described above, since the information in the subject documents fall in these categories, Annexes “KK”, “LL”, “MM”, “NN”, “PP”, “QQ”, “TT”, and “VV” should likewise be treated with confidentiality.

⁶ Decision, ERC Case No. 2015-111 RC dated 30 May 2017 entitled “*In the Matter of the Application for Approval of the Power Supply Agreement Between Nueva Ecija II Electric Cooperative, Inc.- Area 2 (NEECO II – Area 2) and PNOC Renewables Corporation (PNOC RC).*”

29. In view of the foregoing and pursuant to Rule 4 of the Honorable Commission's Revised Rules of Practice and Procedure, Applicants respectfully request that the attached **Annexes "G and series", "I", "J", "KK", "LL", "MM", "NN", "PP", "QQ", "TT", and "VV"** and the information contained therein be treated as confidential and privileged, and not be disclosed to persons other than the necessary officers and staff of this Honorable Commission.

30. Applicants hereby submit **Annexes "G and series", "I", "J", "KK", "LL", "MM", "NN", "PP", "QQ", "TT", and "VV"** via: (i) password-protected electronic copies, and (i) one (1) physical copies each of the respective confidential documents in a sealed envelope, with the envelope and each page of the documents stamped with the word "Confidential".

PRAYER

WHEREFORE, premises considered, Applicants **MERIDIAN POWER INC. (MPI) and VISAYAN ELECTRIC COMPANY, INC. (VISAYAN ELECTRIC)** respectfully pray that the Honorable Commission:

1. **ISSUE** an Order treating **Annexes "G and series", "I", "J", "KK", "LL", "MM", "NN", "PP", "QQ", "TT", and "VV"** as confidential in perpetuity, directing their non-disclosure to persons other than the officers and staff of the Honorable Commission, perpetually protecting the said information from public disclosure and maintaining the same separate and apart from the records of the case, and ensuring that these are not divulged to unauthorized persons, pursuant to Rule 4 of its Rules of Practice and Procedure;
2. After hearing on the merits, **ISSUE** a Decision **APPROVING** the Joint Application and PSA between Visayan Electric and MPI, including all the rates, fees, charges, and tariff adjustment mechanisms set out therein at the rates provided in the PSA, and authorizing Visayan Electric to charge and collect such rates, fees, charges, and tariff adjustments therein from its customers reckoned from the start of the supply by MPI to Visayan Electric under the PSA.

Other relief just an reasonable are likewise prayed for.

The Commission issued an *Order* and a *Notice of Virtual Hearing*, both dated 23 September 2024, setting the instant case for hearing for the determination of compliance with the jurisdictional requirements and expository presentation on 30 October 2024; and for the Pre-Trial Conference and presentation of evidence on 06 November 2024.

However, on 18 October 2024, the Applicants filed a *Joint Manifestation with Urgent Motion to Reset the Hearing* of even date, stating due to a conflict of schedule, the Applicants are unavailable and unable to attend the hearing set on 30 October 2024.

Finding the *Joint Manifestation with Urgent Motion to Reset the Hearing* meritorious, the same is granted. The Commission hereby sets anew the hearing 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 2020⁷ and Resolution No. 01, Series of 2021 (ERC Revised Rules of Practice and Procedure):⁸

Date	Platform	Activity
14 January 2025 (Tuesday) at nine o'clock in the morning (9:00 AM)	Microsoft Teams Application	Determination of compliance with the jurisdictional requirements and expository presentation
21 January 2025 (Tuesday) at nine o'clock in the morning (9:00 AM)		Pre-Trial Conference and presentation of evidence

Accordingly, Visayan Electric and MPI are hereby directed to host the virtual hearings at **Visayan Electric's principal office located at J. Panis Street, Banilad, Cebu City**, as the designated venue for the conduct thereof, and ensure that the same is open to the public. Moreover, Visayan Electric and MPI shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

RELATIVE THERETO, Visayan Electric and MPI 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 their own expense, twice (2x) within

⁷ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

⁸ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

two (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 Governor, the Mayors, and the Local Government Unit (LGU) legislative bodies within Visayan Electric's franchise area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within Visayan Electric's franchise area, by any other means available and appropriate, of the filing of the *Joint Application*, the reasons therefor, and of the scheduled virtual hearings 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 hearings; 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** before the date of the initial virtual hearing, Visayan Electric and MPI 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 the following methodically arranged and duly marked documents:

- 1) The evidence of publication of the attached *Notice of Virtual Hearing* consisting of affidavits of the Editors or Business Managers of the newspapers 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 Visayan Electric and MPI to inform the consumers within Visayan Electric's franchise area of the filing of the *Joint Application*, the reasons therefor, and of the scheduled hearings 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 *Joint 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, Visayan Electric and MPI 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.

Joint Applicants Visayan Electric and MPI, 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 therefor, which should also be attached to the Pre-Trial Brief; and

- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-Trial Brief.

Joint Applicants Visayan Electric and MPI 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 scheduled virtual hearing and Pre-Trial Conference, pursuant to the preceding paragraph.

Failure of Applicants to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearings.

Joint Applicants Visayan Electric and MPI 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*. Relevant information and pertinent details substantiating the reasons and justifications for the *Joint Application* must be cited in support thereof.

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

Joint Applicants Visayan Electric and MPI are further directed to submit, through personal service, registered mail or ordinary mail/private courier, one (1) set of the original or certified true hard copies of their Jurisdictional Compliance, Expository Presentation, Pre-Trial Brief, and Judicial Affidavits of witnesses, **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.

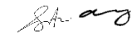
Finally, Visayan Electric and MPI, including their authorized representatives and witnesses, are hereby directed to provide the Commission, through legal.virtualhearings@erc.ph, their respective e-mail addresses upon receipt of this *Order*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearings.

SO ORDERED.

Pasig City, 04 November 2024.

FOR AND BY AUTHORITY
OF THE COMMISSION:


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


LS: MND/ARG

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Copy Furnished:

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Applicant
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10. Office of the Sangguniang Panlalawigan
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12. Office of the Sangguniang Panglungsod
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13. Office of the City Mayor
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14. Office of the Sangguniang Panglungsod
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17. Office of the Municipal Consolacion
Consolacion, Cebu
18. Office of the Sangguniang Bayan
Consolacion, Cebu
19. Office of the Municipal Mayor
Lilo-an, Cebu
20. Office of the Sangguniang Bayan
Lilo-an, Cebu
21. Office of the Municipal Mayor
Minglanilla, Cebu
22. Office of the Sangguniang Bayan
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