

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

**IN THE MATTER OF THE
APPLICATION FOR
APPROVAL OF POWER
SUPPLY AGREEMENT
BETWEEN SAMAR II
ELECTRIC COOPERATIVE,
INC. (SAMELCO II) AND
SUAL POWER INC. (SPI),
WITH MOTION FOR
CONFIDENTIAL
TREATMENT OF
INFORMATION AND
PRAYER FOR PROVISIONAL
AUTHORITY AND/OR
INTERIM RELIEF**

ERC CASE NO. 2024-167 RC

**SAMAR II ELECTRIC
COOPERATIVE, INC.
(SAMELCO II) AND SUAL
POWER INC. (SPI),**
Applicants.

X-----X

Promulgated:
December 26, 2024

ORDER

On 10 December 2024, the Samar II Electric Cooperative, Inc. (SAMELCO II) and Sual Power Inc. (SPI) filed a *Joint Application* dated 13 November 2024, seeking the Commission’s approval of their Power Supply Agreement (PSA), with motion for confidential treatment of information and prayer for provisional authority and/or interim relief.

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

The Joint Applicants

1. Applicant SAMAR II ELECTRIC COOPERATIVE (“SAMELCO II”) 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. 6, Poblacion, Paranas, Samar, Western Samar, herein represented by its Board President, Salvador T. Ilagan Jr., and General Manager, Joey L. Talon, CPA, pursuant to Board Resolution No. 77, Series of 2023 dated 30 August 2024, hereto attached as Annex A;

2. Applicant SPI is a corporation duly organized and existing under the laws of the Republic of the Philippines, represented in this instance by its General Manager, Elenita D. Go, of legal age with office address at 5th Floor C5 Office Building Complex, No. 100 E. Rodriguez Jr. Avenue, C5 Road, Bo. Ugong, Pasig City, Philippines, where Applicant SPI may be served with notices and other processes of this Honorable Commission through its Counsel at the address indicated herein.
3. SPI is the Administrator¹ of the IPP – Administration Agreement (the “IPP-AA”) executed between SPI and Power Sector Assets and Liabilities Management Corporation (“PSALM”) with the conformity of the National Power Corporation (“NPC”) for the management and control of the 1000 MW Net Contracted Capacity of the Sual Coal-Fired Thermal Power Plant (the “Plant”);
4. The Joint Applicants may be served with the orders, notices and other processes of the Honorable Commission through their respective undersigned counsels at the addresses indicated herein;

NATURE OF THE APPLICATION

5. The Joint Application for approval of the Power Supply Agreement (“PSA”) entered into by and between SAMELCO II and SPI, is being submitted to the Honorable Commission for its review and approval pursuant to Sections 25² and 45(b)³ of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (the “EPIRA”), Rules 5, Section 4(e)⁴ and 11, Section 5⁵ of its Implementing Rules and Regulations (IRR), Rule 20(B) of its Rules of Practice and Procedure, and other pertinent rules and regulations and;

¹ At the time of the execution of the PSA and thereafter became the owner of the Plant on 25 October 2024

² SEC.25. Retail Rate. – The retail rates charged by distribution utilities for the supply of electricity in their captive market shall be subject to regulation by the ERC based on the principle of full recovery of prudent and reasonable economic costs incurred, or such other principles that will promote efficiency as may be determined by the ERC.

³ Distribution utilities may enter into bilateral power supply contracts subject to review by the ERC: xxx xxx xxx.

⁴ Prior to the implementation of Open Access and Retail Competition, the prices charged by a Generation Company for the Supply of Electricity shall be subject to ERC regulation on the Retail Rates charged by Distribution Utilities and transition supply contracts (TSCs) as specified in Section 67 of the Act.

⁵ Limits on Bilateral Supply Contracts by a Distribution Utility.

STATEMENT OF FACTS

6. SAMELCO II is a duly franchised Distribution Utility engaged in the distribution of electricity within its franchise areas in the Municipalities of Jiabong, Motiong, Paranas, Hinabangan, San Sebastian, Calbiga, Pinabacdao, Villareal, Talalora, Daram, Santa Rita, Basey, Marabut, San Jose De Buan and Zumarraga, all in Western Samar (the “Franchise Area”);
7. The demand for electricity within the franchise area of SAMELCO II has seen a notable yearly increase following the Covid-19 Pandemic. From 2020 to 2023, this consistent growth trend has been observed. Concurrently, the peak demand has risen from 16.075 MW in 2020 to 21.143 MW for 2024, and projections indicate a further increase to 22.164 MW by 2025 up to 30.492 by the year 2033;
8. Foreseeing the imminent increase in demand, as early as 2023, SAMELCO II was already a part of the efforts to secure Aggregate Supply through the Region 8 Joint Competitive Power Supply Procurement (“R8 JCPSP”). With this aggregation, SAMELCO II intends to procure a total baseload capacity of 20 MW;
9. Following its mandate to provide power in a least cost manner, SAMELCO II entered into the subject Power Supply Agreement with SPI, in which the provided energy and capacity is needed by SAMELCO II to meet the demand of its captive market;

THE CONDUCT OF COMPETITIVE SELECTION PROCESS

10. Through a Memorandum of Agreement (MOA), ten (10) Electric Cooperatives (EC) of Region 8, including SAMELCO II, agreed to conduct a joint procurement for their baseload requirement for the period of 2024 to 2033. The joint procurement was referred to as the Region 8 Joint Competitive Power Supply Procurement (R8 JCPSP);
11. Under the MOA, the Federation of Rural Electric Cooperatives in Region 8 Association, Inc. (“FRECOR 8”) was tasked to supervise and facilitate the transaction process, documentary requirements, and operational coordination among the member ECs of the R8 JCPSP;
12. A Joint Board of Directors (“JBOD”) was also created composed of General Managers and Board Presidents of the member ECs, which acts as the governing and policy-making body of the R8 JCPSP;
13. The JBOD passed Board Resolution No. 2023-11-002, Series of 2023 constituting the R8 Joint Bids and Awards Committee (JBAC) for the R8 JCPSP. A Joint Technical Working Group (JTWG) and a Joint Secretariat was also created;

14. The R8 JCPSP was for the procurement of an aggregate power supply of 190 MW, divided into two (2) lots: Lot 1 for 162 MW, which commences in 2024, and Lot 2 for 28 MW, which commences in 2027. The R8 JCPSP followed the policy and rules prescribed under Department of Energy (DOE) Department Circular No. DC2023-06-0021,⁶ and Energy Regulatory Commission (ERC) Resolution No. 16, Series of 20237;
15. On 15 December 2023, R8 JCPSP Bidding Documents, including Invitation to Bid, Terms of Reference, and Instructions to Bidders, were submitted to NEA. NEA then issued a Certificate of Conformity No. NEA-RAO-COC-2024-02 dated 22 March 2024 when it found the R8 JCPSP's Bidding Documents to be consistent with the latest posted 2023-2032 Power Supply Procurement Plan of the member ECs of the R8 JCPSP. NEA likewise allowed the member ECs of the R8 JCPSP to proceed with the CSP;
16. Thereafter on 6 and 13 April 2024, the Invitation to Bid and Terms of Reference were published in the Manila Bulletin newspaper. There was likewise a local publication under the Leyte Samar Daily Express and the EV Mail;
17. Invitations to power suppliers were also sent through electronic mail and postings were made in the DOE CSP Portal and respective EC websites;
18. On 12 April 2024, Invitations to CSP Observers were sent to attend the Pre-Bid Conference, including NEA, DOE, ERC, consumer representatives, community representatives, interested civil society organizations and consumers, and regional development council for Eastern Visayas;
19. On 23 April 2024, the JBAC conducted its Pre-bid Conference 1. During the Pre-bid Conference 1, the comments and questions submitted by the bidders were reviewed and discussed;
20. On 18 May 2024, Supplemental Bid Bulletin Nos. 03 to 05 were issued and were posted on the DOE CSP Portal. They referred to amendments to the Terms of Reference, amendments to instruction to bidders, and amendments to the draft power supply agreement based on the comments and clarifications from the bidders of Pre-Bid Conference 1;
21. On 22 May 2024, the JBAC conducted the Pre-Bid Conference 2 to provide another opportunity for the

⁶ Prescribing the Policy for the Mandatory Conduct of the Competitive Selection Process by the Distribution Utilities for the Procurement of Power Supply for their Captive Market.

⁷ 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").

bidders to seek clarification on the Bidding Documents and revisions made therein. CSP Observers were invited again;

22. On 08 June 2024, the JBAC issued the Final Instructions to Bidders, Final Terms of Reference, Supplemental Bid Bulletin Nos. 06 and 07 and other documents as requested by bidders in preparation for the submission and opening of bids. Invitations to CSP Observers were sent to attend the submission and opening of bids on 25 to 26 June 2024;
23. On 25 June 2024, bidders submitted their respective bids for Lot 1 and Lot 2. The bids were opened on 25 June 2024 for Lot 1, and on 26 June 2024 for Lot 2 in the presence of JBAC, participating bidders, CSP Observers and an Independent Auditor;
24. On 1 to 3 July 2024, the JBAC conducted a post-qualification evaluation of the lowest calculated bids for Lot 1 and Lot 2;
25. On 3 July 2024, the JBAC issued Resolution No. 02, Series of 2024, recommending to the JBOD to award the power supply agreements to the following bidders for Lot 1 for the period of supply of 2024-2033:

Bidder	Capacity (Lot 1)
Therma Luzon Inc.	81 MW
Sual Power, Inc.	50 MW
KEPCO SPC Power Corp	31 MW

26. Further, the JBAC issued Resolution No. 03, Series of 2024, recommending to the JBOD to award the capacity of 28 MW for Lot 2 for the period of supply of 2027-2033 to TLI as the bidder having the lowest calculated responsive bid;
27. Consequently, on 3 July 2024, JBOD approved JBAC's Recommendation to award the Power Supply Agreements to the bidders with the lowest calculated responsive bids for Lot 1 and Lot 2 through JBOD Resolution No. 2024-07-001 and 2024-007-002, respectively;
28. After its receipt of NEA's Notice to Issue Award dated 13 August 2024 last 14 August 2024, on 19 August 2024, the JBAC issued a Notice of Award to SPI for the 50 MW baseload demand under Lot 1 of the R8 JCPSP, which was duly acknowledged by SPI on 20 August 2024;
29. On 29 August 2024, FRECOR 8 timely submitted to NEA the finalized draft PSA together with the Board Resolution and the justifications to the changes made in the PSA, for the issuance of the Notice to Execute Agreement. However, it was only on 13 September 2024 when FRECOR 8 received

NEA's Notice to Execute Agreement dated 12 September 2024;

30. Thus, on 13 September 2024, SAMELCO II and SPI executed the Power Supply Agreement (PSA), commencing on the later of the two dates: (i) September 26, 2024 or (ii) immediately after the issuance by the ERC of a Provisional Authority, or Interim Relief, or Final Authority, until 25 December 2033 with a contract capacity of 5 MW;
31. Hence, this instant Joint Application for the approval of the PSA between SAMELCO II and SPI;

SALIENT FEATURES OF THE PSA

32. The PSA between SAMELCO II and SPI contains the following salient features:

Sale and Purchase of Energy/Capacity

Subject to and in accordance with the terms of this Agreement, Seller shall make available and sell to Buyer, and Buyer shall purchase from the Seller for the consideration described in Section 6, the energy and capacity from and after the Delivery Date until the expiry of the Term.

Contract Term

This Agreement shall take effect immediately from Effective Date, and from such date, shall remain in force and effect until December 25, 2033, unless sooner terminated in accordance with this Agreement and upon approval by the ERC.

Effectivity Date

The Parties' rights and obligations under this Agreement shall commence on Effective Date, which shall be the date upon which all of the following conditions are satisfied:

- a.) Corporate Approvals. The receipt of the Seller of a certificate executed by the corporate or partnership, as applicable, or a resolution duly and validly issued by the board of directors of Buyer, attesting to the fact that the board of directors of Buyer has adopted resolutions (i) authorizing Buyer to execute and to enter into and deliver this Agreement and perform all its obligation hereunder, and (ii) designating the person authorized to execute this Agreement on behalf of the Buyer; and
- b.) Government Authorizations. All governmental authorizations (except ERC) which are required to have been obtained in connection with the execution, delivery,

and commencement of performance of this Agreement, shall have been obtained and be in full force and effect.

Within five (5) Days after the satisfaction of the conditions referred to in this Section, each Party shall send a written notice to the other Party confirming satisfaction of such conditions. Within five (5) Days from receipt of written notice from the Seller, the Buyer shall then inform the Seller of the Effective Date, which date shall be confirmed by the Seller.

ERC Approval

4.1 The Parties shall jointly file the application for the approval of the Agreement ("ERC Application") with the ERC. Parties shall exert its best efforts to secure the ERC approval of the Agreement within a reasonable time.

4.2. In the event that ERC issues any decision on the ERC Application which effectively modifies or amends any of the terms of the Agreement including provisions on amounts payable under the Agreement, and which requires an amendment thereof, the Seller may file a motion for reconsideration of such decision within fifteen (15) Days from receipt thereof, and before the decision attains finality.

4.3. In the meantime, upon receipt of the ERC decision requiring amendments to the Agreement, the Parties shall cooperate in good faith to address the ERC modification of the Agreement and/or to negotiate amendments to the Agreement. In the event that the Parties agree to an amended Agreement, the Parties shall file the amended Agreement for approval by the ERC within thirty (30) Days from the execution of such amended Agreement.

Reduction of Contract Capacity

From time to time upon and after the implementation of Retail Competition and Open Access (RCOA), Green Energy Option Program (GEOP), Renewable Portfolio Standards (RPS), Metering programs, and other similar government programs, Buyer shall deliver to Seller written notice within thirty (30) Days prior to the target effectivity specifying the name of the affected customer, capacity and when such reductions shall take place, provided that actual reduction of Contract Capacity shall take place upon the receipt of ERC approval. Any such reduction shall be implemented pursuant to Schedule 6 of this Agreement. All other terms and conditions of this Agreement shall remain in full force and effect

Outages

Except in cases of Force Majeure events, the Seller shall guarantee continuous supply even during Scheduled and

Unscheduled Outages of its Facility throughout the term of this Agreement.

Replacement Power

In case of Force Majeure, the Seller may provide replacement power from its affiliate, subject to availability. The cost of which shall be for the account of the Buyer.

Other Charges

Buyer shall bear all other costs and charges incurred after the Delivery Point, such as WESM charges including line rental, transmission line losses, any interconnection charges and site specific loss adjustments, among others, as applicable.

Prompt Payment Discount (“PPD”)

The Seller shall extend PPD equivalent to PhPo.9000/kWh of Associated Energy to the Buyer if full payment of the power bill invoice is made within ten (10) Days from receipt thereof. Provided further, that the Buyer has no outstanding payables to the Seller including any required posting/replenishment of Security Deposit under this Agreement.

The Buyer shall not automatically deduct the PPD from the payment of its current power bill invoice and any unilateral deduction shall be considered a breach of its obligations under this Agreement. The PPD for the current power bill invoice will be made available to the Buyer in the succeeding power bill invoice. The Buyer with an expiring Agreement who is qualified to avail the PPD under its power bill invoice, shall receive its discount upon final settlement and clearance of its Agreement with the Seller.

Schedule 2 of the PSA
Contract Capacity and Contract Energy

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SCHEDULE 2

CONTRACT CAPACITY AND CONTRACT ENERGY

Billing Month	Hours	Contract Capacity (kW)	Maximum Contract Energy (kWh)	Minimum Contract Energy (kWh)
January	744	5000	3,720,000	2,418,000
February	744	5000	3,720,000	2,418,000
March*	672	5000	3,360,000	2,184,000
	696*	5000	3,480,000	2,262,000
April	744	5000	3,720,000	2,418,000
May	720	5000	3,600,000	2,340,000
June	744	5000	3,720,000	2,418,000
July	720	5000	3,600,000	2,340,000
August	744	5000	3,720,000	2,418,000
September	744	5000	3,720,000	2,418,000
October	720	5000	3,600,000	2,340,000
November	744	5000	3,720,000	2,418,000
December	720	5000	3,600,000	2,340,000

*Number of hours for March billing period during leap year.

The Buyer shall be allowed to nominate at least 50% of the Contract Capacity per interval divided by twelve (12) on all 5-minute Trading Intervals, but at the end of the relevant billing period, the Buyer shall be obligated to pay for the Product at 65% monthly minimum CUF or actual energy purchased, whichever is higher. The Buyer will be billed based on Monthly CUF if, at the end of the billing period and after reconciliation, the nomination falls below the Monthly CUF for reasons other than FM.

Schedule 3 of the PSA
Electricity Fees

SCHEDULE 3

ELECTRICITY FEES

Capacity Utilization Factor ("CUF")	CAPACITY FEES, PHP/kWh	
	Capital Recovery Fee	Fixed Operations & Maintenance Fee
100%	2.2933	0.2120
99%	2.3165	0.2141
98%	2.3401	0.2163
97%	2.3642	0.2186
96%	2.3889	0.2208
95%	2.4140	0.2232
94%	2.4397	0.2255
93%	2.4659	0.2280
92%	2.4927	0.2304
91%	2.5201	0.2330
90%	2.5481	0.2356
89%	2.5767	0.2382
88%	2.6060	0.2409
87%	2.6360	0.2437
86%	2.6666	0.2465
85%	2.6980	0.2494
84%	2.7301	0.2524
83%	2.7630	0.2554
82%	2.7967	0.2585
81%	2.8312	0.2617
80%	2.8666	0.2650
79%	2.9029	0.2684
78%	2.9401	0.2718
77%	2.9783	0.2753
76%	3.0175	0.2789
75%	3.0577	0.2827
74%	3.0991	0.2865
73%	3.1415	0.2904
72%	3.1851	0.2944
71%	3.2300	0.2986
70%	3.2761	0.3029
69%	3.3236	0.3072
68%	3.3725	0.3118
67%	3.4228	0.3164
66%	3.4747	0.3212
65%	3.5282	0.3262

Note: FOM shall be 100% indexed to PH CPI

CAPACITY UTILIZATION FACTOR FORMULA

The Capacity Utilization Factor shall be calculated in accordance with the formula below:

$$CUF = \frac{AE}{CC \times (BPD - FMDT) \times 24}$$

Where:

- CUF** = Capacity Utilization Factor
- AE** = Associated Energy refers to the supplied energy in kiloWatt-hours ("kWh") for the relevant Billing Period.
- CC** = Contract Capacity in kilo-Watt ("kW").
- BPD** = Billing Period Days, the number of Days within the relevant Billing Period.
- FMDT** = Force Majeure Days Taken within the relevant Billing Period.

Note: Calculated CUF for each relevant Billing Period shall be rounded-off to the nearest whole percentage/number.

ENERGY FEES, PhP/kWh		Percentage to be indexed
Fuel Fee	3.6467	100%
Variable Operations & Maintenance Fee	0.1071	100%

Compliance with the Pre-filing Requirements

33. Copies of the foregoing documents and/or information are attached to the Joint Application as annexes and made integral parts hereof:

Annex	Documents/Information
A and series	Certified True Copy of SAMELCO II's (a) Articles of Incorporation (b) By-Laws (c) Certificate of Franchise (d) Certificate of Registration
B	SAMELCO II Secretary's Certificate showing the list of its Board of Directors.
C and series	Certified True Copy of SPI (a) Articles of Incorporation (AOI), (b) Amended Bylaws, and (c) latest General Information Sheet (GIS) of SPI.
D	Verified Certification of SPI showing list of Board of Directors and Board Members of the ultimate parent company, its subsidiaries, and all its affiliates.
E	SPI Certification invoking Section 22 of ERC Resolution 16 Series of 2023 on Documents Previous Submitted

	<ul style="list-style-type: none"> - Write-up on the non-applicability of a Shareholders' Agreement of SPI - Write-up on the non-applicability of the BOI Registration of SPI - Environmental Compliance Certificate of SPI - Write-up on the non-applicability of the DOE-PDP - Write-up on the non-applicability of the requirements regarding a renewable energy plant - Write-up on the non-applicability of the requirement regarding an RE Service Contract - Write-up on the non-applicability of a water permit from the National Water Resources Board - Documents Related to Fuel (<i>confidential</i>) - Certification from the Independent Electricity Market Operator of the Philippines on the WESM Registration of SPI - WESM Registration of SPI - Relevant Technical and economic characteristics of the generation capacity, installed capacity, mode of operation, and dependable capacity - Transmission Service Agreement between the National Grid Corporation of the Philippines and SPI - Heat Rate Test Certificate of the SPI Plant
F	Certificate of Compliance (COC) or Provisional Authority to Operate (PAO) or any Certification coming from the ERC of the ongoing COC/PAO application or renewal, pursuant to the Guidelines for the issuance of COC for Generation Companies/Facilities including Annexes of the SPI Plant.
G	Write-up on the Demand Side Management Program of the EC
H	Write-up on the certification by National Power Corporation (NPC) whether Transition Supply Contract (TSC) capacity and energy are expected to be available during the contractual period.
I and series	Supply and Demand Scenario of the EC including the details of Existing Suppliers, Contract Utilization, Average Daily Load Curve, in accordance with Commission's templates.
J	Single-line Diagram Connection
K and series	Performance Assessment of the System: <ul style="list-style-type: none"> a. SAIDI and SAIFI. b. Historical [for the past five (5) years] c. Current Year
L	An estimation of the potential for a reduction in load supplied of the EC due to retail competition, GEOP, etc.
M	Power Supply Agreement of SPI and the EC

N	Transmission Service Agreement of SPI and/or the EC
O	Write-up on the Related Agreements such as: a. Transmission Wheeling Contract; b. IPPA Agreement; c. EPC Contract; d. O&M Contract; e. Project Feasibility Study; f. Wholesale Aggregator Agreement.
P	Executive Summary of the PSA between SPI and the EC
Q	Rate Generation Calculations and Derivations (<i>confidential</i>) Sample Bill Rate Impact Analysis
R	Write-up, certifications and documents: a. Certified True Copy of the Latest and Complete Set of Audited Financial Statements of the Generation Company (Balance Sheet, Income Statement, and Statement of Cash Flows). b. For conventional power plants utilizing fuel: Certification (from the engine manufacturer or IPP) of the net heat rate (initial and every after major maintenance schedule) in liters per kWh. c. Simulation of the number of operating units necessary to meet the MEOT d. Certified True Copy of the Distribution Wheeling Service (DWS) Agreement (for embedded generators), if applicable. e. Certified True Copy of the Wholesale Electricity Spot Market (WESM) Registration
S	Details and Documents on the Competitive Selections Process (CSP)
T	SAMELCO II Affidavit of Merit

34. The Joint Application is likewise consistent with Section 1 of the same Department Circular No. DC2021- 09-0030 which declares as State policy, that:

“All distribution utilities must henceforth take cognizance and assume full responsibility to forecast, assure and contract for the supply of electric power in the respective franchise areas to meet their obligations as a distribution utility.”
(Underscoring supplied.)

35. By way of emphasis, Resolution No. 21, Series of 2005 of the Honorable Commission dated 19 October 2005 had directed all Distribution Utilities (DUs) “to enter into future

bilateral power supply contract with power producers to be subjected to a review by the Commission.” (Underscoring supplied.)

36. The PSA with SPI was made to ensure the continuous supply of power to the EC and due to the former’s competitive pricing structure and other favorable terms of its contract, which will redound to the benefit of the latter and its end-consumers in terms of reliable and affordable power supply;

GENERATION RATE IMPACT ANALYSIS

37. An analysis was conducted to determine the impact of the implementation of the PSA on Applicant’s generation rate while taking into account Applicant’s projected energy, available contracted supply for the next two years and WESM final price using the average monthly price based on the actual from January - December 2023. Table 1 below, shows the average generation rate without SPI PSA at PhP6.5422/kWh. Table 2 shows the average generation rate with SPI PSA at PhP6.4075/kWh.

Annex “Q” is shown below:

Table 1:

Without SPI						
	Forecasted 2025 (kWh)	Amount (Php.)	Percent Share (%)	Resulting Capacity Factor (%)	Average Rate (P/kWh)	Weighted Average Rate (kWh)
SPI	0.00	0.00	0.00%	0%	#DIV/0!	6.5422
KSPC SHORT TERM	26,280,000.00	156,055,896.00	20.73%	100%	5.9382	
WESM	100,523,101.15	677,452,632.22	79.27%		6.7393	
TOTAL	126,803,101.15	833,508,528.22	100.00%		6.5733	

Table 2:

With SPI						
	Forecasted 2025 (kWh)	Amount (Php)	Percent Share (%)	Resulting Capacity Factor (%)	Average Rate (P/kWh)	Weighted Average Rate (kWh)
SPI	43,800,000.00	274,148,580.00	34.54%	100%	6.2591	6.4075
KSPC SHORT TERM	26,280,000.00	156,055,896.00	20.73%	100%	5.9382	
WESM	56,723,101.15	384,638,867.59	44.73%		6.7810	
TOTAL	126,803,101.15	814,843,343.59	100%		6.4261	

GENERATION RATE IMPACT (0.1347)

As shown by the analysis, the procurement of supply from Applicant SPI under the PSA will result in a rate impact/decrease of about $\text{Php } 0.1347/\text{kWh}$.

Allegations In Support Of The Motion For Provisional Authority

38. SAMELCO II and SPI replead, by reference, all the foregoing allegations.
39. SAMELCO II and SPI 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.
40. As shown in the SAMELCO II's Supply and Demand Scenario, the peak demand ranges from 21 to 30 MW and our previous contract capacity of 15 MW, which is an Emergency Power Supply Agreement (EPSA) with FDC Misamis Corporation (FDCMPC), already expired on 13 September 2024;
41. As such, currently, SAMELCO II's power supply is being sourced from WESM. If no provisional authority or interim relief will be issued, SAMELCO II will continuously be exposed to the market having erratic power rates, to the prejudice of the consumers;
42. Thus, the issuance of the provisional authority or interim relief is in the best interest of the electricity consumers, especially the captive customers, as it ensures continuous and reliable electricity service, with stable rate, which is essential for public welfare, economic stability and growth.
43. Furthermore, from SAMELCO II's rate impact simulation, it is clear that the implementation of the PSA with KSPC would reduce SAMELCO II's rate by $\text{Php } 0.1347/\text{kWh}$, as compared to if the same power requirements are purchased from the Wholesale Electricity Spot Market (WESM).
44. As such, the early implementation of the PSA with SPI would benefit SAMELCO II and its end-users as it will ensure the provision of reliable, secure, and quality supply of electricity in the least cost manner.
45. 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 SAMELCO II member-consumers.

46. To support the prayer for provisional authority or interim relief, an Affidavit of Merit is hereto attached as *Annex "T"*.

Allegations in Support of the Confidential Treatment of Annex "E" and Series and "Q"

47. Rule 4 of the Honorable Commission's Rules of Practice and Procedure provides that the EC and SPI may request that information may not be disclosed;
48. SPI prays for the confidential treatment of the information contained in the Annexes "E" and "Q", and not disclosed except to the officers and staff of the Honorable Commission and its staff.
49. Annexes "E" and "Q" contains the details of SPI's fuel procurement processes, power rate calculations and financial model as well as the manner by which these were derived. This information is proprietary in nature and should be protected as trade secrets as contemplated by law and jurisprudence. In the case of *Air Philippines Corporation vs. Pennswell, Inc.*⁸, the Supreme Court defined a trade secret, as follows:

"A trade secret may consist of any formula, pattern, device, or compilation of information that: (1) is used in one's business; and (2) gives the employer an opportunity to obtain an advantage over competitors who do not possess the information. Generally, a trade secret is a process or device intended for continuous use in the operation of the business, for example, a machine or formula, but can be a price list or catalogue or specialized customer list. It is indubitable that trade secrets constitute proprietary rights. The inventor, discoverer, or possessor of a trade secret or similar innovation has rights therein which may be treated as property, and ordinarily an injunction will be granted to prevent the disclosure of the trade secret by one who obtained the information "in confidence" or through a "confidential relationship". American jurisprudence has utilized the following factors to determine if an information is a trade secret, to wit:

- (1) the extent to which the information is known outside of the employer's business;

⁸ G.R. No. 172835, December 13, 2007

- (2) the extent to which the information is known by employees and others involved in the business;
- (3) the extent of measures taken by the employer to guard the secrecy of the information;
- (4) the value of the information to the employer and to competitors;
- (5) the amount of effort or money expended by the company in developing the information; and
- (6) the extent to which the information could be easily or readily obtained through an independent source.” (*citations omitted, emphasis supplied*)
- (7) The interest of the consuming public is sufficiently protected by the review and evaluation of the rates under the PSA by the Honorable Commission, without the need to disclose the contents of Annexes “E” and “Q”. The reasonableness and transparency of the prices of electricity is to be assured by the Honorable Commission through its own review and verification of SPI’s operating costs and expenses;
- (8) More importantly, SPI’s competitors, should they obtain the information in Annexes “E” and “Q”, will gain undue advantage thereon and have the opportunity to use the same in their operations. The negotiating power of SPI with parties it plans to contract with or who it is currently doing business with, will clearly be thwarted if it is compelled to disclose such information;
- (9) Accordingly, SPI submits one (1) copy of Annexes “E” and “Q”, in a sealed envelope, with the said envelope and each page of the documents and/or information stamped with the word “*Confidential*”.
- (10) Lastly and corollary to the foregoing, SPI would like to implore the discerning wisdom of the Honorable Commission to include in its issuance for this purpose the “*procedures for the handling or returning the confidential information, as appropriate, upon the close of the*”

proceedings or at the end of the period for which the information is to be treated as confidential⁹.

(11) This is guided by the fact that SPI will seek for the return of these sought to be declared confidential annexes after its utilization as evidence in this case and/or at the close of the proceedings hereof, so as to relieve the Honorable Commission of the burden of safekeeping the trade secrets of SPI enclosed in the subject annexes.

PRAYER

WHEREFORE, premises considered, Joint Applicants SAMELCO II and SPI most respectfully pray that the Honorable Commission:

- i. a *Provisional Authority of Interim Relief* confirm the authority of the Joint Applicants to immediately implement the PSA subject of this case in entirety;
- ii. ISSUE an Order treating Annexes “E” and “Q” as confidential in perpetuity, directing its non-disclosure to persons other than the officers and staff of the Honorable Commission, perpetually protecting the said information from public disclosure by maintaining the same separate and apart from the records of the case, ensuring that these are not divulged to unauthorized persons, and that these confidential documents are returned to SPI after the termination of this case pursuant to Rule 4 of its Rules of Practice and Procedure;
- iii. After due notice and hearing, ISSUE a Decision approving the instant Joint Application *in toto* which will thereby allow/authorize SAMELCO II to charge and collect the fees from its customers reckoned from the commencement of the supply to the latter by SPI.

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

Finding the said *Joint Application* to be sufficient in form and with the required fees having been paid, the Commission hereby sets the same for determination of compliance with the jurisdictional requirements, expository presentation, Pre-Trial Conference, and presentation of evidence on the following dates and online platform for the conduct thereof, pursuant to Resolution No. 09, Series of 2020¹⁰

⁹ Letter (d), Section 4, of the ERC Rules and Practice and Procedure.

¹⁰ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

and Resolution No. 01, Series of 2021 (ERC Revised Rules of Practice and Procedure):¹¹

Date	Platform	Activity
12 February 2025 (Wednesday) at two o'clock in the afternoon (2:00 PM)	Microsoft Teams Application	Determination of compliance with the jurisdictional requirements and expository presentation
19 February 2025 (Wednesday) at two o'clock in the afternoon (2:00 PM)		Pre-Trial Conference and presentation of evidence

Accordingly, SAMELCO II and SPI are hereby directed to host the virtual hearings at **SAMELCO II's principal office located at Brgy. 6, Poblacion, Paranas, Samar**, as the designated venue for the conduct thereof, and ensure that the same is open to the public. Moreover, SAMELCO II and SPI shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

RELATIVE THERETO, SAMELCO II and SPI 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 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 SAMELCO II's franchise area for the appropriate posting thereof on their respective bulletin boards;

¹¹ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

- 3) Inform the consumers within SAMELCO II'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, SAMELCO II and SPI 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 SAMELCO II and SPI to inform the consumers within SAMELCO II'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, SAMELCO II and SPI are hereby required to post on their bulletin boards, the scanned copies of the foregoing jurisdictional requirements, together with the newspaper publications and certifications issued by the concerned Offices of the Governor, Mayors, and Local Legislative Bodies, and to submit proof of posting thereof.

Applicants SAMELCO II and SPI, 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.

Applicants SAMELCO II and SPI 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.

Applicants SAMELCO II and SPI 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.

Applicants SAMELCO II and SPI 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.

Applicants SAMELCO II and SPI 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.

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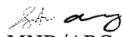
Finally, SAMELCO II and SPI, including their authorized representatives and witnesses, are hereby directed to provide the Commission, through legal.virtualhearings@erc.ph, their respective e-mail addresses upon receipt of this *Order*. The Commission will send the access link/s to the aforementioned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

SO ORDERED.

Pasig City, 26 December 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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citizensdesk@coa.gov.ph
8. Senate Committee on Energy
GSIS Building, Roxas Boulevard, Pasay City
senateenergycommittee@gmail.com
9. House Committee on Energy
Batasan Hills, Quezon City
committee.energy@house.gov.ph
10. Office of the Provincial Governor
Province of Samar
11. Office of the Sangguniang Panlalawigan
Province of Samar
12. Office of the City Mayor
Catbalogan, Samar
13. Office of the Sangguniang Panglungsod
Catbalogan, Samar
14. Office of the Municipal Mayor
Jiabong, Samar
15. Office of the Sangguniang Bayan
Jiabong, Samar

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16. Office of the Municipal Mayor
Paranas, Samar
17. Office of the Sangguniang Bayan
Paranas, Samar
18. Office of the Municipal Mayor
Motiong, Samar
19. Office of the Sangguniang Bayan
Motiong, Samar
20. Office of the Municipal Mayor
Hinabangan, Samar
21. Office of the Sangguniang Bayan
Hinabangan, Samar
22. Office of the Municipal Mayor
San Sebastian, Samar
23. Office of the Sangguniang Bayan
San Sebastian, Samar
24. Office of the Municipal Mayor
Calbiga, Samar
25. Office of the Sangguniang Bayan
Calbiga, Samar
26. Office of the Municipal Mayor
Pinabacdao, Samar
27. Office of the Sangguniang Bayan
Pinabacdao, Samar
28. Office of the Municipal Mayor
Villareal, Samar
29. Office of the Sangguniang Bayan
Villareal, Samar
30. Office of the Municipal Mayor
Talalora, Samar
31. Office of the Sangguniang Bayan
Talalora, Samar
32. Office of the Municipal Mayor
Sta. Rita, Samar
33. Office of the Sangguniang Bayan
Sta. Rita, Samar
34. Office of the Municipal Mayor
Basey, Samar
35. Office of the Sangguniang Bayan
Basey, Samar
36. Office of the Municipal Mayor
Marabut, Samar
37. Office of the Sangguniang Bayan
Marabut, Samar

38. Office of the Municipal Mayor
San Jose De Buan, Samar
39. Office of the Sangguniang Bayan
San Jose De Buan, Samar
40. Office of the Municipal Mayor
Daram, Samar
41. Office of the Sangguniang Bayan
Daram, Samar
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