

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



**IN THE MATTER OF THE
APPLICATION FOR
APPROVAL OF THE
ADDENDUM TO THE
POWER SUPPLY
AGREEMENT BETWEEN
PALAWAN ELECTRIC
COOPERATIVE, INC.
(PALECO) AND DELTA P
INC., WITH PRAYER FOR
PROVISIONAL AUTHORITY**

ERC CASE NO. 2019-010 RC

**PALAWAN ELECTRIC
COOPERATIVE, INC.
(PALECO) AND DELTA P
INC.,**

Applicants.

X-----X

Promulgated:

MAR 07 2019

ORDER

On 13 February 2019, Applicants Palawan Electric Cooperative, Inc. (PALECO) and Delta P Inc. (Delta P) filed an *Application* dated 10 December 2018, seeking the Commission's approval of the addendum to their Power Supply Agreement (PSA), with prayer for the issuance of provisional authority.

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

1. PALECO is an electric cooperative existing under the laws of the Republic of the Philippines, specifically under Presidential Decree No. 269 and duly registered with the Cooperative Development Authority under Registration Number QC-1616-EC-012, with principal office address located at Tiniguiban, Puerto Princesa City, Palawan. It is a holder of a Certificate of Franchise issued by the National Electrification Commission to operate as an electric distribution utility servicing its member-consumers within the Province of Palawan.

- 1.1 The National Electrification Administration granted PALECO a fifty (50)-year franchise to distribute electric service to its member-consumers in its franchise area covering Puerto Princesa City, Aborlan, Narra, Brooke's Point, Espanola, Cuyo, Magsaysay, Quezon, Roxas, Taytay, El Nido, Araceli, San Vicente, Batarza, Rizal, Balabac, Cagayancillo, Agutaya, and Dumarán.
2. Delta P is a domestic corporation duly organized and existing pursuant to the laws of the Republic of the Philippines. Its principal place of business is at Kilometer 13, North National Highway, Barangay Sta. Lourdes, Puerto Princesa, Palawan. It may be served with pleadings and court processes through its counsel J. P. Garcia & Associates at Units 1501-1502 Ayala Life-FGU Center, Mindanao Avenue corner Biliran Road, Cebu Business Park, Cebu City.
3. Pursuant to Rule 20 (B) of the ERC Rules of Practice and Procedure, and other pertinent rules and regulations, this Joint Application is submitted to this Honorable Commission to approve the Power Supply Agreement ("PSA") executed by and between PALECO and Delta P

I. STATEMENT OF FACTS

4. Delta P is a corporation duly existing under and by virtue of the laws of the Republic of the Philippines, with principal office at Kilometer 13, North National Highway, Barangay Sta. Lourdes, Puerto Princesa, Palawan.
 - 4.1 Copies of pertinent documents evidencing Delta P's due registration and permit to operate as a generation company are attached as follows and made integral parts hereof:

DOCUMENT	ANNEX
Latest Articles of Incorporation and By-Laws	"A"
SEC Certificate of Registration of the Articles of Incorporation	"B"
Generation Information Sheet for 2018	"C"
Latest Audited Financial Statements	"D"

5. August 8, 2009, PALECO conducted a competitive selection process ("CSP") for the appointment of a New Power Provider ("NPP") that will provide a portion of its present and future power requirements in accordance with the Department of Energy ("DOE") Circular No. 2004-01-001.
6. The CSP concluded with the signing of a Power Supply Agreement on February 6, 2009 for the supply of an Estimated Deliverable Energy of 4,583,333 kWh/month or 55,000,000 kWh/year or a Maximum Deliverable Energy of 6,000,000 kWh/month or 72,000,000 kWh/year for a Cooperation Period of ten (10) years from Commercial

Operations Date (as these capitalized terms are defined in the PSA) (the "Old PSA"). Energy will be transmitted through the PALECO-owned 13.2 kV transmission line with the billing meter located within PALECO's substation.

6.1 Thus, the Old PSA will end on April 03, 2019.

7. Following the execution of the Old PSA, on April 17, 2009, PALECO and Delta P filed a joint petition with the Honorable Commission for its approval which was docketed as ERC Case no. 2009-025 RC entitled "*In Re: Petition for Approval of the Power Supply Agreement (PSA) and the New Power Provider-True Cost Generation Rate (NPP-TCGR), with Prayer for Provisional Authority, Palawan Electric Cooperative, Inc. (PALECO and Delta P, Inc. (Delta P), Petitioners.*"

8. In support of the application for the approval of the Old PSA, PALECO and Delta P submitted the following documentary evidence:

DOCUMENT	ANNEX
Executive Summary of the Old PSA Relevant Technical and Economic Characteristics of the Generation Capacity; Installed Capacity; Mode of Operation; Dependable Capacity Sources of Funds/Financial Plans Purchase Power Rate Cash Flow	"E"
Procurement Process of Fuel	"F"
ERC Certificate of Compliance	"G"
Environmental Compliance Certificate from the Department of Environment and Natural Resources	"H"
Details of the CSP (as contained in the Petition in ERC Case No. 2009-025 RC)	"I"
Transmission projects or grid connection projects necessary to complement the proposed generation capacity	"J"
Certification of the consistencies and inconsistencies between the proposed generation capacity and the Doe Philippine Development Plant.	"K"
Load Forecast Projects in accordance with the Distribution Development Plan	"L"
Alternative Demand Side Management Program of PALECO	"M"

9. After due notice and hearing, the Old PSA was approved in a November 9, 2009 Decision of the Honorable Commission.

The Entry of the New Supplier

10. Several years after the approval of the Old PSA, PALECO foresaw a need to secure additional power to cope with the increase in load in its franchise area. Accordingly, PALECO conducted another CSP (the “2nd CSP”) for the appointment of a New Power Provider to provide a Guaranteed Dependable Capacity of 20.0 MW in accordance with the same DOE Circular No. 2004-01-001.
11. The 2nd CSP resulted in the signing of a Power Supply Agreement with Delta P on March 18, 2016, having been declared as the winning bidder of the CSP (the “New PSA”). This time, the capacity is to be made available through the 13.2 kV of PALECO or 69 kV transmission line of the National Power Corporation (“NPC”).
12. Thereafter, on April 29, 2016 PALECO and Delta P filed a Joint Application for the approval of the New PSA with the Honorable Commission which was docketed as ERC Case No. 2016-082 RC and entitled “*In the Matter of the Application for Approval of the Power Supply Agreement Between Palawan Electric Cooperative, Inc. (PALECO) and Delta P Inc. and New Power Provider-True Cost Generation Rate (NPP-TCGR), with Prayer for Provisional Authority, Palawan Electric Cooperative, Inc. (PALECO) and Delta P Inc., Applicants.*”
13. On January 9, 2018, the parties, through their legal counsel, received an Order for Interim Relief, granting provisional authority to the New PSA.
14. At the time of the execution of the Old PSA on February 6, 2009, the parties did not contemplate that another power plant will use the same transmission line, that there will be a need to allocate system loss that will arise and which party shall bear the cost of the system loss. With the execution of the New PSA, even as the same supplier is involved, the parties saw the need to clarify the treatment of the system loss through an Addendum.

***Salient Provision of the Addendum
To the Power Supply Agreements***

15. The Addendum was signed on October 10, 2018 solely for the parties to implement a formula to allocate the system loss resulting from two (2) power plants using the same 13.2 kV transmission line.
16. The formula is as follows:

EOT_t = Energy delivered by Delta P (from the existing plant under the PSA signed on February 6, 2009) to PALECO as indicated in the Billing Meters during each Billing Period t expressed in kWh

$$EOT_t = ODPI_{BM} \times (ODPI_{SM} / (ED_{BM} + ODPI_{SM}))$$

Where:

$oDPI_{BM}$ = Energy delivered by Delta P (from the existing plant under the PSA signed on February 6, 2009) to PALECO as indicated in the Billing Meters during each Billing Period t expressed in kWh

$oDPI_{SM}$ = Energy generated by Delta P (from the existing plant under the PSA signed on February 6, 2009) to PALECO as indicated in the Summation Meter during each Billing Period t expressed in kWh

ED_{BM} = Energy delivered (of the expansion plant under the PSA signed on March 18, 2016) to PALECO as indicated in the Billing Meters during the Billing Month t expressed in kWh

17. Subject to the approval by the Honorable Commission, the parties intend to implement the foregoing formula starting on March 25, 2017, or the time when eDPI first infused energy into the grid.
18. Lastly, all other provisions of the Old PSA and the New PSA that are not inconsistent with the formula shall remain in effect. A copy of the Addendum is attached as **Annex "N"** and made an integral part hereof.
 - 18.1 As proof of the respective authority of PALECO and Delta P to execute the Addendum and apply for its approval, a copy of the Resolution of PALECO and the Secretary's Certificate of Delta P area attached and made integral part hereof as **Annexes "O"** and **"O-1"**, respectively.

II. Financial Impact on PALECO's Rates

19. If approved, the Addendum and the formula on the treatment of system loss shall not have any impact on PALECO's rates to its customers. Any system loss resulting from applying the formula shall be paid by the National Power Corporation.

III. Motion for Issuance of Provisional Authority

20. As alleged in paragraph 6.1, the Old PSA shall end on April 03, 2019. For this reason, there is a need to grant provisional authority to the Addendum to keep the Old PSA whole in terms of system loss.
21. However, the effectivity and term of this Addendum is dependent upon a provisional or final authority from this Honorable Commission.
22. Rule 14, Section 3 of the Honorable Commission's Rules of Practice and Procedure allows the issuance of Provisional Authority, even prior to the conduct of a hearing on an application. Thus:

“Section 3. Action on the Motion. – Motions for provisional authority or interim relief may be acted upon with or without hearing. The Commission shall act on the motion on the basis of the allegations of the application or petition and supporting documents and other evidences that applicant or petitioner has submitted and the comments or opposition filed by any interested person, if there be any.”

23. For the foregoing reasons, in the interest of keeping whole the Old PSA, the Applicants jointly seek the indulgence of this Honorable Commission for the issuance of a Provisional Authority for the Addendum.

IV. Compliance with Pre-Filing Requirements

24. The Applicants jointly manifest compliance with the pre-filing requirements under Rule 3, Section 4(e) of the Implementing Rules and Regulations of the EPIRA and Rule 6 of the 2006 ERC Rules of Practice and Procedure, as evidenced by the following documents:
- a) Certification issued by the *Sangguniang Panlalawigan* of the Province of Palawan and the *Sangguniang Panlungsod* of the City of Puerto Princesa, attached as *Annexes “P” and “Q”*, respectively;
 - b) Notarized *Affidavit of Publication* certifying to the publication of this Application in a newspaper of generation circulation within the Franchise Area of PALECO, attached as *Annex “R”*; and
 - c) A copy of the newspaper where the *Application* was published, attached as *Annex “S”*.

PRAYER

WHEREFORE, in view of the foregoing, it is most respectfully prayed from this Honorable Commission:

1. To IMMEDIATELY HEAR the instant Application;
2. To RESOLVE the Motion for Provisional Authority within seventy-five (75) days from the filing of this Joint Application;
3. To APPROVE with finality the Addendum after due notice and hearing, including the formula for addressing system loss; and
4. Should the Provisional or Final Authority be issued after the expiration of the Old PSA (or after April 03,

2019), that the Honorable Commission authorize Delta P to RECOVER THROUGH THE NEW PSA.

Other reliefs as may be just and equitable under the premises are likewise prayed for.

Finding the said *Application* to be sufficient in form and substance, with the required fees having been paid, the same is hereby set for determination of compliance with the jurisdictional requirements, expository presentation, pre-trial conference, and presentation of evidence on **15 May 2019 (Wednesday) at one o'clock in the afternoon (1:00 P.M.) at PALECO's Principal Office at Tiniguiban, Puerto Princesa City, Palawan.**

Accordingly, PALECO and Delta P are hereby directed to:

- 1) Cause the publication of the attached *Notice of Public 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 hearing;
- 2) Furnish with copies of this *Order* and the attached *Notice of Public Hearing* the Offices of the Provincial Governor, the City and Municipal Mayors, and the Local Government Unit (LGU) legislative bodies within PALECO's franchise area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within PALECO's franchise area of the filing of the *Application*, their reasons therefor, and of the scheduled hearing thereon, by any other means available and appropriate;
- 4) Furnish with copies of this *Order* and the attached *Notice of Public 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 at the scheduled hearing; and
- 5) Furnish with copies of the *Application* and its attachments all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing, PALECO and Delta P must submit to the Commission their written compliance with the aforementioned jurisdictional requirements attaching therewith, methodically arranged and duly marked the following:

- 1) The evidence of publication of the attached *Notice of Public Hearing* consisting of affidavits of the Editors or Business Managers of the newspapers where the said *Notice of Public Hearing* were published, and the complete issues of the said newspapers;
- 2) The evidence of actual posting of this *Order* and the attached *Notice of Public Hearing*, consisting of certifications issued to that effect, signed by the Provincial 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 PALECO to inform the consumers within the affected areas of the filing of the *Application*, its reasons therefor, and of the scheduled hearing thereon;
- 4) The evidence of receipt of copies of this *Order* and the attached *Notice of Public 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 *Application* and its attachments by all those making requests therefor, if any; and
- 6) Such other proofs of compliance with the requirements of the Commission.

Applicants and all interested parties are also required to submit, at least five (5) days before the date of initial 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 therefore; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-trial Brief.

Failure of Applicants to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from the said date of cancellation.

Applicants must also be prepared to make an expository presentation of the instant *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 *Application* with relevant information and pertinent details substantiating the reasons and justifications being cited in support thereof.

SO ORDERED.

Pasig City, 04 March 2019.

FOR AND BY AUTHORITY
OF THE COMMISSION:


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Oversight Commissioner for Legal Services

LS: RSPV/ARG/ALO

COPY FURNISHED:

1. J.P. Garcia and Associates
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Applicant
Tinguiban, Puerto Princesa City, Palawan
3. Delta P. Inc. (Delta P)
Co-Applicant
Kilometer 13, North National Highway
Barangay Sta. Lourdes, Puerto Princesa, Palawan

ERC CASE NO. 2019-010 RC
ORDER/04 MARCH 2019
PAGE 10 OF 11

4. Office of the Solicitor General (OSG)
134 Amorsolo Street, Legaspi Village, Makati City
5. Commission on Audit (COA)
Commonwealth Avenue, Quezon City 1121
6. Senate Committee on Energy
GSIS Building, Roxas Boulevard, Pasay City 1307
7. House Committee on Energy
Batasan Hills, Quezon City 1126
8. Office of the Governor
Province of Palawan
9. Office of the Local Government (LGU) legislative body
Province of Palawan
10. Office of the Mayor
Puerto Princesa City, Palawan
11. Office of the Local Government (LGU) legislative body
Puerto Princesa City, Palawan
12. Office of the Mayor
Municipality of Aborlan, Palawan
13. Office of the Local Government (LGU) legislative body
Municipality of Aborlan, Palawan
14. Office of the Mayor
Municipality of Narra, Palawan
15. Office of the Local Government (LGU) legislative body
Municipality of Narra, Palawan
16. Office of the Mayor
Municipality of Brooke's Point, Palawan
17. Office of the Local Government (LGU) legislative body
Municipality of Brooke's Point, Palawan
18. Office of the Mayor
Municipality of Espanola, Palawan
19. Office of the Local Government (LGU) legislative body
Municipality of Espanola, Palawan
20. Office of the Mayor
Municipality of Cuyo, Palawan
21. Office of the Local Government (LGU) legislative body
Municipality of Cuyo, Palawan
22. Office of the Mayor
Municipality of Magsaysay, Palawan
23. Office of the Local Government (LGU) legislative body
Municipality of Magsaysay, Palawan
24. Office of the Mayor
Municipality of Quezon, Palawan
25. Office of the Local Government (LGU) legislative body
Municipality of Quezon, Palawan
26. Office of the Mayor
Municipality of Roxas, Palawan
27. Office of the Local Government (LGU) legislative body

ERC CASE NO. 2019-010 RC
ORDER/04 MARCH 2019
PAGE 11 OF 11

- Municipality of Roxas, Palawan
28. Office of the Mayor
Municipality of Taytay, Palawan
 29. Office of the Local Government (LGU) legislative body
Municipality of Taytay, Palawan
 30. Office of the Mayor
Municipality of El Nido, Palawan
 31. Office of the Local Government (LGU) legislative body
Municipality of El Nido, Palawan
 32. Office of the Mayor
Municipality of Araceli, Palawan
 33. Office of the Local Government (LGU) legislative body
Municipality of Araceli, Palawan
 34. Office of the Mayor
Municipality of San Vicente, Palawan
 35. Office of the Local Government (LGU) legislative body
Municipality of San Vicente, Palawan
 36. Office of the Mayor
Municipality of Bataraza, Palawan
 37. Office of the Local Government (LGU) legislative body
Municipality of Bataraza, Palawan
 38. Office of the Mayor
Municipality of Rizal, Palawan
 39. Office of the Local Government (LGU) legislative body
Municipality of Rizal, Palawan
 40. Office of the Mayor
Municipality of Balabac, Palawan
 41. Office of the Local Government (LGU) legislative body
Municipality of Balabac, Palawan
 42. Office of the Mayor
Municipality of Cagayancillo, Palawan
 43. Office of the Local Government (LGU) legislative body
Municipality of Cagayancillo, Palawan
 44. Office of the Mayor
Municipality of Agutaya, Palawan
 45. Office of the Local Government (LGU) legislative body
Municipality of Agutaya, Palawan
 46. Office of the Mayor
Municipality of Dumarán, Palawan
 47. Office of the Local Government (LGU) legislative body
Municipality of Dumarán, Palawan
 48. Regulatory Operations Service (ROS)
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17th Floor, Pacific Center, San Miguel Avenue, Pasig City