

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

**IN THE MATTER OF THE
APPLICATION FOR
APPROVAL OF EMERGENCY
POWER SUPPLY AGREEMENT
BETWEEN PAMPANGA II
ELECTRIC COOPERATIVE,
INC. (PELCO II) AND
MASINLOC POWER CO. LTD.
(MPCL), WITH MOTION FOR
CONFIDENTIAL TREATMENT
OF INFORMATION**

ERC CASE NO. 2025-094 RC

**PAMPANGA II ELECTRIC
COOPERATIVE, INC. (PELCO
II) AND MASINLOC POWER
CO. LTD. (MPCL),**

Applicants.

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Promulgated:
July 10, 2025

NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 29 April 2025, the Pampanga II Electric Cooperative, Inc. (PELCO II) and Masinloc Power Co. Ltd. (MPCL) filed their *Joint Application* dated 11 March 2025, seeking the Commission’s approval of their Emergency Power Supply Agreement (EPSA), with motion for confidential treatment of information.

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

XXX

THE JOINT APPLICANTS

1. Applicant **PELCO II** non-stock, non-profit electric cooperative (EC) duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office located at San Roque, Guagua, Pampanga 2003. It is the exclusive

franchise holder of a Certificate of Franchise issued by the National Electrification Commission (“NEC”) of the National Electrification Administration (“NEA”) to operate an electric light and power services in the city and municipalities in the Province of Pampanga, namely: 1) Guagua, 2) Bacolor, 3) Porac, 4) Sasmuan, 5) Lubao, 6) Sta. Rita, and 7) Mabalacat City;

2. Likewise, included in the areas being served by Applicant **PELCO II**, pursuant to government interventions, are the following: i) The Palmayo resettlement and the adjoining areas within its jurisdiction (both of which are part of the franchise area); ii) Barangay Anon, Floridablanca, Pampanga and nearby barangays (both of which are part of the Lubao franchise area; and iii) Sta. Lucia Resettlement, Magalang, Pampanga (which is part of the Mabalacat City franchise area);

3. Applicant **MPCL** is a limited partnership duly organized and existing under the laws of the Republic of the Philippines, with principal office address at Masinloc Coal-Fired Thermal Power Plant, Barangay Bani, Masinloc, Zambales. It shall also be referred to herein as the “Seller”. Applicant **MPCL** is the owner of the 1 x 344 MW (Unit 1), 1 x 344 MW (Unit 2) and 1 x 335 MW (Unit 3) coal-fired power plants, comprising the Masinloc Power Plant, (the “Plant”) located in Barangay Bani, Masinloc, Zambales;

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 Emergency Power Supply Agreement (“EPSA”) entered into by and between **PELCO II** and **MPCL**, is being submitted to the Honorable Commission for its review and approval pursuant to Sections 25¹ and 45(b)² of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (the “EPIRA”), Rules 5, Section 4(e)³ and 11, Section 5⁴ of its Implementing Rules and Regulations (IRR), Rule 20(B) of its Rules of Practice and Procedure, and other pertinent rules and regulations;

STATEMENT OF FACTS

6. On December 20, 2021, Pampanga II Electric Cooperative, Inc. (**PELCO II**) and GNPowder Dinginin Ltd. Co. (**GNPD**) executed a

¹ 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.

² Distribution utilities may enter into bilateral power supply contracts subject to review by the ERC: xxx xxx xxx.

³ 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.

⁴ Limits on Bilateral Supply Contracts by a Distribution Utility.

Settlement Agreement and a 25–50 MW Power Purchase and Sale Agreement (PPSA) as a result of negotiations arising from the dispute resolution case under ERC Case No. 2019-002 DR filed by GNPd. This PPSA stemmed from the power supply bidding conducted in 2013 by the Central Luzon Electric Cooperative Association – First Luzon Aggregation Group, Inc. (CLECAFLAG), which is composed of twelve (12) Region III electric cooperatives;

7. While PELCO II was in the process of preparing the documentary requirements for the joint application for the approval of the PPSA before the Energy Regulatory Commission, the ERC, on March 1, 2023, issued an Order in ERC Case No. 2016-037 RC entitled “In the Matter of the Application for Approval of the Power Purchase and Sale Agreement Entered into by and between Nueva Ecija I Electric Cooperative, Inc. and GNPd Ltd. Co., with Prayer for Confidential Treatment of Information – NEECO I and GNPd, Applicants.” In this Order, the Commission declared that the PPSA between NEECO I and GNPd is subject to the Competitive Selection Process (CSP) mandate as established in the Alyansa case;

8. Furthermore, in the same Order, the Commission ruled that the procurement of the PPSA between NEECO I and GNPd failed to comply with the Department of Energy (DOE) 2018 CSP Circular;

9. Acknowledging the similarity between the PPSA executed by PELCO II and GNPd and the PPSA between NEECO I and GNPd, as referenced in the aforementioned Order, PELCO II and GNPd mutually agreed to terminate their PPSA on December 11 and 19, 2023, respectively;

10. On August 7, 2024, the Department of Energy issued an advisory to the ERC, the National Electrification Administration (NEA), and Distribution Utilities (DUs), including electric cooperatives such as PELCO II. The advisory stated that “DUs with PSAs affected by the Alyansa Ruling, which have not yet applied for, and have not been granted a CSP Exemption (COE-CSP) pursuant to the 2019 Advisory, may negotiate and enter into a Transition Power Supply Agreement (TPSA);”

11. Historically, PELCO II's demand has shown an upward trend. However, during the summer of 2024, the cooperative recorded a coincident peak demand of 170.33 MW, a substantial increase from the 145.83 MW peak recorded in 2023. This unprecedented rise of nearly 25 MW, attributed to the El Niño phenomenon, placed significant pressure on PELCO II's contracted capacity and increased its exposure to the Wholesale Electricity Spot Market (WESM), known for its price volatility;

12. In response to these pressing circumstances, PELCO II explored the possibility of securing additional contracted capacity through the execution of a 12-month Temporary Power Supply Agreement (TPSA) while undertaking its Competitive Selection Process (CSP). However, due to the fact that the PPSA between

PELCO II and GNPD was not filed with the Honorable Commission, PELCO II was deemed ineligible to execute a TPSA;

13. Given the critical need to secure a stable and continuous power supply for its member-consumer-owners (MCO), PELCO II actively sought proposals from various power suppliers. After evaluating options, PELCO II entered an EPSA with MPCL, which offered the most competitive rate and favorable terms to meet its immediate electricity needs;

14. Hence, PELCO II and MPCL now submit this joint application for the approval of the EPSA before the Honorable ERC;

**SALIENT FEATURES OF THE EMERGENCY POWER
SUPPLY AGREEMENT (EPSA) AND RELATED
INFORMATION**

15. Contract Terms

a. The Agreement becomes effective upon signing and will remain in force for a maximum of one (1) year or until the ERC approves a new power supply agreement arising from PELCO II's Competitive Selection Process, whichever comes first;

b. The Supply Effective Date (SED) is January 26, 2025;

16. Supply Commitments

a. MPCL shall deliver up to 25,000 kW of power, with a minimum nomination per trading interval of sixty percent (60.0%) of the Contract Capacity for the duration of the Agreement;

b. The delivery points are the 69 kV lines of PELCO II's six (6) substations;

17. Pricing and Payment

a. The gross Flat Generation Rate (FGR) consists of a fixed Capacity Fee and a variable Fuel Fee, amounting to Php 6.8000 per kWh.;

b. A Prompt Payment Discount (PPD) of three percent (3.0%) will apply to the total prevailing FGR if the power bill invoice is paid in full on or before the 10th day of the calendar month following the current billing period;

c. A security deposit equivalent to one month of estimated billing is required;

18. Outages Allowance and Replacement Power

- a. MPCL shall guarantee the supply of the Contract Capacity to PELCO II, even during scheduled and unscheduled outages of the plant, except in the event of Force Majeure;
 - b. MPCL, at its sole discretion, may provide Replacement Power during a Force Majeure event that affects the plant's capability to deliver the Contract Capacity and Contract Energy;
- 19. Adjustments and Charges
 - a. Monthly billing will be subject to fuel cost adjustments and foreign exchange rate fluctuations;
 - b. Taxes and additional charges, such as WESM charges, line rental, and transmission losses, shall be borne by PELCO II;.
- 20. Dispute Resolution
 - a. Disputes shall be resolved amicably through conciliation. Unresolved issues will be referred to the Energy Regulatory Commission (ERC) or arbitration in accordance with Philippine law;
- 21. Regulatory Compliance
 - a. Both parties shall jointly seek ERC approval and ensure compliance with applicable laws, including the Electric Power Industry Reform Act (EPIRA) and the Philippine Grid Code;

RATE IMPACT ANALYSIS

- 22. The simulated impact of the subject EPSA on PELCO II's overall generation rate from February 2025 to January 2026 is as follows:

Without the Subject EPSA		
Supplier	Average Simulated Rate (PhP/kWh)	Maximum Simulated Rate (PhP/kWh)
Current PSAs	5.7466	5.9933
WESM	7.9794	9.2096
Blended Gen. Rate	6.5277	7.2737

With the Subject EPSA		
Supplier	Average Simulated Rate (PhP/kWh)	Maximum Simulated Rate (PhP/kWh)
Current PSAs	5.7466	5.9933
MPCL	7.5724	7.6247
WESM	7.9794	9.2096

Blended Gen. Rate	6.4583	7.0099
Comparison		
Blended Gen. Rate Without vs With MPCL	Average Simulated Rate (PhP/kWh)	Maximum Simulated Rate (PhP/kWh)
Increase (Decrease)	(0.0694)	(0.2638)

23. With the implementation of the EPSA, PELCO II anticipates a reduction in its blended generation rate, ranging from an average decrease of Php 0.0694 per kWh to a maximum of Php 0.2638 per kWh. The EPSA significantly lowers the generation costs (GC), leading to reduced pass-through GC for end users.

COMPLIANCE WITH THE PRE-FILING REQUIREMENTS:

Annex	Documents/Information
“A” and series	PELCO II’s Average Daily Load Curve, Supply-Demand Scenario, Historical and Forecasted Supply-Demand Scenario, DU’s Existing Suppliers and Power Supply Contract Utilization
“B”	Duly signed Emergency PSA
“B-1”	Executive Summary of the EPSA
“C” and series	MPCL Rate Derivation and Related Documents (<i>Confidential</i>)
“D”	MPCL’s Write-up Invoking Section 22 of ERC Resolution No. 16, Series of 2024
“E”	MPCL’s Outages
“F”	Rate Impact Analysis
“F-1”	Rate Impact Analysis computation in MS Excel Format (<i>Confidential</i>)
“G”	Board Resolution of PELCO II to enter into the EPSA with MPCL
“H”	Board Resolution authorizing counsel to file the subject application
“I”	Board Resolution authorizing PELCO II officer/s to execute the Verification and Certification against Forum Shopping
“J”	PELCO II’s Certificate of Email Registration
“K” and series	MPCL’s Secretary’s Certificates
“L”	MPCL’s Certificate of Email Registration

24. The EPSA with MPCL was made to ensure the continuous supply of power to PELCO II 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;

ALLEGATIONS IN SUPPORT OF THE CONFIDENTIAL
TREATMENT OF ANNEXES “C” AND SERIES AND
ANNEX “F-1”

25. Rule 4 of the Honorable Commission's Rules of Practice and Procedure provides that PELCO II and MPCL may request that information may not be disclosed;

26. MPCL and PELCO II prays for the confidential treatment of the information contained in the Annexes "C" and series, as well as Annex "F-1" and ensure that it is disclosed only to the officers and staff of the Honorable Commission;

27. Annexes "F-1", or the supporting MS Excel computations of rate impact analysis, contain information on detailed pricing of the current power supplier of PELCO II.

28. Annexes "C" and series contain the details of MPCL's power rate calculations and financial model as well as the manner by which these were derived. These pieces of information are 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.*, 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;
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)

29. The interest of the consuming public is sufficiently protected by the review and evaluation of the rates under the EPSA by the Honorable Commission, without the need to disclose the contents of Annexes “C” and Series. The reasonableness and transparency of the prices of electricity is to be assured by the Honorable Commission through its own review and verification of MPCL’s operating costs and expenses;

30. More importantly, MPCL’s competitors, should they obtain the information in Annexes “C” and series, will gain undue advantage thereon and have the opportunity to use the same in their operations. The negotiating power of MPCL 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;

31. Accordingly, MPCL submits one (1) copy of Annexes “C” and series, in a sealed envelope, with the said envelope and each page of the documents and/or information stamped with the word “Confidential”.

32. Lastly, and corollary to the foregoing, MPCL 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 confidential”.

33. This is guided by the fact that MPCL 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 MPCL enclosed in the subject annexes.

PRAYER

WHEREFORE, premises concerned, Applicants PELCO II and MPCL respectfully pray unto this Honorable Commission the following:

- a. During the pendency of the proceedings/scheduled hearing(s) and before the final resolution/approval of this case, that an Order be issued for the **GRANT** of:
 - i. A **Directive** affording Annexes “C” and Series, as well as Annex “F-1” **confidential treatment** in the handling and evaluation thereof from the time these annexes are received by the Honorable Commission up to the termination of the instant case by continuously protecting the said information from public disclosure by maintaining the same as separate and apart from the records of the case, and ensuring that these are not divulged to unauthorized persons other than the concerned staff and officers of the Honorable Commission;

- ii. An **Issuance** concerning the procedures for handling confidential information upon the close of the proceedings and its return/delivery to MPCL.
- b. After hearing on the merits, render a Decision **APPROVING** the PELCO II and MPCL EPSA and the terms and conditions thereunder, including the price which will thereby allow/authorize PELCO II to charge and collect the fees from its consumers reckoned from the commencement of the supply to the latter by MPCL; and directing that the rates, terms, and conditions of the *PELCO II-MPCL EPSA* be retroactively applied for the entire term of the EPSA.

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

The Commission sets the instant *Joint Application* for determination of compliance with the jurisdictional requirements, expository presentation, Pre-Trial Conference, and presentation of evidence on the following dates and online platform for the conduct thereof, pursuant to Resolution No. 09, Series of 2020⁵ and Resolution No. 01, Series of 2021⁶ (ERC Revised Rules of Practice and Procedure):

Date	Platform	Activity
03 September 2025 (Wednesday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Teams Application	Determination of compliance with the jurisdictional requirements and expository presentation
10 September 2025 (Wednesday) at nine o'clock in the morning (9:00 A.M.)		Pre-Trial Conference and presentation of evidence

Accordingly, PELCO II and MPCL are directed to mirror the virtual hearings, to be hosted by the Commission, at **PELCO II's principal office located at Brgy. San Roque, Guagua, Pampanga**, as the designated venue for the conduct thereof, and ensure that the same is open to the public. Moreover, the Applicants shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

⁵ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.
⁶ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

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

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

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

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

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

All interested parties filing their Petition to Intervene, Opposition or Comment are required to submit the hard copies thereof

through personal service, registered mail or ordinary mail/private courier, **within five (5) working days** from the date that the same were electronically submitted, as reflected in the acknowledgment receipt e-mail sent by the Commission.

Any of the persons mentioned in the preceding paragraphs may access the copy of the *Joint Application* on the Commission's official website at www.erc.gov.ph.

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

WITNESS, the Honorable Chairperson and CEO **MONALISA C. DIMALANTA** and the Honorable Commissioners **FLORESINDA G. BALDO-DIGAL** and **MARKO ROMEO L. FUENTES**, Energy Regulatory Commission, this 10th day of July 2025 in Pasig City.

FOR AND BY AUTHORITY
OF THE COMMISSION:


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


LS: ADGS/ARG