Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

IN THE MATTER OF THE JOINT APPLICATION FOR APPROVAL OF EMERGENCY POWER SUPPLY AGREEMENT BETWEEN PAMPANGA III ELECTRIC COOPERATIVE, INC. (PELCO III) AND SUAL POWER INC. (SPI) WITH MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION

ERC CASE NO. 2026-_____ RC

PAMPANGA III ELECTRIC COOPERATIVE, INC. (PELCO III) AND SUAL POWER INC. (SPI),

Applicants.
x - x

JOINT APPLICATION
(With Prayer Confidential Treatment of Information)

Applicants **PAMPANGA III ELECTRIC COOPERATIVE, INC. (PELCO III) and SUAL POWER INC. (SPI),** through their respective undersigned counsels and unto the Honorable Commission, most respectfully state, that:

I. The Applicants

1.1. PELCO III is an electric cooperative company duly organized and existing under the laws of the Republic of the Philippines, with office address at Sampaloc, Apalit, Pampanga. It holds an exclusive franchise from the National Electrification Administration (NEA) to operate light and power services in the towns

of **Apalit, Macabebe, Masantol, San Simon, Minalin and Sto. Tomas, all in the province of Pampanga.** ("Franchise Area").

1.2. SPI is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with business address at 5th Floor, C5 Office Building Complex, #100 E. Rodriguez Jr. Ave., C5 Road, Bo. Ugong, Pasig City.

1.3. The 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.

II. Nature of the Application

2.1 The Joint Application for approval of the Emergency Power Supply Agreement ("EPSA") entered into by and between PELCO III and SPI, is being submitted to the Honorable Commission for its review and approval pursuant to Sections 25[1] 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 5[4] of its Implementing Rules and Regulations (IRR), Rule 20(B) of its Rules of Practice and Procedure, and other pertinent rules and regulations.

III. Statement of Facts

3.1 Prior to this application, PELCO III was sourcing its power from Masinloc Power Co. Ltd (MPCL). However, last October 25, 2025, its EPSA with MPCL already expired.

3.2 PELCO III is now in need of 60 MW demand to augment the required capacity of the coop. Since PELCO III is an indirect WESM member, PELCO III cannot source power from the WESM.

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[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.

3.3 Considering the urgency of the situation, and to have a reliable, accessible, and efficient electric service and avert exposure to the volatile prices in the WESM for its MCOs, PELCO III looked for reliable emergency power suppliers that can address its immediate needs and ensure uninterrupted power supply to the cooperative.

3.4 PELCO 3 solicited offers from the following generation companies: Citicore Power, Inc., SN Aboitiz Power Group, First Gen, San Miguel Global Power (with proposal under Sual Power Inc.) and Aboitiz Power (with proposal under Therma Luzon, Inc.). Only Sual Power Inc. and Therma Luzon, Inc. submitted their offer letters.

3.5 After careful consideration of the offers from both generation companies, Sual Power Inc. was accepted by PELCO III because of its competitive rate and beneficial terms.

3.6 PELCO III then informing the Department of Energy, Energy Regulatory Commission and National Electrification Administration, through a letter, that its board and management agreed that the cooperative will enter into an Emergency Power Supply Agreement (EPSA) with a 60 MW demand to a qualified power provider to augment the required capacity of the coop because of the near expiration of the EPSA with MPCL and the status of the CSP.

3.6 Hence, on October 15, 2025, an Emergency Power Supply Agreement was executed between PELCO III and SPI for the supply of 60 megawatts which started last October 26, 2025.

IV. Salient Features of the EPSA

4.1 TERM

4.1.1 This Agreement shall be binding and effective between the Parties on the date of signing ("Execution Date") and the supply duration shall be up to a maximum period of one (1) year or twelve (12) Billing Periods from Supply Effective Date ("SED") or up to the approval by the ERC of the power supply agreement resulting from the BUYER's conduct of its Competitive Selection Process, whichever comes first.

4.1.2 The SED shall be whichever comes later of: a) 26 October 2025; or b) the 26th Day of the calendar month when the copies of the resolutions approved by the BUYER's Board of Directors authorizing

the execution, delivery and performance of the BUYER of this Agreement, duly certified by the BUYER's Board Secretary, have been received by the SELLER from the BUYER.

4.3 **Security Deposit:** The BUYER shall post a Security Deposit equivalent to one hundred percent (100%) of the estimated monthly power bill invoice.

4.4 **Form.** The Security Deposit shall be in the form of cash, cash bond, manager's or cashier's check, bank certified check, irrevocable stand-by letter of credit, performance bond or bank guarantee "callable on demand" issued by a financial institution, or any other forms of security, such as but not limited to escrow account to be administered by a bank acceptable to the SELLER, in such form and substance acceptable to the SELLER.

4.5 **Contract Capacity and Actual Energy Delivered:** Beginning SED, the SELLER shall make available to the BUYER, and the BUYER shall purchase from the SELLER the Contract Capacity as stated in Annex "I". The BUYER acknowledges that it is obligated to "take or pay" the Contract Capacity in Annex I and "take and pay" the Actual Energy Delivered. The Contract Capacity specified in Annex "I" shall not be changed by either Party except in cases provided for this Agreement.

The Contract Capacity and Actual Energy Delivered shall be delivered by the SELLER at the high voltage side of the main transformer of the Plant, as provided in Annex IV, or from plants owned and/or operated by any of its affiliates, other electricity generators, including the WESM. This will be used for purposes of declaration of BCQ's, billing and settlement. Title and risk of loss for the Contract Capacity and Contract Energy, such as but not limited to, Line Rental and other WESM Charges, shall be transferred to the BUYER at the high voltage side of the Plant's transformer.

4.6 **Outages:** During the term of this Agreement, the SELLER shall guarantee the supply of Contract Capacity to the BUYER, even during Scheduled and Unscheduled Outages of the Plant. For avoidance of doubt, an Event of Force Majeure as defined in Article 11 shall not be considered as an Outage.

4.7 **Contract Charges and Adjustments:**

4.7.1 **Generation Charges.** The BUYER shall pay Generation Charges comprising of the following:

4.7.2 **Monthly Generation Cost Payment ("MGCP")** Shall be equivalent to the product of the Flat Generation Rate ("FGR") as provided in Annex II (as adjusted based on the Monthly Billing Formula provided in Annex III) and the Actual Energy Delivered.

4.7.3 Throughout the duration of the Agreement, except during Events of Force Majeure, the SELLER shall guarantee the supply of Contract Capacity to the BUYER, even during Scheduled and/or Unscheduled Outages of the Plant, to be paid by the BUYER at Contract Charges.

4.7.4 If at its sole option, the SELLER provides, and the BUYER accepts, Replacement Power during an Event of Force Majeure that affects the capability of the Plant to deliver the Contract Capacity, the same is to be paid by the BUYER at Contract Charges.

4.7.5 The BUYER agrees that it will pay the adjusted FGR as stated in Annex II for the Contract Capacity and Delivered Energy and that at any time during the implementation of this Agreement prior to the Parties' receipt of the ERC Approval, should the BUYER refuse and/or make payments for power supply lower than the adjusted FGR pursuant to whatever government regulatory issuance of whatever nature, the BUYER knowingly acknowledges the SELLER's right to immediately suspend the supply thereof. If within the period of ten (10) Days after the suspension of the supply to the BUYER and the Parties still fail to arrive at an amicable solution, the BUYER conclusively acknowledges the SELLER's right to terminate the Agreement without prejudice to all the available remedies it has such as but not limited to the collection of all outstanding accounts that accrued prior to the termination of the Agreement.

4.7.6 **Taxes.** All applicable existing taxes including Value Added Tax ("VAT"), as well as all other future taxes (except Corporate Income Tax), that may be imposed by the government and which may be legally passed on by the SELLER to the BUYER in connection with the SELLER's performance of its obligation under this Agreement, including any increase or adjustments thereon, shall be for the account of the BUYER.

4.7.7 **Other Associated Charges.** The 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.

4.7.8 **Prompt Payment Discount.** The BUYER may avail of the PPD equivalent to three percent (3.0%) applied to the total prevailing FGR (excluding Associated Charges, Replacement Power cost, if any, and Value Added Tax) provided that:

a. The BUYER has no arrears from previous power billings including the Security Deposit or any unpaid charges or penalties including Value-Added Tax ("VAT");

b. The BUYER has submitted all necessary BIR Tax Certificates for all taxes withheld as well as for all zero-rated VAT end-consumers and;

c. The BUYER pays the power bill invoice in full within ten (10) days from receipt thereof.

The PPD shall take effect upon SED, provided that the BUYER complies with the conditions set forth in Section 9.1.

The BUYER shall not automatically deduct the PPD from the payment of its current power bill invoice. 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.

V. Generation Rate Impact Analysis

EXISTING EPSA WITH MPCL	
PRICE COMPONENT	*RATE (Php/kwh)*
Capacity Fee (CF)	3.0827
Fuel Fee	3.7173
TOTAL CONTRACT PRICE (GROSS)	6.8000
Less : PPD (3%)	-0.2040
CONTRACT PRICE (Net)	**6.5960**

TLI PROPOSAL

PRICE COMPONENT	*RATE (Php/kwh)*
Capital Recovery Fee (CRF) @65%	2.2007
Fixed O&M Fee (FOM) @65%	0.3285
Variable O&M Fee (VOM)	0.1995
Fuel Fee (FF)	2.9236
TOTAL CONTRACT PRICE (GROSS)	5.6523
Less : PPD	-0.0429
CONTRACT PRICE (Net)	**5.6094**

EFFECTIVE RATE		*UNIT*
Hours in a month (A)	720	hr
Capacity (B)	60,000	kW
Capacity Utilization (C)	0.65	
Product of ABC	28,080,000	kWhr
Purchased Energy	257,446,25	kWhr
Factor	1.0907	
TOTAL CONTRACT PRICE (GROSS)	5.6523	Php/kwh
EFFECTIVE RATE	**6.17**	**Php/kwh**

SPI PROPOSAL	
PRICE COMPONENT	*RATE (Php/kwh)*
Flat Generation Rate (FGR)	5.6200
TOTAL CONTRACT PRICE (GROSS)	5.6200
Less : PPD (3%)	-0.1686

CONTRACT PRICE (Net)	5.4514

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

Annex	Documents/Information
ROS Requirements	
01	Duly signed Emergency PSA
02 and series	DU's Supply and Demand Scenario (during the time of emergency situation), Details of Existing Suppliers, Contract utilization, Average Daily Load Curve in accordance with Commission's templates under Annex "1" and "2" of the Prefiling Checklist
03	Executive Summary of the EPSA
04-series	Generation Rate and Derivations including cost analysis ***(confidential)*** Sample Bill Rate Impact Analysis
05	Certificate of SPI on Previously Submitted Documents • Fuel Supply and Sworn Statement on the Fuel Procurement • Relevant Technical and economic characteristics of the plant including outages
Legal Service Requirements	
A-series	CSP Documents
B	Secretary's Certificate of SPI
C and C-1	Certificate of email registration of SPI and PELCO III
D and D-1	Verified Declarations of SPI and PELCO III

E-series	Board Resolutions of PELCO III
F	Proof of Exemption from the conduct of CSP
G	Affidavit of Force Majeure (PELCO III)
H	Verification and Certification Against Forum Shopping
I-series	Solicitation letters and proposals from generation companies

The Joint Application is likewise consistent with Section 1 of 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).*

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).*

The EPSA with SPI was made to ensure the continuous supply of power to PELCO III 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.

VI. Allegations in Support of the Confidential Treatment of Annex 04-series

6.1 Rule 4 of the Honorable Commission's Rules of Practice and Procedure provides that PELCO III and SPI may request that information may not be disclosed.

6.2 SPI prays for the confidential treatment of the information contained in Annex 04-series, and not disclosed except to the officers and staff of the Honorable Commission and its staff.

6.3 **Annex 04-series** contains the details of PELCO III's BOI Terms and Conditions, power rate calculations and financial model as well as the manner by which these were derived, and the pertinent details of coal supply contracts. 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.*[5], 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

[5] G.R. No. 172835, December 13, 2007

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)*

6.4 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 **Annex 04-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 SPI's operating costs and expenses.

6.5 More importantly, SPI's competitors, should they obtain the information in **Annex 04-series**, 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;

a. Accordingly, SPI submits one (1) copy of **Annex 04-series,** in a sealed envelope, with the said envelope and each page of the documents and/or information stamped with the word *"Confidential"*.

b. 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 confidential"***.[6]

c. 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, Applicants PELCO III and SPI most respectfully pray that the Honorable Commission:

i. **ISSUE** an Order treating **Annex 04-series** 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;

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[6] Letter (d), Section 4, of the ERC Rules and Practice and Procedure.

ii. After due notice and hearing, **ISSUE** a Decision approving the instant Joint Application ***in toto*** which will thereby allow/authorize PELCO III 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.

Pasig City, 23 February 2026.

(Signature page of counsels will follow)

PAMPANGA III ELECTRIC COOPERATIVE (PELCO III)

By:

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PTR No. 3963826 / 01-06-2026 / Pasig City
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[redacted]

[redacted]

ALEXIS D. SOLACITO
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IBP No. 546049 / 04 - 28 - 2025 / Iloilo
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IBP Invoice No. 536845 / 07 January 2026 /
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MCLE Compliance No. VIII-0016943 valid until 14 April 2028
Roll No. 39024