

PANAY - GUIMARAS EC POWER CONSORTIUM, INC.



JOINT THIRD PARTY BIDS AND AWARDS COMMITTEE

**Competitive Selection Process (CSP) for the procurement of the power supply requirement
for base load, intermediate and peaking of seven (7) Electric Cooperatives
in Panay and Guimaras**

SUPPLEMENTAL BID BULLETIN NO. 09

Date : **July 14, 2022**
To : **All Bidders of Lot No. 3 and Observers**
Subject : **Replies and Clarifications on Additional Queries and Concerns**

The PGEPCCI-JTPBAC hereby issues this Supplemental Bid Bulletin No. 09 to address the queries and clarifications raised by the Bidders for the above-stated project.

Attached herewith as Annexes to this Supplemental Bid Bulletin are the following:

- Annex BB-09-A - Checklist of Required Documents for Bid Opening
- Annex BB-09-B - ITB Annex D-1 (as revised)
- Annex BB-09-C - ITB Annex D-2 (as revised)
- Annex BB-09-D - ITB Annex D-4 (as revised)

This Supplemental Bid Bulletin No. 09 and all its Annexes shall form part of the Bidding Documents. Any terms, conditions and provisions inconsistent with this Bid Bulletin are hereby amended, modified, and superseded accordingly.

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INSTRUCTIONS TO BIDDERS

SECTION/SOURCE DATA	DESCRIPTION	COMMENTS/QUESTIONS/CLARIFICATIONS	JTPBAC RESPONSE
Section 14 - Technical Proposal	<p>14.1 The Technical Proposal shall detail the plan on how the Bidder will supply the power requirement of the Panay and Guimaras ECs from the following options and based on the Terms of Reference (TOR):</p> <p>A. Existing system capacity:</p> <ul style="list-style-type: none"> i. Explanation on the constraints on the availability of the power supply. ii. Description of the scheduling flexibility and/or scheduling obligations the ECs will have, if any, for energy dispatch. iii. Description of the Delivery Point or Points at which power will be delivered. iv. Explanation of congestion point or points that could result in the process of delivering power to each EC. v. Specification on the expected monthly MW and GWh net sales to the ECs and its effect over the life of contract. 	<ol style="list-style-type: none"> 1.) For item iii, can the TPBAC provide the specific delivery points relevant to Lot 3 CSP. 2.) For item iv, Are the congestion points referring to congestion points within Panay-Guimaras islands only? If no, should existing congestion points be included (e.g. Negros-Panay connection, Metro Cebu congestion, etc.)? 3. We are requesting again a template/format from the TPBAC, for uniformity purposes and to make sure that all necessary details are covered in the Technical Proposal 	<p>ANTECO – 1. Nabas, Aklan NGCP Substation, 2. Brgy. Igbonglo, San Jose, Antique NGCP Substation</p> <p>CAPELCO- Panit-an, Capiz NGCP Substation</p> <p>GUIMELCO-Sta. Barbara, Iloilo NGCP Substation</p> <p>ILECO II- Dingle, Iloilo NGCP Substation</p> <p>ILECO III-1. Dingle, Iloilo NGCP Substation 2. Concepcion, Iloilo NGCP Substation</p> <p>2. Explanation or consideration of congestion will be from the location of power plant to the delivery point of the buyers.</p> <p>3. Free hand, as long as the minimum requirements are stated.</p>
Section 9 - Financial Documents	g) Financial Ratios indicating liquidity measurement ratio, debt ratio, profitability ratio and operating performance ratio	Similar to the AFS, is this also for 2020 and 2021?	This is for 2021 only.

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POWER SUPPLY AGREEMENT

Section/Source Data	Description	Comments/Questions/Clarifications	PGECPCI's RESPONSE
General		Are provisions in the Power Supply Agreement (PSA), except for those clearly stated in the Bidding Documents, open for negotiations between the EC and the Winning Bidder?	The PSA was already submitted for review to the NEA and DOE. Thus, the JTPBAC-PGECPCI shall only consider the minor revisions thereof, <i>provided that, such revisions shall not affect</i> the Terms of Reference and issued Bid Bulletins.
Article 1 Definition of Terms and Interpretation	Billing Month	Suggest to use the terminology "Billing Period" instead of "Billing Month" and throughout the body of the Agreement.	NO.The PGECPCI shall use the term "Billing Month"
Article 1 Definition of Terms and Interpretation	Billing Year - means the period commencing on the 26th day of December and ending on the 25th day of December of the following year.	Suggest to use the term "Contract Year" instead of "Billing Year" with the following definition and use the said term consistently throughout the Agreement "Contract Year" - shall mean a period consisting of twelve (12) consecutive Billing Periods, provided that the first (1st) Contract Year shall only cover the period commencing on the Initial Delivery Date up to December 25, 2022.	NO. The PGECPCI shall use the term "Billing Year"
Article 1 Definition of Terms and Interpretation	" Contracted Capacity " shall mean a capacity of MW reserved by the SELLER for the BUYER for the duration of the Cooperation Period.	Suggest to reword as follows:	
		" Contracted Capacity " shall mean a capacity reserved by the SELLER for the BUYER for the duration of the Cooperation Period as specified in Schedule 1.	REVISE: "Contracted Capacity" shall mean a capacity in MW reserved by the SELLER for the BUYER for the duration of the Cooperation Period as specified in Schedule 1.
		Suggest to use the defined term "Contracted Capacity" consistently throughout the Agreement instead of "Contract Capacity".	YES. The term "Contracted Capacity" shall be consistently used throughout the Agreement.

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Article 1 Definition of Terms and Interpretation		We suggest to include the following terms as defined below and use the said terms consistently throughout the Agreement.	
		<p>“Working day” = “Business Day” “Calendar day” or “day” = “Day”</p> <p>Business Day -means any day, excluding Saturday, Sunday and any day which shall be a legal holiday or a day on which banking institutions are permitted to be closed in City, or in the City of Pasig, provided that in the event that SELLER ceases to have its principal office in Pasig City or BUYER ceases to have its principal office in City, the same shall be replaced with the city or municipality where SELLER or BUYER has transferred its principal place of business;</p> <p>Day - refers to calendar day</p>	REVISE: The term “Working Day” is changed to “Business Day,” but the use of the term “Calendar Day” shall be maintained throughout the Agreement.
Article 1 Definition of Terms and Interpretation	1.2 Interpretation	Suggest to include the following:	
		(f) references to Articles and Schedules shall refer to the Articles and Schedules of this Agreement;	ACCEPTED
		(g) “include” or “including” means including without limitation;	ACCEPTED.

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		<p>(h) "or" is not exclusive;</p>	<p>REVISE Article 1.2 as follows: 1.2 Interpretation. Unless the context otherwise requires:</p> <ul style="list-style-type: none"> a. the singular includes the plural and vice versa; b. reference to a statute, rule, regulation, delegated legislation, memorandum circular or order refers to the same as amended, modified, supplemented or replaced from time to time and to any statute, regulation, rule, delegated legislation or memorandum circular or order made thereunder; c. reference to a consent refers to the same as amended, modified or replaced from time to time, and to any proper order, instruction, requirement or decision of any Governmental Authority thereunder; d. reference to an agreement or instrument refers to the same as amended, notated, modified or replaced from time to time; e. any reference to a government department, authority or agency shall be construed as including a reference to the governmental department, authority or agency which succeeds to the functions thereof. (f) references to Articles and Schedules shall refer to the Articles and Schedules of this Agreement; (g) "include" or "including" means including without limitation; (h) "or" is not exclusive;
<p>Article 1 Definition of Terms and Interpretation</p>		<p>We suggest to include the terminologies with the following definition and use the said terms consistently throughout the Agreement.</p> <p>ASSOCIATED ENERGY – whenever applicable, refers to the Bilateral Contract Quantity ("BCQ") in kilowatt-hours ("kWh") nominated by the BUYER and declared by the</p>	<p>NO. The term "Associated Energy" is not used in the Agreement.</p>

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		<p>SELLER within the term of the Agreement, which in no case shall be lower than Contracted Energy.</p>	
		<p>CONTRACTED ENERGY - means the energy, in KiloWatt-hours (kWh), to be purchased by BUYER from SELLER in a Contract Year as described in detail in Schedule 1.</p>	<p>REVISE the meaning of "Contracted Energy" as follows: CONTRACTED ENERGY- means the energy, in KiloWatt-hours (kWh), to be purchased by BUYER from SELLER in a Contract Year as described in detail in Schedule 1.</p>
		<p>ERC Approval - means the approval, whether provisional, interim relief or final, of the ERC of the terms and conditions of this Agreement, including the pricing structure as set out herein.</p>	<p>ACCEPTED. The term "ERC Approval, " and its meaning as proposed herein, shall be included as part of the Definition of Terms and Interpretation.</p>
<p>2.2 Responsibilities of SELLER.</p>	<p>2.2.1 SELLER shall supply and deliver electricity to BUYER from the Power Plant during the Cooperation Period in accordance with the terms and conditions of this Agreement; provided that, SELLER shall not be obligated to deliver electricity hereunder following the date on which a Termination Notice is validly issued by the SELLER pursuant to a BUYER Default.</p>	<p>May SELLER source supply from other sources, as an alternative/ back-up only, since supply will still be charged at Contract Price and line rental charges is still for SELLER's account (LOT1)? While for LOT 3 the same conditions apply and as long as the consequent Renewable Energy Certificates is also provided?</p> <p>Suggested change:</p> <p>2.2.1 SELLER shall supply and deliver electricity to BUYER from the Power Plant or Other Sources during the Cooperation Period in accordance with the terms and conditions of this Agreement; provided that, SELLER shall not be obligated to deliver electricity hereunder following the date on which a Termination Notice is validly issued by the SELLER</p>	<p>NO. The JTPBAC-PGECPCI will not allow the SELLER to source their supply from other sources other than the Power Plant which was proposed and identified during the bidding process.</p>

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		<p>pursuant to a BUYER Default.</p> <p>Where Other Sources refers to: (i) other power plant/s owned and/or operated by SELLER's affiliates, (ii) other independent power producers or third party-suppliers, and/or (iii) as a last resort, the WESM, from which SUPPLIER may, in its sole discretion, source electric energy for Supply;</p>	
Article 2 The Transaction	2.2.5 SELLER shall shoulder all the expenses necessary for the approval of the PSA such as, but not limited to the, legal, filing, and publication fees.	Please clarify "legal" fees and what other costs relative to the Joint Application are being contemplated under the phrase "such as, but not limited to".	Legal fees shall pertain to lawyer's fees or professional fees incurred for the filing of the application for approval of the PSA. Since the Seller shall process and facilitate the filing, the legal fees and other related expenses, such as, but not limited to, the filing fees, publication fees, photocopying and printing expenses and/or travel expenses, shall be for the account of the SELLER;
Article 3 Supply and Purchase of Electricity	3.1 Supply of Electricity. SELLER shall make available to BUYER the Contracted Capacity from the Power Plant throughout the duration of the Cooperation Period. The Parties agree that the SELLER shall have no obligation to supply more than the Contracted Capacity to BUYER.	3.1 Supply of Electricity. SELLER shall make available to BUYER the Contracted Capacity from the Power Plant, or at any other source including the WESM in case of Replacement Power , throughout the duration of the Cooperation Period except during Force Majeure events. <u>The Parties agree that the SELLER shall have no obligation to supply more than the Contracted Capacity to BUYER.</u>	NO. The JTPBAC-PGECPCI will not allow the SELLER to source their supply from other sources other than the Power Plant which was proposed and identified during the bidding process.
	Section 3.1 Supply of Electricity. SELLER shall make available to BUYER the Contracted Capacity from the Power Plant throughout the duration of the Cooperation Period. The Parties agree that the	We kindly request to revise this as follows: "SELLER shall make available <u>or shall cause to be made available</u> to BUYER the Contracted Capacity <u>primarily</u> from the Power Plant..."	NO. The JTPBAC-PGECPCI will not allow the SELLER to source their supply from other sources other than the Power Plant which was proposed and identified during the bidding process.

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	SELLER shall have no obligation to supply more than the Contracted Capacity to BUYER.	We suggest to include a provision stating that the obligation to supply electricity shall start after ERC approval of the PSA and upon acceptance by the SELLER.	Rejected. Under Article 3.4 of the PSA, the supply of electricity by SELLER and acceptance by BUYER shall start no later than the Initial Delivery Date which shall mark the beginning of the Cooperation Period or such earlier date as the Parties may mutually agree upon in writing, and the satisfaction of the conditions precedent provided under Article 11.
	Section 3.2	Contracted Energy is not a defined term.	The term is already included in the definition.
Section 3.1 of the PSA	xxx BUYER shall submit to SELLER the week-ahead or day-ahead Daily Generation Schedule (DGS) as set out in Schedule 7 of this agreement. BUYER shall purchase and SELLER shall supply, for each Billing Month, the <u>Contracted Energy in accordance with Schedule 1</u>	Change Contracted Energy "Minimum Contracted Energy, as stipulated in Schedule I,..."	REVISED. The word "Minimum" was removed and only the term "Contracted Energy" shall be used in Schedule I.
Section 3.2 of the PSA	Purchase of Electricity. BUYER shall purchase at least the Contracted Energy from the Power Plant throughout the duration of the Cooperation Period.	Change Contracted Energy "Minimum Contracted Energy, as stipulated in Schedule I,..."	REVISED. The word "Minimum" was removed and only the term "Contracted Energy" shall be used in Schedule I.
Article 3 Supply and Purchase of Electricity	3.4 Start of Supply of Electricity. The supply of electricity by SELLER and acceptance by BUYER shall start no later than the Initial Delivery Date which shall mark the beginning of the Cooperation Period or such earlier date as the Parties may mutually agree upon in writing, and the satisfaction of the conditions precedent provided under Article 11.	3.4 Start of Supply of Electricity. The supply of electricity by SELLER and acceptance by BUYER shall start no later than the Initial Delivery Date which shall mark the beginning of the Cooperation Period or such earlier date as the Parties may mutually agree upon in writing, and the satisfaction of the conditions precedent provided under Article 11 including the receipt by the Parties of the ERC Approval for this Agreement.	REJECTED. No need for further revision.
Section 3.5	Delivery Points	Please confirm that Delivery Points are at the respective high voltage side of the step-up transformers of the Plant and/or Other Sources	Delivery Point shall be at the metering point or nodal point of the BUYER (usually at NGCP sub-stations)

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			and not on the plant gate of the SELLER. (SELLER is responsible for line rental).
3.6 Scheduled and Unscheduled Outage.	SELLER shall exert best efforts to coordinate with BUYER its nominated Scheduled Outage every year in confirmation of the System Operator. Once a nomination is submitted for Scheduled Outage, the same shall be final and not subject to amendments unless (a) with prior written consent of BUYER , or (b) upon written advice by NGCP for an amendment, or (c) upon written request of BUYER, but in this case, subject to consent of SELLER.	<p>Revised scheduled outages considers various critical factors including plant safety, availability of material and manpower, NGCP approval, customer's needs, etc. Requiring approval from BUYER prior to revision of scheduled outages, considering multiple customers of SELLER, may result to delayed or inefficient implementation of any maintenance or repair activities. Suggest to revise to the following:</p> <p>SELLER shall exert best efforts to coordinate with BUYER its nominated Scheduled Outage every year in confirmation of the System Operator. Once a nomination is submitted for Scheduled Outage, the same shall be final and not subject to amendments unless (a) with prior written <i>consent of notice to</i> BUYER, or (b) upon written advice by NGCP for an amendment, or (c) upon written request of BUYER, but in this case, subject to consent of SELLER.</p>	ACCEPTED. Section 3.6.2 is REVISED, as follows: "SELLER shall exert best efforts to coordinate with BUYER its nominated Scheduled Outage every year in confirmation of the System Operator. Once a nomination is submitted for Scheduled Outage, the same shall be final and not subject to amendments unless (a) with prior written notice to the BUYER, or (b) upon written advice by NGCP for an amendment, or (c) upon written request of BUYER, but in this case, subject to consent of SELLER."
Section 3.8	Buyer's Allowed Scheduled and Unscheduled Maintenance Allowance. Buyer's total maintenance allowance for both scheduled and unscheduled shall be computed as maximum demand multiplied by thirty (30) days and by twenty-four (24) hours and shall be defined in kilowatt-hours (kwh).	Is the maintenance allowance in addition to the Allowed Outages?	REVISED the Definition of Terms to include the term "Buyer's Maintenance Allowance" defined as follows "Buyer's Maintenance Allowance - is the total of Allowed Scheduled and Unscheduled Outages computed as maximum demand multiplied by thirty (30) days and by twenty-four (24) hours and shall be defined in kilowatt-hours (kwh)."
	Scenario 1 and Scenario 2		

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Article 3 Supply and Purchase of Electricity	(a) The Transferring Customer was an existing captive customer of the BUYER prior to COD;	This should be “(a) The Transferring Customer was an existing captive customer of the BUYER prior to Initial Delivery Date ,”	Accepted. REVISE ARTICLE 3.9 as follows: “(a) The Transferring Customer was an existing captive customer of the BUYER prior to Initial Delivery Date (or COD, if new plant).
Article 3 Supply and Purchase of Electricity	1.9 Scenario 2	Please add “(b) BUYER’s RCOA Reduction quantity shall be equivalent to...” on item (b) of Scenario 2.	Accepted - (b) BUYER’s RCOA Reduction quantity shall be equivalent to the average monthly demand of the Transferring Customer for the 12 months immediately preceding the switching date.
	(b) The average monthly demand of the Transferring Customer for the 12 months immediately preceding the switching date		
Article 3 Supply and Purchase of Electricity	(last paragraph of Article 3)	Please confirm if there are pending cases of reduction of demand due to the expansion of franchise of other distribution or private utility.	None.
	In case of reduction of demand due to the expansion of franchise of other distribution or private utility or other circumstances that may affect the BUYER’s franchise and will eventually result to the transfer of customers or takeover of existing distribution assets or facilities, the contracted demand of affected BUYER will have a provision for automatic reduction of demand equivalent to the takeover capacity.		
Article 3 Supply and Purchase of Electricity	3.7.1 <u>During Allowed Outage</u>	Suggest to reword as follows:	Denied. For Replacement Power, the BUYER shall be billed based on the contract rate.
	Seller shall have the right, but not the obligation, to provide the Replacement Power to the Buyer during Allowed Outage. For this purpose, Replacement Power during Allowed Outage shall be billed at Contract Rate, or WESM rates, whichever is applicable.	“Seller shall have the right, but not the obligation, to provide the Replacement Power to the Buyer during Allowed Outage. For this purpose, Replacement Power during Allowed Outage shall be billed at pass-through cost to the Buyer subject to its acceptance. ”	
Article 3 Supply and Purchase of Electricity	3.7.2 <u>In Excess if Allowed Outage</u>	Since the Buyer is guaranteed of supply of Replacement Power during outages beyond the Outage Allowance, the Seller should likewise be guaranteed of payment based on Contract Rate.	Yes, as agreed that Replacement Power shall be based on the Contract Rate.
	In the event the Allowed Outage is exceeded, Seller shall supply or cause the supply to the Buyer Replacement Power at its own cost. However, the Buyer shall continue to pay the Seller for the		

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	Replacement Power at Contract Rate, or WESM rates, whichever is lower.		
3.7 Obligation During Allowed and Beyond the Allowed Scheduled and Unscheduled Outage.	3.7.2 In Excess of Allowed Outage In the event the Allowed Outage is exceeded, Seller shall supply or cause the supply to the Buyer Replacement Power at its own cost. However, the Buyer shall continue to pay the Seller for the Replacement Power at Contract Rate, or WESM rates, whichever is lower.	If SELLER sources from either other power plants or WESM, its responsibility should be to supply Replacement Power at Contract Rate to BUYER. Since BUYER will already have secured supply at the agreed rate, the agree rate should already be sufficient for the BUYER. Suggested revision: "3.7.2 In Excess of Allowed Outage In the event the Allowed Outage is exceeded, Seller shall supply or cause the supply to the Buyer Replacement Power at its own cost. However, the Buyer shall continue to pay the Seller for the Replacement Power at Contract Rate, or WESM rates, whichever is lower."	ACCEPTED. REVISE Section 3.7.2. as follows: 3.7.2 In Excess of Allowed Outage In the event the Allowed Outage is exceeded, Seller shall supply or cause the supply to the Buyer Replacement Power at its own cost. However, the Buyer shall continue to pay the Seller for the Replacement Power at Contract Rate;
	Section 3.7.1 During Allowed Outage. Seller shall have the right, but not the obligation, to provide the Replacement Power to the Buyer during Allowed Outage. For this purpose, Replacement Power during Allowed Outage shall be billed at Contract Rate, or WESM rates, whichever is applicable.	The Replacement Power shall be at Contract Rate only.	Accepted, as agreed.
	Section 3.7.2 In the event the Allowed Outage is exceeded, Seller shall supply or cause the supply to the Buyer Replacement Power at its own cost. However, the Buyer shall continue to pay the Seller for the Replacement Power at Contract Rate, or WESM rates, <u>whichever is lower</u> .	The Replacement Power shall be at Contract Rate only.	Accepted, as agreed.

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	Section 3.8 <u>Buyers Allowed Scheduled and Unscheduled Maintenance Allowance</u> . Buyer's total maintenance allowance for both scheduled and unscheduled shall be computed as maximum demand multiplied by thirty (30) days and by twenty-four (24) hours and shall be defined in kilowatt-hours (kwh).	Please clarify. This is not very clear. Does this mean that (a) Buyer shall have outages as well, or (b) does this provision state how much Replacement Power shall be provided in case Seller is on outage? If it is (b), please clarify how "maximum demand" is computed - at what % capacity utilization factor?	a. Yes, Buyer shall also have outages. b. No, this shall only refer to Buyer's Outage.
	Section 3.9 Reduction in Contracted Capacity	Is there a procedure or record on determining the list of existing captive customers pose to be a contestable customer prior to Initial Delivery Date/COD.	Yes, the respective EC can determine the list of existing customers pose to be a contestable customer
	Section 3.9	There is reference to "COD". Please check if it should read "Initial Delivery Date"	Accepted - "(a) The Transferring Customer was an existing captive customer of the BUYER prior to Initial Delivery Date (or COD, if new plant).
	Section 3.9	We suggest to add Scenario 3 where the Transferring Customer transfers to a RES that is an affiliate of an existing supplier of BUYER. In that case, there should be no reduction of capacity.	Denied as per DOE comments dated Dec.13, 2021
	Section 3.9 (2nd to last paragraph): The Contract Capacity and <u>Associated Energy</u> shall be reduced to equivalent to the reduction in the demand of affected Ecs by reason of the implementation of Retail Competition and Open Access, the Renewable Energy Law, or other relevant Laws and Legal Requirements.	"Associated Energy" is not a defined term. Other provisions use "Contracted Energy" which is also not a defined term.	REVISE Section 3.9 (2nd to last paragraph) as follows: The Contract Capacity and <u>Contracted Energy</u> shall be reduced to equivalent to the reduction in the demand of affected ECs by reason of the implementation of Retail Competition and Open Access, the Renewable Energy Law, or other relevant Laws and Legal Requirements.
	Section 3.9 (last paragraph): In case of reduction of demand due to the expansion of franchise of other distribution or private utility <u>or other circumstances</u> that may affect the BUYER's franchise and will eventually result to the transfer of customers or takeover of existing distribution assets or facilities,	Suggest to rephrase, by deleting " <u>or other circumstances</u> " since the language is too broad.	Denied.

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	the contracted demand of affected BUYER will have a provision for automatic reduction of demand equivalent to the takeover capacity		
3.9 Reduction in Contracted Capacity.	3.9 Reduction in Contracted Capacity. BUYER shall be entitled to a reduction in its Contracted Capacity as a result of the transfer of any of the BUYER's contestable market to another supplier upon written application by the BUYER to the SELLER at least sixty (60) days prior to such reduction.	<p>If the Transferring Customer transfers to a RES affiliated with one of BUYER's other current supplier, suggest to add Scenario 3 below. BUYER can reduce the Contracted Capacity and Contracted Energy of the PSA with the affiliated other current supplier:</p> <p>Scenario 3: If the Transferring Customer transfers to a Retail Electricity Supplier (RES) that is an Affiliate of BUYER's other power suppliers, the BUYER shall be not be entitled to RCOA Reduction.</p>	Denied as per DOE comments dated Dec.13, 2021
Section 3.9 (Scenario 2b) of the PSA	(b) The average monthly demand of the Transferring Customer for the 12 months immediately preceding the switching date	Is what? The average monthly demand is not defined.	Revised- (b) BUYER's RCOA Reduction quantity shall be equivalent to the average monthly demand of the Transferring Customer for the 12 months immediately preceding the switching date. Monthly demand refers to Monthly Average kW demand
	Schedule 4	Please clarify the intention of PGECPCI on the Fixed Rate at different CUF level (100%,90%,80%,70%) and the evaluation worksheet output. This in line with the TOR having no take or pay provision for the Variable and Fuel fee.	Since DU may not always utilize 100% of the contracted energy, DU shall only pay for the energy actually utilized. Hence, the different fixed rates for different CUF level (although utilization shall not be lower than 70%).
Section 4.1 of the PSA	The monthly electricity rate will be based on yearly fixed rate for the duration of cooperation period with the provision of Prompt Payment Discount (PPD) and any other discounts provided.	Please clarify reference of fixed rate when the TOR allows bidders to submit bids with escalation subject to tariff adjustments.	The implementation of incremental fixed rate computation will be annually and based on the LCOE and on the evaluation result or separate template as offered by the seller. This annual rate will not change within and until the end of the

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			contract. This means that there will be no additional cost, variable cost/fuel or pass on rate.
Article 4 Fees	4.2 Payment Procedure	Suggest to include this provision:	
		SELLER may send the power bill electronically through the designated e-mails and other medium as agreed upon by both Parties and proof of receipt of the electronic power bill on the designated e-mail address shall be considered as receipt of the said power bill.	REVISE ARTICLE 4.2. to include the following in the 1st paragraph. SELLER may send the signed power bill electronically, through the designated e-mails and other medium as agreed upon by both Parties, and receipt of the electronic power bill, upon the proper acknowledgment of the BUYER, on the designated e-mail address shall be considered as receipt of the said power bill.
Item 4.3 of the PSA	<p><u>If any undisputed amount payable by BUYER under this Agreement is not paid within fifteen (15) calendar days from the due date:</u></p> <p>(i) <u>BUYER shall pay interest thereon at a rate of 2.5% per annum of the unpaid amount, computed from the date due until the date of full payment:</u></p> <p>(ii) SELLER has the right to immediately suspend the delivery of electricity upon written notice to the BUYER at least forty-eight (48) hours prior thereto, provided that the fees for electricity supplied but not billed shall be immediately due and payable; and</p> <p>(iii) SELLER has a right to demand from the BUYER a security deposit or collateral acceptable to the SELLER, which shall be a condition precedent for the continued supply of electricity by SELLER to BUYER. The foregoing provisions shall</p>	Please clarify this underlined provision	BUYER shall pay interest thereon at a rate of 2.5% per annum of the unpaid amount, computed from the date due until the date of full payment
		Please provide a "full payment under protest" clause in the contract	Denied.
		Please confirm our understanding that i, ii and iii are applicable collectively or altogether	Yes.

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	<p>be suspended upon declaration of the Force Majeure event until the event of the Force Majeure no longer exists.</p>		
<p>4.3 Non-Payment.</p>	<p>4.3 Non-Payment. If any undisputed amount payable by BUYER under this Agreement is not paid within fifteen (15) calendar days from the due date: (i) BUYER shall pay interest thereon at a rate of 2.5% per annum of the unpaid amount, computed from the date due until the date of full payment; (ii) SELLER has the right to immediately suspend the delivery of electricity upon written notice to the BUYER at least forty-eight (48) hours prior thereto, provided that the fees for electricity supplied but not billed shall be immediately due and payable; and (iii) SELLER has a right to demand from the BUYER a security deposit or collateral acceptable to the SELLER, which shall be a condition precedent for the continued supply of electricity by SELLER to BUYER.</p>	<p>> SELLER has ~30 days payment exposure after the last billing period and there is no BUYER's Security Deposit to protect SELLER from further exposure.</p> <p>> Suggested interest charges also below:</p> <p>Proposed language below reduces additional exposure, for consideration:</p> <p>"4.3 Non-Payment. If the full invoice <i>any undisputed amount</i> payable by BUYER under this Agreement is not paid on the <i>within fifteen (15) calendar days from the due date</i>: (i) BUYER shall pay interest thereon at a rate of twelve percent (12%) per annum, computed on a 360-day basis until actual payment is received by the SELLER 2.5% per annum of the unpaid amount, computed from the date due until the date of full payment; (ii) SELLER has the right to immediately suspend the delivery of electricity upon written notice to the BUYER at least forty-eight (48) hours prior thereto, provided that the fees for electricity supplied but not billed shall be immediately due and payable; and (iii) SELLER has a right to</p>	<p>Denied.</p>

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		demand from the BUYER a security deposit or collateral acceptable to the SELLER, which shall be a condition precedent for the continued supply of electricity by SELLER to BUYER."	
4.3	<p>Non-Payment. If any undisputed amount payable by BUYER under this Agreement is not paid within fifteen (15) calendar days from the due date: (i) BUYER shall pay interest thereon at a rate of 2.5% per annum of the unpaid amount, computed from the date due until the date of full payment; (ii) SELLER has the right to immediately suspend the delivery of electricity upon written notice to the BUYER at least forty-eight (48) hours prior thereto, provided that the fees for electricity supplied but not billed shall be immediately due and payable; and (iii) SELLER has a right to demand from the BUYER a security deposit or collateral acceptable to the SELLER, which shall be a condition precedent for the continued supply of electricity by SELLER to BUYER.</p>	Written notice may be delivered electronically?	<p>REVISE Article 13.1 as follows:</p> <p>13.1 Writing. Each communication to be made hereunder shall be made in writing and, unless otherwise stated, may be sent through personal delivery, facsimile, registered mail, special courier or email. Written Notices sent by personal delivery, facsimile, registered mail and special courier shall be effective on the date of the actual receipt thereof. If written notices were sent thru registered mail, the same is deemed as received after fifteen (15) days, if within the same city or province, and after thirty (30) days, if sent outside of the province, unless proven otherwise; Written Notices sent thru email shall be effective on the date the email was acknowledged, provided that, if the receiving PARTY failed to acknowledge receipt within three (3) days after it was sent, the same shall be deemed effective, provided further that, the SENDING PARTY shall send, thru registered mail or special courier, the original copy of the written notice, within three (3) days from the date the email was sent.</p> <p>13.2 Addresses. Any communication, letter or document to be made or delivered by one Party to another pursuant to this Agreement shall be made or delivered to the other Party at the following address, or facsimile number:</p> <p>For SELLER: Name:</p>

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			<p>Designation: Address: Telephone: Fax: Email address: For BUYER: Name: Designation: Address: Telephone: Fax: Email address: or such address, or facsimile number notified by the PARTY to the other PARTY by giving not less than fifteen (15) days' notice of such change of address or number, and shall be deemed to have been made or delivered (i) in the case of any communication made by mail, when left at that address or otherwise received by the addressee; and (ii) in the case of any communication made by facsimile, when a legible copy of such communication has been received.</p>
4.3	The foregoing provisions shall be suspended upon declaration of the Force Majeure event until the event of the Force Majeure no longer exists.	<p>The occurrence of an event of FM should not suspend the obligation of the Buyer to pay any amounts due and demandable under the PSA.</p> <p>Add our template/ standard FM events - we need to be able to invoke FM for preventive emergency shutdowns</p>	The occurrence of an FM shall not suspend the obligation of the Buyer to pay any amount due and demandable, but it will suspend the application of Article 4.3. (i) (ii) & (iii).
	Section 4.3 Non-Payment	interest rate of 2.5% per annum is too small (perhaps even below inflation) that it might	Denied.

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		provide an incentive to default. We suggest to make it T-Bill Rate + 2.5% per annum.	
	Section 4.3 (last paragraph): The foregoing provisions shall be suspended upon declaration of the Force Majeure event until the event of the Force Majeure no longer exists.	We suggest deletion of this paragraph. This paragraph lends to the interpretation that in case of FM, imposition of interest during non-payment is suspended and that SELLER's right to suspend delivery of electricity in case of non-payment is also suspended. FM does not affect the obligation of BUYER to pay. We suggest deletion.	Denied.
	Section 4.4 (paragraph (a)): The yearly fixed rate is inclusive of the 12% Expanded Value Added Tax (EVAT). The PARTIES shall agree to adjust the fixed rate accordingly if there is an increase/decrease in the EVAT.	Please clarify and elaborate the intention of this provision. VAT is payable upon collection.	EVAT is included in the computation of the monthly bill. EVAT is paid upon payment also of the Monthly Bill, and not as collected.
4.4 Payments Free and Clear.	4.4 Payments Free and Clear. All payments made by BUYER to the SELLER shall be subjected to withholding taxes, unless the SELLER provides proof of tax exemptions. Payments by BUYER to SELLER supported by Certificate of Taxes Withheld in the name of the SELLER with the correct amount of tax withheld shall be considered payment free and clear.	Suggested additions below:BUYER shall promptly forward to the SELLER a certificate of tax withheld at source (BIR Form 2307) on or before the 20th day of the calendar month following the payment of the Electricity Fees, showing that the full amount of any such deduction or withholding has been paid over, or will otherwise be remitted to the relevant taxing authority. In case of failure by the BUYER to forward to SELLER the BIR Form 2307, the amount withheld by the BUYER shall be construed as deficiency in payment of the Electricity Fees and which deficiency amount shall be immediately be payable, subject to late payment interest provided in Section 4.3 reckoned from the day after the original	REVISED Article 4.4. to include the following paragraph:BUYER shall promptly forward to the SELLER, by special courier, the original copy of the certificate of tax withheld at source (BIR Form 2307) on or before the 20th day of the calendar month following the payment of the Electricity Fees.

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		payment due date, without prejudice to other remedies provided in the Agreement.	
Article 4 Fees	4.4 Applicable Taxes.	Kindly clarify the provisions under Article 4.4	REVISE. Article 4.4. Applicable Taxes is corrected and changed to Article 4.6. Applicable Taxes.
	(a) The yearly fixed rate is inclusive of the 12% Expanded Value Added Tax (EVAT). The PARTIES shall agree to adjust the fixed rate accordingly if there is an increase/decrease in the EVAT.		The yearly Fixed Rate is the electricity fees provided under Schedule 4 which includes the 12% EVAT. Any other taxes, fees, charges, levies and dues in connection with the purchase and sale of electricity SHALL NOT be passed on to the BUYER.
	(b) The BUYER shall no longer be liable for the payment of any existing taxes, fees, charges, levies and dues imposed or assessed by any Governmental Authority on or in connection with the purchase and sale of electricity and/or payments due to SELLER hereunder.		
(c) Any new taxes, fees, charges, levies and dues (including any increase in the rate or amount thereof but excluding taxes referred to in Section 4.4(a) and (d) shall be imposed to the SELLER thereafter in connection with the performance of its obligations pursuant to this Agreement.			
	Section 4.4 (paragraph (b)): The <u>BUYER shall no longer be liable for the payment of any existing taxes, fees, charges, levies and dues imposed or assessed by any Governmental Authority on or in connection with the purchase and sale of electricity and/or payments due to SELLER hereunder.</u>	We suggest deletion. This statement is too broad. It lends to the interpretation that other than VAT, all other taxes that may be applicable to Buyer shall now be shifted to the Seller. We suggest to rephrase it such that each of the Buyer and Seller shall pay their respective taxes in accordance with applicable laws.	Denied.

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	<p>Section 4.4 (paragraph (c): Any new taxes, fees, charges, levies and dues (including any increase in the rate or amount thereof but excluding taxes referred to in Section 4.4 (a) and (d) <u>shall be imposed to the SELLER thereafter</u> in connection with the performance of its obligations pursuant to this Agreement.</p>	<p>We suggest deletion. This statement is too broad. It lends to the interpretation that other than VAT and income tax, all other taxes that may be applicable to Buyer by any new law shall now be shifted to the Seller. We cannot accept that. We suggest to rephrase it such that each of the Buyer and Seller shall pay their respective taxes in accordance with applicable laws.</p>	<p>Denied.</p>
<p>Items 4.4(a)(b)(c) of the PSA</p>	<p>(a) The yearly fixed rate is inclusive of the 12% Expanded Value Added Tax (EVAT). The PARTIES shall agree to adjust the fixed rate accordingly if there is an increase/decrease in the EVAT. (b) The BUYER shall no longer be liable for the payment of any existing taxes, fees, charges, levies and dues imposed or assessed by any Governmental Authority on or in connection with the purchase and sale of electricity and/or payments due to SELLER hereunder. (c) Any new taxes, fees, charges, levies and dues (including any increase in the rate or amount thereof but excluding taxes referred to in Section 4.4(a) and (d) shall be imposed to the SELLER thereafter in connection with the performance of its obligations pursuant to this Agreement.</p>	<p>Please clarify these provisions</p>	<p>The yearly Fixed Rate is the electricity fees provided under Schedule 4 which includes the 12% EVAT. Any other taxes, fees, charges, levies and dues in connection with the purchase and sale of electricity SHALL NOT be passed on to the BUYER.</p>
<p>4.5 Billing Disputes.</p>	<p>4.5 Billing Disputes.If BUYER disputes any invoice, it shall so inform SELLER in writing within ten (10) calendar days from receipt of such invoice. The BUYER must specify the disputed items in the invoice. If the dispute is not resolved by the due date, BUYER shall pay the undisputed amount on or before such due date and the disputed amount</p>	<p>> Considering the payment exposure of the SELLER of ~30 days, we suggest that payment be made in full and any amount that will be considered as overpayment by the BUYER be returned after: "4.5 Billing Disputes.If BUYER disputes any</p>	<p>Denied.</p>

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	<p>shall be resolved within fourteen (14) calendar days after due date for such invoice. In case the dispute is not resolved in fourteen (14) calendar days, then Article 15 shall apply. It is understood that any dispute of the invoice under this Article 4.5 shall be made in good faith.</p>	<p>invoice, it shall so inform SELLER in writing within ten (10) calendar days from receipt of such invoice. The BUYER must specify the disputed items in the invoice. <i>If the dispute is not resolved by the due date</i>, BUYER shall pay the full invoice <i>undisputed</i> amount on or before such due date <i>and the disputed amount shall be resolved within fourteen (14) calendar days after due date for such invoice</i>. In case the dispute is not resolved in fourteen (14) calendar days, then Article 15 shall apply. It is understood that any dispute of the invoice under this Article 4.5 shall be made in good faith."</p>	
<p>Schedule 6 (no. 1)</p>		<p>Minimum Contracted Energy is not a defined term. The term "minimum energy off-take" is also used in other provisions. We suggest to include a definition and use one term only to refer to MEOT.</p>	<p>The Agreement will not be using the term "minimum energy off-take" but will replace it with "contracted energy." Both terms carry the same meaning.</p>
<p>Section 6.1 Force Majeure</p>		<p>Can the Seller negotiate with the a more detailed FME categories, as it appears that the provision was broad. Also, we suggest that this NOT be an exhaustive list. There should be provision for "similar instances" to be considered FM because we cannot anticipate all possibilities.</p>	<p>No.</p>
<p>Section 6.1 Force Majeure</p>		<p>We suggest the following FM events: a. acts of God; b. acts of war or the public enemy, whether war be declared or not declared, invasion, armed conflict or act of foreign enemy, blockade,</p>	<p>A to M are already covered, except F which is not applicable.</p>

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		<p>embargo, revolution, and public disorders, including insurrection, rebellion, civil commotion, sabotage, riots, terrorism and violent demonstrations;</p> <p>c. strikes, lockouts, riots, labor disputes, in any such case which are widespread or nationwide;</p> <p>d. floods, tidal waves, explosions, fires, earthquakes, typhoons, volcanic eruption and other natural calamities;</p> <p>e. widespread illnesses, endemic, pandemic, and similar events, whether or not officially declared that directly affects a Party's ability to supply and/or receive power;</p> <p>f. accidents of navigation or breakdown or injury of vessels, accidents to harbors, docks, canals, or other assistance to or adjuncts of shipping or navigation, or closure of ports;</p> <p>g. failure of the Visayas grid and/or inability of NGCP to transmit power in full or partial from SELLER to BUYER;</p> <p>h. any Curtailment of the Power Plant's or any of the Units' output by the Market Operator or the System Operator.</p> <p>i. Any System Emergency or Transmission Failure or congestion that may affect the</p>	
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		<p>delivery by the SELLER, or acceptance by the BUYER, of electricity (except if due to the act or omission of a Party seeking to claim an event of Force Majeure, unless otherwise due to an event of Force Majeure). In case of disagreement as to the existence of a Transmission Failure, the Parties shall secure the necessary certification from the appropriate authority such as the Grid Management Committee established under the Grid Code, or the NGCP which certification shall bind both Parties.</p> <p>j. Appropriate actions taken in response to any orders or instructions given by a Governmental Authority or the System Operator or the Market Operator for safety reasons to implement grid security or emergency shutdown (except if due to the act or omission of the Party seeking to claim an event of Force Majeure, unless otherwise due to an even of Force Majeure).</p> <p>k. expropriation or compulsory acquisition of all or any material part of the Facilities, including any sub-transmission or substation facilities to which such Facilities are connected by any Governmental Authority;</p> <p>l. arbitrary, capricious or unreasonable denial, conditioning, variation, termination or voiding of, or failure or delay in granting or renewing, any permit, license or authority by Governmental</p>	
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		<p>Authority required for such Party's performance of its material obligations hereunder, notwithstanding such Party's due application therefore and diligent efforts to obtain the same;</p> <p>m. fuel export/import bans and/or extraordinary increases in fuel costs;</p> <p>m. any other event of similar nature which prevents SELLER from delivering electricity to BUYER, or prevents BUYER from receiving electricity from SELLER.</p>	
Section 6.1	<p>The BUYER and the SELLER shall jointly establish plans for operating the power plant during Force majeure. Such plans shall include recovery from a local or widespread electrical blackout. The SELLER shall comply with the Emergency procedures and provide contingency plan if a force majeure occurs.</p>	<p>Please define "contingency plan" and "Emergency procedures"</p>	<p>REVISE Article 6.1. to read as follows: The BUYER and the SELLER shall jointly establish plans for operating the power plant during Force Majeure. Such plans shall include recovery from a local or widespread electrical blackout. The SELLER shall comply with the Emergency procedures and provide contingency plan if a force majeure occurs. The emergency plan and contingency plan shall be established by the PARTIES within sixty (60) days from effective date.</p>
	<p>Section 6.1 (last paragraph): In case of Force Majeure event as indicated above, <u>minimum energy off-take</u> shall be suspended until the effect of Force Majeure ends. Actual consumption shall be pro-rated to all the BUYER's suppliers.</p>	<p>Minimum Energy Off-take is not a defined term.</p>	<p>Minimum Energy Off-take is the Contracted Energy. REVISE 6.1 to replace the term "minimum energy off-take" to "contracted energy."</p>
	<p>Section 6.4 Extension of Cooperation Period. If any event of Force Majeure occurs during the Cooperation Period, the Cooperation Period shall be extended by a period of time based on the unutilized energy converted into hours.</p>	<p>We suggest that extension be on the basis of kWh. Example, if the FM results in 100,000 kWh unlifted MEOT, then the extension should also be such as to cover 100,000 kWh as well - not on a day-for-day or hour-for-hour basis</p>	<p>Denied. The extension for the Cooperation Period is based on the unutilized energy converted only into hours.</p>

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		because it is possible that FM is only partial (e.g., generator is partially ordered to ramp down by SO) and/or not for the full day (e.g., only for a few hours).	
Section 6.3	6.1 Procedure to Invoke Force Majeure. The PARTY seeking to rely on an event of Force Majeure to excuse failure or delay in the performance of its obligations pursuant to Section 6.2 shall notify the other PARTY as soon as reasonably possible of the nature of Force Majeure claimed and the extent to which the Force Majeure claimed affects the PARTY's obligation under this Agreement, and such PARTY shall resume the performance of its obligations as soon as reasonably possible after the event of Force Majeure no longer exists.	Form of notice - email/SMS/formal written letter?	Additional provision under 6.3. All notices must be in writing and must be served personally or thru email or by registered mail or special courier.
6.4 Extension of Cooperation Period.	6.4 Extension of Cooperation Period. If any event of Force Majeure occurs during the Cooperation Period, the Cooperation Period shall be extended by a period of time based on the unutilized energy converted into hours.	Please see suggested revision: 6.4 Extension of Cooperation Period. If any event of Force Majeure occurs during the Cooperation Period, the Cooperation Period may be <i>shall be</i> extended by a period of time based on the unutilized energy converted into hours, upon mutual agreement of the Parties.	Denied.
Item 6.4 of the PSA	If any event of Force Majeure occurs during the Cooperation Period, the Cooperation Period shall be extended by a period of time based on the unutilized energy converted into hours.	Please clarify this provision	The extension for the Cooperation Period is based on the unutilized energy converted only into hours. Ex.: If the Contracted Energy is 10,000mWh and the unutilized energy due to Force majeure is 2,000mWh, then we divide the unutilized energy (2,000mWh) by the contracted demand 5mW, the

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			result will be 400 hours which shall be the extension in the Cooperation period.
Schedule 7		Pls clarify if the hourly nomination will also be represented at 5 minute interval that is hourly nomination will be divided in 12 interval?	Yes.
Section 7 Change in Circumstance		Change in Circumstances should not only be limited to changes in law. It should also allow for other change in circumstances (not necessarily arising from change in law) that fundamentally changes the premise upon which the parties entered into this contract.	Denied.
Section 7 Change in Circumstances		This provision speaks of the financial impact of a Change in Circumstances on the SELLER. The option to terminate should be solely on the SELLER because it is the affected party. It should not be based on mutual agreement of the parties because that renders this provision ineffective. Finally, termination under this provision should be a "no fault" termination because it is based on a change in law. As such, Section 12.5 should not be applied. Seller should not be subject to termination penalty because this is a no-fault termination.	Denied.
Article 7 Change in Circumstances	In the event of a change occurring after the date of this Agreement in all or any Applicable Requirements (including without limitation any change in interpretation or application thereof) such as, but not limited to, plant de-rating capacity, and as a result thereof, SELLER's financial return on its investment is materially reduced, prejudiced or otherwise adversely affected, SELLER shall give	Suggest the following provision under Change in Circumstances.	Denied.
		7.1 If a change in law, circumstances and other variables beyond the SELLER's control, has a material and adverse effect on the SELLER's financial and economic returns, the SELLER shall give written notice to the BUYER of such changes, the adverse impact thereof on the	Denied.

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	<p>notice thereof to BUYER with a description of the adverse impact, including the reduction in receipts or net income reasonably attributable thereto and the amount believed by SELLER to be due by reason thereof. The PARTIES may mutually agree to terminate this Agreement without prejudice to the provisions of Article 12.5.</p>	<p>SELLER's financial and economic returns and the proposed adjustment to the Capacity and Energy Fees and/or additional costs payable by the BUYER; and the SELLER and the BUYER shall meet within ten (10) Days from receipt of the SELLER's notice, to discuss and come to an agreement on an equitable and justifiable adjustment of the Capacity and Energy Fees as may be reasonably acceptable to the Parties, with a view of substantially preserving the SELLER's financial return at the least cost to the BUYER.</p> <p>7.1.1 Change in circumstances shall include but not be limited to:</p> <ul style="list-style-type: none"> a. Any change in the applicable laws, regulations, resolutions or ordinances, or their application and interpretation, in force on Execution Date; b. Amendments, modifications, repeal or revocation of approvals, licenses, permits, consents, registrations or exemptions in force on Execution Date; c. Any change in the operating environment of the Plant or in the requirements of the Grid which require modifications in the Plant or Plant operations; <p>7.2 Any increase in the Capacity and Energy Fees as a result of the above changes and agreed upon in writing by the Parties shall be</p>	
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		<p>effective upon approval by the ERC. The Parties shall file the application for the approval of the adjustments within thirty (30) Days from execution of the agreement on the adjustment.</p> <p>7.3 If the Parties cannot come to an agreement within ninety (90) Days from receipt of the SELLER's written notice, the SELLER shall have the right to terminate this Contract; provided that, during the said ninety (90)-Day period, the SELLER shall have the right to suspend the supply and delivery of Contract Capacity and Associated Energy to the BUYER to prevent further losses on the part of the SELLER.</p> <p>We believe the above provision will benefit both Parties as it also includes option for negotiation rather than immediate termination of the Agreement.</p>	
	Section 8 Non-Assignment of Agreement	Please include a provision allowing assignment to lenders for purposes of financing or refinancing the Plant. Project Finance lenders will require this.	Denied.
Article 8 Non-Assignment of Agreement	Either PARTY shall not be permitted to assign this Agreement to another party.	This Agreement shall be binding between the Parties, their successors-in-interest and assigns. A Party may not assign this Agreement or its rights and obligations therein to a third party without the other Party's written consent. However, the BUYER acknowledges that the SELLER has, without the need to secure the BUYER's consent, the right to a)	Denied.

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		assign or transfer this Agreement to any affiliates or subsidiaries of the SELLER and b) to pledge, transfer, sell, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any project financing or financial arrangements; provided that the assignee under (a) and (b) hereof shall agree in writing to assume and be bound by the terms and conditions of this Agreement, and upon such assumption, the assignor shall be relieved from any further liability under this Agreement.	
Article 11	Conditions Precedent	Not clear what the CPs are for as these documents would already have been submitted as part of the Bid Submission. If these are CPs for the commencement of supply, should we not include ERC approval etc?	Since there is one PSA per EC, Section 11 requires the submission of a new set of documents (different from those submitted during the bidding).
	Section 11 Conditions Precedent	Please add - as a CP to the start of supply, there must first be ERC approval and acceptance of the approved rates by the SELLER.	Denied.
	(SELLER and BUYER are sometimes referred to herein as " PARTY " or collectively as the " PARTIES ").	Suggest to reword as follows: (SELLER and BUYER <u>may be referred to individually</u> as " PARTY " or collectively as the " PARTIES ")	Denied.
Article 11 Conditions Precedent	11.1 BUYER Conditions Precedent. It shall be a condition precedent to the performance by the BUYER of its obligations hereunder that all the following documents are supplied by the SELLER ,	1. For item (a): If the SELLER is a partnership, will it be allowed to submit Articles of Partnership instead?	Yes (a) Copies of the SEC Certificate of Registration, Articles of Incorporation or Articles of Partnership and By-Laws of the SELLER , each duly certified by the Securities and Exchange Commission (SEC).

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	unless submission thereof is waived by the BUYER:		
	(a) Copies of the SEC Certificate of Registration, Articles of Incorporation and By-Laws of the SELLER , each duly certified by the Securities and Exchange Commission (SEC).	2. For item (b): Can the SELLER submit a Secretary Certificate instead of a Board Resolution?	No.
	(b) Copies of resolutions adopted by the Board of Directors of the SELLER authorizing the execution, delivery and performance by the SELLER of this Agreement and the transactions contemplated hereunder, duly certified by the corporate secretary of the SELLER and in form and substance reasonably satisfactory to the BUYER .	3. This should include receipt by the Parties of the ERC approval of the terms of this Agreement.	Yes. REVISE Article 11 to include another condition precedent, read as follows: 11.3 In both instances, the ERC approval of the PSA shall be a condition precedent to the performance of the parties of their obligations.
Item 11 of the PSA	Provisions on Conditions Precedent	Please include the ERC approval in the Conditions Precedent provision	Accepted. REVISE Article 11 to include another condition precedent, read as follows: 11.3 In both instances, the ERC approval of the PSA shall be a condition precedent to the performance of the parties of their obligations.
Item 12.2 and 12.3 of the PSA	Seller's Right To Terminate / Buyer's Right to Terminate	Will the TPBAC allow bidders to suggest provisions under the SELLER's Right to Terminate and the BUYER's Right to Terminate?	We will only allow minimal alterations provided that it shall NOT affect the Terms of Reference and issued Bid Bulletins.
12.2 SELLER's Right to Terminate.	12.2.1 BUYER's Events of Default. b. BUYER defaults in the payment when due of any undisputed amount payable under this Agreement and such failure continues for a period of not less than sixty (60) days.	SELLER already has ~30-day payment exposure from last day of delivery to payment due date and BUYER has no Customer's Security Deposit. BUYER also still has 30-day curing period. Suggested revision lowers exposure of SELLER... "12.2.1 BUYER's Events of Default.	Denied. There are no conflicting provisions. If there is non-payment after 15 days after due date of the undisputed amount, the seller may already charge the BUYER the interest 2.5% per annum. However, BUYER is only considered in default, for purposes of terminating this agreement, if non-payment is more than 60 days after due date.

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		b. BUYER defaults in the payment when due of any undisputed amount payable under this Agreement <i>and such failure continues for a period of not less than sixty (60) days.</i> "	
Section 12.2.2 vs Section 2.2.1	<p>Section 12.2.2 SELLER may send BUYER a Termination Notice thereafter, and this Agreement shall be effectively terminated thirty (30) days from BUYER's receipt of the Termination Notice</p> <p>vs Section 2.2.1 xxxx provided that, SELLER shall not be obligated to deliver electricity hereunder following the date on which a Termination Notice is validly issued by the SELLER pursuant to a BUYER Default.</p>	Does this mean that upon issuance of the Termination Notice we can discontinue supply even if the effectivity of termination is 30 days from receipt of the Termination Notice?	Yes.
<p>12.2 SELLER's Right to Terminate.</p> <p>12.3 BUYER's Right to Terminate.</p>	<p>12.2.2 Procedure for SELLER to Terminate ... If BUYER fails to cure the BUYER's Default within the 30-day curing period, SELLER may send BUYER a Termination Notice thereafter, and this Agreement shall be effectively terminated thirty (30) days from BUYER's receipt of the Termination Notice.</p> <p>12.4 Procedure for BUYER to Terminate If SELLER fails to cure the SELLER's Default within the 60-day curing period, BUYER may send SELLER a Termination Notice thereafter, and this Agreement shall be effectively terminated thirty (30) days from SELLER's receipt of the Termination Notice.</p>	<p>Suggest to lower Termination effectivity for mutual Parties:</p> <p>"12.2.2 Procedure for SELLER to Terminate ... If BUYER fails to cure the BUYER's Default within the 30-day curing period, SELLER may send BUYER a Termination Notice thereafter, and this Agreement shall be effectively terminated seven (7) thirty (30) days from BUYER's receipt of the Termination Notice.</p> <p>12.4 Procedure for BUYER to Terminate If SELLER fails to cure the SELLER's Default within the 60-day curing period, BUYER may send SELLER a Termination Notice thereafter, and this Agreement shall be effectively</p>	Denied.

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		terminated seven (7) thirty (30) days from SELLER's receipt of the Termination Notice."	
Section 12.6	<p>The BUYER may terminate the Agreement by written notice to the Supplier in cases of default, as follows:</p> <p>a. Non-commencement of Commercial Operation Date; b. Expiration of cooperation period and/or Upon Mutual Agreement; c. Non-fulfillment of conditions for effective date; d. Events of Force Majeure; and e. When the SELLER fails to supply for a period of sixty (60) days for reason wholly attributable to its fault and/or negligence, provided that, the SELLER fails to take reasonable actions or remedies to solve its inability to deliver capacity and energy.</p> <p>The SELLER may terminate the Agreement by written notice to the BUYER when the latter:</p> <p>a. Discontinues operations; b. Declares bankruptcy; or c. Any financial obligation of the BUYER is not paid when due within any applicable grace period.</p>	<p>Commercial Operation Date - not defined Non-fulfillment of conditions for effective date - not defined Events of FM - should refer only to prolonged FM, and such is a ground for Seller termination as well under Section 6.7</p>	<p>REVISE Article 12.6 (2nd par.) as follows: The BUYER may terminate the Agreement by written notice to the Supplier, as follows: a. For new power plants, the non-commencement of Commercial Operation Date, b. Expiration of cooperation period and/or Upon Mutual Agreement; c. Non-fulfillment of conditions provided under this Agreement; d. Due to prolonged Force Majeure; and e. When the SELLER fails to supply for a period of sixty (60) days for reason wholly attributable to its fault and/or negligence, provided that, the SELLER fails to take reasonable actions or remedies to solve its inability to deliver capacity and energy.</p> <p>The 2nd paragraph was deleted since the grounds stated therein is already covered by Art. 12.2.1 (b) and 12.3.1.</p>
Article 12 Term and Termination	12.6 Other Termination Events	Please clarify this provision.	
	c. Non-fulfillment of conditions for effective date;		Revised to "C. Non- fulfillment of conditions provided under this Agreement."

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<p>12.7 Payments on Termination.</p>	<p>12.7.2 Upon the termination of this Agreement in bad faith by the SELLER, the SELLER shall pay the BUYER liquidated damages in the form of a termination penalty amounting to the capital recovery fees, as specified in Schedule 4 and as approved by the ERC for the remainder of the Cooperation Period.</p> <p>For purposes of this Article 12.7.2, a termination by the SELLER shall be deemed to have been done in bad faith or intentional breach should such termination be a mere termination by convenience.</p>	<p>Request to mutualize provision:</p> <p>"12.7.2 Upon the termination of this Agreement in bad faith by a Partythe SELLER (Terminating Party), the Terminating Party SELLER shall pay the Non-terminating Party liquidated damages in the form of a termination penalty amounting to the capital recovery fees, as specified in Schedule 4 and as approved by the ERC for the remainder of the Cooperation Period.</p> <p>For purposes of this Article 12.7.2, a termination by the Terminating Party SELLER shall be deemed to have been done in bad faith or intentional breach should such termination be a mere termination by convenience."</p>	<p>Denied.</p>
<p>Section 12.7.2</p>	<p>12.7.2 Upon the termination of this Agreement in bad faith by the SELLER, the SELLER shall pay the BUYER liquidated damages in the form of a termination penalty amounting to the capital recovery fees, as specified in Schedule 4 and as approved by the ERC for the remainder of the Cooperation Period.</p> <p>For purposes of this Article 12.7.2, a termination by the SELLER shall be deemed to have been done in bad faith or intentional breach should such termination be a mere termination by convenience.</p>	<p>This section should apply to both Parties.</p> <p>Penalty should be more clearly defined - "for the remainder of the Cooperation Period" suggests that the Seller shall be penalized for the remainder of contract duration, which implies that the PSA continues despite termination and the payment of liquidated damages.</p>	<p>Revised Section 12.7.2 Upon the termination of this Agreement in bad faith by the SELLER, the SELLER shall pay the BUYER liquidated damages in the form of a termination penalty amounting to the yearly fixed rate, as specified in Schedule 4 and as approved by the ERC, for the remainder of the Cooperation Period. Penalty is computed until the remaining cooperation period despite the termination of the Agreement.</p> <p>For purposes of this Article 12.7.2, a termination by the SELLER shall be deemed to have been done in bad faith or intentional breach should such termination be a mere termination by convenience.</p>
		<p>Will there be a separate PSA template for Lot No.1 (Open Technology) and Lots 2,3 and 4 for RE requirement?</p>	<p>We will use the same PSA template for all lots.</p>

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	Section 12.2.1 (paragraph a)	"initial delivery date" should be capitalized because it is a defined term.	ACCEPTED. "INITIAL DELIVERY DATE"
	Section 12.3.1 (paragraph b): SELLER ceases or discontinues to deliver electricity for a period of sixty (60) consecutive days, except in instances allowed under this Agreement.	We suggest to revise as follows: SELLER ceases or discontinues to deliver electricity for a period of sixty (60) consecutive days, except in <u>case of expropriation and/or in other instances allowed under this Agreement.</u>	Denied.
	Section 12.6 last 2 paragraphs	We suggest deletion of the last 2 paragraphs of Section 12.6. These events are inconsistent with and are already covered by Sections 12.2 and 12.3. In addition, expiration, mutual termination or FM are not "default" but these events are referred to as "default" here. We suggest deletion.	Accepted. Section 12.6 was already revised.
	Section 12.7.1	In case this Agreement is terminated due to Buyer's default, it should also be liable for Termination Penalty. This provision only states that Buyer shall only be responsible for paying its electricity bills. There is a moral hazard when there is no termination penalty for default. We suggest to make termination penalty mutual. We also suggest that termination penalty be capped CRF x Capacity x remainder of Cooperation Period but not to exceed 3 years.	The buyer's default is not tantamount to bad faith. Thus, BUYER should not be charged with termination penalty similar to that of a SELLER who acted in bad faith.
	Section 12.7.2	May we suggest not to use the term "bad faith". We suggest to revise that in case of termination due to Seller's default, then it shall be liable for termination penalty. We suggest to cap termination penalty to CRF x Capacity x remainder of Cooperation Period but not to exceed 3 years.	Denied. Bad faith is termination for the convenience of the SELLER.

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<p>Article 15 Dispute Resolution</p>	<p>15.1 Regular Meetings. Throughout the term of this Agreement, authorized representatives of BUYER and SELLER shall meet regularly every month during the rest of the Cooperation Period to discuss any concern arising from the implementation of the Agreement to ensure that arrangements between Parties proceed on a mutually satisfactory basis.</p>	<p>Suggest to revise as follows: 15.1 Regular Meetings. Throughout the term of this Agreement, authorized representatives of BUYER and SELLER shall meet regularly, <u>either physically or via video/teleconferencing,</u> every month <u>or as may be necessary,</u> during the rest of the Cooperation Period to discuss any concern arising from the implementation of the Agreement to ensure that arrangements between Parties proceed on a mutually satisfactory basis.</p>	<p>ACCEPTED. REVISE Article 15.1 Regular Meetings. Throughout the term of this Agreement, authorized representatives of BUYER and SELLER shall meet regularly, either physically or via video/teleconferencing, every month or as may be necessary, during the rest of the Cooperation Period to discuss any concern arising from the implementation of the Agreement to ensure that arrangements between Parties proceed on a mutually satisfactory basis.</p>
<p></p>	<p>Section 16 Jurisdiction</p>	<p>ERC has limited Jurisdiction. We suggest to add a provision - for those Disputes outside of ERC Jurisdiction, then it shall be subject to PDRCI arbitration (3 arbitrators, English Language, Pasig City).</p>	<p>Denied. THE PSA ALREADY HAS A PROVISION FOR DISPUTE RESOLUTION UNDER ARTICLE 15. THE PARTIES SHALL EXHAUST ALL REMEDIES AVAILABLE UNDER THE PSA WITHOUT THE FURTHER NEED TO SUBMIT TO ARBITRATION.</p>
<p>Recitals</p>	<p></p>	<p>Where is the recital pertinent to the CSP conducted by the EC for the power supply requirements?</p>	<p>ACCEPTED.</p>
<p></p>	<p></p>	<p>Suggest to include an additional Whereas clause as follows:WHEREAS, the BUYER has complied with the competitive selection process requirement under Energy Regulatory Commission (“ERC”) Resolution No.13, Series of 2015 (“ERC Reso. No.13), otherwise known as “Resolution Directing All Distribution Utilities (“DUs”) for the conduct of a Competitive Selection Process (“CSP”) in the procurement of their Supply to the Captive Market”, Department of Energy (DOE) Circular No. DC</p>	<p>Accepted.</p>

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		<p>2018-02-003, “Adopting and Prescribing the Policy for the Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreement for the Captive Market”; Department of Energy (DOE) Circular No. DC 2021-09-0030 , “Amending Certain Provision of and Supplementing Department Circular No. DC 2018-02-0003 on the Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreement for the Captive Market”; and NEA Memorandum No. 2017-003 entitled “Policy in the Conduct of Competitive Selection Process of the ECs’ Power Supply Agreement”;</p>	
<p>Page 1</p>	<p>“NAME OF THE SELLER”, a corporation duly organized and existing under the laws of the Republic of the Philippines with principal address at _____ , represented herein by its President, _____ , as per Board Resolution no. _____ (hereinafter referred to as “SELLER”);</p>	<p>May we request to allow two (2) authorized representatives indicated in the Secretary Certificate to sign the Power Supply Agreement?</p> <p>Suggest to reword as follows:</p> <p>xxx as per <u>Secretary Certificate dated</u> (hereinafter referred to as “SELLER”)</p>	<p>The JTPBAC will allow only ONE (1) Authorized Representative as signatory in the PSA.</p>
<p>General Comments</p>		<p>We suggest to have a period of PSA negotiation to be stated in the CSP calendar/schedule wherein parties can perfect the long-term PSA before signing to mirror items which are lacking in the current PSA draft but are proposed in good faith and will benefit both of the parties.</p>	<p>PSA was submitted for review to the NEA and DOE thus we only allow minimal revisions, provided that, the revisions shall NOT affect the Terms of Reference and issued Bid Bulletins</p>

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General Comments		In case of conflict between Instructions to Bidders, PSA, and TOR, which one shall prevail?	In case of conflict, the Terms of Reference will prevail.
General Comments		Does PGECPCI require discounts during the negotiation / PPSA finalization?	PSA was submitted for review to the NEA and DOE thus we only allow minimal revisions, provided that, the revisions shall NOT affect the Terms of Reference and issued Bid Bulletins
ARTICLE 1 DEFINITION OF TERMS AND INTERPRETATION 1.1 Definitions	ARTICLE 1 DEFINITION OF TERMS AND INTERPRETATION 1.1 Definitions “Electricity Fees” means the electricity fees payable by BUYER to SELLER.	We propose to change “Electricity Fees” to “Contract Price”. Proposed revision: “Contract Price” means the price (as adjusted in accordance with Schedule 1) to be paid by the Buyer to the Seller for the purchase of the Product, as specified herein. The Contract Price is comprised of the relevant Capacity Price and Energy Price.	Denied. Electricity Fees means the fixed rate as offered by the Seller including, capacity fee, O&M fee, market fees, fuel fee, e-VAT, line rental as specified in the evaluation worksheet.
	1.2 Interpretation. Unless the context otherwise requires: a. the singular includes the plural and vice versa; b. reference to a statute, rule, regulation, delegated legislation, memorandum circular or order refers to the same as amended, modified, supplemented or replaced from time to time and to any statute, regulation, rule, delegated legislation or memorandum circular or order made thereunder; c. reference to a consent refers to the same as amended, modified or replaced from time to time, and to any proper order, instruction, requirement or decision of any Governmental Authority thereunder;	Item d - Suggest to edit as “reference to an agreement or instrument require the agreement to be recorded in writing and refers to the same as amended, notated, modified or replaced from time to time”	Denied. The term "agreement" or "instrument" already refers to a written document.

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	<p>d. reference to an agreement or instrument refers to the same as amended, notated, modified or replaced from time to time;</p> <p>e. any reference to a government department, authority or agency shall be construed as including a reference to the governmental department, authority or agency which succeeds to the functions thereof.</p>		
<p>ARTICLE 2 THE TRANSACTION</p>	<p>2.1 Transaction. The transaction shall consist in the supply of electricity by the SELLER to the BUYER, and the purchase by the BUYER of electricity from the SELLER, under the terms of this Agreement for the duration of the Cooperation Period (“Transaction”).</p> <p>2.2 Responsibilities of SELLER. In addition to its other responsibilities herein: 2.2.1 SELLER shall supply and deliver electricity to BUYER from the Power Plant during the Cooperation Period in accordance with the terms and conditions of this Agreement; provided that, SELLER shall not be obligated to deliver electricity hereunder following the date on which a Termination Notice is validly issued by the SELLER pursuant to a BUYER Default.</p> <p>2.2.2 SELLER shall comply with all Applicable Requirements in force from time to time during the term hereof required for the performance of its</p>	<p>Proposed Revision:</p> <p>2.2.1 SELLER shall supply and deliver electricity to BUYER from the from its Power Plant, WESM and other sources during the Cooperation Period in accordance with the terms and conditions of this Agreement; provided that, SELLER shall not be obligated to deliver electricity hereunder following the date on which a Termination Notice is validly issued by the SELLER pursuant to a BUYER Default.</p> <p>xxx</p>	<p>Denied. The supply of power from sources other than the power plant, proposed and identified during the bidding, are not allowed except for Replacement Power during allowed outages under Section 3.7 wherein SELLER may source from WESM, provided that, BUYER shall be billed based on the contract rate and not the WESM rate.</p>

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	<p>obligations hereunder.</p> <p>2.2.3 SELLER shall provide all necessary and reasonable assistance to BUYER in its application for the approval of this Agreement before the ERC.</p> <p>2.2.4 SELLER, together with the BUYER, shall file the joint application with the ERC for the approval of the PSA.</p> <p>2.2.5 SELLER shall shoulder all the expenses necessary for the approval of the PSA such as, but not limited to the, legal, filing, and publication fees.</p> <p>2.3 Responsibilities of BUYER. In addition to its other responsibilities herein:</p> <p>2.3.1 BUYER shall purchase the electricity to be generated by the SELLER from the Power Plant throughout the duration of the Cooperation Period and subject to the terms and conditions of this Agreement.</p> <p>2.3.2 BUYER shall comply with all Applicable Requirements in force from time to time during the term hereof required for the performance of its obligations hereunder.</p> <p>2.4 Cooperation.</p> <p>2.4.1 The Parties shall mutually collaborate and</p>		
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	cooperate with each other and act in good faith in order to achieve the objectives of this Agreement.		
ARTICLE 3 SUPPLY AND PURCHASE OF ELECTRICITY	3.3 Nomination and Dispatch Procedures. The Parties agree that the nomination and dispatch procedures shall be in accordance with Schedule 5.	1. Can the winning bidder negotiate the timeline stipulated on Schedule 5 afterwards, provided that the Parties both agreed? 2. Moreover, can the Winning Bidder propose a nomination protocol in line with the guidelines being currently implemented with its existing DU customers? This is to align processes with its current customer pool and plant dispatch strategies.	1. No, we will not allow the revision of Schedule 5 2. Schedule 5 follows the current nomination protocol of all participating EC
	3.7.1 During Allowed Outage Seller shall have the right, but not the obligation, to provide the Replacement Power to the Buyer during Allowed Outage. For this purpose, Replacement Power during Allowed Outage shall be billed at Contract Rate, or WESM rates, whichever is applicable.	Please confirm that supplier can bill the buyer at WESM rate should it provide RP within the allowable outage. Proposed revision: 3.7.1 During Allowed Outage Seller shall have the right, but not the obligation, to provide the Replacement Power to the Buyer during Allowed Outage. For this purpose, Replacement Power during Allowed Outage shall be billed at Contract Rate, or WESM rates, whichever is applicable. whether sourced from the Facility or other third- party supplier including the WESM, at the ERC-approved rate. xxx	As agreed that Replacement Power shall be based on the Contract Rate.
	3.9 Reduction in Contracted Capacity. BUYER shall be entitled to a reduction in its Contracted Capacity as a result of the transfer of any of the BUYER's contestable market to another supplier upon written application by the BUYER to the	Proposed Revision: 3.9 Reduction in Contracted Capacity. BUYER shall be entitled to a reduction in its Contracted Capacity as a result of the transfer of any of the BUYER's contestable market to	Denied.

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	<p>SELLER at least sixty (60) days prior to such reduction.</p>	<p>another supplier upon written application by the BUYER to the SELLER at least sixty (60) days prior to such reduction, provided that such reduction shall be mutually agreed by both parties. Provided further, that the reduction shall require approval of the ERC and must comply with all applicable rules of competition set by the government</p>	
<p>ARTICLE 4 FEES</p>	<p>4.1 Electricity Fees. In respect of each Billing Month within the Cooperation Period, BUYER shall pay Electricity Fees to SELLER in accordance with Schedule 4.</p> <p>The monthly electricity rate will be based on yearly fixed rate for the duration of cooperation period with the provision of Prompt Payment Discount (PPD) and any other discounts provided.</p> <p>4.2 Payment Procedure. SELLER shall deliver to BUYER, within ten (10) working days after the end of each Billing Month, an invoice of the Electricity Fees payable for the previous Billing Month. The due dates for such invoice shall be every 25th day of the following month. All payments shall be made by BUYER to SELLER in Pesos, as calculated under Schedule 4.</p> <p>The BUYER shall provide the SELLER the proof of payment within five (5) working days from the date of payment. Within five (5) working days after receipt of proof of payment, the SELLER shall</p>	<p>“The foregoing provisions shall be suspended upon declaration of the Force Majeure event until the event of the Force Majeure no longer exists.” – We suggest to delete.</p> <p>The Party claiming Force Majeure shall be excused from the performance of its obligations under this Agreement but not the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure.</p>	<p>The occurrence of a FM shall not suspend the obligation of the Buyer to pay any amount due and demandable, but it will suspend the application of Article 4.3. (i), (ii) & (iii).</p>

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	<p>provide and send to the BUYER the original copy of Official Receipt.</p> <p>4.3 Non-Payment. If any undisputed amount payable by BUYER under this Agreement is not paid within fifteen (15) calendar days from the due date: (i) BUYER shall pay interest thereon at a rate of 2.5% per annum of the unpaid amount, computed from the date due until the date of full payment; (ii) SELLER has the right to immediately suspend the delivery of electricity upon written notice to the BUYER at least forty-eight (48) hours prior thereto, provided that the fees for electricity supplied but not billed shall be immediately due and payable; and (iii) SELLER has a right to demand from the BUYER a security deposit or collateral acceptable to the SELLER, which shall be a condition precedent for the continued supply of electricity by SELLER to BUYER.</p> <p>The foregoing provisions shall be suspended upon declaration of the Force Majeure event until the event of the Force Majeure no longer exists.</p>		
	<p>4.4 Applicable Taxes.(a) The yearly fixed rate is inclusive of the 12% Expanded Value Added Tax (EVAT). The PARTIES shall agree to adjust the fixed rate accordingly if there is an increase/decrease in the EVAT.(b) The BUYER shall no longer be liable for the payment of any existing taxes, fees, charges, levies and dues imposed or assessed by any Governmental Authority on or in connection with the purchase and</p>	<p>Proposed revision:"All value added taxes, sales taxes, goods and services taxes, excise taxes, import duties, stamp taxes, and similar taxes and charges imposed by any government authority ("Governmental Charges") on or with respect to the purchase and sale of electricity (including any increase in the rate or amount), shall be for the account of the Buyer. The Seller's own income taxes, property taxes and</p>	<p>Denied. The YEARLY FIXED RATE is the electricity fees provided under Schedule 4 which includes, but not limited to, the 12% EVAT as specified in the evaluation worksheet. Any other taxes, fees, charges, levies and dues in connection with the purchase and sale of electricity SHALL NOT be passed-on to the BUYER.</p>

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	<p>sale of electricity and/or payments due to SELLER hereunder.(c) Any new taxes, fees, charges, levies and dues (including any increase in the rate or amount thereof but excluding taxes referred to in Section 4.4(a) and (d) shall be imposed to the SELLER thereafter in connection with the performance of its obligations pursuant to this Agreement.(d) Each PARTY shall be liable for their respective income taxes.</p>	<p>local business taxes are for its own account. In the event the Seller is required by Applicable Laws to remit or pay any such Governmental Charges, such amounts will be set forth in the invoice for the next subsequent Billing Period and shall be due and payable by the Buyer according to the provisions of Article 4."</p>	
<p>ARTICLE 5 LIABILITY</p>	<p>5.1 Liability. Each PARTY shall indemnify and hold harmless the other PARTY, its officers, directors, employees or agents from and against any liability, damages, claims or suits of all kind arising from the fulfillment by such PARTY of its obligations under this Agreement, except if such is due to gross, willful and inexcusable negligence or intentional breach by the other PARTY, its officers, directors, employees or agents, of this Agreement. 5.2 Several Liability. Except as may be otherwise stated in this Agreement, the duties, obligations and liabilities of the PARTIES hereto are intended to be several and not joint or collective and nothing contained in this Agreement shall be construed to create an association, trust, partnership, employer-employee relation, agency or joint venture between the PARTIES hereto and each PARTY shall be liable individually for its own obligations under this Agreement. 5.3 Non-Recovery for Consequential Damages. Neither PARTY shall be liable to the other in any event for loss of profits, nor for any indirect, special or consequential losses or damages, whether</p>	<p>5.4 May we know the rationale behind the Cap of P15M? We suggest to limit the liability to the direct actual damages only.</p>	<p>The cap of 15 million shall be applied to the ACTUAL DAMAGES incurred by one PARTY arising from the gross, willful and inexcusable negligence or intentional breach by the OTHER PARTY.</p>

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	<p>arising under tort, contract or otherwise, in respect of or in connection with this Agreement without prejudice to the payment of any such losses or damages which have been or may be deemed included in the calculation of any amount comprised within the Electricity Fees and the payment of any other amount agreed by a PARTY to be payable by it to the other PARTY in accordance with the terms and conditions hereof.</p> <p>5.4 Limit of Liability. In addition to the limitations in Article 5.3, the liability of each PARTY to the other PARTY under (or in connection with) this Agreement, after the Initial Delivery Date (whether arising from breach or otherwise) shall be limited to the amount of Fifteen Million Pesos (PHP15,000,000.00) (the “Cap”); it being understood, however, that any Termination Fee, Electricity Fees, NGCP charges and any other amount agreed by a PARTY to be payable by it to the other PARTY in accordance with the terms and conditions hereof, including interest thereon, which may be due and payable by either PARTY hereunder, shall not be covered by the Cap or be included in calculating whether the Cap has been reached.</p>		
<p>ARTICLE 6</p> <p>FORCE MAJEURE</p>	<p>6.1 Force Majeure.</p> <p>As used herein:</p> <p>“Force Majeure” shall mean any circumstances beyond the reasonable control of a PARTY which effectively prevents such PARTY from performing</p>	<p>1. Please confirm whether the Winning Bidder is allowed to propose revisions to Article 6.</p> <p>2. Please see our comments to the following Sections:</p> <p>6.1 Force Majeure</p>	<p>Denied.</p>

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	<p>its obligations hereunder. Force Majeure events may include without limitation: Acts of God;</p> <p>Acts of war or the public enemy, whether war be declared or not declared, invasion, armed conflict or act of foreign enemy, attacks by insurgents, acts of terrorism, blockade, embargo, revolution and public disorders, including insurrection, rebellion, civil commotion, sabotage, riots and violent demonstrations;</p> <p>Floods, tidal waves, explosions, fires, earthquakes, typhoons and other natural calamities;</p> <p>Issuances of executive order or government intervention (e.g. pandemic, closure, etc.)</p> <p>Grid outages</p> <p>The BUYER and the SELLER shall jointly establish plans for operating the power plant during Force majeure. Such plans shall include recovery from a local or widespread electrical blackout. The SELLER shall comply with the Emergency procedures and provide contingency plan if a force majeure occurs.</p> <p>The BUYER shall not be required to make payments for any capacity that is undelivered/unutilized.</p> <p>In case of Force Majeure event as indicated above,</p>	<p>We note that the list of Force Majeure is not exclusive, however, we would like to propose the inclusion of the following: - Strikes and labor disputes</p> <p>- Inability of the Seller to purchase electricity for the Seller to purchase electricity for delivery to the Buyer due to the unavailability of electricity in WESM</p> <p>In addition, we would like to confirm whether the Winning Bidder may be allowed to propose a list of exclusions or instances which are not to be considered as Force Majeure event.</p>	
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	<p>minimum energy off-take shall be suspended until the effect of Force Majeure ends. Actual consumption shall be pro-rated to all the BUYER's suppliers.</p>		
	<p>6.2 Effect of Force Majeure. Neither PARTIES shall be liable for any failure or delay in the performance of its obligations under this Agreement in case of, but only to the extent caused by, any event of Force Majeure.</p>	<p>6.2 1. Suggest to add language that the party claiming Force Majeure shall be excused from the performance of its obligations herein. 2. Also, it must be clarified that the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure is not excused, provided that the procedure for invoking Force Majeure under 6.3 was complied with.</p>	<p>ALREADY COVERED BY Article 6.1 & 6.2.</p>
	<p>6.7 Termination Due to Prolonged Force Majeure. Either PARTY may terminate this Agreement upon delivery of a Termination Notice at least thirty (30) days to the effectivity of the termination, if an event of Force Majeure occurs during the Cooperation Period that prevents BUYER from receiving or SELLER from delivering electricity at the Delivery Points for a period in excess of six (6) consecutive months provided that BUYER shall pay SELLER all unpaid fees payable up to and including the Termination Date, together with all other amounts then payable under this Agreement.</p>	<p>6.7 Termination Due to Prolonged Force Majeure xxx ... including the Termination Date, together with all other amounts then payable under this Agreement, provided further, that both Parties exhaust all remedies available for this Agreement to survive in accordance with but not limited to the Section 6.4 and 6.5 of this Agreement.</p>	<p>ACCEPTED. REVISE Article 6.7, as follows: Termination Due to Prolonged Force Majeure. Either PARTY may terminate this Agreement upon delivery of a Termination Notice at least thirty (30) days to the effectivity of the termination, if an event of Force Majeure occurs during the Cooperation Period that prevents BUYER from receiving or SELLER from delivering electricity at the Delivery Points for a period in excess of six (6) consecutive months provided that BUYER shall pay SELLER all unpaid fees payable up to and including the Termination Date, together with all other amounts then payable under this Agreement, provided further, that both Parties exhaust all remedies available for this Agreement to survive in accordance with but not limited to the Section 6.4 and 6.5 of this Agreement.</p>

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<p>ARTICLE 8</p> <p>NON-ASSIGNMENT OF AGREEMENT</p>	<p>Either PARTY shall not be permitted to assign this Agreement to another party.</p>	<p>Can the Winning Bidder be allowed to propose revisions to Article 8 due to circumstances requiring the bidder to have a permitted assignment to either a credit financing institution or affiliate so long as the assignment is done in good faith and for the mutual benefit of the Parties?</p>	<p>No.</p>
<p>ARTICLE 9 REPRESENTATION AND WARRANTIES</p>	<p>9.1 SELLER. SELLER hereby represents and warrants the following:</p> <p>a. Corporate Existence. SELLER represents that it is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, and that it possesses the corporate power and authority to execute, deliver and perform obligations under the terms and conditions provided under this Agreement.</p> <p>b. Governmental Permits. SELLER represents and warrants that it has taken, or by Effective Date shall have taken, all necessary corporate action, and has secured or caused to be secured all necessary Governmental Permits to permit it to enter into this Agreement, supply electricity to BUYER, and make payments therefore in the currency referred to herein.</p> <p>c. Compliance with Laws. SELLER shall, at all times, conform to all laws, rules, regulations and ordinances applicable to it.</p> <p>d. No Legal Constraint. SELLER represents and</p>	<p>1. We respectfully suggest having flexibility to revise the language on the Corporate Existence, which would still depend on the Winning Bidder's corporate documents.</p> <p>2. Please confirm whether the Winning Bidder is allowed to propose its Representation and Warranties clauses.</p> <p>d – Suggest to add that the performance of this Agreement is also duly authorized.</p>	<p>1. We will revise in accordance with the nature of their organization (whether corporation or partnership);</p> <p>2. No;</p> <p>3. Denied.</p>

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	<p>warrants that it is free and authorized to enter into this Agreement.</p>		
	<p>9.2 BUYER. BUYER hereby represents and warrants the following:</p> <p>a. Corporate Existence. BUYER represents that it is an electric cooperative duly organized and existing under the laws of the Republic of the Philippines and is authorized to exclusively own, operate and maintain a system for the distribution of electricity in the Municipalities of _____, and that it possesses the power and authority to execute, deliver and perform obligations under the terms and conditions provided under this Agreement, and has the power and authority to execute, deliver and carry out the terms of this Agreement.</p> <p>b. Governmental Permits. BUYER represents and warrants that it has taken, or by Effective Date shall have taken, all necessary corporate action, and has secured or caused to be secured all necessary Governmental Permits as well as compliance to any and all laws and rules and regulations to permit it to enter into this Agreement, purchase electricity from SELLER, and make payments therefore in the currency referred to herein.</p> <p>c. Compliance with Laws. BUYER shall, at all times, conform to all laws, rules, regulations and ordinances applicable to it.</p>	<p>We respectfully suggest requesting the customer to warrant its WESM Membership of good standing.</p>	<p>Already covered by 9.2.C.</p>

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	<p>d. No Legal Constraint. BUYER represents and warrants that it is free to enter into this Agreement.</p>		
<p>ARTICLE 10 CONFIDENTIALITY</p>	<p>10.1 Each of BUYER and SELLER agrees that all information and documents (whether financial, technical or otherwise) obtained by it or its agents from SELLER or BUYER or from its agents' inspections, which have been classified in writing by either BUYER or SELLER as confidential, shall be kept confidential and shall not be disclosed to any other person or entity without the prior written approval of SELLER or BUYER, as the case may be.</p> <p>10.2 This Article 10 shall not apply to:</p> <p>a. Disclosures as may be required by law or by a judicial decree or order, or as required by the laws and regulations of any agency including disclosures required by any laws and regulations of the Philippines or otherwise, relating to the sale and/or exchange of securities;</p> <p>b. Disclosures made by SELLER to its affiliates or related companies, lenders, professional advisors, employees, agents or authorized representatives;</p> <p>c. Disclosures made by BUYER to its lenders, professional advisors, employees, agents or authorized representatives; and</p> <p>d. Disclosures made to persons, firms, organizations or institutions that are already</p>	<p>Section 10.2.b and c – suggest to add investors and potential investors, counsel, and accountants.</p>	<p>REVISE ARTICLE 10.2.b, as follows: Disclosures made by SELLER to its affiliates or related companies, investors, lenders, professional advisors, employees, agents or authorized representatives;</p>

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	<p>participating in or with whom either Party is discussing a potential participation in the Transaction, including any existing or proposed contractors, export credit agencies, lender or prospective lenders and their professional advisors.</p> <p>10.3 The provisions contained in this Article 10 shall survive the termination or expiration of this Agreement.</p>		
<p>ARTICLE 11 CONDITIONS PRECEDENT</p>	<p>11.1 BUYER Conditions Precedent. It shall be a condition precedent to the performance by the BUYER of its obligations hereunder that all the following documents are supplied by the SELLER, unless submission thereof is waived by the BUYER:(a) Copies of the SEC Certificate of Registration, Articles of Incorporation and By-Laws of the SELLER, each duly certified by the Securities and Exchange Commission (SEC).(b) Copies of resolutions adopted by the Board of Directors of the SELLER authorizing the execution, delivery and performance by the SELLER of this Agreement and the transactions contemplated hereunder, duly certified by the corporate secretary of the SELLER and in form and substance reasonably satisfactory to the BUYER.11.2 SELLER Conditions Precedent. It shall be a condition precedent to the performance by the SELLER of its obligations hereunder that all the following documents are supplied by the BUYER, unless their submission is waived by the SELLER:(a) Copies of the Original Charter, Certificate of Franchise or Cooperative</p>	<p>We respectfully suggest having the flexibility to revise the language to accommodate Partnership documents and circumstances of the Winning Bidder.</p>	<p>REVISE Article 11.1 (a), as follows: Copies of the SEC Certificate of Registration, Articles of Incorporation or Articles of Partnership, and By-Laws of the SELLER, each duly certified by the Securities and Exchange Commission (SEC).</p>

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	<p>Development Authority (CDA) Certificate of Registration, Articles of Incorporation or Cooperation and By-Laws of the BUYER, each certified by the corporate secretary of the BUYER or relevant authorities.(b) Copies of resolutions adopted by the Board of Directors of the BUYER authorizing the execution, delivery and performance by the BUYER of this Agreement and the transactions contemplated hereunder, certified by the corporate secretary of the BUYER and in form and substance reasonably satisfactory to the SELLER.</p>		
<p>ARTICLE 12 TERM TERMINATION and</p>	<p>ARTICLE 12 TERM and TERMINATION 12.1 Term. 12.1.1 The term of this Agreement shall end on the last day of the Cooperation Period, unless sooner terminated pursuant to this Agreement. 12.2 SELLER’s Right to Terminate. 12.2.1 BUYER’s Events of Default. The following events shall give SELLER the right to terminate this Agreement (each a “BUYER Default”): a. any of the following occurs before or after the initial delivery date: (i) BUYER admits in writing its inability to pay any indebtedness as and when due; (ii) any bankruptcy, insolvency,</p>	<p>We would like to confirm whether the Winning Bidder is allowed to propose revisions to the Events of Default clauses of the PSA. 12.2.1a(i) - We suggest a cure/remedy period of 5 business days after Buyer’s receipt of written notice for such payment 12.2.1b - We suggest to lessen 60 days to 30 days - “BUYER ceases or discontinues operations and/or distribution of electricity for a period of forty five (45) consecutive days, except in instances allowed under this Agreement.” What are the instances allowed under this Agreement?</p>	<p>Denied.</p>

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	<p>suspension of payment, reorganization or similar proceedings are commenced by or against BUYER; (iii) as part of a scheme of arrangement or composition with its creditors, BUYER makes any assignment for the benefit of its creditors; or (iv) an effective order is made (and not set aside or stayed within 60 days), or an effective corporate resolution is passed, for the liquidation, winding-up or dissolution of BUYER; and (v) BUYER enters into any arrangement or agreement for the restructuring of any of its unpaid accounts with other electricity suppliers;</p> <p>b. BUYER defaults in the payment when due of any undisputed amount payable under this Agreement and such failure continues for a period of not less than sixty (60) days.</p> <p>BUYER ceases or discontinues operations and/or distribution of electricity for a period of forty five (45) consecutive days, except in instances allowed under this Agreement.</p> <p>c. In any of the above case, in addition to the rights given hereunder, the SELLER shall have the right to immediately suspend or withhold the delivery of electricity to the BUYER.</p> <p>12.2.2 Procedure for SELLER to Terminate</p> <p>SELLER shall send BUYER a Notice of Default</p>		
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	<p>after the lapse of the respective periods indicated above. BUYER shall then have thirty (30) days from its receipt of the Notice of Default to cure the BUYER Default. If BUYER fails to cure the BUYER's Default within the 30- day curing period, SELLER may send BUYER a Termination Notice thereafter, and this Agreement shall be effectively terminated thirty (30) days from BUYER's receipt of the Termination Notice.</p> <p>12.3 BUYER's Right to Terminate.</p> <p>12.3.1 SELLER's Events of Default.</p> <p>The following events shall give BUYER the right to terminate this Agreement (each a "SELLER Default"):</p> <p>a. The unexcused or willful failure of SELLER to comply with its material obligations under this Agreement, including but not limited to the failure of the SELLER to deliver the Contracted Capacity on Initial Delivery Date and after a grace period of sixty (60) days from the time of notice of demand from BUYER in accordance with section 12.4 below; and</p> <p>b. SELLER ceases or discontinues to deliver electricity for a period of sixty (60) consecutive days, except in instances allowed under this Agreement.</p>		
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	<p>12.6 Other Termination Events</p> <p>In the event that a law, court order or decision by a court of competent jurisdiction makes it unlawful for SELLER to supply and deliver electricity to BUYER or perform any or all of its obligations under this Agreement, or BUYER to accept delivery of electricity from SELLER or perform any or all of its obligations under this Agreement, this Agreement may be terminated by delivery of a Termination Notice by the affected PARTY to the other PARTY.</p> <p>The BUYER may terminate the Agreement by written notice to the Supplier in cases of default, as follows:</p> <ul style="list-style-type: none"> a. Non-commencement of Commercial Operation Date; b. Expiration of cooperation period and/or Upon Mutual Agreement; c. Non-fulfillment of conditions for effective date; d. Events of Force Majeure; and e. When the SELLER fails to supply for a period of sixty (60) days for reason wholly attributable to its fault and/or negligence, provided that, the SELLER fails to take reasonable actions or remedies to solve its inability to deliver capacity and energy. 	<p>Suggest to change the word "Supplier" to "SELLER".</p> <p>"The BUYER may terminate the Agreement by written notice to the Supplier in cases of default, as follows:"</p> <p>– For clarity, suggest to delete "in cases of default" if this is intended for termination events other than the Buyer's and Seller's Events of Default.</p> <p>•d – Suggest to add "as provided in Section 6.7"</p>	<ul style="list-style-type: none"> 1. The PGECPCI agrees to relace the term "Supplier" to "SELLER" 2. Agrees to remove the phrase "in cases of default" 3. REVISE Article 12.6, as follows: "The BUYER may terminate the Agreement by written notice to the SELLER, as follows: <ul style="list-style-type: none"> a. For new power plants, the non-commencement of Commercial Operation Date; b. Expiration of cooperation period and/or Upon Mutual Agreement; c. Non-fulfillment of conditions provided under this Agreement; d. Due to prolonged Force Majeure; and e. When the SELLER fails to supply for a period of sixty (60) days for reason wholly attributable to its fault and/or negligence, provided that, the SELLER fails to take reasonable actions or remedies to solve its inability to deliver capacity and energy.
	<p>The SELLER may terminate the Agreement by written notice to the BUYER when the latter:</p> <ul style="list-style-type: none"> a. Discontinues operations; 		

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	<p>b. Declares bankruptcy; or</p> <p>c. Any financial obligation of the BUYER is not paid when due within any applicable grace period.</p>		
<p>ARTICLE 13</p> <p>NOTICES</p>	<p>13.1 Writing. Each communication to be made hereunder shall be made in writing and, unless otherwise stated, may be sent through personal delivery, facsimile or first class mail or email.</p> <p>13.2 Addresses. Any communication, letter or document to be made or delivered by one Party to another pursuant to this Agreement shall be made or delivered to the other Party at the following address, or facsimile number:</p> <p>For SELLER: Name: Designation: Address: Telephone: Fax: Email address:</p> <p>For BUYER: Name: Designation: Address: Telephone: Fax: Email address: or such address, or facsimile number notified by the PARTY to the other PARTY by giving not less than fifteen (15) days notice of such change of address or number, and shall be deemed to have been made or delivered (i) in the case of any communication made by mail, when left at that address or otherwise received by the addressee; and (ii) in the case of any communication made by facsimile, when a legible copy of such</p>	<p>May the bidder propose changes to this Article 13? May courier services be added to 13.1?</p> <p>Suggest that notice by facsimile or personal delivery shall be effective at the close of business on the day actually received, if received during business hours on a business day, and otherwise shall be effective at the close of business on the next succeeding business day.</p> <p>Suggest that notice by overnight mail or courier shall be effective on the next business day after it was sent.</p> <p>Suggest that notices by email will be effective only when actually received in readable form and if addressed in such a manner as the Parties shall specify for this purpose.</p>	<p>13.1 Writing. Each communication to be made hereunder shall be made in writing and, unless otherwise stated, may be sent through personal delivery, facsimile, registered mail, special courier or email. Written Notices sent by personal delivery, facsimile, registered mail and special courier shall be effective on the date of the actual receipt thereof. If written notices were sent thru registered mail, the same is deemed as received after fifteen (15) days, if within the same city or province, and after thirty (30) days, if sent outside of the province, unless proven otherwise; Written Notices sent thru email shall be effective on the date the email was acknowledged, <i>provided that</i>, if the receiving PARTY failed to acknowledge receipt within three (3) days after it was sent, the same shall be deemed effective, <i>provided further that</i>, the SENDING PARTY shall send, thru registered mail or special courier, the original copy of the written notice, within three (3) days from the date the email was sent.</p> <p>13.2 Addresses. Any communication, letter or document to be made or delivered by one Party to another pursuant to this Agreement shall be made or delivered to the other Party at the following address, or facsimile number:</p> <p>For SELLER: Name: Designation:</p>

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	<p>communication has been received.</p>		<p>Address: Telephone: Fax: Email address: For BUYER: Name: Designation: Address: Telephone: Fax: Email address: or such address, or facsimile number notified by the PARTY to the other PARTY by giving not less than fifteen (15) days notice of such change of address or number, and shall be deemed to have been made or delivered (i) in the case of any communication made by mail, when left at that address or otherwise received by the addressee; and (ii) in the case of any communication made by facsimile, when a legible copy of such communication has been received.</p>
<p>ARTICLE 15 DISPUTE RESOLUTION</p>	<p>15.1 Regular Meetings. Throughout the term of this Agreement, authorized representatives of BUYER and SELLER shall meet regularly every month during the rest of the Cooperation Period to discuss any concern arising from the implementation of the Agreement to ensure that arrangements between Parties proceed on a mutually satisfactory basis.</p> <p>15.2 Amicable Settlement. The Parties agree that in the event that there is any dispute, controversy, claim or difference between them arising out of or relating to this Agreement, or the breach thereof, or in the interpretation of any of the provisions hereof, they shall meet and endeavor to resolve such</p>	<p>1. confirm whether the Winning Bidder is allowed to propose its dispute resolution clauses.</p> <p>Suggest for 14 days to be revised to 30 days.</p> <p>2. May PGECPCI accept commercial arbitration in case amicable settlement is not reached under Section 15.2?</p>	<p>1. ALREADY COVERED UNDER ARTICLE 15 OF THE PSA; 2. WE WILL NOT CONSIDER THE SUBMISSION OF ANY DISPUTE TO COMMERCIAL ARBITRATION;</p>

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	dispute by discussion between them; failing such resolution, the Chief Executives of BUYER and SELLER shall meet to resolve such dispute or difference. If the Chief Executives are unable to resolve the dispute or difference within fourteen (14) days from their initial meeting, then either PARTY may initiate the appropriate action in a court of competent jurisdiction, subject to the provisions of Article 17.		
ARTICLE 16 JURISDICTION	The PARTIES agree to submit to the exclusive jurisdiction of the ERC for the hearing and determination of any action or proceeding arising out of or in connection with this Agreement, to the exclusion of all other courts and tribunals.	May this be negotiated by the Winner Bidder to be revised to allow commercial arbitration? Instead of naming the ERC as having exclusive jurisdiction, may the Parties mutually agree to refer the dispute to the ERC for resolution and/or to any other government agency having jurisdiction over the dispute? This will grant mutual flexibility to the Parties' exercise of their available legal remedies.	Denied. THE PSA ALREADY HAS A PROVISION FOR DISPUTE RESOLUTION UNDER ARTICLE 15. THE PARTIES SHALL EXHAUST ALL REMEDIES AVAILABLE UNDER THE PSA WITHOUT THE FURTHER NEED TO SUBMIT TO ARBITRATION. Under RA 9136 (EPIRA law) The ERC shall have the original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties imposed by the ERC in the exercise of the above mentioned powers, functions and responsibilities and over all cases involving disputes between and among participants or players in the energy sector.
ARTICLE 17 GOVERNING LAW	This Agreement shall be governed by and construed in accordance with the laws of the Republic of the Philippines.	May the Winning Bidder add specific clauses relating to the agreement of the Parties to comply with anti-corrupt practices laws, including the US Foreign Corrupt Practices Act?	No.
SCHEDULE 5 DISPATCH PROTOCOL	A. BUYER	Proposed revision:	Denied.

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	<p>1. BUYER shall submit its day-ahead nomination one (1) day before the relevant trading day and the week-ahead nomination one (1) day before the relevant trading week. The hourly nominations for both week-ahead and day-ahead Daily Generation Schedule (DGS) shall not exceed the Contracted Capacity and shall reasonably conform to the typical daily load profile submitted. The total of the energy quantities nominated by the BUYER in the DGS submitted for any given month shall not be less than the Minimum Contracted Energy nominated by the BUYER in Schedule 1.</p> <p>2. BUYER may submit revisions to the submitted nominations on a day-ahead or weekahead basis. Such revisions shall, in case of day-ahead projections be notified to the SELLER before 4:00PM of the day before the relevant trading day or such other time as the SELLER sees reasonable and confirmed in writing by the BUYER.</p> <p>3. In the event that BUYER fails to submit its day-ahead nomination, SELLER shall consider the corresponding day of the relevant week-ahead nominations as the final dayahead nomination for that trading day. If there is no week-ahead nomination submitted for the relevant week, the latest week- ahead nomination shall be used in determining the final day-ahead nomination.</p> <p>4. In case of outage by the BUYER or Force Majeure, a re- declared load nomination shall be</p>	<p>A. BUYER</p> <p>1. BUYER shall submit its day- ahead nomination one (1) day before the relevant trading day and the week-ahead nomination Friday before the relevant trading week. The hourly nominations for both week-ahead and day-ahead Daily Generation Schedule (DGS) shall not exceed the Contracted Capacity and shall reasonably conform to the typical daily load profile submitted. The total of the energy quantities nominated by the BUYER in the DGS submitted for any given month shall not be less than the Minimum Contracted Energy nominated by the BUYER in Schedule 1.</p>	
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	<p>submitted a day after the relevant trading day.</p> <p>B. SELLER</p> <p>1. SELLER shall confirm to BUYER receipt of the day-ahead nomination and in case no day-ahead nomination was submitted, the nomination shall be based from the week-ahead projection as set out above.</p> <p>2. SELLER shall comply with all applicable requirements of the WESM Rules.</p>		
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<p>PSA - Article 3 Supply and Purchase of Electricity</p>		<p>Is the Seller restricted from sourcing the power from a nominated power plant only?</p>	<p>Yes. The Seller should source the power only to the power plant identified and proposed during the bidding process.</p>
<p>PSA - Section 3.9 Reduction in Contracted Capacity</p>	<p>The BUYER shall be entitled to a reduction in its Contracted Capacity and Contracted Energy as a result of the transfer of any of the BUYER's captive customers to the contestable market.</p> <p>Scenario 1: If the Transferring Customer transfers to a Retail Electricity Supplier (RES) that is an Affiliate of the Seller, the Buyer shall be entitled to RCOA Reduction provided that: x x x</p> <p>Scenario 2: If the Transferring Customer transfers to a RES that is not an Affiliate of the Seller and not an Affiliate of any of the Buyer's power suppliers, Buyer shall be entitled to RCOA reduction provided that: x x x</p>	<p>Please confirm if the Buyer shall not be entitled to a reduction if a captive customer become a contestable customer and transfers to a RES that is an Affiliate of any of the Buyer's power suppliers</p>	<p>If the transferring customer transfer to a RES - regardless of whether affiliate or not of BUYER'S other power suppliers, the Buyer is still be entitled to RCOA reduction. Initial proposal for no reduction for this scenario was disapproved by DOE in its comments dated Dec.13, 2021</p>

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<p>PSA - Section 4.4 Applicable Taxes</p>	<p>4.4 Applicable Taxes. (a) The yearly fixed rate is inclusive of the 12% Expanded Value Added Tax (EVAT). The PARTIES shall agree to adjust the fixed rate accordingly if there is an increase/decrease in the EVAT. (b) The BUYER shall no longer be liable for the payment of any existing taxes, fees, charges, levies and dues imposed or assessed by any Governmental Authority on or in connection with the purchase and sale of electricity and/or payments due to SELLER hereunder. (c) Any new taxes, fees, charges, levies and dues (including any increase in the rate or amount thereof but excluding taxes referred to in Section 4.4(a) and (d) shall be imposed to the SELLER thereafter in connection with the performance of its obligations pursuant to this Agreement. (d) Each PARTY shall be liable for their respective income taxes.</p>	<p>Please clarify that only VAT is to be applied to the yearly fixed rate and that it can be adjusted only if there is any change in the VAT rate.</p> <p>May we know what taxes, levies, fees or charges is being referred to in (b) and (c) which are supposed to be attributable to the seller?</p>	<p>Yes, VAT is already to the yearly-to-yearly fixed rate and may be adjusted if there are changes in the VAT rate. Any other taxes, levies, fees and charges, other than VAT, in relation to the sale of the electricity shall be absorbed by the SELLER.</p>
<p>PSA - Section 6.1 Force Majeure</p>	<p>x x x The BUYER and the SELLER shall jointly establish plans for operating the power plant during Force majeure. Such plans shall include recovery from a local or widespread electrical blackout. The SELLER shall comply with the Emergency procedures and provide contingency plan if a force majeure occurs. x x x</p>	<p>Suggested revision: x x x The SELLER shall inform BUYER of its plans for operating the power plant during Force majeure. Such plans shall include recovery from a local or widespread electrical blackout. The SELLER shall comply with the Emergency procedures and provide contingency plan if a force majeure occurs. x x x</p>	<p>Denied. The Party shall jointly establish plans, agreeable to both parties.</p>
<p>PSA - Section 6.4 Extension of Cooperation Period</p>	<p>6.4 Extension of Cooperation Period. If any event of Force Majeure occurs during the Cooperation Period, the Cooperation Period shall be extended</p>	<p>Kindly clarify how the extension will be computed (i.e. unutilized energy will be converted into hours).</p>	<p>The extension for the Cooperation Period is based on the unutilized energy converted only into hours. Ex.: If the Contracted Energy is 10,000mWh and</p>

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	by a period of time based on the unutilized energy converted into hours.		the unutilized energy due to Force majeure is 2,000mWh, then we divide the unutilized energy (2,000mWh) by the contracted demand 5mW, the result will be 400 hours which shall be the extension in the Cooperation period.
PSA - Article 7 Change in Circumstances	<p>ARTICLE 7 CHANGE IN CIRCUMSTANCES In the event of a change occurring after the date of this Agreement in all or any Applicable Requirements (including without limitation any change in interpretation or application thereof) such as, but not limited to, plant de-rating capacity, and as a result thereof, SELLER's financial return on its investment is materially reduced, prejudiced or otherwise adversely affected, SELLER shall give notice thereof to BUYER with a description of the adverse impact, including the reduction in receipts or net income reasonably attributable thereto and the amount believed by SELLER to be due by reason thereof. The PARTIES may mutually agree to terminate this Agreement without prejudice to the provisions of Article 12.5.</p>	Please clarify if the only effect of the change in applicable requirements is termination of the PSA. Will there be a period for negotiation and possibility of continuation of the PSA?	YES. As long as the parties mutually agree to the continuation or termination of the PSA due to change in circumstances.
PSA - Section 12.6 Other Termination Events		We note that Section 12.3.1 provides for the Seller's event of default. However, Section 12.6 2nd paragraph also provides for instances when Buyer can terminate.	ART. 12.6 par. 2 REVISED TO: "The BUYER may terminate the Agreement by written notice to the Supplier, as follows: ..."
PSA - Section 12.6 Other Termination Events	The BUYER may terminate the Agreement by written notice to the Supplier in cases of default, as follows: a. Non-commencement of Commercial Operation Date;	The PSA does not provide a definition for "Commercial Operation Date." Assuming a definition will be provided, we suggest for the Supplier to be given a curing period before Buyer has the right to terminate on this ground.	Non-commencement of Commercial Operation Date, applicable to new plants only.

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PSA - Section 12.6 Other Termination Events	The BUYER may terminate the Agreement by written notice to the Supplier in cases of default, as follows: x x x c. Non-fulfillment of conditions for effective date;	Suggest deletion of (c). "Effective Date" is defined as the date of execution of the PSA. There are no conditions for Effective Date	Revise Art. 12.6.c: Non-fulfillment of conditions provided under this Agreement.
PSA - Section 12.6 Other Termination Events	The BUYER may terminate the Agreement by written notice to the Supplier in cases of default, as follows: x x x d. Events of Force Majeure; and	Suggest deletion of (d). Article 6.7 provides the right to termination due to FM only when there is prolonged FM for more than 6 months and such is not considered an event of Supplier default.	Revise 12.6: The BUYER may terminate the Agreement by written notice to the Supplier, as follows: x x x d. Due to prolonged Force Majeure; and
PSA - Section 12.6 Other Termination Events	The BUYER may terminate the Agreement by written notice to the Supplier in cases of default, as follows: x x x e. When the SELLER fails to supply for a period of sixty (60) days for reason wholly attributable to its fault and/or negligence, provided that, the SELLER fails to take reasonable actions or remedies to solve its inability to deliver capacity and energy.	Suggest deletion. This seems to be a duplication of the grounds in 12.3.1	Denied. Article 12.3.1 Refers to failure to comply with the material obligations under the PSA, and not only the failure to supply as stated under Article 12.6.
PSA - Section 12.6 Other Termination Events	The SELLER may terminate the Agreement by written notice to the BUYER when the latter: a. Discontinues operations; b. Declares bankruptcy; or c. Any financial obligation of the BUYER is not paid when due within any applicable grace period.	Suggest deletion as this paragraph lists down grounds when the Seller can terminate and the grounds seem to be a duplication of the grounds in 12.2.1	Accepted.
PSA - Section 12.7.2	12.7.2 Upon the termination of this Agreement in bad faith by the SELLER, the SELLER shall pay the BUYER liquidated damages in the form of a termination penalty amounting to the capital recovery fees, as specified in Schedule 4 and as approved by the ERC for the remainder of the Cooperation Period.	How will termination fee be computed?	Article 12.7.2 Upon the termination of this Agreement in bad faith by the SELLER, the SELLER shall pay the BUYER liquidated damages in the form of a termination penalty amounting to the yearly fixed rate, as specified in Schedule 4 and as approved by the ERC, for the remainder of the Cooperation Period. Penalty is computed until the

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	For purposes of this Article 12.7.2, a termination by the SELLER shall be deemed to have been done in bad faith or intentional breach should such termination be a mere termination by convenience.		remaining cooperation period despite the termination of the Agreement. For purposes of this Article 12.7.2, a termination by the SELLER shall be deemed to have been done in bad faith or intentional breach should such termination be a mere termination by convenience.
PSA - Article 15 Dispute Resolution and Article 16 Jurisdiction		There seems to be a conflict. Article 15 allows for the recourse the court in case amicable settlement is not reached. Article 16 states that ERC has the exclusive jurisdiction. Kindly clarify.	There is NO CONFLICT. The Parties will first attempt to resolve any disputes among themselves before submitting the issue to the jurisdiction of the ERC.

Finally, kindly acknowledge receipt of this bid bulletin and email it upon receipt to tpbac.pgecpci@gmail.com

Thank you very much.

**THE JOINT THIRD PARTY BIDS AND AWARDS COMMITTEE
PANAY-GUIMARAS EC POWER CONSORTIUM, INC.**

By:

HERMO PATACSIL
Chairman, JTPBAC

PANAY - GUIMARAS EC POWER CONSORTIUM, INC.



ACKNOWLEDGMENT RECEIPT

This is to acknowledge the receipt of Supplemental Bid Bulletin No. 9 issued by the Joint Third-Party Bids and Awards Committee (JTPBAC) of Panay-Guimaras EC Power Consortium, Inc. (PGEPCCI).

Received: _____

Signature Over Printed Name

Position: _____

Company: _____

Date Received: _____

PANAY - GUIMARAS EC POWER CONSORTIUM, INC.

