

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

IN THE MATTER OF THE
APPLICATION FOR
AUTHORITY TO DEVELOP,
OWN, OPERATE AND
MAINTAIN DEDICATED
POINT-TO-POINT LIMITED
FACILITIES TO CONNECT TO
THE TRANSMISSION
SYSTEM OF NATIONAL GRID
CORPORATION OF THE
PHILIPPINES (“NCGP”),
WITH PRAYER FOR
PROVISIONAL AUTHORITY
OR INTERIM RELIEF AND
MOTION FOR
CONFIDENTIAL
TREATMENT OF
INFORMATION,

2024-008 MC
ERC Case No. 2024-__RC

February 07, 2024

SP NEW ENERGY
CORPORATION (FORMERLY
SOLAR PHILIPPINES NUEVA
ECIJA CORPORATION),
Applicant.

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APPLICATION
(With Prayer for the Issuance of Provisional Authority or
Interim Relief and Motion for Confidential Treatment of
Information)

Applicant SP NEW ENERGY CORPORATION (FORMERLY
SOLAR PHILIPPINES NUEVA ECIJA CORPORATION), by
counsel, most respectfully states:

1. SP New Energy Corporation¹ is a generation company (“GenCo”) duly organized and existing under the laws of the Republic of the Philippines, with principal office at 112 Legaspi Street, Legaspi Village, Brgy. San Lorenzo, Makati City, Philippines. It may be served with summons and other legal processes at 22/F ACCRALAW Tower, 2nd Avenue Corner 30th Street, Crescent Park West, Bonifacio Global City, 1635 Taguig, Metro Manila. SP New Energy Corporation is represented in this instance by its authorized representative Ms. Hazel Iris P. Lafuente.²

2. SP New Energy Corporation is a subsidiary of Solar Philippines Power Project Holdings, Inc. and owns (and is presently developing) its Sta. Rosa Nueva Ecija 2 Solar Power Plant with a capacity of five hundred (500) Megawatt peak (“MWp”)/Megawatts of direct current (“MWdc”) (the “Project”). The Project is divided into two phases, comprising of a two-hundred twenty-five (225) MWp/MWdc (“Phase 1”) and a two-hundred seventy-five (275) MWp/MWdc (“Phase 2”) power plant. Phase 1 is further comprised of two (2) sub-phases consisting of a fifty (50) MWp/MWdc power plant (“Phase 1A”) and a one-hundred seventy-five (175) MWp/MWdc power plant (“Phase 1B”) all located in the Municipality of Peñaranda, Nueva Ecija.

3. SP New Energy Corporation falls within the ambit of Sections 6 and 29 of Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 (“EPIRA”) and is therefore classified as a GenCo under the supply sector.

4. In connection thereto, the Department of Energy (“DOE”) approved and issued Solar Service Energy Contract No. 2017-06-404 in favor of Solar Philippines Commercial Rooftop Projects, Inc. the assignment of which to SP New Energy Corporation was likewise approved by the DOE in 2018.³

5. In the 2016-2040 Demand-Supply Outlook, the DOE recognized the growing demand for power in the Philippines.⁴ For the Luzon Grid, the DOE projected the energy demand to increase from

¹ A copy of the Articles of Incorporation of Solar Philippines Nueva Ecija Corporation is attached hereto as Annex “A-1” and made integral parts hereof.

² A copy of the Secretary’s Certificate dated 6 October 2022 is attached hereto as Annex “A-4” and made an integral part hereof.

³ A copy of the Solar Service Energy Contract No. 2017-06-404 and approval of the Deed of Assignment are attached hereto as Annexes “V-Series” and made an integral part hereof.

⁴ 2016-2040 Demand-Supply Outlook, *Department of Energy*, available at <https://www.doe.gov.ph/sites/default/files/pdf/announcements/iloilo-a-bs4-02-power-demand-and-supply-outlook.pdf>

9,726 MW in 2016 to 29,852 MW by 2040.⁵ Based on the foregoing, the Luzon Grid still needs a total of 24,385 MW of additional capacities in the form of 13,635 MW base-load plants, 8,300 mid-merit plants and 2,450 MW peaking plants to meet the electricity demand.⁶ Recent developments in the power industry showed that the required power system capacity addition for the Luzon Grid between the years 2016 to 2040 would be 24,385 MW.

6. To help address the need for additional capacity in the Luzon Grid, SP New Energy Corporation has entered into a Renewable Power Supply Agreement dated 7 February 2022 (“PSA”) with Angeles Electric Corporation (“AEC”), with a contracted capacity of 13 MW to be supplied from the Phase 1A Renewable Energy Facility (“Phase 1A Facility”).⁷ To date, the Joint Application docketed as 2023-004 RC before this Honorable Commission is pending approval.

7. For the purpose of the Project, SP New Energy Corporation likewise intends to construct, install and operate a point-to-point limited interconnection facility (the “Transmission Line”) to support the converted energy output of approximately three hundred (300) Megawatts, Alternating Current (“MWac”). In order to test, commission, and dispatch its Project, SP New Energy Corporation proposes to transmit its generated power to the National Grid Corporation of the Philippines (“NGCP”) Luzon Grid via a double circuit direct connection to the Cabanatuan 230kV Substation. The connection will be through the 11.7km, 230Kv transmission line from the plant to the said substation using a 1-410mm² TACSR power conductor from CSPPP Take-Off Substation.⁸

8. A System Impact Study (“SIS”) on the proposed Transmission Line has been conducted and based on the results of the study, the interconnection is technically feasible for up to twenty (20) MW while waiting for the completion of the necessary grid reinforcements. This capacity can increase to up to one hundred fifty (150) MW in the scenario that the North Luzon Hydro Power Plants are at a lower dispatch level.⁹ Thus, the contracted capacity of 13MW under the PSA is well within the allowable capacity identified in the SIS even pending the grid reinforcements. Notably, the Transmission

⁵ *Id.*

⁶ *Id.*

⁷ A copy of the Power Supply Agreement and its Amendment are attached hereto as Annexes “U-Series” and made an integral part hereof.

⁸ A copy of the Project Description is attached hereto as Annex “C” and made an integral part hereof.

⁹ A copy of the System Impact Study is attached hereto as Annexes “H-series” and made an integral part hereof.

Development Plan for 2022 – 2040 (“TDP”)¹⁰ has identified upgrades to the San Jose – San Rafael 230 kV Transmission Line scheduled for October 2027¹¹ and upgrades to the Marilao – Mexico 230 kV Transmission line scheduled for August 2027, the latter of which has already been filed with this Honorable Commission.¹² Upon completion of the grid reinforcements, the Cabanatuan 230kV Substation, San Jose – San Rafael 230 kV Transmission Line, and Marilao – Mexico 230 kV Transmission Line can fully accommodate the approximate three hundred (300) MWac output of the entire Project.

9. This proposed connection is also the most viable and reasonable option that will enable SP New Energy Corporation to dispatch the contracted capacity under the PSA, considering its close proximity to the NGCP Cabanatuan 230kV Substation. The estimated cost for construction and installation of the Transmission Line is One Billion One Hundred and Five Million Eight Hundred Eighty-Three Thousand Six Hundred Forty Nine Pesos and Twenty-Six Centavos (PhP1,105,883,649.26).¹³

10. Likewise, a Facilities Study Report has been conducted and approved by the NGCP.¹⁴

11. In further support of the Application, SP New Energy Corporation most respectfully submits to the Honorable Commission the following documents:

ANNEX	DOCUMENTS
A	Securities and Exchange Commission Certificate of Registration
A-1	Amended Articles of Incorporation
A-2	Amended By-laws
A-3	Board of Directors Approval of Connection Assets
A-4	Secretary’s Certificate dated 6 October 2022
A-5	Key Management Officers
B	General Information Sheet

¹⁰ A copy of the Transmission Development Plan for 2022 – 2040 is attached hereto as Annex “J-1” and made an integral part hereof.

¹¹ *Id.*, at p. 84.

¹² *Id.*, at p. 84.

¹³ A copy of the Breakdown of Project Costs is attached hereto as Annex “O-series” and made an integral part hereof.

¹⁴ A copy of the Facilities Studies Report is attached hereto as Annexes “I-series” and made an integral part hereof.

ANNEX	DOCUMENTS
C	Project Description
C-1	Project Rationale
C-2	Project Timeline
D	Transmission Service Agreement
E	Connection Agreement
F	Certification from the NGCP on the Status of the Metering Service Agreement
G-series	Interconnection Design
H-Series	System Impact Study
I-Series	Facilities Study Report
J-Series	Transmission Development Plan
K	DENR Environmental Compliance Certificate
L-Series	Transmission Line Route Options
M	Detailed Electrical Single Line Diagram
N	Conceptual Engineering Design and Drawings
O-Series	Breakdown of Project Costs
P	Gantt Chart Schedule
Q	Sworn Statement (To File Application for the Approval of the Transmission Line With All Concerned Government Agencies)
R-Series	Compliance with the Philippine Grid Code and Philippine Distribution Code
S	Audited Financial Sheet
T	Inconsistencies Analysis
U-Series	Power Supply Agreement as Amended
V-Series	Solar Service Energy Contract
W-Series	Company Profile of Contractors
X	Actual Historical and Forecasted Demand Supply Scenario
Y	DOE Certifications

12. Section 9(f) of the EPIRA provides:

“A generation company may develop and own or operate dedicated point-to-point limited transmission facilities that are consistent with the Transmission Development Plan (“TDP”): Provided, that such facilities are required only for the purpose of connecting to the transmission system, and are used solely by the generating facility, subject to prior authorization by the ERC.”

13. In accordance with the requirement of Section 9(f) of the EPIRA, SP New Energy Corporation hereby seeks this Honorable Commission's authorization to develop, own, and operate a dedicated point-to-point limited interconnection facility, to connect the Project to the grid. The proposed Transmission Line meets the requirement provided in Section 9 of the EPIRA and the relevant regulations issued by this Honorable Commission as follows:

- a) The Transmission Line is a dedicated point-to-point limited interconnection facility whose sole purpose is to connect the Project to the grid and is considered a "Connection Asset" under ERC Resolution No. 23, Series of 2016 ("ERC Resolution");
- b) The Transmission Line will be exclusively used by SP New Energy Corporation for the operations of the Project pursuant to the PSA and for any energy off-take arrangements it may enter into in the future, hence, will not serve any end-user;
- c) The Transmission Line is technically feasible, as evidenced by the SIS, for both the Phase 1A Facility and, upon completion of the grid reinforcements, the entire Project; and SP New Energy Corporation has the technical and financial ability to develop, construct, operate, and maintain the Transmission Line as evidenced by its financial documents.

MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION

14. Section 1, Rule 4 of the ERC Revised Rules of Practice and Procedure states that information may be treated as confidential, as follows:

"Section 1. Motion for Confidential Treatment of Information. - A party to a proceeding before the Commission may move for information to be treated as confidential.

The motion shall:

- a) Describe therein with particularity the information to be treated as confidential, stating the specific

grounds thereof, and specifying the period during which the information must not be disclosed.

- b) Be accompanied with one (1) copy of the document that contains the information sought to be treated as confidential, placed in a sealed envelope, with the envelope and each page thereof stamped with the word "Confidential". The sealed envelope shall be accompanied by an index enumerating the contents thereof with sufficient particularity.
- c) The movant shall serve the other parties with the motion but not copies of the documents and/or information sought to be treated as confidential.
- d) If the information for which confidentiality is requested is part of the attachments to an application, petition or other pleading, the same must comply with this Section by incorporating therein the motion.

The movant has the burden of proof to establish that the information is entitled to such confidentiality."

15. SP New Energy Corporation thus respectfully requests that the information in Annexes **"G-series" Interconnection Design, "I-series" Facilities Study Report, "N"- Conceptual Engineering Design and Drawings and "O-series" - Breakdown of Project Costs**, submitted in compliance with the said rule, be treated as confidential in nature pursuant to afore-stated provision.

16. Annexes **"G-series," "I-series," "N," and "O-series"** contain information which is not available to the public and which involves, among others, trade secrets reflecting SP New Energy Corporation's intellectual property, investment, business calculations, and pricing structures. Moreover **Annex "O-series"** also contains proprietary information and, financial, investment, and business calculations of SP New Energy Corporation. The data and information contained therein relate to SP New Energy Corporation's specific solar power plant design and technology, as well as vital data which serve as a component of the overall formula and process in arriving at its competitive rates, all of which were specifically developed by SP New Energy Corporation. If the information contained in these annexes are unduly disclosed, this will seriously prejudice the competitiveness of

SP New Energy Corporation as it may be used by other GenCo's in designing their power plants and calculating their offers/tariff structure/rate design, undermining competition. As such, they are solely for SP New Energy Corporation's use and treated as a trade secret.

17. A trade secret has been defined in jurisprudence as follows:

"A trade secret is defined as a plan or process, tool, mechanism or compound known only to its owner and those of his employees to whom it is necessary to confide it. The definition also extends to a secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade having a commercial value. A trade secret may consist of any formula, pattern, device, or compilation of information that: **(1) is used in one's business; and (2) gives the employer an opportunity to obtain an advantage over competitors who do not possess the information.** Generally, a trade secret is a process or device intended for continuous use in the operation of the business, for example, a machine or formula, but can be a price list or catalogue or specialized customer list. It is indubitable that trade secrets constitute proprietary rights. The inventor, discoverer, or possessor of a trade secret or similar innovation has rights therein which may be treated as property, and ordinarily an injunction will be granted to prevent the disclosure of the trade secret by one who obtained the information 'in confidence' or through a 'confidential relationship.'"¹⁵

18. To this end, the confidentiality of trade secrets is protected by various laws and rules,¹⁶ and no less than the Supreme Court has emphasized that the privileged nature of trade secrets is **"beyond quibble."**¹⁷

19. Likewise, this Honorable Commission has previously held that in the electric power industry, information relating to pricing structures are confidential and may not be disclosed, to wit:

¹⁵ Air Philippines Corp. v. Pennswell, Inc., G.R. No. 172835, 13 December 2007.

¹⁶ Rules of Court, Rule 130, Sec. 26; Section 4, Rule 3 of the Interim Rules of Procedure on Government Rehabilitation; Section 66 of the Securities Regulation Code of 2000; Rev. Penal Code, Art 291-292; Rep. Act No. 8424, Sec. 278; Rep. Act No. 6969, Sec. 12.

¹⁷ Air Philippines Corp. v. Pennswell, Inc., G.R. No. 172835, 13 December 2007.

“In the case of PNOC RC, the documents sought to be protected from disclosure contain formula and pricing structures used in arriving at their proposed tariff. In fact, all there (3) documents were used by the Commission in evaluating the reasonableness of the proposed rate. In the electric power industry w(h)ere prices is[sic] a major consideration in selecting one’s supplier, it is apparent that the assumptions used in arriving at one’s proposed tariff is considered a competitive leverage by one player against its competitors.

Thus, the Commission resolves to treat the said documents confidential and may not be publicly disclosed.”¹⁸

20. Indeed, the information contained in the above-stated documents is vital to the determination of SP New Energy Corporation’s pricing structure and competitive advantage and undoubtedly constitute proprietary information or trade secrets as defined. Thus, SP New Energy Corporation respectfully moves that the above information be treated as confidential, and that the information contained therein be solely used for the purposes of examination and evaluation by this Honorable Commission.

MOTION FOR ISSUANCE OF PROVISIONAL AUTHORITY OR INTERIM RELIEF

21. Under Section 4(e), Rule 3 of the EPIRA IRR and Rule 14 of the ERC Revised Rules of Practice and Procedure, this Honorable Commission may grant provisional authority or interim relief.

22. The connection of the Project to the Cabanatuan 230kV Substation will accommodate the rapidly increasing demand for energy¹⁹ amidst the drastic and constant price increases in fuel,²⁰ commodities²¹ as well as power prices. In March 2022, the peak

¹⁸ In the Matter of the Application for Approval of the Power Supply Agreement between Nueva Ecija II Electric Cooperative, Inc.-Area 2 (NEECO II – Area 2) and PNOC Renewables Corporation (PNOC RC), ERC Case No. 2015-11 RC, 30 May 2017.

¹⁹ A copy of the Project Rational is attached hereto as Annex “C-1” and made an integral part hereof. A copy of the Actual Historical and Forecasted Demand Supply Scenario is attached hereto as Annex “X” and made an integral part hereof.

²⁰ *DOE expects more fuel price increases in the coming weeks*, Philstar, 8 June 2022, available at <https://www.philstar.com/headlines/2022/06/08/2186937/doe-expects-more-fuel-price-increases-coming-weeks>, (last accessed on 13 June 2022).

²¹ *Supermarket industry warns of rising prices due to higher material costs*, Business World, 6 March 2022, available at <https://www.bworldonline.com/economy/2022/03/06/434156/supermarket-industry-warns-of-rising-prices-due-to-higher-materials-costs/>, (last accessed on 13 June 2022).

electricity demand exceeded the annual figures from 2019 and 2021 as prices at the WESM remained high due to the thinning of reserves in the Luzon grid.²² Higher coal and fuel prices abroad,²³ exacerbated by the depreciation of the Philippine Peso, which showed no indication of slowing down,²⁴ lead to further increases in prices. Further, in 2023, demand increased to record-breaking figures, peaking in April 2023 at 12,221 MW, 2,380 MW and 2,363 MW for Luzon, Visayas and Mindanao, respectively.²⁵ The demand is projected to rise even higher this 2024 to 13,917 MW, 2,891 MW and 2,584 MW, respectively.²⁶ The connection for the entire Project will likewise encourage more partnerships and projects which promote the use of clean energy, specifically solar energy, which, in turn, reduces the country's dependence on fossil fuels.

23. Additionally, pending the grid reinforcements to the San Jose – San Rafael 230 kV Transmission Line and Marilao – Mexico 230 kV Transmission, the output provided under the PSA from the Phase 1A Facility is ripe for connection to the grid, its capacity being well within the twenty (20) MW range identified in the SIS. While the Joint Application for Approval of the PSA is a separate and distinct proceeding, which is currently ongoing before this Honorable Commission, it is respectfully submitted that, for the benefit of the consuming public, SP New Energy Corporation be allowed to conduct preparatory works for the construction, installation and eventual operation of the Transmission Line.

24. Thus, in view of the urgency above-mentioned, SP New Energy Corporation respectfully prays for the issuance of a Provisional Authority or other Interim Relief for the development, construction

²² *Power rates up in April as generation charges rise*, Business World, 12 April 2022, available at [https://www.bworldonline.com/corporate/2022/04/12/441805/electricity-rates-rise-in-april-as-power-generation-charge-climbs-meralco/#:~:text=\(Meralco\)%20will%20see%20more%20than,5363%20per%20kWh%20to%20P10,\(last%20accessed%20on%2013%20June%202022\).](https://www.bworldonline.com/corporate/2022/04/12/441805/electricity-rates-rise-in-april-as-power-generation-charge-climbs-meralco/#:~:text=(Meralco)%20will%20see%20more%20than,5363%20per%20kWh%20to%20P10,(last%20accessed%20on%2013%20June%202022).)

²³ *Power rates headed upward due to more expensive coal*, Business World, 6 March 2022, available at <https://www.bworldonline.com/economy/2022/03/06/434154/power-rates-headed-upward-due-to-more-expensive-coal/>, (last accessed 13 June 2022).

²⁴ *Peso skids past P53:\$1 level to hit a fresh 3-year low*, Ramon Royandoyan, PhilStar, 13 June 2022, available at <https://www.philstar.com/business/2022/06/13/2188106/peso-skids-past-p531-level-hit-fresh-3-year-low>, (last accessed 13 June 2022).

²⁵ *Iemop Observes A Rise in Electricity demand this April 2023*, Independent Electricity Market Operator of the Philippines Inc., 25 April 2023, available at [https://www.iemop.ph/news/iemop-observes-a-rise-in-electricity-demand-this-april-2023/#:~:text=The%20increase%20in%20demand%20led,MW%20on%20April%2019%2C%202023,\(last%20accessed%2023%20January%202024\).](https://www.iemop.ph/news/iemop-observes-a-rise-in-electricity-demand-this-april-2023/#:~:text=The%20increase%20in%20demand%20led,MW%20on%20April%2019%2C%202023,(last%20accessed%2023%20January%202024).)

²⁶ *DOE braces for El Nino's impact on power*, Philippine New Agency, 14 December 2023, available at [https://www.pna.gov.ph/articles/1215413#:~:text=In%202024%2C%20peak%20demand%20in,and%20%2C315%20MW%20in%20Mindanao,\(last%20accessed%2023%20January%202024\).](https://www.pna.gov.ph/articles/1215413#:~:text=In%202024%2C%20peak%20demand%20in,and%20%2C315%20MW%20in%20Mindanao,(last%20accessed%2023%20January%202024).)

and operation of the proposed Transmission Line.

25. SP New Energy Corporation, most respectfully reserves the right to seek the amendment and/or revision of the operating capacity of the Transmission Line, subject to the approval by the Honorable Commission, as maybe deemed necessary for the Project and dependent upon the progress of the adverted grid reinforcement.

PRAYER

WHEREFORE, premises considered, **SP NEW ENERGY CORPORATION (FORMERLY SOLAR PHILIPPINES NUEVA ECIJA CORPORATION)** respectfully prays that this Honorable Commission issue an order:

1. **IMMEDIATELY GRANTING** the *Motion for Issuance of Provisional Authority or Interim Relief* and immediately **ISSUING** a Provisional Authority or Interim Relief authorizing SP New Energy Corporation to develop, own and maintain the dedicated point-to-point limited facilities for the Project;
2. **IMMEDIATELY:**
 - a) **GRANTING** the *Motion for Issuance of Provisional Authority or Interim Relief* and immediately **ISSUING** a Provisional Authority or Interim Relief authorizing SP New Energy Corporation to operate the dedicated point-to-point limited facilities for the Project;

Or in the **ALTERNATIVE:**

- b) **GRANTING** the *Motion for Issuance of Provisional Authority or Interim Relief* and immediately **ISSUING** a Provisional Authority or Interim Relief authorizing SP New Energy Corporation to operate the dedicated point-to-point limited facilities for the Phase 1A Facility;
3. **GRANTING** the *Motion for Confidential Treatment of Information* and treat the documents, and the information therein, duly marked as **Annexes "G-series," "I-series," "N" and "O-series"** as **CONFIDENTIAL**;

4. After due notice, hearing and consideration, the Provisional Authority/ies be made **PERMANENT** and **FINAL**; and
5. **GRANTING** the *Application (With Prayer for the Issuance of Provisional Authority or Interim Relief and Motion for Confidential Treatment of Information)*.

SP New Energy Corporation likewise prays for such further or other relief as may be deemed just or equitable.

Taguig City for Pasig City, 23 January 2024.

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