

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

**IN THE MATTER OF THE
APPLICATION FOR
APPROVAL OF THE SALE FOR
RESALE AGREEMENT BY
AND BETWEEN CLARK
ELECTRIC DISTRIBUTION
CORPORATION (CEDC) AND
SHIN CLARK POWER
CORPORATION (SCPC),
WITH PRAYER FOR
PROVISIONAL AUTHORITY**

ERC CASE NO. 2024-063 RC

**CLARK ELECTRIC
DISTRIBUTION
CORPORATION (CEDC) AND
SHIN CLARK POWER
CORPORATION (SCPC),**
Applicants.

Promulgated:
May 17, 2024

X-----X

ORDER

On 07 May 2024, the Clark Electric Distribution Corporation (CEDC) and Shin Clark Power Corporation (SCPC) filed their *Application* dated 04 April 2024, seeking the Commission's approval of their Sale for Resale Agreement (SRA), with prayer for issuance of provisional authority.

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

1. CEDC is a distribution utility duly organized and existing under Philippine law, with office address at Bldg. N2830, Bayanihan Street, Clark Freeport Zone, Pampanga, Philippines. CEDC was franchised by the Clark Development Corporation (CDC) to distribute electricity within the Clark Special Economic Zone (CSEZ) until year 2047 under a Joint Venture Agreement (JVA) executed pursuant to Executive Order No. 80, and is represented here by its President and CEO, Baldomero N. Guisala.

2. SCPC is a distribution utility duly organized and existing under Philippine law, with office address at NCC-Substation, Botolan-Clark Airport Road, New Clark City, Aranguren, Capas, Tarlac. SCPC is the joint venture corporation created between the Bases Conversion Development Authority (BCDA) and Shin Clark Power Holdings Inc. (SCPHI) in accordance with their Joint Venture Agreement (JVA) dated 3 April 2019 for the financing, design, engineering, construction, development and operation and maintenance of an electric power distribution system inside New Clark City.
 - A. BCDA is a government instrumentality vested with corporate powers and created by virtue of Republic Act No. 7227, as amended.
 - B. SCPHI is a consortium established by and between Manila Electric Company, Marubeni Asian Power Philippines Corporation (formerly, Axia Power Holdings Philippines Corporation), KPIC Netherlands, B.V., and Chubu Electric Power Co. Inc. SCPHI holds 90% of the shares of SCPC while BCDA holds 10% thereof.
3. CEDC and SCPC may be served with notices and other processes of this Honorable Commission through its undersigned counsel at the address indicated herein.
4. On 23 January 2018, the 200-hectare National Government Administrative Center (NGAC) broke ground in New Clark City. This government hub is seen to help decongest Metro Manila as it houses the government agencies and offices that run the country and provide continuous service to its citizens. Later that year, construction also started for the sports facilities that will be used for hosting the 2019 Southeast Asian Games.
5. On 16 May 2018, BCDA released an Invitation to Bid for the Selection of the Joint Venture Partner for the development of electric power distribution system in New Clark City (NCC). After the conduct of a competitive selection process, the BCDA Joint Venture Select Committee (JVSC) issued on 18 January 2019 a Notice of Award to the Meralco-Marubeni Consortium as the winning Private Sector Participant (PSP).
6. On 03 April 2019, BCDA and SCPHI entered into a Joint Venture Agreement (JVA) for the financing, design, engineering, construction, development and operation and maintenance of an electric power distribution system inside NCC. The MERALCO Marubeni consortium was then incorporated into SCPHI.
7. Under the JVA, BCDA and SCPHI shall establish and incorporate a Joint Venture Corporation (JVC) with the primary purpose of developing, constructing, owning, operating and maintaining the distribution system inside NCC. Hence, SCPC was organized and incorporated on 10 May 2022.

8. On 22 August 2019, President Rodrigo R. Duterte signed into law Republic Act No. 11420 (RA 11420) granting to BCDA and its assignees the franchise to construct, install, establish, operate, lease, own, manage and maintain for commercial purposes, and in the public interest, distribution systems for the conveyance of electric power in NCC, an area covering 9,450 hectares located in the towns of Capas and Bamban, both in the Province of Tarlac. Section 14 of RA 11420 expressly recognized the JVA.
9. In June 2022, SCPC applied for a Certificate of Public Convenience and Necessity (CPCN) before the Energy Regulatory Commission (ERC), docketed as ERC Case No. 2022-015 MC. The CPCN application was approved by the Honorable Commission in a Decision dated 22 March 2023.
10. As a greenfield project, SCPC is currently not connected to the Grid. However, SCPC has initiated the application process with National Grid Corporation of the Philippines (NGCP) as well as compliance with the various technical requirements of NGCP to connect to their existing Dolores Substation.
11. Pending completion of the process to complete connection with the Grid, SCPC proposes to draw power from CEDC so it can serve the power requirements of NCC. Thus, CEDC and SCPC entered into a Sale for Resale Agreement and is now seeking the Honorable Commission's approval of the herein proposed Sale for Resale Agreement pursuant to ERC Resolution No. 02, Series of 2009.
12. NCC's current and prospective locators will consist primarily of power-sensitive industrial and commercial customers. To attract investors, it is imperative that SCPC gain immediate access to a safe, quality and reliable power service at affordable rates. In this regard, CEDC and SCPC urgently prays for the issuance of a provisional authority from the Honorable Commission to implement the proposed Sale for Resale Agreement pending final resolution of the subject application case.
13. CEDC's proposed selling rate to SCPC will consist of its Blended Generation Charge, Transmission Charge for 69kV customers, Distribution, Supply & Metering Charges for 69kV customers, and System Loss Charges for 69kV customers. CEDC will not charge SCPC with Universal Charge and FIT-All Charge as SCPC is not an end-user. CEDC will accordingly advise PSALM and TRANSCO of this fact.
14. In support of this Application, CEDC and SCPC hereby submit the following documents:

Document	Annex
Sale for Resale Agreement between CEDC and SCPC	"A"
CEDC Board Resolution authorizing execution of Sale for Resale Agreement with SCPC	"B"
CEDC Board Resolution authorizing the joint filing of application for approval of Sale for Resale Agreement with SCPC	"C"
SCPC Board Resolution authorizing execution of Sale for Resale Agreement with CEDC and the filing of the application with the ERC	"D"
SCPC's Customer Profile/Customer Mix <ul style="list-style-type: none"> a. Energy Purchase (kWh) b. Energy Sales (kWh) c. Peak Demand (kW) d. Number of Customers e. Type of Customers f. Franchise Area 	"E"
Actual Calculation of of (sic) SCPC's retail rate per customer type per month	"F"
Sample bills of SCPC per customer type per month	"G"
Proposed SCPC retail rate per customer type under the proposed Sale for Resale Agreement	"H"
Computation of Generation Rate to be paid by SCPC to CEDC	"I"
SCPC's existing and proposed Unbundled Retail Rates	"J"
Rate impact of Sale for Resale to SCPC's power rate	"K"
Single Line Diagram of SCPC's distribution system	"L"
Calculation of CEDC's retail rates per customer type	"M"
CEDC's actual selling rates per customer type	"N"
Power Bills of CEDC per supplier per month	"O"
CEDC URR submissions	"P"
Computation of Generation Rate to charge by CEDC to SCPC based on submitted URR	"Q"
Consumer Sample Bills of CEDC per customer type	"R"
Existing and Proposed Unbundled Selling Rates of CEDC to SCPC	"S"
Computation of proposed rates with documentation on assumptions taken of the Selling DU	"T"
Projected power bills of SCPC from CEDC under the proposed Sale for Resale Agreement	"U"
Audited Financial Statements of CEDC for the year 2022	"V"
Single Line Diagram of CEDC's Distribution System	"W"
CEDC Judicial Affidavit in support of Motion for Issuance of Provisional Authority	"X"
SCPC Judicial Affidavit in support of Motion for Issuance of Provisional Authority	"Y"

PRAYER

WHEREFORE, CEDC and SCPC respectfully pray for the approval of proposed Sale for Resale Agreement.

CEDC and SCPC further pray that they be provisionally authorized to implement the proposed Sale for Resale Agreement pending final resolution of the above-captioned application.

Finally, CEDC and SCPC prays (*sic*) for such other relief or remedy as may be just (*sic*) equitable under the circumstances.

Finding the said *Application* to be sufficient in form and with the required fees having been paid, the Commission hereby sets the same for determination of compliance with the jurisdictional requirements, expository presentation, Pre-Trial Conference and presentation of evidence on the following dates and online platform for the conduct thereof, pursuant to Resolution No. 09, Series of 2020¹ and Resolution No. 01, Series of 2021² (ERC Revised Rules of Practice and Procedure):

Date	Platform	Activity
19 June 2024 (Wednesday) at nine o'clock in the morning (9:00 AM)	Microsoft Teams Application	Determination of compliance with the jurisdictional requirements and expository presentation
26 June 2024 (Wednesday) at nine o'clock in the morning (9:00 AM)		Pre-Trial Conference and presentation of evidence

Accordingly, Applicants CEDC and SCPC are hereby directed to host the virtual hearings at **SCPC's Principal Office at NCC-Substation, Botolan-Clark Airport Road, New Clark City, Aranguren, Capas, Tarlac**, as the designated venue for the conduct thereof, and ensure that the same is open to the public. Moreover, Applicants CEDC and SCPC shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

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¹ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

² A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

RELATIVE THERETO, Applicants CEDC and SCPC are hereby directed to:

- 1) Cause the publication of the attached *Notice of Virtual Hearing* in two (2) newspapers of nationwide circulation in the Philippines at their own expense, twice (2x) within two (2) successive weeks, the dates of publication not being less than seven (7) days apart, and the date of the last publication to be made not later than ten (10) days before the date of the scheduled initial hearing;
- 2) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing* the Offices of the Provincial Governor, the Mayors and the Local Government Unit (LGU) legislative bodies within Applicant SCPC's franchise area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within Applicant SCPC's franchise area, by any other means available and appropriate, of the filing of the *Application*, the reasons therefor, and of the scheduled virtual hearings thereon;
- 4) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing*, the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress. They are hereby requested, if they so desire, to send their duly authorized representatives and attend the scheduled hearings; and
- 5) Furnish with copies of the *Application* and its attachments, all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

Within five (5) calendar days before the date of the initial virtual hearing, Applicants CEDC and SCPC must submit to the Commission via electronic mail (e-mail) at docket@erc.ph, and copy furnish the Legal Service through legal@erc.ph, the scanned copies of their written compliance with the aforementioned jurisdictional requirements, attaching the following methodically arranged and duly marked documents:

- 1) The evidence of publication of the attached *Notice of Virtual Hearing* consisting of affidavits of the Editors or Business Managers of the newspapers where the said *Notice of Virtual Hearing* was published, and the complete issues of the said newspapers;
- 2) The evidence of actual posting of this *Order* and the attached *Notice of Virtual Hearing* consisting of certifications issued to that effect, signed by the aforementioned Governor, Mayors and LGU legislative bodies or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by CEDC and SCPC to inform the consumers within SCPC's franchise area of the filing of the *Application*, the reasons therefor, and of the scheduled hearings thereon;
- 4) The evidence of receipt of copies of this *Order* and the attached *Notice of Virtual Hearing* by the OSG, the COA, and the Committees on Energy of both Houses of Congress;
- 5) The evidence of receipt of copies of the *Application* and its attachments, by all those making requests therefor, if any; and
- 6) Such other proof of compliance with the requirements of the Commission.

Moreover, Applicants CEDC and SCPC are hereby required to post on their bulletin boards, the scanned copies of the foregoing jurisdictional requirements, together with the newspaper publications and certifications issued by the concerned Offices of the Governor, Mayors, and Local Legislative Bodies, and to submit proof of posting thereof.

Applicants CEDC and SCPC, and all interested parties are also required to submit via e-mail at doCKET@erc.ph, and copy furnish the Legal Service through legal@erc.ph, **at least five (5) calendar days** before the date of the scheduled virtual hearing and Pre-Trial Conference, their respective Pre-Trial Briefs containing, among others:

- 1) A summary of admitted facts and proposed stipulation of facts;
- 2) The issues to be tried or resolved;

- 3) The documents or exhibits to be presented, stating the purposes and proposed markings therefor, which should also be attached to the Pre-Trial Brief; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-Trial Brief.

Applicants CEDC and SCPC must ensure that all the documents or exhibits proposed to be presented have already been duly submitted to the Commission **at least five (5) calendar days** before the date of the scheduled virtual hearing and Pre-Trial Conference pursuant to the preceding paragraph.

Failure of Applicants CEDC and SCPC to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearings.

Applicants CEDC and SCPC must also be prepared to make an expository presentation of the instant *Application*, aided by whatever communication medium that they may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties, the nature of the *Application*. Relevant information and pertinent details substantiating the reasons and justifications for the *Application* must be cited in support thereof.

Applicants CEDC and SCPC are hereby directed to file a copy of their Expository Presentation via e-mail at doCKET@erc.ph, and copy furnish the Legal Service through legal@erc.ph, **at least five (5) calendar days** prior to the scheduled virtual hearing. Applicants CEDC and SCPC shall also be required, upon the request of any stakeholder, to provide an advance copy of their Expository Presentation, **at least five (5) calendar days** prior to the scheduled virtual hearing.


Applicants CEDC and SCPC are further directed to submit, either through personal service, registered mail or ordinary mail/private courier, one (1) set of the original or certified true hard copies of their Jurisdictional Compliance, Expository Presentation, Pre-Trial Brief, and Judicial Affidavits of witnesses, **within five (5) working days** from the date that the same were electronically submitted, as reflected in the acknowledgment receipt e-mail sent by the Commission.

Finally, Applicants CEDC and SCPC, including their authorized representatives and witnesses, are hereby directed to provide the Commission, through legal.virtualhearings@erc.ph, their respective e-mail addresses upon receipt of this *Order*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearings.

SO ORDERED.

Pasig City, 17 May 2024.

FOR AND BY AUTHORITY
OF THE COMMISSION:


MONALISA C. DIMALANTA
Chairperson and CEO


LS: JRBC/ARG/KTB

ERC

Office of the Chairperson and CEO



MCD2024-017066

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Copy Furnished:

1. Clark Electric Distribution Corporation (CEDC)
Co-Applicant
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Clark Freeport Zone, Pampanga
2. Shin Clark Power Corporation (SCPC)
Co-Applicant
NCC-Substation, Botolan-Clark Airport Road
New Clark City, Aranguren, Capas, Tarlac
3. Atty. Ranulfo M. Ocampo
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4. Office of the Solicitor General (OSG)
134 Amorsolo Street, Legaspi Village, Makati City
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5. Commission on Audit (COA)
Commonwealth Avenue, Quezon City
citizensdesk@coa.gov.ph
6. Senate Committee on Energy
GSIS Building, Roxas Boulevard, Pasay City
senateenergycommittee@gmail.com
7. House Committee on Energy
Batasan Hills, Quezon City
committee.energy@house.gov.ph
8. Office of the Provincial Governor
Province of Pampanga
9. Office of the Local Government Unit (LGU) Legislative Body
Province of Pampanga
10. Office of the Provincial Governor
Province of Tarlac
11. Office of the Local Government Unit (LGU) Legislative Body
Province of Tarlac
12. Office of the Municipal Mayor
Bamban, Tarlac
13. Office of the Local Government Unit (LGU) Legislative Body
Bamban, Tarlac
14. Office of the Municipal Mayor
Capas, Tarlac
15. Office of the Local Government Unit (LGU) Legislative Body
Capas, Tarlac
16. Office of the Administrator
Clark Special Economic Zone
17. Regulatory Operations Service
14th Floor, Exquadra Tower, Jade Drive,
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