

Republic of the Philippines Department of Transportation Land Transportation Franchising and Regulatory Board East Avenue, Quezon City CASE NO. 2023-4966 Application for a Certificate of a Public Convenience to operate a TH (Truck-for-hire) Service ARDANT CONFIDERE INC., Applicant/s.

NOTICE OF HEARING Applicant requests authority to operate a TH (Truck-for-hire) Service within ANGAT, BULACAN and from said place to any point in the PHILIPPINES accessible to motor vehicle traffic and vice versa with the use of THREE (3) unit/s.

NOTICE is hereby given that this application will be heard by this Board on MARCH 7, 2023 at 1:00 p.m. at its office through online hearing. The Zoom hearing link will be sent to the applicant's provided email address.

At least FIVE (5) days prior to the above date, applicant/s shall publish this Notice once in ONE (1) daily newspaper of general circulation in Luzon.

Pursuant to Memorandum Circular No. 2021-043 in relation to No. 2020-069 (re: Guidelines in the conduct of on-line hearing during community quarantine), the Formal Offer of Evidence (FOE) must be submitted at least FIVE (5) working days prior to the scheduled hearing.

Parties opposed to the granting of the application must file their written oppositions supported by documentary evidence on or before the above date furnishing a copy of the same to the applicant/s and may if they so, desire appear on said date and time.

This application will be acted upon by this Board on the basis of its records and documentary evidence submitted by the parties, unless the Board deems it necessary to receive additional documentary and/or oral evidence.

WITNESS the Honorable ATTY. TEOFILO E. GUADIZ III, CESO V, Chairman this FEBRUARY 16, 2023.

ATTY. FREDERICK L. VALERO Office-in-Charge Legal Division

Republic of the Philippines Department of Transportation Land Transportation Franchising and Regulatory Board East Avenue, Quezon City CASE NO. 2023-6160 Application for a Certificate of a Public Convenience to operate a TH (Truck-for-hire) Service PANFILO S. ARGUTA, Applicant/s.

NOTICE OF HEARING Applicant requests authority to operate a TH (Truck-for-hire) Service within TAGUIG CITY and from said place to any point in the PHILIPPINES accessible to motor vehicle traffic and vice versa with the use of ONE (1) unit/s.

NOTICE is hereby given that this application will be heard by this Board on MARCH 7, 2023 at 1:00 p.m. at its office through online hearing. The Zoom hearing link will be sent to the applicant's provided email address.

At least FIVE (5) days prior to the above date, applicant/s shall publish this Notice once in ONE (1) daily newspaper of general circulation in Luzon.

Pursuant to Memorandum Circular No. 2021-043 in relation to No. 2020-069 (re: Guidelines in the conduct of on-line hearing during community quarantine), the Formal Offer of Evidence (FOE) must be submitted at least FIVE (5) working days prior to the scheduled hearing.

Parties opposed to the granting of the application must file their written oppositions supported by documentary evidence on or before the above date furnishing a copy of the same to the applicant/s and may if they so, desire appear on said date and time.

This application will be acted upon by this Board on the basis of its records and documentary evidence submitted by the parties, unless the Board deems it necessary to receive additional documentary and/or oral evidence.

WITNESS the Honorable ATTY. TEOFILO E. GUADIZ III, CESO V, Chairman this FEBRUARY 15, 2023.

ATTY. MARK T. COFINO, CPA Attorney IV Hearing Officer

Republic of the Philippines Department of Transportation Land Transportation Franchising and Regulatory Board East Avenue, Quezon City CASE NO. 2023-6081 Application for a Certificate of a Public Convenience to operate a TH (Truck-for-hire) Service MARITES DANDO MADRIAGA, Applicant/s.

NOTICE OF HEARING Applicant requests authority to operate a TH (Truck-for-hire) Service within LAS PINAS and from said place to any point in the PHILIPPINES accessible to motor vehicle traffic and vice versa with the use of ONE (1) unit/s.

NOTICE is hereby given that this application will be heard by this Board on MARCH 6, 2023 at 1:00 p.m. at its office through online

hearing. The Zoom hearing link will be sent to the applicant's provided email address.

At least FIVE (5) days prior to the above date, applicant/s shall publish this Notice once in ONE (1) daily newspaper of general circulation in Luzon.

Pursuant to Memorandum Circular No. 2021-043 in relation to No. 2020-069 (re: Guidelines in the conduct of on-line hearing during community quarantine), the Formal Offer of Evidence (FOE) must be submitted at least FIVE (5) working days prior to the scheduled hearing.

Parties opposed to the granting of the application must file their written oppositions supported by documentary evidence on or before the above date furnishing a copy of the same to the applicant/s and may if they so, desire appear on said date and time.

This application will be acted upon by this Board on the basis of its records and documentary evidence submitted by the parties, unless the Board deems it necessary to receive additional documentary and/or oral evidence.

WITNESS the Honorable ATTY. TEOFILO E. GUADIZ III, CESO V, Chairman this FEBRUARY 14, 2023.

ATTY. JENNIFER LEAH P. ROJAS Attorney IV Hearing Officer

Republic of the Philippines Department of Transportation Land Transportation Franchising and Regulatory Board East Avenue, Quezon City CASE NO. TNVS-2023-0962 Application for a Certificate of a Public Convenience to operate a Transport Network Vehicle Service JEAH S. FLORES, Applicant/s.

NOTICE OF HEARING Applicant filed an application requesting for authority to operate a Transport Network Vehicle Service (TNVS) within METRO MANILA including MUCPEP area, accessible to motor vehicle traffic and vice versa, with the use of ONE (1) unit/s.

NOTICE is hereby given that this application will be heard by this Board on MARCH 2, 2023 at 1:00 p.m. at its office through online hearing. The Zoom hearing link will be sent to the Applicant's provided email address.

At least FIVE (5) days prior to the above date, applicant/s shall publish this Notice once in ONE (1) daily newspaper of general circulation in Luzon. Pursuant to Memorandum Circular No. 2021-043 in relation to No. 2020-069 (re: Guidelines in conduct of on-line hearing during community quarantine), the Formal Offer of Evidence (FOE) must be submitted at least FIVE (5) working days prior to the scheduled hearing.

Parties opposed to the granting of the application must file their written oppositions supported by documentary evidence on or before the above date furnishing a copy of the same to the applicant/s and may if they so, desire appear on said date and time.

This application will be acted upon by this Board on the basis of its records and documentary evidence submitted by the parties, unless the Board deems it necessary to receive additional documentary and/or oral evidence.

WITNESS the Honorable ATTY. TEOFILO E. GUADIZ III, CESO V, Chairman, this FEBRUARY 14, 2023.

ATTY. FREDERICK L. VALERO Office-in-Charge Legal Division

Republic of the Philippines Department of Transportation Land Transportation Franchising and Regulatory Board East Avenue, Quezon City CASE NO. TNVS-2023-1141 Application for a Certificate of a Public Convenience to operate a Transport Network Vehicle Service JASON M. GANUELAS, Applicant/s.

NOTICE OF HEARING Applicant filed an application requesting for authority to operate a Transport Network Vehicle Service (TNVS) within METRO MANILA including MUCPEP area, accessible to motor vehicle traffic and vice versa, with the use of ONE (1) unit/s.

NOTICE is hereby given that this application will be heard by this Board on MARCH 9, 2023 at 9:00 a.m. at its office through online hearing. The Zoom hearing link will be sent to the Applicant's provided email address.

At least FIVE (5) days prior to the above date, applicant/s shall publish this Notice once in ONE (1) daily newspaper of general circulation in Luzon. Pursuant to Memorandum Circular No. 2021-043 in relation to No. 2020-069 (re: Guidelines in conduct of on-line hearing during community quarantine), the Formal Offer of Evidence (FOE) must be submitted at least FIVE (5) working days prior to the scheduled hearing.

Parties opposed to the granting of the application must file their written oppositions supported by documentary evidence on or before the above date furnishing a copy of the same to the applicant/s and may if they so, desire appear on said date and time.

This application will be acted upon by this Board on the basis of its records and documentary evidence submitted by the parties, unless the Board deems it necessary to receive additional documentary and/or oral evidence.

WITNESS the Honorable ATTY. TEOFILO E. GUADIZ III, CESO V, Chairman, this FEBRUARY 14, 2023.

ATTY. FREDERICK L. VALERO Office-in-Charge Legal Division

Republic of the Philippines Department of Transportation Land Transportation Franchising and Regulatory Board National Capital Region Regalado Hi-way, North Fairview, Quezon City CASE NO. 92-10047 TRACKING ID NO. 163406 Application for Extension of Validity of a Certificate of Public Convenience to operate a PUJ service NORMA O. MALLILLIN, Applicant/s.

NOTICE OF HEARING Applicant is a grantee of a Certificate of Public Convenience to operate a PUJ service within: DIVISORIA - MALANDAY VIA J.A. SANTOS with the use of ONE (1) units which Certificate is valid up to OCTOBER 29, 2022. In the application filed on DECEMBER 19, 2022. Applicant requests authority to extend the validity of the said Certificate on the same route and with the use of the same number of units.

NOTICE is hereby given that this application will be heard by this Regional Office on MARCH 7, 2023 at 9:00 a.m. thru online hearing. Three days before the scheduled hearing, a link shall be sent to the applicant via email or text message.

At least FIVE (5) days prior to the above date, applicant/s shall publish this Notice of Hearing once in ONE (1) daily newspaper of general circulation in Metro Manila. Further, applicant is hereby directed to submit his/her Formal Offer of Evidence at the designated drop box of this RFO during business hour five days before the scheduled hearing.

Parties opposed to the granting of the application must file their written opposition supported by documentary evidences on or before the above date, furnishing a copy of the same to applicant and may, if so desires, appear on the scheduled date of hearing.

WITNESS the Honorable ATTY. TEOFILO E. GUADIZ III, CESO V, Chairman, this 14th day of FEBRUARY 2023.

ATTY. SHERWIN D. VIZCONDE Attorney IV

Republic of the Philippines Department of Transportation Land Transportation Franchising and Regulatory Board National Capital Region Regalado Hi-way, North Fairview, Quezon City CASE NO. 92-09868 TRACKING ID NO. 163503 Application for Extension of Validity of a Certificate of Public Convenience to operate a PUJ service SPS. ALBERTO & MARLENE PABUAYA, Applicant/s.

NOTICE OF HEARING Applicant is a grantee of a Certificate of Public Convenience to operate a PUJ service within: DIVISORIA - MALINTA VIA JA SANTOS with the use of ONE (1) units which Certificate is valid up to NOVEMBER 5, 2022. In the application filed on OCTOBER 10, 2022. Applicant requests authority to extend the validity of the said Certificate on the same route and with the use of the same number of units.

NOTICE is hereby given that this application will be heard by this Regional Office on MARCH 7, 2023 at 9:00 a.m. thru online hearing. Three days before the scheduled hearing, a link shall be sent to the applicant via email or text message.

At least FIVE (5) days prior to the above date, applicant/s shall publish this Notice of Hearing once in ONE (1) daily newspaper of general circulation in Metro Manila. Further, applicant is hereby directed to submit his/her Formal Offer of Evidence at the designated drop box of this RFO during business hour five days before the scheduled hearing.

Parties opposed to the granting of the application must file their written opposition supported by documentary evidences on or before the above date, furnishing a copy of the same to applicant and may, if so desires, appear on the scheduled date of hearing.

WITNESS the Honorable ATTY. TEOFILO E. GUADIZ III, CESO V, Chairman, this 14th day of FEBRUARY 2023.

ATTY. SHERWIN D. VIZCONDE Attorney IV

Republic of the Philippines Department of Transportation Land Transportation Franchising and Regulatory Board National Capital Region San Fernando, Pampanga RFR03-23-00064 Application for a Certificate of Public Convenience to operate a TH-Freight Truck service MARK LOUIE V. BOGNOT 149 Dona Lucing Ave. Calibutbut, Bacolor, Pampanga Applicant/s.

NOTICE OF HEARING Applicant requests authority for issuance of a Certificate of Public Convenience to operate a TH FREIGHT TRUCK service within the Municipality of BACOLOR, PAMPANGA and from said place to any point in the island of PHILIPPINES accessible to motor vehicle traffic and vice versa with the use of ONE (1) units.

NOTICE is hereby given that this application will be heard by this Board on MARCH 14, 2023 at 9:00 a.m. at its office at the above

address. Applicant is hereby ordered to publish this Notice at least TEN (10) days before the above date of hearing once in a newspaper of general circulation in PHILIPPINES. Parties opposed to the granting of the application must file their written oppositions supported by documentary evidence on or before the above date furnishing a copy of the same to the applicant/s and may if they so, desire appear on said date and time.

This application will be acted upon by this Board on the basis of its records and documentary evidence submitted by the parties, unless the Board deems it necessary to receive additional evidence.

WITNESS the Honorable NASRUDIN U. TALIPASAN, Regional Director, this 17th day of FEBRUARY 2023 in the City of San Fernando, Pampanga.

ATTY. THERESA B. MAGTOTO Chief Transportation Development Officer Hearing Officer

Republic of the Philippines Department of Transportation Land Transportation Franchising and Regulatory Board National Capital Region San Fernando, Pampanga RFR03-2016-02012 Application for Extension of Validity of a Certificate of Public Convenience to operate a TH-Freight Truck service RON SHERWIN R. VALENTIN, Applicant/s.

NOTICE OF HEARING Applicant is a grantee of a Certificate of Public Convenience to operate a TH Freight Truck service for the transportation of cargoes and freight within the Municipality of PANDI, BULACAN and from said place to any point of the PHILIPPINES accessible to motor vehicle traffic with the use of ONE (1) unit/s which Certificate is valid up to APRIL 2, 2023. In the application filed on FEBRUARY 6, 2023. Applicant requests for extension of validity of said certificate with the use of the same number of units authorized.

NOTICE is hereby given that this application will be heard by this Board on MARCH 14, 2023 at 9:00 a.m. at its office at the above address.

Applicant is hereby ordered to publish this Notice at least TEN (10) days before the above date of hearing once in a newspaper of general circulation in PHILIPPINES.

Parties opposed to the granting of the application must file their written oppositions supported by documentary evidence on or before the above date furnishing a copy of the same to the applicant/s and may if they so, desire appear on said date and time.

This application will be acted upon by this Board on the basis of its records and documentary evidence submitted by the parties, unless the Board deems it necessary to receive additional evidence.

WITNESS the Honorable NASRUDIN U. TALIPASAN, Regional Director, this 17th day of FEBRUARY 2023 in the City of San Fernando, Pampanga.

ATTY. THERESA B. MAGTOTO Chief Transportation Development Officer Hearing Officer

Republic of the Philippines Department of Transportation Land Transportation Franchising and Regulatory Board National Capital Region San Fernando, Pampanga RFR03-2017-00577 Application for Extension of Validity of a Certificate of Public Convenience to operate a TH-Freight Truck service RON SHERWIN R. VALENTIN, Applicant/s.

NOTICE OF HEARING Applicant is a grantee of a Certificate of Public Convenience to operate a TH Freight Truck service for the transportation of cargoes and freight within the Municipality of PANDI, BULACAN and from said place to any point of the PHILIPPINES accessible to motor vehicle traffic with the use of ONE (1) unit/s which Certificate is valid up to MAY 7, 2023. In the application filed on FEBRUARY 6, 2023. Applicant requests for extension of validity of said certificate with the use of the same number of units authorized.

NOTICE is hereby given that this application will be heard by this Board on MARCH 14, 2023 at 9:00 a.m. at its office at the above address.

Applicant is hereby ordered to publish this Notice at least TEN (10) days before the above date of hearing once in a newspaper of general circulation in PHILIPPINES.

Parties opposed to the granting of the application must file their written oppositions supported by documentary evidence on or before the above date furnishing a copy of the same to the applicant/s and may if they so, desire appear on said date and time.

This application will be acted upon by this Board on the basis of its records and documentary evidence submitted by the parties, unless the Board deems it necessary to receive additional evidence.

WITNESS the Honorable NASRUDIN U. TALIPASAN, Regional Director, this 17th day of FEBRUARY 2023 in the City of San Fernando, Pampanga.

ATTY. THERESA B. MAGTOTO Chief Transportation Development Officer Hearing Officer

Republic of the Philippines Department of Transportation Land Transportation Franchising and Regulatory Board Regional Office No. III San Fernando, Pampanga RFR03-2020-00210 Application for Additional Unit of a Certificate of a Public Convenience to operate a SHUTTLE service ELOHIM TRANSPORT SERVICES INC., Applicant/s.

SECOND NOTICE OF HEARING Applicant is a grantee of a Certificate of Public Convenience to operate a SHUTTLE service for the transportation of employees and officials of HERMOSA ECOZONE DEVELOPMENT CORP. located at Hermosa Ecozone Industrial Park, Palihan, Hermosa, Bataan with the use of SIX (6) unit/s which certificate is valid up to DECEMBER 16, 2026. In the application filed on JANUARY 18, 2023. Applicant requests authority to include TWO (2) unit/s so as to operate EIGHT (8) unit/s, with same authorized route.

NOTICE is hereby given that this application will be heard by this Board on MARCH 14, 2023 at 9:00 a.m. at its office at the above address.

Applicant is hereby ordered to publish this Notice at least FIVE (5) days before the above date of hearing once in a newspaper of general circulation in REGION III.

Parties opposed to the granting of the application must file their written oppositions supported by documentary evidence on or before the above date furnishing a copy of the same to the applicant/s and may if they so, desire appear on said date and time.

This application will be acted upon by this Board on the basis of its records and documentary evidence submitted by the parties, unless the Board deems it necessary to receive additional evidence.

WITNESS the Honorable NASRUDIN U. TALIPASAN, Regional Director, this 17th day of FEBRUARY 2023 in the City of San Fernando, Pampanga.

ATTY. THERESA B. MAGTOTO Chief Transportation Development Officer Hearing Officer

Republic of the Philippines Department of Transportation Land Transportation Franchising and Regulatory Board National Capital Region San Fernando, Pampanga RFR03-2022-00787 Application for a Certificate of Public Convenience to operate a SCHOOL TRANSPORT service ELOHIM TRANSPORT SERVICES INC. Aptoing St. Manalo Village, Brgy. Palihan, Hermosa, Bataan Applicant/s.

SECOND NOTICE OF HEARING Applicant requests authority for issuance of a Certificate of Public Convenience to operate a SCHOOL TRANSPORT service for the exclusive transportation of students of REGIONAL SCIENCE HIGH SCHOOL III located at East Kalayaan Heights, Subic Bay, Freeport Zone from their respective residences in BATAAN and vice versa with the use of FOUR (4) unit/s.

NOTICE is hereby given that this application will be heard by this Board on MARCH 14, 2023 at 9:00 a.m. at its office at the above address.

Applicant is hereby ordered to publish this Notice at least FIVE (5) days before the above date of hearing once in a newspaper of general circulation in REGION III.

Parties opposed to the granting of the application must file their written oppositions supported by documentary evidence on or before the above date furnishing a copy of the same to the applicant/s and may if they so, desire appear on said date and time.

This application will be acted upon by this Board on the basis of its records and documentary evidence submitted by the parties, unless the Board deems it necessary to receive additional evidence.

WITNESS the Honorable NASRUDIN U. TALIPASAN, Regional Director, this 17th day of FEBRUARY 2023 in the City of San Fernando, Pampanga.

ATTY. THERESA B. MAGTOTO Chief Transportation Development Officer Hearing Officer

Republic of the Philippines Department of Transportation Land Transportation Franchising and Regulatory Board East Avenue, Quezon City CASE NO. TNVS-2023-1119 Application for a Certificate of a Public Convenience to operate a Transport Network Vehicle Service CARL JASON MENDOZA SY, Applicant/s.

NOTICE OF HEARING Applicant filed an application requesting for authority to operate a Transport Network Vehicle Service (TNVS) within METRO MANILA including MUCPEP area, accessible to motor vehicle traffic and vice versa, with the use of ONE (1) unit/s.

NOTICE is hereby given that this application will be heard by this Board on MARCH 9, 2023 at 1:00 p.m. at its office through online hearing. The Zoom hearing link will be sent to the Applicant's provided email address.

ATTY. FREDERICK L. VALERO Office-in-Charge Legal Division

At least FIVE (5) days prior to the above date, applicant/s shall publish this Notice once in ONE (1) daily newspaper of general circulation in Luzon.

Pursuant to Memorandum Circular No. 2021-043 in relation to No. 2020-069 (re: Guidelines in conduct of on-line hearing during community quarantine), the Formal Offer of Evidence (FOE) must be submitted at least FIVE (5) working days prior to the scheduled hearing.

Parties opposed to the granting of the application must file their written oppositions supported by documentary evidence on or before the above date furnishing a copy of the same to the applicant/s and may if they so, desire appear on said date and time.

This application will be acted upon by this Board on the basis of its records and documentary evidence submitted by the parties, unless the Board deems it necessary to receive additional documentary and/or oral evidence.

WITNESS the Honorable ATTY. TEOFILO E. GUADIZ III, CESO V, Chairman, this FEBRUARY 16, 2023.

ATTY. FREDERICK L. VALERO Office-in-Charge Legal Division

Republic of the Philippines Department of Transportation Land Transportation Franchising and Regulatory Board East Avenue, Quezon City CASE NO. TNVS-2023-0941 Application for a Certificate of a Public Convenience to operate a Transport Network Vehicle Service ALYSSA SANGALANG BARNACHEA, Applicant/s.

NOTICE OF HEARING Applicant filed an application requesting for authority to operate a Transport Network Vehicle Service (TNVS) within METRO MANILA including MUCPEP area, accessible to motor vehicle traffic and vice versa, with the use of ONE (1) unit/s.

NOTICE is hereby given that this application will be heard by this Board on MARCH 2, 2023 at 1:00 p.m. at its Office through online hearing. The Zoom hearing link will be sent to the applicant's provided email address.

At least FIVE (5) days prior to the above date, applicant/s shall publish this Notice once in ONE (1) daily newspaper of general circulation in Luzon.

Pursuant to Memorandum Circular No. 2021-043 in relation to No. 2020-069 (re: Guidelines in conduct of on-line hearing during community quarantine), the Formal Offer of Evidence (FOE) must be submitted at least FIVE (5) working days prior to the scheduled hearing.

Parties opposed to the granting of the application must file their written oppositions supported by documentary evidence on or before the above date furnishing a copy of the same to the applicant/s and may if they so, desire appear on said date and time.

This application will be acted upon by this Board on the basis of its records and documentary evidence submitted by the parties, unless the Board deems it necessary to receive additional documentary and/or oral evidence.

WITNESS the Honorable ATTY. TEOFILO E. GUADIZ III, CESO V, Chairman, this FEBRUARY 14, 2023.

ATTY. FREDERICK L. VALERO Office-in-Charge Legal Division

Republic of the Philippines Department of Transportation Land Transportation Franchising and Regulatory Board East Avenue, Quezon City CASE NO. TNVS-2023-0942 Application for a Certificate of a Public Convenience to operate a Transport Network Vehicle Service KRISTEL VIZCARRA SAJONIA, Applicant/s.

NOTICE OF HEARING Applicant filed an application requesting for authority to operate a Transport Network Vehicle Service (TNVS) within METRO MANILA including MUCPEP area, accessible to motor vehicle traffic and vice versa, with the use of ONE (1) unit/s.

NOTICE is hereby given that this application will be heard by this Board on MARCH 2, 2023 at 1:00 p.m. at its office through online hearing. The Zoom hearing link will be sent to the applicant's provided email address.

At least FIVE (5) days prior to the above date, applicant/s shall publish this Notice once in ONE (1) daily newspaper of general circulation in Luzon. Pursuant to Memorandum Circular No. 2021-043 in relation to No. 2020-069 (re: Guidelines in conduct of on-line hearing during community quarantine), the Formal Offer of Evidence (FOE) must be submitted at least FIVE (5) working days prior to the scheduled hearing.

Parties opposed to the granting of the application must file their written oppositions supported by documentary evidence on or before the above date furnishing a copy of the same to the applicant/s and may if they so, desire appear on said date and time.

This application will be acted upon by this Board on the basis of its records and documentary evidence submitted by the parties, unless the Board deems it necessary to receive additional documentary and/or oral evidence.

WITNESS the Honorable ATTY. TEOFILO E. GUADIZ III, CESO V, Chairman, this FEBRUARY 14, 2023.

ATTY. FREDERICK L. VALERO Office-in-Charge Legal Division

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

PETITION FOR DISPUTE
RESOLUTION

ATLANTA INDUSTRIES INC.

-versus- Petitioner,

ERC CASE NO. 2023-003 DR

MANILA ELECTRIC COMPANY AND
MPOWER (AS THE LOCAL RETAIL
ELECTRICITY SUPPLIER OF MERALCO),
Respondents.

NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 12 January 2023, Atlanta Industries, Inc. (ATLANTA) filed a Petition for Dispute Resolution dated 20 December 2022 against Manila Electric Company (MERALCO) and Mpower as the Local Retail Electricity Supplier (LRES) of MERALCO.

The pertinent portions of the said Petition are hereunder quoted:

PARTIES

- Petitioner ATLANTA INDUSTRIES, INC. is a corporation duly organized and existing under and by virtue of Philippine laws, with principal office address at 35th Floor, Atlanta Center, 31 Annapolis Street, Greenhills, San Juan, Metro Manila. It may be served with processes, pleadings, papers, and orders of this Honorable Commission through the undersigned counsel at the address indicated.
- The Respondent MANILA ELECTRIC COMPANY ("MERALCO") is a corporation duly organized and existing under and by virtue of Philippine laws, engaged in the distribution and sale of electric power, and may be served with processes, pleadings, papers and orders of this Honorable Commission at its principal address at G/F Lopez Building, MERALCO Center, Ortigas Avenue, Pasig City, Philippines.
- The Respondent MPOWER is a local Retail Electricity Supplier ("RES") and a business segment of Respondent MERALCO and may be served with processes, pleadings, papers, and orders of this Honorable Commission at 2/F Business Solutions Center, MERALCO Compound, Ortigas Avenue, Pasig City.

STATEMENT OF FACTS
AND ANTECEDENT PROCEEDINGS

- Atlanta is engaged primarily in the manufacturing business, and operates and maintains a plastic pipe factory at 8007 (PPC7), Atlanta Compound, A. Mabini St, Manggahan, Pasig City ("Manggahan Compound").
- Atlanta has an existing retail electricity supply agreement ("RESA") with the Respondent MERALCO, through the latter's non-regulated supply business segment, MPOWER, a local retail electricity supplier, for the supply of electricity at Petitioner's Manggahan Compound under Service ID Number No. 100102680101 (CSIN: 100102680102), for meter number: 412JSL002014. A copy of the aforementioned RESA is attached as Annex "A".
- The latest contract pricing agreement for the RESA between MERALCO and Atlanta is contained in a contract executed between the parties in December 2021 and captioned "Addendum to the Offer Sheet dated 20 March 2016" (hereinafter, "2021 Addendum"). Copies of the Offer Sheet dated 20 March 2016 and the 2021 Addendum are attached herewith as Annexes "B" and "B-1".
- The relevant provisions in the 2021 Addendum pertaining to the electricity price agreed between the parties are replicated below:

Product Description	The Fixed Pricing Product is an energy-based product that has a set Contract Price per kWh for energy consumption, priced from a blend of MPOWER's supply portfolio. In addition to the Contract Price, MPOWER shall bill you all other Pass-Through Charges from third parties and other charges which shall form the total cost of providing your retail electricity supply of the Electricity Price.
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MPOWER, as the local retail electricity supplier, has been the party directly dealing with Atlanta with respect to their retail electricity supply agreement. However, Mpower is part of MERALCO, and MERALCO, being the legal juridical identity, shall be the Respondent. For purposes only of stating the facts, Mpower shall be specifically referred to as such throughout the complaint if only to identify the concerned retail electric supplier of Atlanta Industries, Inc.

Contract Capacity	Your Contract Capacity is 3,500 kW, fixed for the Contract Term. If energy consumption exceeds Contract Capacity, MPOWER will provide this at the Contract Price.
Details of Electricity Price	<p>ELECTRICITY PRICE</p> <p>ELECTRICITY PRICE = Contract Price x Energy Volume (kWh) + Other Generation Charges + WESM Charges + Reimbursable Costs + Pass-Through Charges</p> <p>Fixed Pricing Product Structure</p> <p>Contract Price = 3.5500 Php/kWh</p> <p>In case of extension, the Contract Price during the extended period will be adjusted annually based on the changes in the Philippine Consumer Price Index starting on the first month of an extended period. Refer to the attached Computation Reference Sheet. The Contract Price will reflect changes in this variable as and when they occur, including necessary "true-ups" that are charged to us, and adjustments will be made in the next invoicing cycle if the amounts are known and can be calculated by the time we send you our next invoice; otherwise the adjustments, retroactive to the time they should have been reflected, will be made as soon as practicable.</p> <p>Energy Volume (kWh) = Metered energy quantities</p> <p>Retail Supply Charge = Php10,000.00 per month. This will be adjusted starting on the second Contract Year based on the changes in the Philippine Consumer Price Index and every Contract Year thereafter. A Contract Year means any successive twelve (12) supply periods. The first Contract Year shall commence from December 26, 2021. For details, refer to the attached Computation Reference Sheet.</p> <p>Other Generation Charges</p> <ul style="list-style-type: none"> During Force Majeure events, MPOWER may continue to supply your energy requirement from WESM or other alternative sources as the case may be, provided that there is available power in the grid or WESM and either party is not affected by the Force Majeure event to deliver and/or accept such electric energy. If MPOWER is able to supply your energy requirement during Force Majeure events, payment shall be at the Contract Price or actual cost, whichever is higher.

- WESM Charges*
- Line Rental shall be for the account of MPOWER
 - Must Run Unit
 - Other WESM Charges as billed by the WESM (such as but not limited to Market Operator Fees)

MPOWER shall bill you the following reimbursable costs:

- Local taxes imposed, assessed or to be imposed by any local government units or instrumentality on pass-through charges;
- In case of amendment, adoption or enactment of any law, rules or government issuance, or the application, enforcement, interpretation or implementation thereof by any Governmental instrumentality, and which was not in existence as of the execution date of this Offer Sheet or RESA resulting in new or increase in taxes, duties, levies, fees, charges and similar imposts.

Pass-Through Charges* -- other charges passed on to us for supplying electricity to you. These charges include, but are not limited to:

- Transmission Charge = as billed by the Distribution Utility
- Distribution, Metering, Supply, System Loss Charges including Subsidies, Over and Under Recoveries = as billed by the Distribution Utility Universal Charge = rate as approved by the ERC
- FIT-All (Renewable) = rate as approved by the ERC
- Other Charges = as approved by the ERC to be considered Pass-Through Charges
- Government Taxes = as imposed by governmental regulations

*These pass-through charges are subject to change without prior notice depending on the bills we receive from the applicable entities or the regulations or laws issued by the government.

The Pricing and tariff set out in this Pricing Product assumes the period from a) December 26, 2021 to December 25, 2023 and b) the extended period from December 26, 2023 to December 25, 2025 in the Contract term

8. It is very clear in this 2021 Addendum that the parties agreed to a fixed contract price of 3.55 PHP/kWh for the contract period beginning 26 December 2021 to 26 December 2023, and the extension period from 26 December 23 to 25 December 2025.

9. However, on 22 April 2022, Atlanta received a letter dated 20 April 2022 captioned Notice of Change in Circumstance and signed by Eddie John V. Adug, Assistant, Vice President and Head of Sale of Mpower. A copy of this Notice of Change in Circumstance is attached as Annex "C".

10. In the Notice of Change in Circumstance, Mpower stated that due to recent unprecedented increases in the global price of oil, coal, gas, and other fuel sources that have allegedly greatly affected the cost of electricity, its power generator suppliers were constrained to pass on their under-recoveries and consequent fuel costs arising from the increase in fuel and coal prices through fuel adjustments. It further stated that:

"xxx
Due to the change in circumstance brought about by these extraordinary increases in fuel costs, we are notifying you that we will be implementing beginning next month the recovery of the fuel adjustment cost coming from our power generator suppliers covering the period of January to March 2022. Please note that future monthly billings will also reflect recovery of fuel adjustment cost if the high fuel cost situation persists.
xxx"

11. On 29 April 2022, a meeting was held between the representatives of Atlanta and MPOWER to discuss the matter of the recovery of fuel adjustments in the future billings of Atlanta for its account with Service ID Number No. 100102680101 (CSIN: 100102680102). During this meeting, Atlanta expressed its objection to the imposition and collection of the recovery of the fuel adjustment and the inclusion thereof in its electricity billings and invoked their signed and mutual agreement in the 2021 Addendum on a fixed contract price. The said adjustment on the electricity bill is tantamount to an increase in the price of the electricity, and since it is not one of those charges that can be passed through to the consumer, its inclusion in the bill is not allowed under the terms of Atlanta's RESA.

12. Again, through a letter dated 04 May 2022, a copy of which is attached as Annex "D", Atlanta reiterated its objection to the implementation of the recovery of the fuel adjustment costs in its subsequent monthly electricity billings, asserting that these additional charges to Atlanta are not allowed under the terms of agreement between MERALCO and Atlanta in their "2021 Addendum" on the fixed contract pricing.

13. Despite Atlanta's express and adamant objections, MPOWER went ahead and billed Atlanta in the latter's Electricity Bill Invoice No. 5882050020893 for the period 26 March to 25

Current Charges	PHP	7,179,654.88
FCRA	PHP	3,918,891.25
Total	PHP	11,098,546.13

April 2022 an additional amount of Three Million Nine Hundred Eighteen Thousand Eight Hundred Ninety One Pesos (PHP 3,918,891.00), which was referred to in the bill as Fuel Cost Recovery Adjustment ("FCRA"), on top of the Current Charges of Seven Million One Hundred Seventy Nine Thousand Six Hundred Fifty Four and 88/100 Pesos (PHP 7,179,654.88). A copy of Electricity Bill Invoice No. 5882050020893, showing the following amounts, is attached as Annex "E":

14. To avoid any costly disruptions in the electricity supply to the manufacturing plants of Atlanta located at the Manggahan Compound, Atlanta paid the full amount billed under Electricity Bill Invoice No. 5882050020893, including the FCRA. A copy of the BDO check transaction slip proving payment of the FCRA amounting to Three Million Nine Hundred Eighteen Thousand Eight Hundred Ninety One Pesos (PHP 3,918,891.00) is attached as Annex "E-1".

15. On 24 May 2022, Atlanta, through the undersigned counsel, sent a protest letter dated 23 May 2022 to MPOWER, a copy of which is attached herewith as Annex "F", informing the latter that Atlanta paid the amounts due on the Electricity Bill Invoice No. 5882050020893, including the FCRA unilaterally imposed and against the objections of Atlanta, and emphasized, however, that the payment of the FCRA was paid under protest. Hence, a demand was made for the full refund of the amount paid for the FCRA within five (5) calendar days from 24 May 2022. Mpower did not respond to the Letter of Protest dated 23 May 2022.

16. Since Atlanta did not receive any response to its protest letter and anticipating that Mpower will continue to include the FCRA in its monthly electricity billing for its Manggahan Compound, it filed with the Energy Regulatory Commission - Consumer Affairs Service ("ERC-CAS") a letter-complaint dated 31 May 2022 with a prayer for the issuance of a temporary restraining order against MERALCO/Mpower on 31 May 2022.

16.01. Before the ERC-CAS took recognition of the letter-complaint, it sent Atlanta to MERALCO's consumer desk at the 5th floor of the Pacific Center, where the ERC is also holding office, per the protocols of the ERC. At the MERALCO desk, no settlement was arrived at. The MERALCO agent merely took note of the complaint and because no resolution from MERALCO was forthcoming, Atlanta returned to ERC to file the letter-complaint.

16.02. Sometime after, ERC directed Atlanta to submit copies of its RESA with MERALCO/Mpower and the monthly electricity billings showing the FCRA charges, which Atlanta complied with right away.

17. Meantime, Atlanta continued to receive its monthly electricity billings for its Manggahan Compound, and Mpower continued to charge a FCRA in every billing. 18. On 14 June 2022, Atlanta received its Electricity Bill Invoice No. 5882060020769 for the period 26 April to 25 May 2022. In this Electricity Bill,

with total amount due of Twelve Million Eighty Six Thousand Seven Hundred Sixty and 12/100 Pesos (PHP 12,086,760.12). Mpower has again billed Atlanta another round of FCRA in the amount of Four Million Eight Hundred Sixty One Thousand Five Hundred Twenty Four and 25/100 Pesos (PHP 4,861,524.25) on top of the Current Charges of Seven Million Two Hundred Twenty Five Thousand Two Hundred Thirty Five and 87/100 Pesos (PHP 7,225,235.87). A copy of Electricity Bill Invoice No. 5882060020769, showing the following, is attached as Annex "G".

Current Charges	PHP	7,225,235.87
FCRA	PHP	4,861,524.25
Total	PHP	12,086,760.12

19. On 28 June 2022, Atlanta, through undersigned counsel, sent another letter of even date to reiterate to Mpower its objections to the unilateral imposition of the FCRA in the monthly electricity billings for the Manggahan Compound because the additional charges were getting considerably bigger each time and are burdensome on the finances of Atlanta. Thus, it did not pay the FCRA billed in its June monthly bill and paid only the amount corresponding to the Current Charges. In the letter, Atlanta also informed Mpower that a letter-complaint was already filed with the ERC and requested that the parties maintain status quo in the meantime while the matter is pending resolution. A copy of the letter dated 28 June 2022 is attached as Annex "H".

20. Instead of a response to its protest letters, Atlanta received a letter dated 23 June 2022 captioned "Fuel Cost Recovery Adjustment for January 2022 to March 2022" stating that Mpower will also be collecting FCRA covering the period beginning January 2022 to March 2022 in the amount of Five Million Seven Hundred Seventeen Thousand Nine Hundred Eighty Eight and 4/100 Pesos (PHP 5,717,988.04). The letter dated 23 June 2022 is attached herewith as Annex "I".

21. Thereafter, Atlanta received its Electricity Bill Invoice No. 5882070020863 with due date on 22 July 2022, covering the period 26 May 2022 to 25 June 2022, with total amount due of Eighteen Million One Hundred Ninety Four Thousand Two Hundred Ninety and 43/100 Pesos (PHP 18,194,290.43), broken down as follows:

Balance from Previous Billing	PHP	4,861,524.25
Current Charges	PHP	6,489,894.10
FCRA	PHP	6,842,872.08
Total	PHP	18,194,290.43

21.01. Mpower again imposed a FCRA in this billing in the amount of Six Million Eight Hundred Forty Two Thousand Eight Hundred Seventy Two and 08/100 Pesos (PHP 6,842,872.08), which is now an amount more than the current charges for the same period. A copy of Electricity Bill Invoice No. 5882070020863 is attached as Annex "J".

22. In light of the letter-complaint it filed and still pending with the ERC-CAS, Atlanta did not pay the FCRA being collected by Mpower in its letter dated 23 June 2022 and included in the Electricity Bill Invoice No. 5882070020863. Atlanta only paid the Current Charges billed based on their agreement of a fixed contract price.

23. On 04 July 2022, upon the request of MERALCO, Atlanta's lawyers met with lawyers and representatives of MERALCO and Mpower through a videoconference to discuss the matter on the FCRA. MERALCO proposed settling the issue of the FCRA outside of the ERC, so Atlanta's top management met with MERALCO and Mpower.

24. However, the parties could still not arrive at a final agreement because Mpower insisted on collecting the FCRA, whereas, Atlanta, on the other hand, refused to concede to the additional charges because the FCRA amounts being billed on top of the contract price agreed between the parties are in the millions of pesos and are significantly affecting the operating costs and cash flow of Atlanta and ultimately distressing Atlanta's finances.

25. Immediately thereafter on 10 July 2022, Atlanta received a Termination Letter dated 7 July 2022 captioned "Termination of Retail Electricity Supply Agreement ("RESA") between Atlanta Industries, Inc. and MPOWER". The Termination Letter stated that due to Atlanta's failure to pay the FCRA in the billing adjustment letter dated 23 June 2022 and in the April and May 2022 billing statements, which amounts summed up to Fifteen Million Two Hundred Nineteen Thousand Seven Hundred Eighty Four and 65/100 Pesos (PHP 15,219,784.65), Mpower is terminating the RESA with Atlanta effective 25 July 2022 and Mpower will request for disconnection of the electricity service and/or cease the supply of electricity to Atlanta's premises at Manggahan by July 26, 2022 after receipt of the letter without further notice. The termination letter is attached herewith as Annex "K".

26. On 13 July 2022, Atlanta and Mpower had another conference to continue discussions on the matter of the FCRA and Mpower's threat to terminate and effect disconnection of the electricity supply to Atlanta's Manggahan compound. In this meeting, Mpower agreed to suspend the collection of the FCRA for the period January 2022 to March 2022. As to the unpaid FCRA for May and June 2022 amounting to Eleven Million Seven Hundred Four Thousand Three Hundred Ninety Six and 33/100 Pesos (PHP 11,704,396.33), Mpower proposed for Atlanta to pay the said amount in installments. Because of the impending threat of Mpower to cut off the electricity supply to the Manggahan Compound should the FCRA not be paid, Atlanta reluctantly agreed to the installment payments of the unpaid FCRA, but made no concessions on the validity of the FCRA nor on its inclusion in the monthly electricity bills.

27. Accordingly, following the conference with Atlanta, Mpower sent a Billing Adjustment and Installment Payment Agreement dated 01 August 2022, a copy of which is attached herewith as Annex "L", with a proposed Installment Payment Arrangement Schedule ("IPA Schedule") for the settlement of the unpaid FCRA for the months in four installments, as follows:

INSTALLMENT PAYMENT ARRANGEMENT SCHEDULE				
Billing Month	FCRA Supply Month	Total	Due Date	
Aug 2022	1,620,508.08	1,620,508.08		Same as due date of Aug 2022 bill
Sep 2022	1,620,508.08	2,280,957.36	3,901,465.44	Same as due date of Sep 2022 bill
Oct 2022	1,620,508.09	2,280,957.36	3,901,465.44	Same as due date of Oct 2022 bill
Nov 2022		2,280,957.36	2,280,957.36	Same as due date of Nov 2022 bill
Dec 2022				
Jan 2023				
Feb 2023				
Mar 2023				
Apr 2023				
May 2023				
FCRA Amount	4,861,424.25	6,842,872.08	11,704,396.33	

28. On 25 July 2022, Atlanta received from the ERC a letter dated 19 July 2022 directing Mpower to submit its Comment to the letter-complaint and setting the complaint for a virtual conference with the parties on 09 August 2022 at 10 a.m. A copy of the ERC letter dated 19 July 2022 is attached herewith as Annex "M".

29. On 09 August 2022, the ERC met with MERALCO / Mpower and Atlanta through a virtual conference via ZOOM. The ERC reiterated its order for Mpower to submit its Comment to the letter-complaint filed by Atlanta. The parties still did not arrive at an agreement so the ERC set the case for another video conference at the end of the month.

30. On 10 August 2022, Atlanta received via electronic mail, and through the undersigned counsel, Mpower's Comment to the letter-complaint, to which Atlanta filed its Reply dated 24 August 2022 on 25 August 2022. A copy of Atlanta's Comment to Atlanta's letter-complaint is attached herewith as Annex "N", while a copy of Atlanta's Reply dated 24 August 2022 is attached herewith as Annex "O".

30.01. In their Comment, Mpower did not even bother to justify its unilateral imposition of the FCRA but only submitted that the ERC had no jurisdiction over the matter of dispute between Mpower and Atlanta regarding the charging of the FCRA. Mpower opined that the prices charged by suppliers for the supply of electricity in a contestable market is not subject to regulation by the ERC and that the matter of dispute is one that requires the interpretation of the contract between the parties, which belongs to the regular courts.

31. Also on 10 August 2022, Atlanta sent Mpower a letter-reply dated 09 August 2022, through undersigned counsel, expressing its agreement to the payment schedule laid out in the Installment Payment Arrangement Schedule for the May 2022 and June 2022 FCRA, but emphasizing that any payments of FCRA made pursuant to the Schedule will be made in protest, and the same should not be construed as an acquiescence to the validity of the imposition of the FCRA, nor as a waiver of Atlanta's right to recover the amounts of FCRA paid and any FCRA that will be paid in the future should there be a final determination that there is no legal nor factual basis for the imposition and collection of the FCRA. The letter-reply dated 09 August 2022 is attached herewith as Annex "P".

32. However, in the next billing Electricity Bill Invoice No. 5882080021004 with due date 23 August 2022, a copy of which is attached herewith as Annex "Q", the entire amount of the unpaid FCRA subject of the IPA was included as Balance from Previous Billing, on top of the Current Charges and current FCRA. All in all, Atlanta was charged a total amount of PHP 23,086,796.69 for its July 2022 Billing, broken down as follows:

Balance from Previous Billing	PHP	11,704,396.33
Current Charges		5,700,677.99
FCRA		5,681,722.37
Total	PHP	23,086,796.69

32.01. On 22 August 2022, Atlanta paid only the current charges in Electricity Bill Invoice No. 5882080021004 and the current FCRA billed therein, plus the first installment in the IPA Schedule in the amount of One Million Six Hundred Twenty Thousand Five Hundred Eight and 08/100 Pesos (PHP 1,620,508.08). Atlanta did not pay the entire amount pertaining to the "Balance from Previous Billing". Copies of the BDO check transaction slips showing proof of the aforementioned payments under Electricity Invoice No. 5882080021004 and the first installment are attached as Annex "Q-1".

32.02. Atlanta sent a letter dated 26 August 2022 to Mpower, through the undersigned counsel, to inform Mpower that it paid the amounts corresponding to the Current Charges and the FCRA billed in Electricity Invoice No. 5882080021004. Pursuant to the proposed IPA accepted by Atlanta, it paid only the first installment due, and not the entire "Balance from Previous Billing", which was clearly the FCRA for the period covering May to June 2022. Atlanta also reiterated that despite its agreement to pay IPA, all the FCRA payments it makes, including the installments, were made in protest, and that said payments were in no way to be interpreted as an acquiescence on the part of Atlanta on the validity of the imposition and collection by Mpower of the FCRA. A copy of the letter dated 26 August 2022 is attached as Annex "R".

33. In the following month, Atlanta received it[s] Electricity Bill Invoice No. 5882090020991, a copy of which is attached herewith as Annex "S", and was shocked to find that it was charged a total amount of Thirty Six Million Five Hundred Seventy Two Thousand Eight Hundred Eighty Nine and 77/100 Pesos (PHP 36,572,889.77). Broken down as follows:

Balance from Previous Billing	PHP	23,086,796.69
Current Charges		6,695,169.42
FCRA		6,790,923.66
Total	PHP	36,572,889.77

33.01. It would appear that Mpower had not reflected the previous payments made by Atlanta and carried over the total amount due from the last bill into the August 2022 bill.

33.02. Nevertheless, for its Electricity Bill Invoice No. 5882090020991, Atlanta paid the Current Charges, the FCRA billed for the period 26 August 2022 to 25 September 2022, and the second installment under the IPA Schedule in the amount of Three Million Nine Hundred One Thousand Four Hundred Sixty Five and 44/100 Pesos (PHP 3,901,465.44). Copies of the BDO check transaction slips showing proof of the aforementioned payments under Electricity Invoice No. 5882090020991 are attached as Annex "S-1".

33.03. Through another letter dated 30 September 2022, Atlanta again informed Mpower that it had settled the amounts corresponding to the Current Charges and the currently billed FCRA in Electricity Invoice No. 588209002099, and the second installment based on the Schedule, with the qualification that all the FCRA payments continue to be paid in protest. A copy of the letter dated 30 September 2022 is attached herewith as Annex "T".

34. Right after, Atlanta received Electricity Bill Invoice No. 5882100021337, a copy of which is attached herewith as Annex "U", with total bill amount of PHP 21,455,411.51, broken down as follows:

Balance from Previous Billing	PHP	7,802,930.89
Current Charges		6,368,145.18
FCRA		7,534,631.84
Adjustment on DWS Charges		(250,296.40)
Total	PHP	21,455,411.51

34.01. Like the last two months, a "Balance from Previous Billing" appeared on the electricity Bill. The amount equals the total of the 2nd and 3rd installment under the IPA, but because the breakdown of this amount is not shown or explained on the bill, Atlanta could not confirm what the balance represented.

34.02. Hence, as with the previous months, Atlanta paid only the Current Charges, the FCRA billed in Electricity Bill Invoice No. 5882100021337, plus the third installment under the IPA Schedule in the amount of Three Million Nine Hundred One Thousand Four Hundred Sixty Five and 45/100 Pesos (PHP 3,901,465.45). Copies of the BDO check transaction slips showing proof of the aforementioned payments under Electricity Invoice No. 5882100021337 are attached as Annex "U-1".

34.03. Atlanta sent another letter dated 17 November 2022 informing Mpower that it made the aforementioned payments, with the reiteration that all FCRA payments continue to be made in protest. A copy of the letter dated 17 November 2022 is attached as Annex "V".

35. Earlier, on 10 October 2022, Atlanta received the ERC's letter dated 07 October 2022, a copy of which is attached herewith as Annex "W", confirming that the ERC has jurisdiction over disputes between Contestable Customers and their respective Retail Electricity Suppliers, including disputes that call for a contractual interpretation. The ERC gave Atlanta the option to avail any of the following remedies: (1) Verified Complaint; or (2) for Dispute Resolution.

36. Subsequently, Atlanta received Electricity Bill Invoice No. 5882110021584, a copy of which is attached herewith as Annex "X", with total bill amount of PHP 23,822,392.44, broken down as follows:

Balance from Previous Billing	PHP	11,476,828.66
Current Charges		5,549,058.23
FCRA		6,796,505.55
Total	PHP	23,822,392.44

36.01. Again, there was a "Balance from Previous Billings" but Atlanta could not ascertain what this amount represented because it had been diligently paying the Current Charges and FCRA billed every month plus the installments under the IPA.

36.02. Nevertheless, Atlanta paid only the Current Charges, the FCRA currently billed in Electricity Bill Invoice No. 5882110021584, plus the fourth installment under the IPA Schedule in the amount of Two Million Two Hundred Eighty Thousand Nine Hundred Fifty Seven and 36/100 Pesos (PHP 2,280,957.36). Copies of the BDO check transaction slips showing proof of the aforementioned payments under Electricity Invoice No. 5882110021584 are attached as Annex "X-1".

36.03. Atlanta sent another letter dated 19 December 2022 informing Mpower that it made the aforementioned payments, with the reiteration that all FCRA payments continue to be made in protest. A copy of the letter dated 19 December 2022 is attached as Annex "Y".

37. As of the filing of the instant Petition, Atlanta has already paid under protest FCRA in the total amount of FORTY TWO MILLION FOUR HUNDRED TWENTY SEVEN THOUSAND SEVENTY AND 75/100 PESOS (PHP 42,427,070.75), as follows:

Electricity Bill	FCRA billed	IPA	Amount Paid	Check No.	Date Paid
5882050020893	3,918,891.00		3,918,891.00	3030198	23-May-22
		1,620,508.08	1,620,508.08	3083758	22-Aug-22
5882060020769	4,861,524.25	3,901,465.44	1,620,508.08	3083857	20-Sep-22
			2,280,957.36	3083874	23-Sep-22
5882070020863	6,842,872.08	3,901,465.45	1,620,508.09	3084052	26-Oct-22
		2,280,957.36	2,280,957.38	3084051	26-Oct-22
5882080021004	5,681,722.37		5,681,722.37	3084208	28-Nov-22
5882090020991	6,790,923.66		6,790,923.66	3083767	22-Aug-22
5882100021337	7,534,631.84		7,534,631.84	3083901	23-Sep-22
			6,796,505.55	3084050	26-Oct-22
5882110021584	6,796,505.55		6,796,505.55	3084224	28-Nov-22
	42,427,070.75		42,427,070.75		

38. The total FCRA paid thus far is almost as much as the current charges paid by Atlanta. This means Atlanta had been paying almost twice the fixed contract price it agreed to when it executed the 2021 Addendum with Mpower. The whole point for entering into the fixed contract price, which was a product offered and marketed by Mpower, was completely missed.

39. Unfortunately, Respondents Meralco and Mpower are not making any concessions and have completely disregarded their obligation under the RESA to provide the electricity to Atlanta's Manggahan Compound in accordance with the agreed terms of the parties and are bent on imposing their will on Atlanta.

40. Atlanta already went through several discussions with MERALCO and Mpower in an attempt to resolve the matter but to this date, no settlement agreement is forthcoming. There appears to be no immediate end to the instant dispute if the same is left to the parties alone to resolve. Mpower continues to charge Atlanta the disputed FCRA and for each time, Atlanta pays the said amounts despite the increasing strain on its cashflows. Though paid under protest, these additional monthly charges are causing major constraints on Atlanta's finances, significantly affecting its operations. Thus, leaving the matter to the parties to solve alone is no longer practical and is in fact prejudicial to Atlanta who is left with no choice but to keep paying the FCRA in order to avoid disconnection of the electricity supply to its Manggahan Compound, whereas Mpower can just keep delaying the settlement while it continues to bill and collect the FCRA.

41. This Honorable Commission set Atlanta's letter-complaint for mediation but even that was unsuccessful. The Honorable Commission scheduled the parties for mediation via videoconference on two occasions to allow the matter to be ventilated and possibly settled by and between the parties themselves, but no amicable settlement resulted from this mediation with the Honorable Commission, too. Hence on the second videoconference on 24 November 2022, Atlanta moved for the termination of the mediation and manifested that it will instead proceed to file a verified complaint with the ERC.

42. Atlanta Industries, Inc. prefers to submit the matter to this Honorable Commission for hearing and dispute resolution, instead of submitting it to arbitration. In any case, the matter is within the exclusive jurisdiction of the ERC, being the regulatory body having the authority and technical expertise to intelligently deliberate on and resolve the issue at hand.

43. On 22 October 2022, Atlanta filed, through the undersigned counsel, a Notice to Verified Complaint but was advised subsequently to instead file a Petition for Dispute Resolution, which Petition shall be handled by the ERC Office of Legal Service.

44. Hence, this Petition for Dispute Resolution.

CAUSE OF ACTION

45. Section 43 of the Electric Power Industry Reform Act of 2001 ("EPIRA") provides that:

"SEC. 43. *Functions of the ERC.* The ERC shall promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry. In appropriate cases, the ERC is authorized to issue cease and desist order after due notice and hearing. x x x"

Towards this end, it shall be responsible for the following key functions in the restructured industry:

46. Under the foregoing section, the ERC has numerous functions which encompasses a wide range of responsibilities from supervision to investigative and quasi-judicial functions, all with the goal "to promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry." Some of the functions include:

"SEC. 43. *Functions of the ERC.* - xxx

(k) Monitor and take measures in accordance with this Act to penalize abuse of market power, cartelization, and anti-competitive or discriminatory behavior by any electric power industry participant;

(l) Impose fines or penalties for any non-compliance with or breach of this Act, the IRR of this Act and the rules and regulations which it promulgates or administers;

XXX

(o) Monitor the activities in the generation and supply of the electric power industry with the end in view of promoting free market competition and ensuring that the allocation or pass through of bulk purchase cost by distributors is transparent, non-discriminatory and that any existing subsidies shall be divided pro-rata among all retail suppliers;

XXX

(r) In the exercise of its investigative and quasi-judicial powers, act against any participant or player in the energy sector for violations of any law, rule and regulation governing the same, including the rules on cross-ownership, anti-competitive practices, abuse of market positions and similar or related acts by any participant in the energy sector or by any person, as may be provided by law, and require any person or entity to submit any report or data relative to any investigation or hearing conducted pursuant to this Act;

(s) Inspect, on its own or through duly authorized representatives, the premises, books of accounts and records of any person or entity at any time, in the exercise of its quasi-judicial power for purposes of determining the existence of any anti-competitive behavior and/or market power abuse and any violation of rules and regulations issued by the ERC;

XXX

(u) 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."

47. Further, in relation to the contestable market, Section 29 of the EPIRA provides in part that "[e]lectricity suppliers shall be subject to the rules and regulations concerning abuse of market power, cartelization, and other anti-competitive or discriminatory behavior to be promulgated by the ERC."

48. The instant Petition for Dispute Resolution is brought before this Honorable Commission invoking the foregoing powers of the Honorable Commission to finally settle this matter of the unilateral imposition of the FCRA by Mpower. It may seemingly appear that the issue involves the matter of rates being charged by Mpower, or its pricing mechanism. However, the matter goes beyond a pricing issue or the objective determination of what rate to impose. There is a necessity for this Honorable Commission to look into the legality or validity of imposing the Fuel Cost Recovery Adjustments, which by no means is part of the RESA as will be discussed, as well as the behavior or acts of Mpower in dealing with its consumer regarding this matter.

49. Atlanta's RESA had only taken effect starting December 2021, and the parties have agreed on fixed pricing. However, soon after the new year has begun, Mpower had subsequently disregarded the same, without prior consultation and without presenting proof or justification of the charges being passed through to it from its suppliers. Mpower's acts of unilaterally imposing the FCRA removed Atlanta from the contestable market and placed it in a situation similar to a captive market where the consumer effectively no longer has freedom of choice.

50. Mpower had been forcing the FCRA upon Atlanta, as well as other clients that also have a fixed price contract with it. Though Petitioner is in the contestable market and, by definition, has a choice of a supplier of electricity and is free to negotiate the terms of its RESA, the prevailing circumstances takes the case out of the realm of the contestable market because Atlanta is now left with almost zero bargaining power against Mpower and is forced to either accept the terms of MERALCO or risk having the electricity supply to its Manggahan Compound disconnected.

51. Although Atlanta has the option to go to another RES, it cannot do a switch without incurring significant losses at its Manggahan Compound. Atlanta maintains a production facility at the Manggahan Compound and stands to lose a significant amount if it closes down its operations just to switch to another RES. The difficulty and losses that come with the switch is such that it again puts Atlanta at the mercy of Mpower.

52. Mpower did not even go through good-faith settlement efforts with Atlanta. All it offered were threats to discontinue the supply of electricity to the Pasig compound of Atlanta or to terminate their agreement upon failure of Atlanta to pay the FCRA, or even when payment was made by Atlanta but under protest, clearly power playing knowing that the consumer, although in the contestable market, would have difficulty switching to another RES, and in reality has no other supplier to go to.

53. There is a necessity for this Honorable Commission to look at this behavior of Mpower (MERALCO), as an influential big player in the energy sector, from the perspective of the Commission's mandate "to promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry." Section 45 of the EPIRA provides as follows:

"SEC. 45. *Cross Ownership, Market Power Abuse and Anti-Competitive Behavior.* No participant in the electricity industry or any other person may engage in any anti-competitive behavior including, but not limited to, cross-subsidization, price or market manipulation, or other unfair trade practices detrimental to the encouragement and protection of contestable markets.

XXX

The ERC shall, motu proprio, monitor and penalize any market power abuse or anti-competitive or discriminatory act or behavior by any participant in the electric power industry. Upon finding that a market participant has engaged in such act or behavior, the ERC shall stop and redress the same. Such remedies shall, without limitation, include the imposition of price controls, issuance of injunctions, requirement of divestment or disgorgement of excess profits and imposition of fines and penalties pursuant to this Act."

54. The instant complaint does not only involve a superficial issue on what rates Mpower may charge Atlanta Industries, Inc., but involves the determination of an abuse of power or unfair trade practices, such as wanton disregard of an existing RESA committed by Mpower that detrimental to the encouragement and protection of contestable markets.

55. There is no factual and legal basis for the imposition of the FCRA and yet Mpower is relentless in charging these against its clients including those that have fixed price contracts. There is a cause of action therefore to bring the instant Petition before this Honorable Commission who clearly has the responsibility to protect consumers, regardless of whether they are in the contestable market or in the captive market, from market power abuses and other unfair trade practices detrimental to the encouragement and protection of contestable markets.

56. Moreover, Atlanta had been forced to keep paying the FCRA continuously billed by Mpower, and as of the filing of the instant Petition, that amount is almost 50 Million Pesos. If Mpower is allowed to keep charging the FCRA despite the dubious validity of the charges, great irreparable injury may be caused to Atlanta and the other clients of Mpower in similar situation. There is thus a need to preserve the status quo until the merits of this case can be heard fully by the Honorable Commission. Thus, the prayer for the immediate issuance of a Cease and Desist Order, pursuant to the general function of the Honorable Commission, is also sought in this Petition.

ISSUE

WHETHER OR NOT MPOWER MAY UNILATERALLY IMPOSE THE FCRA ON ATLANTA'S ELECTRICITY BILLS UNDER UNDER (sic) THE SERVICE ID NUMBER NO. 100102680101 (CSIN: 100102680102).

DISCUSSION:

There is no legal and/or factual basis for Mpower's assessment and collection of the Fuel Cost Recovery Adjustments

57. Mpower cannot impose and collect the amounts corresponding to the FCRA under RESA and the Addendums thereto with Atlanta.

58. Under the prevailing 2021 Addendum, which currently governs the pricing agreement of the parties, Atlanta shall be charged the fixed electricity price of 3.55 PHP/kWh for the contract period beginning 26 December 2021 to 26 December 2023, and the extension period from 26 December [20]23 to 25 December 2025.

59. For convenience, the relevant terms and conditions of the 2021 Addendum are replicated below:

Product Description	The Fixed Pricing Product is an energy-based product that has a seal Contract Price per kWh for energy consumption, priced from a blend of MPOWER's supply portfolio.
Contract Capacity	In addition to the Contract Price, MPOWER shall bill you all other Pass-Through Charges from third parties and other charges which shall [form] the total cost of providing your retail electricity supply of the Electricity Price. Your Contract Capacity is 3,500 kW, fixed for the Contract Term. If energy consumption exceeds Contract Capacity, MPOWER will provide this at the Contract Price.
Details of Electricity Price	ELECTRICITY PRICE ELECTRICITY PRICE = Contract Price x Energy Volume (kWh) + Other Generation Charges + WESM

Charges + Reimbursable Costs + Pass-Through Charges

Fixed Pricing Product Structure

Contract Price = 3.5500 Php/kWh

In case of extension, the Contract Price during the extended period will be adjusted annually based on the changes in the Philippine Consumer Price Index starting on the first month of an extended period. Refer to the attached Computation Reference Sheet. The Contract Price will reflect changes in this variable as and when they occur, including necessary "true-ups" that are charged to us, and adjustments will be made in the next invoicing cycle if the amounts are known and can be calculated by the time we send you our next invoice; otherwise the adjustments, retroactive to the time they should have been reflected, will be made as soon as practicable.

Energy Volume (kWh) = Metered energy quantities

Retail Supply Charge = PHP10,000.00 per month. This will be adjusted starting on the second Contract Year based on the changes in the Philippine Consumer Price Index and every Contract Year thereafter. A Contract Year means any successive twelve (12) supply periods. The first Contract Year shall commence from December 26, 2021. For details, refer to the attached Computation Reference Sheet.

Other Generation Charges

• During Force Majeure events, MPOWER may continue to supply your energy requirement from WESM or other alternative sources as the case may be, provided that there is available power in the grid or WESM and either party is not affected by the Force Majeure event to deliver and/or accept such electric energy. If MPOWER is able to supply your energy requirement during Force Majeure events, payment shall be at the Contract Price or actual cost, whichever is higher.

WESM Charges*

- Line Rental shall be for the account of MPOWER
- Must Run Unit
- Other WESM Charges as billed by the WESM (such as but not limited to Market Operator Fees)

MPOWER shall bill you the following reimbursable costs:

- Local taxes imposed, assessed or to be imposed by any local government units instrumentality on pass-through charges; or
- In case of amendment, adoption or enactment of any law, rules or government issuance, or the application, enforcement, interpretation or implementation thereof by any Governmental instrumentality, and which was not in existence as of the execution date of this Offer Sheet or RESA resulting in new or increase in taxes, duties, levies, fees, charges and similar imposts.

Pass-Through Charges-- other charges passed on to us for supplying electricity to you. These charges include, but are not limited to:

- Transmission Charge = as billed by the Distribution Utility
- Distribution, Metering, Supply, System Loss Charges including Subsidies, Over and Under Recoveries = as billed by the Distribution Utility
- Universal Charge = rate as approved by the ERC
- FIT-All (Renewable) = rate as approved by the ERC
- Other Charges = as approved by the ERC to be considered Pass-Through Charges
- Government Taxes = as imposed by governmental regulations

*These pass-through charges are subject to change without prior notice depending on the bills we receive from the applicable entities or the regulations or laws issued by the government.

The Pricing and tariff set out in this Pricing Product assumes the period from a) December 26, 2021 to December 25, 2023 and b) the extended period from December 26, 2023 to December 25, 2025 in the Contract term

60. The foregoing terms under the RESA show that there are only four other charges that can be billed to Atlanta in addition to the contract price, which is basically the unit price for generation charges. These other charges are (1) Other Generation Charges, (2) WESM Charges, (3) Reimbursable Costs and (3) Pass-Through Charges, all of which are expressly defined in the 2021 Addendum.

61. Based on the foregoing terms and the definitions of the other charges that are billable to Atlanta under the 2021 Addendum, there is no basis for Mpower to bill and collect its so-called Fuel Cost Recovery Adjustment or FCRA.

62. Mpower has argued that the FCRA was due to the alleged extraordinary increase in global fuel prices that were allegedly caused by several international events beyond the control of Mpower. Mpower claims that this extraordinary increase in global fuel costs is force majeure that justifies the imposition of the FCRA.

63. The opposite is true. The extraordinary increase in global fuel prices allegedly caused by the worldwide events mentioned by Mpower in the Notice of Change in Circumstance does not fall under the definition of a force majeure that would justify the implementation of the FCRA under "Other Generation Charges".

64. As ruled by the Supreme Court in the case of Republic of the Philippines vs. Luzon Stevedoring Corporation,² caso fortuito or force majeure, by definition, are extraordinary events not foreseeable or avoidable; events that could not be foreseen, or which, though foreseen, are inevitable.

65. In the case of Gacal vs. Philippine Air Lines, Inc.,³ the Supreme Court likewise ruled:

"In order to constitute a caso fortuito or force majeure that would exempt a person from liability, it is necessary that the following elements must concur: (a) the cause of the breach of the obligation must be independent of the human will (the will of the debtor or the obligor); (b) the event must be either unforeseeable or unavoidable; (c) the event must be such as to render it impossible for the debtor to fulfill his obligation in a normal manner; and (d) the debtor must be free from any participation in, or aggravation of the injury to the creditor." (Citations omitted.)

66. For the second element of force majeure, i.e. that the event must be either unforeseeable or unavoidable, it is not enough that the event should not have been foreseen or anticipated, as is commonly believed, but it must be one impossible to foresee or to avoid. The mere difficulty to foresee the happening is not impossibility to foresee the same.⁴

67. Global fuel and coal prices have always been volatile and fluctuating. MPower, being in the energy industry, is not unaware of the volatility of global fuel and coal prices. As such, it was not impossible at the time the parties entered into the 2021 Addendum that fuel costs, even on a global scale, would soar to great heights, as they have earlier this year.

68. In fact, the very purpose for which the parties agreed on a Fixed Pricing Product Structure is to counteract the volatility of factors affecting electricity cost. Certainly, Atlanta's expectation when it entered into the contract was that the company will be shielded from exactly these kinds of contingencies that MERALCO mentioned in its Notice. That was the selling point of the Fixed Pricing Product and the offer of Mpower in marketing this product to Atlanta. And by setting up a fixed contract price, the parties have agreed to fix the rate for the generation charge throughout the term of the RESA.

69. The FCRA cannot likewise be considered as a WESM charge nor a reimbursable cost. Clearly, it is not a WESM charge. It is likewise not one of those mentioned as reimbursable costs,

²G.R. No. L-21749, 29 September 1967.

³ G.R. No. L-55300, 15 March 1990.

⁴Ibid.

i.e. (1) local taxes imposed, assessed, or to be imposed by any local government units or instrumentality on pass-through charges; and (2) new or increase in taxes, duties, levies, fees, charges, and similar imposts in case of amendment, adoption, or enactment of any law, rules, or government issuance, or the application, enforcement, interpretation, or implementation thereof by any Government Instrumentality, and which was not in existence as of the execution date of the Offer Sheet or RESA.

70. Finally, the FCRA does not also fall under any of the Pass- Through Charges allowed under the RESA.

70.01. Per the 2021 Addendum, Pass-Through Charges are other charges passed on to Mpower for supplying electricity to its end-users. These charges include, but are not limited to: (1) Transmission Charge; (2) Distribution, Metering, Supply, System Loss Charges including Subsidies, Over and Under Recoveries; (3) Universal Charge; (4) FIT-All; (5) Other Charges; and (6) Government Taxes.

71. It is clear from the foregoing that the FCRA cannot be "Other Generation Charges", nor WESM Charges, nor reimbursable costs, nor Pass-Through Charges as contemplated in the formula provided under the 2021 Addendum. There is clearly no factual or legal basis for Mpower / MERALCO to charge Atlanta this FCRA for the supply of electricity to the Manggahan Atlanta Compound under the Service ID Number No. 100102680101 (CSIN: 100102680102).

72. Moreover, under paragraph 3.6 of the RESA, the electricity price may be subject to adjustments but it must be in accordance with paragraph thereof, to wit: "3.6 The Electricity Price is subject to adjustment as described below, in accordance with Section 10 and as otherwise provided in the Annex: XXX

10. Except as otherwise provided in this Agreement, any modifications or amendments to this Agreement must be mutually agreed upon in writing."

73. Atlanta has not consented to nor signed any agreement on any changes to its RESA and the 2021 Addendum. In fact, Atlanta has consistently and adamantly objected to the charging and collection of the FCRA by Mpower.

74. Premises considered, Mpower's imposition of the FCRA has no legal or factual basis.

75. Notably, in the Decision of this Honorable Commission in ERC Case No. 2019-083, entitled "In the Matter of the Application for the Approval of the Power Supply Agreement (PSA) Between Manila Electric Company (MERALCO) and San Miguel Energy Corporation (SMEC), with prayer for provisional authority and/or interim relief and Motion for Confidential Treatment of Information," the Honorable Commission denied the petition brought by MERALCO and SMEC because the Commission therein found that the price adjustment due to the "Change in Circumstance" triggered by fuel and coal price increased was without basis because the change in circumstance alleged by the parties therein is not one of the events recognized under their contract as a valid ground to increase their contract price, which was fixed as agreed between the parties and approved by the ERC.

76. The reasoning and principle behind the ruling of the Honorable Commission in ERC Case No. 2019-083, although it is a case that deals with the captive market, is applicable to the instant Petition.

Mpower cannot unilaterally determine the change in contract price.

77. Even assuming for the sake of argument that Mpower may validly charge the FCRA as a valid pass-through charge, it cannot unilaterally determine the change in the contract price because that violates the principle of mutuality of contracts. Again, Atlanta has never agreed to any change in the contract price.

78. Atlanta had been trying to get an explanation from Mpower to show what the latter's basis was for the imposition of the FCRA but all that Mpower said was that the FCRA was due to the extraordinary increase in fuel costs. However, it did not show that there was in fact charges passed on to it from its suppliers and there was no data or report to show how much these charges were in fact passed on to Atlanta.

79. The FCRA being charged to Atlanta monthly were noticeably increasing every month despite the drastic decrease in the generation charges of Atlanta. The total FCRA paid thus far is almost as much as the current charges paid during the same period, meaning Atlanta has been paying almost 100% more than the contract price and there is no clear explanation for how the FCRA was being computed, because it did not appear like it was based on the consumption of the end-user.

80. Mpower must have first shown to Atlanta its proof that charges have indeed been passed on to it from its suppliers and must be able to justify the amounts it collected from Atlanta as FCRA in the monthly billings. Absent showing of the actual charges passed to Mpower, it cannot just claim these pass-through charges from its clients. There is clearly no transparency here.

Allegations in support of the Prayer for the Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction

81. From the foregoing, it is clear that Mpower has neither legal nor factual basis to impose and/or collect the Fuel Cost Recovery Adjustments (FCRA) from Atlanta Industries, Inc., considering that the parties have a contractual agreement that Mpower / MERALCO should only charge Atlanta at a fixed generation rate of 3.55 Php/kWh. Thus, Atlanta is under no legal and/or contractual obligation to continue paying the FCRA.

82. Accordingly, Mpower should immediately, and without delay, cease and desist, or should be required to forthwith cease and desist from further assessing and collecting from Atlanta this so called FCRA, as well as from including the same in any and all future billing statements to be issued to Atlanta.

83. Additionally, Respondents Mpower and MERALCO should be enjoined from cutting off the electricity supply to Atlanta's Compound at Manggahan, Pasig City, due to non-payment of the FCRA, should an FCRA be again included in the subsequent billings of Service ID Number No. 100102680101 (CSIN: 100102680102) after the filing of this Petition.

84. Atlanta is entitled to the relief demanded and the whole or part of such relief consists in restraining or preventing Mpower from assessing, and/or billing such FCRA in all of its future electricity billings to Atlanta under Service ID Number No. 100102680101 (CSIN: 100102680102), and necessarily as well, of altogether preventing and/or enjoining Mpower from actually charging and/or collecting the FCRA from Atlanta.

85. The FCRA is a substantial amount in the electricity bill of Atlanta and Mpower's continuous billing and collection thereof will easily bring that amount to confounding numbers. If not enjoined, the inclusion and collection of the FCRA in Atlanta's electricity bill under Service ID Number No. 100102680101 (CSIN: 100102680102) pending the resolution of the issues will work injustice to Atlanta.

86. Moreover, during the negotiations of the matter before the filing of this complaint, Mpower / MERALCO conveyed to Atlanta that should Atlanta refuse to pay the FCRA, Mpower / MERALCO will terminate their electricity supply agreement and Atlanta will have to look for a different electricity supplier, or Mpower will start charging at regular rates.

87. The costs involved are real, material, and substantial. Atlanta is maintaining and operating a plastic pipe factory at its compound in Manggahan, Pasig City, where Mpower / MERALCO has a contractual obligation to provide electricity services at a fixed contract price under Service ID Number No. 100102680101 (CSIN: 100102680102). A majority of Atlanta's manufacturing takes place at this compound. The factories thereat produce an estimated one (100) hundred tons of plastic pipe daily. If the electricity supply to the area is cut off for even just a few days, the loss to Atlanta will be substantial, and this is only in terms of the product output from the said plants. There will be other potential losses, such as damages to the machines or materials due to the loss of power supply to the plant. Even if Atlanta wishes to look for another retail electricity supplier, it will not be immediate and costs would have already piled up by the time the electricity supply is restored.

88. By threatening to cut off the electricity supply to the said serviceable area if the FCRA is not paid, Mpower / MERALCO is clearly taking advantage of the fact

that Atlanta has its manufacturing plants thereat to force Atlanta to yield and pay the FCRA.

89. There is thus a need to preserve the status quo until the merits of this case can be heard fully by the Commission. The immediate issuance of the temporary restraining order is therefore imperative to prevent this serious irredeemable injury to Atlanta.

PRAYER

WHEREFORE, premises considered, Petitioner respectfully prays of this Honorable Office:

1. Upon filing of this Petition, to immediately issue a Cease-and- Desist Order preventing and enjoining Mpower from collecting Fuel Cost Recovery Adjustment from Petitioner, and/or from including such Fuel Cost Recovery Adjustment in all the future Billing Statements that respondents will issue to Atlanta Industries, Inc. under Service ID No. 100102680101, and from cutting off the electricity supply due to non-payment of the FCRA charged in Atlanta's electricity billings for Service ID No. 100102680101 issued after the filing of this Complaint, but before the matter is heard;
 2. After trial on the merits, and compliance with the mandatory hearings as set forth in the Rules of Practice and Procedure of this Honorable Commission, judgment be rendered in favor of Petitioner and against the respondent, as follows:
 - 2.1. Permanently preventing and enjoining the respondent from charging and collecting such Fuel Cost Recovery Adjustment from Atlanta for its account with Service ID No. 100102680101; and
 - 2.2. Ordering respondents to refund or credit the total amount of FORTY TWO MILLION FOUR HUNDRED TWENTY SEVEN THOUSAND SEVENTY AND 75/100 PESOS (PHP 42,427,070.75), plus legal interest, which represents the amount of FCRA paid in protest by the Petitioner as of the date of filing, as well as any future payments that Petitioner may be forced to effect prior to the issuance of the Cease-and-Desist Order in this case.
- Other reliefs, just and equitable under the premises, are likewise prayed for.

The Commission has set the instant Petition for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference and presentation of evidence on the following dates and online platforms for the conduct thereof, pursuant to Resolution No. 09, Series of 2020⁵ and Resolution No. 01, Series of 2021⁶ (ERC Revised Rules of Practice and Procedure):

Date and Time	Platform	Activity
01 March 2023 (Wednesday) at nine o'clock in the morning (9:00 A.M.)		Determination of compliance with jurisdictional requirements and Expository presentation
08 March 2023 (Wednesday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Teams or Zoom Application	Pre-trial Conference
15 March 2023 (Wednesday) at nine o'clock in the morning (9:00 A.M.)		Presentation of evidence
22 March 2023 (Wednesday) at nine o'clock in the morning (9:00 A.M.)		Presentation of evidence

Any interested stakeholder may submit its **comments and/or clarifications** at least one (1) calendar day prior to the scheduled virtual hearing, via electronic mail (e-mail) at doCKET@erc.ph, copy furnish the Legal Service through legal@erc.ph. The Commission shall

⁵ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

⁶ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

give priority to the stakeholders who have duly submitted their respective comments and/or clarifications, to discuss the same and propound questions during the course of the expository presentation.

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

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

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

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

All interested parties filing their Petition to Intervene, Opposition or Comment are required to submit the hard/printed copy/ies thereof either through personal service, registered or ordinary mail/private courier, within five (5) working days from the date that the same were electronically submitted, as reflected in the acknowledgment receipt e-mail sent by the Commission.

Any of the persons mentioned in the preceding paragraphs may access the copy of the Petition on the Commission's official website at www.erc.gov.ph. Finally, all interested persons may be allowed to join the scheduled initial virtual hearing by providing the Commission, thru legal.virtualhearings@erc.ph, with their respective e-mail addresses and indicating therein the case number of the instant Petition. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearing.

WITNESS, the Honorable Chairperson and CEO MONALISA C. DIMALANTA, and the Honorable Commissioners ALEXIS M. LUMBATAN, CATHERINE P. MACEDA, and MARKO ROMEO L. FUENTES, Energy Regulatory Commission, this 9th day of F 2023 in Pasig City.


FLORESINDA G. BALDO-DIGAL
 Commissioner

