

**G. PATRICK CIVILLE  
CIVILLE & TANG, PLLC**  
330 Hernan Cortez Avenue, Suite 200  
Hagåtña, Guam 96910  
Telephone: (671) 472-8868/69  
Facsimile: (671) 477-2511  
Email: pciville@civilletang.com

*Attorneys for Defendant  
KEPCO Mangilao Solar, LLC  
(f/k/a KEPCO-LG CNS Mangilao, Solar, LLC)*

**FILED  
SUPERIOR COURT  
OF GUAM**

**2022 JAN -6 PM 4: 57**

**CLERK OF COURT**

BY: \_\_\_\_\_



**IN THE SUPERIOR COURT OF GUAM**

THE GOVERNMENT OF GUAM,

Plaintiff,

vs.

KEPCO MANGILAO SOLAR, LLC and  
SAMSUNG E & C AMERICA, INC.,

Defendants.

CIVIL CASE NO. CV0597-21

**KEPCO MANGILAO SOLAR, LLC'S  
ANSWER TO AMENDED COMPLAINT**

KEPCO Mangilao Solar, LLC ("KMS") answers and responds to the allegations in the Plaintiff Government of Guam's Amended Complaint filed on August 30, 2021 ("Complaint") as follows:

**FIRST DEFENSE**

The Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

**SECOND DEFENSE**

As a Second Defense to the Complaint, KMS states:

1. Paragraph 1 contains legal conclusions and does not contain allegations of fact requiring a response, but to the extent a response is deemed necessary, the allegations therein are denied.

2. Paragraph 2 contains legal conclusions and does not contain allegations of fact requiring a response, but to the extent a response is deemed necessary, the allegations therein are denied.

3. The allegations in paragraph 3 are admitted.

4. In response to paragraph 4 of the Complaint, KMS admits only that it contracted with Defendant Samsung E&C America Inc. for construction of the Mangilao solar project and that the work under the construction contract entailed earthmoving operations, and KMS denies all other allegations therein.

5. KMS lacks sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraph 5 and on that basis denies them.

6. KMS lacks sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraph 6 and on that basis denies them.

7. KMS lacks sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraph 7 and on that basis denies them.

8. The allegations in paragraph 8 are admitted.

9. The allegations in paragraph 9 are admitted.

10. The allegations in paragraph 10 contain incomplete or inaccurate descriptions of the terms of the E&SC Plan and is therefore denied.

11. Paragraph 11 contains legal conclusions and does not contain allegations of fact requiring a response, but to the extent a response is deemed necessary, the allegations therein are denied.

12. In response to the allegations in paragraph 12, the phrase “this included” is so vague that KMS cannot reasonably determine what Plaintiff is referring to and the allegations are therefore denied.

13. KMS lacks sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraph 13 and on that basis denies them.

14. KMS lacks sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraph 14 and on that basis denies them.

15. In response to the allegations in paragraph 15, the phrases “fully implemented” and “approved measures” are so vague that KMS cannot reasonably determine what Plaintiff is referring to and the allegations are therefore denied.

16. KMS lacks sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraph 16 and on that basis denies them.

17. KMS lacks sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraph 17 and on that basis denies them.

18. In response to the allegations in paragraph 18, KMS incorporates its responses to paragraphs 1 through 17 as though set forth fully herein.

19. The allegations in paragraph 19 are denied.

20. The allegations in paragraph 20 are denied.

21. The allegations in paragraph 21 are denied.

22. KMS lacks sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraph 22 and on that basis denies them.

23. In response to the allegations in paragraph 23, KMS incorporates its responses to paragraphs 1 through 22 as though set forth fully herein.

24. Paragraph 24 contains legal conclusions and does not contain allegations of fact requiring a response, but to the extent a response is deemed necessary, the allegations therein are denied.

25. The allegations in paragraph 25 are denied.

26. The allegations in paragraph 26 are denied.

27. KMS denies each and every allegation contained in the Complaint that is not expressly admitted or addressed herein.

#### **AFFIRMATIVE DEFENSES**

1. The Court lacks jurisdiction over the subject matter of Plaintiff's Complaint.

2. Plaintiff lacks standing to assert the claims set forth in the Complaint.

3. Plaintiff failed to exhaust its administrative remedies.

4. Plaintiff's Complaint fails to present a justiciable controversy between Plaintiff and KMS.

5. Plaintiff is barred from maintaining this action against KMS because the questions presented by the action are either moot or not ripe for adjudication.

6. Any damages sustained by Plaintiff were caused primarily by its own negligence and its claim is therefore barred.

7. Any damages Plaintiff sustained were partially caused by its own negligence, and its damages, if any, must be reduced by the percentage of causal negligence attributable to Plaintiff.

8. Plaintiff is barred from recovering because Plaintiff's damages, if any, were caused by an act or omission of a third party.

9. Plaintiff is barred from recovering because Plaintiff's damages, if any, were caused by, or contributed to by, the acts of other persons and/or other entities or by other forces which each were an intervening and superseding cause of the alleged injuries and damages.

10. Plaintiff's recovery in this action, if any, should be reduced in accordance with the doctrine of avoidable consequences.

11. Plaintiff's recovery in this action, if any, should be reduced because Plaintiff failed to take reasonable steps to reduce or minimize the damages experienced, if any.

12. Plaintiff is barred from maintaining this action against KMS based upon the doctrines of res judicata and collateral estoppel.

13. Plaintiff is barred from maintaining this action because, upon information and belief, the alleged claims have been previously extinguished by prior compromise, settlement agreement, and/or mutual release.

14. Plaintiff is barred from recovering because damages have already been paid for the same injury.

15. Plaintiff is barred from maintaining this action against KMS based upon the doctrines of laches, waiver, estoppel, and/or unclean hands.

16. Plaintiff is barred from maintaining this action based on the failure to join indispensable parties.

17. Plaintiff is barred from recovering because the remedy it seeks is impossible to perform.

18. Plaintiff is barred from maintaining this action based on the common enemy doctrine.

19. Plaintiff is barred from recovering because Plaintiff's damages, if any, were caused by an uncontrollable force or Act of God.

20. KMS gives notice that it intends to rely upon any other matters constituting an avoidance or affirmative defense as set forth in Rule 8(c) of the Guam Rules of Civil Procedure, and that it intends to seek leave to amend its Answer to allege those defenses of which it may become aware during the course of discovery or trial of this action.

**PRAYER**

WHEREFORE, KMS pray for relief as follows:

1. That the Complaint of Plaintiff be dismissed, that judgment be entered against Plaintiff and that Plaintiffs take nothing thereby;
2. That KMS recover their cost of suit; and
3. That KMS be granted such further relief as this Court deems appropriate.

DATED this 6<sup>th</sup> day of January 2022.

**CIVILLE & TANG, PLLC**

By: /s/ G. Patrick Civile  
**G. PATRICK CIVILLE**  
*Attorneys for Defendant*  
*KEPCO Mangilao Solar, LLC*  
*(f/k/a KEPCO-LG CNS Mangilao, Solar, LLC)*