RL-270

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

IN THE MATTER OF THE JOINT APPLICATION FOR APPROVAL OF THE POWER SUPPLY AGREEMENT BETWEEN MANILA ELECTRIC COMPANY ("MERALCO") AND THERMA MOBILE, INC. ("TMO"), WITH MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION,

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ERC CASE NO. 2019-029 RC

MANILA ELECTRIC COMPANY ("MERALCO") and THERMA MOBILE, INC. ("TMO"),
Applicants.
x----------x

Amt P 3,030.

PAID

JOINT APPLICATION
[with Motion for Confidential Treatment of Information]

Applicants **MANILA ELECTRIC COMPANY (MERALCO) and THERMA MOBILE, INC. ("TMO"),** by undersigned counsel, and to this Honorable Commission, most respectfully state: That -

1. Applicant MERALCO is a private corporation existing under the laws of the Republic of the Philippines, with principal office located at Lopez Building, Ortigas Avenue, Brgy. Ugong, Pasig City. It may be served with notices and other processes of this Honorable Commission at its principal office address or through its counsel at the address indicated herein.

2. MERALCO has a legislative franchise to operate and maintain a distribution system in the cities/municipalities of Metro Manila, Bulacan, Cavite and Rizal and certain cities/municipalities/barangays in Batangas, Laguna, Quezon and Pampanga, pursuant to Republic Act No. 9209, and is authorized to charge all its customers for their electric consumption at the rates approved by the Honorable Commission.

3. Applicant TMO is a corporation duly organized and existing under the laws of the Republic of the Philippines, with office address

at the Old VECO Compound, Ermita, Cebu City. It may be served with notices and other processes of this Honorable Commission through its counsel at the address indicated herein.

4. TMO is engaged in the generation of power and owns and operates the barge-mounted, bunker oil-fired power generating and interconnection facilities (Plant) at the Navotas Fish Port Complex in Navotas City.

5. The National Grid Corporation of the Philippines ("**NGCP**"), for the period May to June 2019, forecasted localized low voltage situations in the Luzon Grid each time peak demand exceeds 11,200 MW. During this period, several NGCP-MERALCO delivery point substations will be affected, which could trigger Manual Load Dropping ("**MLD**") or power interruptions during the critical period of the May 2019 elections and up to June 2019 (together with water shortage and effects of El Niño).

6. Parties acknowledge that while this is not a supply adequacy issue but an ancillary service problem caused mainly by insufficient MVAr supply to load center, one of the identified remedial measures is to ensure that the embedded generators in the area, which includes the Plant, is operational, available, and dispatched.

7. To help find a solution to the current emergency situation and assist NGCP and the Department of Energy ("**DOE**"), MERALCO will facilitate the dispatch of the Plant by executing an emergency Power Supply Agreement ("**PSA**") with TMO for the period 26 April 2019 to 25 April 2020 in order to mitigate the low voltage situations forecasted by NGCP.

8. This one (1) year term of the PSA, however, could be shortened upon a successful execution and implementation of an Ancillary Service Procurement Agreement ("**ASPA**") between TMO and NGCP.

9. Section 2.2.2 of the Department of Energy's (DOE) Department Circular No. DC2018-02-0003 allows exemption from a Competitive Selection Process ("**CSP**") of any "[n]egotiated procurement of emergency power supply; Provided, that the cooperation period of the corresponding PSA shall not exceed one (1) year; Provided further, that the rate shall not be higher than the latest ERC approved generation tariff for same or similar technology".

10. On 11 April 2019 and 12 April 2019, respectively, MERALCO and TMO wrote letters to the DOE requesting for exemption from CSP of the negotiated PSA of the Parties.

11. On 15 April 2019, MERALCO and TMO executed a PSA (hereinafter referred to as the "**2019 PSA**", for brevity) for the purchase of capacity and energy from the Plant from Operations Effective Date until 25 April 2020, or the execution of an ASPA between TMO and NGCP, whichever occurs earlier.

12. Thus, in order to ensure continuous and reliable electricity for MERALCO's customers especially during the coming election period, there is a need for MERALCO to secure the capacity of TMO through a PSA.

13. Under Section 45(b) of Republic Act No. 9136 ("**EPIRA**"), it is provided that *"Distribution utilities may enter into bilateral power supply contracts subject to review by the ERC xxx*."

14. The 2019 PSA between MERALCO and TMO, a copy of which is attached as **ANNEX "A"** and made an integral part hereof, contains the following salient features:

"Contract Capacity	means 200,000 kW, subject to restatement not more than twice (unless otherwise agreed by the Parties) based on the results of the Capacity Tests to be conducted prior to May 26, 2019, and subsequent adjustment, if any, under Section 8.3..[1]
	xxx
Contract Year	means the period commencing from the Operations Effective Date and ending on 25 April 2020.[2]
	xxx
Operations Effective Date	means the date confirmed by Meralco and Power Supplier, in accordance with Section 3.2.2, on which their respective obligations with respect to Contract Capacity and the Associated Energy shall commence.[3]
	xxx

2.2 Term of Agreement

2.2.1 Subject to Section 3.1, this Agreement shall become effective on the Effective Date.

2.2.2 The term of this Agreement ("**Term**") shall commence on the Effective Date and shall expire on

[1] *See* PSA, p. 4, clause 1.1, "Contract Capacity".
[2] *See* PSA, p. 4, clause 1.1, "Contract Year".
[3] *See* PSA, p. 9, clause 1.1, "Operations Effective Date".

April 25, 2020, unless terminated earlier in accordance with the terms of this Agreement.

2.2.3 Not later than six (6) months prior to the expiration of the Term, either Party may deliver a written notice of its intent to extend the Term for a period of one (1) year under the same terms and conditions of this Agreement. If the Parties agree to extend, the Parties shall execute the necessary agreement extending the Term no later than ninety (90) days before the expiration of the Term.

2.2.4 This Agreement shall automatically terminate upon implementation of the Ancillary Services Procurement Agreement between Power Supplier and the National Grid Corporation of the Philippines.

xxx

3.4 ERC Approval

3.4.1 Meralco and Power Supplier shall use reasonable best efforts to secure ERC Final Approval on or before the FA Longstop Date, in both cases, in the form and substance satisfactory to the Parties.

If the ERC Final Approval is not issued by the FA Longstop Date, Power Supplier may immediately suspend this Agreement, with written notice to Meralco, and/or terminate this Agreement upon thirty (30) Days prior written notice to Meralco in accordance with the provisions of Section 16.6.1 (a).

3.4.2 [Not used]

3.4.3 If the ERC Final Approval requires an amendment of any provision hereof, including provisions on amounts payable under this Agreement, or subjects such approval to any material term or condition that is not acceptable to either Party, acting reasonably, the Party adversely affected may immediately suspend this Agreement, with written notice to the other Party. The Parties shall cooperate in good faith to resolve the required ERC amendment(s) or to address the material term or condition. The Parties may:

(a) Within fifteen (15) Days after the receipt by Meralco of the ERC Final Approval, seek reconsideration of the ERC Final Approval ("**Motion for Reconsideration**"); or

(b) within sixty (60) Days after receipt by Meralco of the ERC Final Approval, revise and file an amended Agreement incorporating changes (other than the Price) for approval by the ERC ("**Amended Agreement**");

provided that if (i) no Motion for Reconsideration is filed within the period prescribed in Section 3.4.3(a), (ii) the Motion for Reconsideration remains pending at least ninety (90) Days from filing thereof with the ERC, (iii) the Motion for Reconsideration is denied by the ERC, (iv) the Parties fail to enter into, and file the Amended Agreement for approval by the ERC within the period prescribed in Section 3.4.3(b), (v) the application for approval of the Amended Agreement remains pending at least ninety (90) Days from filing thereof with the ERC, or (vi) the Amended Agreement is disapproved by the ERC or approved by the ERC but still with any material term or condition that is not acceptable to either Party, acting reasonably, the Party adversely affected may terminate this Agreement upon thirty (30) Days prior written notice to the other Party in accordance with the provisions of Section 16.6.1(b).

3.4.4 If the ERC Final Approval requires any portion of any sum that has been paid by one Party ("Payor Party") to the other Party ("Payee Party") to be refunded to the Payor Party, the Payee Party shall be liable for any such amounts and shall repay in full such amounts in accordance with the direction of the ERC; provided that the Payee Party may immediately suspend this Agreement, with written notice to the Payor Party, and/or terminate this Agreement in accordance with Section 16.6.1(c).

3.4.5 In case of suspension or termination of this Agreement under this Section 3.4, Power Supplier shall have no obligation to make available the Contract Capacity and Deliver the Associated Energy, and Meralco shall source its energy requirements from the WESM.

4.1 Supply of Power

Subject to the terms and conditions of this Agreement:

4.1.1 From the Operations Effective Date, Power Supplier shall:

(a) make Available to Meralco, and Meralco shall purchase from Power Supplier, the Contract Capacity of the Plant at the Price determined in accordance with Appendix D; and

(b) sell and Deliver to Meralco, and Meralco shall purchase from Power Supplier, the Associated Energy of the Plant at the Price determined in accordance with Appendix D to the extent of Meralco's relevant day-ahead nominations.

4.1.2 Unless otherwise expressly permitted by this Agreement, Power Supplier shall not, without Meralco's prior written consent, sell, divert, grant, transfer, dedicate, reserve or assign all or any portion of the Contract Capacity and Associated Energy to any Person other than Meralco, except that before Operations Effective Date or during the period when the Agreement is suspended under Section 6.5.1, Power Supplier may, without Meralco's prior written consent, sell the electric energy generated by the Plant to the WESM or to third parties.

xxx

7.1 Outage Allowances

7.1.1 Power Supplier shall be allowed Scheduled Outages not to exceed fourteen (14) Days for the Contract Year ("**Full Load Equivalent Scheduled Outage Allowance Days**") during which times reduced or no supply of Contract Capacity or Associated Energy will be available to Meralco, provided that Power Supplier shall not avail of Scheduled Outages during the period from April 26, 2019 to June 25, 2019. Power Supplier shall be entitled to a pro-rata portion of the Full Load Equivalent Scheduled Outage Allowance Days calculated using the ratio of the remaining days of the Contract Year to 365 days, multiplied by the Full Load Equivalent Scheduled Outage Allowance Days.

7.1.2 In addition to the Full Load Equivalent Scheduled Outage Allowance Days, Power Supplier shall be allowed to avail an additional thirteen (13) Full Load Equivalent Days (the "Additional Full Load Equivalent Scheduled Outage Allowance Days") upon satisfaction of any of the following: (a) any generating unit of the Plant reaches four thousand (4,000) running hours or eight thousand (8,000) running hours or twelve thousand (12,000) running hours; (b) Power Supplier notifies Meralco at least fifteen (15) Days before its intended implementation; (c) Meralco verifies the same within five (5) Days from receipt of such notice. For avoidance of doubt, Power Supplier shall be entitled to the Additional Full Load Equivalent Scheduled Outage Allowance Days for each instance that a generating unit of the Plant reaches four thousand (4,000) running hours, eight thousand (8,000) running hours, and twelve thousand (12,000) running hours. In the event that the maintenance of the relevant generating unit of the Plant is not completed within the Additional Full Load Equivalent Scheduled Outage Allowance Days, Power Supplier shall be allowed to utilize any unutilized Full Load Equivalent Scheduled Outage Allowance Days.

7.1.3 Power Supplier shall be allowed Forced Outages not to exceed twelve (12) Days for each Contract Year ("**Full Load Equivalent Forced Outage Allowance Days**") during the Term during which times reduced or no supply of Contract Capacity or Associated Energy will be Available to Meralco. Power Supplier shall be entitled to a pro-rata portion of the Full Load Equivalent Forced Outage Allowance Days calculated using the ratio of the remaining days of the Contract Year to 365 days, multiplied by the Full Load Equivalent Forced Outage Allowance Days.

xxx

8.2 Notification of Reduction in Contract Capacity and Associated Energy

Not later than sixty (60) Days prior to the implementation of each phase of Open Access and Retail Competition, Renewable Energy Law, and other applicable Laws, the Coordinating Committee shall prepare the protocol to implement the reduction in the amount of Contract Capacity and Associated Energy as a result of Open Access and Retail Competition, Renewable Energy Law, or other applicable Laws, as appropriate.

8.3 Assignment or Transfer of Contract Capacity Due to Open Access and Retail Competition

In relation to the implementation of Open Access and Retail Competition, Renewable Energy Law, or other applicable Laws, Meralco shall be entitled to assign, transfer, designate, delegate or allocate (as determined by Meralco) to any of its Affiliates, or to any of its business segments, to the extent allowed by Law, or to any third party acceptable to Power Supplier (which express written consent shall not be unreasonably withheld), its right to purchase such portion of Contract Capacity and Associated Energy reduced as a result of Open Access and Retail Competition, Renewable Energy Law, or other applicable Laws, as appropriate.

For the avoidance of doubt, in no case shall the reduction contemplated in Section 8.2 or the assignment or transfer contemplated in Section 8.3 relieve or otherwise excuse Meralco from payment for the full Contract Capacity and Associated Energy except as otherwise assumed by the assignee or transferee. Meralco shall then be relieved from paying for, and from any liability pertaining to, such portion of the Contract Capacity and Associated Energy assumed, assigned, transferred, designated, delegated or allocated except with respect to liabilities of Meralco pertaining to such portion of the Contract Capacity and Associated Energy which accrued prior to such assignment or transfer.

Except for such reduction of amount of Contract Capacity and Associated Energy to be specified by Meralco

(including the resulting reduction in Capacity Payments and Energy Payments payable under this Agreement), all other terms and conditions of this Agreement shall remain in full force and effect.

In the event of an assignment or transfer of Meralco's right to purchase Contract Capacity and Associated Energy to an Affiliate pursuant to this Section 8.3 ("**Assignment**"), and the Affiliate defaults on any of its obligations under the Assignment and such default is not remedied within thirty (30) Days after written notice from Power Supplier to the Affiliate stating that such default has occurred, all rights and obligations of the Affiliate under the Assignment shall automatically and without need of any further act or deed, be assigned to Meralco, and Meralco shall accept the same. Meralco shall execute any instrument or certificate requested by Power Supplier to document such assignment.

xxx"

15. The Payment Structure under Appendix D of the 2019 PSA is as follows:

"2 **Payment Structure**

The payment to be made in each Billing Period during the Term for Contract Capacity and BCQ shall consist of a Capacity Payment and an Energy Payment. The Capacity Payment consists of Component A (Monthly Capital Recovery Fee) and Component B (Monthly Fixed O&M Payment), and the Energy Payment consists of Component C (Fuel and Lube Payment), Component D (Variable O&M), and Component E (Start-up and Shutdown Costs) as set forth below. All computations on payments to Power Supplier shall not be rounded off, except for the final PHP amount, which shall be rounded off to the nearest Philippine centavo, respectively.

Sample calculations of the payment are set forth in Schedule 2 of Appendix A.

The Capacity Payment and Energy Payment are exclusive of the applicable Value Added Tax."

16. MERALCO notes that the rates under the 2019 PSA are the same as approved by this Honorable Commission for MERALCO and TMO's PSA dated 27 September 2013, as amended. In addition, the following table shows the indicative rate impact of implementation of the 2019 PSA on MERALCO's blended rates:

TMO PSA – Rate Impact
(May 2019 to April 2020)

BILLING COMPONENT	UNIT	BASE RATE [a]	CPI Adj Factor [b]	BILLING DETERMINANT [c]		AMOUNT (PHP)
A. Capital Recovery Fee (MCRF)						
Peso Portion	(Php/kW-yr)	4,190.00		200,000	(kW)	838,000,000.00
B. Fixed O&M Payment (MFOM)						
Peso Portion	(Php/kW-yr)	2,815.00	1.185019	200,000	(kW)	667,165,953.31
C. Fuel Payment (MFP)						
Peso Portion	(Php/kWh) [d]	7.3478		470,967,742	(kWh)	3,460,557,737.01
D. Variable O&M Payment (MVOMP)						
Peso Portion	(Php/kWh)	0.4000	1.185019	470,967,742	(kWh)	223,242,374.80
TOTAL PAYMENT	(Php)					5,188,966,065.12
Effective Rate at Plant Gate	(Php/kWh)					11.0172
WESM Line Rental Rate [e]	(Php/kWh)					0.0000
Delivered Rate	(Php/kWh)					**11.0177**
Effective Cost at WESM Price [f]	(Php/kWh)					7.0589
Increase / (Decrease) over WESM Price	(Php/kWh)					3.9588
Meralco Captive Energy Demand [g]	(kWh)					12,002,733,000
Increase / (Decrease) in Generation Cost	(Php)					1,864,453,872
Increase / (Decrease) in Generation Cost	(Php/kWh)					0.0583

NOTE:

[a] Base Rates as set forth in Schedule 1 of Appendix D of the PSA

[b] CPI escalation based on forecasted PH CPI value for May 2019 (PH CPI = 121.82)

[c] Energy Billing Determinant based on 26.88% pcf dispatch, which may be lower for period after June 2019

[d] Fuel Payment calculated based on Heavy Fuel Oil (HFO) price = 28.4343 Php/liter, HFO consumption rate = 0.2450 liter/kWh, Lube Oil price = 127.12 Php/liter, and Lube oil consumption rate = 0.003 liter/kWh (Forecasted oil prices for May 2019)

[e] No line rental was assumed since TMO is embedded within MERALCO franchise area

[f] Cost if equivalent volume of TMO was sourced from the WESM based on forecasted May 2019 to April 2020 hourly prices

[g] Meralco Captive Energy Demand based on forecast for May 2019 to April 2020

17. Likewise, in support of the instant Joint Application and pursuant to Rule 6 (Pre-Filing Requirements) of the Rules of Practice and Procedure of this Commission, the Applicants provide the following documents:

Description of Document	Annex
MERALCO's Articles of Incorporation	C
MERALCO'S By-Laws	D
MERALCO's Latest General Information Sheet (GIS)	E
MERALCO's Demand Side Management Program	F
MERALCO's Distribution Development Plan; with Average Daily Load Curve scenarios; Supply and Demand Scenario, with capacity utilization*; and Write-up on Non-Applicability of National Power Corporation (NPC) Certification regarding whether or not Transition Supply Contract (TSC) capacity and energy is expected to be available during the contractual period	G G-1 G-2* G-3
Letters of MERALCO and TMO to DOE Requesting for Exemption	H & series
TMO's SEC Certificate of Incorporation	I
TMO's Articles of Incorporation	J
TMO's By-laws	K
TMO's Latest General Information Sheet (GIS)	L
TMO's Ownership Organizational Structure	M
TMO's Environmental Compliance Certificates (ECC)	N
TMO's Certificates of Compliance (COC)	O & series
TMO's Transmission Service Agreement with NGCP	P
TMO's Metering Service Agreement with NGCP	Q
TMO's Generation/Power Rate*	R*
Sample Bill	S
Rate Simulation	T

Description of Document	Annex
Sworn statement on fuel procurement process* and the Fuel Service Agreement*	U* U-1*
TMO's Latest and Complete Set of Audited Financial Statements	V
Certification on Net Heat Rate*	W*
Write Up on Non-Applicability of the following: • Shareholders' Agreement • Board of Investment (BOI) Certificate of Registration • Certification from Department of Energy (DOE) regarding Philippine Development Plan (PDP) or Certificate of Endorsement • Renewable Energy Service Contract/ Operating Contract from the DOE • Certificate of Registration or Certification of Confirmation of Commerciality by an RE Developer and after due confirmation by the DOE • Other documentation that may be needed by the ERC in the course of the evaluation, such as, but not limited to: o Simulation of the no. of operating units necessary to meet MEOT and/or additional energy/demand requirements of the DU o Potential Cost (absolute amounts and PhP/kWh) of Ancillary Services as/when the IPP/ DU is connected to the main grid	X

**** Subject of the Motion for Confidential Treatment of Information.***

18. It bears noting that Department Circular No. DC2018-02-0003 of the DOE allows immediate implementation of the PSAs contemplated under Section 2.4 thereof. Pursuant thereto, Applicants shall implement the 2019 PSA upon filing of this Joint Application, subject to this Honorable Commission's confirmation/approval of the rate.

19. It must be emphasized that the timely and immediate implementation of the 2019 PSA is of **paramount importance** in order to avert MLD or power interruptions and ensure that power is continuous and reliable during the critical period of the May 2019 elections up to June 2019.

20. At this point, it is significant to highlight that as early as 3 April 2019, NGCP has declared the Luzon power grid under "yellow alert"[4] and "red alert"[5] status several times, resulting in significant increase in prices at the Wholesale Electricity Spot Market ("**WESM**") and prompting an increase in generation cost. It is anticipated that these yellow/red alerts from NGCP shall persist and even worsen especially during the critical period of the May 2019 elections up to June 2019.

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[4] *Due to high forecasted system demand, forced and unplanned plant outages and limited plant capability due to de-ration.*

[5] *Due to insufficient operating reserve brought about by forced outage of Sual 1, forced and unplanned outages of other plants and limited plant capability due to de-ration.*

21. In view of the foregoing, there is paramount relevance and necessity to immediately implement the 2019 PSA in order to ensure continuous and reliable electricity for MERALCO's customers.

22. In support of this Joint Application, the Judicial Affidavit of **Mr. RYAN S. MORALES**, Head of MERALCO's Energy Sourcing Office is attached as **ANNEX "B"**.

ALLEGATIONS IN SUPPORT OF MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION

23. Under *Rule 4 of the ERC Rules of Practice and Procedure*, a party to any proceeding before the Honorable Commission may request that certain information not be disclosed and be treated as confidential, by describing with particularity the information to be treated as confidential, specifying the ground for the claim of confidential treatment of the information and, if applicable, specifying the period during which the information must not be disclosed.

24. With respect to the document marked and attached as **ANNEX "G-2"** (MERALCO Supply-Demand Outlook), MERALCO respectfully moves that it be treated as confidential and not be disclosed to any party for the reason that it contains information which are of commercially sensitive nature and may affect price offers that MERALCO may receive under a power supply agreement. In addition, such information falls within the bounds of valuable proprietary interest under "trade secrets" which are entitled to protection under the Constitution, statutes and rule and regulations.

25. With respect to the documents marked and attached as **ANNEXES "R", "U", and "W",** TMO likewise respectfully moves that these be treated as confidential and not be disclosed to any party for the reason that these contain non-public, proprietary information, data and calculations involving the investments, financial calculations, and business operations of TMO. The data and information contained therein are part of the overall formula and process in arriving at the competitive rates of TMO. These formula and process are specifically developed for the use of TMO and are treated as trade secrets. If the information contained in these documents are unduly disclosed, it will seriously prejudice the competitiveness of TMO. These documents are neither generally available to the public nor already in the possession of the Honorable Commission on a non-confidential basis.

26. In the case of *Air Philippines Corporation vs. Pennswell Inc,*[6] the Supreme Court defined "trade secret" as follows:

[6] G. R. No. 172835, 13 December 2007.

"A **trade secret** is defined as a **plan or process, tool, mechanism or compound known only to its owner and those of his employees to whom it is necessary to confide it.** The definition **also extends to a secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade having commercial value.** A **trade secret** may consist of **any formula, pattern, device, or compilation of information that (1) is used in one's business;** and (2) **gives the employer an opportunity to obtain advantage over competitors who do not possess the information.** Generally, a **trade secret** is a **process or device intended for continuous operation of the business,** for example, a machine or formula, but can be a price list or catalogue or specialized customer list. **It is indubitable that trade secrets constitute proprietary rights."** (Emphasis supplied.)

27. The protection of trade secrets is likewise recognized by the Honorable Commission in its Decision in ERC Case No. 2015-111 RC:

> In the case of PNOC RC, the documents sought to be protected from disclosure contains formula and pricing structures used in arriving at their proposed tariff. The prices cited in the documents were components of the proposed tariff. In fact, all three (3) documents were used by the Commission in evaluating the reasonableness of the proposed rate. In electric power industry [where] prices is a major consideration in selecting one's supplier, it is apparent that the assumption used in arriving at one's proposed tariff is considered a competitive leverage by one player against its competitors.
>
> Thus, the Commission resolved to treat the said documents confidential and may not be publicly disclosed.[7]

28. With respect to the documents marked and attached as **ANNEX "U-1"** TMO respectfully moves for the confidential treatment thereof, not to be disclosed to persons other than officers and staff of the Honorable Commission, as may be necessary in the evaluation of this Application. TMO is bound by the confidentiality clause of the document, prohibiting the disclosure of any business, technical, marketing, operational, organizational, financial or other information and trade secrets and other confidential documents, paper and information.

29. Applicants hereby submit one (1) copy of each of the foregoing confidential documents in sealed envelopes, with the envelopes and each page of the documents marked "Confidential."

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[7] *In the Matter of the Application for the Approval of the Power Supply Agreement Between Nueva Ecija II Electric Cooperative, Inc. – Area 2 (NEECO II – Area 2) and PNOC Renewables Corporation (PNOC RC) with Prayer for Provisional Authority,* ERC Case No. 2015-111 RC, Decision dated 30 May 2017, p. 26. Emphasis and underscoring supplied.

PRAYER

WHEREFORE, premises considered, Applicants respectfully pray that:

1. **ISSUE** an Order treating **Annexes "G-2", "R", "U"** and **"U-1", and "W"**, and all other information contained therein as confidential, directing their non-disclosure to persons other than officers and staff of this Honorable Commission, continuously protecting the said information from public disclosure by maintaining the same separate and apart from the records of the case, and ensuring that these are not divulged to unauthorized persons, pursuant to Rule 4 of the ERC Rules of Practice and Procedure; and

2. After hearing on the merits, a Decision be rendered **APPROVING** said Agreement and applying the approved price thereunder beginning Operations Effective Date.

Other relief just and equitable under the circumstances are likewise prayed for.

Pasig City and Taguig City for Pasig City, 16 April 2019.

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Applicant
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By:

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THERMA MOBILE, INC.
Co-Applicant

By:

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REPUBLIC OF THE PHILIPPINES }
CITY OF PASIG } S.S.

VERIFICATION/CERTIFICATION OF NON-FORUM SHOPPING

I, **JOSE RONALD V. VALLES**, Filipino, of legal age, married, with office address at 7th Floor, Lopez Building, MERALCO Compound, Ortigas Avenue, Pasig City, after being sworn in accordance with law, hereby depose and say that—

1. I am the Vice President and Head, Regulatory Management Office, of Applicant Manila Electric Company (MERALCO). In such capacity, I have caused the preparation and filing of the foregoing Joint Application;

2. I have been authorized by the Board of Directors of MERALCO to certify that Applicant has not heretofore filed any similar action, pleading or application involving the same issues before the Supreme Court, the Court of Appeals or any other lower courts or administrative bodies. A copy of the Secretary's Certificate authorizing me to cause the preparation of the instant Joint Application and sign this Verification and Certification is attached as **ANNEX "Y"**;

3. I have read and understood the allegations contained therein and the same are true and correct based on my personal knowledge and authentic records made available to me in the ordinary course of business of MERALCO;

4. To the best of my knowledge, apart from ERC Case No. 2013-196 RC, no other related action or proceeding is pending before the Supreme Court, the Court of Appeals, the lower courts or administrative bodies; and

5. If I should hereafter learn that a similar action has been filed before the Supreme Court, the Court of Appeals, the lower courts or administrative bodies, I undertake to report such fact to this Honorable Commission within five (5) days from notice of such fact.

IN WITNESS WHEREOF, I have hereunto affixed my signature this APR 16 2019 day of April 2019 at Pasig City, Philippines.

JOSE RONALD V. VALLES
Affiant

SUBSCRIBED and SWORN to before me this APR 16 2019 day of April 2019, affiant having exhibited to me his Social Security System ID bearing the number SSS NO. 33-1090088

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ISAGANI C. CORUÑA II
Notary Public
Pasig, San Juan and Pateros
Issued on February 11, 2019 at Pasig City
Appointment No. 105 (2019-2020)
Roll No. 63123/ IBP No. 56250; 1/9/19; RSM Chapter
PTR No. 5229243; 1/9/19; Pasig City
7th Floor, Lopez Bldg., Ortigas Ave., Pasig City

REPUBLIC OF THE PHILIPPINES }
CITY OF TAGUIG } S.S.

VERIFICATION/CERTIFICATION OF NON-FORUM SHOPPING

I, **DENNIS A. DELA SERNA**, Filipino, of legal age, married, with office address at 16th Floor, NAC Tower, 32nd Street, Bonifacio Global City, Taguig City, Metro Manila after being sworn in accordance with law, hereby depose and say that—

1. I am the authorized representative of Co-Applicant Therma Mobile, Inc. (TMO). In such capacity, I have caused the preparation and filing of the foregoing Application;

2. I have been authorized by the Board of Directors of TMO to certify that Co-Applicant has not heretofore filed any similar action, pleading or application involving the same issues before the Supreme Court, the Court of Appeals or any other lower courts or administrative bodies. A copy of the Secretary's Certificate authorizing me to cause the preparation of the instant Application and sign this Verification and Certification is attached as **ANNEX "Z";**

3. I have read and understood the allegations contained therein and the same are true and correct based on my personal knowledge and authentic records made available to me in the ordinary course of business of TMO;

4. To the best of my knowledge, apart from ERC Case No. 2013-196 RC, no other related action or proceeding is pending before the Supreme Court, the Court of Appeals, the lower courts or administrative bodies; and

5. If I should hereafter learn that a similar action has been filed before the Supreme Court, the Court of Appeals, the lower courts or administrative bodies, I undertake to report such fact to this Honorable Commission within five (5) days from notice of such fact.

IN WITNESS WHEREOF, I have hereunto affixed my signature this APR 16 2019 day of April 2019 at Taguig City, Philippines.

DENNIS A. DELA SERNA
Affiant

SUBSCRIBED and SWORN to before me this APR 16 2019 in Taguig City, affiant having exhibited to me his Passport No. P5991577A issued by DFA Manila on 10 February 2018.

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ATTY. LETICIA M. AMON
NOTARY PUBLIC FOR TAGUIG CITY
APPT. NO. 8 UNTIL DEC. 31, 2019
ROLL OF ATTY. NO. 22188
MCLE COMPLIANCE NO. VI-0004659/12-17
IBP O.R No. 574709-Life TIME MEMBER/1-03
PTR No.4942975- JAN 03, 2019- PASIG C.
11 PARAISO ST. UPPER BICUTAN, TAGUIG CITY

MERALCO
ORTIGAS AVENUE, PASIG CITY
0300 PHILIPPINES

ANNEX "Y"

REPUBLIC OF THE PHILIPPINES)
PASIG CITY) S.S.

SECRETARY'S CERTIFICATE

I, WILLIAM S. PAMINTUAN, a duly elected, qualified and incumbent Assistant Corporate Secretary of the Manila Electric Company (MERALCO), a corporation duly organized and existing under and by virtue of the laws of the Philippines, do hereby certify that:

At the regular meeting of the Board of Directors of the Company duly convened and held on February 26, 2019, at which meeting a quorum was present, acted throughout and voted, the following resolution amending the resolution of the Board on February 23, 2015 on the same subject, was approved and that said amendatory resolution is in full force and effect on the date hereof:

"RESOLVED, that the Board of Directors of the Manila Electric Company (MERALCO) authorize, as it hereby authorizes, Messrs. MANUEL V. PANGILINAN, Chairman, OSCAR S. REYES, President, RAY C. ESPINOSA, Deputy Chief Executive Officer, SIMEON KEN R. FERRER, Corporate Secretary, ALFREDO S. PANLILIO, Senior Vice President, Head, Customer Retail Services and Head, Corporate Communication, ROBERTO R. ALMAZORA, Senior Vice President, RONNIE L. APEROCHO, Senior Vice President & Head, Networks, WILLIAM S. PAMINTUAN, First Vice President, Assistant Corporate Secretary, Compliance Officer and Head, Legal and Corporate Governance, EDGARDO V. CARASIG, Vice President & Head, Human Resources & Corporate Services, FERDINAND O. GELUZ, Vice President & Head, Corporate Logistics, JOSE RONALD V. VALLES, Vice President and Head, Regulatory Management Office, MARIA ZARAH R. VILLANUEVA-CASTRO, Vice President & Head, Corporate Legal Services, RAUL G. CORALDE, Assistant Vice President & Head, Litigation Services, MICHELLE O. DELOS SANTOS-BONA, Assistant Vice President & Head, Legal Operations Support, CRISTOPHER B. ARPON, Legal Counsel & Head, Litigation Team 1, CORNELIO MANUEL III C. DICCION, Manager & Head, Litigation Team 2, EUGENE JUDE DENIS GERARD E. ALABANZA, Senior Manager & Head, Tax & Labor Litigation, and any lawyer or employee of MERALCO that any of them may designate, name or appoint:

(1) to represent the Company, in the institution, prosecution, and defense of any claim, complaint, action, proceeding, petition, application, protest, suit, or case, for or against the Company, before any court, prosecutor's office, regulatory, quasi-judicial, or administrative body, agency, or office of the national or any local government;

(2) to sign, execute, and deliver in connection therewith the necessary or appropriate complaint, petition, application, position paper, memorandum, all types of pleadings and motions, verifications, affidavit-complaint, counter-affidavit, affidavit of merit, affidavit of desistance, affidavit of witness, and all other affidavits of whatever nature, certificate of non-forum shopping, powers of attorney, certifications, and all other instruments as may be necessary or proper;

(3) to represent the Company or to designate, name, and appoint a representative or an attorney-in-fact in behalf of the company during the investigation, inquest, preliminary investigation, preliminary conference, pre-trial, mediation, conciliation, arbitration, trial, execution, and all other stages of or incidents related to the case, proceeding or action; to negotiate, enter into, and agree to an amicable settlement, compromise agreement, plea bargaining, admissions or stipulations of fact or documents, simplification of issues, limitation on the number of witnesses, alternative modes of dispute resolution, withdrawal, dismissal or waiver of claim or action; and to perform and execute any and all actions or deeds as may aid in the prompt disposition of such cases, proceedings, or actions filed in behalf of or against the Company;

"RESOLVED, FURTHER, that any previous resolution of the Board of Directors on the same subject matter that is inconsistent herewith shall be deemed terminated, superseded and revoked."

Pursuant to the above resolutions, it is hereby certified that MERALCO is authorized to file the Application, entitled "IN THE MATTER OF THE JOINT APPLICATION FOR THE APPROVAL OF THE POWER SUPPLY AGREEMENT (PSA) BETWEEN MANILA ELECTRIC COMPANY (MERALCO) AND THERMA MOBILE, INC. (TMO), WITH MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION, MANILA ELECTRIC COMPANY (MERALCO) AND THERMA MOBILE, INC. (TMO), *Applicants*," with the Energy Regulatory Commission (ERC), and that Atty. Jose Ronald V. Valles, Vice President and Head of Regulatory Management Office, is an authorized representative and signatory of the Company with respect to the aforesaid Application.

WITNESS THE SIGNATURE of the undersigned as such officer of the Company and its corporate seal hereunto affixed on this APR 16 2019 day of April 2019.

WILLIAM S. PAMINTUAN
Assistant Corporate Secretary

SUBSCRIBED AND SWORN to before me this APR 16 2019 day of April 2019, affiant exhibited to me his Taxpayer Identification Number (TIN) 146-473-562, issued by the Bureau of Internal Revenue (BIR) as his competent evidence of identity.

ISAGANI C. CORUÑA II
Notary Public
Pasig, San Juan and Pateros
Issued on February 11, 2019 at Pasig City
Appointment No. 105 (2019-2020)
Roll No. 63123/ IBP No. 66250; 1/9/19; RSM Chapter
PTR No. 5229243; 1/9/19; Pasig City
7th Floor, Lopez Bldg., Ortigas Ave., Pasig City

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ANNEX "Z"

AboitizPower

THERMA MOBILE, INC.

REPUBLIC OF THE PHILIPPINES)
CITY OF TAGUIG) S.S.

SECRETARY'S CERTIFICATE

I, **JUSTINE MAE A. CABATINGAN**, Filipino, of legal age, with office address at Aboitiz Corporate Center, Gov. Manuel A. Cuenco Avenue, Kasambagan, Cebu City, after having been duly sworn in accordance with law, hereby depose and state that:

1. I am the Assistant Corporate Secretary of **THERMA MOBILE, INC.** (the "Company"), a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at Old VECO Compound, Ermita, Cebu City.

2. At the Regular Board Meeting held on **May 18, 2018,** during which meeting a quorum was present and acting throughout, the following resolutions were unanimously passed and approved:

   "RESOLVED, that the Board of Directors of **Therma Mobile, Inc.** (the "Company") authorize, as it hereby authorizes, the Company to enter into a Power Supply Agreement (the "PSA") with Manila Electric Company ("MERALCO"), under such terms and conditions as management may deem beneficial to the Company;

   RESOLVED FURTHER, that the Company authorize, as it hereby authorizes MR. **ANTONIO R. MORAZA,** Attorney-in-Fact, to execute, sign, and deliver, for and on behalf of the Company, the Agreement, including any amendments and modifications thereto, and any and all related agreements, deeds, documents, contracts, papers, and instruments, and to do and perform any and all acts, in connection with, or as may be deemed necessary, desirable, and incidental;

   RESOLVED FURTHER, that the Company be authorized to file an Application before the Energy Regulatory Commission ("ERC") for the approval of the PSA (the "Application");

   RESOLVED FURTHER, that in connection with the foregoing, the Company authorize, as it hereby authorizes any one (1) of the following authorized representatives:

NAME	DESIGNATION
Katrina M. Platon	Attorney-in-Fact
Paul B. Sorino	Attorney-in-Fact
Ma. Margarita S. Lim	Attorney-in-Fact
Celeni G. Guinto	Attorney-in-Fact

and/or any person appointed by any one of them, to:

a) File such Application, and to represent the Company and to appear for or on its behalf in all proceedings, pre-trial, hearings, meetings and discussions before the ERC with respect to the Application, to perform any and all acts and deeds and to submit and sign such documents and pleadings necessary to implement this authority;

b) Act as agent of and appear in behalf of the Company in the proceedings relating to the said Application, with full power to make commitments and take positions, and to consider (i) the possibility of an amicable settlement or a submission to arbitration, mediation or other modes of alternative dispute resolution; (ii) the simplification of the issues; (iii) the necessity or desirability of amendments to the pleadings; (iv) the possibility of obtaining stipulations or admissions of facts and of documents totally or partially to avoid unnecessary proof; (v) the limitation of the number of witnesses or time allocated to particular witnesses and issues; (vi) the advisability of a preliminary reference of issues to a commissioner; (vii) the necessity or desirability of having an expository hearing or consumer forum; (viii) the procedures at the hearing and hearing schedule; (ix) the submission of written testimony and exhibits to be offered and the marking thereof; (x) the agreements regarding service of documents; and (xi) such other matters as may aid in the prompt disposition of the proceedings;

c) Negotiate, conclude, enter into and execute a compromise or amicable settlement of the Application, if appropriate, or to submit the Application to alternative modes of dispute resolution, under such terms and conditions as they may deem just and reasonable;

d) File any appeal or represent the Company in further proceedings; and

e) Do and perform on behalf of the Company any act and deed relating to the Application which the Company could legally do and perform;

RESOLVED FURTHER, that **Mr. Dennis A. Dela Serna,** Attorney-in-Fact, be authorized to:

a) Execute, sign and obtain any document, including verifications and certifications of non-forum shopping, which may be required in the filing of any pleading, motion, or comment during the course of the Application;

b) Represent the Company, in the filing of the application before the ERC; and

c) Do and perform on behalf of the Company any act and deed necessary to be done in the premises, and the Company hereby ratifies and confirms all that have been done, or that shall be done or cause to be done, by virtue of his authority;

RESOLVED FURTHER, that **Ms. Patricia Montero,** Attorney-in-Fact, or any person appointed by her be authorized to:

a) Represent the Company in the filing of the Application with ERC; and

b) Represent the Company, and/or appoint any other person to represent the Company, as its witness during the hearing of the Application;

RESOLVED FINALLY, that the Company approve and ratify, as it hereby approves and ratifies any and all acts done by the foregoing authorized representatives in connection with the above transaction."

3. These board resolutions have not been revoked, amended or modified, and are in full force and effect as of the date hereof.

4. The foregoing statements are in accordance with the records of the Company.

IN WITNESS WHEREOF, I have hereunto set my hand this 16 APR 2019 at Taguig City, Philippines.

JUSTINE MAE A. CABATINGAN
Assistant Corporate Secretary GRG

SUBSCRIBED AND SWORN to before me this 16 APR 2019 at Taguig City, Philippines. Affiant, who is personally known to me, exhibited to me her Driver's License No. G06-03-079669 issued at Cebu City on May 16, 2018 and Community Tax Certificate No. 12178776 issued in Cebu City on January 25, 2019.

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Page No. 105;
Book No. II;
Series of 2019.

ATTY. JAKE PATRICK P. POSIO
ROLL NO. 58362
NOTARY PUBLIC
TAGUIG CITY, PHILS.

Atty Jake Patrick P. Posio
Notary Public for Taguig City
Notarial Commission No 51
Until December 31, 2019
NAC Tower, 32nd St. Bonifacio Global City Taguig City
PTR No 4208013 Taguig City, January 07 2019
IBP O.R No 061324, January 08 2019
Roll No 58362
MCLE No VI-0015634