Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

IN THE MATTER OF THE JOINT APPLICATION FOR THE APPROVAL OF THE POWER SUPPLY AGREEMENT BETWEEN MANILA ELECTRIC COMPANY AND SAN ROQUE HYDROPOWER, INC., WITH PRAYER FOR ISSUANCE OF A PROVISIONAL AUTHORITY AND/OR INTERIM RELIEF AND MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION

ERC CASE NO. 2024-120 RC

MANILA ELECTRIC COMPANY AND SAN ROQUE HYDROPOWER, INC.,
Applicants.
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Promulgated:
September 26, 2024

NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 23 September 2024, Manila Electric Company (MERALCO) and San Roque Hydropower, Inc. (SRHI) filed a *Joint Application,* dated 03 September 2024, seeking the Commission's approval of their Power Supply Agreement (PSA), with prayer for issuance of provisional authority and/or interim relief, and motion for confidential treatment of information.

The pertinent allegations of the *Joint Application* are hereunder quoted as follows:

I. THE APPLICANTS

A. MERALCO

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 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.

B. SRHI

3. Applicant SRHI is a corporation duly organized and existing under the laws of the Philippines, with principal place of business at 5th Floor, C5 Office Building Complex, No. 100 E. Rodriguez Jr. Avenue, C5 Road, Brgy. Ugong, Pasig City. It may be served with notices and other processes of this Honorable Commission through its counsel at the address indicated herein.

4. SRHI is the Administrator of the *"Agreement between Power Sector Assets and Liabilities Management Corporation ("PSALM") and Strategic Power Development Corporation ("SPDC") (with the conformity of National Power Corporation ["NPC"]) relative to the Administration of the IPP Contract of NPC for San Roque Hydroelectric Multipurpose Project with an Installed Capacity of 345MW"* (the "IPP Administration Agreement" or the "IPP-AA" for brevity). As the Administrator of the IPP-AA, SRHI has the right and obligation to manage and control the installed capacity of the San Roque Hydroelectric Multipurpose Project owned by San Roque Power Corporation ("SRPC") located at Brgy. San Roque, Municipality of San Manuel, Province of Pangasinan (the "Plant") coupled with the right to trade, sell or otherwise deal said capacity.

II. STATEMENT OF FACTS AND TIMELINESS

5. In accordance with MERALCO's latest and duly accepted Distribution Development Plan and posted Power Supply Procurement Plan ("PSPP") approved by the Department of Energy ("DOE"), MERALCO foresees a renewable energy mid-merit capacity deficit in its portfolio for the Renewable Portfolio Standards ("RPS") covering 350 MW_{AC} (net) and 150 MW_{AC} (net)

based on its power situation outlook for first quarter of 2025 and first quarter of 2026, respectively.

6. Thus, in order to ensure continuous and reliable electricity for MERALCO's customers there is a need for MERALCO to source additional mid-merit capacity through bilateral power supply contracts.

7. 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.*"

8. Accordingly, pursuant to *Section 4, Article IV of the Energy Regulatory Commission's ("ERC") Resolution No. 16, Series of 2023* ("ERC CSP Guidelines"), MERALCO conducted a Competitive Selection Process ("CSP") for the procurement of 500 MW_{AC} (net) renewable energy mid-merit supply requirement. The conduct of CSP proceeded as follows:

   8.1. On 6 May 2024, MERALCO submitted to the DOE, the Invitation to Bid ("ITB")/Terms of Reference ("TOR") for its 350 MW_{AC} (net) Requirement Effective March 2025 to increase by 150 MW_{AC} (net) Effective March 2026 (collectively referred to as the "500 MW RE CSP"), to request for issuance of a Certificate of Conformity in accordance with MERALCO's latest and duly accepted Distribution Development Plan and posted PSPP, pursuant to *Section 4.3 of DOE Department Circular No. DC2023-06-0021, Series of 2023 and Section 5, Appendix B of the ERC CSP Guidelines.*

   8.2. On 20 May 2024, the DOE issued in favor of MERALCO a Certificate of Conformity No. DOE-EPIMB-COC-2024-05-004 dated 17 May 2024 (the "DOE COC") covering MERALCO's 500 MW_{AC} (net) renewable energy mid-merit supply requirement, which MERALCO received on the same day and endorsed to its Bids and Awards Committee for Power Supply Agreements ("BAC-PSA") for commencement of the 500 MW RE CSP. On the same day, pursuant to requirements provided in the ERC CSP Guidelines, the BAC-PSA Secretariat furnished the ERC a copy of the DOE COC and formally notified the DOE (copy furnished the ERC) of the commencement of the 500 MW RE CSP in relation to the DOE COC.

   8.3. On 25 May 2024 and 1 June 2024, the BAC-PSA caused the publication of the ITB in The Philippine Star, a newspaper of general

circulation in the Philippines. The ITB contained the TOR, a summary of the process and timelines of the CSP, and invitation to power generation companies to pay the Participation Fee and submit an Expression of Interest and set of documents on or before the deadline set out in said Invitation. The ITB and the TOR were likewise posted on MERALCO's website and on the DOE e-based CSP Portal.

8.4. On 25 May 2024, MERALCO posted on its website, an "Invitation to Participate as CSP Observers," which informed the public that the following entities or groups identified in Section 9 of the ERC CSP Guidelines are invited to signify to the BAC-PSA of their interest to participate as observer. On 7 June 2024, two (2) CSP Observers submitted their intent to (and were admitted by) the BAC-PSA as CSP Observers.

8.5. On 14 June 2024, a Pre-Bid Conference was held to allow interested bidders an opportunity to clarify any provisions, requirements, and/or terms and conditions of the bidding documents and/or any other matter that the interested bidders may raise. The Pre-Bid Conference were held at least thirty (30) calendar days before the 500 MW RE CSP's bid submission deadline; were attended by CSP Observers; and were broadcasted livestream in MERALCO's YouTube page.

8.6. On 17 July 2024, the bidders submitted their bid document submissions in compliance with all the bidding documents for the 500 MW RE CSP, and the respective submissions of the bidders were opened by the BAC-PSA. The bid submission and bid opening were held at least forty-five (45) days after the ITB/TOR's last publication and were attended by CSP Observers and were broadcasted livestream in MERALCO's YouTube page.

8.7. Following the BAC-PSA's evaluation of each of the bidders' bid submissions, Applicant SRHI emerged as one of the bidders with the lowest calculated responsive bid ("*Best Bid*"), with SRHI offering 340 MW_{AC} (net) out of the required contract capacity of 500 MW_{AC} (net) for the said bidding.

8.8. On 24 July 2024, the BAC-PSA conducted the post-qualification of the document submissions of SRHI and found the submissions to be compliant and responsive to all the

requirements and conditions specified in the bidding documents, as amended, or clarified by pertinent bid bulletins, for the 500 MW_{AC} (net) CSP. The post-qualification was attended by CSP Observers and was broadcasted livestream in MERALCO's YouTube page.

8.9. On 25 July 2024, the BAC-PSA submitted its recommendation and report to MERALCO's Board of Directors recommending SRHI, as one of the bidders with the best bids in the 500 MW RE CSP, to be declared as one of the Winning Power Suppliers and be awarded a power supply agreement for its offer of PhP 6.9500/kWh (total Delivered Headline Rate, VAT and Line Rental inclusive) for 340 MW_{AC} (net).

8.10. On 29 July 2024, MERALCO's Board of Directors approved the BAC-PSA's recommendation, and on 31 July 2024, a Notice of Award was issued by the BAC-PSA in favor of SRHI.

8.11. On 21 August 2024, the Power Supply Agreement between MERALCO and SRHI was dated, signed and executed ("MERALCO-SRHI PSA"). Thereafter, after a performance bond was submitted by SRHI on 29 August 2024 and a Notice to Proceed was issued in its favor on 29 August 2024.

A copy of the BAC-PSA Summary-Report and the DOE COC regarding the conduct of the 500 MW_{AC} (net) CSP are attached hereto as ANNEXES "C" and "C-1".

9. The said Joint Application together with its Annexes was pre-filed with the Honorable Commission starting on 3 September 2024. Hence, this Joint Application is timely filed *within* the reglementary period provided under the ERC CSP Guidelines.

III. SALIENT FEATURES OF THE MERALCO-SRHI PSA

10. The MERALCO-SRHI PSA, a copy of which is attached as ANNEX "D" and made an integral part hereof, contains the following salient provisions:

> "Article 1 Definitions and Interpretation
>
> xxx
>
> Availability of Supply means one hundred percent (100%) of the Contract

Capacity is dispatchable during the Available Hours.

Available Hours means the continuous periods of twelve (12) hours from Mondays to Sundays covering peak hours of 9:00 AM (Trading Interval 10) to 9:00 PM (Trading Interval 21). The above-mentioned hours are Meralco's peak hours at present, but this may change during Required Contract Period upon mutual consent of both Parties.

xxx

Contract Capacity "or CC" shall be 340 MW_{AC} (net) by 26 February 2025, sourced from the Plant, the WESM or any other source, as may be adjusted from time to time in accordance with Article 8 and Article 19.

xxx

Material Adverse Government Action means:

(a) any Law or Directive coming into effect after the signing of this Agreement, including the adoption or enactment, or any change or repeal with respect to the imposition of taxes, duties, levies, fees, charges and similar impositions, and the right to remit or convert currencies. This does not include any Legal Requirement or the application or interpretation thereof in existence at the date of the signing of this Agreement, but which by its explicit terms or due to any other circumstance, became effective or could be implemented only after the date of this Agreement; or

(b) the amendment, modification, repeal or withdrawal of any Law or Directive (including any official interpretation thereof which the Parties have relied upon in entering into this Agreement) in force at the date of this Agreement; or

(c) the modification in the application, enforcement, interpretation or implementation of any Law or Directive by a Governmental Instrumentality which the Parties have relied upon in entering into this Agreement, which

modification occurred at any time after the date of this Agreement.

which causes or may cause serious damage to, or materially and adversely affects the financial condition of, any of the Parties. It is understood that there is serious damage to, or material and adverse effect on the financial condition of, a Party if the cost impact is more than ten percent (10%) of the product of (i) PhP6.9500/kWh[1], as may be approved by the ERC, and (ii) the Minimum Energy Off-Take for the relevant Contract Year affected by the Material Adverse Government Action.

xxx

2.2. Term of Agreement

2.2.1. Subject to Article 3, this Agreement shall become effective on the Execution Date.

2.2.2. The term of this Agreement (the "Term") shall commence on the Operations Effective Date, and shall expire on the last day of the tenth (10th) Contract Year, unless terminated earlier in accordance with the terms of this Agreement and upon approval by the ERC, or extended by the application of Section 15.3.2.

xxx

3.2. Operations Effective Date

3.2.1. Subject to Section 3.2.2, the obligations of Power Supplier with respect to 340 MW_{AC} (net) of the Contract Capacity and Associated Energy shall commence on February 26, 2025.

xxx

4.1. Supply of Power

Subject to the terms and conditions of this Agreement:

4.1.1 From the Operations Effective Date until the expiration of the Term or earlier termination of this Agreement:

(a) Power Supplier shall make available to Meralco during the Available Hours, the Contract Capacity to be sourced from the Plant, WESM or any other source, and

[1] Contract Price of Energy Within MEOT as defined in Schedule 1 of Appendix D of this Agreement.

deliver and sell to Meralco the Associated Energy, at the Contract Price determined in accordance with Appendix D; and

(b) Meralco shall purchase from Power Supplier to the extent of Meralco's relevant day-ahead nominations, the MEOT, and at its option, the Excess Energy, at the Contract Price determined in accordance with Appendix D.

xxx

Article 7. Outages

7.1 Power Supplier shall not be entitled to any Outage during the Term of this Agreement. For clarity, this means that notwithstanding Outage of the Plant, Power Supplier shall make available the Contract Capacity and deliver the Associated Energy to Meralco.

7.2 The preceding Section notwithstanding, Power Supplier shall furnish Meralco its proposed Major Maintenance Outage and Scheduled Outage, inclusive of the duration thereof and schedule of completion and start-up. From time to time, Power Supplier shall inform Meralco of any changes requested by Power Supplier from the System Operator in the schedule of its Major Maintenance Outage and Scheduled Outage including possible delays in the shut-down and completion of schedules or early completion of Major Maintenance Outage and Scheduled Outage. Failure of Power Supplier to provide its Major Maintenance Outage and Scheduled Outage shall preclude Power Supplier from invoking Article 15.

7.3 In case Power Supplier fails to make available the Contract Capacity and deliver the Associated Energy to Meralco due to unavailability of supply from its Plant, WESM, and any other source, Power Supplier shall pay a fine equivalent to Nine Hundred Eight Philippine Peso (PhP 908.00) multiplied by each MWh during a Day, which shall be used to reduce the generation charge to the consumers. For the avoidance of doubt, in case Power Supplier fails or refuses to supply Contract Capacity and

Associated Energy despite availability thereof, then Section 16.3.3. shall apply.

Article 8. Adjustments in Contract Capacity and Associated Energy

8.1. Subject to the provisions of Section 8.2 below, Meralco shall, from time to time, be entitled to a reduction in the Contract Capacity and Associated Energy (the "Reduction in Contract Capacity and Associated Energy") equivalent to the reduction in the demand of its captive customers in order to avoid stranded contract capacities or costs, or by reason of the enforcement of Retail Competition and Open Access (RCOA), the Renewable Energy Law, Renewable Portfolio Standards (RPS), Green Energy Option Program (GEOP), Net Metering program, and other similar government programs, Laws, and Legal Requirements.

8.2. Meralco shall give a written notice to Power Supplier of such reduction at least five (5) Days prior to the first Day of the next Billing Period to Power Supplier, specifying the Reduction in Contract Capacity and Associated Energy pursuant to Section 8.1, indicating when such reductions shall take place. Upon receipt by Power Supplier of such written notice, Meralco shall cease to have any rights and obligations under this Agreement in respect of such Reduction in Contract Capacity and Associated Energy. Any such reduction shall be limited to the extent of the Contract Capacity and Associated Energy that will allow Meralco to comply with its obligation to supply electricity in the least cost manner to its customers as of the date indicated in the notice when such Reduction in Contract Capacity and Associated Energy shall commence. Except for such Reduction in Contract Capacity and Associated Energy and the corresponding reduction in MEOT, all other terms and conditions of this Agreement, as approved by the ERC, shall remain in full force and effect. For this purpose, Parties shall execute an operations protocol and provide a copy thereof to the ERC.

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12.2 ERC Approval

12.2.1 Subject to ERC Approval having been received on or prior to the Longstop Date, upon receipt of the ERC Approval, Meralco shall provide a copy of such ERC Approval to Power Supplier. Power Supplier shall have ten (10) Days from its receipt from ERC or from Meralco of such ERC Approval, whichever is earlier, to notify Meralco in writing that (a) it accepts such ERC Approval or (b) it does not accept the ERC Approval, stating the grounds for non-acceptance; *provided* that, if the ERC Approval does not contain any adjustment or modification, the ERC Approval shall be (i) deemed accepted by Power Supplier and (ii) implemented by the Parties immediately.

xxx"

IV. GENERATION RATE IMPACT

11. Based on the foregoing, and given a certain set of assumptions, the effective rate under the MERALCO-SRHI PSA is PhP 6.9500 per kWh (at plant gate, VAT exclusive), as shown in the RATE IMPACT ANALYSIS below:

San Roque Hydropower Inc. (SRHI) PSA Rate Impact at 50% PCF
March 2025 to February 2026

BILLING COMPONENT	UNIT	BASE RATE [a]	BILLING DETERMINANT [b]		AMOUNT (PHP)
A. MEOT Energy Payment **(MEP)**					
Peso Portion	(Php/kWh)	6.9500	1,340,280,000	(kWh)	9,314,946,000.00
B. Excess Energy Payment **(EEP)**					
Peso Portion	(Php/kWh)	6.9500	148,920,000	(kWh)	1,034,994,000.00
Total Payment (VAT exclusive)	**(Php)**				**10,349,940,000.00**
Effective Rate at Plant Gate	**(Php/kWh)**				**6.9500**
WESM Line Rental Rate [c]	**(Php/kWh)**				**0.1500**
Delivered Rate (VAT exclusive)	**(Php/kWh)**				**7.1000**
Total Effective Cost if sourced from WESM inclusive of RECs	(Php/kWh)				10.3260
Effective Cost if sourced from WESM [d]	(Php/kWh)				10.0844
Effective Cost if RECs are sourced from REM [e]	(Php/kWh)				0.2416
Increase / (Decrease) over WESM Price inclusive of RECs	(Php/kWh)				(3.2260)
Meralco Captive Energy Demand [f]	(kWh)				38,719,831,373.92
Increase / (Decrease) in Generation Cost	**(Php)**				**-4,804,099,632.00**
Increase / (Decrease) in Generation Cost	**(Php/kWh)**				**(0.1241)**

NOTES:

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

[b] Total of energy billing determinant is based on 50% pcf with respect to the Contract Capacity.

[c] Line Rental rate for SRHI is based on the maximum allowable value as stated in the PSA.

[d] Cost if equivalent volume of SRHI was sourced from the WESM based on forecasted average hourly peak prices from March 2025 to February 2026.

[e] Maximum allowable price of RECs in the RE Market as stated in ERC Resolution No. 8, Series of 2024

[f] Forecasted Meralco Captive Energy for March 2025 to February 2026 based on 2024 Power Supply Procurement Plan as submitted to DOE

12. MERALCO notes that the delivered rate of PhP 7.1000 per kWh (line rental inclusive and VAT exclusive) is lower by about PhP 3.2260 per kWh than the effective cost of PhP 10.3260 per kWh if the equivalent capacity under the MERALCO-SRHI PSA is to be sourced from the Wholesale Electricity Spot Market ("WESM") inclusive of Renewable Energy Certificates. In fact, by sourcing the capacity through the MERALCO-SRHI PSA, MERALCO's average blended generation rate will be reduced by about PhP 0.1241 per kWh (as seen in the RATE IMPACT ANALYSIS above) resulting in savings to consumers of about PhP 4.804 billion.

13. In support of this Joint Application, the Judicial Affidavit of ENGR. MICHAEL ANGELO A. RACELIS, Staff of MERALCO's Energy Sourcing – Energy Resource Planning, is attached as ANNEX "E" and made an integral part hereof.

V. COMPLIANCE WITH DOCUMENTARY REQUIREMENTS

14. Likewise, in support of the instant Joint Application, the Applicants provide the following documents, which underwent the pre-filing conference and pre-filing marking of annexes with the Honorable Commission:

Description of Document	Annex
A. Applicants' Authority	
MERALCO's Secretary's Certificate	"A"
SRHI's Secretary's Certificate	"B"
B. MERALCO's Documents	
BAC-PSA Summary-Report regarding the conduct of the CSP	"C"
DOE Certificate of Conformity No. DOE-EPIMB-COC-2024-05-004 dated 17 May 2024	"C-1"
MERALCO-SRHI PSA	"D"
Executive Summary	"D-1"
Judicial Affidavit of MERALCO's witness, Engr. Michael Angelo A. Racelis, staff of MERALCO's Energy Sourcing – Energy Resource Planning	"E"
MERALCO's Articles of Incorporation and By-Laws (SEC-certified true copy)	"F"
MERALCO's Latest General Information Sheet ("GIS") (SEC-certified true copy)	"G"
Verified Certification of True Copies of MERALCO's Articles of Incorporation, By-Laws, and GIS and of MERALCO's Ultimate Parent Company, all of its subsidiaries and affiliates	"G-1"
MERALCO's Demand Side Management Program	"H"

Write-up on the 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	"I"
• Excerpt of MERALCO's Distribution Development Plan – Power Supply Procurement Plan (Supply and Demand Scenario); • Average Daily Load Curve scenarios • Details of Existing Suppliers • Details of Power Supply Contract Utilization • Details of SAIDI and SAIFI • Estimation of the potential for a reduction in load supplied by MERALCO due to RCOA, GEOP, etc.	"J" "J-1" "J-2" "J-3" "J-4" "J-5"
Documents showing MERALCO's conduct of CSP	"K" and series
C. SRHI's Documents	
Big Bucks Realty Corp. ("BBRC") 2003 Articles of Incorporation and By-laws	"L"
SRHI's 2023 Amended Articles of Incorporation	"L-1"
SRHI's 2023 Amended By-laws	"L-2"
SRHI's Latest General Information Sheet	"M"
SRHI's Certification Re: Ultimate Parent Company	"N"
Certification on the Non-applicability of a Shareholders' Agreement	" O"
SRHI's Financial Model and Rate Derivation *(Confidential)*	"P" and series
Sample Bill *(Confidential)*	"Q"

VI. ALLEGATIONS IN SUPPORT OF THE PRAYER FOR THE ISSUANCE OF PROVISIONAL AUTHORITY OR INTERIM RELIEF

15. It bears emphasis that the MERALCO-SRHI PSA has a competitively procured contract price for renewable energy mid-merit supply requirement after undergoing CSP. Other features of the MERALCO-SRHI PSA that shall clearly benefit customers include no outage allowance, and a guaranteed 100% availability of supply.

16. As earlier stated, in accordance with MERALCO's latest and duly accepted DDP and posted PSPP approved by the DOE, MERALCO foresees a renewable energy mid-merit capacity deficit in its portfolio for the RPS covering 350 MW_{AC} (net) Requirement (starting 26 February 2025) and to increase by 150 MW_{AC} (net) (starting 26 February 2026) - or a total of 500 MW_{AC}

(net) mid-merit capacity deficit. If this deficiency is not addressed through the grant of provisional authority or interim relief, MERALCO's customers stand to be exposed to the volatile prices of the WESM equivalent to the considerable volume of the subject MERALCO-SRHI PSA - which is crucial at the start of the summer season of 2025 (i.e. 26 February 2025).

17. Moreover, if this deficiency is not addressed through the grant of provisional authority or interim relief, MERALCO stands to be at risk of fines and penalties for non-compliance with its RPS requirements mandated by the DOE.

18. The MERALCO-SRHI PSA can help shield MERALCO's customers from the looming supply deficiency because the supply availability under the MERALCO-SRHI PSA is guaranteed 100% and no outage allowance is provided therein.

19. This Honorable Commission will note that as shown from the rate impact analysis, the MERALCO-SRHI PSA reflects the most beneficial generation charges with a resultant estimated generation rate reduction of PhP 0.1241 per kWh.

20. Rule 14 of the ERC Revised Rules of Practice and Procedure ("ERC's RRPP") expressly provides for this Honorable Commission's authority to issue a provisional authority or grant interim relief to immediately implement the MERALCO-SRHI PSA. Such issuance or grant will not only avert the situation where MERALCO would be constrained to source its capacity deficit from the WESM, thereby exposing its customers to volatile prices, but more importantly, the immediate implementation of the MERALCO-SRHI PSA would redound to the best interest of electric power consumers since aside from the very competitive rate, the supply availability under the MERALCO-SRHI PSA is guaranteed 100% and no outage allowance is provided therein.

VII. ALLEGATIONS IN SUPPORT OF THE MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION

21. Under Rule 4 of ERC's RRPP, 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.

22. With respect to the following documents marked as ANNEXES "P" and series, and "Q" SRHI 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 SRHI. The data and information contained therein are part of the overall formula and process in arriving at the competitive rates of SRHI. These formula and process are specifically developed for the use of SRHI and are treated as trade secrets. If the information contained in these documents are unduly disclosed, it will seriously prejudice the competitiveness of SRHI. These documents are neither generally available to the public nor already in the possession of the Honorable Commission on a non-confidential basis.

23. In the case of *Air Philippines Corporation vs. Pennswell Inc,*[2] the Supreme Court defined "trade secret" as follows:

> "*A trade secret is defined as a* ***plan or process, tool, mechanism or compound known only to its owner and those of his employees to whom it is necessary to confide it.*** *The definition also* ***extends to a secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade having 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.)

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

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

> *"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."*[3]

25. SRHI hereby submits one (1) copy of the foregoing confidential documents in a sealed envelope, with the envelope and each page of the documents marked "Confidential."

26. The interest of the consumers of MERALCO is sufficiently protected by the review and evaluation of the rates under the PSA by the Honorable Commission, without the need to disclose the contents of ANNEXES "P" and series, and "Q". The reasonableness and transparency of the prices of electricity is to be assured by the Honorable Commission through its own review and verification of the foregoing documents sought to be afforded confidential treatment in the evaluation and handling thereof.

27. Lastly and corollary to the foregoing, SRHI would like to implore the discerning wisdom of the Honorable Commission to include in its issuance for this purpose the *"procedures for handling or returning the confidential information, as may be appropriate, upon the close of the proceedings." (Sec. 2, Rule 4, ERC's RRPP)*

28. This is guided by the fact that SRHI will seek for the return of these sought to be declared confidential annexes after its utilization as evidence in this case and/or at the close of the proceedings hereof, so as to relieve the Honorable Commission of the burden of safekeeping the trade secrets of SRHI enclosed in the subject annexes.

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3 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.

PRAYER

WHEREFORE, premises considered, Applicants MERALCO and SRHI respectfully pray of this Honorable Commission of the following:

a. Issue an Order TREATING ANNEXES "P" and series, and "Q" 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, and that the same will be returned to Applicant SRHI, pursuant to Rule 4 of ERC's RRPP;

b. Issue an Order GRANTING PROVISIONAL AUTHORITY OR INTERIM RELIEF, allowing the Applicants to immediately implement the MERALCO-SRHI PSA in its entirety; and

c. After hearing on the merits, render a Decision APPROVING the MERALCO-SRHI PSA and the terms and conditions thereunder, including the price.

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

The Commission hereby sets the instant *Joint Application* for hearing 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 2020[4] and Resolution No. 01, Series of 2021[5] (ERC Revised Rules of Practice and Procedure):

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

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

Date	Platform	Activity
06 November 2024 (Wednesday) at two o'clock in the afternoon (2:00 P.M.)	**Microsoft Teams Application**	Determination of compliance with jurisdictional requirements and expository presentation
13 November 2024 (Wednesday) at two o'clock in the afternoon (2:00 P.M.)		Pre-Trial Conference and Presentation of Evidence

Accordingly, MERALCO and SRHI are hereby directed to host the virtual hearings at **MERALCO's Principal Office located at Lopez Building, Ortigas Avenue, Brgy. Ugong, Pasig City**, as the designated venue for the conduct thereof, and ensure that the same is open to the public. Moreover, MERALCO and SRHI shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

Accordingly, MERALCO and SRHI are hereby directed to host the virtual hearings at **MERALCO's Principal Office located at Lopez Building, Ortigas Avenue, Brgy. Ugong, Pasig City.**, as the designated venue for the conduct thereof, and ensure that the same is open to the public. Moreover, MERALCO and SRHI shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

Any interested stakeholder may submit its comments and/or clarifications at **least one (1) calendar day** prior to the scheduled initial virtual hearing, via electronic mail (e-mail) at docket@erc.ph, and copy furnish the Legal Service through legal@erc.ph. The Commission shall 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, all persons who have 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, and copy furnishing 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. The verified Petition to Intervene must follow the requirements under Rule 9 of the ERC Revised Rules of Practice and Procedure, indicate therein the docket number and title of the case, and state 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, and 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. Rule 9 of the ERC Revised Rules of Practice and Procedure shall govern. 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 copies thereof through personal service, registered mail 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 *Joint Application* on the Commission's official website at www.erc.gov.ph.

Finally, all interested persons may be allowed to join the scheduled initial virtual hearings by providing the Commission, thru legal.virtualhearings@erc.ph, their respective e-mail addresses and indicating therein the case number of the instant *Joint Application*. The Commission will send the access link/s to the aforementioned

hearing platform within five (5) working days prior to the scheduled hearings.

WITNESS, the Honorable Officer-in-Charge Chairperson and CEO **JESSE HERMOGENES T. ANDRES,** and Honorable Commissioners **ALEXIS M. LUMBATAN, CATHERINE P. MACEDA, FLORESINDA G. BALDO-DIGAL,** and **MARKO ROMEO L. FUENTES,** Energy Regulatory Commission, this 26th day of September 2024 in Pasig City.

FOR AND BY AUTHORITY
OF THE COMMISSION:

KRISHA MARIE T. BUELA
Director III, Legal Service

LS: JSC/LSP

Republic of the Philippines
ENERGY REGULATORY COMMISSION

OGCS-N-02/1038-2024

NOTICE

Sirs/Mesdames:

Please take notice that on **26 September 2024,** the Commission issued an **Order** and a **Notice of Virtual Hearing** in the following case, the original documents were received by this Office on 04 October 2024:

ERC CASE NO. 2024-120 RC, IN THE MATTER OF THE JOINT APPLICATION FOR THE APPROVAL OF THE POWER SUPPLY AGREEMENT BETWEEN MANILA ELECTRIC COMPANY AND SAN ROQUE HYDROPOWER, INC., WITH PRAYER FOR ISSUANCE OF A PROVISIONAL AUTHORITY AND/OR INTERIM RELIEF AND MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION – MANILA ELECTRIC COMPANY AND SAN ROQUE HYDROPOWER, INC., *Applicants.*

Attached are electronic copies.

Please be reminded of the Commission's existing rules on electronic service of orders and decisions provided under **Rule VI** of **Resolution No. 9, Series of 2020**[1], which became effective on 17 November 2020.

Thank you.

Very truly yours,

MARIA LUCILA M. GIRON
Administrative Officer V
OGCS-Central Records Division

/jdc

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