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Republic of the Philippines
ENERGY REGULATORY COMMISSION
Exquadra Tower
1 Jade Drive, Ortigas Center
Brgy. San Antonio, Pasig City

IN THE MATTER OF THE APPLICATION FOR THE APPROVAL OF THE POWER SUPPLY AGREEMENT BETWEEN MANILA ELECTRIC COMPANY AND TERRA SOLAR PHILIPPINES, INC., WITH MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION

ERC CASE NO. 2023-014 RC
February 15, 2023

MANILA ELECTRIC COMPANY AND TERRA SOLAR PHILIPPINES, INC.,
Applicants.
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JOINT APPLICATION
WITH MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION

Applicants **MANILA ELECTRIC COMPANY ("MERALCO")** and **TERRA SOLAR PHILIPPINES, INC. ("TSPI"),** 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 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 TSPI is a private corporation duly organized and existing under the laws of the Philippines, with its principal place of

business at Block 21, 16/F Three E-Com Center Bayshore Drive Corner, Ocean Drive Mall of Asia Complex Zone 10, Barangay 76, Pasay City, Metro Manila. It may be served with notices and other processes of this Honorable Commission through its counsel at the address indicated herein.

4. TSPI shall construct, own, operate, manage, and maintain at least 2,500 MW solar power plants and 4,000 MWh battery energy storage systems ("**BESS**"), located within the areas of Cavite, Bulacan, Nueva Ecija, and/or Zambales, on the island of Luzon in the Philippines, 600 MW (AC, net) of which is scheduled to become operational by 26 February 2026 and 250 MW (AC, net) of which is scheduled to become operational by 26 February 2027 (hereinafter referred to as the "**Plant**"), capable of supplying 850 MW (AC, net) mid-merit from a renewable energy ("**RE**") source.

5. Based on its power situation outlook for 2026 (and succeeding years thereafter), as well as the required minimum percentage share of RE supply based on the prevailing Renewable Portfolio Standards ("**RPS**") requirement, as shown in its 2021 Power Supply Procurement Plan approved by the Department of Energy ("**DOE**"), MERALCO foresees a renewable energy mid-merit capacity deficit in its portfolio covering 850 MW (AC, net).

6. Thus, in order to ensure continuous and reliable electricity for MERALCO's customers whilst allowing MERALCO to continuously comply with the RPS requirement set by the DOE, there is a need for MERALCO to source additional RE 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, following the conduct of a Competitive Selection Process ("**CSP**") for the procurement of 850 MW (AC, net) RE mid-merit capacity, on 24 October 2022, MERALCO executed a Power Supply Agreement with TSPI ("**MERALCO-TSPI PSA**"), for the purchase of electric energy from an RE source corresponding to 850 MW (AC, net). The conduct of CSP proceeded as follows:

8.1. On 29 October 2021, the DOE's Department Circular No. DC 2021-09-0030, Series of 2021,[1] (the "**Revised CSP Rules**") took effect. Section 8.B. of the Revised CSP Rules provided for an alternative mode of procurement in cases of new technology as

[1] Entitled "*Amending Certain Provisions of and Supplementing Department Circular No. DC2018-12-0003 on the Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreement for the Captive Market*," published on 14 October 2021.

defined therein, whereby the capacity requirement of a distribution utility may be procured through a power supplier's Unsolicited Proposal ("**USP**").

If, after the TPBAC's (i) conduct of a completeness review, (ii) detailed evaluation/negotiation of the USP, and (iii) finding of new technology, the TPBAC recommends to the distribution utility ("**DU**") the declaration of the power supplier as the original proponent, the DU may confirm such recommendation and grant the power supplier an original proponent status ("**OP Status**").

After which, the USP's Terms of Reference ("**TOR**") and finding of new technology shall be submitted by the DU to the DOE for review. If approved by the DOE, a competitive challenge will be conducted by the DU's TPBAC wherein other power suppliers may tender an offer that is compliant to the TOR requirements and its offered price is lower than that of the original proponent.

8.2. On 29 October 2021, MERALCO endorsed to its Third-Party Bids and Awards Committee ("**TPBAC**") the USP submitted by TSPI for 850 MW (AC, net) of RE mid-merit supply using a portfolio of solar power plants and BESS ("**TSPI's USP**").

8.3. On 13 December 2021, after MERALCO's confirmation of the TPBAC's (i) conduct of a completeness review, (ii) detailed evaluation/negotiation of TSPI's USP, (iii) finding of new technology, and (iv) recommendation to grant TSPI an OP Status, MERALCO submitted to the DOE for review the Invitation to Bid ("**Invitation**"), TOR, and Bid Requirements of TSPI's USP.

8.4. Upon the DOE's approval of the Invitation, TOR and Bid Requirements on 10 January 2022 and posting by the DOE of Invitation, TOR, and Bid Requirements in the publicly-viewable page of the DOE's CSP e-Portal, on 22 January 2022, to commence the CSP via competitive challenge, MERALCO caused the publication of the Invitation, which contained the basic TOR, indicating a summary of the process and timelines of the CSP, and inviting power generation companies to submit an Expression of Interest ("**EOI**") and Confidentiality Undertaking on or before the deadline set out in said Invitation. At the same time, MERALCO caused the posting thereof on its website, as well as posting in a conspicuous place of its principal office.

8.5. On 5 April 2022, at the deadline for interested bidders to submit their bids and compliance with the Bid Requirements, the TPBAC did not receive a bid from any supplier, hence on the same day, the TPBAC determined that there was failure of bidding under the Revised CSP Rules.

8.6. On 6 April 2022, MERALCO submitted to the DOE for posting the Final Invitation to Bid ("**Final Invitation**"), TOR, and Bid Requirements of TSPI's USP to initiate the second round of the CSP via competitive challenge.

8.7. On 19 April 2022, after the DOE's confirmation that the Final Invitation, TOR and Bid Requirements were posted in the publicly-viewable page of the DOE's CSP e-Portal, to commence the second round of the CSP via competitive challenge, MERALCO caused the publication of the Final Invitation, which contained the basic TOR, indicating a summary of the process and timelines of the CSP, and inviting power generation companies to submit an EOI and Confidentiality Undertaking on or before the deadline set out in said Invitation. At the same time, MERALCO caused the posting thereof on its website, as well as posting in a conspicuous place of its principal office.

8.8. On 2 May 2022, at the deadline for interested bidders to submit their EOI, again the TPBAC did not receive a bid from any supplier, hence on the same day, the TPBAC determined that there was second failure of bidding under the Revised CSP Rules, and considering there is no outstanding dispute before the TPBAC on the conducted first and second rounds of the CSP by competitive challenge, the TPBAC determined that the conditions were present under the Revised CSP Rules so that the DU may enter into direct negotiation with the original proponent, TSPI.

8.9. A copy of the TPBAC Summary-Report regarding the conduct of the CSP is attached as part of **ANNEX "C"**.

9. The MERALCO-TSPI 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 available from 08:00 AM to 8:59 PM from Mondays to Saturdays, and 08:00 AM to 01:59 PM on Sundays, covering peak hours of Meralco, for at least 84 hours in a week. For clarity, Meralco's peak hours are from 8:00 AM to 9:00 PM, but may be subject to change during the Term upon mutual consent of the Parties.

xxx

Contract Capacity or **CC** shall be, subject to Section 3.4.1, Article 10, and Section 21.1: (i) 600 MW_{AC} (net) for the first (1st) Contract Year; and

(ii) pursuant to Section 3.3.1, increased to a total of 850 MW_{AC} (net) beginning Commercial Operations Date (Phase 2), in each case, sourced from the Plant; provided that this shall be the full 850 MW_{AC} (net) should Meralco exercise its option in Section 3.4.3.

xxx

Eligible Renewable Energy Power Plants means generating facilities utilizing renewable energy resources or technology, which achieved commercial operations after effectivity of the Renewable Energy Law and are attributed corresponding RECs pursuant to Laws.

xxx

Guaranteed Output means, on an annual basis, the Availability of Supply from: (a) Plant, shall result in an output of not less than 45% PCF with respect to the Contract Capacity, and (b) subject to Section 6.1, Plant and Eligible Renewable Energy Power Plants, shall result in output of not less than 50% PCF with respect to the Contract Capacity. For clarity, Guaranteed Output does not translate to a minimum energy off-take.

Guaranteed RECs mean, on an annual basis, the minimum number of RECs that Power Supplier shall provide to Meralco equivalent to forty-five percent (45%) PCF with respect to the Contract Capacity.

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 annual capacity payment.

xxx

Renewable Energy Certificates or **RECs** mean the certificate issued by the renewable energy registrar to electric power industry participants which show the energy produced, sold or used, and may be traded in the renewable energy market for compliance with the renewable portfolio standards, pursuant to the Renewable Energy Law and relevant Laws.

xxx

2.2 **Term of Agreement**

Subject to Article 3, this Agreement shall become effective on the Execution Date. The term of this Agreement shall commence on the Commercial Operations Date (Phase 1) and shall expire on the last day of the 20th Contract Year following Commercial Operations Date (Phase 2), unless terminated earlier in accordance with the terms of this Agreement or extended by the application of this Section 2.2 and Section 17.3.3 (the "**Term**").

The Term may be renewed for an additional period of up to one (1) year under the same terms and conditions, at the option of Meralco, by giving prior written notice to Power Supplier at least one hundred eighty (180) Days prior to the end of the Term.

xxx

3.3 **Commercial Operations Date**

3.3.1 Subject to Section 3.4.3, Power Supplier covenants that the Plant Configuration sufficient to make available 600 MW_{AC} (net) of the Plant shall achieve Commercial Operations Date no later than 26 February 2026 (the "**Scheduled Commercial Operations Date (Phase 1)**"); and the Plant Configuration sufficient to make available the additional 250 MW_{AC} (net) of the Plant shall achieve Commercial Operations Date no later than 26 February 2027 (the "**Scheduled Commercial Operations Date (Phase 2)**").

xxx

3.3.3 If the Commercial Operations Date has not occurred by the Scheduled Commercial Operations Date, from and after the Scheduled Commercial Operations Date, Power Supplier shall, for each Day of unexcused delay, (i) procure and cause delivery to Meralco of Replacement Power from Eligible Renewable Energy Power Plants of up to the Contract Capacity, as may be applicable, subject to Article 6 and in accordance with Appendix E, to be paid for by Meralco at the lower between WESM price and the Price specified in Appendix E; or (ii) to the extent that such Replacement Power is not available due to inadequate supply, pay to Meralco a fine equivalent to Nine Hundred Eight Philippine Pesos (PhP 908.00) multiplied by each affected MWh nomination by Meralco, until the earlier of: (a) the Commercial Operations Date, and (b) sixty (60) Days after the Delay Limit Date (as the Delay Limit Date may be adjusted in accordance with the succeeding provisions). For purposes of this Section 3.3.3, a fraction of a Day is considered a Day.

xxx

6.1 **Supply of Power**

Subject to the terms and conditions of this Agreement:

6.1.1 From the Commercial Operations Date of the Plant until the expiration of the Term or earlier termination of this Agreement, Power Supplier shall:

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

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

The Dispatch of Contract Capacity and Associated Energy shall meet the requirements set out in the Performance Guarantees.

The energy storage component of the Plant shall be charged from the renewable energy components of the Plant, and the Associated Energy shall be paid for by Meralco at the Price. Should there be inadequacy of the relevant renewable energy source, which prevents generation from the renewable energy components of the Plant, the energy storage system component may be charged from the WESM to the extent of the inadequacy; provided, however, that should the energy storage system component be charged from a source other than the renewable energy components of the Plant despite adequate renewable energy source for generation, the Associated Energy shall be paid for by Meralco at the lower between WESM price and the Price, in accordance with Appendix E. The Parties shall mutually agree on the mechanism and protocol for purposes of determining the source of the energy storage system's charging energy, in order to give effect to this provision.

6.1.2 Unless otherwise expressly permitted by this Agreement, Power Supplier shall not, without Meralco's prior written consent:

(a) 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; or

(b) provide Meralco with capacity and/or electrical energy from any source other than the Plant; provided, however, that Power Supplier shall be allowed to deliver and sell to Meralco the Associated Energy from Eligible Renewable Energy Power Plants only when the Plant is on Outage. For this purpose, should Power Supplier fail to source from the Plant when it is available, Meralco shall pay the lower between WESM price and Price, in accordance with Appendix E.

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6.5 Compliance with RPS Rules

6.5.1 Subject to the rules on renewable portfolio standards pursuant to the Renewable Energy Law (the "RPS Rules"), the Parties acknowledge and agree that the Contract Capacity and Associated Energy under this Agreement shall be utilized by Meralco for the purpose of complying with RPS Rules requirements. The Parties shall agree on a mechanism by which to implement Section 6.5 within six (6) months from Commencement Date and as may be necessary upon promulgation of relevant regulations.

6.5.2 Beginning on Scheduled Commercial Operations Date, Power Supplier shall provide Meralco RECs equivalent to the higher between Guaranteed RECs and volume corresponding to Meralco's nomination, reckoned annually. This notwithstanding, RECs shall be monitored and accounted for on a monthly basis.

For clarity, (i) for the first Contract Year, RECs shall be reckoned from Scheduled Commercial Operations Date until December 25, 2026, regardless of actual COD; and (ii) for the succeeding Contract Years, RECs shall be reckoned annually from 26 December of the preceding year to 25 December of the current year (or, in case of the final year, until expiration or end of the Term).

6.5.3 Meralco shall be entitled to all RECs for energy generated by the Plant corresponding to the Contract Capacity and Associated Energy, plus Excess Energy and Excess Capacity, if any. All such RECs, which shall be at least equivalent to the Guaranteed RECs, shall be delivered to Meralco in accordance with prevailing regulations. This provision shall apply notwithstanding the suspension of supply under Section 12.2.2(a).

xxx

Article 9 Outages

9.1.1 Power Supplier shall not be entitled to any Outage allowance during the Term of this Agreement. For clarity, this means that notwithstanding Outage of the Plant, Power Supplier shall, except as provided in Section 9.1.4 and subject to Article 17, make available the Contract Capacity and deliver the Associated Energy to Meralco, which shall be paid at the lower between WESM price and Price as specified in Appendix E.

9.1.2 The preceding Section notwithstanding, Power Supplier shall furnish Meralco its proposed 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 Scheduled Outage including possible delays in the shut-down and completion of schedules or early completion of Scheduled Outage.

9.1.3 In case of Outage and Power Supplier fails to provide Replacement Power from Eligible Renewable Energy Power Plants, Meralco will be deemed to have sourced the Replacement Power, subject to reimbursement by Power Supplier of the amount corresponding to the positive difference between (i) WESM price and (ii) Contract Price, in each case inclusive of all relevant transaction cost and taxes. In addition, in case such failure to provide Replacement Power to Meralco is due to unavailability of supply, Power Supplier shall pay a

fine equivalent to Nine Hundred Eight Philippine Peso (PhP908) 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 Replacement Power despite availability thereof, then Section 18.1. shall apply.

9.1.4 On and after the Commercial Operations Date, during any period in which an Event of Force Majeure affects Power Supplier or Meralco, Meralco shall procure replacement energy from the WESM to the extent supply or offtake is so affected. For clarity, the cost of such replacement energy shall form part of the price that Meralco will charge to its customers.

Article 10 **Adjustments in Contract Capacity and Associated Energy**

10.1. Subject to the provisions of Section 10.2 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, the Renewable Energy Law and other Laws and Legal Requirements.

10.2. Meralco shall give a written notice to Power Supplier of the Reduction in Contract Capacity and Associated Energy at least five (5) Days prior to the first Day of the next Billing Period. 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.

10.3. In the event that the Plant is capable of producing energy above the Contract Capacity, Meralco has the option to purchase the same (the "**Excess Capacity**") through notice to Power Supplier sixty (60) Days prior to availment and for a period of up to six (6) months, subject to technical limitations of the Plant in accordance with Appendix A.

xxx

12.2.4 Following the ERC Final Approval, Parties shall implement a one-time adjustment of the Price, in case of a change in the interest rate at the time of ERC Final Approval compared to the interest rate on the Date of Submission of Unsolicited Proposal, in accordance with the Pricing Adjustment Formula provided in Appendix E (the "**One-Time Price Adjustment**"). For clarity, should there be any inconsistency between the adjustment amount in PHP/kW-year of the Pricing Adjustment Formula and the One-Time Price Adjustment based solely on change in interest rate, the latter shall prevail.

xxx

14.3 **ERC Approval**

14.3.1 Subject to the non-occurrence of the Longstop Date, upon receipt of the ERC Final Approval, Meralco shall provide a copy of such ERC Final Approval to Power Supplier. Power Supplier shall have ten (10)

Days from its receipt from ERC or from MERALCO of such ERC Final Approval, whichever is earlier, to notify Meralco in writing that (a) it accepts such ERC Final Approval or (b) it does not accept the ERC Final Approval, stating the grounds for non-acceptance. However, if the ERC Final Approval does not contain any adjustment or modification, it shall be (i) deemed accepted by the Power Supplier and (ii) implemented by the Parties immediately.

xxx"

10. The Payment Structure under Appendix E of the PSA is as follows:

"MONTHLY POWER BILL UPON COMMERCIAL OPERATIONS DATE

The MPB upon COD shall consist of Capacity Payment, Energy Payment, and Other Payments. The Capacity Payment consists of Component A (MCP). The Energy Payment consists of Component B (MVOMP) and Component C (MRP). Other Payments are Component D (LRAP) and Component E (ASCRP). Thus, the MPB upon COD ("**MPB**") for Contract Capacity and Associated Energy (and Replacement Power) for each Billing Period shall be equal to:

MPB = MCP + MVOMP + MRP – LRAP + ASCRP

The MPB is exclusive of the applicable Value Added Tax."

The same Payment Structure under Appendix E of the PSA defines the following components of the Monthly Power Bill (MPB) as:

MCP – Monthly Capacity Payment;
MVOMP – Monthly Variable O&M Payment;
MRP – Monthly Replacement Power Payment;
LRAP – Line Rental Adjustment Payment; and
ASCRP – Ancillary Services Cost Recovery Payment.

11. Based on the foregoing, and given a certain set of assumptions, the annual effective rate under the MERALCO-TSPI PSA is **PhP 5.7000 per kWh (at plant gate, VAT inclusive),** as shown in the **RATE IMPACT ANALYSIS** below:

Terra Solar Philippines, Inc. PSA Rate Impact at 50 % pcf
(March 2027 to February 2028)

BILLING COMPONENT	UNIT	BASE RATES [a]	BILLING DETERMINANT [b]		AMOUNT (PHP)
A) Capacity Payment **(MCP)**	(Php/kW-yr)	23,608.2000	850,000	(kW)	20,066,970,000.00
B) Variable O&M Payment **(MVOMP)**	(PhP/kWh)	0.3100	3,723,000,000	(kWh)	1,154,130,000.00
VAT Payment	(Php)				0.00
Total Payment (VAT inclusive)	**(PhP)**				**21,221,100,000.00**
Effective Rate at Plant Gate (VAT Inclusive)	**(Php/kWh)**				**5.7000**
WESM Line Rental Rate [c]	**(Php/kWh)**				**0.1000**
Delivered Rate (VAT Inclusive)[d]	**(Php/kWh)**				**5.8000**

Effective Cost if sourced from WESM [e]	(Php/kWh)	9.7840
Increase / (Decrease) over WESM	(Php/kWh)	(3.9840)
Meralco Captive Energy Demand [f]	(kWh)	41,894,579,402
Increase / (Decrease) in Generation Cost	**(Php)**	**(14,832,296,825.24)**
Increase / (Decrease) in Generation Cost	**(Php/kWh)**	**(0.3540)**

Assumptions:

[a] Contract Price (VAT exclusive) as indicated in the TS TOR.

[b] Energy billing determinant for Mar 2027 to Feb 2028 based on 50% pcf with respect to the Contract Capacity.

[c] Line Rental rate for Terra Solar Philippines, Inc. is based on the maximum allowable value as indicated in TS TOR.

[d] Delivered Rate (VAT inclusive) will include AS Cost Recovery rate once imposed under existing rule or regulation. AS Cost Recovery rate for Terra Solar Philippines, Inc. shall be based on the lower between actual rate and cap of PhP0.28/kWh.

[e] Cost if equivalent volume of Terra Solar Philippines, Inc. was sourced from WESM and priced using forecasted average WESM prices during peak hours for the period Mar 2027 to Feb 2028, inclusive of 6% VAT.

[f] Forecasted Meralco Captive Energy for Mar 2027 to Feb 2028 based on the latest Power Supply Procurement Plan as submitted to DOE.

12. MERALCO notes that the annual delivered rate of **PhP 5.8000 per kWh (VAT and line rental inclusive)** is **lower** by about PhP 3.9840 per kWh than the effective cost of PhP 9.7840 per kWh (VAT and line rental inclusive), if the equivalent capacity under the MERALCO-TSPI PSA is to be sourced from the WESM. In fact, by sourcing the capacity through the MERALCO-TSPI PSA, MERALCO's average blended generation rate will be reduced by about PhP 0.3540 per kWh (as seen in the **RATE IMPACT ANALYSIS** above) resulting in savings to consumers of about PhP 14.8 billion.

13. In support of this Joint Application, the Judicial Affidavit of **ENGR. ELVIN C. JACOB**, Officer of MERALCO's Energy Sourcing – Energy Sourcing Operations Team, is attached as **ANNEX "E"** and made an integral part hereof.

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
MERALCO's Secretary's Certificate	"A"
TSPI's Secretary Certificates	"B" and "B-1"
TPBAC Summary-Report regarding the conduct of the CSP	"C"
MERALCO-TSPI PSA	"D"

Write-up that the PSA is not under emergency procurement with a DOE-issued Certificate of Exemption	**"D-1"**
Judicial Affidavit of MERALCO's witness, Engr. Elvin C. Jacob, Officer of MERALCO's Energy Sourcing – Energy Sourcing Operations Team	**"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) 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"** **"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 Write-up of no inconsistencies/differences from documents presented	**"J"** **"J-1"** **"J-2"** **"J-3"** **"J-4"** **"J-5"** **"J-6"**
Documents showing MERALCO's conduct of CSP	**"K" and series**
SEC Certificate of Registration including the Articles of Incorporation and By-Laws of TSPI	**"L"**
2022 General Information Sheet of TSPI (SEC-certified true copy)	**M**
Verified Certification of the list of Board Directors and members of the Ultimate Parent Company, subsidiaries and all affiliates of TSPI	**"M-1"**
Diagram of Corporate Structure	**"M-2"**
Shareholders' Agreement dated 17 September 2020	**"N"**
Supplement to the Shareholder's Agreement dated 24 October 2022*	**"N-1" ***
Executive Summary of PSA	**"O"**
Written Explanation on In-applicable Documents	**"P" and series**
1. Renewable Energy Service Contracts from the DOE	
2. Certificate of Registration or Certificate of Confirmation of Commerciality by an RE Developer	
3. Environmental Compliance Certificate ("**ECC**")	
4. Board of Investments ("**BOI**") Certificate of Registration	
5. Certificate of Compliance issued by the Energy Regulatory Commission	

6. Certification from the Department of Energy regarding the Philippine Development Plan or Certificate of Endorsement	
7. Water Permit from the National Water Resources Board	
8. Single-Line Diagram ("**SLD**")	
9. Details regarding transmission projects or grid connection projects necessary to complement the proposed generation capacity; Identification of the parties that will develop and/or own such facilities; any cost related to such project; and specification of the parties responsible for the recovery of any costs related to such projects	
10. Copy of Related Agreements	
11. Updated costs in relation to a previously filed PSA	
12. Sworn Statement regarding the procurement of fuel	
13. Certification of the net heat rate in liters per kWh	
14. Simulation of the number of operating units necessary to meet the MEOT and/or additional energy/demand requirements of the DU	
15. Distribution Wheeling Service Agreement	
16. Potential cost of Ancillary Services as and when the IPP or the DU is connected to the main grid	
17. Certified True Copy of the WESM Registration	
Write-up on Sources of Funds and Financial Plans; Generation Rate and Derivation*	**"Q" ***
Spreadsheet of Financial Model, Bid Price Calculation, and Cost Analysis*	**"Q-1" ***
Technical and Economic Characteristics of the TSPI Plant	**"R"**
Certified True Copy of TSPI's Audited Financial Statements	**"S"**
Verification and Certification of Non-Forum Shopping	**"T"**

**Subject of a Motion for Confidential Treatment of Information*

ALLEGATIONS IN SUPPORT OF THE MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION

18. Under Rule 4 of the ERC's Revised Rules of Practice and Procedure ("**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.

19. With respect to the documents marked and attached as **ANNEXES "Q and Series"** as well as the amendments stipulated under clause 3.1 of the Supplement to the Shareholders' Agreement dated 24 October 2022 marked and attached as **ANNEX "N-1"**, TSPI 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 TSPI. The data and information contained therein are part of the overall formula and process in arriving at the competitive rates of TSPI. These formula and process are specifically developed for the use of TSPI and are treated as trade secrets. If the information contained in these documents are unduly disclosed, it will seriously prejudice the competitiveness of TSPI. These documents are neither generally available to the public nor already in the possession of the Honorable Commission on a non-confidential basis.

20. 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.)

21. 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.[3]

---

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

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.

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

23. 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 "Q and series"** and Clause 3.1 of **ANNEX "N-1"**. 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.

24. Lastly and corollary to the foregoing, TSPI 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)***

25. This is guided by the fact that TSPI 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 TSPI enclosed in the subject annexes.

PRAYER

WHEREFORE, premises considered, Applicants respectfully pray that the Honorable Commission:

a) Issue an Order **TREATING ANNEXES "Q and series"** and **Clause 3.1 of ANNEX "N-1"** 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 TSPI, pursuant to Rule 4 of the ERC's RRPP; and

b) After hearing on the merits, render a Decision **APPROVING** the MERALCO-TSPI PSA and the terms and conditions thereunder, including the price.

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

Pasig City, 2 November 2022.

MANILA ELECTRIC COMPANY
Co-Applicant
Lopez Building, Ortigas Avenue
Brgy. Ugong, Pasig City

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MCLE Compliance No. Admitted to the Bar May 2022

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

VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING

I, **JOSE RONALD V. VALLES**, Filipino citizen, of legal age, and with principal office address at 12th Floor, Lopez Building, MERALCO Compound, Ortigas Avenue, Pasig City, after being sworn in accordance with law, hereby depose and state that -

1. I am the First Vice President and Head of the Regulatory Management Office of Applicant Manila Electric Company ("**MERALCO**"), and am authorized to represent MERALCO in this Joint Application as per the attached Secretary's Certificate (**ANNEX "A"**);

2. I have caused the preparation of the instant Joint Application and read the contents thereof, and I attest that the allegations herein contained are true and correct;

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. The foregoing Joint Application is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

5. The factual allegations therein have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery;

6. Should I hereafter learn that a similar action or proceeding has been filed or pending before the Supreme Court, the Court of Appeals, or before any other tribunal or agency, I hereby undertake to notify this Honorable Commission of such fact within five (5) days from notice of such action or proceeding.

NOV 02 2022

IN WITNESS WHEREOF, I have hereunto affixed my signature this _____ day of _____ 2022 at Pasig City, Philippines.

JOSE RONALD V. VALLES
Affiant

NOV 02 2022

SUBSCRIBED AND SWORN to before me this _____ day of _____ 2022 at Pasig City, Philippines, affiant exhibiting to me the following competent evidence of his identity: SSS ID, bearing the number 3310900088.

Doc. No. 414;
Page No. 84;
Book No. VI;
Series of 2022.

MADELYN C. DELOS SANTOS
NOTARY PUBLIC
Appointment No. 102 (2019-2020)
(valid until DEC 31, 2022 as granted
by Bar Matter No. 3795)
Pasig, San Juan and Pateros
Issued on 18 February 2019 at Pasig City
Roll of Attorneys No. 64977
IBP No. 179341; 01/21/2022; RSM
PTR No. 8131479 01/06/2022; Pasig City
7th Floor, Lopez Bldg., Ortigas Ave., Pasig City

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

VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING

I, Cheryll Len V. Mendoza, Filipino, of legal age, and with office address at Block 21, 16th Floor, Three E-Com Center, Bayshore corner Ocean Drive, Mall of Asia Complex, Zone 10 Barangay 76, Pasay City Metro Manila 1300, Philippines, after having been sworn in accordance with law, hereby depose and state under oath that:

1. I am the duly authorized representative of **TERRA SOLAR PHILIPPINES, INC.** ("**TSPI**"), a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at Block 21, 16th Floor, Three E-Com Center, Bayshore corner Ocean Drive, Mall of Asia Complex, Zone 10 Barangay 76, Pasay City Metro Manila 1300, Philippines.

2. Pursuant to and by virtue of such authority, I caused the preparation of the foregoing Application, captioned "*In the Matter of the Application for the Approval of the Power Supply Agreement (PSA) Between Manila Electric Company (MERALCO) and Terra Solar Philippines, Inc. (TSPI), With Prayer for Provisional Authority and/or Interim Relief and Motion For Confidential Treatment Of Information*".

3. I have read the contents of the Application and attest that to the best of my knowledge and based on authentic records, the allegations therein are true and correct.

4. The Application is not filed to harass, cause unnecessary delay or needlessly increase the cost of litigation.

5. The factual allegations therein have evidentiary support or, if so specifically identified, will likewise have evidentiary support after a reasonable opportunity for discovery.

6. I hereby certify that TSPI has not commenced any action or filed any claim involving the same issues in any court, tribunal, or quasi-judicial agency, and to the best of my knowledge, no such other action or claim is pending therein. Should I thereafter learn that the same or similar action or claim has been filed or is pending, I shall report such fact to this Honorable Commission within five (5) calendar days therefrom.

IN WITNESS WHEREOF, I have hereunto affixed my signature this _____ day of NOV 02 2022, in Makati City.

CHERYLL LEN V. MENDOZA
Authorized Representative

SUBSCRIBED AND SWORN TO before me this _____ day NOV 02 2022 in Makati City, affiant exhibited to me his/her Driver's License No. N03-97-235748 issued on _____ at the _____.

Doc. No. 138;
Page No. 29;
Book No. VIII;
Series of 2022.

RAYA GRACE T. TAN
NOTARY PUBLIC
ROLL NO. 73341
MAKATI CITY, PHILIPPINES

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