

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

**IN THE MATTER OF THE
JOINT APPLICATION FOR
APPROVAL OF THE
CONTRACT FOR SUPPLY OF
ELECTRIC ENERGY (“CSEE”)
IN THE LUZON GRID
BETWEEN POWER SECTOR
ASSETS AND LIABILITIES
MANAGEMENT
CORPORATION AND MANILA
ELECTRIC COMPANY, WITH
PRAYER FOR PROVISIONAL
AUTHORITY**

ERC CASE NO. 2021-109 RC

**POWER SECTOR ASSETS AND
LIABILITIES MANAGEMENT
CORPORATION AND MANILA
ELECTRIC COMPANY,**

Applicants.

X-----X

Promulgated:
January 12, 2022

ORDER

On 29 December 2021, Power Sector Assets and Liabilities Management Corporation (PSALM) and Manila Electric Company (MERALCO) filed a *Joint Application* dated 11 November 2021, seeking the Commission’s approval of their Contract for Supply of Electric Energy (CSEE), with prayer for provisional authority and/or interim relief.

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

1. Applicant PSALM is government-owned and controlled corporation organized and existing by virtue of Republic Act No. 9136¹ (“EPIRA”), with principal office address at 24th Floor, Vertis North Corporate Center 1, Astra corner Lux Drives, North Avenue, Quezon City. It may be served with

¹ Electric Power Industry Reform Act of 2001.

notices and other processes of this Honorable Commission through its counsel at the address indicated herein.

2. Pursuant to Section 49 of the EPIRA and the consequent assignment on 11 May 2009 (a copy of the NPC Assignment Letter is attached as ANNEX “M”) of all National Power Corporation (“NPC”) power supply contracts to PSALM, NPC assigned and transferred to PSALM all its rights and obligations in, to, and under its CSEEs and other similarly or substantially equivalent power supply contracts with NPC power customers (collectively referred to as “Power Supply Contracts”).
3. On and from 11 May 2009, the Power Supply Contracts were deemed amended by the NPC Assignment Letter as follows: (i) all references to NPC therein shall be treated as references to PSALM; (ii) PSALM shall be deemed the SUPPLIER under the said Power Supply Contracts; and (iii) the rights and obligations of the Parties shall be governed by and construed in accordance with said Power Supply Contracts.
4. Applicant MERALCO is a private corporation organized and existing under the laws of the Republic of the Philippines, with principal office located at Lopez Building, Ortigas Avenue, Barangay Ugong, Pasig City. It may be served with notices and other processes of this Honorable Commission through its counsel at the address indicated herein.
5. MERALCO has a legislative franchise to operate and maintain a distribution system in the cities/municipalities of Metro Manila, Bulacan, Cavite, Rizal and certain cities/municipalities/ barangays in Batangas, Laguna, Quezon and Pampanga, pursuant to Republic Act No. 9209,² and is authorized to charge all its customers for their electric consumption at the rates approved by this Honorable Commission.
6. In light of the (i) increased frequency and persistent occurrence of SPEX-Malampaya gas supply restrictions, which is expected to continue to result in the de-rating of gas-fired power plants; (ii) scheduled maintenance of the SPEX-Malampaya pipeline in October 2021; and (iii) anticipated thinning electricity operating margins leading up to the May 2022 elections, especially with upcoming simultaneous scheduled maintenance and possible forced outages of power plants; and in order to mitigate exposure to the Wholesale Electricity Spot Market (“WESM”) of its customers, MERALCO foresees a peaking capacity deficit in its portfolio from 26 September 2021 until 25 July 2022 for 260 MW, of which, 90 MW is secured through this CSEE.

² An Act granting the Manila Electric Company a franchise to construct, operate and maintain a distribution system for the conveyance of electric power to the end-users in the cities/municipalities of Metro Manila, Bulacan, Cavite, and Rizal, and certain cities/municipalities/barangays in Batangas, Laguna, Quezon, and Pampanga.

7. Thus, in order to ensure continuous and reliable supply of electricity for MERALCO's customers at the least cost, there is an urgent need for MERALCO to source additional peaking capacity through bilateral power supply contracts.
8. In view thereof, MERALCO executed a CSEE with PSALM (the "PSALM-MERALCO CSEE") on 28 September 2021, with a Contract Duration of up to 25 July 2022.
9. Under Section Under Section 45(b) of the EPIRA, it is provided that "*Distribution Utilities may enter into bilateral power supply contracts subject to review by the ERC xxx.*"
10. Corollary to that, Section 2.2 of the Department of Energy ("DOE") Department Circular No. DC2018-02-0003³ (the "2018 CSP Rules") allows exemption from a Competitive Selection Process ("CSP") in cases of (i) negotiated procurement of emergency power supply, provided that the cooperation period does not exceed one (1) year and that the rate shall not be higher than the latest Energy Regulatory Commission ("ERC") approved generation tariff for the same or similar technology in the area; or (ii) provisions of power supply by PSALM through bilateral contracts for the power produced from the undisposed generating assets and Independent Power Producer Contracts.
11. The PSALM-MERALCO CSEE is based on the ERC-approved template under ERC Resolution No. 08, Series of 2005, as amended by ERC Resolution No. 15, Series of 2005, and clarified by ERC Resolution No. 33, Series of 2006, with the following minor revisions to clearly reflect the Parties' agreement:
 - (a) those found in Annex 1 thereof, which reflects the Contracted Energy and the corresponding equivalent demand; and
 - (b) the amendment of Section 3.1 on CONTRACT DURATION which states that the PSALM-MERALCO CSEE shall be effective for a period of ten (10) months from 26 September 2021 to 25 July 2022, unless modified by the applicable WESM Rules.
12. Pursuant to Section 2.2.4. of the 2018 CSP Rules,⁴ MERALCO wrote a letter-request dated 25 August 2021 to the DOE for

³ Adopting and Prescribing the Policy for the Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreement for the Captive Market.

⁴ "2.2. All PSAs shall be procured through CSP; Provided however, that the following instances shall warrant a Certificate of Exemption from the Department of Energy (DOE) on the conduct of CSP;

xxx

2.2.4. Provision of power supply by the [PSALM] through bilateral contracts for the power produced from the undisposed generating assets and Independent Power Producer (IPP) contracts duly sanctioned by the "Electric Power Industry Report Act of 2001" or EPIRA as deemed by the DUs, subject to a periodic review by the DOE."

the issuance of a Certificate of Exemption from the conduct of a CSP.

A copy of the MERALCO’s Letter-Request dated 25 August 2021 to the DOE is attached as ANNEX “K”.

13. Thereafter, the DOE issued a Certificate of Exemption dated 28 September 2021 exempting MERALCO from “the conduct of COMPETITIVE SELECTION PROCESS (CSP) for the Contract for the Supply of Electric Energy (CSEE) with the POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT (PSALM) CORPORATION for the period of ten (10) months from 26 September 2021 to 25 July 2022,” as provided under the 2018 CSP Rules, a copy of which is attached herein as ANNEX “C”. In addition, the ERC exempted PSALM from the conduct of CSP in its letter dated 20 September 2016 (attached herein as ANNEX “C-1”) due to the nature of its operations. The ERC recognized PSALM’s exemption from joining the mandatory CSP in its decision approving the application for the approval of CSEEs with the distribution utilities under ERC Case No. 2016-186 RC.
14. The PSALM-MERALCO CSEE, a copy of which is attached as ANNEX “D”, contains the following salient features:

“1.6 CONTRACT ENERGY - refers to the energy in kilowatt-hour (kWh) whether monthly or hourly (in case of Time of Use Rate) allocated by PSALM to CUSTOMER within the contract period, as stated in “Annex I” of this Contract.

xxx

- CONTRACT ENERGY 4.1 Contract Energy and Equivalent Demand as indicated in Annex I may be changed by PSALM due to a change in the projected available capacity of PSALM’s power plants and at any time during the duration of the Contract due to the privatization of any of the assets of PSALM pursuant to the EPIRA.
- 4.1.1 CUSTOMER shall nominate month-ahead its hourly and daily energy quantity requirements three (3) days before the start of the next billing period based on its Daily Load Profile as reflected in Annex 1a. On a day to day transaction, the CUSTOMER shall confirm the schedule of hourly energy requirements to PSALM on the day ahead. PSALM shall declare to WESM the schedule of hourly energy requirements delivered to customers immediately on the day after.

ANNEX I

YEAR	2021			2022		
MONTHS	EQUIVALENT DEMAND (kW)	CONTRACT ENERGY (kWh)	LOAD FACTOR	EQUIVALENT DEMAND (kW)	CONTRACT ENERGY (kWh)	LOAD FACTOR
January				90,000	18,000,000	26.88%
February				90,000	18,900,000	28.23%
March				90,000	18,000,000	29.76%
April				90,000	17,100,000	25.54%
May				90,000	18,000,000	27.78%

June				90,000	19,800,000	29.57%
July				90,000	18,000,000	27.78%
August						
September						
October	90,000	18,900,000	29.17%			
November	90,000	18,900,000	28.23%			
December	90,000	16,200,000	25.00%			

xxx

- CONTRACT DURATION

3.1

This Contract shall be effective for a period of ten (10) months from 26 September 2021 to 25 July 2022, unless modified by the applicable WESM Rules.
- AVAILABILITY OF SUPPLY

4.2

PSALM shall supply the Contract Energy in accordance with good utility practice and in compliance with appropriate rules and regulations such as the Philippine Grid Code, and Open Access Transmission Service (OATS). Supply of energy shall be available except for interruption or reduction due to: a) causes beyond the control of PSALM despite the exercise of due care, including but not limited to the conditions stated in Section 4.1 of this Contract; b) transmission failure; c) maintenance to ensure system stability and safety reasons as may be provided by laws, rules or regulation. In case of shortage in the generation capacity of PSALM, CUSTOMER shall be informed of the deficiency and allocation of the available supply of electricity to the CUSTOMER which shall be proportionate to the contracted energy and equivalent demand as provided for in this Contract.
- ASSIGNABILITY

4.8

PSALM may assign or transfer, part or all of, its rights and obligations in the supply of Contract Energy herein stated, to any such entity, provided that prior written notice is given to CUSTOMER Ninety (90) days before the actual transfer. This Contract shall remain binding to Parties, their successors and assignees. PSALM warrants that any sale, assignments, transfer, or subcontracting of the Contract shall not affect or impair CUSTOMER’s rights and obligations with respect to quantity and price of electricity, Contract effectivity, incentives, discounts and other terms and conditions of this Contract. The assignee shall, by written instrument, assume the rights and obligations of PSALM to CUSTOMER. When a CUSTOMER has been assigned by the PSALM to a Successor Generating Company (SGC) by virtue of the privatization of the PSALM Generating Plant pursuant to the EPIRA, the SGC has the option to renegotiate this Contract with the CUSTOMER within six (6) months from the actual transfer of the CUSTOMER to the SGC. If the CUSTOMER and the SGC fail to reach an agreement, either Party shall have the right to terminate this Contract.
- 4.9

CUSTOMER may assign, sell or transfer a part or all of its Contract Energy and/or Equivalent Demand either permanently or for a certain number of billing periods, subject to the written consent of PSALM under the following conditions, and which consent shall not be unreasonably withheld:

a.

CUSTOMER has obtained certification from NGCP, that the transmission, sub-transmission, substation and other facilities can accommodate

the increase in the power requirements of the assignee/transferee.

- b. CUSTOMER has submitted necessary proof that the buyer, assignee or transferee has no outstanding obligation to PSALM, and undertakes to assume the obligations of CUSTOMER and to pay for the additional expenses necessary or incidental to the transfer.
 - c. Assignment of CUSTOMER to assignee shall comply with the forms provided in Annex IVa and Annex IVb of this Contract.
 - d. THE ASSIGNEE SHALL ASSUME ALL OBLIGATIONS OF THE CUSTOMER related to Contract Energy that might arise in a pending suit with the ERC or in Arbitration proceedings.
- 4.10 The sale, assignment or transfer by CUSTOMER of all its Contract Energy shall relieve the CUSTOMER of all its rights and obligations to PSALM, provided that CUSTOMER has paid all its outstanding obligations to PSALM.
- 4.11 Any application for sale, assignment or transfer shall be acted upon by PSALM within ninety (90) days from compliance by CUSTOMER of the requirements for such sale, assignment or transfer, and filing by CUSTOMER with the principal office of PSALM of a copy of the deed of sale, assignment or transfer.

SECURITY DEPOSIT
AMOUNT

- 5.1. The Security Deposit shall be equivalent to 100% of the average contracted energy indicated in Annex I of the CSEE and shall become valid and effective for the duration of this Contract.

FORM AND TIME OF
POSTING

- 5.2 The Security Deposit may be required to be posted upon privatization of the generating asset/s to which this Contract is allocated or assigned as provided for in Section 4.8 hereof if the prospective buyer, assignee, transferee or successor-in-interest so requires. It shall be in the form of cash, cash bond, manager's or cashier's check, bank certified check, irrevocable stand-by letter of credit. In the event the Security Deposit of the CUSTOMER becomes nil, the PSALM reserves the right to refuse or discontinue supply of electric energy. In cases of partial depletion of the Security Deposit, the CUSTOMER shall replace the Security Deposit not later than thirty (30) days thereafter. PSALM reserves the right to continue supply of electric energy to the extent of Security Deposit of the CUSTOMER".

RELEASE OF
SECURITY DEPOSIT

- 5.3 The Security Deposit (for the portion that should be settled within the WESM) shall be returned to the CUSTOMER within thirty (30) days upon presentation of proof of compliance with the prudential requirements of the WESM. PSALM shall return or release the Security Deposits to CUSTOMER including interest earned, subject to deductions for any amounts owed by CUSTOMER to PSALM. Security Deposits, except those in the form of letter of credit or performance bond, shall earn interest based on prevailing savings deposit rate of the Land Bank of the Philippines (LBP).

BASIC ENERGY
CHARGE

- 6.1 The Basic Energy Charge (BEC) applied to the CUSTOMER's hourly energy consumption which shall be the ERC-

approved NPC/PSALM's Time of Use (TOU) generation rates, hereto attached as Annex III, plus adjustments in the tariff such as, but not limited to Deferred Accounting Adjustments (DAAs) and the Incremental Currency Exchange Rate Adjustments (ICERA), the RA 9136 Mandatory Rate Reduction Adjustments. The BEC to be applied to the contracted energy shall be in accordance with Section 7.1 of this Contract.

Energy consumption higher than the contracted level shall be sourced by the Customer from the Wholesale Electricity Spot Market (WESM) at the WESM rate and paid directly to the Independent Electricity Market Operator of the Philippines (IEMOP).

6.1.1 The BEC shall be applied to the CUSTOMER's hourly energy consumption based on the hourly nominated energy quantity mentioned in Section 4.1.1.

MINIMUM CHARGES 6.2 CUSTOMER shall pay the minimum charge based on the Contract Energy per billing period as indicated in Section 4.1 of this Contract using the basic energy charge if CUSTOMER has not fully taken or failed to consume the Contract Energy, subject to deductions and adjustments as expressly provided for in this Contract.

SERVICE INTERRUPTION ADJUSTMENT 6.3 Should the supply of electricity be interrupted or curtailed to a level below the Contract Energy due to the fault or lack of generation capacity of the PSALM, even if CUSTOMER was at that time unable to take or consume electricity, the Contract Energy shall be adjusted taking into account the ratio of the number of hours that electric service was interrupted to the total number of hours in the billing period. The adjusted Contract Energy shall be used in the calculation of Minimum Charge.

6.4 Should the supply of electricity be interrupted or curtailed to a level below the Contract Energy due to the fault or lack of generation capacity of the PSALM, even if CUSTOMER was at that time unable to take or consume electricity, the Contract Energy shall be adjusted to actual off-take below contract level for all hours when service was curtailed or interrupted based on declaration of power curtailment issued by the NGCP.

6.5 Should the supply of electricity be interrupted or curtailed to a level below the Contract Energy due to the fault or lack of generation capacity of the PSALM, the Contract Energy not taken due to CUSTOMER's fault or negligence or other causes affecting CUSTOMER's ability to take or consume electricity shall not entitle CUSTOMER to interruption adjustment.

MAINTENANCE SERVICE ADJUSTMENT 6.6 CUSTOMER may avail of the service adjustment during the scheduled maintenance of its facilities, not to exceed two (2) billing periods in one year. The minimum charge on the energy consumption shall be fifty percent (50%) of the Contract Energy. To be able to avail of this adjustment, CUSTOMER must inform PSALM in writing thirty (30) days prior to the commencement of the scheduled maintenance.

DISCONNECTION OF POWER SERVICE 6.21 In addition to the above-stated penalty interest charges and without prejudice to its right under Section 9.11 of this Contract, PSALM shall have the right, subject to not less than seven (7) days advance written notice to

CUSTOMER, to discontinue supplying electric services and to refuse to resume electric service for failure of CUSTOMER to post the required Security Deposit, for non-payment of bills, or if any amount including any accrued interest and other charges not necessarily limited to the foregoing, remains unpaid. Notwithstanding such discontinuance of electric service, CUSTOMER shall pay at least the Minimum charge based on the Contract Energy, and failure by CUSTOMER to make full payment within a period of six (6) months shall entitle PSALM to terminate the Contract without prejudice to the right of PSALM to recover unpaid bills and other penalties from CUSTOMER.

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| FORCE MAJEURE | 9.2 | Force majeure is an extraordinary event which cannot be foreseen or which though foreseen, cannot be avoided. The event must render it impossible for a party to fulfill its obligation in a normal manner despite the exercise of due care. Force majeure shall not excuse either party from exercising due care to prevent it or minimize its effects. Force majeure includes a storm, typhoon, lightning, flood, earthquake, tsunami, fire, war, rebellion, insurrection, riot, naval or other blockade, labor disturbance, civil unrest, and other events, which are entirely beyond the control of either or both parties. A party shall not be excused from its failure to perform its obligations under this Contract even if the same is caused by force majeure except as provided in this Section and Sections 9.6 to 9.8. |
| | 9.3 | Insolvency or business losses shall not be considered as an event of force majeure. |
| | 9.4 | The affected party shall notify the other in writing of a force majeure situation. The other party shall have sixty (60) days to verify or deny in writing that such situation exists. |
| | 9.5 | A verified event of force majeure, which prevents a party from supplying or taking electricity for at least six (6) months or agreed upon by both parties to prevent the supply or taking of electricity for a continuous period of at least six (6) months shall entitle either party to terminate this Contract. Buy-out shall not apply to such termination. |
| DEDUCTION DUE TO
FORCE MAJEURE | 9.6 | PSALM shall have a maximum of seventy-two (72) hours from the time a force majeure event prevented it from supplying electricity and perform its other obligations under the Contract to resume supply. CUSTOMER shall not be entitled to interruption adjustment for such period, unless interruptions exceed seventy-two (72) hours and the CUSTOMER failed to fully take or consume its Contract Energy. |
| | 9.7 | Likewise, CUSTOMER shall have a maximum of seventy-two (72) hours from the time a force majeure event prevented it from fully taking its Contract Energy to resume taking electricity. CUSTOMER shall be entitled to interruption adjustment based on the actual number of hours that it was unable to receive electricity, should its consumption be curtailed below the levels of Contract Energy. The number of hours that CUSTOMER can claim for interruption adjustments is limited to a maximum of 72 hours per force majeure event. However, if both PSALM and CUSTOMER were simultaneously unable to supply and consume electricity by reason of Force |

Majeure, CUSTOMER shall be entitled to interruption adjustment.

9.8 The number of hours of interruptions or of failure to receive electricity caused by one force majeure event shall be cumulated.”

CONTRACT
TERMINATION

9.11 Either party will have the right to terminate this Contract upon failure of the other to perform its obligation under this Contract, provided that the party at fault will have to pay all its outstanding account and reimburse the costs incurred by the other party as a result of the termination.”

15. Based on the foregoing, and given a certain set of assumptions, the annual effective rate under the PSALM CSEE is PhP 6.1120 per kWh (at plant gate), as shown in the rate impact analysis below:

PSALM CSEE Rate Impact (October 2021 to July 2022)					
BILLING COMPONENT	UNIT	BASE RATES	BILLING DETERMINANT ^(c)		AMOUNT (PHP)
Energy Payment					
ERC-approved TOU Rate ^(a)	(Php/kWh)	6.0875	181,800,000	(kWh)	1,106,703,630.00
Franchise and Benefits to Host Communities ^(b)	(Php/kWh)	0.0245	181,800,000	(kWh)	4,454,100.00
Total Energy Payment	(Php)				1,111,157,730.00
Effective Rate at Plant Gate	(Php/kWh)				6.1120
WESM Line Rental Rate ^(d)	(Php/kWh)				0.3097
Delivered Rate	(Php/kWh)				6.4216
Effective Cost of WESM ^(e)	(Php/kWh)				6.8440
Increase / (Decrease) over WESM	(Php/kWh)				(0.4224)
Meralco Captive Energy Demand ^(f)	(kWh)				29,160,802,892
Increase / (Decrease) in Generation Cost	(Php)				-76,791,836.43
Increase / (Decrease) in Generation Cost	(Php/kWh)				(0.0026)

Assumptions:

^(a) Contract Price corresponding to the weighted average of the ERC-approved TOU rates for the period Oct 2021 to July 2022.

^(b) FBHC rate is based on latest rates as seen in the PSALM website.

^(c) Energy billing determinant is the total contracted energy for the period Oct 2021 to July 2022.

^(d) Line Rental rate for PSALM CSEE is pass-thru. Assumed line rental is based on actual simple average during Weekdays (excluding Holidays) of Unified Leyte plant for the period Jan-June 2021.

^(e) Cost if equivalent volume of PSALM CSEE was sourced from WESM and priced using forecasted average WESM peak prices for the period Oct 2021 to July 2022.

^(f) Forecasted Meralco Captive Energy for Oct 2021 to July 2022 based on the latest Power Supply Procurement Plan as submitted to DOE.

16. MERALCO notes that the delivered rate of the PSALM CSEE of PhP 6.4216 per kWh is lower by about PhP 0.4224 per kWh than the effective cost of PhP 6.8440 per kWh if the equivalent capacity under the instant CSEE will be sourced from the WESM. In fact, by sourcing the capacity through the PSALM-MERALCO CSEE, MERALCO’s average blended generation rate will be reduced by about PhP 0.0026 per kWh (as seen in the rate impact analysis above), resulting in savings to consumers of about PhP 76.79 million.

17. In support of this Joint Application, the Judicial Affidavits of ENGR. DAVIDJOHN A. ZUÑIGA, Officer of MERALCO’s Energy Resource Planning - Energy Sourcing Office, and that of ENGR. JAMES MARVIN A. MAMARADLO, Corporate Staff Officer B of the Electricity Trading Department under

PSALM’s Privatization and Asset Management Group, are attached as ANNEXES “E” and “L”, respectively.

18. 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 this Honorable Commission:

Description of Document	Annex
MERALCO’s Secretary’s Certificate	“A”
PSALM Corporation’s Secretary’s Certificate	“B”
DOE Certificate of Exemption dated 28 September 2021	“C”
ERC’s Letter Exempting PSALM from the conduct of CSP dated 20 September 2016	“C-1”
PSALM-MERALCO CSEE	“D”
Judicial Affidavit of Engr. Davidjohn A. Zuñiga	“E”
MERALCO’s Articles of Incorporation and By-Laws	“F”
MERALCO’s Latest General Information Sheet (“GIS”)	“G”
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 latest and approved Distribution Development Plan – Power Supply Procurement Plan (Supply and Demand Scenario); Average Daily Load Curve scenarios	“J” “J-1”
MERALCO’s letter-request dated 25 August 2021 requesting the DOE for Certificate of Exemption (COE) from conduct of CSP	“K”
Judicial Affidavit of Engr. James Marvin A. Mamaradlo	“L”
Assignment Letter NPC to PSALM dated 11 May 2009	“M”
Certification or Proof of Service of the instant Joint Application (including annexes) was furnished to the Office of the City Mayor and <i>Sangguniang Panlungsod</i> of Quezon City	“N” “N-1”
Certification or Proof of Service of the instant Joint Application (including annexes) was furnished to the Office of the City Mayor and <i>Sangguniang Panlungsod</i> of Pasig City	“O” “O-1”
Proof of publication of the instant Joint Application (excluding annexes) in a newspaper of general circulation	“P”
MERALCO’s Letter-Request dated 29 September 2021 for the Immediate Implementation of the PSALM-MERALCO CSEE	“Q”

ALLEGATIONS IN SUPPORT FOR THE ISSUANCE OF
PROVISIONAL AUTHORITY and/or INTERIM RELIEF

19. As earlier stated, in light of the (i) increased frequency and persistent occurrence of SPEX-Malampaya gas supply restrictions, which is expected to continue to result in the de-rating of gas-fired power plants; (ii) scheduled maintenance of the SPEX-Malampaya pipeline in October 2021; and (iii) anticipated thinning electricity operating margins leading up to the May 2022 elections, especially with upcoming simultaneous scheduled maintenance and possible forced outages of power plants; and to mitigate exposure to the WESM, MERALCO foresees a peaking capacity deficit in its portfolio from 26 September 2021 until 25 July 2022 for 260 MW.

20. Considering further that: (i) PSALM is exempted from the conduct of CSP; (ii) the PSALM-MERALCO CSEE is based on the ERC-approved template and follows the ERC-approved TOU rates schedule of PSALM; (iii) the DOE's issuance of a Certificate of Exemption from the conduct of CSP authorizes the distribution utility to immediately implement the emergency power supply; and (iv) most importantly, in the interest of assuring least cost to MERALCO's customers by averting their exposure to the high prices of the WESM occurring recently, both MERALCO and PSALM agreed to immediately implement the PSALM-MERALCO CSEE starting 29 September 2021, and file the appropriate Joint Application for the Approval of said CSEE at the soonest possible time.
- 20.1. Thus, in a letter dated 29 September 2021, MERALCO wrote this Honorable Commission informing it of the Parties' agreement to immediately implement the PSALM-MERALCO CSEE, herein attached as ANNEX "Q".
21. The foregoing notwithstanding, the grant of provisional authority and/or interim relief shall confirm the proper implementation of the PSALM-MERALCO CSEE which ultimately redounds to the benefit of MERALCO's customers who stand to be exposed to the volatile prices of the WESM.
22. Pursuant to the ERC Rules of Practice and Procedure, this Honorable Commission may exercise its discretion by granting provisional authority and/or interim relief prior to a final decision.

PRAYER

WHEREFORE, premises considered, Applicants respectfully pray that the Honorable Commission, after hearing on the merits, render a Decision APPROVING the PSALM-MERALCO CSEE executed on 28 September 2021 and the terms and conditions thereunder, including the price. It is likewise prayed that a PROVISIONAL AUTHORITY and/or INTERIM RELIEF be ISSUED confirming the authority of the Parties to implement the subject CSEE in the Luzon Grid.

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

Finding the said *Joint Application* to be sufficient in form with the required fees having been paid, the Commission hereby sets the same for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on the following dates and online platform for the conduct thereof, pursuant to Resolution No. 09, Series of 2020⁵ dated 24 September 2020 and Resolution No. 01, Series of 2021 dated 17 December 2020 (ERC Revised Rules of Practice and Procedure):⁶

Date	Platform	Activity
16 February 2022 (Wednesday) at two o'clock in the afternoon (2:00 P.M.)	Microsoft Teams	Determination of compliance with the jurisdictional requirements and expository presentation
23 February 2022 (Wednesday) at two o'clock in the afternoon (2:00 P.M.)	Microsoft Teams	Pre-trial Conference and presentation of evidence

RELATIVE THERETO, PSALM and MERALCO are hereby directed to:

- 1) Cause the publication of the attached *Notice of Virtual Hearing* in two (2) newspapers of nationwide circulation in the Philippines at their own expense, twice (2x) within two (2) successive weeks, the dates of publication not being less than seven (7) days apart, and the date of the last publication to be made not later than ten (10) days before the date of the scheduled initial hearing;
- 2) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing* the Offices of the City Mayors, and the Local Government Unit (LGU) legislative bodies where PSALM and MERALCO principally operate for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within the affected area, by any other means available and appropriate, of the filing of the *Joint Application*, its reasons therefor, and of the scheduled hearing thereon;

⁵ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.
⁶ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

- 4) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing* the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress. They are hereby requested, if they so desire, to send their duly authorized representatives and attend the scheduled hearings scheduled hearing; and
- 5) Furnish with copies of the *Joint Application* and its attachments all those making requests therefor, subject to the resolution of the prayer for confidential treatment of information, if any, and reimbursement of reasonable photocopying costs.⁷

Within five (5) calendar days prior to the date of the initial virtual hearing, PSALM and MERALCO must submit to the Commission via electronic mail (e-mail) at docket@erc.ph, copy furnish the Legal Service through legal@erc.ph, the scanned copies of their written compliance with the aforementioned jurisdictional requirements attaching therewith, methodically arranged and duly marked, the following:

- 1) The evidence of publication of the attached *Notice of Virtual Hearing* consisting of affidavit of the Editors or Business Managers of the newspapers where the said *Notice of Virtual Hearing* was published, and the complete issues of the said newspapers;
- 2) The evidence of actual posting of this *Order* and the attached *Notice of Virtual Hearing* consisting of certifications issued to that effect, signed by the aforementioned Mayors and LGU legislative bodies or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by PSALM and MERALCO to inform the consumers within the affected area of the filing of the *Joint Application*, its reasons therefor, and of the scheduled hearings thereon;
- 4) The evidence of receipt of copies of this *Order* and the attached *Notice of Virtual Hearing* by the OSG, the COA, and the Committees on Energy of both Houses of Congress;

⁷ For the e-mail address of the applicant, please see page 17.

- 5) The evidence of receipt of copies of the *Joint Application* and its attachments by all those making requests therefor, if any; and
- 6) Such other proof of compliance with the requirements of the Commission.

Moreover, PSALM and MERALCO are hereby required to post on their bulletin boards, the scanned copies of the foregoing jurisdictional requirements, together with the newspaper publications and certifications issued by the concerned Office of the City Mayors and Local Legislative Bodies, and to submit proof of their posting thereof.

PSALM, MERALCO and all interested parties are also required to submit via e-mail at docket@erc.ph, copy furnish the Legal Service through legal@erc.ph, at least five (5) calendar days before the date of the scheduled virtual hearing and Pre-trial Conference, their respective Pre-Trial Briefs containing, among others:

- 1) A summary of admitted facts and proposed stipulation of facts;
- 2) The issues to be tried or resolved;
- 3) The documents or exhibits to be presented, stating the purposes and proposed markings therefor, which should also be attached to the Pre-trial Brief; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-trial Brief.

PSALM and MERALCO must ensure that all the documents or exhibits proposed to be presented have already been duly submitted to the Commission at least five (5) calendar days before the date of the scheduled initial virtual hearing and Pre-trial Conference pursuant to the preceding paragraph.

Failure of PSALM and MERALCO to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from the said date of cancellation.

PSALM and MERALCO must also be prepared to make an expository presentation of the instant *Application*, aided by whatever communication medium that they may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties, the nature of the *Joint Application* with relevant information and pertinent details substantiating the reasons and justifications being cited in support thereof.

PSALM and MERALCO are hereby directed to file a copy of their Expository Presentation via e-mail at doCKET@erc.ph, copy furnish the Legal Service through legal@erc.ph, at least five (5) calendar days prior to the scheduled virtual hearing. PSALM and MERALCO shall also be required, upon the request of any stakeholder, to provide an advance copy of their expository presentation, at least five (5) calendar days prior to the scheduled virtual hearing.

Any interested stakeholder may submit its comments and/or clarifications at least one (1) calendar day prior to the scheduled virtual hearing, via e-mail at doCKET@erc.ph, 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.

PSALM and MERALCO are hereby directed to submit, either through personal service, registered or ordinary mail/private courier, one (1) set of the original or certified true hard/printed copy/ies of their Jurisdictional Compliance, Expository Presentation, Pre-trial Brief, and Judicial Affidavit/s of witness/es, 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. Similarly, all interested parties who filed their Petition for Intervention or Opposition are required to submit the hard/printed copy thereof within the same period through any of the available modes of service.

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Finally, PSALM and MERALCO, including their authorized representative/s and witness/es, are hereby directed to provide the Commission, thru legal.virtualhearings@erc.ph, with their respective e-mail addresses upon receipt of this *Order*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearing.

SO ORDERED.

Pasig City, 05 January 2022.

FOR AND BY AUTHORITY
OF THE COMMISSION:


AGNES VST DEVANADERA
Chairperson and CEO


LS: VMA/LSP/MCCG

ERC
Office of the Chairperson

AVSTD-2022-01-510-0023

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Copy Furnished:

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