

Republic of the Philippines
ENERGY REGULATORY COMMISSION

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Brgy. San Antonio, Pasig City

25 MAR -4 P3:34

RECEIVED BY JOY ANDREW PANTALON

**IN THE MATTER OF THE JOINT
APPLICATION FOR THE
APPROVAL OF THE
EMERGENCY POWER SUPPLY
AGREEMENT BETWEEN
MANILA ELECTRIC COMPANY
AND SUAL POWER INC., WITH
MOTION FOR CONFIDENTIAL
TREATMENT OF INFORMATION**

ERC CASE NO. 2025-048 RC

**MANILA ELECTRIC COMPANY
AND SUAL POWER INC.,**

Applicants.

February 24, 2025

X-----X

**JOINT APPLICATION
WITH MOTION FOR CONFIDENTIAL TREATMENT OF
INFORMATION**

Applicants **MANILA ELECTRIC COMPANY ("MERALCO")** and **SUAL POWER INC. ("SPI")** (collectively, the "**Applicants**"), by undersigned counsel, and to this Honorable Commission, most respectfully state:

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 SPI is a private corporation duly organized and existing under the laws of the Philippines, with address at 5th Floor, C5 Office Building Complex, #100 E. Rodriguez Jr. Ave., C5 Road, Brgy. Ugong, Pasig City, 1604, Metro Manila. It may be served with notices and other processes of this Honorable Commission through its counsel at the address indicated herein.

4. SPI owns and operates the 1,294.040 MW Sual Coal-Fired thermal power plant located in Barangay Pangascasan, Sual, Pangasinan on the island of Luzon.

I. STATEMENT OF FACTS

A. Cessation of Supply of MERALCO's baseload Power Supply Agreement ("PSA") with ACEN Corporation ("ACEN") dated 13 September 2019 involving 200 MW Contract Capacity ("2019 MER-ACEN Baseload PSA")

5. Following the conduct of a competitive selection process under the then-prevailing Department of Energy Department Circular No. DC2018-02-003, MERALCO and ACEN (formerly known as Phinma Energy) executed the 2019 MER-ACEN Baseload PSA, and another PSA dated 16 September 2019 for the supply of 110 MW mid-merit capacity ("**Mid-merit PSA**"). Both PSAs were granted interim relief by the Energy Regulatory Commission ("**ERC**") in separate Orders dated 26 November 2020.¹

6. On 11 October 2023, ACEN issued to MERALCO a Notice of Change in Circumstances ("**CIC**"), which was revised on 1 February 2024, for losses due to CIC incurred in the year 2022 for both PSAs. Consequently, on 29 February 2024, ACEN (joined by MERALCO) filed Joint Motions for Price Adjustment ("**JMPA**") both of even date, with the ERC for the 2019 MER-ACEN Baseload PSA and Mid-merit PSA, involving PhP 618 million and PhP 87 million, respectively.

7. On 24 May 2024, ACEN issued to MERALCO Supplemental Notices of CIC for the year 2023. Thus, on 21 June 2024, ACEN (joined by MERALCO) filed an Updated and Supplemental Joint Motions for Price Adjustment, both of even date, seeking an additional claim amounting to PhP 910 million and 132 PhP million for the Baseload PSA and Mid-merit PSA, respectively. The updated and supplemented JMPAs are both pending resolution before the ERC.²

8. Six (6) months after the JMPAs were filed and despite a clarificatory hearing having been held by the ERC on 15 August 2024, the

¹ Docketed as **ERC Case No. 2019-079RC** (for the 2019 MER-ACEN Baseload PSA) and **ERC Case No. 2019-078RC** (for the 2019 MER-ACEN Mid-merit PSA)

² *Id.*

JMPAs remained unresolved. On 2 September 2024, MERALCO received ACEN's first notices of termination of both PSAs, effective on 1 November 2024, premised on ACEN's financial losses brought about by the CIC having breached indicated threshold levels that allow a power supplier to cut its losses and terminate the PSA. After receipt of ACEN's notice of termination, and in order to avert the termination of the subject PSAs, MERALCO immediately filed with this Honorable Commission an Urgent Motion to Resolve the JMPAs.

9. On 28 October 2024, MERALCO received ACEN's second notice of termination, reiterating their earlier intention to terminate the subject PSAs, specifically informing MERALCO that ACEN would cease declaring its bilateral contract quantities (BCQ) under the PSAs effective 0001H of 02 November 2024. In response, MERALCO urged ACEN through a letter dated 29 October 2024 not to proceed with the termination of the subject PSAs and to instead await the resolution of the JMPAs pending before the ERC for the benefit of the consuming public. Apart from the letter to ACEN, MERALCO also filed an Urgent 3rd Motion to Resolve dated 29 October 2024 with this Honorable Commission.

10. However, on 2 November 2024, despite MERALCO's nominations to ACEN, the latter ceased declaring BCQs to MERALCO under the subject PSAs.

11. As such, pending resolution of the JMPAs and guidance from the ERC, MERALCO's customers are now exposed to and continue to be exposed to the volatile prices of the WESM, involving 200 MW baseload capacity³ until MERALCO secures a replacement PSA.

B. MERALCO's EPSA with SPI for 200 MW ("MERALCO-SPI EPSA") pursuant to the DOE CSP Policy and ERC CSP Guidelines

12. Due to the deficient baseload supply as a result of the cessation of supply of the 2019 MERALCO-ACEN Baseload PSA, coupled with the summer months (and accompanying peak demand of MERALCO) approaching by February 2025, MERALCO undertook necessary precautions to secure an EPSA to address the foregoing deficiency in order to assure its customers reliable and continuous supply.

13. Thus, in the best interest of its customers, MERALCO was constrained to find a contingency and consider an alternative source of supply through a negotiated procurement of an EPSA for MERALCO's 200 MW baseload supply requirement. To this end, after sending out various requests for proposals, MERALCO formally received the most

³ The 2019 MER-ACEN Mid-merit PSA (110MW) expired on 25 December 2024.

reasonable and least cost offer from SPI to address MERALCO's 200 MW emergency baseload supply requirement.

14. The DOE CSP Policy describes a negotiated procurement of emergency power supply due to the occurrence of a Force Majeure/Fortuitous Event as:

"Section 2.3.5

Negotiated procurement of Emergency Power supply wherein the Emergency Power Supply Agreement (EPSA) shall be filed with the ERC within thirty (30) calendar days after the occurrence of the Force Majeure/Fortuitous Events, without need of any prior clearance or certification from the DOE, and shall have a maximum and non-extendible period of one (1) year from its execution. The EPSA shall be immediately implemented to address the emergency, subject to conditions to be defined by the ERC; Provided, that the procurement of emergency power supply shall not be entitled to any form of subsidy; xxx"

15. A Force Majeure or Fortuitous Event ("**FM/FE**"), on the other hand, is defined in Section 3.8 of the DOE CSP Policy as, "[...] any extraordinary event not foreseeable or avoidable, or to an event that could not be foreseen, or which, though foreseen, is inevitable and independent of human will or the DU's participation, whether by active intervention, neglect or failure to act. xxx"

16. MERALCO respectfully submits that the cessation of supply of the 2019 MERALCO-ACEN Baseload PSA is an extraordinary event which, though foreseen, is inevitable and independent of MERALCO's participation. Such FM/FE constrained MERALCO to procure supply through the MERALCO-SPI EPSA.

17. Further, the parameters of a negotiated procurement of emergency supply are enumerated under Appendix A of the ERC CSP Guidelines, which states that, "*The Emergency EPSA (EPSA) shall be immediately implementable without need of a [PA] or [IR], provided that the following conditions are met:*"

17.1. *First*, that the "[T]he EPSA rate shall not be higher than the latest ERC-approved generation tariff specific for the plant, if available. Otherwise, it shall be capped at the latest ERC-approved generation tariff for the same technology. Such rate shall apply until the ERC issues its approval of the EPSA[;]".

To show compliance with this requirement, and since MERALCO is not privy to SPI's contracts with its other off-takers, SPI submitted an ERC Order dated 21 May 2019 and ERC Order dated 22 June 2021,⁴ which showed that SPI's offered rate to MERALCO of PhP 5.0500/kWh (Plant Gate and VAT exclusive) for the Sual power plant is **significantly lower** than the latest ERC-approved rate for the Sual power plant in SMEC's⁵ Power Supply Agreement with BOHECO I of PhP 5.6645/kWh.

- 17.2. Second, that "[T]he cooperation period of such EPSA shall not exceed one (1) year from its execution;", and in relation thereto, "EPSAs may not be pre-terminated, unless a PSA is procured within the term of the EPSA and such PSA has been approved by the ERC;"⁶.

As will be shown in the salient terms of the MERALCO-SPI EPSA below, the term thereof does not exceed one (1) year, starting from 28 January 2025 until 26 January 2026.

- 17.3. Third, that "The DU shall, within five (5) calendar days from the occurrence of the force majeure or fortuitous event, notify in writing the ERC, Department of Energy (DOE), xxx, of such emergency power supply procurement; [and]"

On 07 November 2025, MERALCO sent its letter-notification to the DOE and ERC regarding the MERALCO-SPI EPSA, copies of which are attached hereto as **ANNEXES "C" and "C-1"**, respectively.

- 17.4. Lastly, that the emergency power supply agreement shall be "[F]iled with the ERC for approval within thirty (30) calendar days after the occurrence of the force majeure or fortuitous event."

Relative to this, on 07 December 2024, MERALCO sent a letter to the ERC (with furnished copy to the DOE) requesting for an additional period to file the MERALCO-SPI EPSA, as MERALCO was still in the process of

⁴ For application entitled "In the Matter of the Joint Application for Approval of the Power Supply Agreement (PSA) entered into by and between Bohol I Electric Cooperative, Inc. (BOHECO I) and San Miguel Energy Corporation (SMEC), with Prayer for Provisional Authority and Confidential Treatment of Information," docketed as **ERC Case No. 2019-020 RC**.

⁵ SPI's former corporate name.

⁶ Article VII, Section 34, ERC CSP Guidelines

securing the appropriate PSA with terms and conditions beneficial to its customers, a copy of which is attached hereto as **ANNEX "C-2"**.

Thereafter, on 3 February 2025, MERALCO sent another letter to the ERC (with furnished copy to the DOE) to request for an additional period of thirty (30) calendar days from execution of the MERALCO-SPI EPSA on 27 January 2025 or until 26 February 2025 to file the instant Joint Application, a copy of which is attached hereto as **ANNEX "C-3"**.

The instant Joint Application together with its Annexes was pre-filed with the Honorable Commission starting on 3 February 2025.

18. Pursuant to said provision and parameters, the parties implemented the MERALCO-SPI EPSA beginning 12:01 A.M. of 28 January 2025, in the interest of providing supply in the least cost manner to MERALCO's customers, as it is beneficial to its customers by averting their exposure to volatile prices at the WESM.

19. In sum, MERALCO respectfully submits that the MERALCO-SPI EPSA has sufficiently complied with the DOE CSP Policy and ERC CSP Guidelines for the negotiated procurement of emergency supply. Further, MERALCO has sufficiently established that the negotiated procurement of emergency supply through the MERALCO-SPI EPSA was urgently needed to ensure that deficient baseload supply is addressed and that MERALCO's customers are assured of reliable and continuous supply.

II. SALIENT FEATURES OF THE MERALCO-SPI EPSA

20. The MERALCO-SPI EPSA, a copy of which is attached hereto as **ANNEX "D"**, contains the following salient provisions:

"Article 1 Definitions and Interpretation

xxx

Available or Availability means one hundred percent (100%) of the Contract Capacity is dispatchable during the Available Hours.

xxx

Contract Capacity or CC shall be 200 MW, as may be adjusted from time to time in accordance with Article 8 and/or Section 19.1.

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 Execution Date, and shall be effective until January 25, 2026, unless terminated earlier in accordance with the terms of this Agreement and upon approval by the ERC (the “**Term**”).

xxx

3.2 Operations Effective Date

The obligations of Power Supplier with respect to the Contract Capacity and Associated Energy shall commence on January 28, 2025 (the “**Operations Effective Date**”); *provided that*, the conditions set out in Section 3.1.1 have been satisfied.

xxx

Article 4. Sale and Purchase of Contract Capacity and Associated Energy

4.1. Supply of Power

Subject to the terms and conditions of this Agreement, 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 the Contract Capacity to be sourced from the Plant, WESM, or any other source, and deliver and sell to Meralco the Associated Energy, at the Contract Price determined in accordance with Appendix C; and
- (b) Meralco shall purchase from Power Supplier, to the extent of Meralco’s relevant day-ahead nominations, the MEOT, at the Contract Price determined in accordance with Appendix C.

For clarity, the Power Supplier shall declare to the WESM the corresponding Associated Energy for Meralco at the Plant’s Delivery Point/s or the relevant delivery point/s in Appendix A, as applicable.

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, subject to Article 15, 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 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 (PhP908) multiplied by each affected MWh nomination during a Day by Meralco, 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 16.4.1 shall apply.
- 7.4. On and after Operations Effective 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.

xxx

12.2 ERC Approval

- 12.2.1 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: (i) it accepts such ERC Approval or (ii) 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 of this Agreement, (a) the ERC Approval shall be deemed accepted by Power Supplier and (b) this Agreement shall continue to be implemented by the Parties in accordance with such ERC Approval. For clarity, ERC Approval may be promulgated subsequent to the Operations Effective Date.
- 12.2.2. In case of Power Supplier's non-acceptance, or ERC order of adjustment/disallowance in the Contract Price and/or refund to customers, Power Supplier shall be free to file a motion for reconsideration or seek any other relief to question such ERC Approval or order; *provided that* in case of an ERC order of adjustment/disallowance in the Contract Price and/or refund to customers, Power Supplier may likewise opt to suspend this Agreement and Meralco shall source its supply from WESM in the meantime. For all other instances of non-acceptance, and Power Supplier decides to file a motion for reconsideration, the Parties shall, pending resolution thereof by the ERC, continue to implement this Agreement in accordance with the ERC Approval, subject to any

adjustment or amendment that the ERC may direct. Any order on a motion for reconsideration or on such other relief taken by Power Supplier shall be treated as an ERC Approval for purposes of the processes under this Section 12.2. If the ERC Approval requires any amendment to or modification of any provision of this Agreement that is not acceptable to either Party, acting reasonably, then the Parties shall cooperate in good faith to resolve the required amendment, including seeking a reconsideration by the ERC. If the Parties are unable to agree on the required amendment within thirty (30) Days from receipt of the ERC Approval resolving the motion for reconsideration, or if the motion for reconsideration is not resolved by the ERC within sixty (60) days after its filing, or the amendment is disapproved by the ERC, or not acted upon by the ERC within sixty (60) days after its filing, or approved by the ERC but still contains any material term or condition that is not acceptable to either Party, acting reasonably, then either Party may terminate this Agreement. For clarity, if, following the ERC Approval, Power Supplier does not file a motion for reconsideration with the ERC and/or does not notify Meralco that it intends to terminate this Agreement, the ERC Approval shall be deemed accepted by Power Supplier and this Agreement shall continue to be implemented in accordance with the ERC Approval.

- 12.2.3. If the ERC Approval requires any portion of the sum that has been paid by Meralco to Power Supplier to be adjusted, Power Supplier shall make the necessary adjustments in accordance with the direction of the ERC. In the event of any disallowance in the Contract Price, the same shall be for the account of Power Supplier notwithstanding termination of this Agreement. This shall be without prejudice to the exercise of Power Supplier's rights and remedies at law, under this Agreement, or in equity.

xxx

Appendix C Calculation of Payment

xxx

B. MONTHLY POWER BILL UPON OPERATIONS EFFECTIVE DATE

The Monthly Power Bill ("MPB"), in PhP, upon Operations Effective Date ("OED") shall consist Monthly Energy Payment (MEP), and Line Rental Adjustment Payment (LRAP). Thus, the MPB upon OED for Contract Capacity and Associated Energy for each Billing Period shall be equal to:

$$MPB = MEP - LRAP$$

The MPB is exclusive of the applicable Value Added Tax.

1. Monthly Energy Payment (MEP)

The Monthly Energy Payment (MEP) for the relevant Billing Period is calculated as follows:

$$MEP = CP * BCQ_M$$

Where:

MEP = the Monthly Energy Payment, in PhP, for the relevant Billing Period

CP = the Contract Price for Energy, in PhP/kWh, as set forth in Schedule 1 of this Appendix C

BCQ_M = total BCQ declared by the Power Supplier to Meralco for the relevant Billing Period as determined in Appendix F of this Agreement

2. *Line Rental Adjustment Payment (LRAP)*

The Line Rental Adjustment Payment (LRAP) shall cover the cost of Line Rental Adjustment for the relevant Billing Period, in PhP, calculated as follows:

If $LR_M > (BCQ_M * LR_{CAP})$,

$$LRAP = LR_M - (BCQ_M * LR_{CAP})$$

Else,

$$LRAP = 0$$

Where:

LR_M = the total actual line rental charges for the relevant Billing Period, in PhP, based on billing issued by the Market Operator to Meralco

BCQ_M = as previously defined

LR_{CAP} = the Annual Line Rental Cap, in PhP/kWh, as set forth in Schedule 1 of this Appendix C

III. GENERATION RATE IMPACT

21. Based on the foregoing, and given a certain set of assumptions, the effective rate under the MERALCO-SPI EPSA is **PhP5.0500** per kWh (at plant gate, VAT exclusive), as shown in the **RATE IMPACT ANALYSIS** below:

Sual Power Inc. (SPI) EPSA Rate Impact at 100% PCF				
28 January 2025 to 25 January 2026				
BILLING COMPONENT	UNIT	BASE RATE ^[a]	BILLING DETERMINANT ^[b]	AMOUNT (PHP)
A. Monthly Energy Payment (MEP)				
Peso Portion	(Php/kWh)	5.0500	1,742,400,000 (kWh)	8,799,120,000.00
Total Payment (VAT exclusive)	(Php)			8,799,120,000.00
Effective Rate at Plant Gate	(Php/kWh)			5.0500
WESM Line Rental Rate ^[c]	(Php/kWh)			0.1000
Delivered Rate (VAT exclusive)	(Php/kWh)			5.1500
Effective Cost if sourced from WESM ^[d]	(Php/kWh)			7.3781
Increase / (Decrease) over WESM Price	(Php/kWh)			(2.2281)
Meralco Captive Energy Demand ^[e]	(kWh)			38,374,352,010.32
Increase / (Decrease) in Generation Cost	(Php)			(3,882,210,008.00)
Increase / (Decrease) in Generation Cost	(Php/kWh)			(0.1012)
NOTES:				
^[a] Base Rates as set forth in Schedule 1 of the PSA.				
^[b] Total of energy billing determinant is based on 100% pcf with respect to the Contract Capacity.				
^[c] Line Rental rate for SPI is based on the maximum allowable value as stated in the PSA.				
^[d] Cost if equivalent volume of SPI was sourced from the WESM based on forecasted average hourly prices from 28 January 2025 to 25 January 2026.				
^[e] Forecasted Meralco Captive Energy for 28 January 2025 to 25 January 2026 based on 2024 Power Supply Procurement Plan as submitted to DOE.				

22. MERALCO notes that the delivered rate of **PhP 5.1500 per kWh (VAT exclusive and line rental inclusive)** is **lower** by about **PhP 2.2281 per kWh** than the effective cost of **PhP 7.3781 per kWh**, if the equivalent capacity under the MERALCO-SPI EPSA is to be sourced from the WESM. In fact, by sourcing the capacity through the MERALCO-SPI EPSA, MERALCO’s average blended generation rate will be reduced by about PhP 0.1012 per kWh (as seen in the **RATE IMPACT ANALYSIS** above) resulting in savings to consumers of about PhP 3.882 Billion.

IV. COMPLIANCE WITH DOCUMENTARY REQUIREMENTS

23. In support of this Joint Application, the Judicial Affidavit of **ENGR. JAMES MARTIN J. VELASCO**, Officer of Meralco's Energy Accounting & Settlement - Energy Sourcing Office, is attached hereto as **ANNEX “E”**.

24. 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”
SPI’s Secretary’s Certificates	“B” and “B-1”
MERALCO’s letter notification to DOE dated 7 November 2024	“C”

MERALCO's letter-notification to ERC dated 7 November 2024	"C-1"
MERALCO's letter to ERC dated 2 December 2024	"C-2"
MERALCO's letter to ERC dated 3 February 2025	"C-3"
MERALCO-SPI EPSA	"D"
Judicial Affidavit of MERALCO's witness, ENGR. JAMES MARTIN J. VELASCO , Officer of Meralco's Energy Accounting & Settlement - Energy Sourcing Office	"E"
<ul style="list-style-type: none"> • 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. 	"F" "F-1" "F-2" "F-3" "F-4" "F-5"
Executive Summary of the PSA	"G"
Generation Rate and Derivations including Cost Analysis (confidential)	"H and series"
Certification on Documents Previously Submitted <ul style="list-style-type: none"> • Fuel Procurement Process and Supply Agreement (confidential) • Technical and economic characteristics of the plant 	"I"
Outage Reports of SPI	"J"

**ALLEGATIONS IN SUPPORT OF THE
MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION**

25. Under Rule 4 of the ERC 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.

26. With respect to the documents marked and attached as **ANNEXES "H and series," and "I"**, SPI 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 SPI. The data and information contained therein

are part of the overall formula and process in arriving at the competitive rates of SPI. These formula and process are specifically developed for the use of SPI and are treated as trade secrets. If the information contained in these documents are unduly disclosed, it will seriously prejudice the competitiveness of SPI. These documents are neither generally available to the public nor already in the possession of the Honorable Commission on a non-confidential basis.

27. In the case of *Air Philippines Corporation vs. Pennswell Inc.*,⁷ 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.)

28. 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

⁷ G. R. No. 172835, 13 December 2007.

disclosed.”⁸

29. SPI 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.”

30. 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 “H and series,” and “I”**. 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.

31. Lastly and corollary to the foregoing, SPI 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 RRPP)

32. This is guided by the fact that SPI will seek the return of these documents that are sought to be declared as confidential 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 SPI enclosed in the subject documents.

PRAYER

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

A. After hearing on the merits, render a Decision **APPROVING** the **MERALCO-SPI EPSA** and the terms and conditions thereunder, including the price; and

B. Issue an Order **TREATING ANNEXES “H and series,” and “I”** 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 SPI, pursuant to Rule 4 of the ERC RRPP;

⁸ 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.

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

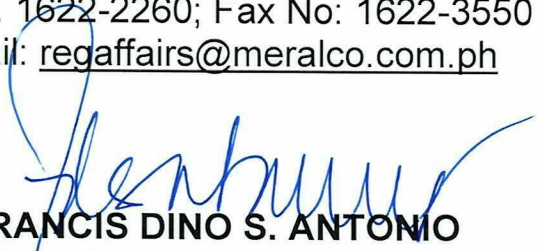
Pasig City, 4 February 2025.

[Signature page follows.]

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Co-Applicant MERALCO

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MA. ELISHA S. ELORIAGA

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PTR No. 3059077; 01/22/2025; Pasig City
IBP No. 491181; 01/01/2025; Quezon City
MCLE Compliance No. VII-0019346; Valid until 14 April 2025

SUAL POWER INC.

By:



JUPITER M. CABAGUIO

5th Floor, C5 Office Building Complex
#100 E. Rodriguez, Jr. Ave., C5 Road, Bo. Ugong,
Pasig City 1604, Metro Manila
Telephone No. (02) 5317 1000 / jcabaguio@smcgph.sanmiguel.com.ph
PTR No. 3006693 / 03 January 2025 / Pasig City
IBP No. 06372 / Lifetime / Makati Chapter
MCLE Compliance No. VII – 0021509 / 17 June 2022
Roll No. 47112



AVELINO G. CEDO III

5th Floor, C5 Office Building Complex
#100 E. Rodriguez, Jr. Ave., C5 Road, Bo. Ugong,
Pasig City 1604, Metro Manila
Telephone No. (02) 5317 1000 / acedoiiii@smcgph.sanmiguel.com.ph
PTR No. 3006695 / 03 January 2025 / Pasig City
IBP No. 010380 / Lifetime / PPLM Chapter
MCLE Compliance No. VII - 0020279 / 02 June 2022
Roll No. 54500

JULIETA B. ESTAMO

5th Floor, C5 Office Building Complex,
#100 E. Rodriguez Jr. Ave., C5 Road, Bo. Ugong,
Pasig City 1604, Metro Manila
Telephone No. (02) 5317 1000 / jestamo@smcgph.sanmiguel.com.ph
PTR No. 3035762 / 07 January 2025 / Pasig City
IBP No. 460997 / IBP - Central Luzon Bulacan Chapter
MCLE Compliance No. VII-0027120 / 17 March 2023
Roll No. 39024

VERIFICATION/CERTIFICATION OF NON-FORUM SHOPPING

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

1. I am the Senior Vice President and Head of the Regulatory Affairs & DU 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 entitled “*In the Matter of the Joint Application for the Approval of the Power Supply Agreement Between Manila Electric Company and Sual Power Inc., with Motion for Confidential Treatment of Information*” 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; and
6. Should I hereinafter learn that the any further similar action or claim has been filed or is pending in the Supreme Court, the Court of Appeals, or any court, tribunal, or quasi-judicial agency, I shall report such fact to this Honorable Commission within five (5) days from discovery of such fact.

IN WITNESS WHEREOF, I have hereunto affixed my signature this 4 February 2025 at Pasig City, Philippines.

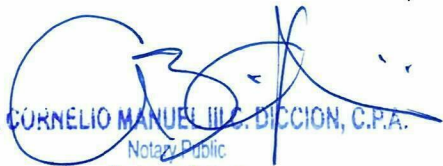

JOSE RONALD V. VALLES
Affiant

SUBSCRIBED and SWORN to before me this 4 February 2025, affiant having exhibited to me his Social Security System ID bearing the number 33-1090008-8.

Driver's License No. X102-89-110184 Exp. 2034/07/16

Doc. No. 521
Page No. 106
Book No. XXVII
Series of 2025.

RT #: 2074811


ATTY. CORNELIO MANUEL III C. DICCION, C.P.A.
Notary Public
Pasig and Pateros
Issued on March 25, 2024
Appointment No. 172 (2024-2025)
Roll No. 45053/ IBP Lifetime Member No. 19740/ RSM Chapter
PTR No. 2831093 01/02/2025 Pasig City
MCLE No. VIII - 0006616 04/14/2028
8th Floor, Lopez Bldg., Ortigas Avenue, Pasig City

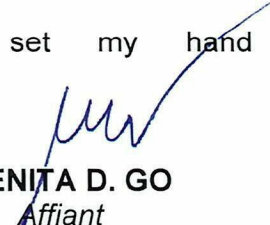
**VERIFICATION AND
CERTIFICATION OF NON-FORUM SHOPPING**

I, **ELENITA D. GO**, Filipino, of legal age, and with office address at the 5th Floor, 100 Eulogio Rodriguez Jr. Avenue C5 Road (North Bound) Pasig City, after having been duly sworn to in accordance with law, hereby depose and state, that:

1. I am the authorized representative of Sual Power Inc. ("SPI") a co-applicant in the Joint Application for Approval of the Emergency Power Supply Agreement between Manila Electric Company ("MERALCO") and SPI;
2. I have caused the preparation and filing of the Joint Application and that I have read the contents thereof and aver that all the factual/legal allegations contained therein are true and correct based on my personal knowledge and/or on authentic documents/official records;
3. The Joint Application is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation and that the factual allegations therein have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery; and,
4. I hereby certify that SPI has not filed/commenced any action or proceeding arising from the same issues raised in the Joint Application before the Supreme Court, Court of Appeals, or any other courts or tribunals or quasi-judicial bodies/agencies and to the best of my knowledge, no such other similar action or claim is pending therein. If ever there is a case pending before the said courts or tribunals involving the same issues, I undertake to inform the Honorable Energy Regulatory Commission of such fact within five (5) calendar days from knowledge thereof.

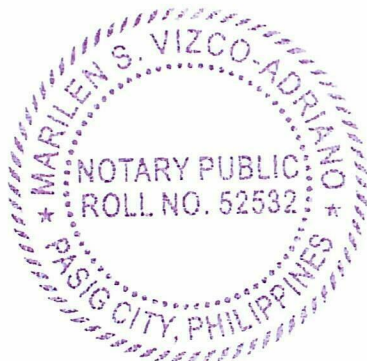
I am executing this undertaking in support of the Joint Application and the veracity of the allegations therein as well as for any other legal purpose this may serve.

IN WITNESS WHEREOF, I have hereunto set my hand this
FEB 6 5 2025 at Pasig City.


ELENITA D. GO
Affiant

SUBSCRIBED AND SWORN to before me this FEB 6 5 2025 in Pasig City. Affiant personally appeared and exhibited to me her Philippine Passport No. P1876103B issued on June 7, 2019 at the DFA NCR East as her competent proof of identity

Doc. No.: 72 ;
Page No.: 16 ;
Book No.: II ;
Series of 2025.




MARILEN S. VIZCO-ADRIANO
Appointment No. 285 (2024-2025)
Notary Public for Pasig City
Until December 31, 2025
5th Floor C5 Office Building Complex,
#100 E. Rodriguez Jr. Ave., C5 Road,
Bo. Ugong, Pasig City 1604 Metro Manila
Roll No. 52532
PTR No. 3006694; January 03, 2025; Pasig City
IBP Lifetime Membership No. 09353; Quezon City Chapter
ICLRF Compliance No. VII-0019617; Valid until April 14, 2025

VERIFIED DECLARATION

I, **MA. ELISHA S. ELORIAGA**, of legal age, Filipino, with office address at the Lopez Building, Ortigas Avenue, Pasig City, after having duly sworn in accordance with law, hereby depose and state:

1. I am one of the duly authorized representatives to undertake the pre-filing process with respect to the application to be pre-filed by **MERALCO and SUAL POWER INC.** for the **Approval of the Emergency Power Supply Agreement between MERALCO and SUAL POWER INC. dated 27 January 2025.**

2. I hereby declare that, in compliance with ERC Resolution No. 9, Series of 2020, the documents submitted by MERALCO electronically as part of the virtual pre-filing process are complete and true copies of the original documents.

IN WITNESS WHEREOF, I hereby affix my signature this day of **05 February 2025**.


MA. ELISHA S. ELORIAGA

SUBSCRIBED AND SWORN to before me this **05 February 2025** at **Pasig City**,
affiant exhibiting to me her IBP ID No. 73497.

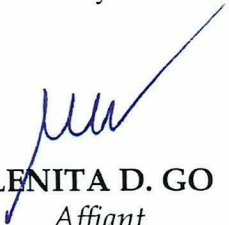
Doc. No. 479
Page No. 97
Book No. 33;
Series of 2025.
DST# 20748114


ATTY. JOSHUA P. LAPUZ
Notary Public for Makati City
Appointment No. M-16 until Dec. 31, 2025
Roll No. 45790/IBP Lifetime #04897/07-03-2003
PTR No. 10466007/01-02-2025/Makati City
MCLE No. VII-0016370/04-26-2022
G/F Fedman Suites 199, Salcedo Street
Legaspi Village, Makati City

VERIFIED DECLARATION

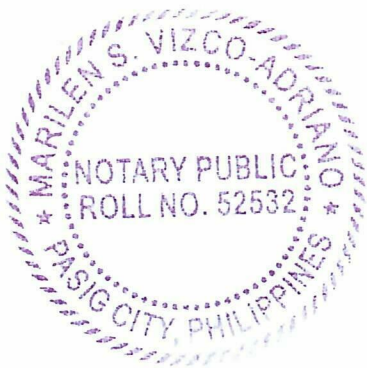
I, **ELENITA D. GO**, of legal age, with office address at the 5th Floor C5 Office Building Complex, #100 E. Rodriguez Jr. Avenue (C5 Road), Brgy. Ugong, Pasig City, hereby declare that all the documents for **MERALCO AND SPI JOINT APPLICATION** hereto submitted electronically in accordance with ERC Resolution No. 09, series of 2020 for the, are the complete and original or true copies of the documents filed with the Commission.

IN WITNESS WHEREOF, I have hereunto set my hand this FEB 15 2025 at PASIG CITY.


ELENITA D. GO
Affiant

SUBSCRIBED AND SWORN to before me this FEB 15 2025 in PASIG CITY. Affiant personally appeared and exhibited to me her Passport ID with No. P1876103B issued on July 7, 2019 at the DFA NCR East as her competent proof of identity.

Doc. No.: 73 ;
Page No.: 16 ;
Book No.: 11 ;
Series of 2025.




MARILEN S. VIZCO-ADRIANO
Appointment No. 285 (2024-2025)
Notary Public for Pasig City
Until December 31, 2025
5th Floor C5 Office Building Complex,
#100 E. Rodriguez Jr. Ave., C5 Road,
Bo. Ugong, Pasig City 1604 Metro Manila
Roll No. 52532
PTR No. 3006694; January 03, 2025; Pasig City
IBP Lifetime Membership No. 09353; Quezon City Chapter
MCLE Compliance No. VII-0019617; Valid until April 14, 2025