

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

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

ERC CASE NO. 2024-060 RC

MANILA ELECTRIC
COMPANY AND SOUTH
PREMIERE POWER CORP.,
Applicants.
X-----X

Promulgated:
October 10, 2024

NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 25 April 2024, Manila Electric Company (MERALCO) and South Premiere Power Corp. (SPPC) filed a *Joint Application (With Motion for Confidential Treatment of Information)* dated 05 April 2024, seeking the Commission’s approval of their Emergency Power Supply Agreement (EPSA), with prayer for the issuance of a provisional authority and/or interim relief and motion for confidential treatment of information.

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

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 SPPC 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. SPPC owns and operates the 1,200 MW combined-cycle power generating facility located in Barangay Ilijan, Batangas on the island of Luzon.

I. STATEMENT OF FACTS

- A. **Termination of the 2019 MERALCO-SPPC and MERALCO-San Miguel Energy Corporation (“SMEC”) Power Supply Agreements (“PSA”) involving 1,000 MW Contract Capacity**
5. MERALCO’s bilateral power supply contracts portfolio was reduced due to the termination of the 2019 MERALCO-SPPC¹ and MERALCO-SMEC² (now known as Sual Power Inc. “SPI”) PSAs for 330 MW and 670 MW, respectively, pursuant to the Court of Appeals’ Joint Decision dated 27 June 2023 (“**CA Joint Decision**”).³ The CA Joint Decision made permanent the CA’s Writ of Preliminary Injunction as to the 2019 MERALCO-SPPC PSA, and lifted the injunction against the termination of the 2019 MERALCO-SMEC PSA. As a result, SPPC and SPI sent Notices of Termination of the respective PSAs to MERALCO on 17 July 2023. SPI and SPPC ceased acceptance of MERALCO’s nomination and supply on 23 July 2023 and 06 December 2022, respectively.
6. Due to the termination of the 2019 MERALCO-SPPC and MERALCO-SMEC PSAs, MERALCO was prompted,

¹ Docketed as ERC Case No. 2019-081RC

² Docketed as ERC Case No. 2019-083RC

³ Docketed as C.A.-G.R. SP No. 176036 and CA-G.R. SP No. 176037

among others, to execute three (3) Emergency Power Supply Agreements ("EPSA") - for 480 MW (with SPPC),⁴ and 370 MW (with Therma Luzon Inc. [TLI]), following the Department of Energy's ("DOE") grant of Certificate of Exemptions from CSP ("COE-CSP") pursuant to the then Department of Energy ("DOE") Department Circular No. 2021-10-0030⁵, as well as 330 MW (with SPPC), pursuant to Department Circular No. DC2023-06-0021 ("DOE CSP Policy").⁶ Following their execution, these EPSAs were filed before the Honorable Commission and the corresponding applications for approval have since been submitted for resolution ("2023 EPSAs").⁷

B. MERALCO's 1,200 MW Baseload Supply Requirement

7. The 2023 EPSAs expired on 25 March 2024, leaving a supply deficit of 1,000 MW.⁸ This, together with MERALCO's 200 MW baseload supply requirement (for which two rounds of bidding/CSP and direct negotiations failed to result in a supply agreement), add up to a total capacity deficit of 1,200 MW baseload supply starting 26 March 2024, which was reflected in MERALCO's DOE-approved 2023 Power Supply Procurement Plan ("MERALCO's 1,200 MW Baseload Supply Requirement").
8. In order to address MERALCO's 1,200 MW Baseload Supply Requirement and pursuant to DOE Certificate of Conformity No. 2023-11-003 issued on 24 November 2023, MERALCO's Bid and Awards Committee conducted a CSP in accordance with the Energy Regulatory Commission's CSP Guidelines ("ERC CSP Guidelines"),⁹ where SPPC emerged as the winning bidder. Thereafter, MERALCO and SPPC executed a Power Supply Agreement dated 05 February 2024 ("**2024 MERALCO-SPPC PSA**") with an Operations Effective Date for the entire 1,200 MW capacity on 26 March 2024. On 06 February 2024, MERALCO and SPPC initiated the pre-filing process before the ERC for the corresponding Joint Application for Approval, with prayer for issuance of Provisional Authority ("PA") and/or

⁴ Includes MERALCO's 180 MW interim baseload supply requirement because of a failed bidding / competitive selection process ("CSP") for 180 MW (baseload, effective 26 February 2023) under the then prevailing DOE CSP Circular.

⁵ Entitled "Amending Certain Provisions of and Supplementing Department Circular No. DC2018-02-0003 on the Competitive Selection Process in the Procurement by Distribution Utilities of Power Supply Agreement for the Captive Market."

⁶ Entitled "Prescribing the Policy for the Mandatory Conduct of the Competitive Selection Process by the Distribution Utilities for the Procurement of Power Supply for their Captive Market".

⁷ Docketed as ERC Case Nos. 2023-094 RC, 2023-095 RC, and 2023-105 RC, respectively.

⁸ Not included anymore was MERALCO's 180 MW interim baseload supply requirement.

⁹ Energy Regulatory Commission Resolution No. 16, Series of 2023, entitled "Implementing guidelines for the procurement, execution, and evaluation of Power Supply Agreements entered into by Distribution Utilities for the supply of electricity to their captive market".

Interim Relief (“IR”) (“**Joint Application for the 2024 MERALCO-SPPC PSA**”). On 05 March 2024, upon completion of ERC’s pre-filing evaluation, the Joint Application for the 2024 MERALCO-SPPC PSA was filed, then docketed as ERC Case No. 2024-030 RC.

- 9. On 12 March 2024, MERALCO filed an urgent motion to issue PA and/or IR (“**Urgent Motion for PA and/or IR**”), reiterating the urgent need to immediately implement the 2024 MERALCO-SPPC PSA due to the following: a.) deficient supply, b.) anticipated thinning electricity operating margins during summer season, c.) forecasted El Niño peak, and d.) to prevent exposure of MERALCO’s customers to the volatile and higher WESM prices. Both the Joint Application for the 2024 MERALCO-SPPC PSA and Urgent Motion for PA and/or IR are pending ERC approval.

- C. **MERALCO’s 2024 EPSA with SPPC for 1,200 MW pursuant to the DOE CSP Policy and ERC CSP Guidelines**

- 10. Considering the imminent deficient supply, MERALCO undertook necessary precautions in case ERC approval or PA/IR for its 2024 MERALCO-SPPC PSA is not timely secured prior to the expiration of the 2023 EPSAs.

- 11. 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 1,200 MW Baseload Supply Requirement. To this end, MERALCO formally received an offer from SPPC to address MERALCO’s 1,200 MW Baseload Supply Requirement.

- 12. 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”

- 13. 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”

- 14. MERALCO respectfully submits that the non-issuance of an ERC approval/PA/IR to allow the implementation of the 2024 MERALCO-SPPC PSA by 26 March 2024 is an event which, though foreseen, is inevitable and independent of MERALCO’s participation, given MERALCO’s prompt and earnest efforts to comply with the ERC CSP Guidelines to secure its 1,200 MW Baseload Supply Requirement. Such FM/FE constrained MERALCO to procure supply through a negotiated 2024 EPSA with SPPC for 1,200 MW, which was executed on 25 March 2024 (“**2024 MERALCO-SPPC EPSA**”).

- 15. 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:*”
 - 15.1. *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[;]”.

Currently, no existing power plant running on Liquefied Natural Gas has an approved rate, thus no comparable rate for the same technology as the 2024 MERALCO-SPPC EPSA exists.

- 15.2. *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;”¹⁰.

¹⁰ Article VII, Section 34, ERC CSP Guidelines

As will be shown in the salient terms of the 2024 MERALCO-SPPC EPSA below, the term thereof is for one (1) year, from 26 March 2024 until 25 March 2025, **and shall be subject to pre-termination upon implementation of the 2024 MERALCO-SPPC PSA (in accordance with the provisions under the PSA for Power Supplier's acceptance of the ERC approval or grant of PA/IR).**

- 15.3. *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]*”

While the provision states that the Distribution Utility must wait for the occurrence of the FM/FE to notify the DOE and ERC of such event and the emergency power supply procurement, given the magnitude of the capacity deficit, its impact, and MERALCO's least cost mandate, MERALCO proactively secured an alternative source of supply. MERALCO respectfully submits that it does not need to wait for the actual occurrence of the FM/FE to shield its customers from highly volatile electricity prices and provide them the immediate benefits under the 2024 MERALCO SPPC EPSA. As such, MERALCO sent its letter-notification to the DOE and ERC regarding the 2024 MERALCO-SPPC EPSA on 22 March 2024, copies of which are attached hereto as **ANNEXES “C” and “C-1”**, respectively.

- 15.4. *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.”

The instant Joint Application together with its Annexes were pre-filed with the Honorable Commission starting on 05 April 2024. Accordingly, this Joint Application is timely filed within the reglementary period provided under the ERC CSP Guidelines.

16. Pursuant to said provision and parameters, after the parties executed the 2024 MERALCO-SPPC EPSA on 25 March 2024, it was implemented beginning 12:01 A.M. of 26 March 2024, 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.

17. In sum, MERALCO respectfully submits that the 2024 MERALCO-SPPC 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 2024 MERALCO-SPPC EPSA was urgently needed to ensure that deficient supply beginning 26 March 2024 is addressed and that MERALCO's customers are assured reliable and continuous supply.

II. SALIENT FEATURES OF THE 2024 MERALCO-SPPC EPSA

18. The 2024 MERALCO-SPPC 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 the Plant is one hundred percent (100%) capable of generating electricity, whether or not it is actually generating electricity, for twenty-four (24) hours daily.

xxx

Contract Capacity or CC shall be: (i) 810 MW (net) from 26 March 2024 until 31 March 2024, and (ii) increased to a total of 1,200 MW (net) from 01 April 2024 until end of Term, both sourced from the Plant, 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 expire on March 25, 2025, unless terminated earlier by either (a) the approval of the termination of this Agreement by the ERC in accordance with the terms of this Agreement, or (b) the implementation of the Power Supply Agreement with Power Supplier dated 05 February 2024, pending approval of the ERC in ERC Case No. 2024-030 RC (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 March 26, 2024 (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, Power Supplier shall:

- (a) make Available to Meralco, and Meralco shall purchase from Power Supplier, at the Price determined in accordance with Appendix C, the Contract Capacity from the Plant. For this purpose, should Power Supplier fail to source from the Plant, Meralco shall pay the lower between (a) Actual Replacement Power Cost and (b) Fuel, both in accordance with Appendix C; and
- (b) deliver and sell to Meralco, and Meralco shall purchase from Power Supplier, at the Price determined in accordance with Appendix C, the Associated Energy (and Replacement Power), to the extent of Meralco’s relevant day-ahead nominations.

For clarity, the Power Supplier shall declare to the WESM the corresponding Associated Energy (and Replacement Power) for Meralco at the Plant’s Delivery Point/s or the relevant delivery point/s in Appendix A, as applicable. Further, for avoidance of doubt, Meralco shall pay Capacity Payment even during Outage, unless the Plant is not available due to an Event of Force Majeure.

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, except as provided in Section 7.5 and subject to Article 15, make available the Contract Capacity and deliver the Replacement Power to Meralco, which shall be paid at the lower between (a) Actual Replacement Power Cost and (b) Fuel, both as specified in Appendix C. For avoidance of doubt, Meralco shall pay Capacity Payment even during Outage, unless the Plant is not available due to an Event of Force Majeure.
- 7.2. 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.

- 7.3 In the event of failure by Power Supplier to provide the Contract Capacity and/or Associated Energy and Replacement Power, Meralco shall be allowed to source Replacement Power from the WESM at the expense of Power Supplier. If the WESM price for the Replacement Power is higher than the Price, then Power Supplier shall reimburse Meralco the difference between (i) the WESM price and (ii) the Price, plus all relevant transaction cost and taxes. If the WESM price for the Replacement Power is lower than the Price, then Meralco shall not be liable to Power Supplier for the difference between the WESM price and the Price.
- 7.4. In case of Outage and Power Supplier fails to provide Meralco Replacement Power due to inadequate supply, Power Supplier shall pay a fine equivalent to Nine Hundred Eight Philippine Peso (PhP908) multiplied by each affected MWh nomination 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.
- 7.5. 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 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 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 Price, the same shall be for the account of Power Supplier. 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

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B. MONTHLY POWER BILL

The MPB shall consist of Capacity Payments and Energy Payments. Thus, the MPB for Contract Capacity, Associated Energy, and Replacement Power for each Billing Period shall be equal to:

MPB = MCP + MEP

The MPB is exclusive of the applicable Value Added Tax.

1. Monthly Capacity Payment (MCP)

The Monthly Capacity Payment for the Billing Period calculated as follows:

MCP = CF_{base} * CC * 1000 * (BPD – FMT) * 24

Where:

- MCP = the Monthly Capacity Payment, in Php, for the Contract Capacity for the Billing Period
- CF_{base} = the Capacity Fee, in Php/kWh, as set forth in Schedule 1 of this Appendix C
- CC = the Contract Capacity, in MW, as set forth in Article 1 of this Agreement
- BPD = Billing Period Days, the number of Days in the relevant Billing Period
- FMT = the Full Load Equivalent Force Majeure Days Taken for the relevant Billing Period, as computed in Schedule 3 of this Appendix C

2. Monthly Energy Payment (MEP)

The Monthly Energy Payment for the Billing Period calculated as follows:

$$MEP = (AE * Fuel) + \sum_{j=1}^{BPD} \sum_{i=1}^{24} [RP_{ij} * \text{Min}(RPC_{ACT,ij}, Fuel)]$$

Where:

- MEP = the Monthly Energy Payment, in Php, for the relevant Billing Period
- AE = the Associated Energy, in kWh, as previously defined in Article 1 of this Agreement. For clarity, AE shall be the difference between the BCQ and Replacement Power.
- Fuel = the effective Fuel Fee, in Php/kWh, computed based on the fuel used to produce the AE.

$$Fuel = Fuel_0 * \frac{JKM_m}{JKM_0} * \frac{FX_m}{FX_0}$$

Where:

- Fuel₀ = the base Fuel Fee, in Php/kWh, as set forth in Schedule 1 of this Appendix C

JKM_m = the average Japan Korea Marker index, in USD/MMBtu, for the last three calendar months prior to the current Billing Period, as published in Platts LNG Daily by Platts, a division of S&P Global, on the website www.spglobal.com or its successor or, if Platts ceases to report the JKM index, an agreed upon replacement source that reports the JKM index shall be adopted by the Parties.

LNG to be used in the April 2024 and May 2024 Billing Periods to generate capacity from the Ilijan Power Plant has been contracted with the following costs of \$11.90/MMBtu for the April 2024 Billing Period and \$10.58/MMBtu for the May 2024 Billing Period (the “Fixed LNG Price”). This Fixed LNG Price shall be the applicable JKMM to be used in the computation

hereunder in the April 2024 and May 2024 Billing Periods, respectively. The Power Supplier will submit to Meralco the calculations and supporting documents i.e., supplier's invoices, of the Fixed LNG Price.

For clarity, these Fixed LNG Prices shall be used in determining the average JKM index for June 2024, July 2024, and August 2024 Billing Periods. For instance, the applicable JKMM index for June 2024 Billing Period shall be computed as the average of Fixed LNG Prices of \$11.90/MMBtu and \$10.58/MMBtu. Further, the applicable JKMM index for July 2024 Billing Period shall be computed as the average of Fixed LNG Prices of \$11.90/MMBtu, \$10.58/MMBtu and JKM index for June 2024 as published by Platts.

- JKM_o = the base Japan Korea Marker index, in USD/MMBtu, as set forth in Schedule 1 of this Appendix C
- FX_m = the closing rate for USD to Php as announced by the Bangko Sentral ng Pilipinas (https://www.bsp.gov.ph/statistics/external/day99_data.aspx), on the last Business Day of the current Billing Period
- FX_o = the base exchange rate, in Php/USD, as set forth in Schedule 1 of this Appendix C
- RP_{ij} = is the Replacement Power, in kWh, as delivered by the Power Supplier for the Trading Interval i and Day j
- RPC_{ACT,ij} = the hourly RPC_{ACT}, in Php/kWh, for the Trading Interval i and Day j.

III. GENERATION RATE IMPACT

19. Based on the foregoing, and given a certain set of assumptions, the annual effective rate under the 2024 MERALCO-SPPC EPSA is **PhP 6.5047** per kWh (at plant gate, VAT exclusive), as shown in the RATE IMPACT ANALYSIS below:

(This space is intentionally left blank.)

South Premiere Power Corp. (SPPC) EPSA - Rate Impact at 100% PCF						
BILLING COMPONENT	UNIT	BASE RATE ^(a)	Adjustment Factor ^(b)	BILLING DETERMINANT ^(c)		AMOUNT (PHP)
A. Capacity Payment (MCP)	(Php/kWh)	1.7500	-	10,455,840,000	(kWh)	18,297,720,000.00
C. Energy Payment (MEP)	(Php/kWh)	6.7500	0.7044	10,455,840,000	(kWh)	49,714,558,434.56
Total Payment (VAT exclusive)	(Php)					68,012,278,434.56
Effective Rate at Plant Gate	(Php/kWh)					6.5047
WESM Line Rental Rate ^(d)	(Php/kWh)					0.1081
Delivered Rate (VAT exclusive)	(Php/kWh)					6.6128
Effective Cost if sourced from WESM ^(e)	(Php/kWh)					7.6386
Increase / (Decrease) over WESM Price	(Php/kWh)					(1.0257)
Meralco Captive Energy Demand ^(f)	(kWh)					36,735,601,254.46
Increase / (Decrease) in Generation Cost	(Php)					(10,724,943,669.06)
Increase / (Decrease) in Generation Cost	(Php/kWh)					(0.2919)
NOTES:						
^(a) Base Rates as set forth in Schedule 1 of Appendix C of the PSA.						
^(b) Adjustment factor calculated in accordance with formula indicated in Appendix C of the EPSA and based on Fixed LNG Prices for April and May 2024 and JKM Forecast for June 2024 to March 2025.						
^(c) Energy Payments based on 100% plant capacity factor.						
^(d) Line Rental rate for SPPC EPSA is based on the actual line rental for February 2024.						
^(e) Cost if equivalent volume of SPPC EPSA was sourced from the WESM based on forecasted average hourly prices from April 2024 to March 2025.						
^(f) Forecasted Meralco Captive Energy for April 2024 to March 2025 based on 2023 Power Supply Procurement Plan as submitted to DOE.						

20. MERALCO notes that the annual delivered rate of **PhP 6.6128 per kWh (VAT exclusive and line rental inclusive)** is **lower** by about **PhP 1.0257 per kWh** than the effective cost of **PhP 7.6386 per kWh**, if the equivalent capacity under the 2024 MERALCO-SPPC EPSA is to be sourced from the WESM. In fact, by sourcing the capacity through the 2024 MERALCO-SPPC EPSA, MERALCO’s average blended generation rate will be reduced by about PhP 0.2919 per kWh (as seen in the **RATE IMPACT ANALYSIS** above) resulting in savings to consumers of about PhP 10.7 Billion.

IV. **COMPLIANCE WITH DOCUMENTARY REQUIREMENTS**

21. In support of this Joint Application, the Judicial Affidavit of **ENGR. DAVIDJOHN A. ZUÑIGA**, Officer of MERALCO’s Energy Sourcing Office - Energy Resource Planning team, is attached hereto as **ANNEX “E”**.
22. 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”

SPPC's Secretary's Certificates	"B" and "B-1"
MERALCO's letter notification to DOE	"C"
MERALCO's letter-notification to ERC	"C-1"
2024 MERALCO-SPPC EPSA	"D"
Judicial Affidavit of MERALCO's witness, ENGR. DAVIDJOHN A. ZUÑIGA, Officer of MERALCO's Energy Resource Planning - 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 scenariosDetails of Existing SuppliersDetails of Power Supply Contract Utilization	"F" "F-1" "F-2" "F-3"
Executive Summary of the PSA	"G-1"
Generation Rate and Derivations including Cost Analysis (confidential)	"H and series"
Fuel Procurement Process and Supply Agreement (confidential)	"I and Series"
Technical and economic characteristics of the plant (including the Outage Reports)	"J and Series"

**ALLEGATIONS IN SUPPORT OF THE PRAYER
FOR PROVISIONAL AUTHORITY OR INTERIM
RELIEF**

23. Under Rule 14 of the ERC Revised Rules of Practice and Procedure ("**ERC RRPP**"), the Honorable Commission is authorized to issue provisional authority or interim relief prior to a final decision, provided the facts and circumstances alleged warrant such remedy.
24. As earlier stated, the provisions and parameters of a negotiated procurement of emergency supply enumerated under Appendix A of the ERC CSP Guidelines allow the parties to immediately implement the 2024 MERALCO-SPPC EPSA. First, currently, no existing power plant running on Liquefied Natural Gas has an approved rate, thus no comparable rate for the same technology as the 2024 MERALCO-SPPC EPSA exists. Second, as shown in the salient terms of the 2024 MERALCO-SPPC EPSA, the term/cooperation period thereof is for one (1) year only, from 26 March 2024 until 25 March 2025, and shall be subject to pre-termination upon implementation of the 2024 MERALCO-SPPC PSA (in accordance with the provisions under the PSA for Power Supplier's acceptance

of the ERC approval or grant of PA/IR). Third, while the provision/parameter requires that the Distribution Utility wait for the occurrence of the FM/FE to notify the DOE and ERC of such event and the emergency power supply procurement, given the magnitude of the capacity deficit, its impact, and MERALCO's least cost mandate, MERALCO proactively secured an alternative source of supply. MERALCO respectfully submits that it does not need to wait for the actual occurrence of the FM/FE to shield its customers from highly volatile electricity prices and provide them the immediate benefits under the 2024 MERALCO SPPC EPSA. As such, MERALCO sent its letter-notification to the DOE and ERC regarding the 2024 MERALCO-SPPC EPSA on 22 March 2024. Lastly, the instant Joint Application together with its Annexes were pre-filed with the Honorable Commission starting on 05 April 2024. Accordingly, this Joint Application is timely filed within the reglementary period provided under the ERC CSP Guidelines.

25. As shown from the rate impact analysis, the 2024 MERALCO-SPPC EPSA reflects the most beneficial generation charges with a resultant estimated generation rate reduction of PhP 0.2919 per kWh.
26. The implementation of the 2024 MERALCO-SPPC EPSA will afford MERALCO's end-users with a reliable supply of electricity at reasonable rates.
27. The foregoing notwithstanding, the grant of provisional authority and/or interim relief shall confirm the proper implementation of the 2024 MERALCO-SPPC EPSA which ultimately redounds to the benefit of MERALCO's customers who stand to be exposed to volatile prices at the WESM.
28. In fact, the Independent Electricity Market Operator of the Philippines (IEMOP) recently released publicly that electricity prices are projected to increase as demand across the archipelago peaks during the summer months through May 2024. The prices in the WESM, as of 3 April 2024, have already averaged PhP5.00/kWh, even prior to May, which is historically the month when demand for electricity starts to peak.¹¹
29. Pursuant to the ERC RRPP, this Honorable Commission may exercise its discretion by granting provisional authority and/or interim relief prior to a final decision.
30. Therefore, MERALCO and SPPC request for a provisional authority or interim relief confirming their authority to implement the 2024 MERALCO-SPPC EPSA, including the rates and tariff structure thereof, from the

¹¹ <https://newsinfo.inquirer.net/1924440/higher-electricity-prices-forecast-until-may>

start of the supply by SPPC to MERALCO under the subject EPSA.

31. This confirmation by the ERC will allow MERALCO and SPPC to continuously implement the 2024 MERALCO-SPPC EPSA based on the rates indicated therein, and MERALCO to have a steady, continuous, guaranteed, and reliable source of electricity, which redounds to the benefit of MERALCO's end-users in terms of providing a more reasonable rate. To support the Motion for Provisional Authority and/or Interim Relief, the Judicial Affidavit of **ENGR. DAVIDJOHN A. ZUÑIGA**, Officer of MERALCO's Energy Resource Planning - Energy Sourcing Office, is attached herein as Annex "E."

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

32. 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.
33. With respect to the documents marked and attached as **ANNEXES "H and series," "I and series" and "J and series"**, SPPC 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 SPPC. The data and information contained therein are part of the overall formula and process in arriving at the competitive rates of SPPC. These formula and process are specifically developed for the use of SPPC and are treated as trade secrets. If the information contained in these documents are unduly disclosed, it will seriously prejudice the competitiveness of SPPC. These documents are neither generally available to the public nor already in the possession of the Honorable Commission on a non-confidential basis.
34. In the case of *Air Philippines Corporation vs. Pennswell Inc.*,¹² 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

¹² G. R. No. 172835, 13 December 2007.

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.)

35. 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."*¹³

36. SPPC 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."
37. 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," "I and series" and "J and series"**. 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.
38. Lastly and corollary to the foregoing, SPPC 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)

¹³ *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.

39. This is guided by the fact that SPPC 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 SPPC enclosed in the subject annexes.

PRAYER

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

- A. Issue an Order granting **PROVISIONAL AUTHORITY and/or INTERIM RELIEF** confirming the authority of MERALCO and SPPC to implement the **2024** MERALCO-SPPC EPSA, including the rates and tariff structure thereof, from the start of the supply by SPPC to MERALCO under the subject EPSA;
- B. After hearing on the merits, render a Decision **APPROVING** the 2024 MERALCO-SPPC EPSA and the terms and conditions thereunder, including the price; and
- C. Issue an Order **TREATING ANNEXES “H and series,” “I and series” and “J and series”** 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 SPPC, pursuant to Rule 4 of the ERC RRPP;

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

The Commission hereby sets the instant *Joint Application* for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on the following dates and online platforms for the conduct thereof, pursuant to Resolution No. 09, Series of 2020¹⁴ and Resolution No. 01, Series of 2021¹⁵ (ERC Revised Rules of Practice and Procedure):

¹⁴ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

¹⁵ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

Date	Platform	Activity
27 November 2024 (Wednesday) at ten o'clock in the morning (10:00 A.M.)	Microsoft Teams or Zoom Application	Determination of compliance with jurisdictional requirements and Expository Presentation
04 December 2024 (Wednesday) at ten o'clock in the morning (10:00 A.M.)		Pre-trial Conference and Presentation of Evidence

Accordingly, MERALCO and SPPC are hereby directed to host the virtual hearings at **MERALCO’s principal office located at Brgy. Ugong, Pasig City**, as the designated venue for the conduct thereof, and ensure that the same is open to the public. Moreover, MERALCO and SPPC shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

Any interested stakeholder may submit its comments and/or clarifications at **least one (1) calendar day** prior to the scheduled initial virtual hearing, via electronic mail (e-mail) at docket@erc.ph, and copy furnish the Legal Service through legal@erc.ph. The Commission shall give priority to the stakeholders who have duly submitted their respective comments and/or clarifications, to discuss the same and propound questions during the course of the expository presentation.

Moreover, all persons who have an interest in the subject matter of the instant case may become a party by filing with the Commission via e-mail at docket@erc.ph, and copy furnishing the Legal Service through legal@erc.ph, a verified Petition to Intervene at **least five (5) calendar days** prior to the date of the initial virtual hearing. The verified Petition to Intervene must follow the requirements under Rule 9 of the ERC Revised Rules of Practice and Procedure, indicate therein the docket number and title of the case, and state the following:

- 1) The petitioner’s name, mailing address, and e-mail address;

- 2) The nature of petitioner's interest in the subject matter of the proceeding and the way and manner in which such interest is affected by the issues involved in the proceeding; and
- 3) A statement of the relief desired.

Likewise, all other persons who may want their views known to the Commission with respect to the subject matter of the case may file through e-mail at doCKET@erc.ph, and copy furnish the Legal Service through legal@erc.ph, their Opposition or Comment thereon at **least five (5) calendar days** prior to the initial virtual hearing. Rule 9 of the ERC Revised Rules of Practice and Procedure shall govern. No particular form of Opposition or Comment is required, but the document, letter, or writing should contain the following:

- 1) The name, mailing address, and e-mail address of such person;
- 2) A concise statement of the Opposition or Comment; and
- 3) The grounds relied upon.

All interested parties filing their Petition to Intervene, Opposition or Comment are required to submit the hard copies thereof through personal service, registered mail or ordinary mail/private courier, **within five (5) working days** from the date that the same were electronically submitted, as reflected in the acknowledgment receipt e-mail sent by the Commission.

Any of the persons mentioned in the preceding paragraphs may access the copy of the *Joint Application* on the Commission's official website at www.erc.gov.ph.

Finally, all interested persons may be allowed to join the scheduled initial virtual hearings by providing the Commission, thru legal.virtualhearings@erc.ph, their respective e-mail addresses and indicating therein the case number of the instant *Joint Application*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearings.

WITNESS, the Honorable Officer-in-Charge Chairperson and CEO **JESSE HERMONGENES T. ANDRESS** Honorable Commissioners **ALEXIS M. LUMBATAN, CATHERINE P. MACEDA, FLORESINDA G. BALDO-DIGAL**, and **MARKO ROMEO L. FUENTES**, Energy Regulatory Commission, this 10th day of October 2024 in Pasig City.


ATTY. KRISHA MARIE T. BUELA
Director III – Legal Service


LS: BBB



NOTICE

Sirs/Mesdames:

Please take notice that on **10 October 2024**, the Commission issued an **Order** and a **Notice of Virtual Hearing** in the following case, the original documents were received by this Office on 21 October 2024:

ERC CASE NO. 2024-060 RC, IN THE MATTER OF THE JOINT APPLICATION FOR THE APPROVAL OF THE EMERGENCY POWER SUPPLY AGREEMENT BETWEEN MANILA ELECTRIC COMPANY AND SOUTH PREMIERE POWER CORP., WITH PRAYER FOR THE ISSUANCE OF A PROVISIONAL AUTHORITY AND/OR INTERIM RELIEF AND MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION – MANILA ELECTRIC COMPANY AND SOUTH PREMIERE POWER CORP., Applicants.

Attached are electronic copies.

Please be reminded of the Commission's existing rules on electronic service of orders and decisions provided under **Rule VI of Resolution No. 9, Series of 2020¹**, which became effective on 17 November 2020.

Thank you.

Very truly yours,

EVELYN O. REYES
Administrative Officer IV
OGCS-Central Records Division

/jdc

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