

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

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



ERC CASE NO. 2024-056 RC

MANILA ELECTRIC
COMPANY AND LIMAY
POWER INC.,

Applicants.

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Promulgated:
April 29, 2024

ORDER

On 22 April 2024, Manila Electric Company (MERALCO) and Limay Power Inc., (LPI) filed a *Joint Application*, dated 03 April 2024, seeking the Commission's approval of their Power Supply Agreement (PSA), 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:

I. THE APPLICANTS

A. MERALCO

1. Applicant MERALCO is a private corporation existing under the laws of the Republic of the Philippines, with principal office located at Lopez Building, Ortigas Avenue, Brgy. Ugong, Pasig City. It may be served with notices and

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

2. MERALCO has a legislative franchise to operate and maintain a distribution system in the cities/municipalities of Metro Manila, Bulacan, Cavite and Rizal and certain cities/municipalities/barangays in Batangas, Laguna, Quezon and Pampanga, pursuant to Republic Act No. 9209, and is authorized to charge all its customers for their electric consumption at the rates approved by the Honorable Commission.

B. LPI

3. Applicant LPI is a corporation duly organized and existing under the laws of the Philippines, with principal place of business at Roman Highway, Barangay Lamao, Limay, Bataan. It may be served with notices and other processes of this Honorable Commission through its counsel at the address indicated herein.
4. LPI owns, operates, manages, and maintains the Limay Circulating Fluidized Bed Coal-Fired Thermal Power Plant located at Barangay Lamao, Limay, Bataan, on the island of Luzon in the Philippines (the "Plant").

II. STATEMENT OF FACTS AND TIMELINESS

5. In accordance with MERALCO's latest and duly accepted Distribution Development Plan and posted Power Supply Procurement Plan ("PSPP") approved by the Department of Energy ("DOE"), MERALCO foresees an interim baseload capacity deficit in its portfolio covering 400 MW based on its power situation outlook for 2024 and first quarter of 2025.
6. Thus, in order to ensure continuous and reliable electricity for MERALCO's customers, there is a need for MERALCO to source additional baseload capacity through bilateral power supply contracts.
7. Under Section 45(b) of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" ("EPIRA"), it is provided that "*Distribution Utilities may enter into bilateral power supply contracts subject to review by the ERC xxx.*"
8. Accordingly, pursuant to *Section 4, Article IV of the Energy Regulatory Commission's ("ERC") Resolution No. 16, Series of 2023 ("ERC CSP Guidelines")*, MERALCO conducted a Competitive Selection Process ("CSP") for the procurement of 400 MW (net) baseload supply requirement (the "400 MW CSP"). The conduct of CSP proceeded as follows:

- 8.1. On 15 December 2023, MERALCO submitted to the DOE, the Invitation to Bid ("ITB")/Terms of Reference ("TOR") for its 400 MW Requirement Effective March 2024 and 260 MW Requirement Effective March 2024 to request for issuance of a Certificate of Conformity in accordance with MERALCO's latest and duly accepted Distribution Development Plan and posted PSPP, pursuant to *Section 4.3 of DOE Department Circular No. DC2023-06-0021, Series of 2023 and Section 5, Appendix B of the ERC CSP Guidelines.*
- 8.2. On 29 December 2023, the DOE issued in favor of MERALCO a Certificate of Conformity with no. 2023-12-004 (the "DOE COC") covering MERALCO's 400 MW and 260 MW baseload and peaking requirements, which MERALCO received on the same day and endorsed to its Bids and Awards Committee for Power Supply Agreements ("BAC-PSA") for commencement of the 400 MW CSP. On the same day, pursuant to the requirements provided in the ERC CSP Guidelines, the BAC-PSA Secretariat furnished the ERC a copy of the DOE COC and formally notified the DOE (copy furnished the ERC) of the commencement of the 400 MW CSP in relation to the DOE COC.
- 8.3. On 03 January 2024, the BAC-PSA caused the publication of the ITB in The Philippine Star, a newspaper of general circulation in the Philippines. The ITB contained the TOR, a summary of the process and timelines of the CSP, and invitation to power generation companies to pay the Participation Fee and submit an Expression of Interest and set of documents on or before the deadline set out in said ITB. The ITB and the TOR were likewise posted on MERALCO's website and on the DOE E-based CSP Portal.
- 8.4. On 04 January 2024, MERALCO posted on its website, an "Invitation to Participate as CSP Observers," which informed the public that the entities or groups identified in Section 9 of the ERC CSP Guidelines are invited to signify to the BAC-PSA their interest to participate as observers to the CSP. On 15 January 2024, two (2) CSP Observers submitted their intent to (and were admitted by) the BAC-PSA as CSB Observers.
- 8.5. On 22 January 2024, a Pre-Bid Conference was held to allow interested bidders an opportunity to clarify any provisions, requirements, and/or terms and conditions of the bidding documents and/or any other matter that the interested bidders may raise. The Pre-Bid Conference was held at least thirty (30) calendar days before the 400 MW CSP's

bid submission deadline; were attended by CSP Observers; and were broadcast live in MERALCO's YouTube website.

- 8.6. On 27 February 2024, the bidders submitted their respective bid documents in compliance with all the bidding documents required for the 400 MW CSP and the respective submissions of the bidders were opened by the BAC-PSA. The bid submission and bid opening were held at least forty-five (45) days after the ITB/TOR's last publication and were attended by CSP Observers and were broadcast live in MERALCO's YouTube website.
- 8.7. Following the BAC-PSA's evaluation of each of the bidders' bid submissions, Applicant LPI emerged as the winning bidder with the lowest calculated responsive bid (the "Best Bid"), with 400 MW offered capacity completing the required Contracted Capacity of said CSP.
- 8.8. On 28 February 2024, the BAC-PSA conducted the post-qualification of the document submissions of LPI and found the submissions to be compliant with and responsive to all the requirements and conditions specified in the bidding documents, as amended, or clarified by pertinent bid bulletins, for the 400 MW CSP. The post-qualification was attended by CSP Observers and was broadcast live in MERALCO's YouTube website.
- 8.9. On 29 February 2024, the BAC-PSA submitted its recommendation and report to MERALCO's Board of Directors recommending LPI, to be declared as the Winning Power Supplier and be awarded a power supply agreement for its offer of PhP6.2708/kWh (total Headline Rate, VAT inclusive) for 400 MW.
- 8.10. On 05 March 2024, MERALCO's Executive Committee, duly authorized by MERALCO's Board of Directors under Section 8 of its By-Laws, approved the BAC-PSA's recommendation and on the following day, 06 March 2024, a Notice of Award was issued by the BAC-PSA in favor of LPI.
- 8.11. On 20 March 2024, the Power Supply Agreement between MERALCO and LPI was dated, signed, and executed ("MERALCO-LPI PSA"). On the same day, upon request of LPI and with the consent of MERALCO, the bid security that LPI issued and submitted during the 400 MW CSP was used as performance bond for the MERALCO-LPI PSA. Thereafter, on 22 March 2024, a Notice to Proceed was issued by MERALCO in favor of LPI.

A copy of the BAC-PSA Summary-Report and the DOE COC regarding the conduct of the 400 MW CSP are attached hereto as ANNEXES "C" and "C-1".

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

III. SALIENT FEATURES OF THE MERALCO-LPI PSA

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

"Article 1 Definitions and Interpretation

xxx

Availability of Supply or Available means one hundred percent (100%) of the Contract Capacity is available for twenty-four (24) hours and seven (7) days a week.

xxx

Contract Capacity or CC shall be set at 400 MW (net) sourced from the Plant, as may be adjusted from time to time in accordance with Article 8 and/or Section 19.1.

xxx

Material Adverse Government Action means:

- (a) any Law or Directive coming into effect after the signing of this Agreement, including the adoption or enactment, or any change or repeal with respect to the imposition of taxes, duties, levies, fees, charges and similar impositions, and the right to remit or convert currencies. This does not include any Legal Requirement or the application or interpretation thereof in existence at the date of the signing of this Agreement, but which by its explicit terms or due to any other circumstance, became effective or could be implemented only after the date of this Agreement; or
- (b) the amendment, modification, repeal or withdrawal of any Law or Directive (including any official interpretation thereof which the Parties have relied upon in entering into this Agreement) in force at the date of this Agreement; or
- (c) the modification in the application, enforcement, interpretation or implementation of any Law or Directive by a Governmental Instrumentality which the Parties have relied upon in entering into this Agreement, which modification occurred at any time after the date of this Agreement,

which causes or may cause serious damage to, or materially and adversely affects the financial condition of, any of the Parties. It is understood that there is serious damage to, or material and adverse effect on the financial condition of, a

Party if the cost impact is more than ten percent (10%) of the annual capacity payment. For clarity, costs resulting from the difference between the actual fuel commodity cost and the forecasted fuel commodity cost shall not be considered as arising from Material Adverse Government Action.

xxx

2.2. Term of Agreement

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

2.2.2. The term of this Agreement shall commence on the Operations Effective Date, and shall expire on February 25, 2025, unless terminated earlier in accordance with the terms of this Agreement and upon approval by the ERC, or extended by application of Section 15.3.3 (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 the later between February 26, 2024 and the ERC Approval (the "Operations Effective Date"), until February 25, 2025; *provided that*, the conditions set out in Section 3.2.1 have been satisfied

xxx

5.1. Supply of Power

(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.

xxx

Article 8. Outages

8.1. 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 8.2.3 and subject to Article 16, make Available the Contract Capacity and deliver the Associated Energy to Meralco, which shall be paid at the lower between the actual cost of Replacement Power and the Price, as specified in Appendix C. For clarity, in case of this Section 8.1, Power Supplier may procure such Contract Capacity and Associated Energy from any other source.

8.2. 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.

- 8.2.1. If (*sic*) the event of failure by Power Supplier to provide the Contract Capacity and/or Associated Energy, 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.
- 8.2.2. If Power Supplier cannot provide supply of power from the Plant or portfolio of Plants, WESM, or any other source, Power Supplier shall pay a fine equivalent to Nine Hundred Eight Philippine Peso (Php 908) multiplied by each affected MWh nomination by Meralco, which shall be used to reduce the generation charge to the consumers. For avoidance of doubt, in case Power Supplier fails or refuses to supply Replacement Power despite availability thereof, then Section 16.1 shall apply.
- 8.2.3. 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.

Article 9. Adjustments in Contract Capacity and Associated Energy

- 9.1. Subject to the provisions of Section 9.2 below, Meralco shall, from time to time, be entitled to a reduction in the Contract Capacity and Associated Energy (the "Reduction in Contract Capacity and Associated Energy") equivalent to the reduction in the demand of its captive customers in order to avoid stranded contract capacities or costs, or by reason of the enforcement of Retail Competition and Open Access (RCOA), the Renewable Energy Law, Renewable Portfolio Standards (RPS), Green Energy Option Program (GEOP), Net Metering program, and other similar government programs, Laws and Legal Requirements.
- 9.2. Meralco shall give a written notice at least five (5) Days prior to the first Day of the next Billing Period to Power Supplier specifying the Reduction in Contract Capacity and Associated Energy pursuant to Section 9.1, indicating when such reductions shall take place. Upon receipt by Power Supplier of such written notice, Meralco shall cease to have any rights and obligations under this Agreement in respect of such Reduction in Contract Capacity and Associated Energy. Any such reduction shall be limited to the extent of the Contract Capacity and Associated Energy that will allow Meralco to comply with its obligation to supply electricity in the least cost manner to its customers as of the date indicated in the

notice when such Reduction in Contract Capacity and Associated Energy shall commence. Except for such Reduction in Contract Capacity and Associated Energy and the resulting reduction in Capacity Payment, all other terms and conditions of this Agreement, as approved by the ERC, shall remain in full force and effect. For this purpose, Parties shall execute an operations protocol and provide a copy thereof to the ERC.

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12.2 ERC Approval

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

XXX"

IV. GENERATION RATE IMPACT

11. Based on the foregoing, and given a certain set of assumptions, the effective rate under the MERALCO-LPI PSA is Php5.4650 per kWh (at plant gate, VAT exclusive), as shown in the RATE IMPACT ANALYSIS below:

Limay Power Inc. (LPI) PSA - Rate Impact at 100% pcf

BILLING COMPONENT	UNIT	BASE RATE ^(a)	BILLING DETERMINANT ^(b)	AMOUNT (PHP)
A. Capacity Payment (MCP)				
Peso Portion	(Php/kW-month)	1,354.2000	400,000 (kW)	6,500,160,000.00
B. Fixed O&M Payment (MFOM)				
Peso Portion	(Php/kW-month)	256.2000	400,000 (kW)	1,229,760,000.00
C. Fuel Cost Payment (MFP)				
Peso Portion	(Php/kWh)	3.1650	3,513,600,000 (kWh)	11,120,544,000.00
D. Variable O&M Payment (MVOM)				
Peso Portion	(Php/kWh)	0.1000	3,513,600,000 (kWh)	351,360,000.00
Total Payment (VAT exclusive)	(Php)			19,201,824,000.00
Effective Rate at Plant Gate	(Php/kWh)			5.4650
WESM Une Rental Rate ^(c)	(Php/kWh)			0.1500
Delivered Rate (VAT exclusive)	(Php/kWh)			5.6150
Effective Cost if sourced from WESM ^(d)	(Php/kWh)			7.9301
Increase / (Decrease) over WESM Price	(Php/kWh)			(2.3151)
Meralco Captive Energy Demand ^(e)	(kWh)			36,636,507,118.08
Increase / (Decrease) in Generation Cost	(Php)			(8,134,163,936.00)
Increase / (Decrease) in Generation Cost	(Php/kWh)			(0.2220)

NOTES:

^(a) Base Rates as set forth in Schedule 1 of Appendix C of the PSA.
^(b) Energy Payments based on 100% plant capacity factor.
^(c) Une Rental rate for LPI is based on the maximum allowable value for the Contract in the PSA
^(d) Cost if equivalent volume of LPI was sourced from the WESM based on forecasted average hourly prices from March 2024 to February 2025.
^(e) Forecasted Meralco Captive Energy for March 2024 to February 2025 based on 2023 Power Supply Procurement Plan as submitted to DOE.

12. MERALCO notes that the delivered rate of PhP5.6150 per kWh (line rental inclusive and VAT exclusive) is lower by about PhP2.3151 per kWh than the effective cost of PhP7.9301 per kWh, if the equivalent capacity under the MERALCO-LPI PSA is to be sourced from the Wholesale Electricity Spot Market (“WESM”). In fact, by sourcing the capacity through the MERALCO-LPI PSA, MERALCO’s average blended generation rate will be reduced by about PhP0.2220 per kWh (as seen in the RATE IMPACT ANALYSIS above) resulting in savings to consumers of about PhP8.1 Billion.
13. In support of this Joint Application, the Judicial Affidavit of ENGR. WESLEY M. NAVARRO, Staff of MERALCO’s Energy Sourcing – Energy Resource Planning, is attached as ANNEX “E” and made an integral part hereof.

V. COMPLIANCE WITH DOCUMENTARY REQUIREMENTS

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

Description of Document	Annex
A. Applicants’ Authority	
MERALCO’s Secretary’s Certificate	“A”
LPI’s Secretary Certificates	“B” and “B-1”
B. MERALCO’s Documents	
BAC-PSA Summary-Report regarding the conduct of the CSP	“C”
DOE Certificate of Conformity No. 2023-12-004 dated 29 December 2023	“C-1”
MERALCO-LPI PSA	“D”
Executive Summary	“D-1”
Judicial Affidavit of MERALCO’s witness, Engr. Wesley M. Navarro, staff of MERALCO’s Energy Sourcing – Energy Resource Planning	“E”
MERALCO’s Articles of Incorporation and By-Laws (SEC-certified true copy)	“F”
MERALCO’s Latest General Information Sheet (“GIS”) (SEC-certified true copy)	“G”
Verified Certification of True Copies of MERALCO’s Articles of Incorporation, By-Laws, and GIS and of MERALCO’s Ultimate Parent Company, all of its subsidiaries and affiliates	“G-1”
MERALCO’s Demand Side Management Program	“H”

Description of Document	Annex
Write-up on the Non-Applicability of National Power Corporation ("NPC") Certification regarding whether Transition Supply Contract ("TSC") capacity and energy is expected to be available during the contractual period	"I"
<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. 	"J" "J-1" "J-2" "J-3" "J-4" "J-5"
Documents showing MERALCO's conduct of CSP	"K" and series
C. LPI's Documents	
LPI's Certificate of Incorporation, Articles of Incorporation and By-laws	"L" and series
LPI's General Information Sheet	"M"
LPI's Secretary's Certificate Re: Ultimate Parent Company	"N"
Write-up/Explanation on the Non-applicability of Shareholders Agreement	"O" "
Write-up/Explanation on the Non-applicability of Certificate of Registration with the Board of Investments ("BOI")	"P" and "P-1"
Certification on Ongoing Evaluation of the Provisional Authority to Operate Application	"Q"
LPI's Certificate of Endorsement from the DOE	"R"
LPI's Environmental Compliance Certificate	"S"
Write-up/Explanation on the Non-applicability of the Requirements regarding Renewable Energy Plant	"T"
Write-up/Explanation on the Non-applicability of Water Permit from the National Water Resources Board ("NWRB")	"U"
Transmission Service Agreement ("TSA") between the National Grid Corporation of the Philippines ("NGCP") and LPI	"V"
Write-up on the Non-applicability of the following Copy of Related Agreements:	"W" and Series

Description of Document	Annex
a. Transmission Contract; b. IPPA Agreement; c. Wholesale Aggregator Agreement; d. Project Feasibility	
Single Line Diagram	"X" and "X-1"
Write-up on the Non-applicability of EPC Contract	"Y"
O&M Contract (<i>Confidential</i>)	"Z"
LPI's Financial Model, Rate Derivation and Other Financial Documents (<i>Confidential</i>)	"AA" and Series
Sample Bill (<i>Confidential</i>)	"BB"
LPI Outages	"CC"
Notarized Certification on the Procurement Process of Fuel	"DD"
Description of the Power Plant	"EE"
LPI's Certification on the Net Plant Heat Rate	"FF"
LPI's latest Audited Financial Statements ("AFS"), Balance Sheet, Income Statement, and Statement of Cash Flows	"GG"
Write-up/Explanation on the capacity of LPI to supply the minimum energy requirements of the PSA	"HH"
Write-up/Explanation on the Non-applicability of the Distribution Wheeling Service	"II"
Certification from Independent Electricity Market Operator of the Philippines ("IEMOP") on the WESM Registration of LPI	"JJ"
Sample Bill	"KK"

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

15. It bears emphasis that the MERALCO-LPI PSA has a competitively procured contract price for interim baseload capacity supply after undergoing CSP. In fact, such a contract price is even lower than the recent offers received by MERALCO for an interim baseload supply. Other features of the MERALCO-LPI PSA that shall clearly benefit customers in terms of reliability of supply include no outage allowance, and a guaranteed 100% availability of supply, which is crucial in the summer months of 2024.
16. The MERALCO-LPI PSA capacity is crucial for MERALCO's supply requirement because of the anticipated thinning electricity operating margins in 2024, especially with the upcoming simultaneous scheduled

maintenance and possible forced outages of power plants, which will ultimately result in the exposure of MERALCO's customers to the highly volatile prices of the WESM.

17. 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 (<https://newsinfo.inquirer.net/1924440/higher-electricity-prices-forecast-until-may>).
18. The MERALCO-LPI PSA can help shield MERALCO's customers from the looming supply deficiency because the supply availability under the MERALCO-LPI PSA is guaranteed 100% and no outage allowance is provided therein.
19. Rule 14 of the ERC Revised Rules of Practice and Procedure ("ERC's RRPP") expressly provides for this Honorable Commission's authority to issue a provisional authority or grant interim relief to immediately implement the MERALCO-LPI PSA. Such issuance or grant will not only avert the situation where MERALCO would be constrained to source its capacity deficit from the WESM, thereby exposing its customers to volatile prices, but more importantly, the immediate implementation of the MERALCO-LPI PSA would redound to the best interest of electric power consumers since aside from the very competitive rate, the supply availability under the MERALCO-LPI PSA is guaranteed 100% and no outage allowance is provided therein.

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

20. Under Rule 4 of ERC's RRPP, a party to any proceeding before the Honorable Commission may request that certain information not be disclosed and be treated as confidential, by describing with particularity the information to be treated as confidential, specifying the ground for the claim of confidential treatment of the information and, if applicable, specifying the period during which the information must not be disclosed.
21. With respect to the following documents marked as ANNEXES "Z" and "AA" and Series LPI 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 LPI. The data and information contained therein are part of the overall formula and process in

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

22. In the case of *Air Philippines Corporation vs. Pennswell Inc.*,¹ 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.)

23. 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."

¹ G. R. No. 172835, 13 December 2007.

Thus, the Commission resolved to treat the said documents confidential and may not be publicly disclosed.”²

24. LPI 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.”
25. 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 “Z” and “AA” and Series to the public. 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.
26. Lastly and corollary to the foregoing, LPI would like to implore the discerning wisdom of the Honorable Commission to include in its issuance for this purpose the *“procedures for handling or returning the confidential information, as may be appropriate, upon the close of the proceedings” (Sec. 2, Rule 4, ERC’s RRPP).*
27. This is guided by the fact that LPI 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 LPI enclosed in the subject annexes.

PRAYER

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

- a) During the pendency of the proceedings/scheduled hearing(s) and before the final resolution/approval of this case, that an Order be issued for the GRANT of:
 - i. a *Provisional Authority or Interim Relief* allowing the Joint Applicants to immediately implement the EPSA subject of this case in its entirety;
 - ii. a *Directive* affording Annexes “Z” and “AA” and Series *confidential treatment* in the handling and evaluation thereof from the time these annexes are received by the Honorable Commission up to the termination of the instant case by continuously protecting the said

² *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.*

information from public disclosure by maintaining the same as separate and apart from the records of the case, and ensuring that these are not divulged to unauthorized persons other than the concerned staff and officers of the Honorable Commission; and,

- iii. an *Issuance* concerning the procedures for handling the confidential information upon the close of the proceedings and its return/delivery to LPI.
- b) After hearing on the merits, render a Decision APPROVING the MERALCO-LPI PSA and the terms and conditions thereunder, including the price.

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

Finding the said *Joint Application* to be sufficient in form and with the required fees having been paid, the Commission hereby sets the same for hearing for determination of compliance with the jurisdictional requirements, expository presentation, Pre-Trial Conference, and presentation of evidence on the following dates and online platform for the conduct thereof, pursuant to Resolution No. 09, Series of 2020³ and Resolution No. 01, Series of 2021⁴ (ERC Revised Rules of Practice and Procedure):

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

Accordingly, Joint Applicants MERALCO and LPI are hereby directed to host the virtual hearings at **MERALCO's principal office located at Lopez Building, Ortigas Avenue, Brgy. Ugong, Pasig City**, as the designated venue for the conduct thereof, and ensure that the same is open to the public. Moreover, Joint Applicants MERALCO and LPI shall guarantee that, during the

³ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.
⁴ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

conduct of the expository presentation, the participation of the public shall not be impaired.

RELATIVE THERETO, Joint Applicants MERALCO and LPI 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 virtual hearing;
- 2) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing* the Offices of the Provincial Governors, the Mayors, and their respective Local Government Unit (LGU) legislative bodies within MERALCO's franchise area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within MERALCO's franchise area, by any other means available and appropriate, of the filing of the *Joint Application*, its reasons therefor, and of the scheduled virtual hearings thereon;
- 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; and
- 5) Furnish with copies of the *Joint Application* and its attachments, except those subject of a motion for confidential treatment of information, all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

Within five (5) calendar days prior to the date of the initial virtual hearing, Joint Applicants MERALCO and LPI must submit to the Commission via electronic mail (e-mail) at doCKET@erc.ph, and copy furnish the Legal Service through legal@erc.ph, the scanned

copies of their written compliance with the aforementioned jurisdictional requirements, attaching the following methodically arranged and duly marked documents:

- 1) The evidence of publication of the attached *Notice of Virtual Hearing* consisting of affidavits 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 Governors, Mayors and LGU legislative bodies or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by MERALCO and LPI to inform the consumers within MERALCO's franchise area of the filing of the *Joint Application*, their 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;
- 5) The evidence of receipt of copies of the *Joint Application* and its attachments, except those subject of a motion for confidential treatment of information, if any, by all those making requests therefor; and
- 6) Such other proofs of compliance with the requirements of the Commission.

Moreover, Joint Applicants MERALCO and LPI 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 Governors, Mayors and Local Legislative Bodies, and to submit proof of posting thereof.

Joint Applicants MERALCO and LPI, and all interested parties are also required to submit to the Commission via e-mail at docket@erc.ph, and copy furnish the Legal Service through

legal@erc.ph, at least five (5) calendar days before the date of the scheduled initial 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.

Joint Applicants MERALCO and LPI 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 Joint Applicants MERALCO and LPI to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearings.

Joint Applicants MERALCO and LPI must also be prepared to make an expository presentation of the instant *Joint 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*. Relevant information and pertinent details substantiating the reasons and justifications for the *Joint Application* must be cited in support thereof.

Joint Applicants MERALCO and LPI are hereby directed to file a copy of their Expository Presentation via e-mail at docket@erc.ph, and copy furnish the Legal Service through legal@erc.ph, **at least five (5) calendar days** prior to the scheduled virtual hearing. Joint Applicants MERALCO and LPI 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.

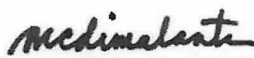
Joint Applicants MERALCO and LPI are further directed to submit, either through personal service, registered mail or ordinary mail/private courier, one (1) set of the original or certified true hard copies of their Jurisdictional Compliance, Expository Presentation, Pre-Trial Brief, and Judicial Affidavits of witnesses, **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.

Finally, Joint Applicants MERALCO and LPI, including their authorized representatives and witnesses, are hereby directed to provide the Commission, thru legal.virtualhearings@erc.ph, 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 hearings.

SO ORDERED.

Pasig City, 29 April 2024.

FOR AND BY AUTHORITY
OF THE COMMISSION:


MONALISA C. DIMALANTA
Chairperson and CEO


LS: VMA/LSP/KTB

ERC
Office of the Chairperson and CEO



MCD2024-016838

ERC CASE NO. 2024-056 RC
ORDER/ 29 APRIL 2024
PAGE 20 OF 30

Copy Furnished:

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City of Caloocan
10. Office of the Local Government Unit (LGU) Legislative Body
City of Caloocan
11. Office of the City Mayor
City of Las Pinas
12. Office of the Local Government Unit (LGU) Legislative Body
City of Las Pinas
13. Office of the City Mayor
City of Makati
14. Office of the Local Government Unit (LGU) Legislative Body
City of Makati
15. Office of the City Mayor
City of Malabon
16. Office of the Local Government Unit (LGU) Legislative Body
City of Malabon
17. Office of the City Mayor
City of Mandaluyong

- 18. Office of the Local Government Unit (LGU) Legislative Body
City of Mandaluyong
- 19. Office of the City Mayor
City of Manila
- 20. Office of the Local Government Unit (LGU) Legislative Body
City of Manila
- 21. Office of the City Mayor
City of Marikina
- 22. Office of the Local Government Unit (LGU) Legislative Body
City of Marikina
- 23. Office of the City Mayor
City of Muntinlupa
- 24. Office of the Local Government Unit (LGU) Legislative Body
City of Muntinlupa
- 25. Office of the City Mayor
City of Navotas
- 26. Office of the Local Government Unit (LGU) Legislative Body
City of Navotas
- 27. Office of the City Mayor
City of Paranaque
- 28. Office of the Local Government Unit (LGU) Legislative Body
City of Paranaque
- 29. Office of the City Mayor
City of Pasay
- 30. Office of the Local Government Unit (LGU) Legislative Body
City of Pasay
- 31. Office of the City Mayor
City of Pasig
- 32. Office of the Local Government Unit (LGU) Legislative Body
City of Pasig
- 33. Office of the Municipal Mayor
Municipality of Pateros
- 34. Office of the Local Government Unit (LGU) Legislative Body
Municipality of Pateros
- 35. Office of the City Mayor
City of Quezon
- 36. Office of the Local Government Unit (LGU) Legislative Body
City of Quezon
- 37. Office of the City Mayor
City of San Juan
- 38. Office of the Local Government Unit (LGU) Legislative Body
City of San Juan
- 39. Office of the City Mayor
City of Taguig
- 40. Office of the Local Government Unit (LGU) Legislative Body
City of Taguig
- 41. Office of the City Mayor
City of Valenzuela

ERC CASE NO. 2024-056 RC
ORDER/ 29 APRIL 2024
PAGE 22 OF 30

42. Office of the Local Government Unit (LGU) Legislative Body
City of Valenzuela
43. Office of the Mayor
Angat, Bulacan
44. Office of the Local Government Unit (LGU) Legislative Body
Angat, Bulacan
45. Office of the Mayor
Balagtas, Bulacan
46. Office of the Local Government Unit (LGU) Legislative Body
Balagtas, Bulacan
47. Office of the Mayor
Baliwag, Bulacan
48. Office of the Local Government Unit (LGU) Legislative Body
Baliwag, Bulacan
49. Office of the Mayor
Bocaue, Bulacan
50. Office of the Local Government Unit (LGU) Legislative Body
Bocaue, Bulacan
51. Office of the Mayor
Bulacan, Bulacan
52. Office of the Local Government Unit (LGU) Legislative Body
Bulacan, Bulacan
53. Office of the Mayor
Bustos, Bulacan
54. Office of the Local Government Unit (LGU) Legislative Body
Bustos, Bulacan
55. Office of the Mayor
Calumpit, Bulacan
56. Office of the Local Government Unit (LGU) Legislative Body
Calumpit, Bulacan
57. Office of the Mayor
Dona Remedios Trinidad, Bulacan
58. Office of the Local Government Unit (LGU) Legislative Body
Dona Remedios Trinidad, Bulacan
59. Office of the Mayor
Guiguinto, Bulacan
60. Office of the Local Government Unit (LGU) Legislative Body
Guiguinto, Bulacan
61. Office of the Mayor
Hagonoy, Bulacan
62. Office of the Local Government Unit (LGU) Legislative Body
Hagonoy, Bulacan
63. Office of the City Mayor
Malolos, Bulacan
64. Office of the Local Government Unit (LGU) Legislative Body
Malolos, Bulacan
65. Office of the Mayor
Marilao, Bulacan
66. Office of the Local Government Unit (LGU) Legislative Body
Marilao, Bulacan

ERC CASE NO. 2024-056 RC
ORDER/ 29 APRIL 2024
PAGE 23 OF 30

67. Office of the City Mayor
Meycauayan, Bulacan
68. Office of the Local Government Unit (LGU) Legislative Body
Meycauayan, Bulacan
69. Office of the Mayor
Norzagaray, Bulacan
70. Office of the Local Government Unit (LGU) Legislative Body
Norzagaray, Bulacan
71. Office of the Mayor
Obando, Bulacan
72. Office of the Local Government Unit (LGU) Legislative Body
Obando, Bulacan
73. Office of the Mayor
Pandi, Bulacan
74. Office of the Local Government Unit (LGU) Legislative Body
Pandi, Bulacan
75. Office of the Mayor
Paombong, Bulacan
76. Office of the Local Government Unit (LGU) Legislative Body
Paombong, Bulacan
77. Office of the Mayor
Plaridel, Bulacan
78. Office of the Local Government Unit (LGU) Legislative Body
Plaridel, Bulacan
79. Office of the Mayor
Pulilan, Bulacan
80. Office of the Local Government Unit (LGU) Legislative Body
Pulilan, Bulacan
81. Office of the Mayor
San Ildefonso, Bulacan
82. Office of the Local Government Unit (LGU) Legislative Body
San Ildefonso, Bulacan
83. Office of the City Mayor
San Jose del Monte, Bulacan
84. Office of the Local Government Unit (LGU) Legislative Body
San Jose del Monte, Bulacan
85. Office of the Mayor
San Miguel, Bulacan
86. Office of the Local Government Unit (LGU) Legislative Body
San Miguel, Bulacan
87. Office of the Mayor
San Rafael, Bulacan
88. Office of the Local Government Unit (LGU) Legislative Body
San Rafael, Bulacan
89. Office of the Mayor
Sta. Maria, Bulacan
90. Office of the Local Government Unit (LGU) Legislative Body
Sta. Maria, Bulacan
91. Office of the Mayor
Alfonso, Cavite

ERC CASE NO. 2024-056 RC
ORDER/ 29 APRIL 2024
PAGE 24 OF 30

92. Office of the Local Government Unit (LGU) Legislative Body
Alfonso, Cavite
93. Office of the Mayor
Amadeo, Cavite
94. Office of the Local Government Unit (LGU) Legislative Body
Amadeo, Cavite
95. Office of the Mayor
Bacoor, Cavite
96. Office of the Local Government Unit (LGU) Legislative Body
Bacoor, Cavite
97. Office of the Mayor
Carmona, Cavite
98. Office of the Local Government Unit (LGU) Legislative Body
Carmona, Cavite
99. Office of the Mayor
Cavite, Cavite
100. Office of the Local Government Unit (LGU) Legislative Body
Cavite, Cavite
101. Office of the Mayor
Dasmarinas, Cavite
102. Office of the Local Government Unit (LGU) Legislative Body
Dasmarinas, Cavite
103. Office of the Mayor
General Emilio Aguinaldo, Cavite
104. Office of the Local Government Unit (LGU) Legislative Body
General Emilio Aguinaldo, Cavite
105. Office of the Mayor
General Mariano Alvarez, Cavite
106. Office of the Local Government Unit (LGU) Legislative Body
General Mariano Alvarez, Cavite
107. Office of the Mayor
General Trias, Cavite
108. Office of the Local Government Unit (LGU) Legislative Body
General Trias, Cavite
109. Office of the Mayor
Imus, Cavite
110. Office of the Local Government Unit (LGU) Legislative Body
Imus, Cavite
111. Office of the Mayor
Indang, Cavite
112. Office of the Local Government Unit (LGU) Legislative Body
Indang, Cavite
113. Office of the Mayor
Kawit, Cavite
114. Office of the Local Government Unit (LGU) Legislative Body
Kawit, Cavite
115. Office of the Mayor
Magallanes, Cavite
116. Office of the Local Government Unit (LGU) Legislative Body
Magallanes, Cavite

ERC CASE NO. 2024-056 RC
ORDER/ 29 APRIL 2024
PAGE 25 OF 30

117. Office of the Mayor
Maragondon, Cavite
118. Office of the Local Government Unit (LGU) Legislative Body
Maragondon, Cavite
119. Office of the Mayor
Mendez, Cavite
120. Office of the Local Government Unit (LGU) Legislative Body
Mendez, Cavite
121. Office of the Mayor
Naic, Cavite
122. Office of the Local Government Unit (LGU) Legislative Body
Naic, Cavite
123. Office of the Mayor
Noveleta, Cavite
124. Office of the Local Government Unit (LGU) Legislative Body
Noveleta, Cavite
125. Office of the Mayor
Rosario, Cavite
126. Office of the Local Government Unit (LGU) Legislative Body
Rosario, Cavite
127. Office of the Mayor
Silang, Cavite
128. Office of the Local Government Unit (LGU) Legislative Body
Silang, Cavite
129. Office of the Mayor
Tagaytay, Cavite
130. Office of the Local Government Unit (LGU) Legislative Body
Tagaytay, Cavite
131. Office of the Mayor
Tanza, Cavite
132. Office of the Local Government Unit (LGU) Legislative Body
Tanza, Cavite
133. Office of the Mayor
Ternate, Cavite
134. Office of the Local Government Unit (LGU) Legislative Body
Ternate, Cavite
135. Office of the Mayor
Trece Martires, Cavite
136. Office of the Local Government Unit (LGU) Legislative Body
Trece Martires, Cavite
137. Office of the Mayor
Angono, Rizal
138. Office of the Local Government Unit (LGU) Legislative Body
Angono, Rizal
139. Office of the Mayor
Antipolo, Rizal
140. Office of the Local Government Unit (LGU) Legislative Body
Antipolo, Rizal
141. Office of the Mayor
Baras, Rizal

ERC CASE NO. 2024-056 RC
ORDER/ 29 APRIL 2024
PAGE 26 OF 30

142. Office of the Local Government Unit (LGU) Legislative Body
Baras, Rizal
143. Office of the Mayor
Binangonan, Rizal
144. Office of the Local Government Unit (LGU) Legislative Body
Binangonan, Rizal
145. Office of the Mayor
Cainta, Rizal
146. Office of the Local Government Unit (LGU) Legislative Body
Cainta, Rizal
147. Office of the Mayor
Cardona, Rizal
148. Office of the Local Government Unit (LGU) Legislative Body
Cardona, Rizal
149. Office of the Mayor
Jala-Jala, Rizal
150. Office of the Local Government Unit (LGU) Legislative Body
Jala-Jala, Rizal
151. Office of the Mayor
Morong, Rizal
152. Office of the Local Government Unit (LGU) Legislative Body
Morong, Rizal
153. Office of the Mayor
Pililla, Rizal
154. Office of the Local Government Unit (LGU) Legislative Body
Pililla, Rizal
155. Office of the Mayor
Rodriguez, Rizal
156. Office of the Local Government Unit (LGU) Legislative Body
Rodriguez, Rizal
157. Office of the Mayor
San Mateo, Rizal
158. Office of the Local Government Unit (LGU) Legislative Body
San Mateo, Rizal
159. Office of the Mayor
Tanay, Rizal
160. Office of the Local Government Unit (LGU) Legislative Body
Tanay, Rizal
161. Office of the Mayor
Taytay, Rizal
162. Office of the Local Government Unit (LGU) Legislative Body
Taytay, Rizal
163. Office of the Mayor
Teresa, Rizal
164. Office of the Local Government Unit (LGU) Legislative Body
Teresa, Rizal
165. Office of the Mayor
Batangas, Batangas
166. Office of the Local Government Unit (LGU) Legislative Body
Batangas, Batangas

ERC CASE NO. 2024-056 RC
ORDER/ 29 APRIL 2024
PAGE 27 OF 30

167. Office of the Mayor
San Pascual, Batangas
168. Office of the Local Government Unit (LGU) Legislative Body
San Pascual, Batangas
169. Office of the Mayor
Sto. Tomas, Batangas
170. Office of the Local Government Unit (LGU) Legislative Body
Sto. Tomas, Batangas
171. Office of the Mayor
Alaminos, Laguna
172. Office of the Local Government Unit (LGU) Legislative Body
Alaminos, Laguna
173. Office of the Mayor
Bay, Laguna
174. Office of the Local Government Unit (LGU) Legislative Body
Bay, Laguna
175. Office of the Mayor
Binan, Laguna
176. Office of the Local Government Unit (LGU) Legislative Body
Binan, Laguna
177. Office of the Mayor
Cabuyao, Laguna
178. Office of the Local Government Unit (LGU) Legislative Body
Cabuyao, Laguna
179. Office of the Mayor
Calamba, Laguna
180. Office of the Local Government Unit (LGU) Legislative Body
Calamba, Laguna
181. Office of the Mayor
Calauan, Laguna
182. Office of the Local Government Unit (LGU) Legislative Body
Calauan, Laguna
183. Office of the Mayor
Liliw, Laguna
184. Office of the Local Government Unit (LGU) Legislative Body
Liliw, Laguna
185. Office of the Mayor
Los Banos, Laguna
186. Office of the Local Government Unit (LGU) Legislative Body
Los Banos, Laguna
187. Office of the Mayor
Luisiana, Laguna
188. Office of the Local Government Unit (LGU) Legislative Body
Luisiana, Laguna
189. Office of the Mayor
Magdalena, Laguna
190. Office of the Local Government Unit (LGU) Legislative Body
Magdalena, Laguna
191. Office of the Mayor
Majayjay, Laguna

ERC CASE NO. 2024-056 RC
ORDER/ 29 APRIL 2024
PAGE 28 OF 30

192. Office of the Local Government Unit (LGU) Legislative Body
Majayjay, Laguna
193. Office of the Mayor
Nagcarlan, Laguna
194. Office of the Local Government Unit (LGU) Legislative Body
Nagcarlan, Laguna
195. Office of the Mayor
Pila, Laguna
196. Office of the Local Government Unit (LGU) Legislative Body
Pila, Laguna
197. Office of the Mayor
Rizal, Laguna
198. Office of the Local Government Unit (LGU) Legislative Body
Rizal, Laguna
199. Office of the Mayor
San Pablo, Laguna
200. Office of the Local Government Unit (LGU) Legislative Body
San Pablo, Laguna
201. Office of the Mayor
San Pedro, Laguna
202. Office of the Local Government Unit (LGU) Legislative Body
San Pedro, Laguna
203. Office of the Mayor
Sta. Cruz, Laguna
204. Office of the Local Government Unit (LGU) Legislative Body
Sta. Cruz, Laguna
205. Office of the Mayor
Sta. Rosa, Laguna
206. Office of the Local Government Unit (LGU) Legislative Body
Sta. Rosa, Laguna
207. Office of the Mayor
Victoria, Laguna
208. Office of the Local Government Unit (LGU) Legislative Body
Victoria, Laguna
209. Office of the Mayor
Candelaria, Quezon
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Candelaria, Quezon
211. Office of the Mayor
Dolores, Quezon
212. Office of the Local Government Unit (LGU) Legislative Body
Dolores, Quezon
213. Office of the Mayor
Lucban, Quezon
214. Office of the Local Government Unit (LGU) Legislative Body
Lucban, Quezon
215. Office of the Mayor
Lucena, Quezon
216. Office of the Local Government Unit (LGU) Legislative Body
Lucena, Quezon

ERC CASE NO. 2024-056 RC
ORDER/ 29 APRIL 2024
PAGE 29 OF 30

217. Office of the Mayor
Mauban, Quezon
218. Office of the Local Government Unit (LGU) Legislative Body
Mauban, Quezon
219. Office of the Mayor
Pagbilao, Quezon
220. Office of the Local Government Unit (LGU) Legislative Body
Pagbilao Quezon
221. Office of the Mayor
Sampaloc, Quezon
222. Office of the Local Government Unit (LGU) Legislative Body
Sampaloc, Quezon
223. Office of the Mayor
San Antonio, Quezon
224. Office of the Local Government Unit (LGU) Legislative Body
San Antonio, Quezon
225. Office of the Mayor
Sariaya, Quezon
226. Office of the Local Government Unit (LGU) Legislative Body
Sariaya, Quezon
227. Office of the Mayor
Tayabas, Quezon
228. Office of the Local Government Unit (LGU) Legislative Body
Tayabas, Quezon
229. Office of the Mayor
Tiaong, Quezon
230. Office of the Local Government Unit (LGU) Legislative Body
Tiaong, Quezon
231. Office of the Mayor
Apalit, Pampanga
232. Office of the Local Government Unit (LGU) Legislative Body
Apalit, Pampanga
233. Office of the Mayor
Candaba, Pampanga
234. Office of the Local Government Unit (LGU) Legislative Body
Candaba, Pampanga
235. Office of the Mayor
San Simon, Pampanga
236. Office of the Local Government Unit (LGU) Legislative Body
San Simon, Pampanga
237. Office of the Governor
Province of Bulacan
238. Office of the Local Government Unit (LGU) Legislative Body
Province of Bulacan
239. Office of the Governor
Province of Cavite
240. Office of the Local Government Unit (LGU) Legislative Body
Province of Cavite
241. Office of the Governor
Province of Rizal

ERC CASE NO. 2024-056 RC
ORDER/ 29 APRIL 2024
PAGE 30 OF 30

- 242. Office of the Local Government Unit (LGU) Legislative Body
Province of Rizal
- 243. Office of the Governor
Province of Batangas
- 244. Office of the Local Government Unit (LGU) Legislative Body
Province of Batangas
- 245. Office of the Governor
Province of Laguna
- 246. Office of the Local Government Unit (LGU) Legislative Body
Province of Laguna
- 247. Office of the Governor
Province of Quezon
- 248. Office of the Local Government Unit (LGU) Legislative Body
Province of Quezon
- 249. Office of the Governor
Province of Pampanga
- 250. Office of the Local Government Unit (LGU) Legislative Body
Province of Pampanga
- 251. Regulatory Operations Service (ROS)
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ros@erc.ph