

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

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

ERC CASE NO. 2023-094 RC

**MANILA ELECTRIC
COMPANY AND SOUTH
PREMIERE POWER CORP.,
Applicants.**

Promulgated:
September 05, 2023

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NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 27 July 2023, Manila Electric Company (MERALCO) and South Premiere Power Corp. (SPPC) filed a *Joint Application* dated 25 April 2023, seeking the Commission's approval of their Emergency Power Supply Agreement (EPSA), with 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, Bo. 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. In addition, pursuant to an IPPA Agreement with the Power Sector Assets and Liabilities Management Corporation, with the conformity of the National Power Corporation, SPPC's Affiliate, San Miguel Energy Corporation, has management and control of the 1,200 MW power generating facility in Sual, Pangasinan, on the island of Luzon.

I. STATEMENT OF FACTS

A. MERALCO's Power Situation Outlook for 2023

- A.1. Suspension of the MERALCO-SPPC 2019 PSA involving 670 MW contract capacity
5. MERALCO's bilateral power supply contracts portfolio was reduced by 670 MW starting 07 December 2022, due to the suspension of the MERALCO and SPPC 670 MW power supply agreement (dated 13 September 2019; docketed as ERC Case No. 2019-081 RC) ("MERALCO-SPPC 2019 PSA") as a result of a 60-day Temporary Restraining Order ("TRO") and, subsequently, a Writ of Preliminary Injunction ("WPI") issued by the Court of Appeals on 23 November 2022 in connection with SPPC's Petition for Certiorari with application for [TRO] and [WPI] dated 4 November 2022 (docketed as CA G.R. SP No. 176036).
6. Thus, since December 2022, MERALCO has been seeking proposals for EPSA/s from various power suppliers in the hope that it may be able to replace the capacity needed due to the suspension of the MERALCO-SPPC 2019 PSA. Subsequently, SPPC and Therma Luzon, Inc. ("TLI") provided offers to MERALCO for an emergency power supply agreement ("EPSA") to supply 300 MW and 370 MW, respectively.
7. Pursuant thereto and considering the urgent need to contract additional capacity so as not to be exposed to the volatile prices at the Wholesale Electricity Spot Market ("WESM"), on 8 March 2023, MERALCO filed with the Department of

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Energy ("DOE") a request for certificate of exemption ("COE") from the conduct of a competitive selection process ("CSP") ("COE-CSP") of the MERALCO-SPPC EPSA (300 MW) and MERALCO-TLI EPSA (370 MW),¹ pursuant to the DOE Department Circular No. DC2018-02-0003 (the "2018 CSP Rules"),² as amended by DOE Department Circular No. DC2021-09-0030 (the "2021 Revised CSP Rules").³

A.2. MERALCO's 180 MW Baseload Supply Requirement

8. In addition, based on MERALCO's latest Department of Energy ("DOE")-approved Power Supply Procurement Plan, MERALCO foresaw a capacity deficit in its portfolio of 180 MW starting 26 February 2023 to 25 February 2024. However, MERALCO's conduct of a CSP under the 2018 CSP Rules, as amended by the 2021 Revised CSP Rules, resulted in a failed bidding last 13 March 2023.
 9. Given that the start date for this 180 MW baseload supply requirement was already past the intended start date due to the conduct of two (2) rounds of failed biddings/CSP, as required under the 2018 CSP Rules, MERALCO was constrained to secure the same through negotiated procurement of EPSA.
 10. Accordingly, MERALCO solicited, received, and negotiated proposals for an EPSA with several power suppliers, and after evaluation, the additional offered capacity of SPPC for an indivisible 180 MW proved to be the least cost option.
 11. On 22 March 2023, MERALCO submitted its letter to the DOE⁴ requesting for a COE-CSP of the MERALCO-SPPC EPSA (to include an additional 180 MW).
- B. DOE-issued Certificates of Exemption from the conduct of CSP ("COE-CSP") and Nature of the Application**
12. In recognition of the peril of the deficiency supply of 670 MW for MERALCO, as well as the imminent need to meet MERALCO's 180 MW baseload supply requirements, the DOE issued COE-CSPs in favor of the MERALCO-SPPC EPSA—for 300 MW on 10 March 2023 and an additional 180 MW on 29 March 2023.
 13. On 24 March 2023, MERALCO and SPPC executed an EPSA for the purchase of up to 480 MW capacity and energy from the Plant starting from Operations Effective Date until 25 March 2024 ("MERALCO-SPPC EPSA"). Pursuant to Section 2.2 of the 2018 CSP Rules, as amended by the 2021 Revised CSP Rules, MERALCO started sending the corresponding

¹ Attached as ANNEX "C" of the *Application*.

² Series of 2018 entitled "Adopting and Prescribing the Policy for the Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreement for the Captive Market."

³ Series of 2021 entitled "Amending Certain Provisions of and Supplementing Department Circular No. DC2018- 02-0003 on the Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreement for the Captive Market."

⁴ Attached as ANNEX "C-2" of the *Application*.

nominations to SPPC beginning 12:01 a.m. of 26 March 2023 for 300 MW, and, beginning 12:01 a.m. of 1 April 2023 for the additional 180 MW.

14. Under Section 45(b) of Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 (“EPIRA”), it is provided that “Distribution utilities [“DUs”] may enter into bilateral power supply contracts subject to review by the ERC xxx”.
15. Corollary to that, Section 2.2 of the 2018 CSP Rules, as amended by the 2021 Revised CSP Rules, reads as follows:

2.2 EXEMPTION FROM CSP.

- 2.2.1 The following instances shall warrant a [COE] from the conduct of [CSP] (COE-CSP) from the DOE:

xxx xxx xxx

- 2.2.1.2 Negotiated procurement of emergency power supply wherein the cooperation period of the corresponding Emergency Power Supply Agreement (EPSA) shall not exceed one (1) year, and such EPSA shall be filed immediately before the Energy Regulatory Commission (ERC) upon the issuance and within the effectivity of the COE-CSP; Provided, that the DU shall prove and certify that it has performed all the necessary and required due diligence, and solicited proposal from at least one (1) power supplier for EPSA to address the emergency situation and to avert and/or mitigate its consequences, and the offer/s from the available Power Supplier/s shall be attached in the request for COE-CSP; Provided also, that the procurement of emergency power supply shall be not be entitled to any form of subsidy. Provided finally, that the rate shall be equivalent to or lower than the latest ERC-approved generation tariff for same or similar technology in comparable areas.”

xxx xxx xxx

- 2.2.1 (sic) For EPSAs contemplated under Section 2.2.1.2, the grant of the COE-CSP authorizes the DU to immediately implement the EPSAs executed by virtue of such certificate, without prejudice to the evaluation and final decision of the ERC on the application for the approval of such EPSAs.

16. Likewise, the 2021 Revised CSP Rules defines emergency power as follows:

- 3.13 “Emergency Power” refers to the power required by the DU in the event that a DU’s actual power supply falls below its load demand due to Force Majeure or Fortuitous Events that are beyond the control of the DU, and such shortfall cannot be addressed through any reasonable means and cannot be supplied by the Wholesale Electricity Spot Market (WESM), subject to the final determination by the DOE. (Underscoring supplied)

II. SALIENT FEATURES OF THE MERALCO-SPPC EPSA

17. The MERALCO-SPPC EPSA, a copy of which is attached as ANNEX “D” and made an integral part hereof, contains the following salient features:

1.1 Definitions

XXX

Contract Capacity or CC shall be set at 480 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

Plant refers to (1) from the relevant Operations Effective Date until Meralco's receipt of notice from Power Supplier of a replacement plant (the "Replacement Notice"), the 1200 MW power generating facility in Sual, Pangasinan, on the island of Luzon (the "Sual Power Plant"); and (2) from date of effectivity indicated in the Replacement Notice, which shall be no earlier than May 25, 2023, the Ilijan Power Plant.

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 March 26, 2023 for 300 MW of the Contract Capacity, to increase to 480 MW on April 1, 2023 provided DOE has granted a certificate of exemption pursuant to Section 3.2.1, and shall expire on March 25, 2024, unless terminated earlier: (i) with respect to only 300 MW of the Contract Capacity, by reason of lifting of the Writ of Preliminary Injunction granted in favor of Power Supplier for 670 MW contract capacity, or (ii) in accordance with the terms of this Agreement xxx.

XXX

3.2. Operations Effective Date

The obligations of Power Supplier with respect to 300 MW of the Contract Capacity and Associated Energy shall commence on March 26, 2023, which shall increase to 480 MW on April 1, 2023 (each the "Operations Effective Date"); provided that, the conditions set out in Section 3.2.1 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 relevant 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 WESM price and fuel fee, 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 only. 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 7.4 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 WESM price and fuel fee, 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 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.
- 7.4. On and after Operations Effective Date, during any period in which an Event of Force Majeure affects Power Supplier or Meralco, Meralco shall procure replacement energy from the WESM to the extent supply or offtake is so affected. For clarity, the cost of such replacement energy shall form part of the price that Meralco will charge to its customers.

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11. Charges Due to Material Adverse Government Action

- 11.1. If as a result of Material Adverse Government Action, Meralco becomes liable to pay any new charges, fees, taxes, duties, assessments or other similar amounts (the "New Charges"), or any increase in existing charges, fees, taxes, duties, assessments or other similar amounts (the "Increased Charges") becomes payable with respect to this Agreement, the New Charges or Increased Charges shall form part of the price that Meralco will charge to its customers.

- 11.2. If as a result of a Material Adverse Government Action affecting Power Supplier, Power Supplier becomes liable to pay any New Charges or any Increased Charges or a Material Adverse Government Action materially and adversely affects the ability of Power Supplier to perform or materially increases the operating costs or capital expenditures associated with the Plant or materially and adversely affects its performance of its obligations under this Agreement, adversely affects the sale by Power Supplier of Contract Capacity and Associated Energy in accordance with this Agreement, makes Power Supplier's administration or operational aspects of such performance materially more burdensome (whether made at the direction of any Governmental Instrumentality or otherwise) or causes serious damage to, or materially and adversely affects the financial condition of Power Supplier, Power Supplier shall send a notice to Meralco of the occurrence of such Material Adverse Government Action with sufficient explanation of the nature and corresponding proof of the Material Adverse Government Action being invoked, together with an analysis of the cost impact of such Material Adverse Government Action and the proposed recovery mechanism (the "Notice of Material Adverse Government Action"). xxx

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12.2. ERC Approval

- 12.2.1. Upon receipt of the ERC Final Approval, Meralco shall provide a copy of such ERC Final Approval to Power Supplier. Power Supplier shall have ten (10) Days from its receipt from ERC or from Meralco of such ERC Final Approval, whichever is earlier, to notify Meralco in writing that: (i) it accepts such ERC Final Approval or (ii) it does not accept the ERC Final Approval, stating the grounds for non-acceptance; provided that, if the ERC Final Approval does not contain any adjustment or modification of this Agreement, (a) the ERC Final 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 Final Approval. For clarity, ERC Final Approval may be promulgated subsequent to the relevant 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 Final 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 Final 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 Final Approval for purposes of the processes under this Section 12.2. If the ERC Final 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 Final 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 Final 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 Final Approval shall be deemed accepted by Power Supplier and this Agreement shall continue to be implemented in accordance with the ERC Final Approval.

- 12.2.3. If the ERC Final 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.

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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:

$$\text{MPB} = \text{MCP} + \text{MEP}$$

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:

$$\text{MCP} = \text{CF}_{\text{base}} * \text{CC} * 1000 * (\text{BPD} - \text{FMT}) * 24$$

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

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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:

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

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

Fuel = the effective Fuel Fee, in Php/kWh, computed based on the fuel used to produce the AE.

- i. If the fuel used to produce AE is coal, the Fuel Fee is computed as:

$$Fuel = Fuel_0 * \frac{N_m}{N_0} * \frac{FX_m}{FX_0}$$

Where:

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

N_m = the average Newcastle index, in USD/MT, for the last three calendar months prior to the current Billing Period, as posted by globalCOAL on the website www.globalcoal.com or its successor or, if globalCOAL ceases to report the Newcastle Index, an agreed upon replacement source that reports the Newcastle Index shall be adopted by the Parties

N₀ = the base Newcastle index, in USD/MT, 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

FX₀ = the base exchange rate, in Php/USD, as set forth in Schedule 1 of this Appendix C

- ii. If the fuel used to produce AE is liquified natural gas (LNG), the Fuel Fee is computed as:

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

Where:

Fuel₀ = as previously defined

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 first two (2) Billing Periods to generate capacity from the Ilijan Power Plant has been locked in and contracted based on the following fixed prices of \$15.20/MMBtu for the first Billing Period and \$14.24/MMBtu for the second Billing Period (the “Fixed LNG Price”). For avoidance of doubt, as soon as the Ilijan Power Plant is designated to be the Plant under this Agreement, this Fixed LNG Price should be the applicable JKM_m to be used in the computation hereunder in the first two (2) Billing Periods for capacity sourced from the Ilijan Power Plant.

JKM_o = the base Japan Korea Marker index, in USD/MMBtu, as set forth in Schedule 1 of this Appendix C

FX_m = as previously defined

FX_o = as previously defined

RP_{ij} = is the Replacement Power, in kWh, as delivered by the Power Supplier for the Trading Interval i and Day j

FEDP_{ij} = the hourly equivalent of the 5-min WESM prices Final Energy Dispatch Price, in Php/kWh, for the Trading Interval i and Day j.

SCHEDULE 1
TABLE 1. BASE RATES

Component	Variable	Unit	Value
Capacity Fee	CF _{base}	Php/kWh	1.75
Base Fuel Fee	Fuel _o	Php/kWh	6.75
Base Newcastle Index	N _o	USD/MT	250.00
Base Japan Korea Marker Index	JKM _o	USD/MMBtu	15.00
Base US-Php Exchange Rate	FX _o	Php/USD	55.00

III.GENERATION RATE IMPACT

18. Based on the foregoing, and given a certain set of assumptions, the effective rate under the MERALCO-SPPC EPSA is PhP 8.2148 per kWh (at plant gate, VAT exclusive), as shown in the RATE IMPACT ANALYSIS below:

(This space is intentionally left blank.)

Rate Impact of South Premiere Power Corp. (SPPC) EPSA at 100.00 % pcf						
BILLING COMPONENT	UNIT	BASE RATES ^(a)	Adjustment Factor ^(b)	BILLING DETERMINANT ^(c)		AMOUNT (PHP)
A.) Monthly Capacity Payment	(Php/kWh)	1.7500	-	4,190,400,000	(kWh)	7,333,200,000.00
B.) Monthly Energy Payment	(Php/kWh)	6.7500	0.9577	4,190,400,000	(kWh)	27,090,142,757.28
Total Payment (VAT Exclusive)	(Php)					34,423,342,757.28
Plant Gate Rate (VAT Exclusive)	(Php/kWh)					8.2148
WESM Line Rental Rate ^(d)	(Php/kWh)					0.1429
Delivered Rate (VAT Exclusive) ^(e)	(Php/kWh)					8.3577
Effective Cost if sourced from WESM ^(f)	(Php/kWh)					9.8523
Increase / (Decrease) over WESM	(Php/kWh)					(1.4946)
Meralco Captive Energy Demand ^(g)	(kWh)					35,586,401,509
Increase / (Decrease) in Generation Charge ^(e)	(Php)					(6,263,094,282)
Increase / (Decrease) in Generation Charge ^(e)	(Php/kWh)					(0.1760)
Assumptions:						
^(a) Base Rates as indicated in Schedule 1 of Appendix C of the EPSA.						
^(b) Adjustment factor calculated in accordance with formula indicated in Appendix C of the EPSA and assumes forecasted values for the Newcastle and JKM indices for the duration of the EPSA.						
^(c) Energy billing determinant for the duration of the EPSA based on 100.00% pcf with respect to the Contract Capacity (300 MW for 6 days, 480 MW for 360 days).						
^(d) Line Rental is a pass-through cost. Assumed line rental rate is based on average actual line rental of Sual and Ilijan.						
^(e) Delivered Rate and its impact to Generation Charge is computed over the Term of the EPSA.						
^(f) Cost if equivalent volume was sourced from WESM.						
^(g) Forecasted Meralco Captive Energy for March 26, 2023 to March 25, 2024 based on the latest Power Supply Procurement Plan as submitted to the DOE						

19. The Applicants note that the delivered rate of PhP 8.3577 per kWh (VAT exclusive and line rental inclusive) is lower by about PhP 1.4946 per kWh than the effective cost of PhP 9.8523 per kWh, if the equivalent capacity under the MERALCO-SPPC EPSA is to be sourced from the WESM. In fact, by sourcing the capacity through the MERALCO-SPPC EPSA, MERALCO’s average blended generation rate will be reduced by about PhP 0.1760 per kWh (as seen in the RATE IMPACT ANALYSIS above), resulting in savings to consumers of about PhP 6.2 billion.

IV. COMPLIANCE WITH DOCUMENTARY REQUIREMENTS

20. In support of this Joint Application with Motion for Confidential Treatment of Information, the Judicial Affidavit of ENGR. DAVIDJOHN A. ZUÑIGA, Officer of MERALCO’s Energy Resource Planning - Energy Sourcing Office, is attached as ANNEX “E” and made an integral part hereof.
21. 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” and “A-1”
SPPC’s Secretary Certificates	“B” and “B-1”
MERALCO Letter-Request for COE-CSP dated 8 March 2023	“C”
DOE COE-CSP transmitted on 10 March 2023	“C-1”
MERALCO Letter-Request for COE-CSP dated 22 March 2023	“C-2”

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Description of Document	Annex
DOE COE-CSP transmitted on 29 March 2023	"C-3"
MERALCO-SPPC EPSA	"D"
Judicial Affidavit of Engr. Davidjohn A. Zuñiga	"E"
MERALCO's Articles of Incorporation and By-Laws	"F"
MERALCO's Latest General Information Sheet ("GIS") 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 MERALCO's WESM Membership certifications	"G" "G-1" "G-2" and series
MERALCO's Demand Side Management Program	"H"
Write-up on the non-applicability of National Power Corporation Certification regarding whether or not Transition Supply Contract capacity and energy is expected to be available during the contractual period	"I"
Excerpt of MERALCO's Distribution Development Plan – Power Supply Procurement Plan (Supply and Demand Scenario); <ul style="list-style-type: none"> Average Daily Load Curve scenarios Details of Existing Suppliers Details of Power Supply Contract Utilization Details of SAIDI and SAIFI Estimation of the potential for a reduction in load supplied by MERALCO due to RCOA Write-up of no inconsistencies/differences from documents presented 	"J" "J-1" "J-2" "J-3" "J-4" "J-5" "J-6"
SEC Certificate of Registration including the Articles of Incorporation and By-Laws of SPPC	"L"
Verified Certification of the list of Board Directors and members of the Ultimate Parent Company, subsidiaries and all affiliates of SPPC	"M"
Write up on the Non-Applicability of a Shareholders' Agreement for SPPC	"N"
The Corporate Structure showing the Ultimate Parent Company, Subsidiaries, and all Affiliates of SPPC	"O"
General Information Sheet of SPPC	"P"
Write up on the Non-Applicability of a Board of Investments ("BOI") Certificate of Registration for SPPC	"Q"
Environmental Compliance Certificate ("ECC") issued by the Department of Environment and Natural Resources ("DENR") of KEPCO Ilijan Power Corporation (KIPC)/National Power Corporation (NPC)	"R"
Certification from the ERC on the status of the COC of SPPC	"S"

Description of Document	Annex
Write up on the Non-Applicability of a Certificate of Endorsement ("COE") from the Department of Energy ("DOE") regarding the Philippine Development Plan ("PDP") for SPPC	"T"
Write up on the Non-Applicability of Renewable Energy Service/Operating Contract and Certificate of Registration or Certification of Commerciality by an RE Developer and After Due Confirmation by the DOE	"U" and Series
Executive Summary of the EPSA	"V"
Transmission Service Agreement of NGCP and SPPC	"W"
Single-line Diagram Connection	"W-1"
Sources of Funds/Financial Plans; Generation Rate and Derivation (Confidential)* Financial model in soft copy containing derivation of rates (Confidential)* Cost Analysis (Confidential)*	"X" and Series *
Explanation on the Fuel Procurement Process of SPPC	"Y and Series"
Technical and Economic Characteristics of the Ilijan Plant including historical outages in the last 5 years	"Z"
Certification regarding the net heat rate of SPPC*	"Z-1"
Write up on the Simulation of the number of operating units necessary to meet the minimum energy off-take ("MEOT") and/or additional energy/demand requirements of MERALCO and the Write up on the Potential Cost of Ancillary Service as and when the IPP or the DU is connected to the main grid*	"Z-2" and Series *
Latest Audited Financial Statements of SPPC Write up on the Non-Applicability of the Distribution Wheeling Service Agreement to SPPC Write up on the Non-Applicability of a Water Permit from the National Water Resources Board ("NWRB") Explanation on the Potential Cost of Ancillary Service WESM Registration Certificate of SPPC Metering Service Agreement between NGCP and SPPC Verified Certification that the rates being charged are no more than the latest rate approved by the Commission for the same or relevant technology in the area	"AA" and Series

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

ALLEGATIONS IN SUPPORT OF THE MOTION

FOR CONFIDENTIAL TREATMENT OF INFORMATION

- 22.SPPC respectfully highlights that its own documentary evidence, Annexes "X" and series and "Z-2" and Series contain numbers, methodology, and calculations such as debt or equity ratio, capital costs, weighted average cost of capital, and fuel cost that provide valuable information and insight on how SPPC arrives at its power generation rate and/or on SPPC's trading in the WESM.

23.SPPC therefore submit respectfully submits that Annexes "X" and series and "Z-2" and Series falls within the bounds of proprietary "trade secrets", which are entitled to protection

under the Constitution, statutes, and rules and regulations of this Honorable Commission.

24. Under Rule 4 of the Revised ERC Rules of Practice and Procedure (the "Revised ERC Rules"), the Honorable Commission may, upon request of a party and determination of the existence of conditions, which would warrant such remedy, treat certain information submitted to it as confidential. Pursuant to such provision, SPPC respectfully prays for the issuance of a protective order declaring Annexes "X" and series and "Z-2" and Series as confidential information, since SPPC intends to present them as evidence in the instant Application.

25. The data contained in Annexes "X" and series and "Z-2" and Series constitute "trade secrets" of SPPC; thus, SPPC has actual and valuable proprietary interest to protect with respect to such information. If the information contained in these documents are unduly disclosed, it will seriously prejudice the competitiveness of SPPC.

26. The Supreme Court, in the case of *Air Philippines Corporation vs. Pennswell, Inc.* (540 SCRA 215 [2007]), had the opportunity to discuss the definition of "trade secrets" and the great extent to which the same are protected under our laws. In other instances, the Supreme Court has held that the confidential nature of trade secrets protects such from disclosure even in the face of the right of inspection given to stockholders or the constitutional right to information. (*Philpotts vs. Philippine Manufacturing Company*, 40 Phil. 471 [1919]; *Garcia vs. Board of Investments*, G.R. 88637 [1989]).

27. In the *Decision* in ERC Case No. 2015-111 RC dated 30 May 2017 entitled *In the Matter of the Application for 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)*, the Honorable Commission categorically stated that formulas and pricing structures of a generation company must be treated as confidential and may not be publicly disclosed, to wit:

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. In fact, all three (3) documents were used by the Commission in evaluating the reasonableness of the proposed rate. **In the electric power industry w(h)ere prices is[sic] a major consideration in selecting one's supplier, it is apparent that the assumptions used in arriving at one's proposed tariff is considered a competitive leverage by one player against its competitors.**

Thus, the Commission resolves to treat the said documents confidential and may not be publicly disclosed. [Emphasis supplied].

28. Thus, the Honorable Commission has recognized the importance of maintaining pricing structures as confidential

in order to ensure the competitiveness of the generation sector. Information, which falls within the definition of a trade secret as defined by jurisprudence, is clearly information that merits the confidential treatment provided for under Rule 4 of the Revised ERC Rules. Annexes "X" and series and "Z-2" and Series should therefore be entitled to the protection of confidential information provided under Rule 4 of the Revised ERC Rules.

29. Accordingly, one (1) copy of each of the foregoing confidential documents is placed in a sealed envelope, with the envelope and each page of the document stamped with the word "Confidential."

PRAYER

WHEREFORE, premises considered, it is respectfully prayed that the Honorable Commission:

- a) Issue an Order TREATING Annexes "X" and series and "Z-2" 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, as applicable, pursuant to Rule 4 of the Revised ERC Rules; and
- b) After hearing on the merits, render a Decision APPROVING the MERALCO-SPPC EPSA and the terms and conditions thereunder, including the price.

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 2020⁵ and Resolution No. 01, Series of 2021⁶ (ERC Revised Rules of Practice and Procedure):

(This space is intentionally left blank.)

⁵ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

⁶ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

Date	Platform	Activity
17 October 2023 (Tuesday) at nine o'clock in the morning (9:00 A.M)	Microsoft Teams Application	Determination of compliance with jurisdictional requirements and Expository Presentation
24 October 2023 (Tuesday) at nine o'clock in the morning (9:00 A.M)		Pre-trial Conference and Presentation of Evidence

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, any 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

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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:

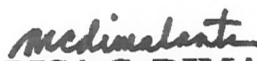
- 1) The name, mailing address, and e-mail address of such person;
- 2) A concise statement of the Opposition or Comment; and
- 3) The grounds relied upon.

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 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 Commissioners **ALEXIS M. LUMBATAN**, **CATHERINE P. MACEDA**, **FLORESINDA G. BALDO-DIGAL**, and **MARKO ROMEO L. FUENTES**, Energy Regulatory Commission, this 5th day of September 2023 in Pasig City.


MONALISA C. DIMALANTA
Chairperson and CEO


LS: VMA/LSP/MCCG

ERC
Office of the Chairperson and CEO



MCD2023-008594