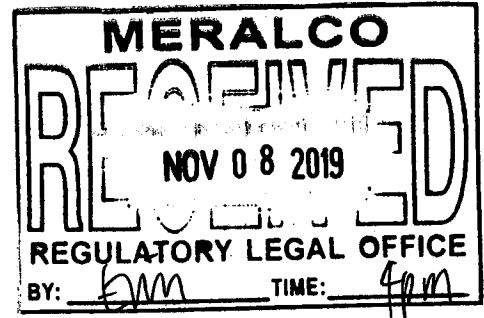


Republic of the Philippines  
**ENERGY REGULATORY COMMISSION**  
San Miguel Avenue, Pasig City

IN THE MATTER OF THE  
APPLICATION FOR THE  
APPROVAL OF THE POWER  
SUPPLY AGREEMENT (PSA)  
BETWEEN MANILA  
ELECTRIC COMPANY  
(MERALCO) AND PHINMA  
ENERGY CORPORATION  
(PHINMA), WITH PRAYER  
FOR PROVISIONAL  
AUTHORITY AND/OR  
INTERIM RELIEF AND  
MOTION FOR CONFIDENTIAL  
TREATMENT OF  
INFORMATION

MANILA ELECTRIC  
COMPANY (MERALCO) AND  
PHINMA ENERGY  
CORPORATION (PHINMA),  
Applicants.

X ----- X



ERC CASE NO. 2019-078 RC

Promulgated:  
NOV 07 2019

**ORDER**

On 22 October 2019, Manila Electric Company (MERALCO) and PHINMA Energy Corporation (PHINMA) filed a *Joint Application* dated 21 October 2019, seeking for the approval of their Power Supply Agreement (PSA) with prayer for provisional authority and/or interim relief and motion for confidential treatment of information (Application).

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

1. Applicant MERALCO is a private corporation duly organized and existing under the laws 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 below.

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 PHINMA is a private corporation duly organized and existing under the laws of the Philippines, with principal office located at 11/F PHINMA Plaza, 39 Plaza Drive, Rockwell Center, Makati City. It may be served with notices and other processes of this Honorable Commission through its counsel at the address indicated below.
4. PHINMA administers and manages the output of the following: (i) South Luzon Thermal Energy Corporation's 2 x 135 MW circulating fluidized bed coal-fired power plants located in KM. 117 National Highway, Calaca Seaport Phase II, Brgy. Puting Bato West, Calaca, Batangas, (ii) Negros Island Solar Power Inc.'s 32 MWp DC solar power plant located in Brgy. Cubay, La Carlota, Negros Occidental, and (iii) Negros Island Solar Power Inc.'s 48 MWp DC solar power plant located in Brgy. Teresa, Manapla, Negros Occidental (collectively referred to as "Plant"), and offered to supply and sell to MERALCO electric energy corresponding to 110 MW (net) produced from said Plant, the Wholesale Electricity Spot Market ("WESM"), or any other source.
5. Based on the power situation outlook for 2020 and succeeding years, MERALCO foresees a capacity deficit in its portfolio due to the expiration by December 25, 2019 of its power supply agreements covering 1905 MW.
6. In order to ensure continuous and reliable electricity for MERALCO's customers, there is a need for MERALCO to source mid-merit capacity through bilateral power supply contracts.
7. Under Section 45(b) of Republic Act No. 9136 (EPIRA), it is provided that "Distribution utilities may enter into bilateral power supply contracts subject to review by the ERC xxx".
8. Accordingly, following the conduct of a competitive selection process ("CSP") for the procurement of mid-merit capacity, on 16 September 2019, MERALCO executed a Power Supply Agreement ("PSA") with PHINMA, for the purchase of electric energy corresponding to 110 MW (net). The conduct of a CSP proceeded as follows:
  - 8.1. On 12 July 2019, MERALCO caused the publication of an Invitation to Bid, which contained basic terms of reference, indicating a summary of the process and timelines of the CSP, and inviting bidders to submit

an Expression of Interest and Confidentiality Undertaking on or before the deadline set out in the said invitation. At the same time, MERALCO caused the posting thereof on its website and the Department of Energy's ("DOE") e-based portal.

- 8.2. On 11 September 2019, the bidders submitted their Bid Requirements, followed by the opening of their respective submissions by the Third-Party Bids and Awards Committee ("TPBAC"). On the same day, PHINMA's bid was declared as one of the possible best bids.
  - 8.3. On 12 September 2019, the TPBAC sent a letter-notice to PHINMA, as one of the winning power suppliers, confirming after post-qualification evaluation that its proposed energy price was found to be among the best bids. The said letter-notice also contained the Notice of Award in favor of PHINMA.
  - 8.4. On 19 September 2019, and upon directive of this Honorable Commission, MERALCO wrote DOE to request for a written certification that the aforesaid CSP is compliant with DOE Circular No. DC2018-02-003, Series of 2018. In lieu of the requested certification that has not been issued to date, the TPBAC Chairman has executed an affidavit attesting to such compliance.<sup>1</sup>
9. The PSA between MERALCO and PHINMA, a copy of which is attached as ANNEX "C" and made an integral part hereof, contains the following salient features:
- "2.2. Term of Agreement
  - 2.2.1. Subject to Article 3, this Agreement shall become effective on the Execution Date.
  - 2.2.2. The term of this Agreement the ("Term") shall commence on the Operations Effective Date, and shall expire on December 25, 2024, unless terminated earlier in accordance with the terms of this Agreement or extended by the application of Section 2.2.3.
  - 2.2.3. The Term may be renewed for an additional period of up to one (1) year under the same terms and conditions, at the option of Meralco, by giving prior written notice to Power Supplier at least one hundred eighty (180) Days prior to the end of the Term.

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<sup>1</sup> A copy of MERALCO's letter-request stamped received by the DOE and the affidavit of the TPBAC's Chairman are attached as part of the documents showing MERALCO's conduct of a competitive selection process marked as Annex "K" and series".

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**3.3. Operations Effective Date**

- 3.3.1. The obligations of Power Supplier with respect to the Contract Capacity and Associated Energy shall commence on December 26, 2019 ("Operations Effective Date"), provided that Commencement Date has occurred.
- 3.3.2. If the Operations Effective Date has not occurred by the Longstop Date, then the provisions of Section 14.5.1. shall apply.

xxx

**4.1. Supply of Power**

Subject to the terms and conditions of this Agreement, from the Operations Effective Date until the expiration of the Term or earlier termination of this Agreement:

- (a) Power Supplier shall make available to Meralco, the Contract Capacity to be sourced from the Plant, WESM or any other source, and deliver and sell to Meralco the Associated Energy, at the Contract Price determined in accordance with Appendix C; and
- (b) Meralco shall purchase from Power Supplier, to the extent of Meralco's relevant day-ahead nominations, the MEOT, and at its option, the Excess Energy, at the Contract Price determined in accordance with Appendix C.

**4.2. Contract Price**

- a. The Contract Price for the First Contract Year is PhP4.9873<sup>2</sup> per kWh, subject to applicable value-added tax (VAT) and an annual escalation, as computed and shown in Schedule 1 of Appendix C, provided, that the Benefits to Host Communities Charges, if any, shall not form part of, and is excluded from the computation of the Contract Price. For the avoidance of doubt, all taxes pertaining to Power Supplier, including but not limited to the Benefits to Host Communities Charges, shall be shouldered by, and be for the sole account of, Power Supplier. Any violation of

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<sup>2</sup> Contract Price during First Contract Year (VAT exclusive) at sixty percent (60%) plant capacity factor corresponding to the Contract Capacity.

this Section 4.2 shall constitute a Power Supplier Event of Default as provided for under Section 14.1.

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**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 make available the Contract Capacity and deliver the Associated Energy to Meralco.

xxx

- 7.3. In case Power Supplier fails to make available the Contract Capacity and Associated Energy to Meralco due to unavailability of supply from its Plant, WESM, and any other source, Power Supplier shall pay a fine equivalent to Nine Hundred Eight Philippine Peso (PhP908) multiplied by each MWh during a Day, 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 14.3.1. shall apply.

**Article 8. Assignment or Transfer of Contract Capacity**

- 8.1 Meralco shall be entitled to assign, transfer, designate, delegate or allocate (collectively in this context, "Transfer") its rights and obligations to purchase a portion of Contract Capacity and Associated Energy that is no longer required by Meralco to any of its business segments or wholly-owned Affiliates, to the extent allowed by Law, or to any other Person acceptable to Power Supplier (which consent shall not be unreasonably withheld, delayed or conditioned).
- 8.2 In respect of Transfers not requiring Power Supplier's consent, Meralco shall give a written notice to the Power Supplier of such Transfer at least five (5) Days prior to the first Day of the next Billing Period or by such date as would be sufficient for timely notice to WESM of such change. In respect of Transfers requiring Power Supplier's consent, Meralco shall give a written notice to Power Supplier of such Transfer at least sixty (60) Days prior to the first Day of the next Billing Period or by such date as would be sufficient for timely notice to WESM of such change.

Subject to the receipt of Meralco and the Power Supplier of the written acceptance of such Transfer by the transferee:

- a) Meralco shall cease to have any rights and obligations under this Agreement, and
- b) the transferee shall assume all rights and obligations of Meralco under this Agreement.

**8.3. Reduction in Contract Capacity and Associated Energy**

8.3.1. Subject to the provisions of Section 8.3.2., 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 by reason of the enforcement of Retail Competition and Open Access, the Renewable Energy Law, other Laws and Legal Requirements.

8.3.2. Meralco shall give a written notice to the Power Supplier of such reduction at least five (5) Days prior to the first Day of the next Billing Period. 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.

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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 the date of receipt from Meralco of such ERC Approval to notify Meralco in writing that (i) it accepts such ERC Approval or (ii) it does not accept the ERC Approval, stating the grounds for non-acceptance.

12.2.2. In case of Power Supplier's non-acceptance, Power Supplier shall be free to file with the ERC a motion for reconsideration. In case Power Supplier decides to file a motion for reconsideration, and pending resolution thereof by the ERC, the Parties shall implement the ERC Approval subject to any adjustment or amendment that the ERC may direct. Any order on a motion for reconsideration shall be treated as an ERC Approval for purposes of the processes under Section 12.2. If the ERC Approval requires any amendment to or modification of any provision of this Agreement

that is not acceptable to either Party, acting reasonably, then the Parties shall cooperate in good faith to resolve the required amendment. If the Parties are unable to agree on the required amendment within thirty (30) Days from receipt of the ERC Approval resolving the motion for reconsideration, or if the motion for reconsideration is not resolved by the ERC within one hundred twenty (120) days after its filing, Power Supplier may terminate this Agreement upon thirty (30) Days prior written notice to Meralco.

12.2.3. If the ERC Approval requires any portion of the sum that has been paid by Meralco to Power Supplier to be adjusted, Power Supplier shall make the necessary adjustments in accordance with the direction of the ERC. In the event of any disallowance in the Contract Price, the same shall be for the account of Power Supplier.

12.2.4. Following (i) a written notice of acceptance from Power Supplier with respect to the ERC Approval (including upon reconsideration under Section 12.2.2. above), or (ii) the lapse of the period referred to in Section 12.2.1. without Power Supplier communicating its acceptance or non-acceptance in writing, the acceptance date shall be considered as having occurred on the date of the written notice of acceptance or on the last Day of such period, as applicable ("Acceptance Date"), provided, in each case, that Meralco has not filed any motion for reconsideration or appeal subsequent to Power Supplier's acceptance of such ERC Approval and the Longstop Date has not occurred.

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### 13.2 Instances of Force Majeure

Subject to the provisions of Section 13.1., Events of Force Majeure shall include, but not be limited to:

- a) acts of war or the public enemy whether war is declared or not;
- b) public disorders, civil disturbance, insurrection, rebellion, acts or campaigns of terrorism, piracy, embargo, sabotage, blockade, revolution, riots or violent demonstrations;
- c) explosions, fires, earthquakes, lightning, typhoon, tsunami, flood, cyclone, volcanic eruptions, landslide or other natural disasters, acts of God, epidemic, quarantine or plague;

- d) any action or aggregation of actions or failure to act by any Governmental Instrumentality, including expropriation, requisition, confiscation, nationalization or other compulsory acquisition;
- e) strikes, lockouts or other collective or industrial action by workers or employees other than non-manual personnel (in each instance, occurring in the Philippines); provided that any Party that seeks to invoke such a strike, lockout or other collective or industrial action as an Event of Force of Majeure must first utilize all reasonable efforts to continue performance of its obligations hereunder; and
- f) any Transmission Failure that prevents delivery by Power Supplier, or acceptance by Meralco, of Contract Capacity and Associated Energy. In case of disagreement as to the existence of a Transmission Failure, the Parties shall secure the necessary certification from the ERC, which certification shall bind both Parties;

For clarity, the Power Supplier shall not be allowed to claim Force Majeure under Article 13 in case there is supply available from the WESM or any other source.

**13.5. Event Not Excused**

Lack or unavailability of supply in itself shall not be considered as an Event of Force Majeure, unless the circumstances in Section 13.1. concur.”

- 10. Based on the foregoing, and given a certain set of assumptions, the annual effective rate under the PSA is PhP 5.5858 per kWh (at plant gate, VAT-inclusive), as shown in the rate impact analysis below:

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| PHINMA PSA (110 MW) - Annual Rate Impact<br>(YEAR 2020)            |           |                           |                                    |       |                    |
|--------------------------------------------------------------------|-----------|---------------------------|------------------------------------|-------|--------------------|
| BILLING COMPONENT                                                  | UNIT      | BASE RATES <sup>(a)</sup> | BILLING DETERMINANT <sup>(b)</sup> |       | AMOUNT (PHP)       |
| Energy Payment                                                     |           |                           |                                    |       |                    |
| Contract Price for energy up to MEOT PCF (45%)                     | (Php/kWh) | 6.4800                    | 434,808,000                        | (kWh) | 2,817,555,840.00   |
| Excess Energy Price for energy greater than MEOT PCF up to 60% pcf | (Php/kWh) | 0.5093                    | 144,936,000                        | (kWh) | 73,819,963.01      |
| Total Energy Payment (VAT exclusive)                               | (Php/kWh) | 4.9873                    | 579,744,000                        | (kWh) | 2,891,375,803.01   |
| VAT Payment <sup>(c)</sup>                                         | (Php)     |                           |                                    |       | 346,965,096.36     |
| Total Payment (VAT inclusive)                                      | (Php)     |                           |                                    |       | 3,238,340,899.37   |
| Effective Rate at Plant Gate (VAT Inclusive)                       | (Php/kWh) |                           |                                    |       | 5.5858             |
| WESM Line Rental Rate <sup>(d)</sup>                               | (Php/kWh) |                           |                                    |       | 0.0000             |
| Delivered Rate (VAT Inclusive)                                     | (Php/kWh) |                           |                                    |       | 5.5858             |
| Effective Cost at representative Mid-merit PSA <sup>(e)</sup>      | (Php/kWh) |                           |                                    |       | 7.5049             |
| Increase / (Decrease) over representative Mid-merit PSA            | (Php/kWh) |                           |                                    |       | (1.9191)           |
| Meralco Captive Energy Demand <sup>(f)</sup>                       | (kWh)     |                           |                                    |       | 35,005,615,519     |
| Increase / (Decrease) in Generation Cost                           | (Php)     |                           |                                    |       | (1,112,596,088.50) |
| Increase / (Decrease) in Generation Cost                           | (Php/kWh) |                           |                                    |       | (0.0318)           |

Assumptions:

<sup>(a)</sup> Contract Price (VAT exclusive) and Excess Energy Price (VAT exclusive) as set forth and computed in Appendix C of the PSA.

<sup>(b)</sup> Energy billing determinant for one year based on 60% plant capacity factor with respect to the Contract Capacity (110,000 kW).

<sup>(c)</sup> VAT rate of 12.00% as stated in the PSA.

<sup>(d)</sup> Line Rental rate for PHINMA is based on the maximum allowable value as stated in the PSA.

<sup>(e)</sup> Cost if equivalent volume of PHINMA was sourced from representative Mid-merit PSA (SMEC) that will expire on Dec. 25, 2019 using average of actual Sep 2018 to Aug 2019 prices (VAT and line rental inclusive).

<sup>(f)</sup> Forecasted Meralco Captive Energy for 2020 based on Power Supply Procurement Plan as submitted to DOE.

11. MERALCO notes that the annual delivered rate of PhP 5.5858 per kWh (VAT and line rental inclusive) is lower by about PhP 1.9191 per kWh than the effective cost of PhP 7.5049 (VAT and line rental inclusive), if the equivalent capacity under the instant PSA will be sourced from MERALCO’s representative mid-merit PSA. In fact, by sourcing the capacity through the instant PSA, MERALCO’s average blended generation rate<sup>3</sup> of PhP 5.84 per kWh (VAT and line rental inclusive) will be reduced by about PhP 0.0318 per kWh (as seen in the rate impact above) resulting in savings to consumers of about PhP 1.11 Billion.
12. It bears emphasis that MERALCO’s foreseen capacity deficit due to the expiration of its several power supply agreements by 25 December 2019 is 1905 MW. Thus, there is an urgent need for provisional authority and/or interim relief to implement the PSA by 26 December 2019; otherwise, MERALCO will be constrained to source its capacity deficit from the WESM, thereby exposing its customers to volatile WESM prices. More importantly, it should be considered that the immediate approval and implementation of the instant PSA would redound to the best interest of the consumers since aside from the very competitive rate, the supply availability under the instant PSA is guaranteed 100% by PHINMA as no outage allowance is provided therein.
13. In support of this Joint Application, and the prayer for provisional authority and/or interim relief, the Judicial Affidavits of MR. ELVIN C. JACOB, Officer of MERALCO’s Energy Sourcing – Energy Accounting and Settlement Team, and MR. HERMAN B. TIMOTEO, Manager of PHINMA’s Power Sales and Customer Management, are attached as

<sup>3</sup> Prior twelve (12)-month period.

ANNEXES “D” and “E”, respectively, and made integral parts hereof.

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 this Honorable Commission:

| Description of Document                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Annex         |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| MERALCO’s Articles of Incorporation and By-Laws                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | F             |
| MERALCO’s latest General Information Sheet (GIS)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | G             |
| Demand Side Management Program                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | H             |
| Write-up on non-applicability of a Certification by NPC re: whether Transition Supply Contract (TSC) capacity and energy is expected to be available                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | I             |
| Excerpt of Distribution Development Plan – Power Supply Procurement Plan                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | J             |
| Supply and Demand Scenario                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | J-1           |
| Average Daily Load Curve scenarios                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | J-2           |
| Documents showing MERALCO’s conduct of a competitive selection process                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | K and series  |
| PHINMA’s Certificate of Registration, Articles of Incorporation and By-Laws                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | L and series  |
| PHINMA’s latest General Information Sheet (“GIS”)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | M             |
| Document showing information related to the Ultimate Parent Company                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | N             |
| Environmental Compliance Certificates (“ECC”) of the Plant                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | O             |
| Certificates of Compliance (“COC”) of the Plant                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | P             |
| Transmission Service Agreements and Metering Services Agreements                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Q             |
| Pricing Analysis for the PSA with Meralco*                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | R and series* |
| Technical Characteristics of the Plants                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | S             |
| PHINMA’s latest Audited Financial Statement (“AFS”)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | T             |
| Write-up on the non-applicability of the following: (Shareholders’ agreement; Board of Investment Certificate of Registration; Certification from DOE regarding Philippine Development Plan or Certificate of Endorsement; Renewable Energy Service/Operating Contract from the DOE; Certificate of Registration or Certificate of Confirmation of Commerciality by an RE Developer; All details in the procurement process of fuel; Certification of the net heat rate; Simulation of the no. of operating units to meet the MEOT; Potential Cost of ancillary services when the IPP or the DU is connected to the main grid) | U             |

\* Subject of the Motion for Confidential Treatment of Information

**MOTION FOR CONFIDENTIAL TREATMENT OF  
ANNEX "R" and series**

15. Annex "R" and series contains numbers, methodology, and calculations which provide valuable information and insight on how PHINMA arrives at its contract price and would accordingly reflect PHINMA's bidding strategy for distribution utilities undertaking competitive process for the selection of their power suppliers, and PHINMA's trading in the WESM.
16. Under Rule 4 of the ERC Rules of Practice and Procedure, 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, Applicant PHINMA respectfully prays for the issuance of a protective order declaring Annex "R" and series as confidential information, since Applicant PHINMA intends to present them as evidence in the instant Application.
17. Even though these will be treated as confidential documents and information and a protective order will be issued, the rules do not preclude the parties of record or their lawyers an access to such confidential information after agreeing to be bound by the terms of the protective order.
18. The data contained in Annex "R" and series constitute "trade secrets" of Applicant PHINMA; thus, PHINMA has actual and valuable proprietary interest to protect with respect to such information. The Supreme Court, in the recent 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]).
19. Information, which falls within the definition of a trade secret, as defined by jurisprudence is clearly information which merits the confidential treatment provided for under Rule 4 of the ERC Rules of Practice and Procedure. Annex "R" and series should therefore be entitled to the protection of confidential information provided under Rule 4 of the ERC Rules of Practice and Procedure.
20. PHINMA hereby submits one (1) copy of each of the foregoing confidential documents 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:

- (i) ISSUE an Order treating Annex “R” and series as confidential information pursuant to Rule 4, Section 1 of the ERC Rules of Practice and Procedure and prescribing the guidelines for the protection thereof;
- (ii) Immediately ISSUE a provisional authority and/or interim relief authorizing the Applicants to implement the Power Supply Agreement by 26 December 2019; and
- (iii) After hearing on the merits, render a Decision APPROVING the Power Supply Agreement.

Other relief just and reasonable are likewise prayed for.

Finding the said *Joint Application* to be sufficient in form and substance, with the required fees having been paid, the same is hereby set for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence **at the ERC Hearing Room, 15<sup>th</sup> Floor Pacific Center Building, San Miguel Avenue, Pasig City** on the following dates:

| Date and Time                                                                    | Particulars                                              |
|----------------------------------------------------------------------------------|----------------------------------------------------------|
| <b>03 December 2019</b> (Tuesday)<br>at nine o'clock in the morning (09:00 A.M.) | Jurisdictional Hearing<br>and<br>Expository Presentation |
| <b>14 January 2020</b> (Tuesday)<br>at nine o'clock in the morning (09:00 A.M.)  | Pre-trial Conference<br>and<br>Evidentiary Hearing       |
| <b>21 January 2020</b> (Tuesday)<br>at nine o'clock in the morning (09:00 A.M.)  | Evidentiary Hearing                                      |
| <b>28 January 2020</b> (Tuesday)<br>at nine o'clock in the morning (09:00 A.M.)  | Evidentiary Hearing                                      |

*(This space is intentionally left blank.)*

Accordingly, MERALCO and PHINMA are hereby directed to:

- 1) Cause the publication of the attached *Notice of Public Hearing* in two (2) newspapers of nationwide circulation in the Philippines at their own expense, twice (2x) within two (2) successive weeks, with the dates of publication not being less than seven (7) days apart, and the date of the last publication to be made not later than ten (10) days before the date of the scheduled initial hearing;
- 2) Furnish with copies of this *Order* and the attached *Notice of Public Hearing* the Offices of the Provincial Governor, the City and Municipal Mayors, and the Local Government Unit (LGU) legislative bodies within the entire franchise area of the DUs concerned for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within the affected franchise area of the filing of the *Joint Application*, its reasons therefor, and of the scheduled hearing thereon, by any other means available and appropriate;
- 4) Furnish with copies of this *Order* and the attached *Notice of Public 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 at the scheduled hearing; and
- 5) Furnish with copies of the *Joint Application* and its attachments all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing, MERALCO and PHINMA must submit to the Commission their written compliance with the aforementioned jurisdictional requirements attaching therewith, methodically arranged and duly marked the following:

- 1) The evidence of publication of the attached *Notice of Public Hearing* consisting of affidavits of the Editors or Business Managers of the newspapers where the said *Notice of Public Hearing* were published, and the complete issues of the said newspapers;

- 2) The evidence of actual posting of this *Order* and the attached *Notice of Public 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 PHINMA to inform the consumers within the affected franchise area of the filing of the *Joint Application*, its reasons therefor, and of the scheduled hearing thereon;
- 4) The evidence of receipt of copies of this *Order* and the attached *Notice of Public Hearing* by the Office of the Solicitor General (OSG), the Commission on Audit (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 by all those making requests therefor, if any; and
- 6) Such other proof of compliance with the requirements of the Commission.

MERALCO and PHINMA and all interested parties are also required to submit, at least five (5) days before the date of the initial 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; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-trial Brief.

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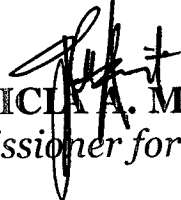
Failure of MERALCO and PHINMA to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from the said date of cancellation.

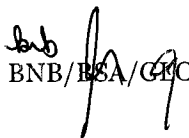
MERALCO and PHINMA must also be prepared to make an expository presentation of the instant *Joint Application*, aided by whatever communication medium that they may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties,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

**SO ORDERED.**

Pasig City, 28 October 2019.

FOR AND BY AUTHORITY  
OF THE COMMISSION:

  
**JOSEFINA PATRICIA A. MAGPALE-ASIRIT**  
*Oversight Commissioner for the Legal Service*

  
LS: BNB/BSA/GEO

Copy Furnished:

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*Applicant*  
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City of Caloocan
6. Office of the Local Government Unit (LGU) Legislative Body  
City of Caloocan
7. Office the City Mayor  
City of Las Piñas
8. Office of the LGU Legislative Body  
City of Las Piñas
9. Office of the City Mayor  
City of Makati
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City of Malabon
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City of Navotas

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Municipality of Pateros
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City of Quezon
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City of Valenzuela
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Angat, Bulacan
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Balagtas, Bulacan
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Baliwag, Bulacan
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Bocaue, Bulacan

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Calumpit, Bulacan
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Doña Remedios Trinidad, Bulacan
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Guiguinto, Bulacan
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Hagonoy, Bulacan
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Marilao, Bulacan
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Norzagaray, Bulacan
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San Ildefonso, Bulacan
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San Jose del Monte, Bulacan
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San Rafael, Bulacan
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Sta. Maria, Bulacan
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Alfonso, Cavite
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Amadeo, Cavite
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Bacoor, Cavite
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Carmona, Cavite

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Dasmariñas, Cavite
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Dasmariñas, Cavite
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General Emilio Aguinaldo, Cavite
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General Emilio Aguinaldo, Cavite
101. Office of the Municipal Mayor  
General Mariano Alvarez, Cavite
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Trece Martires, Cavite
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Alaminos, Laguna
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Bay, Laguna
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Tayabas, Quezon
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Tiaong, Quezon
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San Simon, Pampanga
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San Simon, Pampanga
235. Office of the City Mayor  
La Carlota, Negros Occidental
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La Carlota, Negros Occidental
237. Office of the Municipal Mayor  
Manapla, Negros Occidental

- 238. Office of the LGU Legislative Body  
Manapla, Negros Occidental
- 239. Office of the Governor  
Province of Bulacan
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Province of Quezon
- 250. Office of the LGU Legislative Body  
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- 251. Office of the Governor  
Province of Pampanga
- 252. Office of the LGU Legislative Body  
Province of Pampanga
- 253. Office of the Governor  
Province of Negros Occidental
- 254. Office of the LGU Legislative Body  
Province of Negros Occidental
- 255. Office of the Solicitor General  
134 Amorsolo Street, Legaspi Village, Makati City
- 256. Commission on Audit  
Commonwealth Avenue, Quezon City
- 257. Senate Committee on Energy  
GSIS Bldg., Roxas Boulevard, Pasay City
- 258. House Committee on Energy  
Batasan Hills, Quezon City
- 259. Office of the President of PCCI  
Philippine Chamber of Commerce and Industry (PCCI)  
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