

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 EXCELLENT
ENERGY RESOURCES INC.,
WITH MOTION FOR
CONFIDENTIAL TREATMENT
OF INFORMATION



ERC CASE NO. 2024-028 RC

**MANILA ELECTRIC
COMPANY AND EXCELLENT
ENERGY RESOURCES INC.,**
Applicants.

Promulgated:
March 08, 2024

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ORDER

On 01 March 2024, Manila Electric Company (MERALCO) and Excellent Energy Resources Inc. (EERI) filed their *Joint Application* dated 07 February 2024, seeking the Commission's approval of their Power Supply Agreement (PSA), with motion for confidential treatment of information.

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

NATURE OF THE APPLICATION

1. This is an application for approval of the Power Supply Agreement between MERALCO and EERI dated 5 February 2024 (the "2024 MERALCO-EERI PSA") under Rule 20 (B.) of the Energy Regulatory Commission's ("ERC") Resolution No. 1 Series of 2021 ("ERC Revised Rules of Practice and Procedure" or "ERC RRPP"), and by ERC Resolution No. 16, Series of 2023 ("ERC CSP Guidelines").

PARTIES

2. 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.
3. 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.
4. Applicant EERI is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office located at 6th Floor, C5 Office Building Complex, #100 E. Rodriguez Jr. Ave., C5 Road, Bo Ugong, Pasig City 1604. It may be served with notices and other processes of this Honorable Commission through its counsel at the address indicated herein.
5. EERI shall construct, own, operate, manage and maintain three (3) 425 MW (net) units Combined Cycle Power Plant located at Barangays Dela Paz Proper and Ilijan, Batangas City (the "Plant") capable of supplying 1,275 MW (net).

STATEMENT OF RELEVANT FACTS
AND TIMELINESS OF THE JOINT APPLICATION

6. In accordance with MERALCO's latest and duly accepted Distribution Development Plan ("DDP") and posted Power Supply Procurement Plan ("PSPP") approved by the Department of Energy, MERALCO foresees a baseload capacity deficit in its portfolio covering 1,800 MW based on its power situation outlook for 2024 and succeeding years.
7. 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.
8. 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.*"
9. Accordingly, pursuant to Section 4, Article IV of ERC CSP Guidelines, MERALCO conducted a Competitive Selection Process ("CSP") for the procurement of 1,800 MW (net) baseload supply requirement. The conduct of CSP proceeded as follows:

- 9.1. On 14 September 2023 and 25 October 2023, MERALCO submitted and resubmitted, respectively, to the Department of Energy ("DOE") the Invitation to Bid/Terms of Reference for the CSP for Contract Capacity of 1,800 MW (net), with Commercial Operations Date (COD) 2024-2025 (the "1,800 MW CSP") to request for issuance of a Certificate of Conformity in accordance with MERALCO's latest and duly accepted DDP and posted PSPP, pursuant to Section 4.3 of the DOE Department Circular No. DC2023-06-0021, Series of 2023 and Section 5, Appendix B of the ERC CSP Guidelines.
- 9.2. On 27 October 2023, the DOE issued in favor of MERALCO a Certificate of Conformity No. 2023-10-002 dated October 27, 2023 (the "DOE COC") covering MERALCO's 1,800 MW CSP requirement, 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 1,800 MW CSP. On the same day, 27 October 2023, pursuant to 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 1,800 MW CSP in relation to the DOE COC.
- 9.3. On 1 November 2023 and 8 November 2023, the BAC-PSA caused the publication of the Invitation to Bid ("ITB") in The Philippine Star, a newspaper of general circulation in the Philippines. The ITB contained the Terms of Reference ("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 Invitation. The ITB and the TOR were likewise posted on MERALCO's website and on the DOE E-based CSP Portal.
- 9.4. On 9 November 2023, MERALCO posted on its website, an "Invitation to Participate as CSP Observers," which informed the public that the following entities or groups identified in Section 9 of the ERC CSP Guidelines are invited to signify to the BAC-PSA of their interest to participate as observer. On 14 November 2023, five (5) CSP Observers submitted their intent to (and were admitted by) the BAC-PSA as CSB Observers.
- 9.5. On 20 November 2023 and 24 November 2023, Pre-Bid Conferences were 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 Conferences were held at least thirty (30) calendar days before the 1,800 MW CSP's bid submission deadline; were attended by CSP Observers;

and were broadcasted livestream in MERALCO's YouTube website.

- 9.6. On 5 January 2024, the bidders submitted their bid document submissions in compliance with all the bidding documents for the 1,800 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 broadcasted livestream in MERALCO's YouTube website.
 - 9.7. Following the MERALCO BAC-PSA's evaluation of each of the bidders' bid submissions, Applicant EERI emerged as one of the bidders with the lowest calculated responsive bid ("Best Bid"), with EERI offering 1,200 MW out of the required contract capacity of 1,800 MW for the said bidding.
 - 9.8. On 8 January 2024, the BAC-PSA conducted the post-qualification of the document submissions of the bidders with the Best Bids and found the submissions to be compliant with and are responsive to all the requirements and conditions specified in the bidding documents, as amended, and/or clarified by pertinent bid bulletins, for the 1,800 MW CSP. The post-qualification was attended by CSP Observers and was broadcasted livestream in MERALCO's YouTube website.
 - 9.9. On 22 January 2024, the BAC-PSA submitted its recommendation and report to MERALCO's Board of Directors recommending EERI, as one of the bidders with the best bids 1,800 MW CSP, to be declared as the Winning Power Supplier and be awarded a power supply agreement for its offer of Php 7.1094/kWh (total delivered levelized cost of electricity ["LCOE"], VAT inclusive) for 1,200 MW.
 - 9.10. On 29 January 2024, MERALCO's Board of Directors approved the BAC-PSA's recommendation and the following day, 30 January 2024, a Notice of Award was issued by the BAC-PSA in favor of EERI.
 - 9.11. On 5 February 2024, the 2024 MERALCO-EERI PSA was executed. Thereafter, EERI submitted a performance bond letter dated 6 February 2024 to MERALCO. Upon receipt of said performance bond letter, on even date, MERALCO issued of a Notice to Proceed in favor of EERI, in accordance with Sections 15 and 16, Appendix B of the ERC CSP Guidelines.
- A copy of the BAC-PSA Summary-Report and the DOE COC regarding the conduct of the 1,800 MW CSP are attached hereto as ANNEXES "C" and "C-1".
10. The said Joint Application together with its Annexes was pre-filed with the Honorable Commission on 6 February 2024.

Accordingly, this Joint Application is timely filed within the reglementary period provided under the ERC CSP Guidelines.

SALIENT FEATURES OF THE MERALCO-EERI PSA

11. The MERALCO-EERI PSA, a copy of which is attached hereto as ANNEX "D", 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, subject to Section 9.1.1.

xxx

Contract Capacity or CC shall be, subject to Section 3.4.1, Article 10, and Section 21.1, 1,200 MW (net) sourced from the Plant.

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.

xxx

2.2 Term of Agreement

Subject to Article 3, this Agreement shall become effective on the Execution Date, and shall remain in force and effect until the last day of the 15th Contract Year, unless terminated earlier in accordance with the terms of this Agreement and upon approval by the ERC, or extended by the application of Section 17.3.3 (the "Term").

xxx

3.3 Commercial Operations Date

3.3.1 *Power Supplier covenants that 1,200 MW (net) of the Plant shall achieve Commercial Operations Date no later than 26 November 2024 (the "Scheduled Commercial Operations Date").*

xxx

3.3.3 *If the Commercial Operations Date has not occurred by the Scheduled Commercial Operations Date, from and after the Scheduled Commercial Operations Date, Power Supplier shall, for each Day of unexcused delay, (i) procure and cause delivery to Meralco of Replacement Power of up to the Contract Capacity, as may be applicable, subject to Article 6 and in accordance with Appendix E, to be paid for by Meralco at the lower between the actual price of Replacement Power and the Price specified in Appendix E; or (ii) to the extent that such Replacement Power is not available due to inadequate supply from WESM or from any other source, pay to Meralco a fine equivalent to Nine Hundred Eight Philippine Pesos (PhP 908.00) multiplied by each affected MWh nomination by Meralco, until the earlier of: (a) the Commercial Operations Date, and (b) sixty (60) Days after the Delay Limit Date (as the Delay Limit Date may be adjusted in accordance with the succeeding provisions). For purposes of this Section 3.3.3, a fraction of a Day is considered a Day.*

xxx

6.1 Supply of Power

Subject to the terms and conditions of this Agreement:

6.1.1 *From the Commercial Operations Date of the Plant 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 E, the Contract Capacity of the Plant; and

- b) deliver and sell to Meralco, and Meralco shall purchase from Power Supplier, at the Price determined in accordance with Appendix E, the Associated Energy (and Replacement Power), to the extent of Meralco's relevant day-ahead nominations.*

The Dispatch of Contract Capacity and Associated Energy shall meet the requirements set out in the Performance Guarantees.

xxx

Article 9 Outages

9.1 Outage Allowances and Replacement Power

- 9.1.1 After Commercial Operations Date, Power Supplier shall be allowed Scheduled Outages not exceeding 12.5 Full Load Equivalent Outage Days ("Full Load Equivalent Scheduled Outage Allowance Days") and Forced Outages not exceeding 7.5 Full Load Equivalent Outage Days ("Full Load Equivalent Forced Outage Allowance Days") each Contract Year; provided that, a Forced Outage may only be counted towards the Full Load Equivalent Forced Outage Allowance Days upon provision by Power Supplier to Meralco of a copy of the acknowledgment letter from the System Operator or report from the Market Operator that a Forced Outage has occurred.*
- 9.1.2. During Scheduled Outages within the Full Load Equivalent Scheduled Outage Allowance Days and Forced Outages within the Full Load Equivalent Forced Outage Allowance Days, Meralco shall procure replacement energy from other sources or the WESM, at its own expense, which expense shall be passed on to its customers as part of generation costs.*
- 9.1.3. During Scheduled Outages that exceed the Full Load Equivalent Scheduled Outage Allowance Days and Forced Outages that exceed the Full Load Equivalent Forced Outage Allowance Days, Power Supplier shall purchase Replacement Power, which shall be declared as BCQ and paid for by Meralco at the lower between (a) the actual price of the Replacement Power, and (b) Price as specified in Appendix E. In the event of failure by Power Supplier to source the Replacement Power, Meralco shall be allowed to source replacement energy from the WESM. If the WESM price for the replacement energy is higher than the Price, Power Supplier shall reimburse Meralco the difference between (i) WESM price and (ii) the Price as specified in Appendix E, plus all relevant transaction cost and taxes. If the WESM price for the replacement energy is lower than the Price, Meralco shall not be liable to*

Power Supplier for the difference between WESM price and Price.

- 9.1.4. *On and after the Commercial Operations 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 replacement energy shall form part of the price that Meralco will charge its customers.*
- 9.1.5. *The supply by Power Supplier of quantities of Replacement Power under this Section 9.1 shall be deemed fulfilment of Power Supplier's obligation to make available the Contract Capacity and to deliver the Associated Energy during such period.*

xxx

Article 10 Adjustments in Contract Capacity and Associated Energy

- 10.1 *Subject to the provisions of Section 10.2 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.*
- 10.2 *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 10.1, 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.*

xxx

14.3 ERC Approval

14.3. Subject to the non-occurrence of the Longstop Date, 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 (a) it accepts such ERC Final Approval or (b) 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, the ERC Final Approval shall be (i) deemed accepted by Power Supplier and (ii) implemented by the Parties *immediately*.

xxx"

12. Based on the foregoing, and given a certain set of assumptions, the annual effective rate under the MERALCO-EERI PSA is PhP 6.0417 per kWh (at plant gate, VAT exclusive), as shown in the RATE IMPACT ANALYSIS below:

Excellent Energy Resources Inc. (EERI) PSA - Rate Impact at 94.52% pcf
(YEAR 2025)

BILLING COMPONENT	UNIT	BASE RATE ⁽¹⁾	CPI Adj Factor ⁽²⁾	BILLING DETERMINANT ⁽³⁾		AMOUNT (PHP)
A. Capacity Payment (MCP)						
Peso Portion	(Php/kW-yr)	14,248.9300		1,200,000	(kW)	17,098,716,000.00
B. Fixed O&M Payment (MFOM)						
Escalating Peso Portion	(Php/kW-yr)	3,311.9808	1.0716	1,200,000	(kW)	4,259,097,510.01
C. Fuel Cost Payment (MFCP) ⁽⁴⁾						
	(USD/kWh) ⁽⁵⁾	0.0669		9,935,942,400.00	(kWh)	37,305,620,859.17
D. Variable O&M Payment (MVOM)						
Escalating Peso Portion	(Php/kWh)	0.1283	1.0716	9,935,942,400	(kWh)	1,366,105,526.34
Total Payment (VAT exclusive)	(Php)					60,029,539,895.52
Effective Rate at Plant Gate	(Php/kWh)					6.0417
WESM Line Rental Rate ⁽⁶⁾	(Php/kWh)					0.1500
Delivered Rate (VAT exclusive)	(Php/kWh)					6.1917
Effective Cost if sourced from WESM ⁽⁷⁾	(Php/kWh)					6.8870
Increase / (Decrease) over WESM Price	(Php/kWh)					(0.6953)
Meralco Captive Energy Demand ⁽⁸⁾	(kWh)					38,641,104,390.68
Increase / (Decrease) in Generation Cost	(Php)					-6,908,904,053.28
Increase / (Decrease) in Generation Cost	(Php/kWh)					(0.1788)

NOTES:

⁽¹⁾ Base Rates as set forth in Schedule 1 of Appendix E of the PSA.
⁽²⁾ CPI assumptions were based on values used during evaluation for Year 2025.
⁽³⁾ Energy Payments based on 94.52% plant capacity factor.
⁽⁴⁾ Dollar components shall be paid in USD, however values shown here were converted to Peso amount using exchange rate of PhP 56.085 / USD.
⁽⁵⁾ Fuel Payment calculated based on Guaranteed Net Plant Heat Rate at 100.00% load factor for Contract Year 1.
⁽⁶⁾ Line Rental rate for EERI is based on the maximum allowable value for Contract Year 1 as stated in the PSA.
⁽⁷⁾ Cost if equivalent volume of EERI was sourced from the WESM based on forecasted average hourly prices from May 2025 to April 2026.
⁽⁸⁾ Forecasted Meralco Captive Energy for May 2025 to April 2026 based on 2023 Power Supply Procurement Plan as submitted to DOE.

13. MERALCO notes that the annual delivered rate of PhP 6.1917 per kWh (VAT exclusive and line rental inclusive) is lower by about

PhP 0.6953 per kWh than the effective cost of PhP 6.8870 per kWh, if the equivalent capacity under the MERALCO-EERI PSA is to be sourced from the WESM. In fact, by sourcing the capacity through the MERALCO-EERI PSA, MERALCO's average blended generation rate will be reduced by about PhP 0.1788 per kWh (as seen in the RATE IMPACT ANALYSIS above) resulting in savings to consumers of about PhP 6.908 billion.

14. In support of this Joint Application, the Judicial Affidavit of ENGR. DAVIDJOHN A. ZUNIGA, Officer of MERALCO's Energy Sourcing Office - Energy Resource Planning team, is attached hereto as ANNEX "E".
15. 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"
EERI's Secretary Certificates	"B" and "B-1"
BAC-PSA Summary-Report regarding the conduct of the CSP	"C"
DOE Certificate of Conformity No. 2023-10-002 dated October 27, 2023	"C-1"
2024 MERALCO-EERI PSA	"D"
Executive Summary	"D-1"
Judicial Affidavit of MERALCO's witness, ENGR. DAVIDJOHN A. ZUNIGA, Officer of MERALCO's Energy Resource Planning - Energy Sourcing Office	"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"
Write-up on the Non-Applicability of National Power Corporation ("NPC") Certification regarding whether or not Transition Supply Contract ("TSC") 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);	"J" "J-1"

Description of Document	Annex
<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, GEOP, etc. 	<p>"J-2"</p> <p>"J-3"</p> <p>"J-4"</p> <p>"J-5"</p>
Documents showing MERALCO's conduct of CSP	"K" and series
SEC Certificate of Registration including the Articles of Incorporation and By-Laws of EERI	"L and series"
2023 General Information Sheet of EERI (SEC-certified true copy)	M
Verified Certification of the list of Board Directors and members of the Ultimate Parent Company, subsidiaries and all affiliates of EERI	"N"
Write-up on the non-applicability of a Shareholder's Agreement	"O"
Board of Investments ("BOI") Certificate of Registration	"P" and "P-1"
Environmental Compliance Certificate ("ECC")	"Q"
Affidavit of Undertaking for the filing of the COC of the Plant	"R"
Certificate of Endorsement from the DOE regarding the inclusion of the Plant in the PDP	"S"
Written Explanation on In-applicable Documents	"T" and series
1. Write up on the Non-Applicability of RE Requirements	
2. Water Permit from the National Water Resources Board	
3. Distribution Wheeling Service Agreement	
4. Transmission Wheeling Contract	
5. IPPA Agreement	
6. Wholesale Aggregator Agreement	
7. Bank Certification of Long-Term Loans including Schedule of Original Loans	
8. Certification from the bank or lending institution	
Single-line Diagram	"U"
Point-to-Pont Application of the Plant	"V"
Project Feasibility Study (<i>confidential</i>)	"W"
Financial Model and Generation Rate Derivations (<i>confidential</i>)	"X and series" *
Certification on the Fuel Supply Procurement	"Y"
Fuel Supply Agreement	"Y-1"
Technical and Economic Characteristics of the EERI Plant (including the write up as regards	"Z" and Series

Description of Document	Annex
the inapplicability of the requirement concerning the data on outages)	
Certified True Copy of EERI's Audited Financial Statements Net Heat Rate Simulation of the number of operating units necessary to meet the MEOT Wholesale Electricity Market Registration (WESM)	"AA" and series
Certification as regards the Operation and Maintenance Agreement	"BB"
Lump Sum Supply Contract (EPC Agreement) (Confidential)	"CC" and series

ALLEGATIONS IN SUPPORT OF THE MOTION FOR
CONFIDENTIAL TREATMENT OF INFORMATION

16. Under Rule 4 of the ERC RRPP, a party to any proceeding before the Honorable Commission may request that certain information not be disclosed and be treated as confidential, by describing with particularity the information to be treated as confidential, specifying the ground for the claim of confidential treatment of the information and, if applicable, specifying the period during which the information must not be disclosed.
17. With respect to the documents marked and attached as ANNEXES "W¹", "X" and Series,² and "CC" EERI 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 EERI. The data and information contained therein are part of the overall formula and process in arriving at the competitive rates of EERI. These formula and process are specifically developed for the use of EERI and are treated as trade secrets. If the information contained in these documents are unduly disclosed, it will seriously prejudice the competitiveness of EERI. These documents are neither generally available to the public nor already in the possession of the Honorable Commission on a non-confidential basis.
18. In the case of *Air Philippines Corporation vs. Pennswell Inc.*,³ 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

¹ Project Feasibility Study

² Financial Model and Generation Rate Derivation

³ G. R. No. 172835, 13 December 2007.

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.)

19. The protection of trade secrets is likewise recognized by the Honorable Commission in its Decision in ERC Case No. 2015-111 RC:

"In the case of PNOC RC, the documents sought to be protected from disclosure contains formula and pricing structures used in arriving at their proposed tariff. The prices cited in the documents were components of the proposed tariff. In fact, all three (3) documents were used by the Commission in evaluating the reasonableness of the proposed rate. In electric power industry [where] prices is a major consideration in selecting one's supplier, it is apparent that the assumption used in arriving at one's proposed tariff is considered a competitive leverage by one player against its competitors.

*Thus, the Commission resolved to treat the said documents confidential and may not be publicly disclosed."*⁴

20. EERI hereby submit one (1) copy of the foregoing confidential documents in a sealed envelope, with the envelope and each page of the documents marked "Confidential."
21. 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 "W", "X" and Series and "CC". 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.
22. Lastly and corollary to the foregoing, EERI would like to implore the discerning wisdom of the Honorable Commission to include in its issuance for this purpose the *"procedures for handling or returning the confidential information, as may be appropriate, upon the close of the proceedings..."* (Sec. 2, Rule 4, ERC RRPP)
23. This is guided by the fact that EERI 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

⁴ *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.*

proceedings hereof, so as to relieve the Honorable Commission of the burden of safekeeping the trade secrets of EERI enclosed in the subject annexes.

PRAYER

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

- a) Issue an Order TREATING ANNEXES “W”, “X and Series” and “CC” 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 EERI, pursuant to Rule 4 of the ERC RRPP; and
- b) After hearing on the merits, render a Decision APPROVING the MERALCO-EERI 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 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 2020⁵ and Resolution No. 01, Series of 2021⁶ (ERC Revised Rules of Practice and Procedure):

Date	Platform	Activity
16 April 2024 (Tuesday) at two o'clock in the afternoon (2:00 PM)	Microsoft Teams Application	Determination of compliance with the jurisdictional requirements and expository presentation

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
23 April 2024 (Tuesday) at two o'clock in the afternoon (2:00 PM)		Pre-Trial Conference and presentation of evidence

Accordingly, MERALCO and EERI are hereby directed to host the virtual hearings at **MERALCO's Principal Office 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, MERALCO and EERI shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

RELATIVE THERETO, MERALCO and EERI 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 hearing;
- 2) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing* the Offices of the Provincial Governors, Mayors and 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*, the 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 before the date of the initial virtual hearing, MERALCO and EERI 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 EERI to inform the consumers within MERALCO's franchise area of the filing of the *Joint Application*, the 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, by all those making requests therefor, if any; and
- 6) Such other proof of compliance with the requirements of the Commission.

Moreover, MERALCO and EERI 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 Offices of the Governors, Mayors, and Local Legislative Bodies, and to submit proof of posting thereof.

Joint Applicants MERALCO and EERI and all interested parties are also required to submit 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 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 EERI 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 virtual hearing and Pre-Trial Conference pursuant to the preceding paragraph.

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

Joint Applicants MERALCO and EERI must also be prepared to make an expository presentation of the instant *Joint Application*, aided by whatever communication medium that it 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 EERI 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. MERALCO and EERI 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 EERI 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, MERALCO and EERI, including their authorized representatives and witnesses, are hereby directed to provide the Commission, through 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.

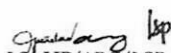
SO ORDERED.

Pasig City, 08 March 2024.

FOR AND BY AUTHORITY
OF THE COMMISSION:



CATHERINE P. MACEDA
*Commissioner and
Officer-In-Charge of the
Office of the Chairperson and CEO*


LS: JJP/ARG/LSP

ERC

Office of the Chairperson and CEO



CPM2024-015199

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Copy Furnished:

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9. Office of the City Mayor
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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

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City of Manila
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22. Office of the Local Government Unit (LGU) Legislative Body
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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
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