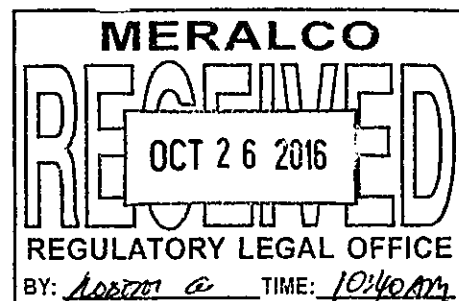


Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City

IN THE MATTER OF THE
APPLICATION FOR THE
APPROVAL OF THE POWER
SUPPLY AGREEMENT (PSA)
BETWEEN MANILA
ELECTRIC COMPANY
(MERALCO) AND REDONDO
PENINSULA ENERGY, INC.
(RPE), WITH MOTION FOR
CONFIDENTIAL
TREATMENT OF
INFORMATION



ERC CASE NO. 2016-084 RC

MANILA ELECTRIC
COMPANY (MERALCO) AND
REDONDO PENINSULA
ENERGY, INC. (RPE),
Applicants.

D O C K E T E D
Date: OCT 25 2016
By: [signature]

X-----X

ORDER

On 29 April 2016, Applicants Manila Electric Company (MERALCO) and Redondo Peninsula Energy, Inc. (RPE) filed a *Joint Application with Motion for Confidential Treatment of Information* dated 28 April 2016 for approval of their Power Supply Agreement (PSA) dated 20 April 2016.

In the said Application, MERALCO and RPE alleged the following:

1. Applicant MERALCO is a private corporation existing under the laws of the Republic of the Philippines, with principal office located at Ortigas Avenue, Barangay 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 and 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 this Honorable Commission.
3. Applicant RPE is a corporation duly organized and existing under the laws of the Republic of the Philippines, with its office address at Unit 310, The Venue, Rizal Highway, Subic Bay Industrial Park, Phase 1, Subic Bay Freeport Zone, Philippines. It may be served with notices and other processes of this Honorable Commission through its counsel at the address indicated herein.
4. RPE shall construct, own, operate, manage and maintain a 300 MW (net) sub-critical circulating fluidized-bed coal-fired power generating facility in Sitio Naglatore, Barangay Cawag, Municipality of Subic in the Province of Zambales, within the Subic Bay Freeport Zone (the "Plant").
5. Based on MERALCO's Distribution Development Plan, "from 2015 to 2024, energy sales is forecasted to grow by a compounded average growth rate of 3.7%."
6. In order to ensure continuous and reliable electricity for MERALCO's customers with the expected continuous increase in demand and load growth, and mitigate exposure to the Wholesale Electricity Spot Market ("WESM"), there is a need for MERALCO to source additional 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 extensive negotiations, on 20 April 2016, MERALCO executed a Power Supply Agreement ("PSA") with RPE, for the purchase of 225 MW Contract Capacity and Associated Energy from the Plant that RPE shall construct, own, operate, manage and maintain.

9. The PSA, a copy of which is attached as ANNEX "A" and made an integral part hereof, contains the following salient features:

"ARTICLE 2
PURPOSE; TERM

xxx

Section 2.2 Term of Agreement

- 2.2.1 This Agreement shall become effective upon the satisfaction (or the waiver by the relevant Party) of the conditions set out in Section 3.1 (the "Effective Date").
- 2.2.2 The term of this Agreement (the "Term") shall commence on the Effective Date and shall expire on the date falling twenty (20) years after the Operations Effective Date xxx.

xxx

ARTICLE 3
EFFECTIVE DATE, COMMENCEMENT DATE
AND COMMERCIAL OPERATIONS DATE

Section 3.1 Effective Date

- 3.1.1 The Effective Date shall be the date that the following conditions shall have been satisfied or waived by the relevant Party, as certified by Power Supplier and Meralco xxx.

xxx

Section 3.2 Commencement Date

- 3.2.1 The "Commencement Date" shall occur upon the satisfaction of the conditions below;
- (a) the conditions set out in Section 3.1 have been fulfilled;
 - (b) each Party has delivered to the other Party a certification dated no earlier than two (2) days prior to the proposed Commencement Date to the effect that its representations and warranties contained

herein shall be true and correct in all material respects on and as of the Commencement Date;

- (c) On or before the Longstop Date, (i) the ERC shall have approved in the ERC Final Approval this Agreement, including the pricing structure as set out herein (or as otherwise acceptable to Power Supplier), and (ii) the Acceptance Date has occurred; and
- (d) Financial Close or NTP Issuance shall have occurred within the period contemplated under Section 3.2.2.

Power Supplier shall deliver written notice to Meralco of the satisfaction of these conditions and Meralco shall confirm in writing the occurrence of the Commencement Date.

3.2.2 Power Supplier covenants to achieve Financial Close or NTP Issuance within ninety (90) Days from the Acceptance Date (the "Required Financial Completion Date").

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Section 3.3 Operations Effective Date

- 3.3.1 Subject to the occurrence of the Commencement Date, Operations Effective Date shall occur on the date that is forty-four (44) months from the Commencement Date. From and after the Operations Effective Date, the obligations of Power Supplier and Meralco under this Agreement with respect to the sale and purchase of Contract Capacity and Associated Energy shall become effective.
- 3.3.2 If, at any time after the occurrence of the Operations Effective Date, Power Supplier fails to supply Meralco with Contract Capacity and Associated Energy, Meralco shall be entitled to procure Replacement Power from the WESM

and Power Supplier shall be liable to pay Meralco the amount equivalent to the difference between (i) the WESM cost of the Replacement Power and (ii) the amount Meralco would have paid for the Replacement Power had it been paid at the Price (the "WESM Differential"). For the avoidance of doubt, if the WESM Differential is a negative number, Meralco shall have no liability whatsoever to Power Supplier.

- 3.3.3 After Meralco receives the invoice from the WESM that includes the WESM Differential, Meralco shall be entitled to invoice Power Supplier for payment of the WESM Differential. Power Supplier shall pay the WESM Differential within five (5) Days from receipt of such invoice.
- 3.3.4 In the event Power Supplier fails to pay Meralco the WESM Differential within the period stated in Section 3.3.3, Meralco shall be entitled to draw on the Performance Security, subject to the obligation of Power Supplier to replenish the Performance Security in accordance with Section 4.5.
- 3.3.5 In the event that Power Supplier fails to supply Contract Capacity and Associated Energy to Meralco for sixty (60) Days, Meralco shall have the right, by written notice to Power Supplier, to terminate this Agreement. In case of such termination, Meralco shall have the right to forfeit as liquidated damages the amount of the Performance Security and to draw on the Performance Security for the settlement of such liquidated damages.

Section 3.4 Commercial Operations Date and Scheduled Commercial Operations Date

- 3.4.1 The "Commercial Operations Date" shall occur upon delivery by Power Supplier of the documents enumerated below, in each case, in the form and substance satisfactory to Meralco:
 - (a) Capacity Test Certificate xxx;
 - (b) a Net Plant Heat Rate Test Certificate xxx;

- (c) all permits, licenses, authorizations and other approvals from all Government Authorities and third parties needed for the operation of the Plant and the supply of electricity by the Power Supplier to Meralco xxx;
- (d) a Commercial Operations Date Certificate; and
- (e) certification by Power Supplier's insurance advisor or broker that the insurances required for the Plant under this Agreement relevant for at least the first Contract Year have been obtained.

xxx

Section 3.5 Early Occurrence of the Commercial Operations Date

- 3.5.1 In the event that Power Supplier anticipates that the Plant shall achieve Commercial Operations Date prior to the Operations Effective Date ("Early Commercial Operations Date"), Power Supplier shall promptly deliver to Meralco written notice (the "Early COD Notice") of such anticipated Early Commercial Operations Date, indicating the anticipated date thereof, at least three (3) months prior to the then anticipated date of the Early Commercial Operations Date.
- 3.5.2 Upon receipt of such Early COD Notice, Meralco shall, by written notice to Power Supplier, choose between the following options:
 - (a) Consider that the Operations Effective Date shall occur on the Early Commercial Operations Date or on such other date as the Parties may agree; or
 - (b) Elect to have Power Supplier deliver, on a non-firm basis during the Interim Supply Period and until the occurrence of the Operations Effective Date, such portion of the Contract Capacity and Associated Energy required by Meralco, for which it shall pay the Non-Firm Price.

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ARTICLE 6
SALE AND PURCHASE OF CONTRACT CAPACITY AND
ASSOCIATED ENERGY

Section 6.1 Sale and Purchase of Power

6.1.1 Subject to the terms and conditions of this Agreement, from the Operations Effective Date until the expiration of the Term, 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) sell and Deliver to Meralco, and Meralco shall purchase from Power Supplier, at the Price determined in accordance with Appendix E, the Associated Energy, to the extent of Meralco's relevant day-ahead nominations as provided in Appendix H; provided that, Power Supplier may make available Contract Capacity and Deliver Associated Energy to Meralco from other sources, including the WESM, at the Price; and any such Associated Energy Delivered from such other sources shall be deemed Delivered by Power Supplier by declaration made from the Plant.

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

6.1.2 Unless otherwise expressly permitted by this Agreement, Power Supplier shall not, without Meralco's prior written consent, sell, divert, grant, transfer, dedicate, reserve or assign all or any portion of the Contract Capacity and Associated Energy to any Person other than Meralco.

6.1.3 The supply of Contract Capacity and Associated Energy by Power Supplier to Meralco shall be in accordance with the WESM Rules. Each Party shall, during the Term, always keep and

maintain its registration as a Direct WESM Member.

6.1.4 Power Supplier shall source its supply for Meralco from the Plant except during (i) the Interim Supply Period; (ii) Outages; (iii) any curtailment due to Dispatch Instructions; (iv) ramping limitations and (v) system frequency fluctuations.

xxx

ARTICLE 9
OUTAGES¹

Section 9.1 Scheduled Outage and Major Maintenance Outage Allowances

Beginning on the Commercial Operations Date, Power Supplier shall be allowed Scheduled Outages not to exceed the Full Load Equivalent Scheduled Outage Allowance Days for each Contract Year during the Term as computed in Appendix E, during which times reduced or no supply of Contract Capacity or Associated Energy will be available to Meralco. Notwithstanding that the Commercial Operations Date does not coincide with the start of a Contract Year, Power Supplier shall be entitled to the Full Load Equivalent Scheduled Outage Allowance Days for such Contract Year when the Commercial Operations Date occurred. For the avoidance of doubt, during the Interim Supply Period, Power Supplier shall not be entitled to the Full Load Equivalent Scheduled Outage Allowance Days.

¹ Schedule 1, Appendix E of the PSA:

Base Full Load Equivalent Scheduled Outage Allowance	30 Days per Contract Year
Full Load Equivalent Major Maintenance Outage Allowance	20 Days, not more frequent than once every 4 years
Base Full Load Equivalent Forced Outage Allowance	15 Days per Contract Year

Power Supplier shall be entitled to the Full Load Equivalent Major Maintenance Outage Allowance Days to undertake major repair, overhaul and maintenance of the Plant in accordance with the technical requirements of the Plant; provided that, it shall, in no case, be availed of more frequently than once every four (4) years; and provided further, that the first Major Maintenance Outage shall occur no earlier than the fourth (4th) year after the occurrence of the Commercial Operations Date.

Section 9.2 Forced Outage Allowance

Beginning on the Commercial Operations Date, Power Supplier shall be allowed Forced Outages not to exceed the Full Load Equivalent Forced Outage Allowance Days for each Contract Year during the Term as computed in Appendix E, during which time reduced or no supply of Contract Capacity or Associated Energy will be available to Meralco. Notwithstanding that the Commercial Operations Date does not coincide with the start of a Contract Year, Power Supplier shall be entitled to the Full Load Equivalent Forced Outage Allowance Days for such Contract Year when the Commercial Operations Date occurred. For the avoidance of doubt, during the Interim Supply Period, Power Supplier shall not be entitled to the Full Load Equivalent Forced Outage Allowance Days.

Section 9.3 Replacement Power

- 9.3.1 During outages within the Full Load Equivalent Forced Outage Allowance Days, Full Load Equivalent Scheduled Outage Allowance Days and the Full Load Equivalent Major Maintenance Outage Allowance Days, Power Supplier shall not be required to supply Meralco with Replacement Power. In such circumstances, Meralco, at its own cost, shall source the Replacement Power from the WESM and Power Supplier shall not bill Meralco for these quantities.

9.3.2 During any period in which an Event of Force Majeure affects Power Supplier or Meralco, Meralco shall procure its own Replacement Power from the WESM to the extent supply or offtake is so affected.

9.3.3 During any period of Scheduled Outage for which unutilized Full Load Equivalent Scheduled Outage Allowance Days is not available, or Major Maintenance Outage for which unutilized Full Load Equivalent Major Maintenance Outage Allowance Days is not available, Power Supplier shall purchase Replacement Power from WESM or third parties to the extent the same is available for delivery to Meralco. Replacement Power quantities procured by Power Supplier under this Section 9.3.3 shall be declared as BCQ and shall be paid by Meralco at the Price in accordance with Appendix E. During any period of Forced Outage for which unutilized Full Load Equivalent Forced Outage Allowance Days is not available, Power Supplier shall purchase Replacement Power from WESM or third parties to the extent the same is available for delivery to Meralco. Replacement Power quantities procured by Power Supplier and delivered to Meralco under this Section 9.3.3 shall be declared as BCQ and shall be paid by Meralco at the Price in accordance with Appendix E.

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ARTICLE 10

ASSIGNMENT OR TRANSFER OF CONTRACT CAPACITY

Section 10.1 Implementation of Open Access and Retail Competition or Reduction in Demand of Captive Customers

With the implementation of Open Access and Retail Competition in phases in accordance with the guidelines issued by the ERC or in relation to any reduction in demand of Meralco's captive customers, the amount of Contract Capacity may be adjusted in accordance with the terms hereof.

Section 10.2 Notification of Reduction in Contract Capacity

In respect of the start of each phase under Open Access and Retail Competition or in case of any reduction in demand of Meralco's captive customers, Meralco shall deliver to Power Supplier written notice specifying the reduced amount of Contract Capacity under this Agreement resulting from transfers made in accordance with Section 10.3.

Section 10.3 Assignment or Transfer of Contract Capacity Due to Open Access and Retail Competition or Reduction in Demand of Captive Customers

10.3.1 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 that is no longer required by Meralco as a result of Open Access and Retail Competition or a reduction in demand of its captive customers to any of its business segments or its Retail Electricity Supplier ("RES") Affiliate, without the prior consent of the Power Supplier. In the event that Meralco has two or more RES Affiliates, Power Supplier shall have the option to choose the RES Affiliate to which Meralco shall transfer its rights and obligations, which option shall be communicated to Meralco within five (5) Days from receipt of the Transfer Notice (defined below).

10.3.2 Meralco shall also be entitled to Transfer its rights and obligations to purchase a portion of Contract Capacity that is no longer required by Meralco as a result of Open Access and Retail Competition or a reduction in demand of its captive customers to (i) any of its Affiliates or (ii) to any other Person, subject to the consent of Power Supplier, which consent shall not be unreasonably withheld delayed or conditioned, it being understood that withholding consent would not be considered unreasonable if the proposed Transfer would be contrary to the reasonable requirements of Finance Parties under the Finance Documents, as evidenced by a written confirmation by the relevant Finance

Parties. Power Supplier shall exert reasonable efforts to (i) procure that only the consent of Finance Parties representing no more than seventy-five percent (75%) of the debt plus undrawn commitments shall be required for a Transfer under the Finance Documents; and (ii) upon written notice being given by Meralco, procure such consent for the Transfer. Meralco shall endeavor to cooperate with Power Supplier by providing documents and information in relation to the Transfer as may be reasonably required by the Finance Parties.

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ARTICLE 11
BILLING AND PAYMENT

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Section 11.2 Payments

- 11.2.1 Meralco shall pay the entire amount indicated in the Final Invoice (subject to Appendix I) when due and payable, provided that Meralco shall not be required to make payment on any Invoice that is manifestly in error, apparently invalid or not in the form or substance contemplated by this Agreement until the same has been corrected following prompt notice by Meralco to Power Supplier of such error, invalidity or absence of proper form or substance.

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ARTICLE 12
TAXES, FEES AND COSTS

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Section 12.2 Charges Due to Change in Circumstances

- 12.2.1 If, as a result of a Change in Circumstances, Meralco becomes liable to pay any new charges, fees, taxes, duties, assessments or other similar amounts ("New Charges"), or any increase in existing charges, fees, taxes, duties, assessments or other similar amounts ("Increased Charges") become 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;

12.2.2 In the event that, as a result of a Change in Circumstances and pursuant to a corresponding order of the ERC or any relevant Government Instrumentality:

- (a) Meralco is prevented from making a timely pass through to its customers of any charges under this Agreement as approved by the ERC in the ERC final Approval as accepted by Power Supplier (such amounts referred to hereinafter as "Disallowed Pass-Through Amounts"); or
- (b) any portion of the Price that has been paid to Power Supplier is required to be refunded to Meralco or Meralco's customers in connection with the ERC Application or any petition, claim, the Parties shall enter into good faith negotiations to agree on a satisfactory solution regarding the amendment of this Agreement to restore Meralco's commercial position prior to such Change in Circumstances, including an adjustment of the Price; provided that in the case of Section 12.2.2(b), Power Supplier shall refund all Refundable Amounts to Meralco or Meralco's customers in the manner and within the period as required by the ERC or any other relevant Government Instrumentality (as applicable). If the Parties fail to reach a mutually satisfactory resolution within sixty (60) Days from the commencement of negotiations, the provisions of Section 18.6.6(a) will apply.

12.2.3 If as a result of a Change in Circumstances affecting Power Supplier, Power Supplier becomes liable to pay any New Charges or any Increased Charges with respect to this Agreement, or Power Supplier is no longer able to require payment from Meralco for Disallowed Pass-Through Amounts, or Power Supplier is required to refund Refundable Amounts, or a Change in Circumstances 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 the 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 Change in Circumstances ("Notice of Change in Circumstances") together with an analysis of the cost impact of such Change in Circumstances and Meralco shall file the necessary application with the ERC for the adjustment of the Price ("Application for Price Adjustment") within thirty (30) Days from receipt of the Notice of Change in Circumstances; provided that, Meralco shall not be liable to pay any adjustment in the Price from the time the Change in Circumstances becomes effective until the ERC approves the Application for Price Adjustment ("Interim Period"); and provided, further, that New Charges or Increased Charges for which the Power Supplier sends a Notice of Change in Circumstances in accordance with this Section 12.2.3 shall not include charges, fees, taxes, duties or other similar amounts relating to (i) taxes on the income of Power Supplier, (ii) taxes on the real property owned, held by or in possession of Power Supplier, and (iii) business taxes on the operations of Power Supplier.

12.2.4 In the event that:

- (a) Meralco is unable to file an Application for Price Adjustment within thirty (30) Days from receipt of the Notice of Change in Circumstances, or
- (b) the ERC denies, in whole or in part, the Application for Price Adjustment, or
- (c) if no order is issued granting the Application for Price Adjustment within sixteen (16) months from receipt of the Notice of Change in Circumstances, or

- (d) the total amount of unreimbursed New Charges, Increased Charges, Disallowed Pass-Through Amounts that Power Supplier is unable to collect from Meralco, and the Refundable Amounts actually refunded by Power Supplier, accumulated during the Interim Periods for all Change in Circumstances events occurring for the entire Term ("Unreimbursed New or Increased Charges and Refundable Amounts") exceeds the equivalent of two percent (2%) of the Capacity Payments for one (1) Contract Year ("Threshold Level 1"),

the Parties shall enter into good faith negotiations to agree on a satisfactory solution regarding the amendment of this Agreement to restore Power Supplier's commercial position prior to such Change if the Parties fail to reach a mutually satisfactory resolution within sixty (60) Days from the commencement of negotiations, the Power Supplier shall be entitled to terminate this Agreement in accordance with the provisions of Section 18.6.6(b).

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ARTICLE 14 COVENANTS

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Section 14.2 ERC Approval

- 14.2.1 Subject to the non-occurrence of the Longstop Date, Power Supplier shall immediately inform Meralco of its receipt of the ERC Final Approval by providing proof thereof. Power Supplier shall have ten (10) Days from the date of such receipt of the ERC Final Approval 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.
- 14.2.2 In case of Power Supplier's non-acceptance, Power Supplier shall be free to file with the ERC a motion for reconsideration and Meralco shall cooperate and use reasonable efforts to support any such motion. Any order on a motion for

reconsideration filed shall be treated as an ERC Final Approval for purposes of the processes under this Section 14.2, and Power Supplier shall accept or reject such ERC Final Approval in accordance with Section 14.2.1 above.

14.2.3 If the ERC's Final Approval requires an amendment of any provision herein, including provisions on amounts payable under this Agreement, or subjects such approval to any material term or condition that is not acceptable to either Party, acting reasonably ("ERC Conditional Approval"), the Parties shall cooperate in good faith to resolve the required ERC amendment or to address the material term or condition. The Parties may

- (a) within fifteen (15) Days after the receipt of the ERC Conditional Approval, seek reconsideration of the ERC Conditional Approval; or
- (b) within sixty (60) Days after receipt of the ERC Conditional Approval, revise and file an amended Agreement incorporating changes (other than the Price) for approval by the ERC ("Amended Agreement"); provided that, if the motion for reconsideration is denied by the ERC, or the Amended Agreement is disapproved by the ERC, or approved by the ERC but still with any material term or condition that is not acceptable to either Party, acting reasonably, the Party adversely affected may terminate this Agreement upon sixty (60) Days prior written notice to the other Party in accordance with the provisions of Section 18.6.2.

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ARTICLE 17
FORCE MAJEURE

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Section 17.5 Effect of Extended Force Majeure

If any Event of Force Majeure prevents Power Supplier from making available the Contract Capacity or Delivering the Associated Energy or Meralco from accepting Contract Capacity or Associated Energy, in each case for a continuous period of more than one hundred eighty (180) Days, then either Party may upon written notice, require the other Party to meet as soon as practicable to reasonably discuss any modification, change or amendment of this Agreement under such reasonable terms, to the extent necessary to resolve the issues arising from the Event of Force Majeure and maintain, to the extent feasible, the rights and obligations of the Parties under this Agreement.

If the Parties do not reach such satisfactory solution prior to the end of such one hundred eighty (180) Day period, or such other time as may be agreed upon, either Party may terminate this Agreement in accordance with Section 18.6.5.

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ARTICLE 18
EVENTS OF DEFAULT AND TERMINATION

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Section 18.3 Remedies in case of an Event of Default

- 18.3.1 During the Curing Period with respect to a Power Supplier Event of Default, Meralco shall, for each time Power Supplier fails to make Available the Contract Capacity or to Deliver the Associated Energy, be entitled to source energy from the WESM. In such case, and provided that Power Supplier is able to cure the Power Supplier Event of Default prior to the exercise by Meralco of its rights under Section 18.3.3, Power Supplier shall be liable to pay Meralco the difference between the amount Meralco actually paid for such energy and the Price. It is understood and

agreed that, despite the cure of a Power Supplier Event of Default, Meralco's rights under Section 18.3.3 continues to subsist until Power Supplier makes full payment of its liability under this Section 18.3.1.

18.3.2 During the Curing Period with respect to a Meralco Event of Default, Power Supplier shall, from the time of Meralco's failure to accept or pay for the Contract Capacity and Associated Energy, be entitled to sell the Contract Capacity and Associated Energy to the WESM. In such case, and provided that Meralco is able to cure the Meralco Event of Default prior to the exercise by Power Supplier of its rights under Section 18.3.4, Meralco shall be liable to pay Power Supplier the difference between the amount Power Supplier actually received from such sale to the WESM and the Price. It is understood and agreed that, despite the cure of a Meralco Event of Default, Power Supplier's rights under Section 18.3.4 continues to subsist until Meralco makes full payment of its liability under this Section 18.3.2.

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10. The Payment Structure, as provided in Appendix E of the PSA shall be as follows:

"C. PAYMENT UPON OPERATIONS EFFECTIVE DATE

The payment to be made in each Billing Period during the Term for Contract Capacity and Associated Energy shall consist of a Capacity Payment, Energy Payment, Interconnection Facilities Payment, and Reimbursable Cost Payment. The Capacity Payment consists of Component A (MCP), and Component B (MFOM), and the Energy Payments consists of Component C (MFP), and Component D (MVOM). Other payments consist of Component E (MIFP), Component F Reimbursable Cost Payment (RCP) and Component G (VAT). Thus, the Monthly Power Bill ("MPB") payment for Contract Capacity and Associated Energy for each Billing Period shall be equal to:

$$\text{MPB} = \text{MCP} + \text{MFOM} + \text{MFP} + \text{MVOM} + \text{MIFP} + \text{RCP} + \text{VAT}"$$

11. Given the foregoing, a sample calculation of the base contract price under the PSA, given a certain set of assumptions, results in an annual effective rate of PhP3.8466 per kWh (at plant gate), as shown in the sample calculation below:

RPE PSA - Rate Impact
(YEAR 2021)

BILLING COMPONENT	UNIT	BASE RATE ^(a)	CPI Adj Factor ^(a)	BILLING DETERMINANT ⁽ⁱ⁾		AMOUNT (PHP)
A. Capacity Payment (MCP)						
Peso Portion	(Php/kW-yr) ^(b)	14,913.2468		225,000	(kW)	3,355,480,530.00
B. Fixed O&M Payment (MFOM)						
US Dollar Portion Escalating	(USD/kW-yr) ^(a)	19.2828	1.000000	225,000	(kW)	199,880,684.10
Peso Portion Escalating	(Php/kW-yr) ^(b)	1,870.1836	1.000000	225,000	(kW)	420,791,310.00
C. Fuel Payment (MFP)						
US Dollar Portion	(USD/kWh) ^(d)	0.0220		1,576,800,000	(kWh)	1,595,887,404.73
D. Variable O&M Payment (MVOM)						
Peso Portion	(Php/kWh)	0.1572	1.000000	1,576,800,000	(kWh)	247,872,960.00
E. Interconnection Facilities Payment (MIFP)						
Capital Recovery	(Php/kW-yr)	403.4155		225,000	(kW)	90,768,487.50
Fixed O&M	(Php/kW-yr)	174.6456	1.000000	225,000	(kW)	39,295,260.00
F. Reimbursable Cost Payment (RCP) ^(e)						
Real Property Tax	(Php)					1,854,823
Lease Fees	(Php)					75,000,000
Start-up and Shutdown Costs	(Php)					-
Supplemental Payments	(Php)					38,473,920
Commissioning Energy Charges	(Php)					-
Replacement Power	(Php)					-
TOTAL PAYMENT	(Php)					6,065,305,379.42
Effective Rate at Plant Gate	(Php/kWh)					3.8466
WESM Line Rental Rate ^(a)	(Php/kWh)					0.3000
Delivered Rate	(Php/kWh)					4.1466

Effective Cost at WESM Price ^(f)	(Php/kWh)	7.0640
Increase / (Decrease) over WESM Price	(Php/kWh)	(2.9174)
Meralco Captive Energy Demand ^(g)	(kWh)	34,658,621,088
Increase / (Decrease) in Generation Cost	(Php)	(4,600,188,356.80)
Increase / (Decrease) in Generation Cost	(Php/kWh)	(0.1327)

NOTE:

^(a) Base Rates as set forth in Schedule 1 of Appendix E of the PSA
^(b) Annual Capacity Rate and Annual Fixed O&M is converted into monthly rates by applying the formulas shown in Appendix E of the PSA
^(c) Fuel Payment calculated based on Guaranteed Net Plant Heat Rate at 91.25% plant load factor, Newcastle index = USD 50.38/MT, Freight Price = USD 5.90/MT, and Forex rate at PhP 46.07/USD (current prices as of Mar 2016)
^(d) Reimbursable Payments (pass through costs) based on estimated taxes
^(e) Assumed estimated RPE line rental rate
^(f) Cost if equivalent volume of RPE was sourced from the WESM based on forecast average Jan - Dec 2021 hourly prices
^(g) Meralco Captive Energy Demand based on 2021 forecast
^(h) Assumed no CPI escalation
⁽ⁱ⁾ Energy Payments based on 80.00% plant capacity factor

12. As seen in the rate impact above, given the above assumptions, the simulated delivered price under the PSA would result in the reduction of MERALCO's generation charge by about PhP0.1327 per kWh.

- 13. Notably, the Plant offers greater reliability compared to existing plants that are past their expected plant life, at a price competitively at par with the rates of the existing plants despite its newness.
- 14. It bears emphasis that there is an urgent need for the final approval of the PSA considering the requirement of lenders for the Honorable Commission's final approval of the PSA prior to financial closure. Only thereafter can RPE commence construction of the Plant to meet the target Commercial Operations Date and allow for delivery of MERALCO's needed capacity and associated energy by then.
- 15. Verily, this Honorable Commission's approval of the PSA will send strong signals to lenders of the viability of financing power generation projects in the Philippines, and thus, set the pace for infusion of similar investments by the private sector.
- 16. Additionally, the Plant is part of the Department of Energy's ("DOE") planned indicative power projects. It is worthy to note that the realization of this project and its contribution to achieving the government's target of available capacity as per the DOE's Philippine Development Plan would largely depend on the timely approval of this Application.
- 17. In support of this Application, the Judicial Affidavit of MR. CIPRINILO C. MENESES, Head of MERALCO's Energy Sourcing Office, is attached as ANNEX "B" and made an integral part hereof.
- 18. Likewise, in support of this Application, the Applicants provide this Honorable Commission with the following documents, which underwent the pre-filing conference of this Honorable Commission, to wit:

DESCRIPTION OF DOCUMENT	ANNEX
Articles of Incorporation of RPE	C
Securities and Exchange Commission ("SEC") Certificate of Registration of the said Articles of Incorporation	D
List of Shareholders (Latest GIS of RPE – SEC Form)	E
Write-up on Board of Investment ("BOI") Certificate of Registration	F

Environmental Compliance Certificate (“ECC”) issued by the Department of Environment and Natural Resources (“DENR”)	G
Executive Summary	H
Debt/Equity Ratio	I
Project Cost	J
Computation of Return on Investment/Weighted Average Cost of Capital (“WACC”)	K
Write-up on Certification from the Bank/Lending Institution	L
Purchased Power Rate/Breakdown of the base prices of Operation and Maintenance; Capacity Fee; Fixed Operation Fee; and Energy Fee	M*
Sample Computation of Power Rates	N
Rate Impact on the overall rates of MERALCO upon approval of the PSA	O
Basis/Rationale of Indexation	P
Cash Flow specifying the Initial Costs and Breakdown of Operating and Maintenance expenses	Q*
Write-up on Minimum Energy Off-take (“MEOT”)	R
Write-up on the Procurement Process of Fuel	S
Write-up on Related Agreements	T
Connection Agreement between National Grid Corporation (“NGCP”) and RPE	U
Write-up on Certificate of Compliance (“COC”) of RPE	V
Write-up on National Power Corporation (“NPC”) Certification	W
Technical and Economic Characteristics	X
Cost Analysis	Y*
Procurement Process leading up to the execution of the PSA	Z
Details regarding transmission projects	AA
Letter from Department of Energy’s (“DOE”) regarding Philippine Development Plan (“PDP”)	BB
Distribution Development Plan (“DDP”) of MERALCO	CC
Demand Side Management (DSM) of MERALCO	DD

Latest and Complete Set of Audited Financial Statements of RPE	EE
Operating Expenses	FF*
Sworn Statement on Fuel Procurement	GG
Write-up on Certification of Engine Manufacturer	HH
Write-up on Simulation of the Number of Operating Units necessary to meet the MEOT	II
Write-up on Potential Cost (absolute amounts and PhP/kWh) of Ancillary Services	JJ
Acknowledgement receipt by the City of Pasig	KK
Affidavit of Publication and Complete Issue of Newspaper	LL

** These documents are requested to be treated as confidential and are attached to this Application in a sealed envelope*

ALLEGATIONS IN SUPPORT OF
MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION

19. RPE notes that Annexes "M", "Q", "Y" and "FF" of this Application contain certain non-public information, data and calculations involving business operations and financial trade secrets reflecting RPE's investment and business calculations and, as such, are confidential in nature. Further, there are confidentiality clauses set out by the Parties under the PSA.
20. Under Rule 4 of the ERC Rules of 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 said rule, RPE respectfully move that Annexes "M", "Q", "Y" and "FF" not be disclosed and be treated as confidential documents in accordance with Rule 4 of the ERC Rules of Procedure.
21. RPE hereby submits Annexes "M", "Q", "Y" and "FF" in a sealed envelope.

PRAYER

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

- a) ISSUE an Order (i) treating Annexes "M", "Q", "Y" and "FF" and the information contained therein as confidential, (ii) directing their non-disclosure to persons other than officers and staff of the Honorable Commission, as necessary, pursuant to Rule 4 of the ERC Rules, and (iii) prescribing guidelines for the protection thereof; and
- b) after hearing on the merits, a Decision be rendered APPROVING the PSA between Applicants MERALCO and RPE.

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

Finding the said 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 on **23 November 2016 (Wednesday) at two o'clock in the afternoon (2:00 p.m.), at the ERC Hearing Room, 15th Floor, Pacific Center Building, San Miguel Avenue, Pasig City.**

Applicants MERALCO and RPE are hereby directed to cause the publication of the attached Notice of Public Hearing, at their own expense, twice (2x) for two (2) successive weeks in two (2) newspapers of general circulation in the Philippines, with the date of the last publication to be made not later than ten (10) days before the date of the scheduled initial hearing. They are also directed to inform the consumers within the franchise area of MERALCO, by any other means available and appropriate, of the filing of the Joint Application with Motion for Confidential Treatment of Information, its reasons therefor, and of the scheduled hearing thereon.

Let copies of the Joint Application with Motion for Confidential Treatment of Information, this Order, and the attached Notice of Public Hearing be furnished 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.

Likewise, let copies of this Order and the attached Notice of Public Hearing be furnished the Offices of the Provincial Governors, the City and Municipal Mayors, and the Local Government Unit (LGU) Legislative Bodies within MERALCO's franchise area for the appropriate posting thereof on their respective bulletin boards.

Applicants MERALCO and RPE are hereby directed to furnish all those making requests therefor with copies of their Joint Application with Motion for Confidential Treatment of Information and the attachments thereto, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing, Applicants MERALCO and RPE must submit to the Commission their written Compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidences on the actual posting and publication of the Notice of Public Hearing consisting of certifications issued to that effect, signed by the afore-mentioned Governors and Mayors, or their duly authorized representatives, and the duly authorized officials of the LGU Legislative bodies, bearing the seals of their offices, and the affidavits of the Editors or Business Managers of the newspapers where the said Notice of Public Hearing were published together with the complete issues of the said newspapers, and such other proofs of compliance with the requirements of the Commission.

Applicants MERALCO and RPE, and all interested parties are directed to submit, at least five (5) days before the date of initial hearing and Pre-trial Conference, their respective Pre-trial Briefs containing, among others:

- a. A summary of admitted facts and proposed stipulation of facts;
- b. The issues to be tried or resolved;
- c. The documents or exhibits to be presented, stating the purposes and proposed markings therefor; and

- d. The number and names of the witnesses, with their written testimonies in an individual affidavit form, to be attached to the Pre-trial Brief.

Failure by the Applicants to submit the required Pre-trial Brief and Judicial Affidavits of their witnesses 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 said date of cancellation.

As part of the pre-trial conference, the Applicants must also be prepared to make an Expository Presentation of their 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, what their Application is all about and the reasons and justifications being cited in support thereof.

SO ORDERED.

Pasig City, 03 October 2016.

FOR AND BY AUTHORITY
OF THE COMMISSION:


JOSE VICENTE B. SALAZAR
Chairman and CEO

ERC
Office of the Chairman



J-2016-021-OC-05609

LS: MCC/GLS/NJM/APV

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Makati City, Metro Manila
6. Commission on Audit (COA)
Commonwealth Avenue
Quezon City, Metro Manila
7. Senate Committee on Energy
GSIS Bldg. Roxas Blvd., Pasay City
Metro Manila
8. House Committee on Energy
Batasan Hills, Quezon City, Metro Manila
9. Philippine Chamber of Commerce and Industry (PCCI)
Campus Avenue corner Park Avenue,
McKinley Town Center, Fort Bonifacio, Taguig City
10. The City Mayor
City of Manila
11. LGU Legislative Body
City of Manila
12. The City Mayor
Quezon City
13. LGU Legislative Body
Quezon City

14. The City Mayor
City of Caloocan
15. LGU Legislative Body
City of Caloocan
16. The City Mayor
City of Makati
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City of Makati
18. The City Mayor
City of Malabon
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20. The City Mayor
City of Mandaluyong
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22. The City Mayor
City of Muntinlupa
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City of Muntinlupa
24. The City Mayor
City of San Jose del Monte, Bulacan
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City of San Jose del Monte, Bulacan
26. The City Mayor
City of Valenzuela
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28. The City Mayor
City of Pasig
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Pasay City
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32. The City Mayor
City of Parañaque
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Cavite City
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Trece Martirez City
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Las Piñas City
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San Juan City
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Lucena City
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Batangas City
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46. The City Mayor
San Pablo City, Laguna
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48. The City Mayor
City of Marikina
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50. The City Mayor
Antipolo City, Rizal
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52. The City Mayor
Tagaytay City, Cavite
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Tagaytay City, Cavite
54. The City Mayor
Calamba, Laguna
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56. The City Mayor
Sta. Rosa, Laguna
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Sta. Rosa, Laguna
58. The City Mayor
Biñan, Laguna
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Biñan, Laguna
60. The City Mayor
Navotas, Metro Manila
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Navotas, Metro Manila
62. The Municipal Mayor
Taguig, Metro Manila
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Taguig, Metro Manila
64. The Municipal Mayor
Pateros, Metro Manila
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Pateros, Metro Manila
66. The Municipal Mayor
General Aguinaldo, Cavite
67. LGU Legislative Body
General Aguinaldo, Cavite

68. The Municipal Mayor
Magallanes, Cavite
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70. The Municipal Mayor
Amadeo, Cavite
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Indang, Cavite
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Mendez, Cavite
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Maragondon, Cavite
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Ternate, Cavite
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Gen. Trias, Cavite
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Rosario, Cavite
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Tanza, Cavite
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98. The Municipal Mayor
Dasmariñas, Cavite
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100. The Municipal Mayor
Gen. Mariano Alvarez, Cavite
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Silang, Cavite
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Carmona, Cavite
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San Simon, Pampanga
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- 236. The Municipal Mayor
Apalit, Pampanga
- 237. LGU Legislative Body
Apalit, Pampanga
- 238. Office of the Governor
Province of Rizal
- 239. LGU Legislative Body
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- 240. Office of the Governor
Province of Laguna
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248. Office of the Governor
Province of Quezon

249. LGU Legislative Body
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250. Office of the Governor
Province of Bulacan

251. LGU Legislative Body
Province of Bulacan