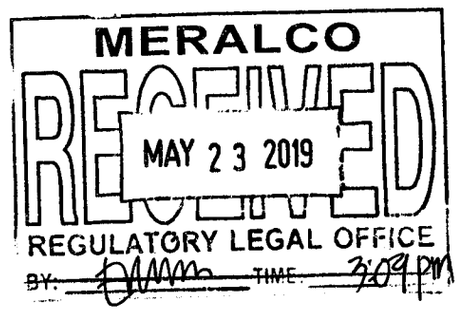
Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City

IN THE MATTER OF THE JOINT APPLICATION FOR APPROVAL OF THE POWER SUPPLY AGREEMENT BETWEEN MANILA ELECTRIC COMPANY (MERALCO) AND THERMA MOBILE, INC. (TMO), WITH MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION



ERC CASE NO. 2019-029 RC

MANILA ELECTRIC COMPANY (MERALCO) AND THERMA MOBILE, INC. (TMO),
Applicants.
x - x

Promulgated:
MAY 23 2019

ORDER

On 17 April 2019, Manila Electric Company (MERALCO) and Therma Mobile, Inc. (TMO) filed a *Joint Application* dated 16 April 2019, seeking the approval of their Power Supply Agreement (PSA), with motion for confidential treatment of information.

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

1. Applicant MERALCO is a private corporation existing under the laws of the Republic of the Philippines, with principal office located at Lopez Building, Ortigas Avenue, Brgy. Ugong, Pasig City. It may be served with notices and other processes of this Honorable Commission at its principal office address or through its counsel at the address indicated herein.

2. MERALCO has a legislative franchise to operate and maintain a distribution system in the cities/municipalities of Metro Manila, Bulacan, Cavite and Rizal and certain cities/municipalities/barangays in Batangas, Laguna, Quezon and Pampanga, pursuant to Republic Act No. 9209,

and is authorized to charge all its customers for their electric consumption at the rates approved by the Honorable Commission.

3. Applicant TMO is a corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at the Old VECO Compound, Ermita, Cebu City. It may be served with notices and other processes of this Honorable Commission through its counsel at the address indicated herein.

4. TMO is engaged in the generation of power and owns and operates the barge-mounted, bunker oil-fired power generating and interconnection facilities (Plant) at the Navotas Fish Port Complex in Navotas City.

5. The National Grid Corporation of the Philippines ("**NGCP**"), for the period May to June 2019, forecasted localized low voltage situations in the Luzon Grid each time peak demand exceeds 11,200 MW. During this period, several NGCP-MERALCO delivery point substations will be affected, which could trigger Manual Load Dropping ("**MLD**") or power interruptions during the critical period of the May 2019 elections and up to June 2019 (together with water shortage and effects of El Niño).

6. Parties acknowledge that while this is not a supply adequacy issue but an ancillary service problem caused mainly by insufficient MVAr supply to load center, one of the identified remedial measures is to ensure that the embedded generators in the area, which includes the Plant, is operational, available, and dispatched.

7. To help find a solution to the current emergency situation and assist NGCP and the Department of Energy ("**DOE**"), MERALCO will facilitate the dispatch of the Plant by executing an emergency Power Supply Agreement ("**PSA**") with TMO for the period 26 April 2019 to 25 April 2020 in order to mitigate the low voltage situations forecasted by NGCP.

8. This one (1) year term of the PSA, however, could be shortened upon a successful execution and implementation of an Ancillary Service Procurement Agreement ("**ASPA**") between TMO and NGCP.

9. Section 2.2.2 of the Department of Energy's (DOE) Department Circular No. DC2018-02-0003 allows exemption from a Competitive Selection Process ("**CSP**") of any "[n]egotiated procurement of emergency power supply; Provided, that the cooperation period of the corresponding PSA shall not exceed one (1) year; Provided further, that the rate shall not be higher than the latest ERC approved generation tariff for same or similar technology".

10. On 11 April 2019 and 12 April 2019, respectively, MERALCO and TMO wrote letters to the DOE requesting for exemption from CSP of the negotiated PSA of the Parties.

11. On 15 April 2019, MERALCO and TMO executed a PSA (hereinafter referred to as the "**2019 PSA**", for brevity) for the purchase of capacity and energy from the Plant from Operations Effective Date until 25 April 2020, or the execution of an ASPA between TMO and NGCP, whichever occurs earlier.

12. Thus, in order to ensure continuous and reliable electricity for MERALCO's customers especially during the coming election period, there is a need for MERALCO to secure the capacity of TMO through a PSA.

13. 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."*

14. The 2019 PSA between MERALCO and TMO, a copy of which is attached as **ANNEX "A"** and made an integral part hereof, contains the following salient features:

"Contract Capacity	means 200,000 kW, subject to restatement not more than twice (unless otherwise agreed by the Parties) based on the results of the Capacity Tests to be conducted prior to May 26, 2019, and subsequent adjustment, if any, under Section 8.3..[1]
	xxx
Contract Year	means the period commencing from the Operations Effective Date and ending on 25 April 2020.[2]
	xxx
Operations Effective Date	means the date confirmed by Meralco and Power Supplier, in accordance with Section 3.2.2, on which their respective obligations with respect to Contract Capacity and the Associated Energy shall commence.[3]
	xxx

2.2 Term of Agreement

2.2.1 Subject to Section 3.1, this Agreement shall become effective on the Effective Date.

2.2.2 The term of this Agreement ("**Term**") shall commence on the Effective Date and shall expire on April 25, 2020, unless terminated earlier in accordance with the terms of this Agreement.

2.2.3 Not later than six (6) months prior to the expiration of the Term, either Party may deliver a written notice of its intent to extend the Term for a period of one (1) year

[1] *See* PSA, p. 4, clause 1.1, "Contract Capacity";
[2] *See* PSA, p. 4, clause 1.1, "Contract Year";
[3] *See* PSA, p. 9, clause 1.1, "Operations Effective Date";

under the same terms and conditions of this Agreement. If the Parties agree to extend, the Parties shall execute the necessary agreement extending the Term no later than ninety (90) days before the expiration of the Term.

2.2.4 This Agreement shall automatically terminate upon implementation of the Ancillary Services Procurement Agreement between Power Supplier and the National Grid Corporation of the Philippines.

xxx

3.4 ERC Approval

3.4.1 Meralco and Power Supplier shall use reasonable best efforts to secure ERC Final Approval on or before the FA Longstop Date, in both cases, in the form and substance satisfactory to the Parties.

If the ERC Final Approval is not issued by the FA Longstop Date, Power Supplier may immediately suspend this Agreement, with written notice to Meralco, and/or terminate this Agreement upon thirty (30) Days prior written notice to Meralco in accordance with the provisions of Section 16.6.1 (a).

3.4.2 [Not used]

3.4.3 If the ERC Final Approval requires an amendment of any provision hereof, 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, the Party adversely affected may immediately suspend this Agreement, with written notice to the other Party. The Parties shall cooperate in good faith to resolve the required ERC amendment(s) or to address the material term or condition. The Parties may:

(a) Within fifteen (15) Days after the receipt by Meralco of the ERC Final Approval, seek reconsideration of the ERC Final Approval ("**Motion for Reconsideration**"); or

(b) within sixty (60) Days after receipt by Meralco of the ERC Final Approval, revise and file an amended Agreement incorporating changes (other than the Price) for approval by the ERC ("**Amended Agreement**");

provided that if (i) no Motion for Reconsideration is filed within the period prescribed in Section 3.4.3(a), (ii) the Motion for Reconsideration remains pending at least ninety (90) Days from filing thereof with the ERC, (iii) the Motion for Reconsideration is denied by the ERC, (iv) the Parties fail to enter into, and file the Amended Agreement for approval by the ERC within the period prescribed in Section 3.4.3(b), (v) the application for approval of the Amended Agreement remains pending at least ninety (90) Days from filing thereof with the ERC, or (vi) 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 thirty (30) Days prior written notice to the other Party in accordance with the provisions of Section 16.6.1(b).

3.4.4 If the ERC Final Approval requires any portion of any sum that has been paid by one Party ("Payor Party") to

the other Party ("Payee Party") to be refunded to the Payor Party, the Payee Party shall be liable for any such amounts and shall repay in full such amounts in accordance with the direction of the ERC; provided that the Payee Party may immediately suspend this Agreement, with written notice to the Payor Party, and/or terminate this Agreement in accordance with Section 16.6.1(c).

3.4.5 In case of suspension or termination of this Agreement under this Section 3.4, Power Supplier shall have no obligation to make available the Contract Capacity and Deliver the Associated Energy, and Meralco shall source its energy requirements from the WESM.

4.1 Supply of Power

Subject to the terms and conditions of this Agreement:

4.1.1 From the Operations Effective Date, Power Supplier shall:

(a) make Available to Meralco, and Meralco shall purchase from Power Supplier, the Contract Capacity of the Plant at the Price determined in accordance with Appendix D; and

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

4.1.2 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, except that before Operations Effective Date or during the period when the Agreement is suspended under Section 6.5.1, Power Supplier may, without Meralco's prior written consent, sell the electric energy generated by the Plant to the WESM or to third parties.

xxx

7.1 Outage Allowances

7.1.1 Power Supplier shall be allowed Scheduled Outages not to exceed fourteen (14) Days for the Contract Year ("**Full Load Equivalent Scheduled Outage Allowance Days**") during which times reduced or no supply of Contract Capacity or Associated Energy will be available to Meralco, provided that Power Supplier shall not avail of Scheduled Outages during the period from April 26, 2019 to June 25, 2019. Power Supplier shall be entitled to a pro-rata portion of the Full Load Equivalent Scheduled Outage Allowance Days calculated using the ratio of the remaining days of the Contract Year to 365 days, multiplied by the Full Load Equivalent Scheduled Outage Allowance Days.

7.1.2 In addition to the Full Load Equivalent Scheduled Outage Allowance Days, Power Supplier shall be allowed to avail an additional thirteen (13) Full Load Equivalent Days (the "Additional Full Load Equivalent Scheduled Outage Allowance Days") upon satisfaction of any of the

following: (a) any generating unit of the Plant reaches four thousand (4,000) running hours or eight thousand (8,000) running hours or twelve thousand (12,000) running hours; (b) Power Supplier notifies Meralco at least fifteen (15) Days before its intended implementation; (c) Meralco verifies the same within five (5) Days from receipt of such notice. For avoidance of doubt, Power Supplier shall be entitled to the Additional Full Load Equivalent Scheduled Outage Allowance Days for each instance that a generating unit of the Plant reaches four thousand (4,000) running hours, eight thousand (8,000) running hours, and twelve thousand (12,000) running hours. In the event that the maintenance of the relevant generating unit of the Plant is not completed within the Additional Full Load Equivalent Scheduled Outage Allowance Days, Power Supplier shall be allowed to utilize any unutilized Full Load Equivalent Scheduled Outage Allowance Days.

7.1.3 Power Supplier shall be allowed Forced Outages not to exceed twelve (12) Days for each Contract Year ("**Full Load Equivalent Forced Outage Allowance Days**") during the Term during which times reduced or no supply of Contract Capacity or Associated Energy will be Available to Meralco. Power Supplier shall be entitled to a pro-rata portion of the Full Load Equivalent Forced Outage Allowance Days calculated using the ratio of the remaining days of the Contract Year to 365 days, multiplied by the Full Load Equivalent Forced Outage Allowance Days.

xxx

8.2 Notification of Reduction in Contract Capacity and Associated Energy

Not later than sixty (60) Days prior to the implementation of each phase of Open Access and Retail Competition, Renewable Energy Law, and other applicable Laws, the Coordinating Committee shall prepare the protocol to implement the reduction in the amount of Contract Capacity and Associated Energy as a result of Open Access and Retail Competition, Renewable Energy Law, or other applicable Laws, as appropriate.

8.3 Assignment or Transfer of Contract Capacity Due to Open Access and Retail Competition

In relation to the implementation of Open Access and Retail Competition, Renewable Energy Law, or other applicable Laws, Meralco shall be entitled to assign, transfer, designate, delegate or allocate (as determined by Meralco) to any of its Affiliates, or to any of its business segments, to the extent allowed by Law, or to any third party acceptable to Power Supplier (which express written consent shall not be unreasonably withheld), its right to purchase such portion of Contract Capacity and Associated Energy reduced as a result of Open Access and Retail Competition, Renewable Energy Law, or other applicable Laws, as appropriate.

For the avoidance of doubt, in no case shall the reduction contemplated in Section 8.2 or the assignment or transfer contemplated in Section 8.3 relieve or otherwise excuse Meralco from payment for the full Contract Capacity and Associated Energy except as otherwise assumed by the assignee or transferee. Meralco shall then be relieved from paying for, and from any liability pertaining to, such portion of the Contract

> Capacity and Associated Energy assumed, assigned, transferred, designated, delegated or allocated except with respect to liabilities of Meralco pertaining to such portion of the Contract Capacity and Associated Energy which accrued prior to such assignment or transfer.
>
> Except for such reduction of amount of Contract Capacity and Associated Energy to be specified by Meralco (including the resulting reduction in Capacity Payments and Energy Payments payable under this Agreement), all other terms and conditions of this Agreement shall remain in full force and effect.
>
> In the event of an assignment or transfer of Meralco's right to purchase Contract Capacity and Associated Energy to an Affiliate pursuant to this Section 8.3 ("**Assignment**"), and the Affiliate defaults on any of its obligations under the Assignment and such default is not remedied within thirty (30) Days after written notice from Power Supplier to the Affiliate stating that such default has occurred, all rights and obligations of the Affiliate under the Assignment shall automatically and without need of any further act or deed, be assigned to Meralco, and Meralco shall accept the same. Meralco shall execute any instrument or certificate requested by Power Supplier to document such assignment.
>
> xxx"

15. The Payment Structure under Appendix D of the 2019 PSA is as follows:

> "2 **Payment Structure**
>
> The payment to be made in each Billing Period during the Term for Contract Capacity and BCQ shall consist of a Capacity Payment and an Energy Payment. The Capacity Payment consists of Component A (Monthly Capital Recovery Fee) and Component B (Monthly Fixed O&M Payment), and the Energy Payment consists of Component C (Fuel and Lube Payment), Component D (Variable O&M), and Component E (Start-up and Shutdown Costs) as set forth below. All computations on payments to Power Supplier shall not be rounded off, except for the final PHP amount, which shall be rounded off to the nearest Philippine centavo, respectively.
>
> Sample calculations of the payment are set forth in Schedule 2 of Appendix A.
>
> The Capacity Payment and Energy Payment are exclusive of the applicable Value Added Tax."

16. MERALCO notes that the rates under the 2019 PSA are the same as approved by this Honorable Commission for MERALCO and TMO's PSA dated 27 September 2013, as amended. In addition, the following table shows the indicative rate impact of implementation of the 2019 PSA on MERALCO's blended rates:

TMO PSA - Rate Impact
(May 2019 to April 2020)

BILLING COMPONENT	UNIT	BASE RATE [a]	CPI Adj Factor [b]	BILLING DETERMINANT [c]		AMOUNT (PHP)
A. Capital Recovery Fee (MCRF)						
Peso Portion	(Php/kW-yr)	4,190.00		200,000	(kW)	838,000,000.00
B. Fixed O&M Payment (MFOM)						
Peso Portion	(Php/kW-yr)	2,815.00	1.185019	200,000	(kW)	667,165,953.31
C. Fuel Payment (MFP)						
Peso Portion	(Php/kWh) [d]	7.3478		470,967,742	(kWh)	3,460,557,737.01
D. Variable O&M Payment (MVOMP)						
Peso Portion	(Php/kWh)	0.4000	1.185019	470,967,742	(kWh)	223,242,374.80
TOTAL PAYMENT	(Php)					5,188,966,065.12
Effective Rate at Plant Gate	(Php/kWh)					11.0177
WESM Line Rental Rate	(Php/kWh)					0.0000
Delivered Rate	(Php/kWh)					11.0177
Effective Cost at WESM Price [f]	(Php/kWh)					7.0589
Increase / (Decrease) over WESM Price	(Php/kWh)					3.9588
Meralco Captive Energy Demand [g]	(kWh)					32,002,732,000
Increase / (Decrease) in Generation Cost	(Php)					1,864,451,872
Increase / (Decrease) in Generation Cost	(Php/kWh)					0.0583

NOTE:
[a] Base Rates as set forth in Schedule 1 of Appendix D of the PSA
[b] CPI escalation based on forecasted PH CPI value for May 2019 (PH CPI = 121.82)
[d] Energy Billing Determinant based on 26.88% pcf dispatch, which may be lower for period after June 2019
[d] Fuel Payment calculated based on Heavy Fuel Oil (HFO) price = 28.4343 Php/liter, HFO consumption rate = 0.2450 liter/kWh, Lube Oil price = 127.12 Php/liter, and Lube oil consumption rate = 0.003 liter/kWh (Forecasted oil prices for May 2019)
[e] No line rental was assumed since TMO is embedded within MERALCO franchise area
[f] Cost if equivalent volume of TMO was sourced from the WESM based on forecasted May 2019 to April 2020 hourly prices
[g] Meralco Captive Energy Demand based on forecast for May 2019 to April 2020

17. Likewise, in support of the instant Joint Application and pursuant to Rule 6 (Pre-Filing Requirements) of the Rules of Practice and Procedure of this Commission, the Applicants provide the following documents:

Description of Document	**Annex**
MERALCO's Articles of Incorporation	C
MERALCO'S By-Laws	D
MERALCO's Latest General Information Sheet (GIS)	E
MERALCO's Demand Side Management Program	F
MERALCO's Distribution Development Plan; with Average Daily Load Curve scenarios; Supply and Demand Scenario, with capacity utilization*; and Write-up on 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	G G-1 G-2* G-3
Letters of MERALCO and TMO to DOE Requesting for Exemption	H & series
TMO's SEC Certificate of Incorporation	I
TMO's Articles of Incorporation	J
TMO's By-laws	K
TMO's Latest General Information Sheet (GIS)	L
TMO's Ownership Organizational Structure	M
TMO's Environmental Compliance Certificates (ECC)	N
TMO's Certificates of Compliance (COC)	O & series
TMO's Transmission Service Agreement with NGCP	P
TMO's Metering Service Agreement with NGCP	Q
TMO's Generation/Power Rate*	R*
Sample Bill	S
Rate Simulation	T
Sworn statement on fuel procurement process* and the Fuel Service Agreement*	U* U-1*
TMO's Latest and Complete Set of Audited Financial Statements	V
Certification on Net Heat Rate*	W*

Description of Document	Annex
Write Up on Non-Applicability of the following: • Shareholders' Agreement • Board of Investment (BOI) Certificate of Registration • Certification from Department of Energy (DOE) regarding Philippine Development Plan (PDP) or Certificate of Endorsement • Renewable Energy Service Contract/ Operating Contract from the DOE • Certificate of Registration or Certification of Confirmation of Commerciality by an RE Developer and after due confirmation by the DOE • Other documentation that may be needed by the ERC in the course of the evaluation, such as, but not limited to: o Simulation of the no. of operating units necessary to meet MEOT and/or additional energy/demand requirements of the DU o Potential Cost (absolute amounts and PhP/kWh) of Ancillary Services as/when the IPP/ DU is connected to the main grid	X

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

18. It bears noting that Department Circular No. DC2018-02-0003 of the DOE allows immediate implementation of the PSAs contemplated under Section 2.4 thereof. Pursuant thereto, Applicants shall implement the 2019 PSA upon filing of this Joint Application, subject to this Honorable Commission's confirmation/approval of the rate.

19. It must be emphasized that the timely and immediate implementation of the 2019 PSA is of **paramount importance** in order to avert MLD or power interruptions and ensure that power is continuous and reliable during the critical period of the May 2019 elections up to June 2019.

20. At this point, it is significant to highlight that as early as 3 April 2019, NGCP has declared the Luzon power grid under "yellow alert"[4] and "red alert"[5] status several times, resulting in significant increase in prices at the Wholesale Electricity Spot Market ("**WESM**") and prompting an increase in generation cost. It is anticipated that these yellow/red alerts from NGCP shall persist and even worsen especially during the critical period of the May 2019 elections up to June 2019.

21. In view of the foregoing, there is paramount relevance and necessity to immediately implement the 2019 PSA in order to ensure continuous and reliable electricity for MERALCO's customers.

22. In support of this Joint Application, the Judicial Affidavit of **Mr. RYAN S. MORALES**, Head of MERALCO's Energy Sourcing Office is attached as **ANNEX "B"**.

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4 *Due to high forecasted system demand, forced and unplanned plant outages and limited plant capability due to de-ration;*

5 *Due to insufficient operating reserve brought about by forced outage of Sual 1, forced and unplanned outages of other plants and limited plant capability due to de-ration;*

ALLEGATIONS IN SUPPORT OF MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION

23. Under *Rule 4 of the ERC Rules of Practice and Procedure*, 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.

24. With respect to the document marked and attached as **ANNEX "G-2"** (MERALCO Supply-Demand Outlook), MERALCO respectfully moves that it be treated as confidential and not be disclosed to any party for the reason that it contains information which are of commercially sensitive nature and may affect price offers that MERALCO may receive under a power supply agreement. In addition, such information falls within the bounds of valuable proprietary interest under "trade secrets" which are entitled to protection under the Constitution, statutes and rule and regulations.

25. With respect to the documents marked and attached as **ANNEXES "R", "U", and "W"**, TMO likewise 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 TMO. The data and information contained therein are part of the overall formula and process in arriving at the competitive rates of TMO. These formula and process are specifically developed for the use of TMO and are treated as trade secrets. If the information contained in these documents are unduly disclosed, it will seriously prejudice the competitiveness of TMO. These documents are neither generally available to the public nor already in the possession of the Honorable Commission on a non-confidential basis.

26. In the case of *Air Philippines Corporation vs. Pennswell Inc,*[6] the Supreme Court defined "trade secret" as follows:

> "A **trade secret** is defined as a **plan or process, tool, mechanism or compound known only to its owner and those of his employees to whom it is necessary to confide it.** The definition **also extends to a secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade having commercial value.** A **trade secret** may consist of **any formula, pattern, device, or compilation of information that (1) is used in one's business;** and (2) **gives the employer an opportunity to obtain advantage over competitors who do not possess the information.** Generally, a **trade secret** is a **process or device**

[6] G. R. No. 172835, 13 December 2007;

> **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.)

27. 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.[7]

28. With respect to the documents marked and attached as **ANNEX "U-1"** TMO respectfully moves for the confidential treatment thereof, not to be disclosed to persons other than officers and staff of the Honorable Commission, as may be necessary in the evaluation of this Application. TMO is bound by the confidentiality clause of the document, prohibiting the disclosure of any business, technical, marketing, operational, organizational, financial or other information and trade secrets and other confidential documents, paper and information.

29. Applicants hereby submit one (1) copy of each of the foregoing confidential documents in sealed envelopes, with the envelopes and each page of the documents marked "Confidential."

PRAYER

WHEREFORE, premises considered, Applicants respectfully pray that:

1. **ISSUE** an Order treating **Annexes "G-2", "R", "U"** and **"U-1", and "W"**, 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, pursuant to Rule 4 of the ERC Rules of Practice and Procedure; and

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[7] *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. Emphasis and underscoring supplied.

2. After hearing on the merits, a Decision be rendered **APPROVING** said Agreement and applying the approved price thereunder beginning Operations Effective Date.

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

On 03 May 2019, the Commission issued an *Order* and *Notice of Public Hearing*, both dated 29 April 2019, setting the instant case for initial hearing on 24 May 2019.

On 17 May 2019, MERALCO filed its *Manifestation with Motion to Re-set Hearing and Issue Necessary Order* (Manifestation with Motion). In the said *Manifestation with Motion*, MERALCO alleged that it will not be able to comply with the publication requirement of the Commission in time for the scheduled hearing on 24 May 2019. Thus, MERALCO prayed that the scheduled hearing be reset.

Finding the said *Manifestation with Motion* to be meritorious, the hearing for the instant case is hereby reset for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on **21 June 2019 (Friday) at nine o'clock in the morning (09:00 A.M.), at the ERC Hearing Room, 15th Floor Pacific Center Building, San Miguel Avenue, Pasig City.**

Accordingly, MERALCO and TMO 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, 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 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;

3) Inform the consumers within MERALCO's 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, Applicants 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 Applicants to inform the consumers within the 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 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 by all those making requests therefor, if any; and

6) Such other proof of compliance with the requirements of the Commission.

Applicants 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.

Failure of Applicants 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.

(*This space is intentionally left blank.*)

MERALCO and TMO 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 justification being cited in support thereof.

SO ORDERED.

21 May 2019, Pasig City.

FOR AND BY AUTHORITY
OF THE COMMISSION:

JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner

LS: ~~JHH/ARG~~/GLO

Copy furnished:

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3. Therma Mobile, Inc. (TMO)
   Applicant
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4. Attys. Katrina M. Platon, Ma. Margarita S. Lim, and Celeni Kristine G. Guinto
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    Quezon City

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13. Office of the City Mayor
    City of Caloocan

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    City of Caloocan

15. Office of the City Mayor
    City of Makati

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    City of Makati

17. Office of the City Mayor
    City of Malabon

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    City of Malabon

19. Office of the City Mayor
    City of Mandaluyong

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    City of Mandaluyong

21. Office of the City Mayor
    City of Muntinlupa

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    City of Muntinlupa

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    City of San Jose del Monte, Bulacan

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    City of San Jose del Monte, Bulacan

25. Office of the City Mayor
    City of Valenzuela

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    City of Valenzuela

27. Office of the City Mayor
    Pasay City

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    Pasay City

29. Office of the City Mayor
    City of Parañaque

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    City of Parañaque

31. Office of the City Mayor
    City of Cavite

32. Office of the LGU Legislative Body
    Cavite City

33. Office the City Mayor
Trece Martires City

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Trece Martires City

35. Office the City Mayor
Las Piñas City

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Las Piñas City

37. Office the City Mayor
San Juan City

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San Juan City

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Lucena City

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Lucena City

41. Office of the City Mayor
Batangas City

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Batangas City

43. Office of the City Mayor
San Pablo City, Laguna

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San Pablo City, Laguna

45. Office of the City Mayor
City of Marikina

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City of Marikina

47. Office of the City Mayor
Antipolo City, Rizal

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Antipolo City, Rizal

49. Office of the City Mayor
Tagaytay City, Cavite

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Tagaytay City, Cavite

51. Office of the City Mayor
Calamba, Laguna

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Calamba, Laguna

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Sta. Rosa, Laguna

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Sta. Rosa, Laguna

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Biñan, Laguna

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Navotas, Metro Manila

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Taguig, Metro Manila

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Taguig, Metro Manila

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Pateros, Metro Manila

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Pateros, Metro Manila

63. Office of the Municipal Mayor
General Aguinaldo, Cavite

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General Aguinaldo, Cavite

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Magallanes, Cavite

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Amadeo, Cavite

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Indang, Cavite

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Mendez, Cavite

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Alfonso, Cavite

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Imus, Cavite

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Kawit, Cavite

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Noveleta, Cavite

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Bacoor, Cavite

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Bacoor, Cavite

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Maragondon, Cavite

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Maragondon, Cavite

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Ternate, Cavite

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Ternate, Cavite

87. Office of the Municipal Mayor
Gen. Trias, Cavite

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Gen. Trias, Cavite

89. Office of the Municipal Mayor
Naic, Cavite

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Naic, Cavite

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Rosario, Cavite

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Rosario, Cavite

93. Office of the Municipal Mayor
Tanza, Cavite

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Tanza, Cavite

95. Office of the Municipal Mayor
Dasmariñas, Cavite

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Dasmariñas, Cavite

97. Office of the Municipal Mayor
Gen. Mariano Alvarez, Cavite

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Silang, Cavite

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Silang, Cavite

101. Office of the Municipal Mayor
Carmona, Cavite

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Carmona, Cavite

103. Office of the Municipal Mayor
Cainta, Rizal

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Cainta, Rizal

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Taytay, Rizal

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Taytay, Rizal

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Teresa, Rizal

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Jala-jala, Rizal

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Jala-jala, Rizal

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Cardona, Rizal

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Baras, Rizal

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Angono, Rizal

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Tanay, Rizal

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Pililla, Rizal

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Morong, Rizal

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Morong, Rizal

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Binangonan, Rizal

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Binangonan, Rizal

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Rodriguez, Rizal

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129. Office of the Municipal Mayor
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Meycauayan, Bulacan

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Obando, Bulacan

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Obando, Bulacan

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Marilao, Bulacan

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Norzagaray, Bulacan

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Sta. Maria, Bulacan

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Sta. Maria, Bulacan

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Angat, Bulacan

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Angat, Bulacan

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Doña Remedios Trinidad, Bulacan

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Plaridel, Bulacan

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San Rafael, Bulacan

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Victoria, Laguna

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Apalit, Pampanga

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Province of Rizal

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237. Office of the Governor
Province of Laguna

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Province of Quezon

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247. Office of the Governor
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