

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 SOUTH
PREMIERE POWER CORP.,
WITH PRAYER FOR ISSUANCE
OF PROVISIONAL AUTHORITY
AND/OR INTERIM RELIEF
WITH MOTION FOR
CONFIDENTIAL TREATMENT
OF INFORMATION**

ERC CASE NO. 2024-030 RC

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

Applicants.

X-----X

Promulgated:

March 22, 2024

NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 05 March 2024, Manila Electric Company (MERALCO) and South Premiere Power Corp. (SPPC) filed a *Joint Application* dated 07 February 2024, seeking the Commission's approval of their Power Supply Agreement (PSA), with prayer for issuance of provisional authority and/or interim relief with motion for confidential treatment of information.

The pertinent portions of the said *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 SPPC dated 5 February

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2024 (the "2024 MERALCO-SPPC 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 SPPC is a private corporation duly organized and existing under the laws of the Philippines, with address at 5th Floor, C5 Office Building Complex, #100 E. Rodriguez Jr. Ave., C5 Road, Bo. Ugong, Pasig City 1604 Metro Manila. It may be served with notices and other processes of this Honorable Commission through its counsel at the address indicated herein.
5. SPPC owns and operates the 1,200 MW combined-cycle power generating facility located in Barangay Ilijan, Batangas on the island of Luzon.

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 810 MW (starting 26 December 2023), an additional 200 MW (starting 26 February 2024) and finally an additional 190 MW (starting 26 March 2024) 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 1,200 MW (net) baseload supply requirement. The conduct of CSP proceeded as follows:
 - 9.1. On 27 October 2023 and 15 November 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 1,200 MW (net), for Contract Period from 26 December 2023 (the "1,200 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 24 November 2023, the DOE issued in favor of MERALCO a Certificate of Conformity No. 2023-11-003 dated 24 November 2023 (the "DOE COC") covering MERALCO's 1,200 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 1,200 MW CSP. On the same day, 24 November 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 1,200 MW CSP in relation to the DOE COC.
 - 9.3. On 29 November 2023 and 6 December 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 1 December 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 11

December 2023, six (6) CSP Observers submitted their intent to (and were admitted by) the BAC-PSA as CSB Observers.

- 9.5. On 18 December 2023, a Pre-Bid Conference was 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 Conference was held at least thirty (30) calendar days before the 1,200 MW CSP's bid submission deadline; was attended by CSP Observers; and was broadcasted livestream in MERALCO's YouTube website.
- 9.6. On 23 January 2024, the bidders submitted their bid document submissions in compliance with all the bidding documents for the 1,200 MW CSP and the respective submissions of the bidders were opened by the BAC-PSA. The bid submission and bid opening 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 SPPC emerged as the bidder with the lowest calculated responsive bid ("Best Bid"), with SPPC offering 1,200 MW out of the required contract capacity of 1,200 MW for the said bidding.
- 9.8. On 24 January 2024, the BAC-PSA conducted the post-qualification of the document submissions of SPPC, as the bidder with the Best Bid, 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 1,200 MW CSP. The post-qualification was attended by CSP Observers and was broadcasted livestream in MERALCO's YouTube website.
- 9.9. On 25 January 2024, the BAC-PSA submitted its recommendation and report to MERALCO's Board of Directors recommending SPPC, as the bidder with the best bids for the 1,200 MW CSP, to be declared as the Winning Power Supplier and be awarded a power supply agreement for its offer of PhP 7.0718/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 SPPC.

- 9.11. On 5 February 2024, the 2024 MERALCO-SPPC PSA was executed. Thereafter, SPPC 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 SPPC, 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 1,200 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 2024 MERALCO-SPPC PSA

11. The 2024 MERALCO-SPPC 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 8.1.1.

xxx

Contract Capacity or CC shall be, subject to Section 3.2.2, Article 9 and Section 19.1: 1: (i) 810 MW (net) by December 26, 2023; (ii) increased to a total of 1,010 MW (net) beginning Operations Effective Date (Phase 2), and (iii) further increased to a total of 1,200 MW(net) beginning Operations Effective Date (Phase 3), in each case, 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 15.3.3 (the "Term").

xxx

3.2 Operations Effective Date

3.2.1 Subject to Section 3.2.2, the obligations of Power Supplier with respect to 810 MW (net)] of the Plant shall commence on 26 December 2023 (the "Operations Effective Date (Phase 1)"); increased to a total of 1,010 MW (net) beginning 26 February 2024 (the "Operations Effective Date (Phase 2)"); and further increased to a total of 1,200 MW (net) beginning 26 March 2024 (the "Operations Effective Date (Phase 3)").

xxx

Article 5 Sale and Purchase of Contract Capacity and Associated Energy

5.1 Supply of Power

Subject to the terms and conditions of this Agreement:

5.1.1 From the Operations Effective 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 8 Outages

8.1 Outage Allowances and Replacement Power

8.1.1. After Operations Effective Date, Power Supplier shall be allowed Scheduled Outages not exceeding 12.5 Full Load Equivalent Outage Days ("Full Load Equivalent Schedule 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.

8.1.2. 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.

8.1.3. 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 despite availability from

WESM or any other source, Meralco shall be allowed to source replacement energy from 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.

8.1.4. On and after the Operations Effective Date, during any period in which an Event of Force Majeure affects Power Supplier or Meralco, Meralco shall procure replacement energy from the WESM to the extent supply or offtake is so affected. For clarity, the cost of replacement energy shall form part of the price that Meralco will charge its customers.

8.1.5. The supply by Power Supplier of quantities of Replacement Power under this Section 8.1 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 9 Adjustments in Contract Capacity and Associated Energy

9.1 Subject to the provisions of Section 9.2 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.

9.2 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 9.1, 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

12.3 ERC Approval

12.3.1 Subject to the non-occurrence of the Longstop Date, upon receipt of the ERC Approval, Meralco shall provide a copy of such ERC Approval to Power Supplier. Power Supplier shall have ten (10) Days from its receipt from ERC or from MERALCO of such ERC Approval, whichever is earlier, to notify Meralco in writing that (a) it accepts such ERC Approval or (b) it does not accept the ERC Approval, stating the grounds for non-acceptance; provided that, if the ERC Approval does not contain any adjustment or modification, the ERC Approval shall be (i) deemed accepted by Power Supplier and (ii) implemented by the Parties immediately.

xxx"

9. Based on the foregoing, and given a certain set of assumptions, the annual effective rate under the 2024 MERALCO-SPPC PSA is PhP 5.9450 per kWh (at plant gate, VAT exclusive), as shown in the RATE IMPACT ANALYSIS below:

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South Premiere Power Corp. (SPPC) PSA - Rate Impact at 94.52% pcf
(YEAR 2024)

BILLING COMPONENT	UNIT	BASE RATE ^(a)	CPI Adj Factor ^(b)	BILLING DETERMINANT ^(c)	AMOUNT (PHP)
A. Capacity Payment (MCP)					
Peso Portion	(Php/kW-yr)	10,620.2084		1,200,000 (kW)	12,744,250,080.00
B. Fixed O&M Payment (MFOM)					
Escalating Peso Portion	(Php/kW-yr)	3,200.0000	1.0352	1,200,000 (kW)	3,975,168,000.00
C. Fuel Cost Payment (MFCP) ^(d)					
(USD/kWh) ^(e)	(USD/kWh) ^(e)	0.0743		9,935,942,400.00 (kWh)	41,423,640,376.70
D. Variable O&M Payment (MVOM)					
Escalating Peso Portion	(Php/kWh)	0.0900	1.0352	9,935,942,400 (kWh)	925,711,881.52
Total Payment (VAT exclusive)	(Php)				59,068,770,338.22
Effective Rate at Plant Gate	(Php/kWh)				5.9450
WESM Line Rental Rate ^(f)	(Php/kWh)				0.1500
Delivered Rate (VAT exclusive)	(Php/kWh)				6.0950
Effective Cost if sourced from WESM ^(g)	(Php/kWh)				7.6386
Increase / (Decrease) over WESM Price	(Php/kWh)				(1.5436)
Merako Captive Energy Demand ^(h)	(kWh)				36,735,601,254.46
Increase / (Decrease) in Generation Cost	(Php)				-15,337,527,918.42
Increase / (Decrease) in Generation Cost	(Php/kWh)				(0.4175)

NOTES:

- ^(a) Base Rates as set forth in Schedule 1 of Appendix E of the PSA.
- ^(b) CPI assumptions were based on values used during evaluation for Year 2024.
- ^(c) Energy Payments based on 94.52% plant capacity factor.
- ^(d) Dollar components shall be paid in USD, however values shown here were converted to Peso amount using exchange rate of Php 56.085 / USD.
- ^(e) Fuel Payment calculated based on Guaranteed Net Plant Heat Rate at 100.00% load factor for Contract Year 1.
- ^(f) Line Rental rate for SPPC is based on the maximum allowable value for Contract Year 1 as stated in the PSA.
- ^(g) Cost if equivalent volume of SPPC was sourced from the WESM based on forecasted average hourly prices from April 2024 to March 2025.
- ^(h) Forecasted Merako Captive Energy for April 2024 to March 2025 based on 2023 Power Supply Procurement Plan as submitted to DOE.

- 10. MERALCO notes that the annual delivered rate of Php 6.0950 per kWh (VAT exclusive and line rental inclusive) is lower by about Php 1.5436 per kWh than the effective cost of Php 7.6386 per kWh, if the equivalent capacity under the 2024 MERALCO-SPPC PSA is to be sourced from the WESM. In fact, by sourcing the capacity through the 2024 MERALCO-SPPC PSA, MERALCO's average blended generation rate will be reduced by about Php 0.4175 per kWh (as seen in the RATE IMPACT ANALYSIS above) resulting in savings to consumers of about Php 15.337 billion.
- 11. In support of this Joint Application, the Judicial Affidavit of ENGR. DAVIDJOHN A. ZUÑIGA, Officer of MERALCO's Energy Sourcing Office - Energy Resource Planning team, is attached hereto as ANNEX "E".
- 12. 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"
SPPC's Secretary's Certificates	"B" and "B-1"
BAC-PSA Summary-Report regarding the conduct of the CSP	"C"

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DOE Certificate of Conformity No. 2023-11-003 dated 24 November 2023	"C-1"
2024 MERALCO-SPPC PSA	"D"
Executive Summary of the PSA	"D-1"
Judicial Affidavit of MERALCO's witness, ENGR. DAVIDJOHN A. ZUÑIGA, 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"
<ul style="list-style-type: none"> • Excerpt of MERALCO's Distribution Development Plan – Power Supply Procurement Plan (Supply and Demand Scenario); • 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 	"J" "J-1" "J-2" "J-3" "J-4" "J-5"
Documents showing MERALCO's conduct of CSP	"K" and series
SEC Certificate of Registration including the Articles of Incorporation and By-Laws of SPPC	"L and series"
2023 General Information Sheet of SPPC (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 SPPC	"N"
Write-up on the Non-Applicability of Certificate of Registration issued by the Board of Investments ("BOI")	"O"
Environmental Compliance Certificate ("ECC") issued by the Department of environment and Natural Resources ("DENR") of SPPC	"P"
Certificate of Endorsement ("COC") or Provisional Authority to Operate ("PAO")	"Q and series"
Written Explanations as regards the non-applicability of related agreements: <ul style="list-style-type: none"> • Transmission Wheeling Contract; • IPPA Agreement; • Project Feasibility Study; • EPC Contract; and, • Wholesale Aggregator Agreement. 	"R and series"

Financial Model and Generation Rate Derivations (<i>to be treated as Confidential</i>) including the Certifications on the Non-Applicability (which are not to be considered as confidential)	"S and series"
Certification on the fuel procurement plan	"T"
Fuel Supply Agreement	"T-1"
Technical and economic characteristics of the plant (including the Outage Reports)	"U and Series"
<ul style="list-style-type: none">• Audited Financial Statements• Simulation of the number of operation units necessary to meet the MEOT• Certification on Net Heat Rate• Write-up on Section 22 (copies of related agreements)	"V and Series"
Operation and Maintenance Agreement ("OMA") (<i>Confidential</i>)	"W"

ALLEGATIONS IN SUPPORT OF THE MOTION FOR
CONFIDENTIAL TREATMENT OF INFORMATION

13. 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.
14. With respect to the documents marked and attached as ANNEXES "S and Series"¹ as well as the OMA that is marked and attached as ANNEX "W", SPPC 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 SPPC. The data and information contained therein are part of the overall formula and process in arriving at the competitive rates of SPPC. These formula and process are specifically developed for the use of SPPC and are treated as trade secrets. If the information contained in these documents are unduly disclosed, it will seriously prejudice the competitiveness of SPPC. These documents are neither generally available to the public nor already in the possession of the Honorable Commission on a non-confidential basis.
15. In the case of Air Philippines Corporation vs. Pennswell Inc,² 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

¹ Financial Model and Generation Rate Derivations.

² G. R. No. 172835, 13 December 2007.

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 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.)

16. 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."

17. SPPC 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."
18. 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 "S and series" and ANNEX "X". 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.

19. Lastly and corollary to the foregoing, SPPC 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)
20. This is guided by the fact that SPPC 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 proceedings hereof, so as to relieve the Honorable Commission of the burden of safekeeping the trade secrets of SPPC enclosed in the subject annexes.

**ALLEGATIONS IN SUPPORT OF THE PRAYER FOR
PROVISIONAL AUTHORITY OR INTERIM RELIEF**

21. Under Rule 14 of the ERC RRPP, the Honorable Commission is authorized to issue provisional authority or interim relief prior to a final decision, provided the facts and circumstances alleged warrant such remedy.
22. As earlier stated, in accordance with MERALCO’s latest and duly accepted DDP and posted PSPP approved by the DOE, MERALCO foresees a baseload capacity deficit in its portfolio covering 810 MW (starting 26 December 2023), an additional 200 MW (starting 26 February 2024) and finally an additional 190 MW (starting 26 March 2024) – or a total of 1,200 MW baseload capacity deficit starting 26 March 2024. If this deficiency is not addressed through the grant of provisional authority or interim relief, MERALCO’s customers stand to be exposed to the volatile prices of the WESM in the considerable volume of the subject 2024 MERALCO-SPPC PSA – which is crucial at the start of the summer season of 2024 (i.e. 26 March 2024).
23. Moreover, the 2024 MERALCO-SPPC PSA capacity is crucial for MERALCO’s supply requirement because of the anticipated thinning electricity operating margins during the summer season and the El Niño forecast to peak by April to May 2024, noting also the upcoming simultaneous scheduled maintenance and possible forced outages of power plants, which will ultimately result in the exposure of MERALCO’s customers to the highly volatile prices of the WESM.
24. As shown from the rate impact analysis, the 2024 MERALCO-SPPC PSA reflects the most beneficial generation charges with a resultant estimated generation rate reduction of PhP 0.4175 per kWh.
25. The implementation of the 2024 MERALCO-SPPC PSA will afford MERALCO’s end-users with a reliable supply of electricity at reasonable rates.

26. Pursuant to the ERC RRPP, this Honorable Commission may exercise its discretion by granting provisional authority and/or interim relief prior to a final decision.
27. Therefore, MERALCO and SPPC request for the grant of provisional authority or interim relief for MERALCO and SPPC to implement the 2024 MERALCO-SPPC PSA, including the rates and tariff structure thereof under the subject PSA.

PRAYER

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

- a) Issue an Order TREATING ANNEXES "S and series" and ANNEX "X" and all other information contained therein as CONFIDENTIAL, directing their non-disclosure to persons other than officers and staff of this Honorable Commission, continuously protecting the said information from public disclosure by maintaining the same separate and apart from the records of the case, and ensuring that these are not divulged to unauthorized persons, and that the same will be returned to Applicant SPPC, pursuant to Rule 4 of the ERC RRPP; and
- b) After hearing on the merits, render a Decision APPROVING the 2024 MERALCO-SPPC PSA and the terms and conditions thereunder, including the price.

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

The Commission hereby sets the instant *Joint Application* for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on the following dates and online platforms for the conduct thereof, pursuant to Resolution No. 09, Series of 2020³ and Resolution No. 01, Series of 2021⁴ (ERC Revised Rules of Practice and Procedure):

³ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

⁴ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

Date	Platform	Activity
14 May 2024 (Tuesday) at two o'clock in the afternoon (2:00 P.M.)	Microsoft Teams Application	Determination of compliance with jurisdictional requirements, and Expository Presentation
21 May 2024 (Tuesday) at two o'clock in the afternoon (2:00 P.M.)		Pre-Trial Conference and Presentation of Evidence

Accordingly, Applicants MERALCO and SPPC are hereby directed to host the virtual hearings at **MERALCO's principal office located 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, Applicants MERALCO and SPPC shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

Any interested stakeholder may submit its comments and/or clarifications at **least one (1) calendar day** prior to the scheduled initial virtual hearing, via electronic mail (e-mail) at doCKET@erc.ph, and copy furnish the Legal Service through legal@erc.ph. The Commission shall give priority to the stakeholders who have duly submitted their respective comments and/or clarifications, to discuss the same and propound questions during the course of the expository presentation.

Moreover, all persons who have an interest in the subject matter of the instant case may become a party by filing with the Commission via e-mail at doCKET@erc.ph, and copy furnishing the Legal Service through legal@erc.ph, a verified Petition to Intervene at **least five (5) calendar days** prior to the date of the initial virtual hearing. The verified Petition to Intervene must follow the requirements under Rule 9 of the ERC Revised Rules of Practice and Procedure, indicate therein the docket number and title of the case, and state the following:

- 1) The petitioner's name, mailing address, and e-mail address;
- 2) The nature of petitioner's interest in the subject matter of the proceeding and the way and manner in which such

interest is affected by the issues involved in the proceeding;
and

- 3) A statement of the relief desired.

Likewise, all other persons who may want their views known to the Commission with respect to the subject matter of the case may file through e-mail at docket@erc.ph, and copy furnish the Legal Service through legal@erc.ph, their Opposition or Comment thereon at **least five (5) calendar days** prior to the initial virtual hearing. Rule 9 of the ERC Revised Rules of Practice and Procedure shall govern. No particular form of Opposition or Comment is required, but the document, letter, or writing should contain the following:

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

All interested parties filing their Petition to Intervene, Opposition or Comment are required to submit the hard copies thereof through personal service, registered mail or ordinary mail/private courier, **within five (5) working days** from the date that the same were electronically submitted, as reflected in the acknowledgment receipt e-mail sent by the Commission.

Any of the persons mentioned in the preceding paragraphs may access the copy of the *Joint Application* on the Commission's official website at www.erc.gov.ph.

Finally, all interested persons may be allowed to join the scheduled initial virtual hearings by providing the Commission, thru legal.virtualhearings@erc.ph, their respective e-mail addresses and indicating therein the case number of the instant *Joint Application*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearings.

WITNESS, the Honorable Commissioners ALEXIS M. LUMBATAN, CATHERINE P. MACEDA, FLORESINDA G.

BALDO-DIGAL, and MARKO ROMEO L. FUENTES, Energy Regulatory Commission, this 22nd day of March 2024 in Pasig City.

Medimalanta
MONALISA C. DIMALANTA
Chairperson and CEO

ERC

Office of the Chairperson and CEO



MCD2024-016044

[Signature]
LS: KACF/MCC/LSP