

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

**IN THE MATTER OF THE
JOINT APPLICATION FOR
APPROVAL OF THE
EMERGENCY POWER
SUPPLY AGREEMENT
DATED 7 AUGUST 2023
BETWEEN MANILA
ELECTRIC COMPANY AND
SOUTH PREMIERE POWER
CORP., WITH MOTION FOR
CONFIDENTIAL
TREATMENT OF
INFORMATION AND
PRAYER FOR PROVISIONAL
AUTHORITY OR INTERIM
RELIEF**

ERC CASE NO. 2023-105 RC

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

Promulgated:
October 02, 2023

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NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 25 September 2023, Manila Electric Company (MERALCO) and South Premiere Power Corp. (SPPC) filed a *Joint Application* dated 10 August 2023, seeking the Commission's approval of their Emergency Power Supply Agreement (EPSA) dated 07 August 2023, with motion for confidential treatment of information and prayer for provisional authority or interim relief.

The pertinent allegations of the *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 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 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.
4. SPPC owns and operates the 1,200 MW combined-cycle power generating facility located in Barangay Ilijan, Batangas on the island of Luzon.

I. STATEMENT OF FACTS

- A. Termination of the MERALCO-SMEC/Sual 2019 PSA involving 330 MW contract capacity
5. MERALCO's bilateral power supply contracts portfolio was reduced by 330 MW starting 24 July 2023, due San Miguel Energy Corporation's (now known as Sual Power Inc., hence, hereinafter referred to as "SMEC/Sual") cessation of its obligations under the MERALCO and SMEC/Sual 330 MW power supply agreement (dated 13 September 2019; docketed as ERC Case No. 2019-083 RC) ("MERALCO-SMEC/Sual 2019 PSA"), as a result of the Court of Appeals' Decision dated 27 June 2023 (docketed as CA G.R. SP No. 176037), a copy of which was received by MERALCO on 14 July 2023.
 - 5.1. On 17 July 2023, SMEC/Sual¹ formally notified MERALCO that it will cease the supply of, and acceptance of MERALCO's nominations relating to, the Contract Capacity and Associated Energy pursuant to the MERALCO-SMEC/Sual 2019 PSA effective immediately upon receipt of their notice, pursuant to the effectivity of its Notice of Termination on 4 October 2022, and as upheld by the Court of Appeals.
 - 5.2. Recognizing the dire effects of its intended course of action, on the same day, 17 July 2023, MERALCO replied to SMEC/Sual's letter urging it to reconsider its intention to immediately cease its supply of Contract Capacity and Associated Energy under the MERALCO-

¹ Attached as ANNEX "C" of the Application.

SMEC/Sual 2019 PSA, or at the very least, grant MERALCO a reasonable period until not earlier than 25 August 2023 to look for replacement emergency power supply in order to protect MERALCO customers from exposure to volatile prices at the WESM.² On even date, MERALCO proceeded to send out requests for proposals (“RFP”) to various power suppliers in order to address the capacity deficit from SMEC/Sual’s cessation of its 330 MW baseload supply of Contract Capacity and Associated Energy under the MERALCO-SMEC/Sual 2019 PSA. MERALCO’s RFPs indicated that offers should be submitted on or before 20 July 2023 considering the urgency of the situation due to the fact that SMEC/Sual had already relayed its intention to immediately cease its supply of Contract Capacity and Associated Energy under the MERALCO-SMEC/Sual 2019 PSA.

- 5.3. In response to MERALCO’s letter-reply, on 18 July 2023, SMEC/Sual agreed to provide MERALCO a reasonable period of five (5) days, or until 23 July 2023, to look for replacement emergency power supply.³
- 5.4. Meanwhile, on 19 July 19, 2023, the DOE’s new CSP policy issued under Department Circular No. DC2023-06-0021 (“2023 CSP Circular”) took effect.⁴
- 6. On 20 July 2023, the only offer received was from SPPC.
- B. Exemption from the conduct of CSP and Nature of the Application
- 7. Pursuant to Section 2.3.5 of the 2023 CSP Circular, the conduct of CSP shall not be required in cases of negotiated EPSAs, viz:

SECTION 2. COVERAGE AND EXEMPTIONS

xxx xxx xxx

2.2.1 In the following instances, the conduct of CSP shall not be required:

xxx xxx xxx

2.3.5 Negotiated procurement of Emergency Power supply wherein the [EPSA] shall be filed with the ERC within thirty (30) calendar days after the occurrence of the Force Majeure/Fortuitous Events, without need of any prior clearance or certification from the DOE, and shall have a maximum and non-extendible period of one (1) year from its execution. The EPSA shall be immediately implemented to address the emergency, xxx

² Attached as ANNEX “C-1” of the *Application*.
³ Attached as ANNEX “C-2” of the *Application*.
⁴ DOE Department Circular 2023-06-0021 entitled “Prescribing the Policy for the Mandatory Conduct of the Competitive Selection Process (CSP) by the Distribution Utilities for the Procurement of Power Supply for their Captive Market.”

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8. Likewise, the 2023 CSP Policy defines emergency power as follows:

“3.7 Emergency Power refers to the power required by the DU in the event that its actual power supply falls below its load demand due to Force Majeure or Fortuitous Events that are beyond the control of the DU, subject to the final determination by the ERC.”

9. On 7 August 2023, MERALCO and SPPC executed an EPSA for the purchase of up to 330 MW capacity and energy from the Plant starting from Operations Effective Date until 25 March 2024 (interchangeably referred to as the “MERALCO-SPPC August 2023 EPSA” or the “2nd SPPC EPSA”), pursuant to Section 2.3.5 of the 2023 CSP Policy.
10. Pursuant to said provision, the parties intend to immediately implement the MERALCO-SPPC August 2023 EPSA beginning 12:01 a.m. of 26 August 2023 for the following reasons: (i) emergency nature of the unforeseen or unpredicted cessation by SMEC/Sual of its obligations under the MERALCO-SMEC/Sual 2019 PSA as a result of the Court of Appeals’ Decision dated 27 June 2023; (ii) pursuant to Section 2.3.5 of the 2023 CSP Policy, “the EPSA shall be immediately implemented to address the emergency” and the Honorable Commission’s posted Database of Generation Rates has no comparable or benchmark rate for LNG-fueled power plants like SPPC; (iii) the DOE, through its DOE Order No. DO2023-05-0015, has expressly welcomed and supports the importation of LNG “in view of the overarching policy of ensuring energy supply security and reasonably priced cost of electricity,” and further declared that “it is recognized that LNG differs from indigenous natural gas, such as Malampaya, in terms of source and pricing and the manner/process of delivery to the power plant,” thus, “all DOE units...shall provide all the necessary support for the smooth entry, operational viability, and timely commercial operation of the LNG-fueled power plants in the power system;” (iv) the DOE itself is pushing for (and welcomes) the reopening of SPPC’s 1,200MW Ilijan power plant to stabilize the power supply in Luzon;⁵ and (v) most importantly, in the interest of providing least cost to MERALCO’s customers, it is beneficial to its customers by averting their exposure to volatile prices at the WESM.
11. Under Section 45(b) of Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 (“EPIRA”), it is provided that, “*Distribution utilities [“DUs”] may enter into bilateral power supply contracts subject to review by the ERC xxx*”.

II. SALIENT FEATURES OF THE MERALCO-SPPC AUGUST 2023 EPSA

⁵ DOE says Ilijan plant to stabilize Luzon power supply, ABS-CBN NEWS, 10 May 2023, 12:53PM, <https://news.abs-cbn.com/business/05/10/23/doe-says-ilijan-plant-to-stabilize-luzon-power-supply>; Lenie Lectura, Ilijan natgas plant reopens, starts power delivery to the grid – DOE, BUSINESSMIRROR, 02 June 2023, <https://businessmirror.com.ph/2023/06/02/ilijan-natgas-plant-reopens-starts-power-delivery-to-the-grid-doe/>.

12. The MERALCO-SPPC August 2023 EPSA, a copy of which is attached as ANNEX "D" and made an integral part hereof, contains the following salient features:

1.1 Definitions

xxx

Contract Capacity or CC shall be set at 330 MW (net) sourced from the Plant, as may be adjusted from time to time in accordance with Article 8 and/or Section 19.1.

xxx

2.2. Term of Agreement

2.2.1. Subject to Article 3, this Agreement shall become effective on the Execution Date.

2.2.2. The term of this Agreement (the "Term") shall commence on the Execution Date, and shall expire on March 25, 2024, unless terminated earlier in accordance with the terms of this Agreement (the "Term").

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3.2. Operations Effective Date

The obligations of Power Supplier with respect to the Contract Capacity and Associated Energy shall commence on August 26, 2023 (the "Operations Effective Date"); provided that, the conditions set out in Section 3.2.1 have been satisfied.

3.2.1 Conditions Precedent to Operations Effective Date

The relevant Operations Effective Date shall occur upon the satisfaction of the following conditions:

- (a) The conditions set out in Section 3.1.1 have been fulfilled;
- (b) Each Party has delivered to the other Party a certification dated no earlier than two (2) Days prior to the relevant Operations Effective 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 relevant Operations Effective Date; and
- (c) All Governmental Authorizations which are required to be obtained in connection with the execution, delivery and commencement of performance of this Agreement shall have been obtained and be in full force and effect, including relevant permits and all other authorizations required pursuant to EPIRA, the Public Service Act, Energy Regulations No. 1-94 promulgated by the DOE pursuant to Executive Order No. 215, and all applicable Environmental Laws and regulations of the Department of

Environment and Natural Resources of the Philippines.

Power Supplier shall deliver written notice to Meralco of the satisfaction of these conditions and Meralco shall confirm in writing the occurrence of the relevant Operations Effective Date; provided that, in order to address the emergency need for supply, this Agreement shall be immediately implemented pending ERC Approval pursuant to DOE Department Circular No. DC2023-06-0021 and subject to Section 12.2.3 and Section 12.3.3 of this Agreement.

XXX

Article 4. Sale and Purchase of Contract Capacity and Associated Energy

4.1. Supply of Power

Subject to the terms and conditions of this Agreement, from the relevant Operations Effective Date 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 C, the Contract Capacity from the Plant. For this purpose, should Power Supplier fail to source from the Plant, Meralco shall pay the lower between WESM price and fuel fee, in accordance with Appendix C; and
- (b) deliver and sell to Meralco, and Meralco shall purchase from Power Supplier, at the Price determined in accordance with Appendix C, the Associated Energy (and Replacement Power), to the extent of Meralco's relevant day-ahead nominations.

For clarity, the Power Supplier shall declare to the WESM the corresponding Associated Energy (and Replacement Power) for Meralco at the Plant's Delivery Point only. Further, for avoidance of doubt, Meralco shall pay Capacity Payment even during Outage, unless the Plant is not available due to an Event of Force Majeure.

XXX

Article 7. Outages

- 7.1. Power Supplier shall not be entitled to any Outage during the Term of this Agreement. For clarity, this means that notwithstanding Outage of the Plant, Power Supplier shall, except as provided in Section 7.4 and subject to Article 15, make available the Contract Capacity and deliver the Replacement Power to Meralco, which shall be paid at the lower between WESM price and fuel fee, as specified in Appendix C. For avoidance of doubt, Meralco shall pay Capacity Payment even during Outage, unless the Plant is not available due to an Event of Force Majeure.

- 7.2. The preceding Section notwithstanding, Power Supplier shall furnish Meralco its proposed Scheduled Outage, inclusive of the duration thereof and schedule of completion and start-up. From time to time, Power Supplier shall inform Meralco of any changes requested by Power Supplier from the System Operator in the schedule of its Scheduled Outage including possible delays in the shut-down and completion of schedules or early completion of Scheduled Outage.
- 7.3 In case of Outage and Power Supplier fails to provide Meralco Replacement Power due to inadequate supply, Power Supplier shall pay a fine equivalent to Nine Hundred Eight Philippine Peso (PhP908) multiplied by each affected MWh nomination by Meralco, which shall be used to reduce the generation charge to the consumers. For the avoidance of doubt, in case Power Supplier fails or refuses to supply Contract Capacity and Associated Energy despite availability thereof, then Section 16.4.1 shall apply.
- 7.4. On and after 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 such replacement energy shall form part of the price that Meralco will charge to its customers.

xxx

- 11. Charges Due to Material Adverse Government Action
 - 11.1. If as a result of Material Adverse Government Action, Meralco becomes liable to pay any new charges, fees, taxes, duties, assessments or other similar amounts (the "New Charges"), or any increase in existing charges, fees, taxes, duties, assessments or other similar amounts (the "Increased Charges") becomes 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.
 - 11.2. If as a result of a Material Adverse Government Action affecting Power Supplier, Power Supplier becomes liable to pay any New Charges or any Increased Charges or a Material Adverse Government Action materially and adversely affects the ability of Power Supplier to perform or 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 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 Material Adverse Government Action with sufficient explanation of the nature and corresponding proof of the Material Adverse Government Action being invoked, together with an analysis of the cost impact of such Material Adverse Government Action and the proposed recovery mechanism (the "Notice of Material Adverse Government Action"). xxx

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12.2. ERC Approval

12.2.1. 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: (i) it accepts such ERC Approval or (ii) 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 of this Agreement, (a) the ERC Approval shall be deemed accepted by Power Supplier and (b) this Agreement shall continue to be implemented by the Parties in accordance with such ERC Approval. For clarity, ERC Approval may be promulgated subsequent to the relevant Operations Effective Date.

12.2.2. In case of Power Supplier's non-acceptance, or ERC order of adjustment/disallowance in the Price and/or refund to customers, Power Supplier shall be free to file a motion for reconsideration or seek any other relief to question such ERC Approval or order; provided that in case of an ERC order of adjustment/disallowance in the Price and/or refund to customers, Power Supplier may likewise opt to suspend this Agreement and Meralco shall source its supply from WESM in the meantime. For all other instances of non-acceptance, and Power Supplier decides to file a motion for reconsideration, the Parties shall, pending resolution thereof by the ERC, continue to implement this Agreement in accordance with the ERC Approval, subject to any adjustment or amendment that the ERC may direct. Any order on a motion for reconsideration or on such other relief taken by Power Supplier shall be treated as an ERC Approval for purposes of the processes under this Section 12.2. If the ERC Approval requires any amendment to or modification of any provision of this Agreement that is not acceptable to either Party, acting reasonably, then the Parties shall cooperate in good faith to resolve the required amendment, including seeking a reconsideration by the ERC. If the Parties are unable to agree on the required amendment within thirty (30) Days from receipt of the ERC Approval

resolving the motion for reconsideration, or if the motion for reconsideration is not resolved by the ERC within sixty (60) days after its filing, or the amendment is disapproved by the ERC, or not acted upon by the ERC within sixty (60) days after its filing, or approved by the ERC but still contains any material term or condition that is not acceptable to either Party, acting reasonably, then either Party may terminate this Agreement. For clarity, if, following the ERC Approval, Power Supplier does not file a motion for reconsideration with the ERC and/or does not notify Meralco that it intends to terminate this Agreement, the ERC Approval shall be deemed accepted by Power Supplier and this Agreement shall continue to be implemented in accordance with the ERC Approval.

- 12.2.3. If the ERC Approval requires any portion of the sum that has been paid by Meralco to Power Supplier to be adjusted, Power Supplier shall make the necessary adjustments in accordance with the direction of the ERC. In the event of any disallowance in the Price, the same shall be for the account of Power Supplier. This shall be without prejudice to the exercise of Power Supplier's rights and remedies at law, under this Agreement, or in equity.

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Appendix C

CALCULATION OF PAYMENT

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B. MONTHLY POWER BILL

The MPB shall consist of Capacity Payments and Energy Payments. Thus, the MPB for Contract Capacity, Associated Energy, and Replacement Power for each Billing Period shall be equal to:

$$\text{MPB} = \text{MCP} + \text{MEP}$$

The MPB is exclusive of the applicable Value Added Tax.

1. *Monthly Capacity Payment (MCP)*

The Monthly Capacity Payment for the Billing Period calculated as follows:

$$\text{MCP} = \text{CF}_{\text{base}} * \text{CC} * 1000 * (\text{BPD} - \text{FMT}) * 24$$

Where:

MCP = the Monthly Capacity Payment, in Php, for the Contract Capacity for the Billing Period

CF_{base} = the Capacity Fee, in Php/kWh, as set forth in Schedule 1 of this Appendix C

- CC

= the Contract Capacity, in MW, as set forth in Article 1 of this Agreement
- BPD

= Billing Period Days, the number of Days in the relevant Billing Period
- FMT

= the Full Load Equivalent Force Majeure Days Taken for the relevant Billing Period, as computed in Schedule 3 of this Appendix C

2. Monthly Energy Payment (MEP)

The Monthly Energy Payment for the Billing Period calculated as follows:

$$MEP = (AE * Fuel) + \sum_{j=1}^{BPD} \sum_{i=1}^{24} [RP_{ij} * Min(FEDP_{ij}, Fuel)]$$

Where:

- MEP

= the Monthly Energy Payment, in Php, for the relevant Billing Period
- AE

= the Associated Energy, in kWh, as previously defined in Article 1 of this Agreement
- Fuel

= the effective Fuel Fee, in Php/kWh, computed based on the fuel used to produce the AE.

$$Fuel = Fuel_0 * \frac{JKM_m}{JKM_0} * \frac{FX_m}{FX_0}$$

Where:

- Fuel₀

= the base Fuel Fee, in Php/kWh, as set forth in Schedule 1 of this Appendix C
- JKM_m

= the average Japan Korea Marker index, in USD/MMBtu, for the last three calendar months prior to the current Billing Period, as published in Platts LNG Daily by Platts, a division of S&P Global, on the website www.spglobal.com or its successor or, if Platts ceases to report the JKM index, an agreed upon replacement source that reports the JKM index shall be adopted by the Parties.

LNG to be used in the August 2023 and September 2023 Billing Periods to generate capacity from the Ilijan Power Plant has been locked in and contracted based on the following fixed prices of \$15.20/MMBtu for the August 2023 Billing Period and \$14.24/MMBtu for the September

Billing Period (the “Fixed LNG Price”). For avoidance of doubt, this Fixed LNG Price should be the applicable JKM_m to be used in the computation hereunder in the August 2023 and September 2023 Billing Periods respectively.

JKM_o = the base Japan Korea Marker index, in USD/MMBtu, as set forth in Schedule 1 of this Appendix C

FX_m = the closing rate for USD to Php as announced by the Bangko Sentral ng Pilipinas (http://bsp.gov.ph/statistics/external/day99_data.aspx), on the last Business of the current Billing Period

FX_o = the base exchange rate, in Php/USD, as set forth in Schedule 1 of this Appendix Cas previously defined

RP_{ij} = is the Replacement Power, in kWh, as delivered by the Power Supplier for the Trading Interval i and Day j

FEDP_{ij} = the hourly equivalent of the 5-min WESM prices Final Energy Dispatch Price, in Php/kWh, for the Trading Interval i and Day j.

SCHEDULE 1
TABLE 1. BASE RATES

Component	Variable	Unit	Value
Capacity Fee	CF _{base}	Php/kWh	1.75
Base Fuel Fee	Fuel _o	Php/kWh	6.75
Base Japan Korea Marker Index	JKM _o	USD/MMBtu	15.00
Base US-Php Exchange Rate	FX _o	Php/USD	55.00

III.GENERATION RATE IMPACT

13. Based on the foregoing, and given a certain set of assumptions, the effective rate under the MERALCO-SPPC August 2023 EPSA is PhP 7.9703 per kWh (at plant gate, VAT exclusive), as shown in the RATE IMPACT ANALYSIS below:

(This space is intentionally left blank.)

Rate Impact of South Premiere Power Corp. (SPPC) EPSA at 100.00 % pcf						
BILLING COMPONENT	UNIT	BASE RATES ^(a)	Adjustment Factor ^(b)	BILLING DETERMINANT ^(c)		AMOUNT (PHP)
A.) Monthly Capacity Payment	(Php/kWh)	1.7500	-	1,686,960,000	(kWh)	2,952,180,000.00
B.) Monthly Energy Payment	(Php/kWh)	6.7500	0.9215	1,686,960,000	(kWh)	10,493,338,485.39
Total Payment (VAT Exclusive)	(Php)					13,445,518,485.39
Plant Gate Rate (VAT Exclusive)	(Php/kWh)					7.9703
WESM Line Rental Rate ^(d)	(Php/kWh)					0.1013
Delivered Rate (VAT Exclusive) ^(e)	(Php/kWh)					8.0716
Effective Cost if sourced from WESM ^(f)	(Php/kWh)					8.4655
Increase / (Decrease) over WESM	(Php/kWh)					(0.3939)
Meralco Captive Energy Demand ^(g)	(kWh)					20,276,987,887
Increase / (Decrease) in Generation Charge ^(e)	(Php)					(664,496,973)
Increase / (Decrease) in Generation Charge ^(e)	(Php/kWh)					(0.0328)
Assumptions: <p>^(a) Base Rates as indicated in Schedule 1 of Appendix C of the EPSA.</p> <p>^(b) Adjustment factor calculated in accordance with formula indicated in Appendix C of the EPSA and assumes forecasted values for the JKM Indices for the duration of the EPSA.</p> <p>^(c) Energy billing determinant for the duration of the EPSA based on 100.00% pcf with respect to the Contract Capacity.</p> <p>^(d) Line Rental is a pass-through cost. Assumed line rental rate is based on average actual line rental of Ilijan.</p> <p>^(e) Delivered Rate and its impact to Generation Charge is computed over the Term of the EPSA (213 days).</p> <p>^(f) Cost If equivalent volume was sourced from WESM.</p> <p>^(g) Forecasted Meralco Captive Energy for August 26, 2023 to March 25, 2024 based on the latest Power Supply Procurement Plan as submitted to the DOE.</p>						

14. The Applicants note that the delivered rate of PhP 8.0716 per kWh (VAT exclusive and line rental inclusive) is lower by about PhP 0.3939 per kWh than the effective cost of PhP 8.4655 per kWh, if the equivalent capacity under the MERALCO-SPPC August 2023 EPSA is to be sourced from the WESM. In fact, by sourcing the capacity through the MERALCO-SPPC August 2023 EPSA, MERALCO’s average blended generation rate will be reduced by about PhP 0.0328 per kWh (as seen in the RATE IMPACT ANALYSIS above), resulting in savings to consumers of about PhP 664 million.

IV. COMPLIANCE WITH DOCUMENTARY REQUIREMENTS

15. In support of this Joint Application with Motion for Confidential Treatment of Information, the Judicial Affidavit of ENGR. DAVIDJOHN A. ZUÑIGA, Officer of MERALCO’s Energy Resource Planning - Energy Sourcing Office, is attached as ANNEX “E” and made an integral part hereof.
16. 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” and “A-1”
SPPC’s Secretary Certificates	“B” and “B-1”
SMEC/Sual’s Letter to Meralco dated 17 July 2023	“C”
MERALCO’s Reply Letter to SMEC/Sual dated 17 July 2023	“C-1”
SMEC/Sual’s Letter to Meralco dated 18 July 2023	“C-2”

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Write-Up on Non-Applicability of DOE's COE-CSP	"C-3"
MERALCO-SPPC EPSA	"D"
Judicial Affidavit of Engr. Davidjohn A. Zuñiga	"E"
MERALCO's Articles of Incorporation and By-Laws	"F"
MERALCO's Latest General Information Sheet ("GIS")	"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 WESM Membership certifications	"G-2" and series
MERALCO's Demand Side Management Program	"H"
Write-up on the non-applicability of National Power Corporation Certification regarding whether or not Transition Supply Contract capacity and energy is expected to be available during the contractual period	"I"
Excerpt of MERALCO's Distribution Development Plan – Power Supply Procurement Plan (Supply and Demand Scenario);	"J"
• Average Daily Load Curve scenarios	"J-1"
• Details of Existing Suppliers	"J-2"
• Details of Power Supply Contract Utilization	"J-3"
• Details of SAIDI and SAIFI	"J-4"
• Estimation of the potential for a reduction in load supplied by MERALCO due to RCOA	"J-5"
• Write-up of no inconsistencies/differences from documents presented	"J-6"
SEC Certificate of Registration including the Articles of Incorporation and By-Laws of SPPC	"L"
Verified Certification of the list of Board Directors and members of the Ultimate Parent Company, subsidiaries and all affiliates of SPPC	"M"
Write up on the Non-Applicability of a Shareholders' Agreement for SPPC	"N"
The Corporate Structure showing the Ultimate Parent Company, Subsidiaries, and all Affiliates of SPPC	"O"
General Information Sheet of SPPC	"P"
Write up on the Non-Applicability of a Board of Investments ("BOI") Certificate of Registration for SPPC	"Q"
Environmental Compliance Certificate ("ECC") issued by the Department of Environment and Natural Resources ("DENR") of KEPCO Ilijan Power Corporation (KIPC)/National Power Corporation (NPC)	"R"
Certification from the ERC on the status of the COC of SPPC	"S"
Write up on the Non-Applicability of a Certificate of Endorsement ("COE") from the Department of Energy ("DOE") regarding the Philippine Development Plan ("PDP") for SPPC	"T"
Write up on the Non-Applicability of Renewable Energy Service/Operating Contract and Certificate of Registration or Certification of Commerciality by an RE Developer and After Due Confirmation by the DOE	"U" and Series
Executive Summary of the EPSA	"V"

Transmission Service Agreement of NGCP and SPPC	"W"
Single-line Diagram Connection	"W-1"
Sources of Funds/Financial Plans; Generation Rate and Derivation (Confidential)* Financial model in soft copy containing derivation of rates (Confidential)* Cost Analysis (Confidential)*	"X" and Series *
Explanation on the Fuel Procurement Process of SPPC (Confidential)*	"Y and Series"*
Technical and Economic Characteristics of the Ilijan Plant including historical outages in the last 5 years Certificate on the readiness of the power plant to deliver power as contemplated in the EPSA	"Z and Series"
Certification regarding the net heat rate of SPPC*	"Z-1"
Write up on the Simulation of the number of operating units necessary to meet the minimum energy off-take ("MEOT") and/or additional energy/demand requirements of MERALCO and the Write up on the Potential Cost of Ancillary Service as and when the IPP or the DU is connected to the main grid*	"Z-2" and Series
Latest Audited Financial Statements of SPPC Write up on the Non-Applicability of the Distribution Wheeling Service Agreement to SPPC Write up on the Non-Applicability of a Water Permit from the National Water Resources Board ("NWRB") Explanation on the Potential Cost of Ancillary Service WESM Registration Certificate of SPPC Metering Service Agreement between NGCP and SPPC Verified Certification that the rates being charged are no more than the latest rate approved by the Commission for the same or relevant technology in the area	"AA" and Series

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

ALLEGATIONS IN SUPPORT OF THE MOTION

FOR CONFIDENTIAL TREATMENT OF INFORMATION

17. SPPC respectfully highlights that its own documentary evidence, Annexes "X" and series and "Y" and Series contain numbers, methodology, and calculations such as debt or equity ratio, capital costs, weighted average cost of capital, and fuel cost that provide valuable information and insight on how SPPC arrives at its power generation rate and/or on SPPC's trading in the WESM.

18. SPPC therefore respectfully submits that Annexes "X" and series and "Y" and Series fall within the bounds of proprietary "trade secrets", which are entitled to protection under the Constitution, statutes, and rules and regulations of this Honorable Commission.

19. Under Rule 4 of the Revised ERC Rules of Practice and Procedure (the "Revised ERC Rules"), the Honorable Commission may, upon request of a party and determination of the existence of conditions, which would warrant such remedy, treat certain information submitted to it as confidential. Pursuant to such provision, SPPC respectfully

prays for the issuance of a protective order declaring Annexes "X" and series and "Y" and Series as confidential information, since SPPC intends to present them as evidence in the instant Application.

20. The data contained in Annexes "X" and series and "Y" and Series constitutes "trade secrets" of SPPC; thus, SPPC has actual and valuable proprietary interest to protect with respect to such information. If the information contained in these documents is unduly disclosed, it will seriously prejudice the competitiveness of SPPC.

21. The Supreme Court, in the case of *Air Philippines Corporation vs. Pennswell, Inc.* (540 SCRA 215 [2007]), had the opportunity to discuss the definition of "trade secrets" and the great extent to which the same are protected under our laws. In other instances, the Supreme Court has held that the confidential nature of trade secrets protects such from disclosure even in the face of the right of inspection given to stockholders or the constitutional right to information. (*Philpotts vs. Philippine Manufacturing Company*, 40 Phil. 471 [1919]; *Garcia vs. Board of Investments*, G.R. 88637 [1989]).

22. In the *Decision* in ERC Case No. 2015-111 RC dated 30 May 2017 entitled *In the Matter of the Application for 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)*, the Honorable Commission categorically stated that formulas and pricing structures of a generation company must be treated as confidential and may not be publicly disclosed, to wit:

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. In fact, all three (3) documents were used by the Commission in evaluating the reasonableness of the proposed rate. **In the electric power industry w(h)ere prices is[sic] a major consideration in selecting one's supplier, it is apparent that the assumptions used in arriving at one's proposed tariff is considered a competitive leverage by one player against its competitors.**

Thus, the Commission resolves to treat the said documents confidential and may not be publicly disclosed. [Emphasis supplied].

23. Thus, the Honorable Commission has recognized the importance of maintaining pricing structures as confidential in order to ensure the competitiveness of the generation sector. Information, which falls within the definition of a trade secret as defined by jurisprudence, is clearly information that merits the confidential treatment provided for under Rule 4 of the Revised ERC Rules. Annexes "X" and series and "Y" and Series should therefore be entitled to the protection of confidential information provided under Rule 4 of the Revised ERC Rules.

24. Accordingly, one (1) copy of each of the foregoing confidential

documents is placed in a sealed envelope, with the envelope and each page of the document stamped with the word "Confidential."

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

25. Under Rule 14 of the ERC Revised Rules of Practice and Procedure, 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.
26. As earlier stated, the parties were compelled to immediately implement the MERALCO-SPPC August 2023 EPSA beginning 12:01 a.m. of 26 August 2023 for the following reasons: (i) emergency nature of the unforeseen or unpredicted cessation by SMEC/Sual of its obligations under the MERALCO-SMEC/Sual 2019 PSA as a result of the Court of Appeals' Decision dated 27 June 2023; (ii) pursuant to Section 2.3.5 of the 2023 CSP Policy, "the EPSA shall be immediately implemented to address the emergency" and the Honorable Commission's posted Database of Generation Rates has no comparable or benchmark rate for LNG-fueled power plants like SPPC; (iii) the DOE, through its DOE Order No. DO2023-05-0015, has expressly welcomed and supports the importation of LNG "in view of the overarching policy of ensuring energy supply security and reasonably priced cost of electricity," and further declared that "it is recognized that LNG differs from indigenous natural gas, such as Malampaya, in terms of source and pricing and the manner/process of delivery to the power plant," thus, "all DOE units...shall provide all the necessary support for the smooth entry, operational viability, and timely commercial operation of the LNG-fueled power plants in the power system;" (iv) the DOE itself is pushing for (and welcomes) the reopening of SPPC's 1,200MW Ilijan power plant to stabilize the power supply in Luzon;⁶ and (v) most importantly, in the interest of providing least cost to MERALCO's customers, it is beneficial to its customers by averting their exposure to the volatile prices of the WESM.
27. As shown from the rate impact analysis, the MERALCO-SPPC August 2023 EPSA reflects the most beneficial generation charges with a resultant estimated generation rate reduction of Php 0.0328 per kWh.
28. The implementation of the MERALCO-SPPC August 2023 EPSA will afford MERALCO's end-users with a reliable supply of electricity at reasonable rates.
29. The foregoing notwithstanding, the grant of provisional authority and/or interim relief shall confirm the proper implementation of the MERALCO-SPPC August 2023 EPSA which ultimately redounds to the benefit of MERALCO's

⁶ *Id.*

customers who stand to be exposed to volatile prices at the WESM.

30. Pursuant to the ERC Revised Rules of Practice and Procedure, this Honorable Commission may exercise its discretion by granting provisional authority and/or interim relief prior to a final decision.
31. Therefore, MERALCO and SPPC request for a provisional authority or interim relief confirming the authority of MERALCO and SPPC to implement the MERALCO-SPPC August 2023 EPSA, including the rates and tariff structure thereof, from the start of the supply by SPPC to MERALCO under the subject EPSA.
32. This confirmation by the ERC will allow MERALCO and SPPC to continuously implement the MERALCO-SPPC August 2023 EPSA based on the rates indicated therein, and MERALCO to have a steady, continuous, guaranteed, and reliable source of electricity, which redounds to the benefit of MERALCO's end-users in terms of providing a more reasonable rate. To support the Motion for Provisional Authority and/or Interim Relief, the Judicial Affidavit of ENGR. DAVIDJOHN A. ZUÑIGA, Officer of MERALCO's Energy Resource Planning - Energy Sourcing Office, is attached herein as ANNEX "E."

PRAYER

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

- a) Issue an Order TREATING Annexes "X" and series and "Y" and Series 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, as applicable, pursuant to Rule 4 of the Revised ERC Rules; and
- b) Issue an Order granting PROVISIONAL AUTHORITY and/or INTERIM RELIEF confirming the authority of MERALCO and SPPC to implement the MERALCO-SPPC August 2023 EPSA, including the rates and tariff structure thereof, from the start of the supply by SPPC to MERALCO under the subject EPSA;
- c) After hearing on the merits, render a Decision APPROVING the MERALCO-SPPC August 2023 EPSA 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 2020⁷ and Resolution No. 01, Series of 2021⁸ (ERC Revised Rules of Practice and Procedure):

Date	Platform	Activity
07 November 2023 (Tuesday) at nine o'clock in the morning (9:00 A.M)	Microsoft Teams Application	Determination of compliance with jurisdictional requirements and Expository Presentation
14 November 2023 (Tuesday) at nine o'clock in the morning (9:00 A.M)		Pre-trial Conference and Presentation of Evidence

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, any 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;

⁷ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.
⁸ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

- 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.

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Finally, all interested persons may be allowed to join the scheduled 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 2nd day of October 2023 in Pasig City.


MONALISA C. DIMALANTA
Chairperson and CEO


LS: VMA/LSP/MCCG

ERC
Office of the Chairperson and CEO



MCD2023-009961