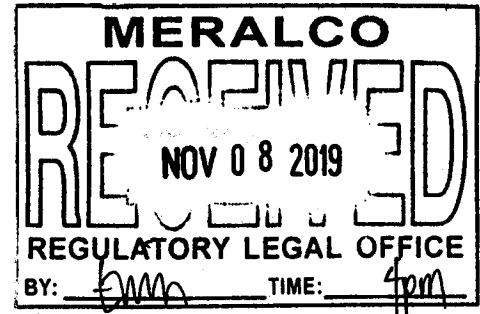


Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City

**IN THE MATTER OF THE
APPLICATION FOR THE
APPROVAL OF THE POWER
SUPPLY AGREEMENT (PSA)
BETWEEN MANILA
ELECTRIC COMPANY
(MERALCO) AND SAN
MIGUEL ENERGY
CORPORATION (SMEC),
WITH PRAYER FOR
PROVISIONAL AUTHORITY
AND/OR INTERIM RELIEF
AND MOTION FOR
CONFIDENTIAL TREATMENT
OF INFORMATION**



ERC CASE NO. 2019-083 RC

**MANILA ELECTRIC
COMPANY (MERALCO) AND
SAN MIGUEL ENERGY
CORPORATION (SMEC),
Applicants.**

X ----- X

Received
NOV 07 2019

ORDER

On 22 October 2019, Manila Electric Company (MERALCO) and San Miguel Energy Corporation (SMEC) filed a *Joint Application* dated 21 October 2019, seeking the approval of their Power Supply Agreement (PSA), with prayer for provisional authority and/or interim relief and motion for confidential treatment of information.

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

1. Applicant MERALCO is a private corporation duly organized and existing under the laws 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 below.

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 SMEC is a private corporation duly organized and existing under the laws of the Philippines, with principal address at 808 Building, Meralco Avenue Cor. General Lim Street, San Antonio Village, Pasig City. It may be served with notices and other processes of this Honorable Commission through its counsel at the address indicated below.
4. Pursuant to and in accordance with the IPPA Agreement executed between SMEC and the Power Sector Assets and Liabilities Management Corporation ("PSALM"), with the conformity of National Power Corporation ("NPC"), SMEC assumed management and control of the 1000 MW (net) contracted capacity of the 1200 MW (net) coal-fired power generating facility in Sual, Pangasinan on the island of Luzon ("**Plant**"). SMEC offered to supply and sell to MERALCO electric energy corresponding to 330 MW (net) produced from said Plant, the Wholesale Electricity Spot Market ("**WESM**"), or any other source.
5. Based on the power situation outlook for 2020 and succeeding years, MERALCO foresees a capacity deficit in its portfolio due to the expiration by 25 December 2019 of its power supply agreements covering 1905 MW.
6. In order to ensure continuous and reliable electricity for MERALCO's customers, there is a need for MERALCO to source baseload capacity through bilateral power supply contracts.
7. Under Section 45(b) of Republic Act No. 9136 (EPIRA), it is provided that "*Distribution utilities may enter into bilateral power supply contracts subject to review by the ERC xxx*".
8. Accordingly, following the conduct of a competitive selection process ("**CSP**") for the procurement of baseload capacity, on 13 September 2019, MERALCO executed a Power Supply Agreement ("**PSA**") with SMEC, for the purchase of electric energy corresponding to 330 MW (net). The conduct of a CSP proceeded as follows:
 - 8.1. On 12 July 2019, MERALCO caused the publication of an Invitation to Bid, which contained basic terms of reference, indicating a summary of the process and timelines of the CSP, and inviting power generation companies to submit an Expression of Interest and Confidentiality Undertaking on or before the deadline set out in the said invitation. At

the same time, MERALCO caused the posting thereof on its website and the Department of Energy's ("DOE") e-based portal.

- 8.2. On 9 September 2019, the bidders submitted their Bid Requirements, followed by the opening of their respective submissions by the Third-Party Bids and Awards Committee ("TPBAC"). On the same day, SMEC's bid was declared as one of the possible best bids.
 - 8.3. On 10 September 2019, the TPBAC sent a letter-notice to SMEC, as one of the winning power suppliers, confirming after post-qualification evaluation that its proposed energy price was found to be among the best bids. The said letter-notice also contained the Notice of Award in favor of SMEC.
 - 8.4. On 19 September 2019, and upon directive of this Honorable Commission, MERALCO wrote DOE to request for a written certification that the aforesaid CSP is compliant with DOE Circular No. DC2018-02-003, Series of 2018. In lieu of the requested certification that has not been issued to date, the TPBAC Chairman has executed an affidavit attesting to such compliance.¹
9. The PSA between MERALCO and SMEC, a copy of which is attached as **ANNEX "C"** and made an integral part hereof, contains the following salient features:

"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 Operations Effective Date, and shall expire on December 25, 2029, unless terminated earlier in accordance with the terms of this Agreement or extended by the application of Section 2.2.3.
- 2.2.3. The Term may be renewed for an additional period of up to one (1) year under the same terms and conditions, at the option of Meralco, by giving prior written notice to Power Supplier at least one hundred eighty (180) Days prior to the end of the Term.

xxx

3.3. Operations Effective Date

¹ A copy of MERALCO's letter-request stamped received by the DOE and the affidavit of the TPBAC's Chairman are attached as part of the documents showing MERALCO's conduct of a competitive selection process marked as Annex "K" and series";

- 3.3.1. The obligations of Power Supplier with respect to the Contract Capacity and Associated Energy shall commence on December 26, 2019 (**“Operations Effective Date”**), provided that Commencement Date has occurred.
- 3.3.2. If the Operations Effective Date has not occurred by the Longstop Date, then the provisions of Section 14.5.1. shall apply.

xxx

4.1. Supply of Power

Subject to the Terms and Conditions of this Agreement, from the Operations Effective Date until the expiration of the Term or earlier termination of this Agreement:

- (a) Power Supplier shall make available to Meralco the Contract Capacity to be sourced from the Plant, the WESM or any other source, and deliver and sell to Meralco the Associated Energy, at the Contract Price determined in accordance with Appendix C;
- (b) Meralco shall purchase from Power Supplier, to the extent of Meralco’s relevant day-ahead nominations, the MEOT and at its option, the Excess Energy, at the Contract Price determined in accordance with Appendix C.

4.2. Contract Price

- a. The Contract Price for the first Contract Year is PhP4.0459² per kWh, subject to twelve percent (12%) value-added tax (VAT) and an annual escalation as computed and shown in Schedule 1 of Appendix C; *provided*, that the Benefits to Host Communities Charges, if any, shall not form part of, and is excluded from the computation of the Contract Price. For the avoidance of doubt, all taxes pertaining to Power Supplier, including but not limited to the Benefits to Host Communities Charges, shall be shouldered by, and be for the sole account of, Power Supplier. Any violation of this Section 4.2 shall constitute a Power Supplier Event of Default as provided for under Section 14.1.

xxx

² Based on one hundred percent (100%) plant capacity factor corresponding to the Contract Capacity;

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 make available the Contract Capacity and Associated Energy to Meralco.

xxx

7.3. In case Power Supplier fails to deliver the Contract Capacity and Associated Energy to Meralco due to unavailability of supply from its Plant, WESM, and any other source, Power Supplier shall pay a fine equivalent to Nine Hundred Eight Philippine Peso (PhP908) multiplied by each MWh during a Day, 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 14.3.1. shall apply.

Article 8. Assignment or Transfer of Contract Capacity

8.1 Meralco shall be entitled to assign, transfer, designate, delegate or allocate (collectively in this context, "**Transfer**") its rights and obligations to purchase a portion of Contract Capacity and Associated Energy that is no longer required by Meralco to any of its business segments or wholly-owned Affiliates, to the extent allowed by Law, or to any other Person acceptable to Power Supplier (which consent shall not be unreasonably withheld, delayed or conditioned).

8.2 In respect of Transfers not requiring Power Supplier's consent, Meralco shall give a written notice to the Power Supplier of such Transfer at least five (5) Days prior to the first Day of the next Billing Period or by such date as would be sufficient for timely notice to WESM of such change. In respect of Transfers requiring Power Supplier's consent, Meralco shall give a written notice to the Power Supplier of such Transfer at least sixty (60) Days prior to the first Day of the next Billing Period or by such date as would be sufficient for timely notice to WESM of such change.

Subject to the receipt of Meralco and the Power Supplier of the written acceptance of such Transfer by the transferee:

- a) Meralco shall cease to have any rights and obligations under this Agreement, and
- b) the transferee shall assume all rights and obligations of Meralco under this Agreement.

8.3. Reduction in Contract Capacity and Associated Energy

- 8.3.1. Subject to the provisions of Section 8.3.2., 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 by reason of the enforcement of Retail Competition and Open Access, the Renewable Energy Law, other Laws and Legal Requirements.
- 8.3.2. Meralco shall give a written notice to the Power Supplier of such reduction at least five (5) Days prior to the first Day of the next Billing Period. 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.

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12.2. ERC Approval

- 12.2.1. 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 the date of receipt from Meralco of such ERC Approval 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.
- 12.2.2. In case of Power Supplier's non-acceptance, Power Supplier shall be free to file with the ERC a motion for reconsideration. In case Power Supplier decides to file a motion for

reconsideration, and pending resolution thereof by the ERC, the Parties shall implement the ERC Approval subject to any adjustment or amendment that the ERC may direct. Any order on a motion for reconsideration shall be treated as an ERC Approval for purposes of the processes under 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. 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 one hundred twenty (120) days after its filing, Power Supplier may terminate this Agreement upon thirty (30) Days prior written notice to Meralco.

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 Contract Price, the same shall be for the account of Power Supplier.

12.2.4. Following (i) a written notice of acceptance from Power Supplier with respect to the ERC Approval (including upon reconsideration under Section 12.2.2. above), or (ii) the lapse of the period referred to in Section 12.2.1. without Power Supplier communicating its acceptance or non-acceptance in writing, the acceptance date shall be considered as having occurred on the date of the written notice of acceptance or on the last Day of such period, as applicable ("**Acceptance Date**"), provided, in each case, that Meralco has not filed any motion for reconsideration or appeal subsequent to the Power Supplier's acceptance of such ERC Approval and the Longstop Date has not occurred.

xxx

13.2 Instance of Force Majeure

Subject to the provisions of Section 13.1., Events of Force Majeure shall include, but not be limited to:

- (a) acts of war or the public enemy whether war is declared or not;
- (b) public disorders, civil disturbance, insurrection, rebellion, acts or campaigns of terrorism, piracy, embargo, sabotage, blockade, revolution, riots or violent demonstrations;
- (c) explosions, fires, earthquakes, lightning, typhoon, tsunami, flood, cyclone, volcanic eruptions, landslide or other natural disasters, acts of God, epidemic, quarantine or plague;
- (d) any action or aggregation of actions or failure to act by any Governmental Instrumentality, including expropriation, requisition, confiscation, nationalization or other compulsory acquisition;
- (e) strikes, lockouts or other collective or industrial action by workers or employees other than non-manual personnel (in each instance, occurring in the Philippines); provided that any Party that seeks to invoke such a strike, lockout or other collective or industrial action as an Event of Force of Majeure must first utilize all reasonable efforts to continue performance of its obligations hereunder; and
- (f) any Transmission Failure that prevents delivery by Power Supplier, or acceptance by Meralco, of Contract Capacity and Associated Energy. In case of disagreement as to the existence of a Transmission Failure, the Parties shall secure the necessary certification from the ERC, which certification shall bind both Parties;

For clarity, the Power Supplier shall not be allowed to claim Force Majeure under Article 13 in case there is supply available from the WESM or any other source.

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13.5. Event Not Excused

Lack or unavailability of supply in itself shall not be considered as an Event of Force Majeure, unless the circumstances in Section 13.1. concur.”

10. Based on the foregoing, and given a certain set of assumptions, the annual effective rate under the PSA is PhP 4.5314 per kWh (at plant gate, VAT-inclusive), as shown in the rate impact analysis below:

SMEC PSA (330 MW) - Annual Rate Impact					
(YEAR 2020)					
BILLING COMPONENT	UNIT	BASE RATES ^[a]	BILLING DETERMINANT ^[b]		AMOUNT (PHP)
Energy Payment					
Contract Price for energy up to MEOT PCF (75%)	(Php/kWh)	4.1496	2,174,040,000	(kWh)	9,021,396,384.00
Excess Energy Price for energy greater than MEOT PCF up to 100% pcf	(Php/kWh)	3.7346	724,680,000	(kWh)	2,706,418,915.20
Total Energy Payment (VAT exclusive)	(Php/kWh)	4.0459	2,898,720,000	(kWh)	11,727,815,299.20
VAT Payment ^[c]	(Php)				1,407,337,835.90
Total Payment (VAT inclusive)	(PhP)				13,135,153,135.10
Effective Rate at Plant Gate (VAT Inclusive)	(Php/kWh)				4.5314
WESM Line Rental Rate ^[d]	(Php/kWh)				0.1000
Delivered Rate (VAT Inclusive)	(Php/kWh)				4.6314
Effective Cost at current Baseload PSAs ^[e]	(Php/kWh)				5.4748
Increase / (Decrease) over current Baseload PSAs	(Php/kWh)				(0.8434)
Meralco Captive Energy Demand ^[f]	(kWh)				35,005,615,519
Increase / (Decrease) in Generation Cost	(Php)				(2,444,782,967.47)
Increase / (Decrease) in Generation Cost	(Php/kWh)				(0.0698)

Assumptions:
^[a] Contract Price (VAT exclusive) and Excess Energy Price (VAT exclusive) as set forth and computed in Appendix C of the PSA.
^[b] Energy billing determinant for one year based on 100% plant capacity factor with respect to the Contract Capacity (330,000 kW).
^[c] VAT rate of 12.00% as stated in the PSA.
^[d] Line Rental rate for SMEC is based on the maximum allowable value as stated in the PSA.
^[e] Cost if equivalent volume of SMEC was sourced from current baseload PSAs (TLI, SPPC, and MPPCL) that will expire on Dec. 25, 2019 using average of actual Sep 2018 to Aug 2019 prices (VAT and line rental inclusive).
^[f] Forecasted Meralco Captive Energy for 2020 based on Power Supply Procurement Plan as submitted to DOE.

11. MERALCO notes that the annual delivered rate of PhP 4.6314 per kWh (VAT and line rental inclusive) is **lower** by about PhP 0.8434 per kWh than the effective cost of PhP 5.4748 per kWh (VAT and line rental inclusive), if the equivalent capacity under the instant PSA will be sourced from among MERALCO’s expiring baseload PSAs. In fact, by sourcing the capacity through the instant PSA, MERALCO’s average blended generation charge rate³ of PhP 5.84 per kWh (VAT and line rental inclusive) will be reduced by about by about **PhP 0.0698 per kWh** (as seen in the rate impact above) resulting in savings to consumers of about PhP 2.44 Billion.
12. It bears emphasis that MERALCO’s foreseen capacity deficit due to the expiration of its several power supply agreements by 25 December 2019 is 1905 MW. Thus, there is an urgent need for provisional authority and/or interim relief to implement the PSA by 26 December 2019; otherwise, MERALCO will be constrained to source its capacity deficit from the WESM, thereby exposing its customers to volatile WESM prices. More importantly, it should be considered that the immediate approval and implementation of the instant PSA would redound

³ Prior twelve (12)-month period.

to the best interest of the consumers since aside from the very competitive rate, the supply availability under the instant PSA is guaranteed 100% by SMEC as no outage allowance is provided therein.

13. In support of this Joint Application, and the prayer for provisional authority and/or interim relief, the Judicial Affidavits of **MR. RYAN S. MORALES**, Head of MERALCO's Energy Sourcing Office, and **MR. ALBERTO REYES III**, Authorized Representative of SMEC, are attached as **ANNEXES "D" and "E"**, respectively, and made integral parts hereof.

14. 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 this Honorable Commission:

Description of Document	Annex
MERALCO's Articles of Incorporation and By-Laws	"F"
MERALCO's latest General Information Sheet (GIS)	"G"
Demand Side Management Program	"H"
Write-up on non-applicability of a Certification by NPC re: whether Transition Supply Contract (TSC) capacity and energy is expected to be available	"I"
Excerpt of Distribution Development Plan – Power Supply Procurement Plan Supply and Demand Scenario	"J"
Average Daily Load Curve scenarios	"J-1" "J-2"
Documents showing MERALCO's conduct of a competitive selection process	"K" and series
SMEC's Certificate of Registration with the Securities and Exchange Commission ("SEC")	"L"
SMEC's Shareholders' Agreement	"M"
SMEC's latest GIS showing list of Shareholders	"N"
SMEC's Corporate Structure showing the Ultimate Parent Company, its Subsidiaries, and all its Affiliates	"O"
SMEC's Board of Investments ("BOI") Certificate of Registration No. BOI 2011-024 dated 26 January 2011	"P"
Environmental Compliance Certificate ("ECC") No. 9406-003-206 dated 08 November 1994	"Q"
SMEC's Certificate of Compliance No. 19-04-M-00039L	"R"
Certification stating the Consistency or Inconsistency of the Sual Coal-fired Power Station with the DOE Philippine Development Plan ("PDP")	"S"
- Transmission / Grid Connection Projects of SMEC	"T" and Series
- Certification of Non-Applicability of Renewable Energy Service/Operating Contract from the DOE	
- Certification of Non-Applicability of Certificate of Registration or Certification of Commerciality by an RE Developer and After Due Confirmation by the DOE	
Executive Summary (technical and economic characteristics of the generation capacity, salient features of the PSA)	"U"
- Sources of Funds/Financial Plans; Generation Rate and Derivation - Financial model in compact disc containing derivation of rates	"V" and Series*
SMEC's Explanation on the Fuel Procurement Process	"W"
- SMEC's latest Audited Financial Statements - Certification regarding the net heat rate - Simulation of the number of operating units necessary to meet the minimum energy off-take ("MEOT") and/or additional energy/demand requirements of MERALCO - Explanation on the Non-Applicability of Potential Cost of Ancillary Service	"X" and Series

SMEC's Secretary Certificate on the authorized personnel to signed and deliver contracts, agreements, instruments and/or securities	"Y"
SMEC's Secretary Certificate on the authority of the authorized representatives to appoint and designate representative to prosecute, defend, arbitrate, settle and/or collect in behalf of the company	"Z"

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

MOTION FOR CONFIDENTIAL TREATMENT OF
ANNEX "V" and series

15. **Annex "V" and series** contain numbers, methodology, and calculations which provide valuable information and insight on how SMEC arrives at its power generation rate and would accordingly reflect SMEC's bidding strategy for distribution utilities undertaking competitive process for the selection of their power suppliers, and SMEC's trading in the WESM. It also contains information regarding the debt or equity ratio, capital costs, weighted average cost of capital, and fuel cost, among other information.
- 15.1 It is therefore submitted that **Annex "V" 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.
16. Under Rule 4 of the ERC Rules of Practice and Procedure, the Honorable Commission may, upon request of a party and determination of the existence of conditions, which would warrant such remedy, treat certain information submitted to it as confidential. Pursuant to such provision, Applicant SMEC respectfully prays for the issuance of a protective order declaring **Annex "V" and series** as confidential information, since Applicant SMEC intends to present them as evidence in the instant Application.
17. Even though these will be treated as confidential documents and information and a protective order will be issued, the rules do not preclude the parties of record or their lawyers an access to such confidential information after agreeing to be bound by the terms of the protective order.
18. The data contained in **Annex "V" and series** constitute "trade secrets" of Applicant SMEC; thus, SMEC has actual and valuable proprietary interest to protect with respect to such information. The Supreme Court, in the recent 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]).

19. Information, which falls within the definition of a trade secret, as defined by jurisprudence is clearly information which merits the confidential treatment provided for under Rule 4 of the ERC Rules of Practice and Procedure. **Annex “V”** and **series** should therefore be entitled to the protection of confidential information provided under Rule 4 of the ERC Rules of Practice and Procedure.
20. SMEC hereby submits one (1) copy of each of the foregoing confidential documents in a sealed envelope, with the envelope and each page of the document stamped with the word "Confidential."

PRAYER

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

- (i) **ISSUE** an Order treating **Annex “V”** and **series** as confidential information pursuant to Rule 4, Section 1 of the ERC Rules of Practice and Procedure and prescribing the guidelines for the protection thereof;
- (ii) Immediately **ISSUE** a provisional authority and/or interim relief authorizing the Applicants to implement the Power Supply Agreement by 26 December 2019; and
- (iii) After hearing on the merits, render a Decision **APPROVING** the Power Supply Agreement.

Other reliefs just and reasonable are likewise prayed for.

Finding the said *Joint Application* to be sufficient in form and substance, with the required fees having been paid, the same is hereby set for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence **at the ERC Hearing Room, 15th Floor Pacific Center Building, San Miguel Avenue, Pasig City** on the following dates:

Date and Time	Particulars
05 December 2019 (Thursday) at one o'clock in the afternoon (1:00 P.M.)	Jurisdictional Hearing and Expository Presentation
16 January 2020 (Thursday) at one o'clock in the afternoon (01:00 P.M.)	Pre-trial Conference and Evidentiary Hearing

23 January 2020 (Thursday) at one o'clock in the afternoon (01:00 P.M.)	Evidentiary Hearing
30 January 2020 (Thursday) at one o'clock in the afternoon (01:00 P.M.)	Evidentiary Hearing

Accordingly, MERALCO and SMEC 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, by any other means available and appropriate, of the filing of the *Application*, its reasons therefor, and of the scheduled hearings thereon;
- 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 hearings; 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, MERALCO and SMEC 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 MERALCO and SMEC to inform the consumers affected of the filing of the *Joint Application*, its reasons therefor, and of the scheduled hearings thereon;
- 4) The evidence of receipt of copies of this *Order* and the attached *Notice of Public Hearing* by the OSG, 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 proofs of compliance with the requirements of the Commission.

MERALCO and SMEC 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 therefore; 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 MERALCO and SMEC to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearings, and the resetting of which shall be six (6) months from the said date of cancellation.

MERALCO and SMEC 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 justifications being cited in support thereof.

SO ORDERED.

Pasig City, 28 October 2019.

FOR AND BY AUTHORITY
OF THE COMMISSION:


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner

LS:  MVM/LSP/GLO

Copy furnished:

1. Manila Electric Company (MERALCO)
Applicant
MERALCO Compound, Ortigas Avenue,
Barangay Ugong, Pasig City
2. Attys. Francis Dino S. Antonio, Carmen Grace S. Ramos, Angelica B. Monteza and Madelyn C. delos Santos
Counsel for Applicant MERALCO
7th Floor, Lopez Building
Ortigas Avenue, Barangay Ugong, Pasig City
3. San Miguel Energy Corporation (SMEC)
Applicant
808 Building, Meralco Avenue Cor. General Lim Street,
San Antonio Village, Pasig City
4. Attys. Jupiter Cabaguio and Avelino Cedo
Counsel for Applicant SMEC
23F San Miguel Properties Centre,
No. 7 St. Francis Street, Mandaluyong City

- 5. Office of the City Mayor
City of Pasig
- 6. Office of the Local Government Unit (LGU) Legislative Body
City of Pasig
- 7. Office of the City Mayor
City of Cebu
- 8. Office of the LGU Legislative Body
City of Cebu
- 9. Office of the City Mayor
City of Manila
- 10. Office of the LGU Legislative Body
City of Manila
- 11. Office of the City Mayor
Quezon City
- 12. Office of the LGU Legislative Body
Quezon City
- 13. Office of the City Mayor
City of Caloocan
- 14. Office of the LGU Legislative Body
City of Caloocan
- 15. Office of the City Mayor
City of Makati
- 16. Office of the LGU Legislative Body
City of Makati
- 17. Office of the City Mayor
City of Malabon
- 18. Office of the LGU Legislative Body
City of Malabon
- 19. Office of the City Mayor
City of Mandaluyong
- 20. Office of the LGU Legislative Body
City of Mandaluyong
- 21. Office of the City Mayor
City of Muntinlupa
- 22. Office of the LGU Legislative Body
City of Muntinlupa
- 23. Office of the City Mayor
City of San Jose del Monte, Bulacan
- 24. Office of the LGU Legislative Body
City of San Jose del Monte, Bulacan
- 25. Office of the City Mayor
City of Valenzuela
- 26. Office of the LGU Legislative Body
City of Valenzuela
- 27. Office of the City Mayor
Pasay City
- 28. Office of the LGU Legislative Body
Pasay City
- 29. Office of the City Mayor

City of Parañaque

30. Office of the LGU Legislative Body
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
34. Office of the LGU Legislative Body
Trece Martires City
35. Office the City Mayor
Las Piñas City
36. Office of the LGU Legislative Body
Las Piñas City
37. Office the City Mayor
San Juan City
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San Juan City
39. Office of the City Mayor
Lucena City
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Lucena City
41. Office of the City Mayor
Batangas City
42. Office of the LGU Legislative Body
Batangas City
43. Office of the City Mayor
San Pablo City, Laguna
44. Office of the LGU Legislative Body
San Pablo City, Laguna
45. Office of the City Mayor
City of Marikina
46. Office of the LGU Legislative Body
City of Marikina
47. Office of the City Mayor
Antipolo City, Rizal
48. Office of the LGU Legislative Body
Antipolo City, Rizal
49. Office of the City Mayor
Tagaytay City, Cavite
50. Office of the LGU Legislative Body
Tagaytay City, Cavite
51. Office of the City Mayor
Calamba, Laguna
52. Office of the LGU Legislative Body
Calamba, Laguna

53. Office of the City Mayor
Sta. Rosa, Laguna
54. Office of the LGU Legislative Body
Sta. Rosa, Laguna
55. Office of the City Mayor
Biñan, Laguna
56. Office of the LGU Legislative Body
Biñan, Laguna
57. Office of the City Mayor
Navotas, Metro Manila
58. Office of the LGU Legislative Body
Navotas, Metro Manila
59. Office of the Municipal Mayor
Taguig, Metro Manila
60. Office of the LGU Legislative Body
Taguig, Metro Manila
61. Office of the Municipal Mayor
Pateros, Metro Manila
62. Office of the LGU Legislative Body
Pateros, Metro Manila
63. Office of the Municipal Mayor
General Aguinaldo, Cavite
64. Office of the LGU Legislative Body
General Aguinaldo, Cavite
65. Office of the Municipal Mayor
Magallanes, Cavite
66. Office of the LGU Legislative Body
Magallanes, Cavite
67. Office of the Municipal Mayor
Amadeo, Cavite
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Amadeo, Cavite
69. Office of the Municipal Mayor
Indang, Cavite
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Indang, Cavite
71. Office of the Municipal Mayor
Mendez, Cavite
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Mendez, Cavite
73. Office of the Municipal Mayor
Alfonso, Cavite
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Alfonso, Cavite
75. Office of the Municipal Mayor
Imus, Cavite
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Imus, Cavite

77. Office of the Municipal Mayor
Kawit, Cavite
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Kawit, Cavite
79. Office of the Municipal Mayor
Noveleta, Cavite
80. Office of the LGU Legislative Body
Noveleta, Cavite
81. Office of the Municipal Mayor
Bacoar, Cavite
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Bacoar, Cavite
83. Office of the Municipal Mayor
Maragondon, Cavite
84. Office of the LGU Legislative Body
Maragondon, Cavite
85. Office of the Municipal Mayor
Ternate, Cavite
86. Office of the LGU Legislative Body
Ternate, Cavite
87. Office of the Municipal Mayor
Gen. Trias, Cavite
88. Office of the LGU Legislative Body
Gen. Trias, Cavite
89. Office of the Municipal Mayor
Naic, Cavite
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Naic, Cavite
91. Office of the Municipal Mayor
Rosario, Cavite
92. Office of the LGU Legislative Body
Rosario, Cavite
93. Office of the Municipal Mayor
Tanza, Cavite
94. Office of the LGU Legislative Body
Tanza, Cavite
95. Office of the Municipal Mayor
Dasmariñas, Cavite
96. Office of the LGU Legislative Body
Dasmariñas, Cavite
97. Office of the Municipal Mayor
Gen. Mariano Alvarez, Cavite
98. Office of the LGU Legislative Body
Gen. Mariano Alvarez, Cavite
99. Office of the Municipal Mayor
Silang, Cavite
100. Office of the LGU Legislative Body
Silang, Cavite

ERC CASE NO. 2019-083 RC
ORDER/28 OCTOBER 2019
PAGE 20 OF 26

101. Office of the Municipal Mayor
Carmona, Cavite
102. Office of the LGU Legislative Body
Carmona, Cavite
103. Office of the Municipal Mayor
Cainta, Rizal
104. Office of the LGU Legislative Body
Cainta, Rizal
105. Office of the Municipal Mayor
Taytay, Rizal
106. Office of the LGU Legislative Body
Taytay, Rizal
107. Office of the Municipal Mayor
Teresa, Rizal
108. Office of the LGU Legislative Body
Teresa, Rizal
109. Office of the Municipal Mayor
Jala-jala, Rizal
110. Office of the LGU Legislative Body
Jala-jala, Rizal
111. Office of the Municipal Mayor
Cardona, Rizal
112. Office of the LGU Legislative Body
Cardona, Rizal
113. Office of the Municipal Mayor
Baras, Rizal
114. Office of the LGU Legislative Body
Baras, Rizal
115. Office of the Municipal Mayor
Angono, Rizal
116. Office of the LGU Legislative Body
Angono, Rizal
117. Office of the Municipal Mayor
Tanay, Rizal
118. Office of the LGU Legislative Body
Tanay, Rizal
119. Office of the Municipal Mayor
Pililla, Rizal
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Pililla, Rizal
121. Office of the Municipal Mayor
Morong, Rizal
122. Office of the LGU Legislative Body
Morong, Rizal
123. Office of the Municipal Mayor
Binangonan, Rizal
124. Office of the LGU Legislative Body
Binangonan, Rizal

125. Office of the Municipal Mayor
Rodriguez, Rizal
126. Office of the LGU Legislative Body
Rodriguez, Rizal
127. Office of the Municipal Mayor
San Mateo, Rizal
128. Office of the LGU Legislative Body
San Mateo, Rizal
129. Office of the Municipal Mayor
Meycauayan, Bulacan
130. Office of the LGU Legislative Body
Meycauayan, Bulacan
131. Office of the Municipal Mayor
Obando, Bulacan
132. Office of the LGU Legislative Body
Obando, Bulacan
133. Office of the Municipal Mayor
Marilao, Bulacan
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Marilao, Bulacan
135. Office of the Municipal Mayor
Norzagaray, Bulacan
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Norzagaray, Bulacan
137. Office of the Municipal Mayor
Sta. Maria, Bulacan
138. Office of the LGU Legislative Body
Sta. Maria, Bulacan
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Angat, Bulacan
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Angat, Bulacan
141. Office of the Municipal Mayor
Doña Remedios Trinidad, Bulacan
142. Office of the LGU Legislative Body
Doña Remedios Trinidad, Bulacan
143. Office of the Municipal Mayor
Plaridel, Bulacan
144. Office of the LGU Legislative Body
Plaridel, Bulacan
145. Office of the Municipal Mayor
Malolos, Bulacan
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Malolos, Bulacan
147. Office of the Municipal Mayor
Calumpit, Bulacan
148. Office of the LGU Legislative Body
Calumpit, Bulacan

149. Office of the Municipal Mayor
Pulilan, Bulacan
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Pulilan, Bulacan
151. Office of the Municipal Mayor
Hagonoy, Bulacan
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Hagonoy, Bulacan
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Paombong, Bulacan
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Paombong, Bulacan
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Guiguinto, Bulacan
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Guiguinto, Bulacan
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Pandi, Bulacan
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Bocaue, Bulacan
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Bulacan, Bulacan
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Bulacan, Bulacan
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Balagtas, Bulacan
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Balagtas, Bulacan
167. Office of the The Municipal Mayor
Baliwag, Bulacan
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Baliwag, Bulacan
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San Rafael, Bulacan
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San Rafael, Bulacan
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San Miguel, Bulacan
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San Miguel, Bulacan

173. Office of the Municipal Mayor
San Ildefonso, Bulacan
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San Ildefonso, Bulacan
175. Office of the Municipal Mayor
Victoria, Laguna
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Victoria, Laguna
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Nagcarlan, Laguna
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Nagcarlan, Laguna
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Magdalena, Laguna
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Magdalena, Laguna
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Calauan, Laguna
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Calauan, Laguna
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Pila, Laguna
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Pila, Laguna
185. Office of the Municipal Mayor
Sta.Cruz, Laguna
186. Office of the LGU Legislative Body
Sta.Cruz, Laguna
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Liliw, Laguna
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Liliw, Laguna
189. Office of the Municipal Mayor
San Pedro, Laguna
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San Pedro, Laguna
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Alaminos, Laguna
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Alaminos, Laguna
193. Office of the Municipal Mayor
Rizal, Laguna
194. Office of the LGU Legislative Body
Rizal, Laguna
195. Office of the Municipal Mayor
Los Baños, Laguna
196. Office of the LGU Legislative Body
Los Baños, Laguna

197. Office of the Municipal Mayor
Cabuyao, Laguna
198. Office of the LGU Legislative Body
Cabuyao, Laguna
199. Office of the Municipal Mayor
Bay, Laguna
200. Office of the LGU Legislative Body
Bay, Laguna
201. Office of the Municipal Mayor
Dolores, Quezon
202. Office of the LGU Legislative Body
Dolores, Quezon
203. Office of the Municipal Mayor
Sampaloc, Quezon
204. Office of the LGU Legislative Body
Sampaloc, Quezon
205. Office of the Municipal Mayor
Pagbilao, Quezon
206. Office of the LGU Legislative Body
Pagbilao, Quezon
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Lucban, Quezon
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Lucban, Quezon
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Tayabas, Quezon
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Tayabas, Quezon
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Candelaria, Quezon
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Candelaria, Quezon
213. Office of the Municipal Mayor
Sariaya, Quezon
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Sariaya, Quezon
215. Office of the Municipal Mayor
San Antonio, Quezon
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San Antonio, Quezon
217. Office of the Municipal Mayor
Mauban, Quezon
218. Office of the LGU Legislative Body
Mauban, Quezon
219. Office of the Municipal Mayor
Tiaong, Quezon
220. Office of the LGU Legislative Body
Tiaong, Quezon

- 221. Office of the Municipal Mayor
Majayjay, Quezon
- 222. Office of the LGU Legislative Body
Majayjay, Quezon
- 223. Office of the Municipal Mayor
Luisiana, Quezon
- 224. Office of the LGU Legislative Body
Luisiana, Quezon
- 225. Office of the Municipal Mayor
Sto. Tomas, Batangas
- 226. Office of the LGU Legislative Body
Sto. Tomas, Batangas
- 227. Office of the Municipal Mayor
San Pascual, Batangas
- 228. Office of the LGU Legislative Body
San Pascual, Batangas
- 229. Office of the Municipal Mayor
Candaba, Pampanga
- 230. Office of the LGU Legislative Body
Candaba, Pampanga
- 231. Office of the Municipal Mayor
San Simon, Pampanga
- 232. Office of the LGU Legislative Body
San Simon, Pampanga
- 233. Office of the Municipal Mayor
Apalit, Pampanga
- 234. Office of the LGU Legislative Body
Apalit, Pampanga
- 235. Office of the Governor
Province of Rizal
- 236. Office of the LGU Legislative Body
Province of Rizal
- 237. Office of the Governor
Province of Laguna
- 238. Office of the LGU Legislative Body
Province of Laguna
- 239. Office of the Governor
Province of Batangas
- 240. Office of the LGU Legislative Body
Province of Batangas
- 241. Office of the Governor
Province of Cavite
- 242. Office of the LGU Legislative Body
Province of Cavite
- 243. Office of the Governor
Province of Pampanga
- 244. Office of the LGU Legislative Body
Province of Pampanga

ERC CASE NO. 2019-083 RC
ORDER/28 OCTOBER 2019
PAGE 26 OF 26

- 245. Office of the Governor
Province of Quezon
- 246. Office of the LGU Legislative Body
Province of Quezon
- 247. Office of the Governor
Province of Bulacan
- 248. Office of the LGU Legislative Body
Province of Bulacan
- 249. Office of the LGU legislative body
Province of Nueva Ecija
- 250. Office of the Solicitor General
134 Amorsolo Street, Legaspi Village, Makati City
- 251. Commission on Audit
Commonwealth Avenue, Quezon City
- 252. Senate Committee on Energy
GSIS Bldg., Roxas Boulevard, Pasay City
- 253. House Committee on Energy
Batasan Hills, Quezon City
- 254. Office of the President of PCCI
Philippine Chamber of Commerce and Industry (PCCI)
3rd Floor, Chamber and Industry Plaza (CIP)
1030 Campus Avenue corner Park Avenue
McKinley Town Center, Fort Bonifacio
Taguig City
- 255. Regulatory Operations Service
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Ortigas Center 1600, Pasig City