

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

**IN THE MATTER OF THE
JOINT APPLICATION FOR
THE APPROVAL OF THE
EMERGENCY POWER
SUPPLY AGREEMENT
BETWEEN MANILA
ELECTRIC COMPANY AND
SUAL POWER INC., WITH
MOTION FOR
CONFIDENTIAL
TREATMENT OF
INFORMATION**

ERC CASE NO. 2025-048 RC

**MANILA ELECTRIC
COMPANY and SUAL POWER
INC.,**

Applicants.

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Promulgated:
March 20, 2025

NOTICE OF VIRTUAL HEARING

Notice is hereby given that on 24 February 2025, the Manila Electric Company (MERALCO) and Sual Power Inc. (SPI), filed their *Joint Application* dated 04 February 2025, seeking the Commission's approval of their Emergency Power Supply Agreement (EPSA), with motion for confidential treatment of information.

The pertinent allegations in the *Joint Application* are hereunder quoted, as follows:

XXX

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 SPI 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, Brgy. 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. SPI owns and operates the 1,294.040 MW Sual Coal-Fired thermal power plant located in Barangay Pangascasan, Sual, Pangasinan on the island of Luzon.

I. STATEMENT OF FACTS

- A. Cessation of Supply of MERALCO's baseload Power Supply Agreement ("PSA") with ACEN Corporation ("ACEN") dated 13 September 2019 involving 200 MW Contract Capacity ("2019 MER-ACEN Baseload PSA")
5. Following the conduct of a competitive selection process under the then-prevailing Department of Energy Department Circular No. DC2018-02-003, MERALCO and ACEN (formerly known as Phinma Energy) executed the 2019 MER-ACEN Baseload PSA, and another PSA dated 16 September 2019 for the supply of 110 MW mid-merit capacity ("Mid-merit PSA"). Both PSAs were granted interim relief by the Energy Regulatory Commission ("ERC") in separate Orders dated 26 November 2020.¹
6. On 11 October 2023, ACEN issued to MERALCO a Notice of Change in Circumstances ("CIC"), which was revised on 1 February 2024, for losses due to CIC incurred in the year 2022 for both PSAs. Consequently, on 29 February 2024, ACEN (joined by MERALCO) filed Joint Motions for Price Adjustment ("JMPA") both of even date, with the ERC for the 2019 MER-ACEN Baseload PSA and Mid-merit PSA, involving PhP 618 million and PhP 87 million, respectively.
7. On 24 May 2024, ACEN issued to MERALCO Supplemental Notices of CIC for the year 2023. Thus, on 21 June 2024, ACEN (joined by MERALCO) filed an Updated and Supplemental Joint Motions for Price Adjustment, both of even date, seeking an additional claim amounting to PhP 910 million and 132 PhP million for the Baseload PSA and Mid-merit PSA, respectively.

¹ Docketed as ERC Case No. 2019-079 RC (for the 2019 MER-ACEN Baseload PSA) and ERC Case No. 2019-078 RC (for the 2019 MER-ACEN Mid-merit PSA).

The updated and supplemented JMPAs are both pending resolution before the ERC.²

8. Six (6) months after the JMPAs were filed and despite a clarificatory hearing having been held by the ERC on 15 August 2024, the JMPAs remained unresolved. On 2 September 2024, MERALCO received ACEN's first notices of termination of both PSAs, effective on 1 November 2024, premised on ACEN's financial losses brought about by the CIC having breached indicated threshold levels that allow a power supplier to cut its losses and terminate the PSA. After receipt of ACEN's notice of termination, and in order to avert the termination of the subject PSAs, MERALCO immediately filed with this Honorable Commission an Urgent Motion to Resolve the JMPAs.
9. On 28 October 2024, MERALCO received ACEN's second notice of termination, reiterating their earlier intention to terminate the subject PSAs, specifically informing MERALCO that ACEN would cease declaring its bilateral contract quantities (BCQ) under the PSAs effective 0001H of 02 November 2024. In response, MERALCO urged ACEN through a letter dated 29 October 2024 not to proceed with the termination of the subject PSAs and to instead await the resolution of the JMPAs pending before the ERC for the benefit of the consuming public. Apart from the letter to ACEN, MERALCO also filed an Urgent 3rd Motion to Resolve dated 29 October 2024 with this Honorable Commission.
10. However, on 2 November 2024, despite MERALCO's nominations to ACEN, the latter ceased declaring BCQs to MERALCO under the subject PSAs.
11. As such, pending resolution of the JMPAs and guidance from the ERC, MERALCO's customers are now exposed to and continue to be exposed to the volatile prices of the WESM, involving 200 MW baseload capacity³ until MERALCO secures a replacement PSA.
 - B. MERALCO's EPSA with SPI for 200 MW ("MERALCO-SPI EPSA") pursuant to the DOE CSP Policy and ERC CSP Guidelines
12. Due to the deficient baseload supply as a result of the cessation of supply of the 2019 MERALCO-ACEN Baseload PSA, coupled with the summer months (and accompanying peak demand of MERALCO) approaching by February 2025, MERALCO undertook necessary precautions to secure an EPSA to address the foregoing deficiency in order to assure its customers reliable and continuous supply.
13. Thus, in the best interest of its customers, MERALCO was constrained to find a contingency and consider an alternative source of supply through a negotiated procurement of an EPSA

² *Id.*

³ The 2019 MER-ACEN Mid-merit PSA (110MW) expired on 25 December 2024.

for MERALCO's 200 MW baseload supply requirement. To this end, after sending out various requests for proposals, MERALCO formally received the most reasonable and least cost offer from SPI to address MERALCO's 200 MW emergency baseload supply requirement.

14. The DOE CSP Policy describes a negotiated procurement of emergency power supply due to the occurrence of a Force Majeure/Fortuitous Event as:

"Section 2.3.5

Negotiated procurement of Emergency Power supply wherein the Emergency Power Supply Agreement (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, subject to conditions to be defined by the ERC; Provided, that the procurement of emergency power supply shall not be entitled to any form of subsidy; xxx"

15. A Force Majeure or Fortuitous Event ("FM/FE"), on the other hand, is defined in Section 3.8 of the DOE CSP Policy as, "[...] any extraordinary event not foreseeable or avoidable, or to an event that could not be foreseen, or which, though foreseen, is inevitable and independent of human will or the DU's participation, whether by active intervention, neglect or failure to act. xxx"
16. MERALCO respectfully submits that the cessation of supply of the 2019 MERALCO-ACEN Baseload PSA is an extraordinary event which, though foreseen, is inevitable and independent of MERALCO's participation. Such FM/FE constrained MERALCO to procure supply through the MERALCO-SPI EPSA.
17. Further, the parameters of a negotiated procurement of emergency supply are enumerated under Appendix A of the ERC CSP Guidelines, which states that, *"The Emergency EPSA (EPSA) shall be immediately implementable without need of a [PA] or [IR], provided that the following conditions are met:"*

17.1 First, that the "[T]he EPSA rate shall not be higher than the latest ERC-approved generation tariff specific for the plant, if available. Otherwise, it shall be capped at the latest ERC-approved generation tariff for the same technology. Such rate shall apply until the ERC issues its approval of the EPSA[;]"

To show compliance with this requirement, and since MERALCO is not privy to SPI's contracts with its other off-takers, SPI submitted an ERC Order dated 21 May 2019 and ERC Order dated 22 June 2021,⁴ which showed that SPI's offered rate to

⁴ For application entitled *"In the Matter of the Joint Application for Approval of the Power Supply Agreement (PSA) entered into by and between Bohol I Electric Cooperative, Inc. (BOHECO I) and*

MERALCO of PhP 5.0500/kWh (Plant Gate and VAT exclusive) for the Sual power plant is significantly lower than the latest ERC-approved rate for the Sual power plant in SMEC's⁵ Power Supply Agreement with BOHECO I of PhP 5.6645/kWh.

17.2 Second, that “[T]he cooperation period of such EPSA shall not exceed one (1) year from its execution;”, and in relation thereto, “EPSAs may not be pre-terminated, unless a PSA is procured within the term of the EPSA and such PSA has been approved by the ERC;”⁶.

As will be shown in the salient terms of the MERALCO-SPI EPSA below, the term thereof does not exceed one (1) year, starting from 28 January 2025 until 26 January 2026.

17.3 Third, that “The DU shall, within five (5) calendar days from the occurrence of the force majeure or fortuitous event, notify in writing the ERC, Department of Energy (DOE), xxx, of such emergency power supply procurement; [and]”

On 07 November 2025, MERALCO sent its letter-notification to the DOE and ERC regarding the MERALCO-SPI EPSA, copies of which are attached hereto as ANNEXES “C” and “C-1”, respectively.

17.4 Lastly, that the emergency power supply agreement shall be “[F]iled with the ERC for approval within thirty (30) calendar days after the occurrence of the force majeure or fortuitous event.”

Relative to this, on 07 December 2024, MERALCO sent a letter to the ERC (with furnished copy to the DOE) requesting for an additional period to file the MERALCO-SPI EPSA, as MERALCO was still in the process of securing the appropriate PSA with terms and conditions beneficial to its customers, a copy of which is attached hereto as ANNEX “C-2”.

Thereafter, on 3 February 2025, MERALCO sent another letter to the ERC (with furnished copy to the DOE) to request for an additional period of thirty (30) calendar days from execution of the MERALCO-SPI EPSA on 27 January 2025 or until 26 February 2025 to file the instant Joint Application, a copy of which is attached hereto as ANNEX “C-3”.

The instant Joint Application together with its Annexes was pre-filed with the Honorable Commission starting on 3 February 2025.

- 18 Pursuant to said provision and parameters, the parties implemented the MERALCO-SPI EPSA beginning 12:01 A.M. of 28 January 2025, in the interest of providing supply in the least

San Miguel Energy Corporation (SMEC), with Prayer for Provisional Authority and Confidential Treatment of Information,” docketed as ERC Case No. 2019-020 RC.

⁵ SPI's former corporate name.

⁶ Article VII, Section 34, ERC CSP Guidelines.

cost manner to MERALCO's customers, as it is beneficial to its customers by averting their exposure to volatile prices at the WESM.

- 19 In sum, MERALCO respectfully submits that the MERALCO-SPI EPSA has sufficiently complied with the DOE CSP Policy and ERC CSP Guidelines for the negotiated procurement of emergency supply. Further, MERALCO has sufficiently established that the negotiated procurement of emergency supply through the MERALCO-SPI EPSA was urgently needed to ensure that deficient baseload supply is addressed and that MERALCO's customers are assured of reliable and continuous supply.

II. SALIENT FEATURES OF THE MERALCO-SPI EPSA

- 20 The MERALCO-SPI EPSA, a copy of which is attached hereto as ANNEX "D", contains the following salient provisions:

"Article 1 Definitions and Interpretation

xxx

Available or Availability means one hundred percent (100%) of the Contract Capacity is dispatchable during the Available Hours.

xxx

Contract Capacity or CC shall be 200 MW, 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 be effective until January 25, 2026, unless terminated earlier in accordance with the terms of this Agreement and upon approval by the ERC (the "Term").

xxx

3.2 Operations Effective Date

The obligations of Power Supplier with respect to the Contract Capacity and Associated Energy shall commence on January 28, 2025 (the "Operations Effective Date"); *provided that*, the conditions set out in Section 3.1.1 have been satisfied.

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 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, WESM, or any other source, and deliver and sell to Meralco the Associated Energy, at the Contract Price determined in accordance with Appendix C; and
- (b) Meralco shall purchase from Power Supplier, to the extent of Meralco's relevant day-ahead nominations, the MEOT, at the Contract Price determined in accordance with Appendix C.

For clarity, the Power Supplier shall declare to the WESM the corresponding Associated Energy for Meralco at the Plant's Delivery Point/s or the relevant delivery point/s in Appendix A, as applicable.

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, subject to Article 15, make available the Contract Capacity and deliver the Associated Energy to Meralco.
- 7.2. The preceding Section notwithstanding, Power Supplier shall furnish Meralco its proposed Major Maintenance Outage and 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 Major Maintenance Outage and Scheduled Outage including possible delays in the shut-down and completion of schedules or early completion of Scheduled Outage. Failure of Power Supplier to provide its Major Maintenance Outage and Scheduled Outage shall preclude Power Supplier from invoking Article 15.
- 7.3. In case Power Supplier fails to make available the Contract Capacity and deliver the 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 affected MWh nomination during a Day 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.

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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 Operations Effective Date.
- 12.2.2. In case of Power Supplier's non-acceptance, or ERC order of adjustment/disallowance in the Contract 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 Contract 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 Contract Price, the same shall be for the account of Power Supplier notwithstanding termination of this Agreement. This shall be without prejudice to the exercise of Power Supplier's rights and remedies at law, under this Agreement, or in equity.

xxx

Appendix C
Calculation of Payment

xxx

B. MONTHLY POWER BILL UPON OPERATIONS EFFECTIVE DATE

The Monthly Power Bill ("MPB"), in PhP, upon Operations Effective Date ("OED") shall consist Monthly Energy Payment (MEP), and Line Rental Adjustment Payment (LRAP). Thus, the MPB upon OED for Contract Capacity and Associated Energy for each Billing Period shall be equal to:

$$MPB = MEP - LRAP$$

The MPB is exclusive of the applicable Value Added Tax.

1. Monthly Energy Payment (MEP)

The Monthly Energy Payment (MEP) for the relevant Billing Period is calculated as follows:

$$MEP = CP * BCQ_M$$

Where:

MEP = the Monthly Energy Payment, in PhP,
for the relevant Billing Period

CP = the Contract Price for Energy, in
PhP/kWh, as set forth in Schedule 1 of this
Appendix C

BCQ_M = total BCQ declared by the Power
Supplier to Meralco for the relevant Billing
Period as determined in Appendix F of this
Agreement

2. Line Rental Adjustment Payment (LRAP)

The Line Rental Adjustment Payment (LRAP) shall cover the cost of Line Rental Adjustment for the relevant Billing Period, in PhP, calculated as follows:

If $LR_M > (BCQ_M * LR_{CAP})$,

$$LRAP = LR_M - (BCQ_M * LR_{CAP})$$

Else,

$$LRAP = 0$$

Where:

LR_M = the total actual line rental charges for
the relevant Billing Period, in PhP, based on
billing issued by the Market Operator to Meralco

BCQ_M = as previously defined

LR_{CAP} = the Annual Line Rental Cap, in
PhP/kWh, as set forth in Schedule 1 of this
Appendix C

III. GENERATION RATE IMPACT

21. Based on the foregoing, and given a certain set of assumptions, the effective rate under the MERALCO-SPI EPSA is PhP5.0500 per kWh (at plant gate, VAT exclusive), as shown in the RATE IMPACT ANALYSIS below:

Sual Power Inc. (SPI) EPSA Rate Impact at 100% PCF					
28 January 2025 to 25 January 2026					
BILLING COMPONENT	UNIT	BASE RATE ^[a]	BILLING DETERMINANT ^[b]		AMOUNT (PHP)
A. Monthly Energy Payment (MEP)					
Peso Portion	(Php/kWh)	5.0500	1,742,400,000	(kWh)	8,799,120,000.00
Total Payment (VAT exclusive)	(Php)				8,799,120,000.00
Effective Rate at Plant Gate	(Php/kWh)				5.0500
WESM Line Rental Rate ^[c]	(Php/kWh)				0.1000
Delivered Rate (VAT exclusive)	(Php/kWh)				5.1500
Effective Cost if sourced from WESM ^[d]	(Php/kWh)				7.3781
Increase / (Decrease) over WESM Price	(Php/kWh)				(2.2281)
Meralco Captive Energy Demand ^[e]	(kWh)				38,374,352,010.32
Increase / (Decrease) in Generation Cost	(Php)				(3,882,210,008.00)
Increase / (Decrease) in Generation Cost	(Php/kWh)				(0.1012)
NOTES:					
^[a] Base Rates as set forth in Schedule 1 of the PSA.					
^[b] Total of energy billing determinant is based on 100% pcf with respect to the Contract Capacity.					
^[c] Line Rental rate for SPI is based on the maximum allowable value as stated in the PSA.					
^[d] Cost if equivalent volume of SPI was sourced from the WESM based on forecasted average hourly prices from 28 January 2025 to 25 January 2026.					
^[e] Forecasted Meralco Captive Energy for 28 January 2025 to 25 January 2026 based on 2024 Power Supply Procurement Plan as submitted to DOE.					

22. MERALCO notes that the delivered rate of PhP 5.1500 per kWh (VAT exclusive and line rental inclusive) is lower by about PhP 2.2281 per kWh than the effective cost of PhP 7.3781 per kWh, if the equivalent capacity under the MERALCO-SPI EPSA is to be sourced from the WESM. In fact, by sourcing the capacity through the MERALCO-SPI EPSA, MERALCO’s average blended generation rate will be reduced by about PhP 0.1012 per kWh (as seen in the RATE IMPACT ANALYSIS above) resulting in savings to consumers of about PhP 3.882 Billion.

IV. COMPLIANCE WITH DOCUMENTARY REQUIREMENTS

23. In support of this Joint Application, the Judicial Affidavit of ENGR. JAMES MARTIN J. VELASCO, Officer of Meralco's Energy Accounting & Settlement - Energy Sourcing Office, is attached hereto as ANNEX “E”.
24. 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”
SPI’s Secretary’s Certificates	“B” and “B-1”
MERALCO’s letter notification to DOE dated 7 November 2024	“C”
MERALCO’s letter-notification to ERC dated 7 November 2024	“C-1”
MERALCO’s letter to ERC dated 2 December 2024	“C-2”
MERALCO’s letter to ERC dated 3 February 2025	“C-3”
MERALCO-SPI EPSA	“D”
Judicial Affidavit of MERALCO’s witness, ENGR. JAMES MARTIN J. VELASCO, Officer of Meralco's Energy Accounting & Settlement - Energy Sourcing Office	“E”
<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 scenariosDetails of Existing SuppliersDetails of Power Supply Contract UtilizationDetails of SAIDI and SAIFIEstimation of the potential for a reduction in load supplied by MERALCO due to RCOA, GEOP, etc.	“F” “F-1” “F-2” “F-3” “F-4” “F-5”
Executive Summary of the PSA	"G"
Generation Rate and Derivations including Cost Analysis (confidential)	"H and series"
Certification on Documents Previously Submitted	“I”

<ul style="list-style-type: none">• Fuel Procurement Process and Supply Agreement (confidential)• Technical and economic characteristics of the plant	
Outage Reports of SPI	"J"

ALLEGATIONS IN SUPPORT OF THE MOTION FOR
CONFIDENTIAL TREATMENT OF INFORMATION

25. 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.
26. With respect to the documents marked and attached as ANNEXES "H and series," and "I", SPI 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 SPI. The data and information contained therein are part of the overall formula and process in arriving at the competitive rates of SPI. These formula and process are specifically developed for the use of SPI and are treated as trade secrets. If the information contained in these documents are unduly disclosed, it will seriously prejudice the competitiveness of SPI. These documents are neither generally available to the public nor already in the possession of the Honorable Commission on a non-confidential basis.
27. In the case of Air Philippines Corporation vs. Pennswell, Inc.⁷, the Supreme Court defined "trade secret" as follows:

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

⁷ G.R. No. 172835, December 13, 2007.

28. 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 competitive leverage by one player against its competitors.

Thus, the Commission resolved to treat the said documents confidential and may not be publicly disclosed.”⁸

29. SPI hereby submits one (1) copy if the foregoing confidential documents in a sealed envelope, with the envelope and each page of the documents marked “Confidential”.
30. 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 “H and series” and “I”. 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.
31. Lastly and corollary to the foregoing, SPI 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)
32. This is guided by the fact that SPI will seek the return of these documents that are sought to be declared as confidential 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 SPI enclosed in the subject documents.

PRAYER

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

⁸ In the Matter of the Application for the Approval of the Power Supply Agreement Between Nueva Ecija II Electric Cooperative, Inc. – Area 2 (NEECO II-Area 2) and PNOC Renewables Corporation (PNOC RC) with Prayer for Provisional Authority, ERC Case No. 2015-111 RC, Decision dated 30 May 2017, p. 26.

- A. After hearing on the merits, render a Decision APPROVING the MERALCO-SPI EPSA and the terms and conditions thereunder, including the price; and
- B. Issue an Order TREATING ANNEXES “H and series,” and “I” 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 the same be returned to Applicant SPI, pursuant to Rule 4 of the ERC RRPP;

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

The Commission hereby sets the same for determination of compliance with the jurisdictional requirements, expository presentation, Pre-Trial Conference, and presentation of evidence on the following dates and online platform for the conduct thereof, pursuant to Resolution No. 09, Series of 2020⁹ and Resolution No. 01, Series of 2021¹⁰ (ERC Revised Rules of Practice and Procedure):

Date	Platform	Activity
06 May 2025 (Tuesday) at nine o’clock in the morning (9:00 AM)	Microsoft Teams Application	Determination of compliance with the jurisdictional requirements and expository presentation
13 May 2025 (Tuesday) at nine o’clock in the morning (9:00 AM)		Pre-Trial Conference and presentation of evidence

MERALCO and SPI are directed to mirror the virtual hearings, hosted by the Commission 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, MERALCO and SPI shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

⁹ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

¹⁰ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

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 person who has 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 **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.

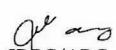
Any of the persons mentioned in the preceding paragraphs may access the copy of the *Joint Application* through the Commission's official website at www.erc.gov.ph.

Finally, all interested persons may be allowed to join the scheduled virtual hearings by providing the Commission, through 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 Chairperson and CEO **MONALISA C. DIMALANTA**, and Honorable Commissioners **ALEXIS M. LUMBATAN**, **CATHERINE P. MACEDA**, **FLORESINDA G. BALDO-DIGAL** and **MARKO ROMEO L. FUENTES**, Energy Regulatory Commission, this 20th day of March 2025 in Pasig City.

FOR AND BY AUTHORITY
OF THE COMMISSION:


KRISHA MARIE T. BUELA
Director III, Legal Service


LS: JRBC/ARG