

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

IN THE MATTER OF THE
JOINT APPLICATION FOR
THE APPROVAL OF THE
POWER SUPPLY
AGREEMENT BETWEEN
MANILA ELECTRIC
COMPANY AND MASINLOC
POWER CO. LTD., WITH
PRAYER FOR ISSUANCE OF
A PROVISIONAL
AUTHORITY AND/OR
INTERIM RELIEF AND
MOTION FOR
CONFIDENTIAL
TREATMENT OF
INFORMATION

MERALCO
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ERC CASE NO. 2024-124 RC

**MANILA ELECTRIC
COMPANY AND MASINLOC
POWER CO. LTD.,**

Applicants.

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Promulgated:
November 04, 2024

ORDER

On 02 October 2024, the Manila Electric Company (MERALCO) and Masinloc Power Co. Ltd. (MPCL) filed a *Joint Application* dated 16 September 2024, seeking the Commission’s approval of their Power Supply Agreement (PSA), with prayer for the issuance of a provisional authority and/or interim relief and motion for confidential treatment of information.

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

XXX

I. THE APPLICANTS

A. MERALCO

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.

B. MPCL

3. Applicant MPCL is a partnership duly organized and existing under the laws of the Philippines, with principal place of business at 5th Floor, C5 Office Building Complex, No. 100 E. Rodriguez Jr. Avenue, C5 Road, 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.
4. MPCL owns and operates Units 3 and 4 (undergoing construction) of the Masinloc Coal-Fired Thermal Power Plant located in Brgy. Bani, Masinloc, Zambales and capable of supplying 619.50 MW (net).

II. STATEMENT OF FACTS AND TIMELINESS

5. In accordance with MERALCO's latest and duly accepted Distribution Development Plan and posted Power Supply Procurement Plan ("**PSPP**") approved by the Department of Energy ("**DOE**"), MERALCO foresees a baseload capacity deficit in its portfolio of 600 MW (net) based on its power situation outlook for the third quarter of 2025.
6. Thus, in order to ensure continuous and reliable electricity for MERALCO's customers there is a need for MERALCO to source additional mid-merit 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, pursuant to *Section 4, Article IV of the Energy Regulatory Commission's ("**ERC**") Resolution No. 16, Series of 2023 ("**ERC CSP Guidelines**")*, MERALCO conducted a Competitive Selection Process ("**CSP**") for the procurement of

600 MW (net) baseload supply requirement. The conduct of CSP proceeded as follows:

- 8.1. On 24 May 2024, MERALCO submitted to the DOE, the Invitation to Bid ("**ITB**")/Terms of Reference ("**TOR**") for its 600 MW (net) Effective September 2025 (referred to as the "**600 MW CSP**"), to request for issuance of a Certificate of Conformity in accordance with MERALCO's latest and duly accepted Distribution Development Plan and posted PSPP, pursuant to *Section 4.3 of DOE Department Circular No. DC2023-06-0021, Series of 2023 and Section 5, Appendix B of the ERC CSP Guidelines*.
- 8.2. On 6 June 2024, the DOE issued in favor of MERALCO a Certificate of Conformity No. DOE-EPIMB-COC-2024-06-006 of even date (the "**DOE COC**") covering MERALCO's 600 MW (net) baseload supply requirement, which MERALCO received on the same day and endorsed to its Bids and Awards Committee for Power Supply Agreements ("**BAC-PSA**") for commencement of the 600 MW CSP. On the same day, pursuant to requirements provided in the ERC CSP Guidelines, the BAC-PSA Secretariat furnished the ERC a copy of the DOE COC and formally notified the DOE (copy furnished the ERC) of the commencement of the 600 MW CSP in relation to the DOE COC.
- 8.3. On 11 June 2024 and 18 June 2024, the BAC-PSA caused the publication of the ITB in The Philippine Star, a newspaper of general circulation in the Philippines. The ITB contained the TOR, a summary of the process and timelines of the CSP, and invitation to power generation companies to pay the Participation Fee and submit an Expression of Interest and set of documents on or before the deadline set out in said Invitation. The ITB and the TOR were likewise posted on MERALCO's website and on the DOE e-based CSP Portal.
- 8.4. On 13 June 2024, MERALCO posted on its website, an "Invitation to Participate as CSP Observers," which informed the public that the following entities or groups identified in Section 9 of the ERC CSP Guidelines are invited to signify to the BAC-PSA of their interest to participate as observer. By 25 June 2024, five (5) CSP Observers submitted their intent to (and were admitted by) the BAC-PSA as CSP Observers.
- 8.5. On 4 July 2024, a Pre-Bid Conference was held to allow interested bidders an opportunity to clarify any provisions, requirements, and/or terms and conditions of the bidding documents and/or any other matter that the interested bidders may raise. The Pre-Bid Conference were held at least thirty (30) calendar days before the 600 MW CSP's bid submission deadline; attended by

CSP Observers; and broadcasted livestream in MERALCO's YouTube page.

- 8.6. On 1 August 2024, the BAC-PSA announced, via Bid Bulletin No. 5, the suspension of the CSP activities until further notice, in compliance with the Temporary Restraining Order ("**TRO**") dated 31 July 2024 issued by Branch 15-FC of the Regional Trial Court of Taguig City, pursuant to the Complaint for Injunction filed by Prime Energy Resources Development B.V., UC38LLC, Prime Oil and Gas, Inc., and PNOC Exploration Corp. against MERALCO. On 19 August 2024, the BAC-PSA announced, via Bid Bulletin No. 6, the resumption of CSP activities for this CSP (starting with the previously scheduled Bid Submission Deadline of 2 August 2024 to the new schedule, 27 August 2024) pursuant to an Order (dated 17 August 2024) issued by Branch 267 of the Regional Trial Court of Taguig City received by MERALCO on 19 August 2024 ("**RTC Order**") and endorsed to the BAC-PSA (with instructions to resume all upcoming CSP activities for the 600 MW CSP without further delay). The RTC Order held that the TRO was without force and effect, and dismissed the Complaint for Injunction for lack of jurisdiction.
- 8.7. On 27 August 2024, the bidders submitted their bid document submissions in compliance with all the bidding documents for the 600 MW CSP, and the respective submissions of the bidders were opened by the BAC-PSA. The bid submission and bid opening were held at least forty-five (45) days after the ITB/TOR's last publication and were attended by CSP Observers and were broadcasted livestream in MERALCO's YouTube page.
- 8.8. Following the BAC-PSA's evaluation of each of the bidders' bid submissions, Applicant MPCL emerged as one of the bidders with the lowest calculated responsive bid ("**Best Bid**"), with MPCL offering 500 MW (net) out of the required contract capacity of 600 MW (net) for the said bidding.
- 8.9. On 30 August 2024, the BAC-PSA conducted the post-qualification of the document submissions of MPCL and found the submissions to be compliant and responsive to all the requirements and conditions specified in the bidding documents, as amended, or clarified by pertinent bid bulletins, for the 600 MW (net) CSP. The post-qualification was attended by CSP Observers and was broadcasted livestream in MERALCO's YouTube page.
- 8.10. On 30 August 2024, the BAC-PSA submitted its report and recommendation to MERALCO's Board of Directors recommending MPCL, as one of the bidders with the best

bids in the 600 MW CSP, to be declared as one of the Winning Power Suppliers and be awarded a power supply agreement for its offer of PhP 5.6015/kWh (total Delivered LCOE Rate, VAT and Line Rental inclusive) for 500 MW (net).

- 8.11. On 30 August 2024, MERALCO’s Board of Directors approved the BAC-PSA’s recommendation, and on the same day, a Notice of Award was issued by the BAC-PSA in favor of MPCL.
- 8.12. On 2 September 2024, the Power Supply Agreement between MERALCO and MPCL was dated, signed and executed (“**MERALCO-MPCL PSA**”). Thereafter, after a performance bond was submitted by MPCL on 3 September 2024 and a Notice to Proceed was issued in its favor on 4 September 2024.

A copy of the BAC-PSA Summary-Report and the DOE COC regarding the conduct of the 600 MW_{AC} (net) CSP are attached hereto as **ANNEXES “C” and “C-1”**.

9. The said Joint Application together with its Annexes was pre-filed with the Honorable Commission starting on 13 September 2024. Hence, this Joint Application is timely filed within the reglementary period provided under the ERC CSP Guidelines.

III. SALIENT FEATURES OF THE MERALCO-MPCL PSA

10. The MERALCO-MPCL PSA, a copy of which is attached as **ANNEX “D”** and made an integral part hereof, contains the following salient provisions:

“Article I Definitions and Interpretations

1.1 Definitions

xxx

Availability of Supply or Available means one hundred percent (100%) of the Contract Capacity is available for twenty-four (24) hours and seven (7) days a week, subject to Section 8.1.1.

xxx

Contract Capacity or CC shall be, subject to Section 3.2.2, Article 8, Article 9 and Section 19.1, 500 MW (net), sourced from the Plant.

xxx

Material Adverse Government Action means:

- (a) *any Law or Directive coming into effect after the signing of this Agreement, including the adoption or enactment, or any change or repeal with respect to the imposition of taxes, duties, levies, fees, charges and similar impositions, and the right to remit or convert currencies. This does not include any Legal Requirement or the application or interpretation thereof in existence at the date of the signing of this Agreement, but which by its explicit terms or due to any other circumstance, became effective or could be implemented only after the date of this Agreement; or*
- (b) *the amendment, modification, repeal or withdrawal of any Law or Directive (including any official interpretation thereof which the Parties have relied upon in entering into this Agreement) in force at the date of this Agreement; or*
- (c) *the modification in the application, enforcement, interpretation or implementation of any Law or Directive by a Governmental Instrumentality which the Parties have relied upon in entering into this Agreement, which modification occurred at any time after the date of this Agreement.*

which causes or may cause serious damage to, or materially and adversely affects the financial condition of, any of the Parties. It is understood that there is serious damage to, or material and adverse effect on the financial condition of, a Party if the cost impact is more than ten percent (10%) of the annual capacity payment.

xxx

2.2 Term of Agreement

*Subject to Article 3, this Agreement shall become effective on the Execution Date, and shall remain in force and effect until the last day of the 15th Contract Year, unless terminated earlier in accordance with the terms of this Agreement and upon approval by the ERC, or extended by the application of Section 15.3.3 (the “**Term**”).*

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3.2 Operations Effective Date

*3.2.1 Subject to Section 3.2.2, the obligations of Power Supplier with respect to the Contract Capacity and Associated Energy shall commence on the later between August 26, 2025 and the ERC Approval (the “**Operations Effective Date**”).*

xxx

Article 8. Outages

8.1 Outage Allowances and Replacement Power

- 8.1.1 After Operations Effective Date, Power Supplier shall be allowed Scheduled Outages not exceeding zero (0) Full Load Equivalent Outage Days ("**Full Load Equivalent Schedule Outage Allowance Days**") and Forced Outages not exceeding zero (0) Full Load Equivalent Outage Days ("**Full Load Equivalent Forced Outage Allowance Days**") each Contract Year; provided that, a Forced Outage may only be counted towards the Full Load Equivalent Forced Outage Allowance Days upon provision by Power Supplier to Meralco of a copy of the acknowledgment letter from the System Operator or report from the Market Operator that a Forced Outage has occurred.
- 8.1.2 During Scheduled Outages within the Full Load Equivalent Scheduled Outage Allowance Days and Forced Outages within the Full Load Equivalent Forced Outage Allowance Days, Meralco shall procure replacement energy from other sources or the WESM, at its own expense, which expense shall be passed on to its customers as part of generation costs.
- 8.1.3 During Scheduled Outages that exceed the Full Load Equivalent Scheduled Outage Allowance Days and Forced Outages that exceed the Full Load Equivalent Forced Outage Allowance Days, Power Supplier shall purchase Replacement Power, which shall be declared as BCQ and paid for by Meralco at the lower between (a) the actual price of the Replacement Power, and (b) Price as specified in Appendix E. In the event of failure by Power Supplier to source the Replacement Power despite availability from WESM or any other source, Meralco shall be allowed to source replacement energy from WESM. If the WESM price for the replacement energy is higher than the Price, Power Supplier shall reimburse MERALCO the difference between (i) WESM price and (ii) the Price as specified in Appendix E, plus all relevant transaction cost and taxes. If the WESM price for the replacement energy is lower than the Price, MERALCO shall not be liable to Power Supplier for the difference between WESM price and Price.
- 8.1.4 On and after the Operations Effective Date, during any period in which an Event of Force Majeure affects Power Supplier or Meralco, Meralco shall procure replacement energy from the WESM to the extent supply or offtake is so affected. For clarity, the cost of replacement energy shall form part of the price that Meralco will charge its customers.

8.1.5 *The supply by Power Supplier of quantities of Replacement Power under this Section 8.1 shall be deemed fulfilment of Power Supplier's obligation to make available the Contract Capacity and to deliver the Associated Energy during such period.*

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Article 9. Reduction in Contract Capacity and Associated Energy

9.1 *Subject to the provisions of Section 9.2 below, Meralco shall, from time to time, be entitled to a reduction in the Contract Capacity and Associated Energy (the "Reduction in Contract Capacity and Associated Energy") equivalent to the reduction in the demand of its captive customers in order to avoid stranded contract capacities or costs, or by reason of the enforcement of Retail Competition and Open Access (RCOA), the Renewable Energy Law, Renewable Portfolio Standards (RPS), Green Energy Option Program (GEOP), Net Metering program, and other similar government programs, Laws and Legal Requirements.*

9.2 *Meralco shall give a written notice at least five (5) Days prior to the first Day of the next Billing Period to Power Supplier, specifying the Reduction in Contract Capacity and Associated Energy pursuant to Section 9.1, indicating when such reductions shall take place. Upon receipt by Power Supplier of such written notice, Meralco shall cease to have any rights and obligations under this Agreement in respect of such Reduction in Contract Capacity and Associated Energy. Any such reduction shall be limited to the extent of the Contract Capacity and Associated Energy that will allow Meralco to comply with its obligation to supply electricity in the least cost manner to its customers as of the date indicated in the notice when such Reduction in Contract Capacity and Associated Energy shall commence. Except for such Reduction in Contract Capacity and Associated Energy and the resulting reduction in Capacity Payment, all other terms and conditions of this Agreement, as approved by the ERC, shall remain in full force and effect. For this purpose, Parties shall execute an operations protocol and provide a copy thereof to the ERC.*

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12.3 ERC Approval

12.3.1 *Subject to the non-occurrence of the Longstop Date, upon receipt of the ERC Approval, Meralco shall provide a copy of such ERC Approval to Power Supplier.*

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

IV. GENERATION RATE IMPACT

11. Based on the foregoing, and given a certain set of assumptions, the effective rate under the MERALCO-MPCL PSA is **PhP 4.8607 per kWh (at plant gate, VAT exclusive)**, as shown in the **RATE IMPACT ANALYSIS** below:

Masinloc Power Co. Ltd. (MPCL) PSA - Rate Impact at 100% pcf
(YEAR 2025)

BILLING COMPONENT	UNIT	BASE RATE ^[a]	CPI Adj Factor ^[b]	BILLING DETERMINANT ^[c]		AMOUNT (PHP)
A. Capacity Payment (MCP)						
Peso Portion	(Php/kW-yr)	17,568.0000		500,000	(kW)	8,784,000,000.00
B. Fixed O&M Payment (MFOM)						
Non-escalating Peso Portion	(Php/kW-yr)	1,756.8000		500,000	(kW)	878,400,000.00
C. Fuel Cost Payment (MFCP) ^[d,e]						
Non-escalating USD Portion	(USD/kWh) ^[d]	0.0434		4,380,000,000	(kWh)	11,189,305,385.57
D. Variable O&M Payment (MVOM)						
Non-escalating Peso Portion	(Php/kWh)	0.1000		4,380,000,000	(kWh)	438,000,000.00
Total Payment (VAT exclusive)						21,289,705,385.57
Effective Rate at Plant Gate						4.8607
WESM Line Rental Rate ^[f]						0.1500
Delivered Rate (VAT exclusive)						5.0107

Effective Cost if sourced from WESM ^[g]	(Php/kWh)	7.2825
Increase / (Decrease) over WESM Price	(Php/kWh)	(2.2719)
Meralco Captive Energy Demand ^[h]	(kWh)	39,683,089,284.22
Increase / (Decrease) in Generation Cost	(Php)	-9,950,826,634.43
Increase / (Decrease) in Generation Cost	(Php/kWh)	(0.2508)

NOTES:

[a] Base Rates as set forth in Schedule 1 of Appendix E of the PSA.

[b] CPI assumptions were based on values used during evaluation for Year 2025.

[c] Energy Payments based on 100% plant capacity factor.

[d] Dollar components shall be paid in USD, however values shown here were converted to Peso amount using exchange rate of PhP 58.835 / USD.

[e] Fuel Payment calculated based on Guaranteed Net Plant Heat Rate at 100.00% load factor for Contract Year 1.

[f] Line Rental rate for MPCL is based on the maximum allowable value for Contract Year 1 as stated in the PSA.

[g] Cost if equivalent volume of MPCL was sourced from the WESM based on forecasted average hourly prices from September 2025 to August 2026.

[h] Forecasted Meralco Captive Energy for September 2025 to August 2026 based on 2024 Power Supply Procurement Plan as submitted to DOE.

12. MERALCO notes that the delivered rate of **PhP 5.0107 per kWh (line rental inclusive and VAT exclusive)** is lower by about **PhP 2.2719 per kWh** than the effective cost of **PhP 7.2825 per kWh** if the equivalent capacity under the MERALCO-MPCL PSA is to be sourced from the Wholesale Electricity Spot Market (“WESM”). In fact, by sourcing the capacity through the MERALCO-MPCL PSA, MERALCO’s

average blended generation rate will be reduced by about **PhP 0.2508** per kWh (as seen in the **RATE IMPACT ANALYSIS** above) resulting in savings to consumers of about **PhP 9.951 billion**.

13. In support of this Joint Application, the Judicial Affidavit of **ENGR. DAVIDJOHN A. ZUÑIGA**, Officer of MERALCO’s Energy Sourcing Office – Energy Resource Planning, is attached as **ANNEX “E”** and made an integral part hereof.

V. COMPLIANCE WITH DOCUMENTARY REQUIREMENTS

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 the Honorable Commission:

Description of Document	Annex
A. Applicants’ Authority	
MERALCO’s Secretary’s Certificate	“A”
MPCL’s Secretary’s Certificate	“B”
B. MERALCO’s Documents	
BAC-PSA Summary-Report regarding the conduct of the CSP	“C”
DOE Certificate of Conformity No. DOE-EPIMB-COC-2024-06-006 dated 6 June 2024	“C-1”
MERALCO- MPCL PSA	“D”
Executive Summary of the PSA	“D-1”
Judicial Affidavit of MERALCO’s witness, Engr. Davidjohn A. Zuñiga, Officer of MERALCO’s Energy Sourcing Office – Energy Resource Planning	“E”
MERALCO’s Articles of Incorporation and By-Laws (SEC-certified true copy)	“F”
MERALCO’s Latest General Information Sheet (“GIS”) (SEC-certified true copy)	“G”
Verified Certification of True Copies of MERALCO’s Articles of Incorporation, By-Laws, and GIS and of MERALCO’s Ultimate Parent Company, all of its subsidiaries and affiliates	“G-1”
MERALCO’s Demand Side Management Program	“H”
Write-up on the Non-Applicability of National Power Corporation (“NPC”) Certification regarding whether or not Transition Supply Contract (“TSC”) capacity and energy is expected to be available during the contractual period	“I”
<ul style="list-style-type: none">Excerpt of MERALCO’s Distribution Development Plan – Power Supply Procurement Plan (Supply and Demand Scenario);Average Daily Load Curve scenariosDetails of Existing SuppliersDetails of Power Supply Contract UtilizationDetails of SAIDI and SAIFI	“J”
	“J-1”
	“J-2”
	“J-3”
	“J-4”
	“J-5”

• Estimation of the potential for a reduction in load supplied by MERALCO due to RCOA, GEOP, etc.	
Documents showing MERALCO’s conduct of CSP	“K” and series
C. MPCL’s Documents	
MPCL’s Certification Re: Ultimate Parent Company	“L”
MPCL’s Outage Hours	“M”
MPCL’s latest Audited Financial Statements (“AFS”), Balance Sheet, Income Statement, and Statement of Cash Flows	“N”
Write-up/Explanation on the capacity of MPCL to supply the energy requirements in the PSA	“O”
MPCL’s Financial Model and Rate Derivation (Confidential)	“P” and series
Sample Bill (Confidential)	“Q”
MPCL’s Certification on Documents Previously Submitted (Section 22 of ERC Resolution No. 16, series of 2023)	“R”

VI. ALLEGATIONS IN SUPPORT OF THE PRAYER FOR THE ISSUANCE OF PROVISIONAL AUTHORITY OR INTERIM RELIEF

15. It bears emphasis that the MERALCO-MPCL PSA has a competitively procured contract price for baseload requirement after undergoing CSP. Other features of the MERALCO-MPCL PSA that shall clearly benefit customers include no outage allowance, and a guaranteed 100% availability of supply.
16. As earlier stated, in accordance with MERALCO’s latest and duly accepted DDP and posted PSPP approved by the DOE, MERALCO foresees a baseload capacity deficit in its portfolio covering 600 MW (net) Requirement (starting September 2025). If this deficiency is not addressed through the grant of provisional authority or interim relief, MERALCO’s customers stand to be exposed to the volatile prices of the WESM equivalent to the considerable volume of the subject MERALCO-MPCL PSA.
17. The MERALCO-MPCL PSA can help shield MERALCO’s customers from the looming supply deficiency because the supply availability under the MERALCO-MPCL PSA is guaranteed 100% and no outage allowance is provided therein.
18. This Honorable Commission will note that as shown from the rate impact analysis, the MERALCO-MPCL PSA reflects the most beneficial generation charges with a resultant estimated generation rate reduction of **PhP 0.2508 per kWh**.
19. Rule 14 of the ERC Revised Rules of Practice and Procedure (“**ERC’s RRPP**”) expressly provides for this Honorable Commission’s authority to issue a provisional authority or grant interim relief to immediately implement the MERALCO-MPCL PSA. Such issuance or grant will not only avert the situation where MERALCO would be constrained to source its

capacity deficit from the WESM, thereby exposing its customers to volatile prices, but more importantly, the immediate implementation of the MERALCO-MPCL PSA would redound to the best interest of electric power consumers since aside from the very competitive rate, the supply availability under the MERALCO-MPCL PSA is guaranteed 100% and no outage allowance is provided therein.

**VII. ALLEGATIONS IN SUPPORT OF THE MOTION FOR
CONFIDENTIAL TREATMENT OF INFORMATION**

20. Under Rule 4 of ERC's 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.
21. With respect to the following documents marked as **ANNEXES "P" and series, and "Q"** MPCL 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 MPCL. The data and information contained therein are part of the overall formula and process in arriving at the competitive rates of MPCL. These formula and process are specifically developed for the use of MPCL and are treated as trade secrets. If the information contained in these documents are unduly disclosed, it will seriously prejudice the competitiveness of MPCL. These documents are neither generally available to the public nor already in the possession of the Honorable Commission on a non-confidential basis.
22. In the case of *Air Philippines Corporation vs. Pennswell Inc.*,¹ 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

¹ G. R. No. 172835, 13 December 2007.

be a price list or catalogue or specialized customer list. It is indubitable that trade secrets constitute proprietary rights." (Emphasis supplied.)

23. The protection of trade secrets is likewise recognized by the Honorable Commission in its Decision in ERC Case No. 2015-111 RC:

"In the case of PNOC RC, the documents sought to be protected from disclosure contains formula and pricing structures used in arriving at their proposed tariff. The prices cited in the documents were components of the proposed tariff. In fact, all three (3) documents were used by the Commission in evaluating the reasonableness of the proposed rate. In electric power industry [where] prices is a major consideration in selecting one's supplier, it is apparent that the assumption used in arriving at one's proposed tariff is considered a competitive leverage by one player against its competitors.

*Thus, the Commission resolved to treat the said documents confidential and may not be publicly disclosed."*²

24. MPCL hereby submits one (1) copy of the foregoing confidential documents in a sealed envelope, with the envelope and each page of the documents marked "Confidential."
25. 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 "P" and series, and "Q"**. 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.
26. Lastly and corollary to the foregoing, MPCL 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's RRPP)
27. This is guided by the fact that MPCL will seek for the return of these sought to be declared confidential annexes after its utilization as evidence in this case and/or at the close of the proceedings hereof, so as to relieve the Honorable Commission of the burden of safekeeping the trade secrets of MPCL enclosed in the subject annexes.

² *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.*

PRAYER

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

- a) Issue an Order **TREATING ANNEXES “P” and series, and “Q”** 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 MPCL, pursuant to Rule 4 of ERC’s RRPP;
- b) Issue an Order **GRANTING PROVISIONAL AUTHORITY OR INTERIM RELIEF**, allowing the Applicants to immediately implement the MERALCO-MPCL PSA in its entirety; and
- c) After hearing on the merits, render a Decision **APPROVING** the MERALCO-MPCL PSA and the terms and conditions thereunder, including the price.

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

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Finding the said *Joint Application* to be sufficient in form and with the required fees having been paid, 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 2020³ and Resolution No. 01, Series of 2021 (ERC Revised Rules of Practice and Procedure):⁴

Date	Platform	Activity
12 December 2024 (Thursday) at nine o’clock in the morning (9:00 A.M.)	Microsoft Teams Application	Determination of compliance with the jurisdictional requirements and expository presentation

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

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

Date	Platform	Activity
09 January 2025 (Thursday) at nine o'clock in the morning (9:00 A.M.)		Pre-Trial Conference and presentation of evidence

Accordingly, MERALCO and MPCL are hereby directed to host the virtual hearings at **MERALCO’s principal office located at Lopez Building, Ortigas Avenue, Brgy. Ugong, Pasig City**, as the designated venue for the conduct thereof, and ensure that the same is open to the public. Moreover, Applicants shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

RELATIVE THERETO, MERALCO and MPCL are hereby directed to:

- 1) Cause the publication of the attached *Notice of Virtual 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 virtual hearing;
- 2) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing* the Offices of the Provincial Governors, the Mayors, and their respective 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 *Joint Application*, the reasons therefor, and of the scheduled virtual hearings thereon;
- 4) Furnish copies of this *Order* and the attached *Notice of Virtual 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 and attend the scheduled hearings; and
- 5) Furnish with copies of the *Joint Application* and its attachments, except those subject of a motion for confidential treatment of information, all those making

requests therefor, subject to reimbursement of reasonable photocopying costs.

Within **five (5) calendar days** prior to the date of the initial virtual hearing, Applicants must submit to the Commission via electronic mail (e-mail) at docket@erc.ph, copy furnish the Legal Service through legal@erc.ph, the scanned copies of 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 Virtual Hearing* consisting of affidavits of the Editors or Business Managers of the newspapers where the said *Notice of Virtual Hearing* was published, and the complete issues of the said newspapers;
- 2) The evidence of actual posting of this *Order* and the attached *Notice of Virtual 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 MPCL to inform the consumers within MERALCO's franchise area of the filing of the *Joint Application*, the reasons therefor, and of the scheduled hearings thereon;
- 4) The evidence of receipt of copies of this *Order* and the attached *Notice of Virtual Hearing* by the OSG, the COA, and the Committees on Energy of both Houses of Congress;
- 5) The evidence of receipt of copies of the *Joint Application* and its attachments, except those covered by motion for confidential treatment of information, by all those making requests therefor, if any; and
- 6) Such other proof of compliance with the requirements of the Commission.

Further, MERALCO and MPCL are hereby required to post on their bulletin boards, the scanned copies of the foregoing jurisdictional requirements, together with the newspaper publications and certifications issued by the concerned Office of the Provincial

Governors, Mayors, and Local Legislative Bodies, and to submit proof of posting thereof.

MERALCO and MPCL and all interested parties are also required to submit via e-mail at doCKET@erc.ph, copy furnish the Legal Service through legal@erc.ph, at least **five (5) calendar days** before the date of the scheduled virtual hearing and Pre-Trial Conference, their respective Pre-Trial Briefs containing, among others:

- 1) A summary of admitted facts and proposed stipulation of facts;
- 2) The issues to be tried or resolved;
- 3) The documents or exhibits to be presented, stating the purposes and proposed markings therefor, which should also be attached to the Pre-Trial Brief; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-Trial Brief.

MERALCO and MPCL must ensure that all the documents or exhibits proposed to be presented have already been duly submitted to the Commission at least **five (5) calendar days** before the date of the scheduled virtual hearing and Pre-Trial Conference, pursuant to the preceding paragraph.

Failure of MERALCO and MPCL to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearings.

MERALCO and MPCL 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*. Relevant information and pertinent details substantiating the reasons and justifications for the *Joint Application* must be cited in support thereof.

MERALCO and MPCL are hereby directed to file a copy of their Expository Presentation via e-mail at doCKET@erc.ph, copy furnish the Legal Service through legal@erc.ph, at least **five (5) calendar days**

prior to the scheduled virtual hearing. Applicants shall also be required, upon the request of any stakeholder, to provide an advance copy of their Expository Presentation, at least **five (5) calendar days** prior to the scheduled virtual hearing.

Applicants are further directed to submit, either through personal service, registered or ordinary mail/private courier, one (1) set of the original or certified true hard copies of their jurisdictional compliance, Expository Presentation, Pre-Trial Brief, and Judicial Affidavits of witnesses, 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.

Finally, Applicants, including their authorized representatives and witnesses, are hereby directed to provide the Commission, through legal.virtualhearings@erc.ph, their respective e-mail addresses upon receipt of this *Order*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearings.

SO ORDERED.

04 November 2024, Pasig City.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ATTY. KRISHA MARIE T. BUELA
Director III, Legal Service


LS: CER/ARG

Copy Furnished:

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Applicant
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5. Office of the Solicitor General (OSG)
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citizensdesk@coa.gov.ph
7. Senate Committee on Energy
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senateenergycommittee@gmail.com
8. House Committee on Energy
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9. Office of the City Mayor
City of Caloocan
10. Office of the Local Government Unit (LGU) Legislative Body
City of Caloocan
11. Office the City Mayor
City of Las Piñas
12. Office of the LGU Legislative Body
City of Las Piñas
13. Office of the City Mayor
City of Makati
14. Office of the LGU Legislative Body
City of Makati
15. Office of the City Mayor
City of Malabon
16. Office of the LGU Legislative Body
City of Malabon
17. Office of the City Mayor
City of Mandaluyong
18. Office of the LGU Legislative Body
City of Mandaluyong
19. Office of the City Mayor
City of Manila

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City of Manila
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City of Marikina
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City of Marikina
- 23. Office of the City Mayor
City of Muntinlupa
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- 25. Office of the City Mayor
City of Navotas
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City of Parañaque
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- 32. Office of the LGU Legislative Body
City of Pasig
- 33. Office of the Municipal Mayor
Municipality of Pateros
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- 35. Office of the City Mayor
City of Quezon
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- 37. Office the City Mayor
City of San Juan
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- 39. Office of the City Mayor
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- 41. Office of the City Mayor
City of Valenzuela
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City of Valenzuela
- 43. Office of the Municipal Mayor
Angat, Bulacan
- 44. Office of the LGU Legislative Body
Angat, Bulacan

- 45. Office of the Municipal Mayor
Balagtas, Bulacan
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Balagtas, Bulacan
- 47. Office of the The Municipal Mayor
Baliwag, Bulacan
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Calumpit, Bulacan
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Doña Remedios Trinidad, Bulacan
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- 59. Office of the Municipal Mayor
Guiguinto, Bulacan
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- 61. Office of the Municipal Mayor
Hagonoy, Bulacan
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Marilao, Bulacan
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Meycauayan, Bulacan
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- 69. Office of the Municipal Mayor
Norzagaray, Bulacan

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San Ildefonso, Bulacan
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San Jose del Monte, Bulacan
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Sta. Maria, Bulacan
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Alfonso, Cavite
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- 93. Office of the Municipal Mayor
Amadeo, Cavite
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- 95. Office of the City Mayor
Bacoor, Cavite
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- 101. Office of the City Mayor
Dasmariñas, Cavite
- 102. Office of the LGU Legislative Body
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- 103. Office of the Municipal Mayor
General Emilio Aguinaldo, Cavite
- 104. Office of the LGU Legislative Body
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- 105. Office of the Municipal Mayor
General Mariano Alvarez, Cavite
- 106. Office of the LGU Legislative Body
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- 107. Office of the City Mayor
General Trias, Cavite
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Ternate, Cavite
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Trece Martires, Cavite
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- 165. Office of the City Mayor
Batangas, Batangas
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San Pascual, Batangas
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San Pascual, Batangas

- 169. Office of the City Mayor
Sto. Tomas, Batangas
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Alaminos, Laguna
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Bay, Laguna
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- 233. Office of the Municipal Mayor
Candaba, Pampanga
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- 235. Office of the Municipal Mayor
San Simon, Pampanga
- 236. Office of the LGU Legislative Body
San Simon, Pampanga
- 237. Office of the Governor
Province of Bulacan
- 238. Office of the LGU Legislative Body
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Province of Cavite
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- 241. Office of the Governor
Province of Rizal
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- 243. Office of the Governor
Province of Batangas
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Province of Pampanga
- 250. Office of the LGU Legislative Body
Province of Pampanga
- 251. Office of the Governor
Province of Zambales
- 252. Office of the LGU Legislative Body
Province of Zambales
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