

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

**IN THE MATTER OF THE
JOINT APPLICATION FOR
APPROVAL OF THE POWER
SUPPLY AGREEMENT
BETWEEN MANILA
ELECTRIC COMPANY AND
PANAY ENERGY
DEVELOPMENT
CORPORATION WITH
PRAYER FOR PROVISIONAL
AUTHORITY OR INTERIM
RELIEF AND MOTION FOR
CONFIDENTIAL TREATMENT**

ERC CASE NO. 2022-001 RC

**MANILA ELECTRIC
COMPANY AND PANAY
ENERGY DEVELOPMENT
CORPORATION,**

Applicants.

X-----X

Promulgated:
January 31, 2022

NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 20 January 2022, Manila Electric Company (MERALCO) and Panay Energy Development Corporation (PEDC) filed a *Joint Application* dated 14 December 2021, seeking the Commission's approval of their Power Supply Agreement (PSA) with prayer for provisional authority or interim relief and motion for confidential treatment.

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

1. Applicant MERALCO is a private corporation existing under the laws of the Republic of the Philippines, with principal office located at Lopez Building, Ortigas Avenue, Brgy. Ugong, Pasig City. It may be served with notices and other

processes of this Honorable Commission through its counsel at the address indicated herein.

2. MERALCO has a legislative franchise to operate and maintain a distribution system in the cities/municipalities of Metro Manila, Bulacan, Cavite and Rizal and certain cities/municipalities/barangays in Batangas, Laguna, Quezon and Pampanga, pursuant to Republic Act No. 9209, and is authorized to charge all its customers for their electric consumption at the rates approved by the Honorable Commission.
3. Applicant PEDC is a corporation duly organized and existing under the laws of the Republic of the Philippines, with its principal place of business at Brgy. Ingore, La Paz, Iloilo City. It may be served with notices and other processes of this Honorable Commission through its counsel at the address indicated herein.
4. PEDC owns, operates, manages and maintains a 2 x 83.7 MW coal-fired CFB power plant (PEDC Units 1 & 2) and a 1 x 150 MW coal-fired CFB power plant (PEDC Unit 3) located in Brgy. Ingore, La Paz, Iloilo City, Iloilo.
5. Based on its power situation outlook for 2022 and succeeding years, as shown in its 2021 Power Supply Procurement Plan approved by the Department of Energy ("DOE"), MERALCO foresees a baseload capacity deficit in its portfolio covering 70 MW.
6. Thus, in order to ensure continuous and reliable electricity for MERALCO's customers, there is a need for MERALCO to source additional baseload capacity through bilateral power supply contracts.
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 29 November 2021, MERALCO executed a Power Supply Agreement with PEDC ("2021 MERALCO-PEDC PSA"), for the purchase of electric energy corresponding to 70 MW. The conduct of CSP proceeded as follows:
 - 8.1. Pursuant to DOE Department Circular No. DC2018-02-0003 ("DOE CSP Rules"), MERALCO submitted to the DOE, and the latter, in a letter dated 24 September 2021,¹ approved, the Terms of Reference ("TOR"), the salient provisions of which are shown below:

¹ A copy of the DOE's Letter-Approval dated 24 September 2021 is hereto attached as Annex "K-1".

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	Past Contract Period	Prospective Contract Period
Contract Capacity and Required Contract Period	From 26 January 2017 to the later between 25 January 2022 and ERC Approval	From the later between 26 January 2022 and ERC approval, to 25 January 2037, 70 MW (net)
Tariff Structure	<p>Proposed Price shall not be higher than the tariff paid by Meralco under the Panay Energy Development Corporation ("PEDC") Power Supply Agreement with Meralco dated 26 April 2016 ("PEDC PSA"), and the Levelized Cost of Electricity ("LCOE") evaluation for the Past Contract Period shall be dependent on the actual dispatch of the PEDC PSA.</p> <p>For clarity, only the Proposed Price as stated by the Bidder shall be considered in the LCOE evaluation for the Past Contract Period, which Proposed Price shall not include the value added tax (VAT) rate, Line Rental cap, and Ancillary Services (AS) Cost recovery cap.</p>	<ul style="list-style-type: none"> • Straight energy price (PhP/kWh); with the following bandwidths: <ul style="list-style-type: none"> - Proposed Minimum Energy Off-Take ("MEOT"), reckoned annually, should not exceed seventy-five percent (75%) of Plant Capacity Factor (PCF) with respect to the contracted capacity. Bidder has an option to indicate discount on the Proposed Price which shall be applied on excess energy above MEOT. - Only up to sixty percent (60%) of the annual Proposed Price can be escalated at a rate not greater than 3.5% annually. • Separate line-item proposal for Bidder's VAT rate that is applicable to its Proposed Price. • Separate line-item proposal for Bidder's annual Line Rental cap, which shall not exceed PhPo.10/kWh. • In view of DOE Circular No. DC2019-012-0018, an annual AS Cost recovery cap, as proposed by Bidder, with a floor value of PhPo.28/kWh, will be considered in computing the LCOE. However, the lower between actual AS cost and the AS Cost Recovery cap will be implemented only upon the effectivity of regulations that mandate a proportionate allocation of AS charges among affected generation companies, which is considered pass-through cost pursuant to existing government regulations. <p>For clarity and consistent with the existing</p>

		<p>government regulations, the AS Cost for the Past Contract Period shall be set at PhPo.00/kWh.</p> <ul style="list-style-type: none"> LCOE evaluation for the Prospective Contract Period shall be at 100% PCF.
Outage Allowance	N/A	<ul style="list-style-type: none"> 100% guaranteed availability (no outage allowance) In case Power Supplier cannot provide supply of power from its Nominated Power Plant or portfolio of Plants, WESM, or 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

- 8.2.

On 30 September 2021, MERALCO caused the publication of an Invitation to Bid ("Invitation"), which contained the TOR, 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 said Invitation. At the same time, MERALCO caused the posting thereof on its website. A second publication was done on 8 October 2021.
- 8.3.

On 19 November 2021, the bidders submitted their compliance with the Bid Requirements and the respective submissions of the bidders were opened by the Third-Party Bids and Awards Committee ("TPBAC"). PEDC's bid was declared as the best bid on even date.
- 8.4.

On 22 November 2021, after confirming through conduct of a post-qualification evaluation that its proposed energy price was found to be the best bid, TPBAC issued a Notice of Award in favor of PEDC as the winning power supplier.
- 8.5.

A copy of the TPBAC Summary-Report regarding the conduct of the CSP is attached as part of ANNEX "C".

9. The 2021 MERALCO-PEDC PSA, a copy of which is attached as ANNEX "D" and made an integral part hereof, contains the following salient features:

Contract Capacity	shall be set at 70 MW (net) sourced from the Plant, WESM or any other source, as may be adjusted from time to time in accordance with Article 8 and/or Section 17.1.
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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 (sic) (the "Term") shall commence on the later between January 26, 2022 and ERC Approval, and end on January 25, 2037, 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

3.3.1 The obligations of Power Supplier with respect to the Contract Capacity and Associated Energy shall commence on January 26, 2022, provided that Commencement Date has

occurred (the "Operations Effective Date").

3.3.3

If the Operations Effective Date has not occurred by the Longstop Date, then the provisions of Section 14.5.1. shall apply. If the Parties agree to extend the Longstop Date, then the Parties shall also stipulate the revised date by which the Operations Effective Date shall occur.

4.1

xxx
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

The Contract Price for the first Contract Year is PhP2.3309 per kWh,² subject to twelve percent (12%) value-added tax (VAT) and an annual escalation as computed and shown in

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

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.

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

Reduction in Contract Capacity and Associated Energy

- 8.1 Subject to the provisions of Section 8.2., 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.
- 8.2 Meralco shall give written notice to 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.
- 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, it has the following options:
- (i) Power Supplier shall be free to file a motion for reconsideration with the ERC. 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 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 one hundred twenty (120) days after its filing, or the amendment is disapproved by the ERC, 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 and the Bid Security shall be returned to Power Supplier.

Meralco reserves the right to forfeit the Bid Security in the event that Power Supplier fails to comply with any order or directive

of the ERC or provide any document required by the ERC, resulting in non-performance of its obligations under this Agreement.

- (ii) If Power Supplier does not file a motion for reconsideration with the ERC and/or notifies Meralco that it intends to terminate this Agreement, Meralco shall have the right to forfeit the Bid Security to the extent of twenty-five percent (25%) thereof.

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13.2

Instances 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 or advisory from the ERC, WESM or NGCP, which certification or advisory shall bind both Parties.

For clarity, 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.

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.

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10. Based on the foregoing, and given a certain set of assumptions, the effective rate under the 2021 MERALCO-PEDC PSA is PhP 2.6106 per kWh (at plant gate, VAT inclusive), as shown in the rate impact analysis below:

Panay Energy Development Corporation PSA Rate Impact at 100 % pcf (February 2022 to January 2023)					
BILLING COMPONENT	UNIT	BASE RATES ^[a]	BILLING DETERMINANT ^[b]		AMOUNT (PHP)
Energy Payment					
Contract Price for energy up to MEOT PCF (75%)	(Php/kWh)	3.1079	459,900,000	(kWh)	1,429,323,210.00
Excess Energy Price for energy greater than MEOT PCF up to 100% pcf	(Php/kWh)	0.0000	153,300,000	(kWh)	0.00
Total Energy Payment (VAT exclusive)	(Php/kWh)	2.3309	613,200,000	(kWh)	1,429,323,210.00
VAT Payment ^[c]	(Php)				171,518,785.20
Total Payment (VAT inclusive)	(PhP)				1,600,841,995.20
Effective Rate at Plant Gate (VAT Inclusive)	(Php/kWh)				2.6106
WESM Line Rental Rate ^[c]	(Php/kWh)				0.1000
Delivered Rate (VAT Inclusive) ^[d]	(Php/kWh)				2.7106

Effective Cost if sourced from WESM ^[e]	(Php/kWh)	4.1232
Increase / (Decrease) over WESM	(Php/kWh)	(1.4125)
Meralco Captive Energy Demand ^[f]	(kWh)	35,318,689,750
Increase / (Decrease) in Generation Cost	(Php)	(866,164,296.78)
Increase / (Decrease) in Generation Cost	(Php/kWh)	(0.0245)

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 Feb 2022 to Jan 2023 based on 100% pcf with respect to the Contract Capacity.

^[c] Line Rental rate for PEDC is based on the maximum allowable value as stated in the PSA.

^[d] Delivered Rate (VAT inclusive) will include AS Cost Recovery rate once imposed under existing rule or regulation. AS Cost Recovery rate for PEDC shall be based on the lower between actual rate and cap of PhP0.28/kWh.

^[e] Cost if equivalent volume of PEDC was sourced from WESM and priced using forecasted average WESM prices for all hours for the period Feb 2022 to Jan 2023, inclusive of 6% VAT.

^[f] Forecasted Meralco Captive Energy for Feb 2022 to Jan 2023 based on the latest Power Supply Procurement Plan as submitted to DOE.

11. MERALCO notes that the delivered rate under the 2021 MERALCO-PEDC PSA of PhP 2.7106 per kWh (VAT inclusive) is lower by about PhP 1.4125 per kWh than the effective cost of PhP 4.1232 if the equivalent capacity under the 2021 MERALCO-PEDC PSA is to be sourced from the WESM. In fact, by sourcing the capacity through the 2021 MERALCO-PEDC PSA, MERALCO's average blended generation rate will be reduced by about PhP 0.0245 per kWh (as seen in the rate impact above), resulting in savings to consumers of about PhP 866 million.
12. In support of this Joint Application, the Judicial Affidavit of ENGR. AIRALYNNE T. ENRIQUEZ, Senior Engineer of MERALCO's Energy Resource Planning - Energy Sourcing Office is attached as ANNEX "E" and made an integral part hereof.

13. 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 Secretary's Certificate	"A"
PEDC's Secretary's Certificate	"B"
TPBAC Summary-Report regarding the conduct of the CSP	"C"
MERALCO-PEDC PSA	"D"
Judicial Affidavit of Engr. Airalynne T. Enriquez	"E"
MERALCO's Articles of Incorporation and By-Laws	"F"
MERALCO's Latest General Information Sheet ("GIS")	"G"
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"
Excerpt of MERALCO's Distribution Development Plan — Power Supply Procurement Plan (Supply and Demand Scenario); Average Daily Load Curve scenarios	"J" "J-1"
Documents showing MERALCO's conduct of CSP (Annex K-5 and Series - Confidential)*	"K" and Series
PEDC's Amended Articles of Incorporation, By-Laws and Certificate of Incorporation	"L" and Series
Explanation on the Shareholders' Agreement of PEDC	"M"
PEDC's Latest General Information Sheet ("GIS")	"N"
PEDC's Corporate Structure showing the Ultimate Parent Company, its Subsidiaries, and all its Affiliates	"O"
Board of Investments ("BOI") Certificate of Registration No. BOI 2008-171 dated 24 July 2008 for PEDC Units 1 and 2 Board of Investments ("BOI") Certificate of Registration No. BOI 2014-110 dated 22 July 2014 for PEDC Unit 3	"P" and Series
PEDC's Environmental Compliance Certificate ("ECC") No. CO-1309-0029 dated 04 March 2014	"Q"
PEDC's Provisional Authority to Operate (PAO) dated 14 January 2021 and request for PAO Extension (Confidential)*	"R and Series"

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PEDC's Certificate of Endorsement No. 2007-12-02 dated 28 December 2007	"S" and Series
PEDC's Certificate of Endorsement No. 2015-06-001 dated 25 June 2015	
PEDC's Explanation on the Non-Applicability of the submission of the requirement regarding its transmission or grid connection projects. PEDC's Explanation on the Non-Applicability of the submission of the requirements regarding its RE Service/Operating Contract, Certificate of Registration and Certificate of Confirmation of Commerciality from the DOE	"T" and Series
Executive Summary (technical and economic characteristics of the generation capacity, salient features of the MERALCO-PEDC PSA, Sources of Funds/Financial Plans; Generation Rate and Derivation) Financial Model containing derivation of rates (PDF and Excel files) Explanation on Non-Applicability of Requirements (Confidential)*	"U" and Series
PEDC's Electricity Fees (Confidential)*	"V"
Bank Certification for Long Term Loans; Explanation on loans (Confidential)*	"W" and Series
PEDC's Affidavit on Fuel Procurement Process Coal Supply Contracts of PEDC (Confidential)*	"X" and series
PEDC's latest Audited Financial Statements	"Y"
PEDC's Explanation on the net heat rate Final Performance Test Result for PEDC Units 1,2,3 PEDC's 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	"Z" and Series
PEDC's Transmission Services Agreement with NGCP	"AA"
PEDC's Explanation on the Non-Applicability of the submission of the requirement regarding its related Agreements	"BB"
PEDC's Explanation in ERC Case No. 2010-043MC in relation to point to point line	"CC"
PEDC Explanation on Other Costs	"DD"

*Subject of the Motion for Confidential Treatment of Information.

**ALLEGATIONS IN SUPPORT OF THE MOTION TO
IMMEDIATELY SET CASE FOR HEARING AND THE PRAYER
FOR THE ISSUANCE OF PROVISIONAL AUTHORITY OR
INTERIM RELIEF**

14. It bears emphasis that the instant PSA will serve as a replacement for the 2016 PSA, albeit with a significantly reduced contract price. As such, the non-issuance of a provisional authority for implementation of the instant PSA will result in a deficit in MERALCO's PSPP by 70 MW. This, coupled with the (i) increased frequency and persistent occurrence of SPEX-Malampaya gas supply restrictions, which is expected to continue to result in the de-rating of gas-fired power plants; and (ii) anticipated thinning electricity operating margins leading up to the May 2022 elections, especially with upcoming simultaneous scheduled maintenance and possible forced outages of power plants, will ultimately result in the exposure of MERALCO's customers to the highly volatile prices of the WESM.
15. Rule 14 of the ERC Revised Rules of Practice and Procedure provides for this Honorable Commission's authority to issue a provisional authority or grant interim relief to immediately implement the instant 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 instant PSA would redound to the best interest of electric power consumers since aside from the very competitive rate, the supply availability under the instant PSA is guaranteed 100% by PEDC, as no outage allowance is provided therein.

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

16. Under Rule 4 of the ERC Rules of Practice and Procedure, 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.
17. With respect to the documents marked and attached as ANNEX K-5 and series, MERALCO respectfully moves that these were requested by its TPBAC to be treated as confidential as it involve[s] the financial proposals submitted by PEDC and the non-winning bidders of the CSP that was conducted (as discussed above). The said financial proposals include certain confidential and proprietary data and information that may be used by other generation companies in designing their offers/tariff structure/rate design in a manner that will undermine competition.

18. With respect to the documents marked and attached as ANNEXES "R and series," "U and Series" "V," "W and Series," and "X and series," PEDC 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 PEDC. The data and information contained therein are part of the overall formula and process in arriving at the competitive rates of PEDC. These formula and process are specifically developed for the use of PEDC and are treated as trade secrets. If the information contained in these documents are unduly disclosed, it will seriously prejudice the competitiveness of PEDC. These documents are neither generally available to the public nor already in the possession of the Honorable Commission on a non-confidential basis.
19. In addition, PEDC is bound by the confidentiality provisions in certain agreements with its counterparties, specifically for Annex "W and Series" (Bank Certification of Long-Term Loans) and Annex "X and Series" (Coal Supply Agreements). These documents contain certain non-public information involving its counterparties' financial trade secrets. Hence, the confidentiality of those documents should be maintained.
20. In the case of Air Philippines Corporation vs. Pennswell Inc.,³ 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.)

³ G.R. No. 172835, 13 December 2007.

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21. 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 are 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."⁴

22. It is respectfully submitted therefore that ANNEXES "K-5 and Series", "R and series", "U and Series", "V", "W and Series, and "X 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.
23. PEDC hereby submits one (1) copy of each of the foregoing confidential documents in sealed envelopes, with the envelopes and each page of the documents marked "Confidential."
24. 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 "K-5 and Series", "R," "U and Series," "V," "W and Series," and "X and series. 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.
25. Lastly and corollary to the foregoing, PEDC would like to implore the discerning wisdom of the Honorable Commission to include in its issuance for this purpose the "procedures for the handling or returning the confidential information, as appropriate, upon the close of the

⁴ 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. Emphasis and underscoring supplied.

proceedings or at the end of the period for which the information is to be treated as confidential.”⁵

26. This is guided by the fact that PEDC will seek for the return of these 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 PEDC.

PRAYER

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

- a) Immediately issue an Order SETTING FOR HEARING the instant prayer for provisional authority and/or interim relief for the better appreciation of this Honorable Commission considering the urgency and complexity of this case;
- b) With or without conducting the aforesaid hearing, immediately issue an Order GRANTING PROVISIONAL AUTHORITY and/or INTERIM RELIEF to authorize the immediate implementation of the 2021 MERALCO-PEDC PSA;
- c) Issue an Order TREATING ANNEXES "K-5 and Series", "R and series," "U and series" "V," "W and Series," and "X and series and all other information contained therein as CONFIDENTIAL, directing their non-disclosure to persons other than officers and staff of this Honorable Commission, continuously protecting the said information from public disclosure by maintaining the same separate and apart from the records of the case, and ensuring that these are not divulged to unauthorized persons, pursuant to Rule 4 of the ERC Rules of Practice and Procedure; and
- d) After hearing on the merits, render a Decision APPROVING THE 2021 MERALCO-PEDC PSA and the terms and conditions thereunder, including the price.

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

The Commission hereby sets instant *Joint Application* for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on the following dates and online platform for the conduct

⁵ Letter (d), Section 4, of the ERC Rules and Practice and Procedure.

thereof, pursuant to Resolution No. 09, Series of 2020⁶ dated 24 September 2020 and Resolution No. 01, Series of 2021 dated 17 December 2020 (ERC Revised Rules of Practice and Procedure):⁷

Date	Platform	Activity
08 March 2022 (Tuesday) at two o'clock in the afternoon (2:00 P.M.)	Microsoft Teams	Determination of compliance with the jurisdictional requirements and expository presentation
15 March 2022 (Tuesday) at two o'clock in the afternoon (2:00 P.M.)	Microsoft Teams	Pre-trial Conference and presentation of evidence

Any interested stakeholder may submit its comments and/or clarifications at least one (1) calendar day prior to the scheduled virtual hearing, via electronic mail (e-mail) at doCKET@erc.ph, 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 expository presentation.

Moreover, all persons who have an interest in the subject matter of the instant case may become a party by filing with the Commission via e-mail at doCKET@erc.ph, copy furnish 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 and subject to the requirements under Rule 9 of the ERC Revised Rules of Practice and Procedure, indicating therein the docket number and title of the case and stating 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.

⁶ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

⁷ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

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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, copy furnish the Legal Service through legal@erc.ph, their Opposition or Comment thereon at least five (5) calendar days prior to the initial virtual hearing and subject to the requirements under Rule 9 of the ERC Revised Rules of Practice and Procedure. 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.

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

Finally, all interested persons may be allowed to join the scheduled initial virtual hearing by providing the Commission, thru legal.virtualhearings@erc.ph, with 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 hearing.

WITNESS, the Honorable Commissioners **CATHERINE P. MACEDA, FLORESINDA G. BALDO-DIGAL**, and **MARKO ROMEO L. FUENTES**, Energy Regulatory Commission, this 28th day of January 2022 in Pasig City.


AGNES VST DEVANADERA
Chairperson and CEO


LS: CNR/LSP/MCCG

