

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

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

MERALCO
RECEIVED
APR 18 2022
REGULATORY LEGAL OFFICE
By: JOMARI
Time: 5:00 pm

ERC CASE NO. 2022-017 RC

**MANILA ELECTRIC
COMPANY (MERALCO) AND
SOUTH PREMIERE POWER
CORP. (SPPC),**

Applicants.

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Promulgated:
April 18, 2022

ORDER

On 21 March 2022, Manila Electric Company (MERALCO) and South Premiere Power Corp. (SPPC) filed a *Joint Application* dated 09 February 2022 for the approval of their Power Supply Agreement (PSA), with prayer for provisional authority/and or interim relief and motion for confidential treatment of information.

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

1. Applicant MERALCO is a private corporation existing under the laws of the Republic of the Philippines, with principal office located at Lopez Building, Ortigas Avenue, Brgy. Ugong, Pasig City. It may be served with notices and other processes of this Honorable Commission through its counsel at the address indicated herein.
2. MERALCO has a legislative franchise to operate and maintain a distribution system in the cities/municipalities of Metro

Manila, Bulacan, Cavite and Rizal and certain cities/municipalities/barangays in Batangas, Laguna, Quezon and Pampanga, pursuant to Republic Act No. 9209, and is authorized to charge all its customers for their electric consumption at the rates approved by the Honorable Commission.

3. Applicant SPPC is a private corporation duly organized and existing under the laws of the Philippines, with address at 5th Floor, C5 Office Building Complex, #100 E. Rodriguez Jr. Ave., C5 Road, Bo. Ugong, Pasig City 1604 Metro Manila. It may be served with notices and other processes of this Honorable Commission through its counsel at the address indicated herein.
4. SPPC manages and controls the output of the 1,200 MW combined-cycle power generating facility fired on natural gas, located in Barangay Ilijan, Batangas on the island of Luzon ("**Plant**"), pursuant to, and in accordance with the IPPA Agreement executed between the Power Supplier and Power Sector Assets and Liabilities Management Corporation ("**PSALM**"), with the conformity of the National Power Corporation ("**NPC**").
5. In light of the anticipated thinning electricity operating margins leading up to the May 2022 elections, especially with upcoming simultaneous scheduled maintenance and possible forced outages of various power plants, MERALCO foresees a peaking capacity deficit in its portfolio from 26 February 2022 until 25 July 2022 for 260 MW, of which 170 MW is secured through this PSA.
6. Thus, in order to ensure continuous and reliable electricity for MERALCO's customers, there is a need for MERALCO to source additional peaking 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 170 MW (net) peaking capacity, on 4 February 2022, MERALCO executed a Power Supply Agreement with SPPC ("**MERALCO-SPPC PSA**"), for the purchase of electric energy corresponding to 170 MW. The conduct of CSP proceeded as follows:
 - 8.1. On 23 December 2021, MERALCO caused the first publication of an Invitation to Bid ("**Invitation**"), which contained the basic terms of reference, indicating a summary of the process and timelines of the CSP, and inviting power generation companies to submit an Expression of Interest and Confidentiality Undertaking on or before the deadline set out in said Invitation. At the same time, MERALCO caused the

posting thereof on its website and the DOE's CSP e-Portal, as well as posting in a conspicuous place of its principal office.

- 8.2. On 2 February 2022, the bidders submitted their compliance with the Bid Requirements. Thereafter, the respective submissions of the bidders were opened by the Third-Party Bids and Awards Committee ("TPBAC"). SPPC's bid was declared as the best bid on even date.
 - 8.3. On 3 February 2022, after confirming through conduct of a post-qualification evaluation that its proposed energy price was found to be the best bid, SPPC was declared by the TPBAC as the winning power supplier.
 - 8.4. A copy of the TPBAC Summary-Report regarding the conduct of the CSP is attached as part of ANNEX "C".
9. The MERALCO-SPPC PSA, a copy of which is attached as **ANNEX "D"** and made an integral part hereof, contains the following salient features:

"2.2. Term of Agreement

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

2.2.2. *The term of this Agreement the [sic] (the "Term") shall commence on the Operations Effective Date, and shall expire on July 25, 2022, 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 five (5) months under the same terms and conditions, at the option of Meralco, by giving prior written notice to Power Supplier at least thirty (30) Days prior to the end of the Term.*

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3.2. Operations Effective Date

The obligations of Power Supplier with respect to the Contract Capacity and Associated Energy shall commence on February 26, 2022 (the "Operations Effective Date"); provided that the conditions set out in Section 3.2.1 have been satisfied.

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, 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*

Associated Energy, at the Contract Price determined in accordance with Appendix C.

4.2. **Contract Price**

The Contract Price shall depend on the applicable load factor for the relevant Billing Period, as computed and shown in Schedule 1 of Appendix C, subject to twelve percent (12%) value-added tax (VAT); 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.

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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.

7.2. 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 a 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.

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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 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 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 to 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.*

12.2.3. If the ERC Approval requires any portion of the sum that has been paid by Meralco to Power Supplier to be adjusted, Power Supplier shall make the necessary adjustments in accordance with the direction of the ERC. In the event of any disallowance in the Contract Price, the same shall be for the account of Power Supplier.

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

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13.2 **Instance of Force Majeure**

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

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

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13.5. **Event Not Excused**

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

10. Based on the foregoing, and given a certain set of assumptions, the effective rate under the MERALCO-SPPC PSA is **PhP 6.4398 per kWh (at plant gate, VAT inclusive)**, as shown in the **RATE IMPACT ANALYSIS** below:

SPPC IPSA Rate Impact at 45 % pcf
(March 2022 to July 2022)

BILLING COMPONENT	UNIT	BASE RATES ^[a]	BILLING DETERMINANT ^[b]		AMOUNT (PHP)
Energy Payment					
Contract Price for energy up to MEOT PCF (24%)	(Php/kWh)	7.1000	146,880,000	(kWh)	1,042,848,000.00
Excess Energy Price for energy greater than MEOT PCF up to 45% pcf	(Php/kWh)	4.2068	128,520,000	(kWh)	540,651,510.00
Total Energy Payment (VAT exclusive)	(Php/kWh)	5.7498	275,400,000	(kWh)	1,583,499,510.00
VAT Payment ^[c]	(Php)				190,019,941.20
Total Payment (VAT inclusive)	(Php)				1,773,519,451.20
Effective Rate at Plant Gate (VAT Inclusive)	(Php/kWh)				6.4398
WESM Line Rental Rate ^[c]	(Php/kWh)				0.1000
Delivered Rate (VAT Inclusive) ^[d]	(Php/kWh)				6.5398

Effective Cost if sourced from WESM ^[e]	(Php/kWh)	7.5414
Increase / (Decrease) over WESM	(Php/kWh)	(1.0016)
Meralco Captive Energy Demand ^[f]	(kWh)	14,948,927,438
Increase / (Decrease) in Generation Cost	(Php)	(275,828,972.42)
Increase / (Decrease) in Generation Cost	(Php/kWh)	(0.0185)

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 Mar 2022 to Jul 2022 based on 45% pcf with respect to the Contract Capacity.
- ^[c] Line Rental rate for South Premiere Power Corp. 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 SPPC shall be based on the lower between actual rate and cap of PhP0.28/kWh.
- ^[e] Cost if equivalent volume of South Premiere Power Corp. was sourced from WESM and priced using forecasted average WESM prices for peak hours for the period Mar 2022 to Jul 2022, inclusive of 6% VAT.
- ^[f] Forecasted Meralco Captive Energy for Mar 2022 to July 2022 based on the latest Power Supply Procurement Plan as submitted to DOE.

11. MERALCO notes that the delivered rate of **6.5398 per kWh (VAT and line rental inclusive)** is **lower** by about PhP 1.0016 per kWh than the effective cost of PhP 7.5414 per kWh (VAT and line rental inclusive), if the equivalent capacity under the MERALCO-SPPC PSA is to be sourced from the WESM. In fact, by sourcing the capacity through the MERALCO-SPPC PSA, MERALCO’s average blended generation rate will be reduced by about PhP 0.0185 per kWh (as seen in the **RATE IMPACT ANALYSIS** above) resulting in savings to consumers of about PhP 275.8 million.
12. In support of this Joint Application and the prayer for issuance of Provisional Authority or Interim Relief, the Judicial Affidavit of **ENGR. WILHELMINA PLETO MANALAYSAY**, MERALCO’s Energy Sourcing Engineer 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 the Honorable Commission:

Description of Document	Annex
MERALCO’s Secretary’s Certificate	“A”
SPPC’s Secretary Certificates	“B” and “B-1”
TPBAC Summary-Report regarding the conduct of the CSP	“C”

Description of Document	Annex
MERALCO-SPPC PSA	"D"
Write-up that the PSA is not under emergency procurement with a DOE-issued Certificate of Exemption	"D-1"
Judicial Affidavit of Engr. Wilhelmina P. Manalaysay	"E"
MERALCO's Articles of Incorporation and By-Laws	"F"
MERALCO's Latest General Information Sheet ("GIS")	"G"
Verified Certification of True Copies of MERALCO's Articles of Incorporation, By-Laws, and GIS and of MERALCO's Ultimate Parent Company, all of its subsidiaries and affiliates	"G-1"
MERALCO's 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);	"J"
Average Daily Load Curve scenarios	"J-1"
Details of Existing Suppliers	"J-2"
Details of Power Supply Contract Utilization	"J-3"
Details of SAIDI and SAIFI	"J-4"
Estimation of the potential for a reduction in load supplied by MERALCO due to RCOA	"J-5"
Write-up of no inconsistencies/differences from documents presented	"J-6"
Documents showing MERALCO's conduct of CSP (Annex K-6 and Series - Confidential)*	"K" and series
SEC Certificate of Registration including the Articles of Incorporation and By-Laws of SPPC	"L"
Verified Certification of the list of Board Directors and members of the Ultimate Parent Company, subsidiaries and all affiliates of SPPC	"M"
Write up on the Non-Applicability of a Shareholders' Agreement for SPPC	"N"
The Corporate Structure showing the Ultimate Parent Company, Subsidiaries, and all Affiliates of SPPC	"O"
General Information Sheet of SPPC	"P"
Write up on the Non-Applicability of a Board of Investments ("BOI") Certificate of Registration for SPPC	"Q"
Environmental Compliance Certificate ("ECC") issued by the Department of Environment and Natural Resources ("DENR") of KEPCO Ilijan Power Corporation (KIPC)/National Power Corporation (NPC)	"R"
Certification from the ERC on the status of the COC of SPPC	"S"
Write up on the Non-Applicability of a Certificate of Endorsement ("COE") from the Department of Energy ("DOE") regarding the Philippine Development Plan ("PDP") for SPPC	"T"
Write up on the Non-Applicability of Renewable Energy Service/Operating Contract and Certificate of	"U"

Description of Document	Annex
Registration or Certification of Commerciality by an RE Developer and After Due Confirmation by the DOE	and Series
Executive Summary of the PSA	“V”
Transmission Service Agreement of NGCP and SPPC	“W”
Single-line Diagram Connection	“W-1”
Sources of Funds/Financial Plans; Generation Rate and Derivation (Confidential)* Financial model in soft copy containing derivation of rates (Confidential)* Cost Analysis (Confidential)*	“X” and Series
Explanation on the Fuel Procurement Process of SPPC	“Y and Series”
Technical and Economic Characteristics of the Ilijan Plant	“Z”
Latest Audited Financial Statements of SPPC Certification regarding the net heat rate of SPPC Write up on the Simulation of the number of operating units necessary to meet the minimum energy off-take (“MEOT”) and/or additional energy/demand requirements of MERALCO Write up on the Non-Applicability of the Distribution Wheeling Service Agreement to SPPC Write up on the Non-Applicability of a Water Permit from the National Water Resources Board (“NWRB”) Explanation on the Potential Cost of Ancillary Service WESM Registration Certificate of SPPC	“AA” and Series

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

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

14. It bears emphasis that the MERALCO-SPPC PSA has a very competitive contract price for peaking capacity supply. In fact, such contract price is even lower than the previous offer received by MERALCO for a peaking plant. Other features of this PSA that shall clearly benefit customers include no outage allowance, and a guaranteed 100% availability of supply (for twelve [12] hours daily covering peak hours of MERALCO) due to the financial-type nature of this PSA, which is crucial in the upcoming summer season of 2022.
15. The MERALCO-SPPC PSA capacity is crucial for MERALCO’s supply requirement because of the 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, which will ultimately result in the exposure of MERALCO’s customers to the highly volatile prices of the WESM.

16. In fact, as early as January of this year, the Luzon Grid was placed on Yellow Alert on several occasions already despite cooler weather. The situation is further exacerbated by Indonesia's recent decision to ban coal supply exports in order to protect its own domestic supply, thus, putting into peril critical fuel inventory of coal-fired power plants in the Philippines. On 18 January 2022, the National Grid Corporation of the Philippines (NGCP) already issued a warning to the public that "thin operating margins (power in excess of demand, which is used to manage and balance the grid) is forecasted in the Luzon grid from April to June 2022 due to increase in demand during the summer, which includes the critical election period."¹
17. The MERALCO-SPPC PSA can help shield MERALCO's customers from the looming supply deficiency because the supply availability under the MERALCO-SPPC PSA is guaranteed 100% (for twelve [12] hours daily covering Meralco's peak hours) by SPPC and no outage allowance is provided therein.
18. 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-SPPC 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-SPPC PSA would redound to the best interest of electric power consumers since aside from the very competitive rate, the supply availability under the MERALCO-SPPC PSA is guaranteed 100% by SPPC and no outage allowance is provided therein.

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

19. Under Rule 4 of the 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.
20. With respect to the documents marked and attached as **ANNEXES K-6 and series**, MERALCO respectfully moves that these were requested by its TPBAC to be treated as confidential as it involves the financial proposals submitted

¹ <https://newsinfo.inquirer.net/1542057/ngcp-warns-of-thin-power-supply-in-luzon-grid-as-higher-demand-likely-during-dry-season>

by SPPC 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.

21. With respect to the documents marked and attached as **ANNEXES “X and Series”**, SPPC 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 SPPC. The data and information contained therein are part of the overall formula and process in arriving at the competitive rates of SPPC. These formula and process are specifically developed for the use of SPPC and are treated as trade secrets. If the information contained in these documents are unduly disclosed, it will seriously prejudice the competitiveness of SPPC. 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.*,² 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.)

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

² G. R. No. 172835, 13 December 2007.

“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.³

24. MERALCO and SPPC hereby submit one (1) copy of each of the foregoing confidential documents in sealed envelopes, with the envelopes 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 K-6 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. One copy each of the mentioned annexes will be placed in a sealed envelope, which will be tagged as “Confidential”, and will be submitted as integral parts hereof.
26. Lastly and corollary to the foregoing, MERALCO and SPPC 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 or at the end of the period.”⁴**
27. This is guided by the fact that MERALCO and SPPC 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 SPPC enclosed in the subject annexes.

³ *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.

⁴ Section 2, fifth paragraph’s letter (d.), ERC Revised Rules and Practice and Procedure.

PRAYER

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

- a) Immediately issue an Order **GRANTING PROVISIONAL AUTHORITY** and/or **INTERIM RELIEF** to authorize the immediate implementation of the MERALCO-SPPC PSA;
- b) Issue an Order **TREATING ANNEXES “K-6 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, and that the same will be returned to Applicants MERALCO and SPPC, as applicable, pursuant to Rule 4 of the ERC Revised Rules of Practice and Procedure; and
- c) After hearing on the merits, render a Decision **APPROVING** the MERALCO-SPPC PSA and the terms and conditions thereunder, including the price.

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

Finding the *Joint Application* to be sufficient in form 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 2020,⁵ dated 24 September 2020, and Resolution No. 01, Series of 2021, dated 17 December 2020 (ERC Revised Rules of Practice and Procedure):⁶

Date	Platform	Activity
06 May 2022 (Friday) at nine o'clock in the morning (9:00 AM)	Microsoft Teams Application	Determination of compliance with the jurisdictional requirements and Expository Presentation

⁵ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

⁶ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

Date	Platform	Activity
13 May 2022 (Friday) at nine o'clock in the morning (9:00 AM)		Pre-trial Conference and presentation of evidence

Accordingly, Applicants are hereby directed to host the virtual hearings at **MERALCO's Principal Office at Lopez Building, Ortigas Avenue, Barangay Ugong, Pasig**, as the designated venue for the conduct thereof, and ensure that the same is open to the public and the community quarantine guidelines are observed at all times. 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 SPPC 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 hearing;
- 2) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing* the Offices of the Provincial Governors, the Mayors and the Local Government Unit (LGU) legislative bodies within MERALCO's franchise area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within MERALCO's franchise area, by any other means available and appropriate, of the filing of the *Joint Application*, its reasons therefor, and of the scheduled virtual hearings thereon;
- 4) Furnish with 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 all those making requests therefor, subject to the resolution of the pending prayer for confidential treatment of information, and reimbursement of reasonable photocopying costs.⁷

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 affidavit 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 SPPC to inform the consumers within the affected franchise area of the filing of the *Joint Application*, its reasons therefor, and of the scheduled hearings thereon;
- 4) The evidence of receipt of copies of this *Order* and the attached *Notice of 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 by all those making requests therefor, if any; and
- 6) Such other proof of compliance with the requirements of the Commission.

Moreover, MERALCO and SPPC are hereby required to post on their bulletin boards, the scanned copies of the foregoing jurisdictional requirements, together with the newspaper publications and

⁷ For the e-mail address of the Applicants, please see page 18.

certifications issued by the concerned Office of the Mayors, Provincial Governors and Local Legislative Bodies, and to submit proof of their posting thereof.

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

MERALCO and SPPC must also be prepared to make an expository presentation of the instant *Joint Application*, aided by whatever communication medium that they may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties, the nature of the *Joint Application* with relevant information and pertinent details substantiating the reasons and justifications being cited in support thereof.

MERALCO and SPPC 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. MERALCO and SPPC 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.

Any interested stakeholder may submit its comments and/or clarifications at least one (1) calendar day prior to the scheduled virtual hearing, via 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 course of the expository presentation.

MERALCO and SPPC are hereby directed to submit, either through personal service, registered or ordinary mail/private courier, one (1) set of the original or certified true hard/printed copy/ies of their Jurisdictional Compliance, Expository Presentation, Pre-trial Brief, and Judicial Affidavit/s of witness/es, 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. Similarly, all interested parties who filed their Petition for Intervention or Opposition are required to submit the hard/printed copy thereof within the same period through any of the available modes of service.

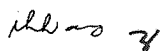
Finally, MERALCO and SPPC, including their authorized representative/s and witness/es, are hereby directed to provide the Commission, through legal.virtualhearings@erc.ph, with their respective e-mail addresses upon receipt of this *Order*. The Commission will send the access link/s to the aforementioned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

SO ORDERED.

Pasig City, 29 March 2022.

FOR AND BY AUTHORITY
OF THE COMMISSION:


AGNES VST DEVANADERA
Chairperson and CEO


LS: IHH/ARG/MCCG

ERC CASE NO. 2022-017 RC
ORDER/ 29 MARCH 2022
PAGE 18 OF 28

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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
20. Office of the LGU Legislative Body
City of Manila

21. Office of the City Mayor
City of Marikina
22. Office of the LGU Legislative Body
City of Marikina
23. Office of the City Mayor
City of Muntinlupa
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City of Muntinlupa
25. Office of the City Mayor
City of Navotas
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City of Parañaque
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City of Pasay
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City of Pasig
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City of Pasig
33. Office of the Municipal Mayor
Municipality of Pateros
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Municipality of Pateros
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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City of Taguig
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41. Office of the City Mayor
City of Valenzuela
42. Office of the LGU Legislative Body
City of Valenzuela
43. Office of the Municipal Mayor
Angat, Bulacan
44. Office of the LGU Legislative Body
Angat, Bulacan

ERC CASE NO. 2022-017 RC
ORDER/ 29 MARCH 2022
PAGE 20 OF 28

45. Office of the Municipal Mayor
Balagtas, Bulacan
46. Office of the LGU Legislative Body
Balagtas, Bulacan
47. Office of the The Municipal Mayor
Baliwag, Bulacan
48. Office of the LGU Legislative Body
Baliwag, Bulacan
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Bocaue, Bulacan
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Bustos, Bulacan
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Calumpit, Bulacan
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Calumpit, Bulacan
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Doña Remedios Trinidad, Bulacan
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Doña Remedios Trinidad, Bulacan
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Guiguinto, Bulacan
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Hagonoy, Bulacan
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Hagonoy, Bulacan
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Malolos, Bulacan
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Malolos, Bulacan
65. Office of the Municipal Mayor
Marilao, Bulacan
66. Office of the LGU Legislative Body
Marilao, Bulacan
67. Office of the City Mayor
Meycauayan, Bulacan
68. Office of the LGU Legislative Body
Meycauayan, Bulacan
69. Office of the Municipal Mayor
Norzagaray, Bulacan

ERC CASE NO. 2022-017 RC
ORDER/ 29 MARCH 2022
PAGE 21 OF 28

70. Office of the LGU Legislative Body
Norzagaray, Bulacan
71. Office of the Municipal Mayor
Obando, Bulacan
72. Office of the LGU Legislative Body
Obando, Bulacan
73. Office of the Municipal Mayor
Pandi, Bulacan
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Paombong, Bulacan
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Plaridel, Bulacan
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Pulilan, Bulacan
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San Ildefonso, Bulacan
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San Ildefonso, Bulacan
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San Jose del Monte, Bulacan
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San Jose del Monte, Bulacan
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San Miguel, Bulacan
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San Rafael, Bulacan
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San Rafael, Bulacan
89. Office of the Municipal Mayor
Sta. Maria, Bulacan
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Sta. Maria, Bulacan
91. Office of the Municipal Mayor
Alfonso, Cavite
92. Office of the LGU Legislative Body
Alfonso, Cavite
93. Office of the Municipal Mayor
Amadeo, Cavite
94. Office of the LGU Legislative Body
Amadeo, Cavite

ERC CASE NO. 2022-017 RC
ORDER/ 29 MARCH 2022
PAGE 22 OF 28

95. Office of the City Mayor
Bacoor, Cavite
96. Office of the LGU Legislative Body
Bacoor, Cavite
97. Office of the Municipal Mayor
Carmona, Cavite
98. Office of the LGU Legislative Body
Carmona, Cavite
99. Office of the City Mayor
Cavite, Cavite
100. Office of the LGU Legislative Body
Cavite, Cavite
101. Office of the City Mayor
Dasmariñas, Cavite
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Dasmariñas, Cavite
103. Office of the Municipal Mayor
General Emilio Aguinaldo, Cavite
104. Office of the LGU Legislative Body
General Emilio Aguinaldo, Cavite
105. Office of the Municipal Mayor
General Mariano Alvarez, Cavite
106. Office of the LGU Legislative Body
General Mariano Alvarez, Cavite
107. Office of the City Mayor
General Trias, Cavite
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General Trias, Cavite
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Imus, Cavite
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Imus, Cavite
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Indang, Cavite
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Indang, Cavite
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Kawit, Cavite
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Kawit, Cavite
115. Office of the Municipal Mayor
Magallanes, Cavite
116. Office of the LGU Legislative Body
Magallanes, Cavite
117. Office of the Municipal Mayor
Maragondon, Cavite
118. Office of the LGU Legislative Body
Maragondon, Cavite

ERC CASE NO. 2022-017 RC
ORDER/ 29 MARCH 2022
PAGE 23 OF 28

119. Office of the Municipal Mayor
Mendez, Cavite
120. Office of the LGU Legislative Body
Mendez, Cavite
121. Office of the Municipal Mayor
Naic, Cavite
122. Office of the LGU Legislative Body
Naic, Cavite
123. Office of the Municipal Mayor
Noveleta, Cavite
124. Office of the LGU Legislative Body
Noveleta, Cavite
125. Office of the Municipal Mayor
Rosario, Cavite
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Rosario, Cavite
127. Office of the Municipal Mayor
Silang, Cavite
128. Office of the LGU Legislative Body
Silang, Cavite
129. Office of the City Mayor
Tagaytay, Cavite
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Tagaytay, Cavite
131. Office of the Municipal Mayor
Tanza, Cavite
132. Office of the LGU Legislative Body
Tanza, Cavite
133. Office of the Municipal Mayor
Ternate, Cavite
134. Office of the LGU Legislative Body
Ternate, Cavite
135. Office the City Mayor
Trece Martires, Cavite
136. Office of the LGU Legislative Body
Trece Martires, Cavite
137. Office of the Municipal Mayor
Angono, Rizal
138. Office of the LGU Legislative Body
Angono, Rizal
139. Office of the City Mayor
Antipolo, Rizal
140. Office of the LGU Legislative Body
Antipolo, Rizal
141. Office of the Municipal Mayor
Baras, Rizal
142. Office of the LGU Legislative Body
Baras, Rizal
143. Office of the Municipal Mayor
Binangonan, Rizal

ERC CASE NO. 2022-017 RC
ORDER/ 29 MARCH 2022
PAGE 24 OF 28

144. Office of the LGU Legislative Body
Binangonan, Rizal
145. Office of the Municipal Mayor
Cainta, Rizal
146. Office of the LGU Legislative Body
Cainta, Rizal
147. Office of the Municipal Mayor
Cardona, Rizal
148. Office of the LGU Legislative Body
Cardona, Rizal
149. Office of the Municipal Mayor
Jala-Jala, Rizal
150. Office of the LGU Legislative Body
Jala-Jala, Rizal
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Morong, Rizal
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Morong, Rizal
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Pililla, Rizal
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Rodriguez, Rizal
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San Mateo, Rizal
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San Mateo, Rizal
159. Office of the Municipal Mayor
Tanay, Rizal
160. Office of the LGU Legislative Body
Tanay, Rizal
161. Office of the Municipal Mayor
Taytay, Rizal
162. Office of the LGU Legislative Body
Taytay, Rizal
163. Office of the Municipal Mayor
Teresa, Rizal
164. Office of the LGU Legislative Body
Teresa, Rizal
165. Office of the City Mayor
Batangas, Batangas
166. Office of the LGU Legislative Body
Batangas, Batangas
167. Office of the Municipal Mayor
San Pascual, Batangas

ERC CASE NO. 2022-017 RC
ORDER/ 29 MARCH 2022
PAGE 25 OF 28

168. Office of the LGU Legislative Body
San Pascual, Batangas
169. Office of the City Mayor
Sto. Tomas, Batangas
170. Office of the LGU Legislative Body
Sto. Tomas, Batangas
171. Office of the Municipal Mayor
Alaminos, Laguna
172. Office of the LGU Legislative Body
Alaminos, Laguna
173. Office of the Municipal Mayor
Bay, Laguna
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Bay, Laguna
175. Office of the City Mayor
Biñan, Laguna
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Biñan, Laguna
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Cabuyao, Laguna
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Cabuyao, Laguna
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Calamba, Laguna
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Calamba, Laguna
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Calauan, Laguna
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Calauan, Laguna
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Los Baños, Laguna
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Luisiana, Laguna
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Luisiana, Laguna
189. Office of the Municipal Mayor
Magdalena, Laguna
190. Office of the LGU Legislative Body
Magdalena, Laguna
191. Office of the Municipal Mayor
Majayjay, Laguna
192. Office of the LGU Legislative Body
Majayjay, Laguna

ERC CASE NO. 2022-017 RC
ORDER/ 29 MARCH 2022
PAGE 26 OF 28

193. Office of the Municipal Mayor
Nagcarlan, Laguna
194. Office of the LGU Legislative Body
Nagcarlan, Laguna
195. Office of the Municipal Mayor
Pila, Laguna
196. Office of the LGU Legislative Body
Pila, Laguna
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Rizal, Laguna
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Rizal, Laguna
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Sta.Cruz, Laguna
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Sta.Cruz, Laguna
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Sta. Rosa, Laguna
206. Office of the LGU Legislative Body
Sta. Rosa, Laguna
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Victoria, Laguna
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Victoria, Laguna
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Candelaria, Quezon
211. Office of the Municipal Mayor
Dolores, Quezon
212. Office of the LGU Legislative Body
Dolores, Quezon
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Lucban, Quezon
214. Office of the LGU Legislative Body
Lucban, Quezon
215. Office of the City Mayor
Lucena, Quezon
216. Office of the LGU Legislative Body
Lucena, Quezon

ERC CASE NO. 2022-017 RC
ORDER/ 29 MARCH 2022
PAGE 27 OF 28

217. Office of the Municipal Mayor
Mauban, Quezon
218. Office of the LGU Legislative Body
Mauban, Quezon
219. Office of the Municipal Mayor
Pagbilao, Quezon
220. Office of the LGU Legislative Body
Pagbilao, Quezon
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Sampaloc, Quezon
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Sampaloc, Quezon
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San Antonio, Quezon
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Sariaya, Quezon
227. Office of the City Mayor
Tayabas, Quezon
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Tiaong, Quezon
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Apalit, Pampanga
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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
Province of Bulacan
239. Office of the Governor
Province of Cavite
240. Office of the LGU Legislative Body
Province of Cavite
241. Office of the Governor
Province of Rizal

- 242. Office of the LGU Legislative Body
Province of Rizal
- 243. Office of the Governor
Province of Batangas
- 244. Office of the LGU Legislative Body
Province of Batangas
- 245. Office of the Governor
Province of Laguna
- 246. Office of the LGU Legislative Body
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- 247. Office of the Governor
Province of Quezon
- 248. Office of the LGU Legislative Body
Province of Quezon
- 249. Office of the Governor
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