

13. MERALCO notes that the annual delivered rate of **PhP 6.1917 per kWh (VAT exclusive and line rental inclusive)** is lower by about PhP 0.6953 per kWh than the effective cost of PhP 6.8870 per kWh, if the equivalent capacity under the MERALCO-EERI PSA is to be sourced from the WESM. In fact, by sourcing the capacity through the MERALCO-EERI PSA, MERALCO's average blended generation rate will be reduced by about PhP 0.1788 per kWh (as seen in the **RATE IMPACT ANALYSIS** above) resulting in savings to consumers of about PhP 6.908 billion.

14. In support of this Joint Application, the Judicial Affidavit of **ENGR. DAVIDJOHN A. ZUÑIGA**, Officer of MERALCO's Energy Sourcing Office - Energy Resource Planning team, is attached hereto as **ANNEX "E"**.

15. 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"
EERI's Secretary Certificates	"B" and "B-1"
BAC-PSA Summary-Report regarding the conduct of the CSP	"C"
DOE Certificate of Conformity No. 2023-10-002 dated October 27, 2023	"C-1"
2024 MERALCO-EERI PSA	"D"
Executive Summary	"D-1"
Judicial Affidavit of MERALCO's witness, ENGR. DAVIDJOHN A. ZUÑIGA, Officer of MERALCO's Energy Resource Planning - Energy Sourcing Office	"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"
• 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, GEOP, etc.	"J-5"
Documents showing MERALCO's conduct of CSP	"K" and series
SEC Certificate of Registration including the Articles of Incorporation and By-Laws of EERI	"L and series"
2023 General Information Sheet of EERI (SEC-certified true copy)	"M"
Verified Certification of the list of Board Directors and members of the Ultimate Parent Company, subsidiaries and all affiliates of EERI	"N"
Write-up on the non-applicability of a Shareholder's Agreement	"O"
Board of Investments ("BOI") Certificate of Registration	"P" and "P-1"
Environmental Compliance Certificate ("ECC")	"Q"
8. Certification from the bank or lending institution	
Single-line Diagram	"U"
Point-to-Point Application of the Plant	"V"
Project Feasibility Study (confidential)	"W"
Financial Model and Generation Rate Derivations (confidential)	"X and series" *
Certification on the Fuel Supply Procurement	"Y"
Fuel Supply Agreement	"Y-1"
Technical and Economic Characteristics of the EERI Plant (including the write up as regards the inapplicability of the requirement concerning the data on outages)	"Z" and Series
Certified True Copy of EERI's Audited Financial Statements	"AA" and series
Net Heat Rate	
Simulation of the number of operating units necessary to meet the MEOT	
Wholesale Electricity Market Registration (WESM)	
Certification as regards the Operation and Maintenance Agreement	"BB"
Lump Sum Supply Contract (EPC Agreement) (Confidential)	"CC" and series

ALLEGATIONS IN SUPPORT OF THE MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION

16. Under Rule 4 of the ERC RPPP, 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 **ANNEXES "W", "X" and Series, 2 and "CC"** EERI 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 EERI. The data and information contained therein are part of the overall formula and process in arriving at the competitive rates of EERI. These formula and process are specifically developed for the use of EERI and are treated as trade secrets. If the information contained in these documents are unduly disclosed, it will seriously prejudice the competitiveness of EERI. These documents are neither generally available to the public nor already in the possession of the Honorable Commission on a non-confidential basis.

18. 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.)

19. 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 PNOCC 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."

20. EERI hereby submit one (1) copy of the foregoing confidential documents in a sealed envelope, with the envelope and each page of the documents marked "Confidential."

21. 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 "W", "X" and Series and "CC"**. 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.

22. Lastly and corollary to the foregoing, EERI 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 RPPP)

23. This is guided by the fact that EERI 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 EERI enclosed in the subject annexes.

PRAYER

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

a) Issue an Order **TREATING ANNEXES "W", "X" and Series**⁶ and **"CC"**⁷ 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 EERI, pursuant to Rule 4 of the ERC RPPP; and

b) After hearing on the merits, render a Decision **APPROVING** the MERALCO-EERI PSA and the terms and conditions thereunder, including the price.

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

Pasig City, 7 February 2024.

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Co-Applicant
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Brgy. Ugong, Pasig City

By:

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IBP No. [REDACTED] / Lifetime / PPLM Chapter
MCLE Compliance No. VII - 0020279 / 02 June 2022
Roll No. [REDACTED]

REPUBLIC OF THE PHILIPPINES }
CITY OF PASIG } S.S.

VERIFICATION/CERTIFICATION OF NON-FORUM SHOPPING

I, **JOSE RONALD V. VALLES**, Filipino, of legal age, married, with office address at 12th Floor, Lopez Building, MERALCO Compound, Ortigas Avenue, Pasig City, after being sworn in accordance with law, hereby depose and say that—

1. I am the Senior Vice President and Head of the Regulatory Management Office of Applicant Manila Electric Company ("MERALCO"), and am authorized to represent MERALCO in this Joint Application as per the attached Secretary's Certificate (**ANNEX "A"**);

2. I have caused the preparation of the instant Joint Application entitled "In the Matter of the Joint Application for the Approval of the Power Supply Agreement Between Manila Electric Company and Excellent Energy Resources Inc., with Motion for Confidential Treatment of Information" and read the contents thereof, and I attest that the allegations herein contained are true and correct;

3. I have read and understood the allegations contained therein and the same are true and correct based on my personal knowledge and authentic records made available to me in the ordinary course of business of MERALCO;

4. The foregoing Joint Application is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

5. The factual allegations therein have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery; and

6. Should I hereinafter learn that the any further similar action or claim has been filed or is pending in the Supreme Court, the Court of Appeals, or any court, tribunal, or quasi-judicial agency, I shall report such fact to this Honorable Commission within five (5) days from discovery of such fact.

IN WITNESS WHEREOF, I have hereunto affixed my signature this FEB 08 2024 at Pasig City, Philippines.

JOSE RONALD V. VALLES
Affiant

SUBSCRIBED and SWORN to before me this FEB 08 2024, affiant having exhibited to me his Social Security System ID bearing the number 73-1000188

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Series of 2024.

ATTY. MA. ELISHA S. ELORAGA
NOTARY PUBLIC
Appointment No. 147-2023-2024
Pasig, San Juan and Pateros
Roll No. 73497 IBP No. 375976; 12/25/2023; Quezon City
PTR No. 1705889; 01/15/2024; Pasig City
MCLE Compliance No. VII-016545; Valid until 14 April 2025
7th Floor, Lopez Bldg., Ortigas Ave., Pasig City

VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING

I, **ELENITA D. GO**, Filipino, of legal age, and with office address at the 6th Floor, 100 Eulogio Rodriguez Jr. Avenue C5 Road (North Bound) Pasig City, after having been duly sworn to in accordance with law, hereby depose and state, that:

1. By virtue of a board resolution as reflected in the Secretary's Certificate dated 5 February 2024 hereto attached as **Annex "A"**, I am the authorized representative of Excellent Energy Resources Inc. ("EERI") a co-applicant in the Joint Application for Approval of the Power Supply Agreement between Manila Electric Company ("MERALCO") and South Premier Power Corp., (the "Joint Application");

2. I have caused the preparation and filing of the Joint Application and that I have read the contents thereof and aver that all the factual/legal allegations contained therein are true and correct based on my personal knowledge and/or on authentic documents/official records;

3. The Joint Application is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation and that the factual allegations therein have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery; and,

4. I hereby certify that EERI has not filed/commenced any action or proceeding arising from the same issues raised in the Joint Application before the Supreme Court, Court of Appeals, or any other courts or tribunals or quasi-judicial bodies/agencies and to the best of my knowledge, no such other similar action or claim is pending therein. If ever there is a case pending before the said courts or tribunals involving the same issues, I undertake to inform the Honorable Energy Regulatory Commission of such fact within five (5) calendar days from knowledge thereof.

I am executing this undertaking in support of the Joint Application and the veracity of the allegations therein as well as for any other legal purpose this may serve.

IN WITNESS WHEREOF, I have hereunto set my hand this 7 February 2024 at Pasig City.

ELENITA D. GO
Affiant

SUBSCRIBED AND SWORN to before me this 7 February 2024 in Pasig City. Affiant personally appeared and exhibited to me her Philippine Passport No. [REDACTED] issued on June 7, 2019 at the DFA NCR East as her competent proof of identity

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Book No. 117
Series of 2024.

MARYANN ANN L. BLOQUIZ
NOTARY PUBLIC
ROLL NO. 56497
PASIG CITY, PHILIPPINES

ATTY. MA. ELISHA S. ELORAGA
NOTARY PUBLIC
Appointment No. 278-2023-2024
Notary Public for Pasig City
Valid December 31, 2024
5th Floor, C5 Office Building Complex,
#100 E. Rodriguez, Jr. Ave., C5 Road,
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Roll No. [REDACTED] / 01-03-2024 / Pasig City
PTR No. [REDACTED] / IBP Lifetime (RSM) Chapter
MCLE Compliance No. VII-0019561; 05-30-2022; Pasig City

¹ Project Feasibility Study
² Financial Model and Generation Rate Derivation
³ G. R. No. 172835, 13 December 2007.

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 PNOCC Renewables Corporation (PNOCC RC) with Prayer for Provisional Authority, ERC Case No. 2015-111 RC, Decision dated 30 May 2017, p. 26.
⁵ Project Feasibility Study
⁶ Financial Model and Generation Rate Derivation
⁷ Lump sum Supply Contract.