

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

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

ERC CASE NO. 2024-028 RC

MANILA ELECTRIC
COMPANY AND EXCELLENT
ENERGY RESOURCES INC.,
Applicants.

Promulgated:
March 08, 2024

NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 01 March 2024, Manila Electric Company (MERALCO) and Excellent Energy Resources Inc. (EERI) filed their Joint Application dated 07 February 2024, seeking the Commission's approval of their Power Supply Agreement (PSA), with motion for confidential treatment of information.

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

NATURE OF THE APPLICATION

- 1. This is an application for approval of the Power Supply Agreement between MERALCO and EERI dated 5 February 2024 (the "2024 MERALCO-EERI PSA") under Rule 20 (B.) of the Energy Regulatory Commission's ("ERC") Resolution No. 1 Series of 2021 ("ERC Revised Rules of Practice and Procedure" or "ERC RRRP"), and by ERC Resolution No. 16, Series of 2023 ("ERC CSP Guidelines").

PARTIES

- 2. 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.
3. 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.
4. Applicant EERI is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office located at 6th Floor, C5 Office Building Complex, #100 E. Rodriguez Jr. Ave., C5 Road, Bo Ugong, Pasig City 1604. It may be served with notices and other processes of this Honorable Commission through its counsel at the address indicated herein.

STATEMENT OF RELEVANT FACTS
AND TIMELINESS OF THE JOINT APPLICATION

- 6. In accordance with MERALCO's latest and duly accepted Distribution Development Plan ("DDP") and posted Power Supply Procurement Plan ("PSP") approved by the Department of Energy, MERALCO foresees a baseload capacity deficit in its portfolio covering 1,800 MW based on its power situation outlook for 2024 and succeeding years.
7. 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.
8. 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."
9. Accordingly, pursuant to Section 4, Article IV of ERC CSP Guidelines, MERALCO conducted a Competitive Selection Process ("CSP") for the procurement of 1,800 MW (net) baseload supply requirement. The conduct of CSP proceeded as follows:

- 9.1 On 14 September 2023 and 25 October 2023, MERALCO submitted and resubmitted, respectively, to the Department of Energy ("DOE") the Invitation to Bid/Terms of Reference for the CSP for Contract Capacity of 1,800 MW (net), with Commercial Operations Date (COD) 2024-2025 (the "1,800 MW CSP") to request for issuance of a Certificate of Conformity in accordance with MERALCO's latest and duly accepted DDP and posted PSP, pursuant to Section 4.3 of the DOE Department Circular No. DC2023-06-0021, Series of 2023 and Section 5, Appendix B of the ERC CSP Guidelines.
9.2 On 27 October 2023, the DOE issued in favor of MERALCO a Certificate of Conformity No. 2023-10-002 dated October 27, 2023 (the "DOE COC") covering MERALCO's 1,800 MW CSP requirement, which MERALCO received on the same day and endorsed to its Bids and Awards Committee for Power Supply Agreements ("BAC-PSA") for commencement of the 1,800 MW CSP. On the same day, 27 October 2023, pursuant to requirements provided in the ERC CSP Guidelines, the BAC-PSA Secretariat furnished the ERC a copy of the DOE COC and formally notified the DOE (copy furnished the ERC) of the commencement of the 1,800 MW CSP in relation to the DOE COC.

- 9.3 On 1 November 2023 and 8 November 2023, the BAC-PSA caused the publication of the Invitation to Bid ("ITB") in The Philippine Star, a newspaper of general circulation in the Philippines. The ITB contained the Terms of Reference ("TOR"), a summary of the process and timelines of the CSP, and invitation to power generation companies to pay the Participation Fee and submit an Expression of Interest and set of documents on or before the deadline set out in said Invitation. The ITB and the TOR were likewise posted on MERALCO's website and on the DOE E-based CSP Portal.

- 9.4 On 9 November 2023, MERALCO posted on its website, an "Invitation to Participate as CSP Observers," which informed the public that the following entities or groups identified in Section 9 of the ERC CSP Guidelines are invited to signify to the BAC-PSA of their interest to participate as observer. On 14 November 2023, five (5) CSP Observers submitted their intent to (and were admitted by) the BAC-PSA as CSB Observers.

- 9.5 On 20 November 2023 and 24 November 2023, Pre-Bid Conferences were held to allow interested bidders an opportunity to clarify any provisions, requirements, and/or terms and conditions of the bidding documents and/or any other matter that the interested bidders may raise. The Pre-Bid Conferences were held at least thirty (30) calendar days before the 1,800 MW CSP's bid submission deadline; were attended by CSP Observers; and were broadcasted livestream in MERALCO's YouTube website.

- 9.6 On 5 January 2024, the bidders submitted their bid document submissions in compliance with all the bidding documents for the 1,800 MW CSP and the respective submissions of the bidders were opened by the BAC-PSA. The bid submission and bid opening were held at least forty-five (45) days after the ITB/ TOR's last publication and were attended by CSP Observers and were broadcasted livestream in MERALCO's YouTube website.

- 9.7 Following the MERALCO BAC-PSA's evaluation of each of the bidders' bid submissions, Applicant EERI emerged as one of the bidders with the lowest calculated responsive bid ("Best Bid"), with EERI offering 1,200 MW out of the required contract capacity of 1,800 MW for the said bidding.

- 9.8 On 8 January 2024, the BAC-PSA conducted the post-qualification of the document submissions of the bidders with the Best Bids and found the submissions to be compliant with and are responsive to all the requirements and conditions specified in the bidding documents, as amended, and/or clarified by pertinent bid bulletins, for the 1,800 MW CSP. The post-qualification was attended by CSP Observers and was broadcasted livestream in MERALCO's YouTube website.

- 9.9 On 22 January 2024, the BAC-PSA submitted its recommendation and report to MERALCO's Board of Directors recommending EERI, as one of the bidders with the best bids 1,800 MW CSP, to be declared as the Winning Power Supplier and be awarded a power supply agreement for its offer of PhP 7.1094/kWh (total delivered levelized cost of electricity ["LCOE"], VAT inclusive) for 1,200 MW.

- 9.10 On 29 January 2024, MERALCO's Board of Directors approved the BAC-PSA's recommendation and the following day, 30 January 2024, a Notice of Award was issued by the BAC-PSA in favor of EERI.

- 9.11 On 5 February 2024, the 2024 MERALCO-EERI PSA was executed. Thereafter, EERI submitted a performance bond letter dated 6 February 2024 to MERALCO. Upon receipt of said performance bond letter, on even date, MERALCO issued a Notice to Proceed in favor of EERI, in accordance with Sections 15 and 16, Appendix B of the ERC CSP Guidelines.

A copy of the BAC-PSA Summary-Report and the DOE COC regarding the conduct of the 1,800 MW CSP are attached hereto as ANNEXES "C" and "C-1".

- 10. The said Joint Application together with its Annexes was pre-filed with the Honorable Commission on 6 February 2024. Accordingly, this Joint Application is timely filed within the regulatory period provided under the ERC CSP Guidelines.

SALIENT FEATURES OF THE MERALCO-EERI PSA

- 11. The MERALCO-EERI PSA, a copy of which is attached hereto as ANNEX "D", contains the following salient provisions:

Article 1 Definitions and Interpretation

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Availability of Supply or Available means one hundred percent (100%) of the Contract Capacity is available for twenty-four (24) hours and seven (7) days a week, subject to Section 9.1.1.

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Contract Capacity or CC shall be, subject to Section 3.4.1, Article 10, and Section 21.1, 1,200 MW (net) sourced from the Plant.

xxx

Material Adverse Government Action means:

- (a) any Law or Directive coming into effect after the signing of this Agreement, including the adoption or enactment, or any change or repeal with respect to the imposition of taxes, duties, levies, fees, charges and similar impositions, and the right to remit or convert currencies. This does not include any Legal Requirement or the application or interpretation thereof in existence at the date of the signing of this Agreement, but which by its explicit terms or due to any other circumstance, became effective or could be implemented only after the date of this Agreement; or

- (b) the amendment, modification, repeal or withdrawal of any Law or Directive (including any official interpretation thereof which the Parties have relied upon in entering into this Agreement) in force at the date of this Agreement; or

- (c) the modification in the application, enforcement, interpretation or implementation of any Law or Directive by a Governmental Instrumentality which the Parties have relied upon in entering into this Agreement, which modification occurred at any time after the date of this Agreement.

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

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2.2 Term of Agreement

Subject to Article 3, this Agreement shall become effective on the Execution Date, and shall remain in force and effect until the last day of the 15th Contract Year, unless terminated earlier in accordance with the terms of this Agreement and upon approval by the ERC, or extended by the application of Section 17.3.3 (the "Term").

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3.3 Commercial Operations Date

3.3.1 Power Supplier covenants that 1,200 MW (net) of the Plant shall achieve Commercial Operations Date no later than 26 November 2024 (the "Scheduled Commercial Operations Date").

xxx

3.3.3 If the Commercial Operations Date has not occurred by the Scheduled Commercial Operations Date, from and after the Scheduled Commercial Operations Date, Power Supplier shall, for each Day of unexcused delay, (i) procure and cause delivery to Meralco of Replacement Power of up to the Contract Capacity, as may be applicable, subject to Article 6 and in accordance with Appendix E, to be paid for by Meralco at the lower between the actual price of Replacement Power and the Price specified in Appendix E; or (ii) to the extent that such Replacement Power is not available due to inadequate supply from WESM or from any other source, pay to Meralco a fine equivalent to Nine Hundred Eight Philippine Pesos (PhP 908.00) multiplied by each affected MWh nomination by Meralco, until the earlier of: (a) the Commercial Operations Date, and (b) sixty (60) Days after the Delay Limit Date (as the Delay Limit Date may be adjusted in accordance with the succeeding provisions). For purposes of this Section 3.3.3, a fraction of a Day is considered a Day.

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6.1 Supply of Power

Subject to the terms and conditions of this Agreement:

6.1.1 From the Commercial Operations Date of the Plant until the expiration of the Term or earlier termination of this Agreement, Power Supplier shall:

- a) make available to Meralco, and Meralco shall purchase from Power Supplier, at the Price determined in accordance with Appendix E, the Contract Capacity of the Plant; and
b) deliver and sell to Meralco, and Meralco shall purchase from Power Supplier, at the Price determined in accordance with Appendix E, the Associated Energy (and Replacement Power), to the extent of Meralco's relevant day-ahead nominations.

The Dispatch of Contract Capacity and Associated Energy shall meet the requirements set out in the Performance Guarantees.

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Article 9 Outages

9.1 Outage Allowances and Replacement Power

9.1.1 After Commercial Operations Date, Power Supplier shall be allowed Scheduled Outages not exceeding 12.5 Full Load Equivalent Outage Days ("Full Load Equivalent Scheduled Outage Allowance Days") and Forced Outages not exceeding 7.5 Full Load Equivalent Outage Days ("Full Load Equivalent Forced Outage Allowance Days") each Contract Year; provided that, a Forced Outage may only be counted towards the Full Load Equivalent Forced Outage Allowance Days upon provision by Power Supplier to Meralco of a copy of the acknowledgment letter from the System Operator or report from the Market Operator that a Forced Outage has occurred.

9.1.2. During Scheduled Outages within the Full Load Equivalent Scheduled Outage Allowance Days and Forced Outages within the Full Load Equivalent Forced Outage Allowance Days, Meralco shall procure replacement energy from other sources or the WESM, at its own expense, which expense shall be passed on to its customers as part of generation costs.

9.1.3. During Scheduled Outages that exceed the Full Load Equivalent Scheduled Outage Allowance Days and Forced Outages that exceed the Full Load Equivalent Forced Outage Allowance Days, Power Supplier shall purchase Replacement Power, which shall be declared as BCQ and paid for by Meralco at the lower between (a) the actual price of the Replacement Power, and (b) Price as specified in Appendix E. In the event of failure by Power Supplier to source the Replacement Power, Meralco shall be allowed to source replacement energy from the WESM. If the WESM price for the replacement energy is higher than the Price, Power Supplier shall reimburse Meralco the difference between (i) WESM price and (ii) the Price as specified in Appendix E, plus all relevant transaction cost and taxes. If the WESM price for the replacement energy is lower than the Price, Meralco shall not be liable to Power Supplier for the difference between WESM price and Price.

9.1.4. On and after the Commercial Operations Date, during any period in which an Event of Force Majeure affects Power Supplier or Meralco, Meralco shall procure replacement energy from the WESM to the extent supply or offtake is so affected. For clarity, the cost of replacement energy shall form part of the price that Meralco will charge its customers.

9.1.5. The supply by Power Supplier of quantities of Replacement Power under this Section 9.1 shall be deemed fulfillment of Power Supplier's obligation to make available the Contract Capacity and to deliver the Associated Energy during such period.

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Article 10 Adjustments in Contract Capacity and Associated Energy

10.1 Subject to the provisions of Section 10.2 below, Meralco shall, from time to time, be entitled to a reduction in the Contract Capacity and Associated Energy (the "Reduction in Contract Capacity and Associated Energy") equivalent to the reduction in the demand of its captive customers in order to avoid stranded contract capacities or costs, or by reason of the enforcement of Retail Competition and Open Access (RCOA), the Renewable Energy Law, Renewable Portfolio Standards (RPS), Green Energy Option Program (GEOP), Net Metering program, and other similar government programs, Laws and Legal Requirements.

10.2 Meralco shall give a written notice at least five (5) Days prior to the first Day of the next Billing Period to Power Supplier, specifying the Reduction in Contract Capacity and Associated Energy pursuant to Section 10.1,

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

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14.3 ERC Approval

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

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- 12. Based on the foregoing, and given a certain set of assumptions, the annual effective rate under the MERALCO-EERI PSA is PhP 6.0417 per kWh (at plant gate, VAT exclusive), as shown in the RATE IMPACT ANALYSIS below:

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Table with columns: BILLING COMPONENT, UNIT, BASE RATE, CPI Adj Factor, BILLING DETERMINANT, AMOUNT (PHP). Rows include Capacity Payment (CMC), Fixed O&M Payment (MFOM), Fuel Cost Payment (EMFCP), Variable O&M Payment (MVOM), Total Payment (VAT exclusive), Effective Rate at Plant Gate, WESM Line Rental Rate, Delivered Rate (VAT exclusive), Effective Cost if sourced from WESM, Increase/Decrease over WESM Price, Meralco Captive Energy Demand, Increase/Decrease in Generation Cost.

NOTES

- 1. Base Rates as set forth in Schedule 1 of Appendix E of the PSA.
2. CPI assumptions were based on values used during evaluation for Year 2025.
3. Energy Payments based on 94.52% plant capacity factor.
4. Dollar components shall be paid in USD, however values shown here were converted to Peso amount using exchange rate of PhP 56.085 / USD.
5. Fuel Payment calculated based on Guaranteed Net Plant Heat Rate at 100.00% load factor for Contract Year 1.
6. Line Rental rate for EERI is based on the maximum allowable value for Contract Year 1 as stated in the PSA.
7. Cost of equivalent volume of EERI was sourced from the WESM based on forecasted average hourly prices from May 2025 to April 2026.
8. Forecasted Meralco Captive Energy for May 2025 to April 2026 based on 2023 Power Supply Procurement Plan as submitted to DOE.

- 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. DAVID JOHN A. ZUNIGA, 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:

Table with columns: Description of Document, Annex. Rows include MERALCO's Secretary's Certificate (Annex A), EERI's Secretary Certificates (Annex B and B-1), BAC-PSA Summary-Report regarding the conduct of the CSP (Annex C).