

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 LIMAY
POWER INC., WITH PRAYER
FOR THE ISSUANCE OF A
PROVISIONAL AUTHORITY
AND/OR INTERIM RELIEF
AND MOTION FOR
CONFIDENTIAL
TREATMENT OF
INFORMATION

ERC CASE NO. 2024-056 RC

MANILA ELECTRIC
COMPANY AND LIMAY
POWER INC.,
Applicants.

Promulgated:
April 29, 2024

NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that, on 22 April 2024, Manila Electric Company (MERALCO) and Limay Power Inc., (LPI) filed a Joint Application, dated 03 April 2024, seeking the Commission's approval of their Power Supply Agreement (PSA), with prayer for the issuance of a provisional authority and/or interim relief and motion for confidential treatment of information.

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

I. THE APPLICANTS

A. MERALCO

1. Applicant MERALCO is a private corporation existing under the laws of the Republic of the Philippines, with principal office located at Lopez Building, Ortigas Avenue, Brgy. Ugong, Pasig City. It may be served with notices and other processes of this Honorable Commission through its counsel at the address indicated herein.

2. MERALCO has a legislative franchise to operate and maintain a distribution system in the cities/municipalities of Metro Manila, Bulacan, Cavite and Rizal and certain cities/municipalities/barangays in Batangas, Laguna, Quezon and Pampanga, pursuant to Republic Act No. 9209, and is authorized to charge all its customers for their electric consumption at the rates approved by the Honorable Commission.

B. LPI

3. Applicant LPI is a corporation duly organized and existing under the laws of the Philippines, with principal place of business at Roman Highway, Barangay Lamao, Limay, Bataan. It may be served with notices and other processes of this Honorable Commission through its counsel at the address indicated herein.

4. LPI owns, operates, manages, and maintains the Limay Circulating Fluidized Bed Coal-Fired Thermal Power Plant located at Barangay Lamao, Limay, Bataan, on the island of Luzon in the Philippines (the "Plant").

II. STATEMENT OF FACTS AND TIMELINESS

5. In accordance with MERALCO's latest and duly accepted Distribution Development Plan and posted Power Supply Procurement Plan ("PSPP") approved by the Department of Energy ("DOE"), MERALCO foresees an interim baseload capacity deficit in its portfolio covering 400 MW based on its power situation outlook for 2024 and first quarter of 2025.

6. Thus, in order to ensure continuous and reliable electricity for MERALCO's customers, there is a need for MERALCO to source additional baseload capacity through bilateral power supply contracts.

7. Under Section 45(b) of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" ("EPIRA"), it is provided that "Distribution Utilities may enter into bilateral power supply contracts subject to review by the ERC xxx."

8. Accordingly, pursuant to Section 4, Article IV of the Energy Regulatory Commission's ("ERC") Resolution No. 16, Series of 2023 ("ERC CSP Guidelines"), MERALCO conducted a Competitive Selection Process ("CSP") for the procurement of 400 MW (net) baseload supply requirement (the "400 MW CSP"). The conduct of CSP proceeded as follows:

8.1. On 15 December 2023, MERALCO submitted to the DOE, the Invitation to Bid ("ITB")/Terms of Reference ("TOR") for its 400 MW Requirement Effective March 2024 and 260 MW Requirement Effective March 2024 to request for issuance of a Certificate of Conformity in accordance with MERALCO's latest and duly accepted Distribution Development Plan and posted PSPP, pursuant to Section 4.3 of DOE Department Circular No. DC2023-06-0021, Series of 2023 and Section 5, Appendix B of the ERC CSP Guidelines.

8.2. On 29 December 2023, the DOE issued in favor of MERALCO a Certificate of Conformity with no. 2023-12-004 (the "DOE COC") covering MERALCO's 400 MW and 260 MW baseload and peaking requirements, 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 400 MW CSP. On the same day, pursuant to the 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 400 MW CSP in relation to the DOE COC.

8.3. On 03 January 2024, the BAC-PSA caused the publication of the ITB in The Philippine Star, a newspaper of general circulation in the Philippines. The ITB contained the TOR, a summary of the process and timelines of the CSP, and invitation to power generation companies to pay the Participation Fee and submit an Expression of Interest and set of documents on or before the deadline set out in said ITB. The ITB and the TOR were likewise posted on MERALCO's website and on the DOE E-based CSP Portal.

8.4. On 04 January 2024, MERALCO posted on its website, an "Invitation to Participate as CSP Observers," which informed the public that the entities or groups identified in Section 9 of the ERC

CSP Guidelines are invited to signify to the BAC-PSA their interest to participate as observers to the CSP. On 15 January 2024, two (2) CSP Observers submitted their intent to (and were admitted by) the BAC-PSA as CSB Observers.

8.5. On 22 January 2024, a Pre-Bid Conference was held to allow interested bidders an opportunity to clarify any provisions, requirements, and/or terms and conditions of the bidding documents and/or any other matter that the interested bidders may raise. The Pre-Bid Conference was held at least thirty (30) calendar days before the 400 MW CSP's bid submission deadline; were attended by CSP Observers; and were broadcast live in MERALCO's YouTube website.

8.6. On 27 February 2024, the bidders submitted their respective bid documents in compliance with all the bidding documents required for the 400 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 broadcast live in MERALCO's YouTube website.

8.7. Following the BAC-PSA's evaluation of each of the bidders' bid submissions, Applicant LPI emerged as the winning bidder with the lowest calculated responsive bid (the "Best Bid"), with 400 MW offered capacity completing the required Contracted Capacity of said CSP.

8.8. On 28 February 2024, the BAC-PSA conducted the post-qualification of the document submissions of LPI and found the submissions to be compliant with and responsive to all the requirements and conditions specified in the bidding documents, as amended, or clarified by pertinent bid bulletins, for the 400 MW CSP. The post-qualification was attended by CSP Observers and was broadcast live in MERALCO's YouTube website.

8.9. On 29 February 2024, the BAC-PSA submitted its recommendation and report to MERALCO's Board of Directors recommending LPI, to be declared as the Winning Power Supplier and be awarded a power supply agreement for its offer of PhP6.2708/kWh (total Headline Rate, VAT inclusive) for 400 MW.

8.10. On 05 March 2024, MERALCO's Executive Committee, duly authorized by MERALCO's Board of Directors under Section 8 of its By-Laws, approved the BAC-PSA's recommendation and on the following day, 06 March 2024, a Notice of Award was issued by the BAC-PSA in favor of LPI.

8.11. On 20 March 2024, the Power Supply Agreement between MERALCO and LPI was dated, signed, and executed ("MERALCO-LPI PSA"). On the same day, upon request of LPI and with the consent of MERALCO, the bid security that LPI issued and submitted during the 400 MW CSP was used as performance bond for the MERALCO-LPI PSA.

Thereafter, on 22 March 2024, a Notice to Proceed was issued by MERALCO in favor of LPI.

A copy of the BAC-PSA Summary-Report and the DOE COC regarding the conduct of the 400 MW CSP are attached hereto as ANNEXES "C" and "C-1."

9. The said Joint Application together with its Annexes was pre-filed with the Honorable Commission on 3 April 2024, this Joint Application is timely filed within the reglementary period provided under the ERC CSP Guidelines.

III. SALIENT FEATURES OF THE MERALCO-LPI PSA

10. The MERALCO-LPI PSA, a copy of which is attached as ANNEX "D" and made an integral part hereof, 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.

xxx

Contract Capacity or CC shall be set at 400 MW (net) sourced from the Plant, as may be adjusted from time to time in accordance with Article 8 and/or Section 19.1.

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. For clarity, costs resulting from the difference between the actual fuel commodity cost and the forecasted fuel commodity cost shall not be considered as arising from Material Adverse Government Action.

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 shall commence on the Operations Effective Date, and shall expire on February 25, 2025, unless terminated earlier in accordance with the terms of this Agreement and upon approval by the ERC, or extended by application of Section 15.3.3 (the "Term").

xxx

3.2. Operations Effective Date

The obligations of Power Supplier with respect to the Contract Capacity and Associated Energy shall commence on the later between February 26, 2024 and the ERC Approval (the "Operations Effective Date"), until February 25, 2025; provided that, the conditions set out in Section 3.2.1 have been satisfied

xxx

5.1. Supply of Power

(b) deliver and sell to Meralco, and Meralco shall purchase from Power Supplier, at the Price determined in accordance with Appendix C, the Associated Energy (and Replacement Power), to the extent of Meralco's relevant day-ahead nominations.

xxx

Article 8. Outages

8.1. 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, except as provided in Section 8.2.3 and subject to Article 16, make Available the Contract Capacity and deliver the Associated Energy to Meralco, which shall be paid at the lower between the actual cost of Replacement Power and the Price, as specified in Appendix C. For clarity, in case of this Section 8.1, Power Supplier may procure such Contract Capacity and Associated Energy from any other source.

8.2. The preceding Section notwithstanding, Power Supplier shall furnish Meralco its proposed Scheduled Outage, inclusive of the duration thereof and schedule of completion and start-up. From time to time, Power Supplier shall inform Meralco of any changes requested by Power Supplier from the System Operator in the schedule of its Scheduled Outage including possible delays in the shut-down and completion of schedules or early completion of Scheduled Outage.

8.2.1. If (sic) the event of failure by Power Supplier to provide the Contract Capacity and/or Associated Energy, Meralco shall be allowed to source Replacement Power from the WESM at the expense of Power Supplier. If the WESM price for the Replacement Power is higher than the Price then Power Supplier shall reimburse Meralco the difference between (i) the WESM price and (ii) the Price, plus all relevant transaction cost and taxes. If the WESM price for the Replacement Power is lower than the Price, then Meralco shall not be liable to Power Supplier for the difference between the WESM price and the Price.

8.2.2. If Power Supplier cannot provide supply of power from the Plant or portfolio of Plants, WESM, or any other source, Power Supplier shall pay a fine equivalent to Nine Hundred Eight Philippine Peso (PhP 908) multiplied by each affected MWh nomination by Meralco, which shall be used to reduce the generation charge to the consumers. For avoidance of doubt, in case Power Supplier fails or refuses to supply Replacement Power despite availability thereof, then Section 16.1 shall apply.

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

Article 9. Adjustments in Contract Capacity and Associated Energy

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

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

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

xxx"

IV. GENERATION RATE IMPACT

11. Based on the foregoing, and given a certain set of assumptions, the effective rate under the MERALCO-LPI PSA is PhP5.4650 per kWh (at plant gate, VAT exclusive), as shown in the RATE IMPACT ANALYSIS below:

(This space is intentionally left blank.)

Limay Power Inc. (LPI) PSA - Rate Impact at 100% pdf

Table with 5 columns: BILLING COMPONENT, UNIT, BASE RATE, BILLING DETERMINANT, AMOUNT (PHP). Rows include Capacity Payment (MCP), Fixed O&M Payment (MCOM), Fuel Cost Payment (MFP), Variable O&M Payment (MCOM), 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, Increase / (Decrease) in Generation Cost.

NOTES:

- 1) Base Rates as set forth in Schedule 1 of Appendix C of the PSA.
2) Energy Payments based on 100% plant capacity factor.
3) Line Rental rate for LPI is based on the maximum allowable value for the Contract in the PSA.
4) Cost-if equivalent volume of LPI is based on the WESM based on forecasted average hourly prices from March 2024 to February 2025.
5) Forecasted Meralco Captive Energy for March 2024 to February 2025 based on 2023 Power Supply Procurement Plan as submitted to DOE.

12. MERALCO notes that the delivered rate of PhP5.6150 per kWh (line rental inclusive and VAT exclusive) is lower by about PhP2.3151 per kWh than the effective cost of PhP7.9301 per kWh, if the equivalent capacity under the MERALCO-LPI PSA is to be sourced from the Wholesale Electricity Spot Market ("WESM"). In fact, by sourcing the capacity through the MERALCO-LPI PSA, MERALCO's average blended generation rate will be reduced by about PhP0.2220 per kWh (as seen in the RATE IMPACT ANALYSIS above) resulting in savings to consumers of about PhP8.1 Billion.

13. In support of this Joint Application, the Judicial Affidavit of ENGR. WESLEY M. NAVARRO, Staff of MERALCO's Energy Sourcing - Energy Resource Planning, is attached as ANNEX "E" and made an integral part hereof.