

V. COMPLIANCE WITH DOCUMENTARY REQUIREMENTS

14. 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:

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Description of Document	Annex
A. Applicants' Authority	
MERALCO's Secretary's Certificate	"A"
LPI's Secretary Certificates	"B" and "B-1"
B. MERALCO's Documents	
BAC-PSA Summary-Report regarding the conduct of the CSP	"C"
DOE Certificate of Conformity No. 2023-12-004 dated 29 December 2023	"C-1"
MERALCO-LPI PSA	"D"
Executive Summary	"D-1"
Judicial Affidavit of MERALCO's witness, Engr. Wesley M. Navarro, staff of MERALCO's Energy Sourcing - Energy Resource Planning	"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 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
C. LPI's Documents	
LPI's Certificate of Incorporation, Articles of Incorporation and By-laws	"L" and series
LPI's General Information Sheet	"M"
LPI's Secretary's Certificate Re: Ultimate Parent Company	"N"
Write-up/Explanation on the Non-applicability of Shareholders Agreement	"O"
Write-up/Explanation on the Non-applicability of Certificate of Registration with the Board of Investments ("BOI")	"P" and "P-1"
Certification on Ongoing Evaluation of the Provisional Authority to Operate Application	"Q"
LPI's Certificate of Endorsement from the DOE	"R"
LPI's Environmental Compliance Certificate	"S"
Write-up/Explanation on the Non-applicability of the Requirements regarding Renewable Energy Plant	"T"
Write-up/Explanation on the Non-applicability of Water Permit from the National Water Resources Board ("NWRB")	"U"
Transmission Service Agreement ("TSA") between the National Grid Corporation of the Philippines ("NGCP") and LPI	"V"
Write-up on the Non-applicability of the following Copy of Related Agreements:	"W" and Series
a. Transmission Wheeling Contract;	
b. IPPA Agreement;	
c. Wholesale Aggregator Agreement;	
d. Project Feasibility	
Single Line Diagram	"X" and "X-1"
Write-up on the Non-applicability of EPC Contract	"Y"
O&M Contract (Confidential)	"Z"
LPI's Financial Model, Rate Derivation and Other Financial Documents (Confidential)	"AA" and Series
Sample Bill (Confidential)	"BB"
LPI Outages	"CC"
Notarized Certification on the Procurement Process of Fuel	"DD"
Description of the Power Plant	"EE"
LPI's Certification on the Net Plant Heat Rate	"FF"
LPI's latest Audited Financial Statements ("AFS"), Balance Sheet, Income Statement, and Statement of Cash Flows	"GG"
Write-up/Explanation on the capacity of LPI to supply the minimum energy requirements of the PSA	"HH"
Write-up/Explanation on the Non-applicability of the Distribution Wheeling Service	"II"
Certification from Independent Electricity Market Operator of the Philippines ("IEMOP") on the WESM Registration of LPI	"JJ"
Sample Bill	"KK"

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

15. It bears emphasis that the MERALCO-LPI PSA has a competitively procured contract price for interim baseload capacity supply after undergoing CSP. In fact, such a contract price is even lower than the recent offers received by MERALCO for an interim baseload supply. Other features of the MERALCO-LPI PSA that shall clearly benefit customers in terms of reliability of supply include no outage allowance, and a guaranteed 100% availability of supply, which is crucial in the summer months of 2024.
16. The MERALCO-LPI PSA capacity is crucial for MERALCO's supply requirement because of the anticipated thinning electricity operating margins in 2024, especially with the 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.

17. In fact, the Independent Electricity Market Operator of the Philippines (IEMOP) recently released publicly that electricity prices are projected to increase as demand across the archipelago peaks during the summer months through May 2024. The prices in the WESM, as of 3 April 2024, have already averaged PhP5.00/kWh, even prior to May, which is historically the month when demand for electricity starts to peak (<https://newsinfo.inquirer.net/1924440/higher-electricity-prices-forecast-until-may>).

18. The MERALCO-LPI PSA can help shield MERALCO's customers from the looming supply deficiency because the supply availability under the MERALCO-LPI PSA is guaranteed 100% and no outage allowance is provided therein.

19. Rule 14 of the ERC Revised Rules of Practice and Procedure ("ERC's RRRP") expressly provides for this Honorable Commission's authority to issue a provisional authority or grant interim relief to immediately implement the MERALCO-LPI 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-LPI PSA would redound to the best interest of electric power consumers since aside from the very competitive rate, the supply availability under the MERALCO-LPI PSA is guaranteed 100% and no outage allowance is provided therein.

VII. ALLEGATIONS IN SUPPORT OF THE MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION

20. Under Rule 4 of ERC's RRRP, 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.

21. With respect to the following documents marked as ANNEXES "Z" and "AA" and Series LPI 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 LPI. The data and information contained therein are part of the overall formula and process in arriving at the competitive rates of LPI. These formula and process are specifically developed for the use of LPI and are treated as trade secrets. If the information contained in these documents are unduly disclosed, it will seriously prejudice the competitiveness of LPI. 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.*, 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:

"In the case of PNOG 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."

24. LPI hereby submits one (1) copy of the foregoing confidential documents in a sealed envelope, with the envelope 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 "Z" and "AA" and Series to the public. 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.

26. Lastly and corollary to the foregoing, LPI 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's RRRP).

27. This is guided by the fact that LPI 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 LPI enclosed in the subject annexes.

PRAYER

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

- a) During the pendency of the proceedings/scheduled hearing(s) and before the final resolution/approval of this case, that an Order be issued for the GRANT of:
- A Provisional Authority or Interim Relief allowing the Joint Applicants to immediately implement the EPSA subject of this case in its entirety;
 - A Directive affording Annexes "Z" and "AA" and Series confidential treatment in the handling and evaluation thereof from the time these annexes are received by the Honorable Commission up to the termination of the instant case by continuously protecting the said information from public disclosure by maintaining the same as separate and apart from the records of the case, and ensuring that these are not divulged to unauthorized persons other than the concerned staff and officers of the Honorable Commission; and,

- An Issuance concerning the procedures for handling the confidential information upon the close of the proceedings and its return/delivery to LPI.

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

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

The Commission hereby sets the instant *Joint Application* for hearing 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 2020³ and Resolution No. 01, Series of 2021⁴ (ERC Revised Rules of Practice and Procedure):

Date	Platform	Activity
06 June 2024 (Thursday) at two o'clock in the afternoon (2:00 P.M)	Microsoft Teams Application	Determination of compliance with jurisdictional requirements and expository presentation
13 June 2024 (Thursday) at two o'clock in the afternoon (2:00 P.M)		Pre-Trial Conference and Presentation of Evidence

Accordingly, MERALCO and LPI are hereby directed to host the virtual hearings at MERALCO's principal office located at Lopez Building, Ortigas Avenue, Brgy. Ugong, Pasig City, as the designated venue for the conduct thereof, and ensure that the same is open to the public. Moreover, MERALCO and LPI shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

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

Moreover, all persons who have an interest in the subject matter of the instant case may become a party by filing with the Commission via e-mail at docket@erc.ph, and copy furnishing the Legal Service through legal@erc.ph, a verified Petition to Intervene at least five (5) calendar days prior to the date of the initial virtual hearing. The verified Petition to Intervene must follow the requirements under Rule 9 of the ERC Revised Rules of Practice and Procedure, indicate therein the docket number and title of the case, and state the following:

- The petitioner's name, mailing address, and e-mail address;
- The nature of petitioner's interest in the subject matter of the proceeding and the way and manner in which such interest is affected by the issues involved in the proceeding; and
- A statement of the relief desired.

Likewise, all other persons who may want their views known to the Commission with respect to the subject matter of the case may file through e-mail at docket@erc.ph, and copy furnish the Legal Service through legal@erc.ph, their Opposition or Comment thereon at least five (5) calendar days prior to the initial virtual hearing. Rule 9 of the ERC Revised Rules of Practice and Procedure shall govern. No particular form of Opposition or Comment is required, but the document, letter, or writing should contain the following:

- The name, mailing address, and e-mail address of such person;
- A concise statement of the Opposition or Comment; and
- The grounds relied upon.

All interested parties filing their Petition to Intervene, Opposition or Comment are required to submit the hard copies thereof through personal service, registered mail or ordinary mail/private courier, 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.

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

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Finally, all interested persons may be allowed to join the scheduled initial virtual hearings by providing the Commission, thru legal.virtualhearings@erc.ph, their respective e-mail addresses and indicating therein the case number of the instant *Joint Application*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearings.

WITNESS, the Honorable Commissioners ALEXIS M. LUMBATAN, CATHERINE P. MACEDA, FLORESINDA G. BALDO-DIGAL, and MARKO ROMEO L. FUENTES, Energy Regulatory Commission, this 29th day of April 2024 in Pasig City.

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MONALISA C. DIMALANTA
Chairperson and CEO

LS: YMA/LSP/KTB



¹ G. R. No. 172835, 13 December 2007.
² *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 PNOG Renewables Corporation (PNOG RC) with Prayer for Provisional Authority*, ERC Case No. 2015-111 RC, Decision dated 30 May 2017, p. 26.
³ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.
⁴ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.