

Republic of the Philippines ENERGY REGULATORY COMMISSION Pasig City

IN THE MATTER OF THE JOINT APPLICATION FOR APPROVAL OF THE POWER SUPPLY AGREEMENT BETWEEN OLONGAPO ELECTRICITY DISTRIBUTION COMPANY INC. (OEDC) AND MASINLOC POWER CO. LTD. (MPCL), WITH MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION AND PRAYER FOR PROVISIONAL AUTHORITY AND/OR INTERIM RELIEF (Re: Baseoad)

ERC CASE NO. 2024-___ RC

OLONGAPO ELECTRICITY DISTRIBUTION COMPANY INC. (OEDC) AND MASINLOC POWER CO. LTD. (MPCL), Applicants.

JOINT APPLICATION

Joint Applicants OLONGAPO ELECTRICITY DISTRIBUTION COMPANY INC. ("OEDC") AND MASINLOC POWER CO. LTD. ("MPCL"), through their respective undersigned counsel, respectfully state that:

The Joint Applicants

- 1. Applicant OEDC is a corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at 1170 Rizal Avenue East Tapanin, Olongapo City. It holds a legislative franchise to construct, install, establish, operate and maintain a distribution system for the conveyance of electric power to the end-users in the City of Olongapo and all its suburbs.
2. Applicant MPCL is a limited partnership duly organized and existing under the laws of the Republic of the Philippines, with its business address at Masinloc Coal-Fired Thermal Power Plant, Barangay Bani, Masinloc, Zambales.
3. MPCL is the owner and operator of the 1 x 344 MW (Unit 1), 1 x 344 MW (Unit 2) and 1 x 335 MW (Unit 3) coal-fired power plant, comprising the Masinloc Coal-Fired Thermal Power Plant located in Barangay Bani, Masinloc, Zambales.
4. The Joint Applicants may be served with the orders, notices and other processes of the Honorable Commission through their respective undersigned counsels at the addresses indicated herein.

Nature of the Application

- 5. The Joint Application for approval of the Power Supply Agreement - Baseoad ("PSA Baseoad") dated 16 September 2024 entered into and by between OEDC and MPCL, is being submitted to the Honorable Commission for its review and approval pursuant to Sections 25 and 45(b) of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" ("EPIRA"); Rule 5, Section 4(e) and Rule 11, Section 5 of EPIRA Implementing Rules and Regulations (IRR); Rule 20(b) of Energy Regulatory Commission's ("ERC") Revised Rules of Practice and Procedure; and other pertinent rules and regulations.
6. Pursuant to Section 4 of ERC Resolution No. 16, Series of 2023 adopted on 3 October 2023 ("2023 ERC CSP Guidelines"), all DUs are mandated to undertake a transparent, competitive and non-discriminatory procurement process before contracting for the supply of electricity to its captive market.
7. Under the Department of Energy's (DOE) Department Circular No. DC2023-06-0021 ("Prescribing the Policy for the Mandatory Conduct of the Competitive Selection Process by the Distribution Utilities for the Procurement of Power Supply for their Captive Market") adopted on 30 June 2023 ("2023 DOE CSP Policy"), all PSAs shall be procured through Competitive Selection Process (CSP), except in some instances which warrant the immediate implementation of the agreement to address the emergency without need of any prior clearance or certification from the DOE, except to the conditions to be defined by the ERC.

Statement of Facts

- 8. OEDC started its CSP activities in 2022, in anticipation of the upcoming expiry of its Power Supply Agreement with San Miguel Energy Corporation, now named as Sual Power Inc. ("SPI"), which was on 25 December 2023.
9. However, due to the first instance of failure of bidding and issuance of the new 2023 ERC CSP Guidelines while the second round of CSP activities were conducted, OEDC claimed the occurrence of force majeure that justified the exigent need to procure emergency power supply to address the impending expiration of the Power Supply Agreement with SPI on 25 December 2023.
10. Consequently, on 15 December 2023, OEDC and SPI executed an Emergency Power Supply Agreement ("EPSA") with one-year term from 26 December 2023 to 25 December 2024. This emergency power supply from SPI was intended to prevent possible exposure of its consumers to the volatile prices of the Wholesale Electricity Spot Market ("WESM"). This is supposed to redound to the benefit of OEDC's consumers in terms of ensuring a stable, secure, continuous and reliable supply of electricity at a reasonable price.
11. In view of the impending expiration of the EPSA and in compliance with the 2023 DOE CSP Policy and 2023 ERC CSP Guidelines, OEDC continued the conduct of its CSP activities.

- 12. On 26 January 2024 and on 19 March 2024, OEDC submitted and resubmitted to the DOE, respectively, the Invitation to Bid and Terms of Reference for the 26MW (8MW Baseoad and 8MW Mid-Merit) CSP to request for issuance of a Certificate of Conformity in accordance with OEDC's latest and duly accepted Distribution Development Plan and posted Power Supply Procurement Plan.
13. On 3 April 2024, DOE issued in favor of OEDC a Certificate of Conformity dated 3 April 2024 with the details: DOE-EPIMB-COC-2024-04-003 ("COC"), covering OEDC's 26MW (8MW Baseoad and 8MW Mid-Merit) CSP requirement, which OEDC received on the same day and endorsed to its Bids and Awards Committee for Power Supply Agreements ("BAC-PSA") for commencement of the CSP. On 5 April 2024, BAC-PSA Secretariat furnished the ERC a copy of the DOE-COC and formally notified the DOE, the commencement of the CSP activities. A copy of the Certificate of Conformity dated 3 April 2024 issued by DOE is attached hereto and marked as Annex "B".
14. On 11 April 2024 and 18 April 2024, the BAC-PSA caused the publication of the Invitation to Bids ("ITB") and Terms of Reference ("TOR") in The Philippine Star, a newspaper of general circulation in the Philippines. Likewise, this ITB was also published in a local newspaper, Subic Bay News, for two consecutive weeks. The ITB contained the TOR, a summary of the process and timelines of the CSP, and invitation to power generation companies to submit a Letter of Intent and required initial documents and to purchase the Bid Documents on or before the deadline set out in said ITB. The ITB and the TOR were likewise posted on OEDC's Facebook page, website and on the DOE E-based CSP Portal. Copies of the postings are attached hereto and marked as Annex "G" and series. Likewise, a copy of the Instruction to Bidders was also posted on the DOE E-based CSP Portal.

- 15. On 18 April 2024, OEDC also sent out letter-invitations to different groups or entities in accordance with the 2023 ERC CSP Guidelines including the consumer representatives, community representatives, and interested civil society organizations and consumers, where OEDC invited these groups to participate as an observer. Before the set deadline, two (2) CSP Observers submitted their intent to BAC-PSA as CSP Observers. Copies of the invitation letters dated 18 April 2024 and replies are attached hereto and marked as Annex "I" and series.
16. Aside from publication and postings, on 19 April 2024, BAC-PSA Secretariat sent letters through email to different power generation companies regarding the ITB and TOR. Copies of the letters dated 19 April 2024 are attached hereto and marked as Annex "J" and series. However, only (1) power generation company, MPCL submitted its Letter of Intent and purchased the Bid Documents on 6 May 2024. A copy of the Letter of Intent dated 6 May 2024 is attached hereto and marked as Annex "K".

- 17. On 8 May 2024, the Pre-Bid Conference was conducted through videoconferencing to clarify any provisions, requirements, and/or terms and conditions of the bidding documents and/or any other matter that the prospective bidder may raise. This was held thirty (30) days before the bid submission deadline and was also attended by two (2) CSP Observers and one prospective Bidder, MPCL. A copy of the attendance sheet is attached hereto and marked as Annex "L".
18. Considering that only one (1) prospective bidder showed interest, purchases the Bid Documents and attended the Pre-Bid Conference, BAC-PSA declared a failure of bidding through its BAC Resolution No. 1, Series of 2024 as a lone bidder is synonymous to only one bidder submitted a proposal on 9 May 2024. A copy of the BAC Resolution No. 1, Series of 2024 is attached hereto and marked as Annex "M".
19. On 10 May 2024, OEDC informed DOE and ERC through email about this failure of first round of bidding and commencement of the second round of bidding. Copies of the letters dated 10 May 2024 addressed to DOE and ERC are attached hereto and marked as Annex "N" and series.

20. By virtue of the valid COC, BAC-PSA conducted the second round of bidding by causing another round of publication of the ITB and TOR in Philippine Star on 15 May 2024 and 22 May 2024. This ITB was also published in a local newspaper for two consecutive weeks. The ITB and the TOR were again posted on OEDC's Facebook page, website and on the DOE E-based CSP Portal. Copies of the postings are attached hereto and marked as Annex "R" and series.

21. On 20 May 2024, letter-invitations to different groups or entities were sent out to invite them to participate as an observer. This time, only one (1) CSP Observer submitted its intent to BAC-PSA as CSP Observer. Copies of the invitation letters dated 20 May 2024 and replies are attached hereto and marked as Annex "S" and series.

22. On 21 May 2024, BAC-PSA Secretariat also sent letters through email to different power generation companies informing them about the ITB and TOR for the second round of bidding. Copies of the letters dated 21 May 2024 are attached hereto and marked as Annex "T" and series. Yet, only (1) power generation company, MPCL manifested its interest and intent to join the second round of the CSP. A copy of the Letter of Intent dated 23 May 2024 is attached hereto and marked as Annex "U".

23. On 18 June 2024, the second Pre-Bid Conference was conducted through videoconferencing in accordance with the 2023 ERC CSP Guidelines. Only the lone prospective bidder, MPCL attended the Pre-Bid Conference. A copy of the attendance sheet of the Zoom meeting is attached hereto and marked as Annex "V".

24. With the same circumstances of the first and second round of bidding, where only one (1) prospective bidder showed interest, on 19 June 2024, BAC-PSA declared a failure of bidding through its BAC Resolution No. 2, Series of 2024 as a lone bidder is synonymous to only one bidder submitted a Letter of Intent. It was also indicated that due to the two (2) failed biddings, the direct negotiations will commence. A copy of the BAC Resolution No. 2, Series of 2024 is attached hereto and marked as Annex "W".

25. On 19 June 2024, OEDC informed DOE and ERC through email about this failure of second round of bidding and commencement of the direct negotiations as provided for under Section 10 of the 2023 ERC CSP Guidelines. Copies of the letters dated 10 May 2024 addressed to DOE and ERC are attached hereto and marked as Annex "X" and series.

26. On 20 June 2024, OEDC sent letters to different power generation companies informing them about the failure of the second round of bidding and inquired whether they have available supply for the power requirement of OEDC.

27. On 28 June 2024, SEM-Calaca Power Corporation sent through email their Term Sheet for the Baseoad requirement, but without rates. On 1 July 2024, Therna Luzon, Inc. wrote a letter and signified that they have decided not to participate in the direct negotiation. On 1 July 2024, MPCL also sent their Offer Sheets for the baseoad and mid-merit requirements.

28. In view of the responses of these power generation companies and considering that time is of the essence, OEDC continued to negotiate the terms with MPCL. After evaluation of its offer, Applicant MPCL's offer was considered by OEDC.

29. Thereafter, the BAC-PSA submitted its recommendation and report to OEDC's Board of Directors recommending to accept the offer and revised offer of MPCL including the discussions and negotiations between the parties and to award the negotiated contract for the baseoad lot for 18MW to MPCL. A copy of the Notice of Award of Negotiated Contract for Baseoad Lot dated 7 September 2024 is attached hereto and marked as Annex "Y".

30. On 16 September 2024, the PSA Baseoad between OEDC and MPCL was executed. A copy of the Power Supply Agreement executed between OEDC and MPCL dated 16 September 2024 is attached hereto and marked as Annex "Z".

31. The salient features of the PSA Baseoad are as follows:

- 31.1 Contract Capacity
The Contract Capacity for the duration of this PSA Baseoad is 18,000 kiloWatt (kW).
31.2 Sale and Purchase of Energy/Capacity
Subject to and in accordance with the terms of this Agreement, Seller shall make available and sell to Buyer, and Buyer shall purchase from the Seller for the consideration described in Section 5 of the PSA Baseoad, the Contract Capacity and Delivered Energy from and after the Effective Date until the expiry of the Contract Term.
31.3 Contract Term
This Agreement shall take effect immediately from Effective Date, and from such date, shall remain in force and effect until December 25, 2034, unless sooner terminated in accordance with this Agreement and upon approval by the ERC.

31.4 Effective Date
The Parties' rights and obligations under this Agreement shall commence on Effective Date.

The Seller shall commence delivery of Contract Capacity to Buyer on the Effective Date. The Effective Date shall be a date, reckoned from December 26, 2024 or date of issuance by the ERC of a Provisional Authority or Interim Relief, as applicable, or Final Authority, if neither Provisional Authority nor Interim Relief was issued, whichever comes later.

31.5 ERC Approval
The Parties shall jointly file the application for the approval of the Agreement (ERC Application) with the ERC. Parties shall exert its best efforts to secure the ERC approval of the Agreement within a reasonable time. The Buyer shall, within five (5) Days from receipt of the written approval of the Agreement from the ERC, provide a copy of such approval to the Seller.

In the event that ERC issues any decision on the ERC Application which effectively modifies or amends any of the terms of the Agreement including provisions on amounts payable under the Agreement, and which requires an amendment thereof, the Parties may file a motion for reconsideration of such decision within fifteen (15) Days from receipt thereof, and before the decision attains finality.

31.6 Supply of Energy
Beginning on the Effective Date, until the termination or expiration of this Agreement, Seller shall supply and deliver the baseoad power requirements under the Contract Capacity as detailed in Schedule 2 of the PSA Baseoad to Buyer at the Delivery Point, and the Buyer shall purchase and pay Seller the Contract Capacity and Delivered Energy at the Basic Energy Rate and other applicable charges contained in Section 6 of the PSA Baseoad.

31.7 Reduction of Contract Capacity
From time to time upon and after the implementation of Retail Competition and Open Access ("RCOA"), Green Energy Option Program ("GEOPT"), Renewables Portfolio Standard ("RPS"), Net Metering programs, and other similar government programs, Buyer shall deliver to Seller written notice specifying the reduction in Contract Capacity resulting from the implementation of RCOA, GEOPT, RPS, Net Metering programs, and other similar government programs, indicating when such reduction in payments payable under this Agreement, all other terms and conditions of this Agreement shall remain in full force and effect, subject to the approval by the ERC.

The Parties shall agree on and prepare the protocol to implement the reduction in the contract capacity once Buyer would have other power suppliers other than the Seller.

31.8 Allowed Outage and Replacement Power

During the term of this Agreement, Seller shall not be obligated to deliver the Contract Capacity during the Allowed Outage for each Contract Year (Per ERC Resolution No. 10, Series of 2020):

- i. For Allowed Planned Outage, twenty-seven and 9/10 (27.9) Days for each Contract Year
ii. For Allowed Unplanned Outage, sixteen and 8/10 (16.8) Days for each Contract Year
The procurement of any Replacement Power within the Allowed Outage shall be the responsibility of the Buyer. During such outage, Buyer shall source Replacement Power from the WESM or from other suppliers, at its own expense.
In case of outages exceeding the Allowed Outage, the Seller shall provide Replacement Power to be paid by the Buyer at Contract Charges. Should the Seller fail to source Replacement Power, the Buyer shall be allowed to source Replacement Power from the WESM or from other suppliers. Seller shall shoulder the incremental cost between the cost of Replacement Power and the prevailing Basic Energy Rate.

31.9 Contract Charges
Beginning the Effective Date subject to the terms and conditions of this Agreement, the Buyer shall pay the following:

- i. Basic Energy Rate as contained in Schedule 4 of the PSA Baseoad and as adjusted on a monthly basis based on Schedule 5 of the PSA Baseoad.
ii. Line Rental charges up to a maximum of PhP 0.20/kWh ("LR Cap") as billed by the IEMOP to the Buyer shall be for the amount of the Seller's Line Rental less than PhP 0.20/kWh but less than or equal to PhP 0.40/kWh shall be for the account of the Buyer. Furthermore, Line Rental charges greater than PhP 0.40/kWh shall be divided equally between the Buyer and the Seller.
iii. Taxes. All applicable existing taxes including Value Added Tax ("VAT"), as well as all other future taxes (except Corporate Income Tax), that may be imposed by the government and which may be legally passed on by the Seller to the Buyer in connection with the Seller's performance of its obligation under this Agreement, including any increase or adjustments thereon, shall be for the account of the Buyer.
iv. All other WESM Charges as billed by the IEMOP to the Buyer including Line Rental as set out in Section 6.2.2 of the PSA Baseoad shall be for the account of the Buyer.
v. Other Charges. The Buyer shall bear all other costs and charges incurred after the Delivery Point, including but not limited to transmission line losses, any interconnection charges and site specific loss adjustments.

Utilized Allowed Outage Days shall not be carried forward to any subsequent Contract Year.

31.9 Contract Charges
Beginning the Effective Date subject to the terms and conditions of this Agreement, the Buyer shall pay the following:

- i. Basic Energy Rate as contained in Schedule 4 of the PSA Baseoad and as adjusted on a monthly basis based on Schedule 5 of the PSA Baseoad.
ii. Line Rental charges up to a maximum of PhP 0.20/kWh ("LR Cap") as billed by the IEMOP to the Buyer shall be for the account of the Seller's Line Rental less than PhP 0.20/kWh but less than or equal to PhP 0.40/kWh shall be for the account of the Buyer. Furthermore, Line Rental charges greater than PhP 0.40/kWh shall be divided equally between the Buyer and the Seller.
iii. Taxes. All applicable existing taxes including Value Added Tax ("VAT"), as well as all other future taxes (except Corporate Income Tax), that may be imposed by the government and which may be legally passed on by the Seller to the Buyer in connection with the Seller's performance of its obligation under this Agreement, including any increase or adjustments thereon, shall be for the account of the Buyer.
iv. All other WESM Charges as billed by the IEMOP to the Buyer including Line Rental as set out in Section 6.2.2 of the PSA Baseoad shall be for the account of the Buyer.
v. Other Charges. The Buyer shall bear all other costs and charges incurred after the Delivery Point, including but not limited to transmission line losses, any interconnection charges and site specific loss adjustments.

vi. Replacement Power. If any, Replacement Power supplied by the Seller during outages beyond the Allowed Outage shall be paid by the Buyer at Contract Charges.

31.10 Prompt Payment Discount

The Seller shall extend PPD equivalent to two percent (2%) of the prevailing Basic Energy Rate to the Buyer as payment incentive, provided that: 1) full payment is made within ten (10) Days from receipt of Seller's power bill invoice, and 2) Buyer is up to date with all its payment obligations to the Seller including any required posting/replenishment of Security Deposit under this Agreement.

The Buyer shall not automatically deduct the PPD from the payment of its current power bill invoice and any unilateral deduction shall be considered a breach of its obligations under this Agreement. The PPD for the current power bill invoice will be made available to the Buyer in the succeeding power bill invoice. The Buyer with an expiring Agreement who is qualified to avail the PPD under its power bill invoice, shall receive its discount upon final settlement and clearance of its Agreement with the Seller.

Rate Impact on OEDC's Overall Generation Rate

32. Based on the foregoing, the indicative rate impact on OEDC's overall generation rate of the PSA Baseoad is as follows:

Table with 5 columns: Power Supplier, Supply Mix Ratio, Energy Purchased (kWh), Amount, and Total. Rows include WESM, OEDC, and a Total row. Includes sub-tables for Generation Rate Impact Analysis (without applicant MPCL) and (with applicant MPCL).

33. OEDC notes that the annual delivered rate of PhP 7,4280 per kWh (line rental inclusive of VAT exclusion) is lower by about PhP 0.4420 per kWh than the effective cost of PhP 7.85 per kWh, if the equivalent capacity under the OEDC PSA is to be sourced from the WESM.

Compliance with Documentary Requirements

34. Likewise, in support of the instant Joint Application, copies of the following documents and/or information are attached hereto as annexes and made integral parts hereof:

Table with 2 columns: ANNEX and DOCUMENTS. Lists various documents such as OEDC's Articles of Incorporation, Amended Articles, 2023 General Information Sheet, etc.

35. Furthermore, the Joint Application is consistent and in accordance with the first (1st) and fifth (5th) "Whereas clauses" of the DOE Circular No. 2003-12-11 which are quoted hereunder:

"WHEREAS, Section 2 of Republic Act No. 9136, also known as the Electric Power Industry Reform Act of 2001 or EPIRA, declared as a policy of the State, among others, [to ensure the quality, reliability, security and affordability of the supply of electric power;" first "whereas clause", Department of Energy Circular No. 2003-12-11, Underscoring supplied.)

"WHEREAS, pursuant to Section 23 of EPIRA, all distribution utilities, as defined in the law, SHALL HAVE THE OBLIGATION TO SUPPLY ELECTRICITY IN THE LEAST COST MANNER TO ITS CAPTIVE MARKET subject to the collection of retail rate duly approved by the Energy Regulatory Commission;" fifth "whereas clause", ibid, Underscoring supplied)

36. The Joint Application is, likewise, consistent with Section 1 of the same Department Circular which declares as State policy, that:

"All distribution utilities must henceforth take cognizance and assume full responsibility to forecast, assure and contract for the supply of electric power in the respective franchise areas to meet their obligations as a distribution utility." (Underscoring supplied)

37. By way of emphasis, Resolution No. 21, Series of 2005 of the Honorable Commission dated October 2005 had directed all Distribution Utilities (DUs) "to enter into future bilateral power supply contract with power producers to be subjected to a review by the Commission." (Underscoring supplied)

38. The PSA Baseoad was made to ensure the continuous supply of power to OEDC and due to the former's competitive pricing structure and other favorable terms of its contract, which will redound to the benefit of the latter and its end-consumers in terms of reliable and affordable power supply.

Allegations in Support of the Motion for Issuance of a Provisional Authority

39. Section 1 Rule 14 of the Honorable Commission's Rules of Practice and Procedure provides that the Commission may grant either a provisional authority or an interim relief upon motion included in the application or petition and indicated in the caption of the pleading clearly indicating that such relief is requested.

40. To reiterate, OEDC's existing EPSA with SPI with its sole contracted power supplier will be expiring by 25 December 2024. Upon the expiration of its EPSA, OEDC will no longer have any contracted power supply to provide its customers, and will be constrained to source its entire power requirements from the WESM and its customers will be exposed to the volatile prices of WESM. Thus, it is imperative that the PSA subject of this instant Joint Application be allowed to be lawfully implemented on 26 December 2024.

41. In view of the impending expiration of the EPSA and to prevent possible exposure of its consumers to the volatile prices of the WESM, the Joint Applicants respectfully move for the issuance of a Provisional Authority or an Interim Relief from the Honorable Commission.

42. This is intended to redound to the benefit of OEDC's consumers in terms of ensuring a stable, secure, continuous and reliable supply of electricity at a reasonable price.

43. Attached and made an integral part hereof as Annex "RR" is the Sworn Affidavit in support of the Motion for Provisional Authority and/or Interim Relief.

Allegations in Support of the Motion for Confidential Treatment of Information

44. Rule 4 of the Honorable Commission's Revised Rules of Practice and Procedure provides that a party may request that certain information not be disclosed and 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.

45. MPCL prays for the confidential treatment of the information contained in the following Annexes "KK" and series, and not disclosed except to the officers and staff of the Honorable Commission Annexes "KK" and series contain the details of MPCL's power rate calculations, financial model, as well as the manner by which these were derived.

46. These information are proprietary in nature and should be protected as trade secrets as contemplated by law and jurisprudence. In the case of Air Philippines Corporation vs. Pennswell, Inc., 13 the Supreme Court defined a trade secret, as follows:

"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 an advantage over competitors who do not possess the information. Generally, a trade secret is a process or device intended for continuous use in the operation of the business, for example, a machine or formula, but it may be a price list or catalogue or specialized customer list. It is indubitable that trade secrets constitute proprietary rights. The inventor, discoverer, or possessor of a trade secret or similar innovation has rights therein which may be treated as property, and accordingly an injunction will be granted to prevent the disclosure of the trade secret by one who obtained the information 'in confidence' or through a 'confidential relationship'." American jurisprudence has utilized the following factors to determine if an information is a trade secret, to wit:

- (1) the extent to which the information is known outside of the employer's business;
(2) the extent to which the information is known by employees and others involved in the business;

13 G.R. No. 172835, December 13, 2007

(3) the extent of measures taken by the employer to guard the secrecy of the information;

(4) the value of the information to the employer and to competitors;

(5) the amount of effort or money expended by the company in developing the information; and

(6) the extent to which the information could be easily or readily obtained through an independent source." (citations omitted, emphasis supplied)

47. The interest of the consuming public 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 "KK" 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.

48. More importantly, competitors of MPCL, should they obtain the information in Annexes "KK" and series will gain undue advantage thereon without the opportunity to disclose the same in their operations. The negotiating power of MPCL with parties it plans to contract with or who it is currently doing business with, will clearly be thwarted if it is compelled to disclose such information;

49. MPCL 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."

50. Lastly and corollary to the foregoing, MPCL would like to implore the discerning wisdom of the Honorable Commission to include in its issuance for this purpose the "procedures for the handling or returning the confidential information, as appropriate, upon the close of the proceedings or at the end of the period for which the information is to be treated as confidential";

51. This is guided by the fact that MPCL 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 MPCL enclosed in the subject annexes.

PRAYER

WHEREFORE, the foregoing premises considered, the Joint Applicants Olongapo Electricity Distribution Company Inc. ("OEDC") and Masinloc Power Co. Ltd. ("MPCL") most respectfully pray that after due notice and hearing, the Honorable Commission:

- 1. Before and during the pendency of the proceedings/scheduled hearing(s) and the final resolution/approval of this case, that an Order be issued for the GRANT of:
a. a Provisional Authority or Interim Relief authorizing the Joint Applicants to immediately implement the PSA Baseoad subject of this case in its entirety;
b. an Order affording Annexes "KK" 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; and,
c. an Issuance concerning the procedures for handling the confidential information upon the close of the proceedings and its return/delivery to MPCL.

2. After due notice and hearing, ISSUE a Decision approving the instant Joint Application in toto which will thereby allow/authorize OEDC to charge and collect the fees from its customers reckoned from the commencement of the supply to the latter by MPCL.

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

Olongapo City for Pasig City, 7 October 2024.

(Counsels signature pages to follow)

OLONGAPO ELECTRICITY DISTRIBUTION COMPANY INC.

By: [Signature]

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PTR No. [Redacted] / 8 January 2024 / Olongapo City

IBP No. [Redacted] / 19 April 2010 / 2010-04-01

Roll of Attorneys No. [Redacted]

MCLE Compliance No. VII-0002101 / 4 April 2023

(MPCL signature page to follow)

MASINLOC POWER CO. LTD.

By: [Signature]

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PTR No. [Redacted] / 04 January 2024 / Pasig City

IBP No. [Redacted] / Lifetime / PPLM Chapter

MCLE Compliance No. VII-0002979 / 02 June 2022

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PTR No. [Redacted] / 08 January 2024 / Pasig City

IBP No. [Redacted] / Lifetime / PPLM Chapter

MCLE Compliance No. VII-0002120 / 17 March 2023

Roll No. [Redacted]

Republic of the Philippines)) SS.

VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING

I, JOSE MARIA A. ABAYA, of legal age, with office address at 1170 Rizal Avenue East Tapanin, Olongapo City, after having been duly sworn in accordance with law, hereby depose and state that:

- 1. I am the President of Olongapo Electricity Distribution Company, Inc. and its authorized representative in the above-captioned Joint Application;
2. I caused the preparation and filing of the foregoing Joint Application;
3. I have read the contents thereof and the allegations stated therein are true and correct based on my personal knowledge and/or on the basis of copies of authentic documents and records of the company;
4. This Joint Application is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
5. The factual allegations herein have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery;
6. I have not commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals, or any other tribunal or quasi-judicial agency, and to the best of my knowledge and belief, no such action or proceeding is pending in the Supreme Court, the Court of Appeals, or any other tribunal or quasi-judicial agency;
7. If I should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or any other tribunal or quasi-judicial agency, I undertake to report that fact within five (5) calendar days therefrom to this Honorable Commission.

JOSE MARIA A. ABAYA