

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig CityIN THE MATTER OF THE
JOINT APPLICATION FOR
THE APPROVAL OF THE
EMERGENCY POWER
SUPPLY AGREEMENT
BETWEEN MANILA
ELECTRIC COMPANY AND
SUAL POWER INC., WITH
MOTION FOR
CONFIDENTIAL
TREATMENT OF
INFORMATION

ERC CASE NO. 2025-048 RC

MANILA ELECTRIC
COMPANY and SUAL POWER
INC.,
Applicants.Promulgated:
March 20, 2025

NOTICE OF VIRTUAL HEARING

Notice is hereby given that on 24 February 2025, the Manila Electric Company (MERALCO) and Sual Power Inc. (SPI), filed their Joint Application dated 04 February 2025, seeking the Commission's approval of their Emergency Power Supply Agreement (EPSA), with motion for confidential treatment of information.

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

xxx

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.

3. Applicant SPI is a private corporation duly organized and existing under the laws of the Philippines, with address at 5th Floor, C5 Office Building Complex, #100 E. Rodriguez Jr. Ave., C5 Road, Brgy. Ugong, Pasig City, 1604, Metro Manila. It may be served with notices and other processes of this Honorable Commission through its counsel at the address indicated herein.

4. SPI owns and operates the 1,294.040 MW Sual Coal-Fired thermal power plant located in Barangay Pangascasan, Sual, Pangasinan on the island of Luzon.

I. STATEMENT OF FACTS

A. Cessation of Supply of MERALCO's baseload Power Supply Agreement ("PSA") with ACEN Corporation ("ACEN") dated 13 September 2019 involving 200 MW Contract Capacity ("2019 MER-ACEN Baseload PSA")

5. Following the conduct of a competitive selection process under the then-prevailing Department of Energy Department Circular No. DC2018-02-003, MERALCO and ACEN (formerly known as Phinma Energy) executed the 2019 MER-ACEN Baseload PSA, and another PSA dated 16 September 2019 for the supply of 110 MW mid-merit capacity ("Mid-merit PSA"). Both PSAs were granted interim relief by the Energy Regulatory Commission ("ERC") in separate Orders dated 26 November 2020.¹

6. On 11 October 2023, ACEN issued to MERALCO a Notice of Change in Circumstances ("CIC"), which was revised on 1 February 2024, for losses due to CIC incurred in the year 2022 for both PSAs. Consequently, on 29 February 2024, ACEN (joined by MERALCO) filed Joint Motions for Price Adjustment ("JMPA") both of even date, with the ERC for the 2019 MER-ACEN Baseload PSA and Mid-merit PSA, involving PhP 618 million and PhP 87 million, respectively.

7. On 24 May 2024, ACEN issued to MERALCO Supplemental Notices of CIC for the year 2023. Thus, on 21 June 2024, ACEN (joined by MERALCO) filed an Updated and Supplemental Joint Motions for Price Adjustment, both of even date, seeking an additional claim amounting to PhP 910 million and 132 PhP million for the Baseload PSA and Mid-merit PSA, respectively.

The updated and supplemented JMPAs are both pending resolution before the ERC.²

8. Six (6) months after the JMPAs were filed and despite a clarificatory hearing having been held by the ERC on 15 August 2024, the JMPAs remained unresolved. On 2 September 2024, MERALCO received ACEN's first notices of termination of both PSAs, effective on 1 November 2024, premised on ACEN's financial losses brought about by the CIC having breached indicated threshold levels that allow a power supplier to cut its losses and terminate the PSA. After receipt of ACEN's notice of termination, and in order to avert the termination of the subject PSAs, MERALCO immediately filed with this Honorable Commission an Urgent Motion to Resolve the JMPAs.

9. On 28 October 2024, MERALCO received ACEN's second notice of termination, reiterating their earlier intention to terminate the subject PSAs, specifically informing MERALCO that ACEN would cease declaring its bilateral contract quantities (BCQ) under the PSAs effective 0001H of 02 November 2024. In response, MERALCO urged ACEN through a letter dated 29 October 2024 not to proceed with the termination of the subject PSAs and to instead await the resolution of the JMPAs pending before the ERC for the benefit of the consuming public. Apart from the letter to ACEN, MERALCO also filed an Urgent 3rd Motion to Resolve dated 29 October 2024 with this Honorable Commission.

10. However, on 2 November 2024, despite MERALCO's nominations to ACEN, the latter ceased declaring BCQs to MERALCO under the subject PSAs.

11. As such, pending resolution of the JMPAs and guidance from the ERC, MERALCO's customers are now exposed to and continue to be exposed to the volatile prices of the WESM, involving 200 MW baseload capacity³ until MERALCO secures a replacement PSA.

B. MERALCO's EPSA with SPI for 200 MW ("MERALCO-SPI EPSA") pursuant to the DOE CSP Policy and ERC CSP Guidelines

12. Due to the deficient baseload supply as a result of the cessation of supply of the 2019 MERALCO-ACEN Baseload PSA, coupled with the summer months (and accompanying peak demand of MERALCO) approaching by February 2025, MERALCO undertook necessary precautions to secure an EPSA to address the foregoing deficiency in order to assure its customers reliable and continuous supply.

13. Thus, in the best interest of its customers, MERALCO was constrained to find a contingency and consider an alternative source of supply through a negotiated procurement of an EPSA for MERALCO's 200 MW baseload supply requirement. To this end, after sending out various requests for proposals, MERALCO formally received the most reasonable and least cost offer from SPI to address MERALCO's 200 MW emergency baseload supply requirement.

14. The DOE CSP Policy describes a negotiated procurement of emergency power supply due to the occurrence of a Force Majeure/Fortuitous Event as:

"Section 2.3.5

Negotiated procurement of Emergency Power supply wherein the Emergency Power Supply Agreement (EPSA) shall be filed with the ERC within thirty (30) calendar days after the occurrence of the Force Majeure/Fortuitous Events, without need of any prior clearance or certification from the DOE, and shall have a maximum and non-extendible period of one (1) year from its execution. The EPSA shall be immediately implemented to address the emergency, subject to conditions to be defined by the ERC; Provided, that the procurement of emergency power supply shall not be entitled to any form of subsidy; xxx"

15. A Force Majeure or Fortuitous Event ("FM/FE"), on the other hand, is defined in Section 3.8 of the DOE CSP Policy as, "[...] any extraordinary event not foreseeable or avoidable, or to an event that could not be foreseen, or which, though foreseen, is inevitable and independent of human will or the DU's participation, whether by active intervention, neglect or failure to act. xxx"

16. MERALCO respectfully submits that the cessation of supply of the 2019 MERALCO-ACEN Baseload PSA is an extraordinary event which, though foreseen, is inevitable and independent of MERALCO's participation. Such FM/FE constrained MERALCO to procure supply through the MERALCO-SPI EPSA.

17. Further, the parameters of a negotiated procurement of emergency supply are enumerated under Appendix A of the ERC CSP Guidelines, which states that, "The Emergency EPSA (EPSA) shall be immediately implementable without need of a [PA] or [IR], provided that the following conditions are met:"

17.1 First, that the "The EPSA rate shall not be higher than the latest ERC-approved generation tariff specific for the plant, if available. Otherwise, it shall be capped at the latest ERC-approved generation tariff for the same technology. Such rate shall apply until the ERC issues its approval of the EPSA; j."

To show compliance with this requirement, and since MERALCO is not privy to SPI's contracts with its other off-takers, SPI submitted an ERC Order dated 21 May 2019 and ERC Order dated 22 June 2024,⁴ which showed that SPI's offered rate to MERALCO of PhP 5,0500/kWh (Plant Gate and VAT exclusive) for the Sual power plant is significantly lower than the latest ERC-approved rate for the Sual power plant in SMEC's⁵ Power Supply Agreement with BOHECO I of PhP 5,6645/kWh.

17.2 Second, that "The cooperation period of such EPSA shall not exceed one (1) year from its execution; and in relation thereto, "EPSAs may not be pre-terminated, unless a PSA has been approved by the ERC;".

As will be shown in the salient terms of the MERALCO-SPI EPSA below, the term thereof does not exceed one (1) year, starting from 28 January 2025 until 26 January 2026.

17.3 Third, that "The DU shall, within five (5) calendar days from the occurrence of the force majeure or fortuitous event, notify in writing the ERC, Department of Energy (DOE), xxx, of such emergency power supply procurement; [and]"

On 07 November 2025, MERALCO sent its letter-notification to the DOE and ERC regarding the MERALCO-SPI EPSA, copies of which are attached hereto as ANNEXES "C" and "C-1", respectively.

17.4 Lastly, that the emergency power supply agreement shall be "[F]iled with the ERC for approval within thirty (30) calendar days after the occurrence of the force majeure or fortuitous event."

Relative to this, on 07 December 2024, MERALCO sent a letter to the ERC (with furnished copy to the DOE) requesting for an additional period to file the MERALCO-SPI EPSA, as MERALCO was still in the process of securing the appropriate PSA with terms and conditions beneficial to its customers, a copy of which is attached hereto as ANNEX "C-2".

Thereafter, on 3 February 2025, MERALCO sent another letter to the ERC (with furnished copy to the DOE) to request for an additional period of thirty (30) calendar days from execution of the MERALCO-SPI EPSA on 27 January 2025 or until 26 February 2025 to file the instant Joint Application, a copy of which is attached hereto as ANNEX "C-3".

The instant Joint Application together with its Annexes was pre-filed with the Honorable Commission starting on 3 February 2025.

18. Pursuant to said provision and parameters, the parties implemented the MERALCO-SPI EPSA beginning 12:01 A.M. of 28 January 2025, in the interest of providing supply in the least cost manner to MERALCO's customers, as it is beneficial to its customers by averting their exposure to volatile prices at the WESM.

19. In sum, MERALCO respectfully submits that the MERALCO-SPI EPSA has sufficiently complied with the DOE CSP Policy and ERC CSP Guidelines for the negotiated procurement of emergency supply. Further, MERALCO has sufficiently established that the negotiated procurement of emergency supply through the MERALCO-SPI EPSA was urgently needed to ensure that deficient baseload supply is addressed and that MERALCO's customers are assured of reliable and continuous supply.

II. SALIENT FEATURES OF THE MERALCO-SPI EPSA

20. The MERALCO-SPI EPSA, a copy of which is attached hereto as ANNEX "D", contains the following salient provisions:

"Article 1 Definitions and Interpretation

xxx

Available or Availability means one hundred percent (100%) of the Contract Capacity is dispatchable during the Available Hours.

xxx

Contract Capacity or CC shall be 200 MW, as may be adjusted from time to time in accordance with Article 8 and/or Section 19.1.

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 (the "Term") shall commence on the Execution Date, and shall be effective until January 25, 2026, unless terminated earlier in accordance with the terms of this Agreement and upon approval by the ERC (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 January 28, 2025 (the "Operations Effective Date"); provided that, the conditions set out in Section 3.1.1 have been satisfied.

xxx

Article 4. Sale and Purchase of Contract Capacity and Associated Energy

4.1. Supply of Power

Subject to the terms and conditions of this Agreement, from the Operations Effective Date until the expiration of the Term or earlier termination of this Agreement:

(a) Power Supplier shall make Available to Meralco the Contract Capacity to be sourced from the Plant, WESM, or any other source, and deliver and sell to Meralco the Associated Energy, at the Contract Price determined in accordance with Appendix C; and

⁴ For application entitled "In the Matter of the Joint Application for Approval of the Power Supply Agreement (PSA) entered into by and between Bohol I Electric Cooperative, Inc. (BOHECO I) and Meralco Corporation (MERALCO) dated 2024-02-07 RC (for the 2019 MER-ACEN Baseload PSA) and ERC Case No. 2019-078 RC (for the 2019 MER-ACEN Mid-merit PSA).

⁵ Id.

⁶ The 2019 MER-ACEN Mid-merit PSA (110MW) expired on 25 December 2024.

(b) Meralco shall purchase from Power Supplier, to the extent of Meralco's relevant day-ahead nominations, the MEOt, at the Contract Price determined in accordance with Appendix C.

For clarity, the Power Supplier shall declare to the WESM the corresponding Associated Energy for Meralco at the Plant's Delivery Point/s or the relevant delivery point/s in Appendix A, as applicable.

xxx

Article 7 Outages

7.1. 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, subject to Article 15, make available the Contract Capacity and deliver the Associated Energy to Meralco.

7.2. The preceding Section notwithstanding, Power Supplier shall furnish Meralco its proposed Major Maintenance Outage and 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 Major Maintenance Outage and Scheduled Outage including possible delays in the shut-down and completion of schedule or early completion of Scheduled Outage. Failure of Power Supplier to provide its Major Maintenance Outage and Scheduled Outage shall preclude Power Supplier from invoking Article 15.

7.3. In case Power Supplier fails to make available the Contract Capacity and deliver the Associated Energy to Meralco due to unavailability of supply from its Plant, WESM, and any other source, Power Supplier shall pay a fine equivalent to Nine Hundred Eight Philippine Peso (PhP908) multiplied by each affected MWh nomination during a Day by Meralco, which shall be used to reduce the generation charge to the consumers. For the avoidance of doubt, in case Power Supplier fails or refuses to supply Contract Capacity and Associated Energy despite availability thereof, then Section 16.4.1 shall apply.

7.4. 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.

xxx

12.2 ERC Approval

12.2.1 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: (i) it accepts such ERC Approval or (ii) 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 of this Agreement, (a) the ERC Approval shall be deemed accepted by Power Supplier and (b) this Agreement shall continue to be implemented by the Parties in accordance with such ERC Approval. For clarity, ERC Approval may be promulgated subsequent to the Operations Effective Date.

12.2.2. In case of Power Supplier's non-acceptance, or ERC order of adjustment/disallowance in the Contract Price and/or refund to customers, Power Supplier shall be free to file motion for reconsideration or seek any other relief to question such ERC Approval or order; provided that in case of an ERC order of adjustment/disallowance in the Contract Price and/or refund to customers, Power Supplier may likewise opt to suspend this Agreement and Meralco shall source its supply from WESM in the meantime. For all other instances of non-acceptance, and Power Supplier decides to file a motion for reconsideration, the Parties shall, pending resolution thereof by the ERC, continue to implement this Agreement in accordance with the ERC Approval, subject to any adjustment or amendment that the ERC may direct. Any order on a motion for reconsideration or on such other relief taken by Power Supplier shall be treated as an ERC Approval for purposes of the processes under this Section 12.2. If the ERC Approval requires any amendment to or modification of any provision of this Agreement that is not acceptable to either Party, acting reasonably, then the Parties shall cooperate in good faith to resolve the required amendment, including seeking a reconsideration by the ERC. If the Parties are unable to agree on the required amendment within thirty (30) Days from receipt of the ERC Approval resolving the motion for reconsideration, or if the motion for reconsideration is not resolved by the ERC within sixty (60) days after its filing, or the amendment is disapproved by the ERC, or not acted upon by the ERC within sixty (60) days after its filing, or approved by the ERC but still contains any material term or condition that is not acceptable to either Party, acting reasonably, then either Party may terminate this Agreement. For clarity, if, following the ERC Approval, Power Supplier does not file a motion for reconsideration with the ERC and/or does not notify Meralco that it intends to terminate this Agreement, the ERC Approval shall be deemed accepted by Power Supplier and this Agreement shall continue to be implemented in accordance with the ERC Approval.

12.2.3. If the ERC Approval requires any portion of the sum that has been paid by Meralco to Power Supplier to be adjusted, Power Supplier shall make the necessary adjustments in accordance with the direction of the ERC. In the event of any disallowance in the Contract Price, the same shall be for the account of Power Supplier notwithstanding termination of this Agreement. This shall be without prejudice to the exercise of Power Supplier's rights and remedies at law, under this Agreement, or in equity.

xxx

Appendix C
Calculation of Payment

xxx

B. MONTHLY POWER BILL UPON OPERATIONS EFFECTIVE DATE

The Monthly Power Bill ("MPB"), in PhP, upon Operations Effective Date ("OED") shall consist Monthly Energy Payment (MEP), and Line Adjustment Payment (LRAP). Thus, the MPB upon OED for Contract Capacity and Associated Energy for each Billing Period shall be equal to:

$$MPB = MEP - LRAP$$

The MPB is exclusive of the applicable Value Added Tax.

1. Monthly Energy Payment (MEP)

The Monthly Energy Payment (MEP) for the relevant Billing Period is calculated as follows:

$$MEP = CP * BCQ_M$$

Where:

MEP = the Monthly Energy Payment, in PhP