

Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City


IN THE MATTER OF THE
APPLICATION FOR THE
APPROVAL OF THE
EXTENSION OF THE
POWER SUPPLY
AGREEMENT (PSA)
BETWEEN MANILA
ELECTRIC COMPANY
(MERALCO) AND
MASINLOC POWER
PARTNERS CO., LTD.
(MPPCL), WITH MOTION
FOR CONFIDENTIAL
TREATMENT OF
INFORMATION,

ERC CASE NO. 2016-180 RC

MANILA ELECTRIC
COMPANY (MERALCO)
AND MASINLOC POWER
PARTNERS CO., LTD.
(MPPCL),

Applicant.

X-----X

D O C K E T E D
Date: MAR 20 2017
By: 

NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on n 21 November 2016, Manila Electric Company (MERALCO) and Masinloc Power Partners Co., Ltd. (MPPCL) filed a *Joint Application with Motion for Confidential Treatment of Information (Joint Application)* seeking the Commission's approval of the *Supplemental Agreement* entered into by both parties on 08 April 2016 extending for a period of three (3) years the term of the Power Supply Agreement (PSA)¹ previously entered into by both parties on 21 December 2011.

¹ The said PSA was approved with modification by the Commission in a Decision dated 17 December 2012 under ERC Case No. 2012-036 RC. The dispositive portion of the Decision reads as follows:

WHEREFORE, the foregoing premises considered, the application for the approval of the Power Supply Agreement (PSA) between Manila Electric Company (MERALCO) and Masinloc Power Partners Co. Ltd. (MPPCL) is hereby APPROVED with MODIFICATION.

Applicants included in their *Joint Application* a *Motion for confidential treatment of information*. MERALCO and MPPCL likewise alleged the following in their *Joint Application*:

1. Applicant MERALCO is a private corporation existing under the laws of the Republic of the Philippines, with principal office located at Lopez Building, Meralco Center, Ortigas Avenue, 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 MPPCL is a limited partnership organized and existing under the laws of the Philippines, engaged in the generation of power, and is the owner and operator of the Masinloc Coal-Fired Thermal Power Plant.

4. On 21 December 2011, MERALCO executed a Power Supply Agreement ("PSA") with MPPCL for the purchase from the Masinloc Coal-Fired Thermal Power Plant located in Barangay Bani, Masinloc, Zambales, of the capacity indicated in the table in Appendix C of the PSA, as replicated below:

Billing Period	Maximum Hourly Contract Capacity kW
December 26, 2011 to December 25, 2012	330,000
December 26, 2012 to December 25, 2015	400,000
December 26, 2015 to end of Term	430,000

5. On 9 March 2012, MERALCO filed an Application docketed as ERC Case No. 2012-036 RC seeking this Honorable Commission's approval of the PSA.

Accordingly, the approved rates are as follows:

Particulars	Approved Rate
Annual Capacity Fee	US\$276.39/kW/Year
Annual Fixed O&M	US\$55.30/kW/Year
Annual Fixed O&M	PhP1,285.63/kW/Year
Variable O&M Fee	US\$0.0002/kWh
Variable O&M Fee	PhPo.05382/kWh
Fuel Cost	Pass-through
Guaranteed Net Plant	10,300 Btu/kWh

SO ORDERED.

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6. On 17 December 2012, this Honorable Commission rendered a Decision in ERC Case No. 2012-036 RC approving the application for approval of the PSA between MERALCO and MPPCL dated 21 December 2011 (hereinafter, the "Approved PSA"). The dispositive portion thereof reads:

"WHEREFORE, the foregoing premises considered, the application for the approval of the Power Supply Agreement (PSA) between Manila Electric Company (MERALCO) and Masinloc Power Partners Co. Ltd. (MPPCL) is hereby APPROVED with MODIFICATION.

Accordingly, the approved rates are as follows:

Particulars	Approved Rate
Annual Capacity Fee	US\$276.39/kW/Year
Annual Fixed O&M	US\$55.30/kW/Year
Annual Fixed O&M	PhP1,285.63/kW/Year
Variable O&M Fee	US\$0.0002/kWh
Variable O&M Fee	PhP0.05382/kWh
Fuel Cost	Pass-through
Guaranteed Net Plant	10,300 Btu/kWh

SO ORDERED."

7. Based on MERALCO's Distribution Development Plan, from 2015 to 2024, aggregate demand is forecasted to grow by a compound average growth rate of 3.7%. In order to ensure continuous and reliable electricity for MERALCO's customers with the expected continuous increase in demand and load growth, and mitigate exposure to the Wholesale Electricity Spot Market ("WESM"), there is a need for MERALCO to continue to source additional capacity through bilateral power supply contracts.

8. In view of this, after good faith negotiations, MERALCO and MPPCL mutually agreed to extend the term of the Approved PSA in accordance with Section 2.2 thereof, which provides thus:

- "2.2 Term of Agreement
- 2.2.1 Subject to Section 3.5, this Agreement shall become effective on the Effective Date.
- 2.2.2 The term of this Agreement (the "Term") shall commence on the Effective Date and shall expire the date falling seven (7) years after the Operations Effective Date, unless terminated earlier in accordance with the terms of this Agreement or extended by the application of Sections 16.3.2 and 16.3.3 or Section 2.2.3.
- 2.2.3 The Term may be extended for an additional period of three (3) years by mutual agreement of the Parties under the same terms and conditions as set forth in this Agreement." (Emphasis supplied)

9. Accordingly, on 8 April 2016, MERALCO and MPPCL entered into a Supplemental Agreement to extend the term of the

Approved PSA for an additional period of three (3) years under the same terms and conditions thereunder. The pertinent provision of the Supplemental Agreement reads:

- “2.1 It is agreed between the Parties that the term of the 2011 PSA shall be extended, in accordance with Section 2.2.3 of the 2011 PSA, for an additional period of three (3) years under the same terms and conditions, including the Price as set forth in the 2011 PSA as approved by the Energy Regulatory Commission.
- 2.2 Under Section 2.2.2 of the 2011 PSA, the expiration date thereof shall be on the date falling seven (7) years after the Operations Effective Date, or on 25 December 2019.
- 2.3 Hence, the Parties agree that the extended Term of the PSA shall be from 26 December 2019 until 25 December 2022.” (Emphasis retained from original)

10. In this connection, on 18 April 2016, MERALCO filed with this Honorable Commission a “Manifestation and Motion” of even date, seeking confirmation that the aforementioned Supplemental Agreement extending the term of the Approved PSA, from 26 December 2019 until 25 December 2022, is consistent with and valid under Section 2.2.3 of the Approved PSA.

A copy of the Supplemental Agreement is attached to the said “Manifestation and Motion” and, for ease of reference, is hereby reattached hereto and made an integral part hereof as ANNEX “I.”

A copy of the Approved PSA is likewise attached herewith and made an integral part hereof as ANNEX “I-1”.

11. On 25 October 2016, MERALCO received the Honorable Commission’s Order dated 11 October 2016, which resolved to consider the “Manifestation and Motion” dated 18 April 2016 “as a new application for approval of PSA filed on 18 April 2016 under the instant Case Number.” In particular, the Order directed MERALCO and MPPCL to:

“IN VIEW OF THE FOREGOING, MERALCO and Masinloc Power Partners, Co. Ltd. (MPPCL) are hereby DIRECTED to:

- 1) COMPLY with the pre-filing requirements under Section 2, Rule 6 of the Commission’s 2006 Rules of Practice and Procedure (2006 RPP) by sending copies to the relevant Local Government Units and publishing herein Order, the amended Application, and the PSA; and
- 2) PRESENT their proof of compliance with Section 2, Rule 6, 2006 RPP during pre-filing conference and filing proper pursuant to Sections 4 and 5, Rule 6 of the 2006 RPP.

Accordingly, the Manifestation is deemed conditionally filed subject to MERALCO and MPPCL’s compliance with the above directive within thirty (30) days from receipt hereof.”

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A copy of the Order dated 11 October 2016 is attached hereto as ANNEX "T."

12. Hence, this Joint Application for the approval of the extended term of the Approved PSA, from 26 December 2019 until 25 December 2022, as enunciated in the Supplemental Agreement attached herein as Annex I.

13. Given the foregoing, a sample calculation of the base contract price under the PSA, as extended, given a certain set of assumptions, results in an annual effective rate of PhP 4.1879 per kWh (at plant gate), as shown in the sample calculation below:

MPPCL PSA - Rate Impact
(YEAR 2020)

BILLING COMPONENT	UNIT	BASE RATE ^[a]	CPI Adj Factor ^[d]	BILLING DETERMINANT ^[a]	AMOUNT (PHP)
A. Capacity Payment (MCP)					
US Dollar Portion	(USD/kW-yr) ^[a]	276.3900		260,000 (kW)	3,485,277,900.00
B. Fixed O&M Payment (MFGM²)					
US Dollar Portion Escalating	(USD/kW-yr) ^[a]	55.3000	1.0669	260,000 (kW)	766,268,044.47
Peso Portion Escalating	(Php/kW-yr) ^[a]	1,285.6300	1.1769	260,000 (kW)	393,385,288.44
C. Energy Payment (EP)					
Peso Portion	(Php/kWh) ^[c]	1.5716		1,827,072,000 (kWh)	2,871,442,931.60
D. Variable O&M Payment (VOMP)					
US Dollar Portion	(USD/kWh)	0.00020	1.0669	1,827,072,000 (kWh)	19,474,570.71
Peso Portion	(Php/kWh)	0.05982	1.1769	1,827,072,000 (kWh)	115,725,248.99
TOTAL PAYMENT	(Php)				7,651,573,984.40
Effective Rate at Plant Gate	(Php/kWh)				4.1879
WESM Line Rental Rate ^[e]	(Php/kWh)				0.1861
Delivered Rate	(Php/kWh)				4.3740
Effective Cost at WESM Price ^[f]	(Php/kWh)				7.0970
Increase / (Decrease) over WESM Price	(Php/kWh)				(2.7230)
Meralco Captive Energy Demand ^[g]	(kWh)				33,569,812,196
Increase / (Decrease) in Generation Cost	(Php)				(4,975,154,412.30)
Increase / (Decrease) in Generation Cost	(Php/kWh)				(0.1482)

Assumptions:

- ^[a] ERC approved Base Rates from ERC Case No. 2012-036 RC dated December 17, 2012, except for Energy Payment [see Note (c)]
- ^[b] Annual Capacity Rate and Annual Fixed O&M Rate are converted into monthly rates by applying the formulas shown in Appendix D of the PSA
- ^[c] Energy Payment calculated based on Guaranteed Net Plant Heat Rate of 10,300 Btu/kWh, Newcastle Index = 67.41 USD/MT, Freight Price = 7.47 USD/MT, and Forex rate of 48.50 Php/USD (current prices as of September 2016)
- ^[d] Line Rental rate for MPPCL is based on actual weighted average of 2015 billing data
- ^[e] Cost of equivalent volume of MPPCL was sourced from the WESM based on forecast average Jan - Dec 2020 hourly prices
- ^[f] Meralco Captive Energy Demand based on 2020 forecast
- ^[g] Three-month average (Jun-Aug 2016) US CPI = 240.846 and Three-month average (Jun-Aug 2016) PH CPI = 144.167
- ^[h] Energy Payments based on 80,000 plant capacity factor

14. As seen in the rate impact above, given the above assumptions, the simulated delivered price under the PSA would result in the reduction of MERALCO's generation charge by about PhP 0.1482 per kWh.

15. In support of this Joint Application, the Judicial Affidavit of MR. CIPRINILO C. MENESES, Head of MERALCO's Energy Sourcing Office, is attached as ANNEX "U" and made an integral part hereof.

16. Likewise, in support of the instant Joint Application, the Applicants provide this Honorable Commission with the following documents, which underwent the pre-filing conference

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and pre-filing marking of annexes with this Honorable Commission:

Description of Document	Annex
MERALCO's Articles of Incorporation and By-Laws	A
MERALCO's latest General Information Sheet (GIS) showing list of Directors, Officers, Subsidiaries, Affiliates, etc.	B
MPPCL's Certificate of Registration with the Securities and Exchange Commission ("SEC"); MPPCL's Amended Articles of Limited Partnership; Partnership Interest of the Partners	C
MPPCL's Board of Investments ("BOI") Certificate of Registration No. BOI 2008-052 dated 3 March 2008	D
MPPCL's Environmental Compliance Certificate ("ECC") No. 1111-020 dated 23 April 2012	E
MPPCL's Certificate of Compliance No. 15-07-M-286gL	F
Demand Side Management program	G
Distribution Development Plan with Supply and Demand Scenario and Average Daily Load Curve scenarios	H
Supplemental Agreement extending the term of the PSA, and Power Supply Agreement (PSA) between MERALCO and MPPCL, approved by the ERC in ERC Case No. 2012-036 RC	I I-1
Transmission Service Agreement between MPPCL and the National Transmission Corporation	J
Connection Agreement between MPPCL and NGCP, and Metering Service Agreement between MPPCL and NGCP	K K-1
Executive Summary (technical and economic characteristics of the generation capacity, salient features of the PSA)	L
Sources of Funds/Financial Plans; Generation Rate and Derivation*	M
Accounts Agreement between MPPCL and Collateral Trustee*	M-1
Financial model in compact disc containing derivation of rates*	M-2
Affidavit regarding procurement process of coal	N
MPPCL's latest Audited Financial Statements	O
Certification regarding the net heat rate	P
Simulation of the number of operating units necessary to meet the minimum energy off-take (MEOT) and/or additional energy/demand requirements of MERALCO	Q
Potential cost (absolute amounts and PhP/kWh) of ancillary services as and when the Independent Power	R

Producer or DU is connected to the main grid	
Write-up on the non-applicability of the following requirements:	S
1. list of shareholders	
2. certification from DOE regarding PDP or certificate of endorsement	S-1
Write-up on the non-applicability of a Certification by NPC whether Transition Supply Contract (TSC) capacity and energy is expected	

** Subject of the Motion for Confidential Treatment of Information.*

**ALLEGATIONS IN SUPPORT OF
MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION**

17. Annex "M" and subseries contains numbers, methodology, and calculations which provide valuable information and insight on how MPPCL arrives at its power generation rate and would accordingly reflect MPPCL's bidding strategy for distribution utilities undertaking competitive process for the selection of their power suppliers, and MPPCL's trading in the WESM. It also contains information regarding the debt or equity ratio, capital costs, weighted average cost of capital, and fuel cost, among other information.

17.1. Pursuant to MPPCL's agreement with its lenders, Annex M-1" likewise contains certain non-public information involving its lenders' financial trade secrets. The information contained in Annex "M-1", when disclosed together with Annexes "M," and "M-2" would certainly provide an indication of MPPCL's bidding strategy and trading in the WESM.

17.2. It is therefore submitted that Annexes "M" and subseries fall within the bounds of proprietary "trade secrets" which are entitled to protection under the Constitution, statutes, and rules and regulations of this Honorable Commission.

18. Under Rule 4 of the ERC Rules of Practice and Procedure, the Honorable Commission may, upon request of a party and determination of the existence of conditions, which would warrant such remedy, treat certain information submitted to it as confidential. Pursuant to such provision, Applicant MPPCL respectfully prays for the issuance of a protective order declaring Annexes "M" and subseries as confidential information, since the Applicants intend to present them as evidence in the instant Application.

19. Even though these will be treated as confidential documents and information and a protective order will be issued, the rules do not preclude the parties of record or their lawyers an access to such confidential information after agreeing to be bound by the terms of the protective order.

20. The data contained in Annexes "M" and subseries constitute "trade secrets" of Applicant MPPCL; thus, MPPCL has actual and valuable proprietary interest to protect with respect to such information. The Supreme Court, in the recent case of *Air Philippines Corporation vs. Pennswell, Inc.* (540 SCRA 215 [2007]), had the opportunity to discuss the definition of "trade secrets" and the great extent to which the same are protected under our laws. In other instances, the Supreme Court has held that the confidential nature of trade secrets protects such from disclosure even in the face of the right of inspection given to stockholders or the constitutional right to information. (*Philpotts vs. Philippine Manufacturing Company*, 40 Phil. 471 [1919]; *Garcia vs. Board of Investments*, G.R. 88637 [1989])

21. In ERC Case No 2008-030, the National Power Corporation's ("NPC") application for revised basic generation rates, the Honorable Commission had an occasion to rule on the confidentiality of NPC's results of operation per power plant for calendar years 2005 to 2007. The Honorable Commission declared such information as confidential, in this wise:

"Upon review of the documents submitted by NPC, the Commission found that the results of operation per plant of NPC for years 2005 to 2007 contain vital information necessary in the calculation of its production costs in P/kWh per plant and the corresponding revenues. This information will serve as initial inputs to NPC's decision-making. As such, disclosure of this information will give the other parties, particularly the other generation companies (Gencos) and the distribution utilities (DUs) with Genco counterparts, undue advantage in the pricing of electricity in the market over NPC and other Gencos by using its production costs as benchmark. Thus, the Commission deems the information as confidential, which may not be made public, as it may affect adversely the competitive position of NPC and other generation companies."

22. Information, which falls within the definition of a trade secret, as defined by jurisprudence is clearly information which merits the confidential treatment provided for under Rule 4 of the ERC Rules of Practice and Procedure. Annexes "M" and subseries should therefore be entitled to the protection of confidential information provided under Rule 4 of the ERC Rules of Practice and Procedure.

23. MPPCL hereby submits one (1) copy of each of the foregoing confidential documents in a sealed envelope, with the envelope and each page of the document stamped with the word "Confidential."

PRAYER

WHEREFORE, premises considered, it is respectfully prayed that the Honorable Commission,

(i) ISSUE an Order treating Annexes "M" and subseries as confidential information pursuant to Rule 4, Section 1 of the ERC Rules of Practice and Procedure and prescribing the guidelines for the protection thereof; and

(ii) after hearing on the merits, render a Decision APPROVING the Supplemental Agreement that extends the term of the Approved PSA from 26 December 2019 until 25 December 2022, pursuant to Section 2.2.3 of the Approved PSA.

The Commission has set the *Joint Application* for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on **25 May 2017 at nine o'clock in the morning (9:00 A.M.), at the ERC Hearing Room, 15th Floor, Pacific Center, San Miguel Avenue, Pasig City.**

All persons who have an interest in the subject matter of the instant case may become a party by filing with the Commission a verified Petition to Intervene at least five (5) days prior to the initial hearing and subject to the requirements under Rule 9 of the 2006 Rules of Practice and Procedure, indicating therein the docket number and title of the case and stating the following:

- i. The petitioner's name and address;
- ii. 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
- iii. A statement of the relief desired.

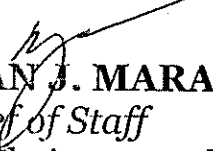
All other persons who may want their views known to the Commission with respect to the subject matter of the case may file their Opposition or Comment thereon at any stage of the proceeding before Applicants rest their case, subject to the requirements under Rule 9 of the 2006 Rules of Practice and Procedure. No particular form of Opposition or Comment is required, but the document, letter, or writing should contain the following:

- 1) The name and address of such person;
- 2) A concise statement of the Opposition or Comment; and

3) The grounds relied upon.

All such persons who wish to have a copy of the *Joint Application* may request from Applicants that they be furnished with the same, prior to the date of the initial hearing. Applicants are hereby directed to furnish all those making such request with copies of the *Joint Application* and its attachments, subject to the reimbursement of reasonable photocopying costs. Any such person may likewise examine the *Joint Application* and other pertinent records filed with the Commission during the standard office hours.

WITNESS, the Honorable Chairman **JOSE VICENTE B. SALAZAR**, and the Honorable Commissioners **ALFREDO J. NON**, **GLORIA VICTORIA C. YAP-TARUC**, **JOSEFINA PATRICIA A. MAGPALE-ASIRIT**, and **GERONIMO D. STA. ANA**, Energy Regulatory Commission, this 6th day of March 2017 at Pasig City.


ATTY. NATHAN J. MARASIGAN
Chief of Staff
Office of the Chairman and CEO

LS: IQB/ fOM/ APV