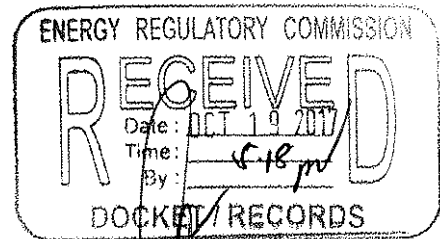


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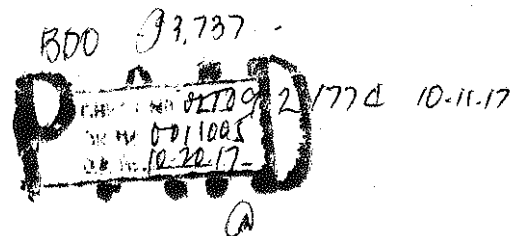
Republic of the Philippines  
**ENERGY REGULATORY COMMISSION**  
San Miguel Avenue, Pasig City

**IN THE MATTER OF THE APPLICATION FOR THE APPROVAL OF THE POWER SUPPLY AGREEMENT (PSA) BETWEEN MANILA ELECTRIC COMPANY (MERALCO) AND SOLAR PHILIPPINES TARLAC CORPORATION (SPTC), WITH PRAYER FOR PROVISIONAL AUTHORITY AND MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION**



**ERC CASE NO. 2017-094 RC**

**MANILA ELECTRIC COMPANY (MERALCO) AND SOLAR PHILIPPINES TARLAC CORPORATION (SPTC),**  
*Applicants.*



X-----X

**JOINT APPLICATION**

Applicants **MANILA ELECTRIC COMPANY ("MERALCO")** and **SOLAR PHILIPPINES TARLAC CORPORATION ("SPTC")**, through their respective undersigned counsels, respectfully state:

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 SPTC is a corporation duly organized and existing under the laws of the Republic of the Philippines, with its principal office address at 2/F LPL Towers, 112 Legaspi Street, Makati City, Metro Manila. It may be served with notices and other processes of this Honorable Commission through its counsel at the address indicated herein.

4. SPTC is constructing, and shall own, operate, manage and maintain a solar power plant capable of supplying electric energy up to 85 MW<sub>AC</sub> (net), which is located in the Municipality of Concepcion, Tarlac.

5. Based on the power situation outlook for 2017 and succeeding years, MERALCO foresees a peaking capacity deficit in its portfolio due to the expected high demand as well as possible occurrences of scheduled maintenance shutdowns and forced outage of power plants. Moreover, based on MERALCO's Distribution Development Plan, from 2015 to 2024, MERALCO's aggregate capacity requirement is forecasted to grow by a compounded average growth rate of 3.7%.

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

7. Under Section 45(b) of Republic Act No. 9136 (EPIRA), it is provided that "*Distribution utilities may enter into bilateral power supply contracts subject to review by the ERC xxx*".

8. Accordingly, following extensive negotiations and the conduct of a competitive selection process, on 06 October 2017, MERALCO executed a Power Supply Agreement ("**PSA**") with SPTC, for the purchase of electric energy generated by its solar power plant corresponding to: (i) 75 MW (AC, net) up to 85 MW (AC, net) from the 1<sup>st</sup> to 5<sup>th</sup> Contract Years; and (ii) 85 MW (AC, net) from the 6<sup>th</sup> to 20<sup>th</sup> Contract Years, on a take and pay basis, with proposed plant site located in the Municipality of Concepcion, Tarlac. The conduct of a competitive selection process proceeded as follows:

8.1. On 28 June 2017, MERALCO caused the publication of an Invitation for Price Challenge, which contained the basic terms of reference and conditions of the proposal of an original power supplier, indicating a summary of the process and timelines of the Price Challenge process, and inviting power generation companies to submit better tariff proposals on or before the timelines set out in the said invitation. At the same time, MERALCO caused the posting thereof on its website.

8.2. On 17 August 2017, MERALCO's Power Supply Agreements Bids and Awards Committee (the "PSA BAC") sent a letter-notice to the original power supplier and a qualified price challenger, SPTC, informing them that the proposed energy price of **PhP2.9999 per kWh** submitted by SPTC was found to be the best bid. The said letter-notice also explained that the original power supplier had the right to match the proposed energy price of SPTC.

8.3. On 25 August 2017, the original power supplier sent a letter-notice to MERALCO informing the latter that it is not exercising its right to match SPTC's proposed energy price of PhP2.9999 per kWh. Thus, MERALCO's PSA BAC issued a Notice of Award in favor of SPTC.

9. The PSA between MERALCO and SPTC, a copy of which is attached as **ANNEX "A"** and made an integral part hereof, contains the following salient features:

"2.1 *Term of Agreement.* The Agreement shall commence on Effective Date and shall remain in full force and effect until the last day of the twentieth (20<sup>th</sup>) Contract Year, unless earlier terminated in accordance with this Agreement (the "**Term**"); provided, that Section 4.1 (Regulatory Approvals), Section 10.4 (Liquidated Damages), Article 11 (Miscellaneous), Article 12 (Dispute Resolution), and Article 13 (Termination) shall be effective upon Meralco's issuance of a notice of award to Power Supplier as the winning power supplier after the conduct of a competitive selection process; provided further, that the obligations of Power Supplier and Meralco under this Agreement with respect to sale and purchase of the Product shall be for a duration of twenty (20) years from Commencement Date; provided finally, that termination shall not affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any such termination.

xxx

3.2. *Commencement Date.* The "**Commencement Date**" shall

occur upon the satisfaction of the conditions below:

- (a) The conditions set out in Section 3.1. have been fulfilled;
- (b) Each Party has delivered to the other Party a certification dated no earlier than two (2) Days prior to the proposed Commencement Date to the effect that its representations and warranties contained herein shall be true and correct in all material respects on and as of the Commencement Date; and
- (c) On or before the Longstop Date, (i) the ERC shall have issued an ERC Provisional Approval or ERC Final Approval of this Agreement, including the pricing structure as set out herein (or as otherwise acceptable to Power Supplier), and (ii) the Acceptance Date has occurred.

Within seven (7) Days after the satisfaction of the conditions referred to in this Section 3.2, Meralco and Power Supplier shall issue a joint certification confirming satisfaction of such conditions and defining the Commencement Date.

Should the Longstop Date occur without the conditions in Section 3.2 having been satisfied, the Parties may terminate this Agreement.

3.3. *Scheduled Commercial Operations Date.* Power Supplier covenants that the Plant shall achieve commercial operations upon Commencement Date.

xxx

4.1 *Regulatory Approvals.* After signing, the Parties shall file a joint application with the ERC for the approval of this Agreement (the "**ERC Application**"). Both Parties shall cooperate in this undertaking and Power Supplier shall provide all the necessary support, including the submission of all the documents required to expedite the ERC Provisional Approval and ERC Final Approval of the Agreement and the filing of urgent motion(s) for issuance of the ERC Provisional Approval and ERC Final Approval, provided that:

- (a) If Power Supplier fails to submit any ERC pre-filing requirement, which results in the ERC Application not being filed by October 20, 2017, then fifty percent (50%) of the Performance Security shall be forfeited in favor of Meralco and this Agreement shall be deemed automatically terminated, unless the Parties agree otherwise in writing.
- (b) If the ERC provisionally accepts filing of the ERC Application on or before October 20, 2017 subject to the submission of additional requirement(s) to enable the ERC to commence evaluation of the ERC Application, then beginning January 26, 2018, Meralco will be deemed to have sourced replacement

energy from WESM at the cost of Power Supplier and in accordance with the procedure in Section 3.5.3, for a period equivalent to the number of Days from filing of the ERC Application until Power Supplier's submission to ERC of such additional requirement(s).

- (c) Notwithstanding Section 4.1(b), if the ERC Application is filed and docketed on or before October 20, 2017, but Power Supplier refuses to cooperate in securing an ERC Provisional Approval or otherwise fails to provide any other requirement of the ERC for the purpose of securing an ERC Provisional Approval, then Meralco shall be entitled (but not obligated), solely by written notice, to immediately terminate this Agreement and forfeit the Performance Security in Meralco's favor. Unless Meralco issues such notice terminating this Agreement, Meralco will be deemed to have sourced replacement energy from WESM at the cost of Power Supplier and in accordance with the procedure in Section 3.5.3 beginning January 26, 2018, until the earlier of July 25, 2018 or Commercial Operations Date.

In the event of any disallowance in the Contract Price or the imposition of penalties as a result of implementation of this Agreement pursuant to (b) and (c) of this Section 4.1, the same shall be for the account of Power Supplier.

For the avoidance of doubt, and provided that Power Supplier complies with all its obligations under this Section 4.1, Power Supplier shall not be responsible for replacement energy in the event that the ERC does not issue an ERC Provisional Approval for reasons not attributable to Power Supplier. In such a case, the Performance Security shall not be forfeited and this Agreement shall not be deemed terminated.

- 4.2 Power Supplier shall have ten (10) Business Days from notice of ERC approval to inform Meralco in writing that (i) it accepts such ERC Provisional Approval or ERC Final Approval, whichever occurs earlier, or (ii) it does not accept the ERC approval, stating the grounds for non-acceptance.
- 4.3 In case of Power Supplier's non-acceptance, Power Supplier shall be free to: (i) file with the ERC a motion for reconsideration, which, however, shall not excuse Power Supplier from delivering the Product under the Agreement; or (ii) terminate this Agreement upon sixty (60) days prior written notice to Meralco; provided that, any order on a motion for reconsideration shall be treated as an ERC Final Approval for purposes of the processes under this Article 4; provided further that, if the motion for reconsideration is denied by the ERC, or granted by the ERC but still with any material term or condition that is not acceptable to Power Supplier, Power Supplier may terminate this Agreement upon sixty (60) days prior written notice to Meralco.

xxx

- 5.1 *Obligations of the Parties.* Beginning on the Commencement Date, and subject to the terms and conditions of this Agreement, Power Supplier shall sell and deliver, and Meralco shall pay for, the Product at the Contract Price. For this purpose, at any time during the 5<sup>th</sup> Contract Year, Power Supplier undertakes to submit a certification from the EPC Contractor that the Plant is capable of generating 85 MWh of electric energy over a continuous period of one hour. Should Power Supplier fail to provide such certification, it shall supply Replacement Energy to Meralco beginning the first Day of the 6<sup>th</sup> Contract Year.

Power Supplier shall, at all times from Plant testing and commissioning, ensure compliance with terms and conditions under its interconnection, metering and other agreements necessary for the performance of its obligations hereunder. For clarity, Power Supplier shall be allowed to sell and deliver electric energy in excess of the Product from the Plant, or any electric energy from an expansion of the Plant, to any third party during the Term of this Agreement; provided that Power Supplier shall ensure that there are separate and dedicated billing meter and transmission line to measure and deliver the Product to the transmission grid for delivery to Meralco.

Unless otherwise expressly stipulated herein, and subject to Section 5.4, Power Supplier shall not sell and deliver power from the Plant up to the Product to any third party or WESM during the Term of this Agreement. Notwithstanding any provision to the contrary, any violation of this Section 5.1 shall be considered a Material Breach and a ground for termination of this Agreement following the procedure in Section 13.2.

- 5.2 *Take and Pay Contract.* Subject to circumstances of Force Majeure under this Agreement, Meralco shall accept any and all electric energy deliveries from Power Supplier up to 85 MWh and Meralco shall pay the corresponding Contract Price for all electric energy (in kWh or MWh) declared by Power Supplier at the WESM for Meralco, which quantity shall be based on the readings of Billing Meter.
- 5.3 *Contract Price.* The Contract Price is PhP 2.9999 per kWh, subject to an annual escalation of two percent (2%), *provided*, that the Franchise and Benefits to Host Communities Charge, if any, shall not form part of and is excluded from the computation of the Contract Price. For avoidance of doubt, all taxes pertaining to Power Supplier, including but not limited to the FBHC charge, shall be shouldered by, and be for the sole account of, Power Supplier. Any violation of this Section 5.3 shall be considered a Material Breach and a ground for termination of this Agreement upon prior notice.

- 7.1. Subject to existing laws and rules and regulations, Meralco shall be entitled to assign, transfer, designate, delegate or allocate (collectively in this context, "**Transfer**") its rights and obligations to purchase a portion of the Product that is no longer required by Meralco as a result of Retail Competition and Open Access (RCOA) or in case of any reduction in demand of Meralco's captive customers to any of its business segments or wholly-owned Affiliates without the prior consent of Power Supplier, provided that such Transfer shall not result in a material change in the obligation of Power Supplier under Section 8.3. In the event that Meralco has two or more RES Affiliates, Power Supplier shall have the option to choose the RES Affiliate to which Meralco shall Transfer its rights and obligations, which option shall be communicated to Meralco within five (5) Days from receipt of the Transfer Notice (defined below).

Meralco shall also be entitled to Transfer its rights and obligations to purchase a portion of the Product that is no longer required by Meralco as a result of Retail Competition and Open Access (RCOA) or in case of any reduction in demand of Meralco's captive customers to any other Person, subject to the consent of Power Supplier, which consent shall not be unreasonably withheld, delayed or conditioned, it being understood that withholding consent would not be considered unreasonable if the proposed Transfer would be contrary to existing laws and rules and regulations and/or the reasonable requirements of Finance Parties under the Finance Documents, as evidenced by a written confirmation by the relevant Finance Parties. Power Supplier shall exert reasonable efforts to (i) procure that only the consent of Finance Parties representing no more than seventy-five percent (75%) of the debt plus undrawn commitments shall be required for a Transfer under the Finance Documents; and (ii) upon written notice being given by Meralco, procure such consent for the Transfer.

Meralco shall endeavor to cooperate with Power Supplier by providing documents and information in relation to the Transfer as may be reasonably required by the Finance Parties.

Power Supplier shall also be entitled to Transfer its rights and obligations under this Agreement to any of its wholly-owned Affiliates or Subsidiaries, subject to the consent of Meralco, which consent shall not be unreasonably withheld, delayed or conditioned.

xxx

- 7.3 *Reduction in the Product.* Meralco shall, from time to time, be entitled to a reduction in Product (the "**Reduction in Product**") equivalent to the reduction in the demand of its captive customers by reason of the enforcement of Retail Competition and Open Access, Renewable Energy Law and

other Applicable Laws. For this purpose, Meralco shall give a written notice to Power Supplier of such reduction at least five (5) Days prior to the first day of the next Billing Period or by such date as would be sufficient for timely notice to WESM of such change. Upon receipt by Power Supplier of such written notice, Meralco shall cease to have any rights and obligations under this Agreement in respect of such Reduction in Product.

xxx

- 8.3 *WESM and Line Rental Charges.* All WESM charges attributable to Power Supplier (e.g., WESM Market Fees) are not to be passed on to Meralco. Line rental charges in excess of PhP 0.1000 per kWh, reckoned on a monthly basis, shall be for the account of Power Supplier.

xxx

- 11.7 *Change in Circumstances.* The Parties shall faithfully perform all their obligations in accordance with the provisions of this Agreement as well as the Applicable Laws. In case of any (i) amendment, modification or change in Applicable Laws, (ii) any decision or order by the ERC or any court or government agency which provides for a new or change in the interpretation of Applicable Laws and ERC rules and regulations after the date of this Agreement, or (iii) Change in Circumstances that would prevent either or both Parties from performing or continuing to perform their obligations under this Agreement, or when such change in Applicable Law, or Change in Circumstance or the issuance of such decision or order would cause irreparable damage or would adversely affect the financial viability of either Party, the Parties shall meet and negotiate in good faith within ten (10) days from the effectivity of said amendment, modification, or change or issuance of decision or order, to mutually address and agree on appropriate solutions to the problem. Failure to arrive at a solution in accordance with this Section 11.7 within sixty (60) Days from the commencement of such negotiations shall be a ground for termination of this Agreement upon prior notice.

For the avoidance of doubt, neither Party shall utilize battery storage in a manner that may affect the rights and obligations of the Parties under this Agreement without prior notice and agreement of the other Party. For this purpose, the use of battery storage shall be deemed a Change in Circumstance.

xxx

## **13. TERMINATION**

- 13.1. For terminations after Commencement Date but prior to Commercial Operations Date under Sections 3.4 and 3.5, Meralco shall, at any time prior to July 25, 2018, provide Power



Supplier a written notice at least sixty days prior that the Agreement shall be terminated effective no later than July 25, 2018. For clarity, replacement energy shall continue to be procured under Sections 3.4 and 3.5 until the termination date indicated in such written notice.

13.2. The Party not in Material Breach may terminate the Agreement, upon sixty (60) days prior written notice to the other Party, for any Material Breach that remains unremedied after ninety (90) days (the "**Curing Period**"), subject to Section 10.4 (Liquidated Damages). During such Curing Period, in the event of Material Breach on the part of Power Supplier, Power Supplier shall deliver Replacement Energy to Meralco at the actual price sourced by Power Supplier or Contract Price, whichever is lower, provided that Power Supplier shall exert best efforts to source Replacement Energy in the least cost manner; while in the event of Material Breach on the part of Meralco, Power Supplier may opt to sell the Product to WESM or third parties, subject to existing ERC rules and regulations."

10. Based on the foregoing, given a certain set of assumptions, the annual effective rate under the PSA is Php2.9999 per kWh (at plant gate), as shown in the rate impact analysis below:

Solar Philippines Tarlac Corporation PSA - Rate Impact (YEAR 2018)					
BILLING COMPONENT	UNIT	BASE RATE <sup>[a]</sup>	BILLING DETERMINANT <sup>[b]</sup>		AMOUNT (PHP)
Energy Payment					
Contract Price	(Php/kWh)	2.9999	137,751,000	(kWh)	413,239,224.90
<b>TOTAL PAYMENT</b>	(Php)				<b>413,239,224.90</b>
<b>Effective Rate at Plant Gate</b>	(Php/kWh)				<b>2.9999</b>
WESM Line Rental Rate <sup>[c]</sup>	(Php/kWh)				0.1000
<b>Delivered Rate</b>	(Php/kWh)				<b>3.0999</b>
<b>Effective Cost at WESM Price <sup>[d]</sup></b>	(Php/kWh)				<b>3.8524</b>
<b>Increase / (Decrease) over WESM Price</b>	(Php/kWh)				<b>(0.7525)</b>
<b>Meralco Captive Energy Demand <sup>[e]</sup></b>	(kWh)				<b>31,542,384,061</b>
<b>Increase / (Decrease) in Generation Cost</b>	(Php)				<b>(103,657,627.50)</b>
<b>Increase / (Decrease) in Generation Cost</b>	(Php/kWh)				<b>(0.0033)</b>

**Assumptions:**

<sup>[a]</sup> Base Rates as set forth in Schedule 1 of the PSA

<sup>[b]</sup> Energy billing determinant based on 85,000 kW contract capacity and 18.50% solar plant capacity factor

<sup>[c]</sup> Line Rental rate for SPTC is based on maximum allowable value as stated in the PSA

<sup>[d]</sup> Cost if equivalent volume of SPTC was sourced from the WESM based on forecast weighted average of Jan - Dec 2018 hourly prices from 6am to 6pm

<sup>[e]</sup> Meralco Captive Energy Demand based on 2018 forecast

11. Also, as seen in the rate impact above, given a similar set of assumptions, the simulated delivered price under the PSA would be Php3.0999 per kWh, resulting in a reduction of MERALCO's generation charge by about Php0.0033 per kWh.

12. It bears emphasis that, as previously mentioned, based on MERALCO's foreseen peaking capacity deficit in its portfolio due to the expected high demand as well as possible occurrences of scheduled maintenance shutdowns and forced outage of power plants, there is an urgent need for the provisional approval of the PSA.

13. Verily, this Honorable Commission's approval of the PSA will send strong signals to renewable or solar energy generation projects in the Philippines, and thus, set the pace for infusion of similar investments by the private sector.

14. Likewise, in support of the instant Joint Application and pursuant to Rule 6 (Pre-Filing Requirements) of the Rules of Practice and Procedure of this Commission, the Applicants provide the following documents:

<b>Description of Document</b>	<b>Annex</b>
MERALCO's Articles of Incorporation	<b>C</b>
MERALCO'S By-Laws	<b>D</b>
MERALCO's latest General Information Sheet (GIS)	<b>E</b>
MERALCO's Demand Side Management program	<b>F</b>
MERALCO's Distribution Development Plan; with Average Daily Load Curve scenarios; and Supply and Demand Scenario *	<b>G</b> <b>G-1</b> <b>G-2*</b> <b>G-3</b>
Write-up on Non-Applicability of National Power Corporation (NPC) Certification	
Documents showing MERALCO's conduct of a Competitive Selection Procurements (CSP)	<b>H and series</b>
SPTC's SEC Certificate of Registration	<b>I</b>
SPTC's Articles of Incorporation	<b>J-1</b>
SPTC By-laws	<b>J-2</b>
Write Ups on Non-Applicability of the following: <ul style="list-style-type: none"> <li>• Shareholders' Agreement</li> <li>• All details on the procurement process of fuel including requests, proposals received, tender offers, etc.; Fuel supply agreement; sworn statement detailing how the fuel was competitively procured, contract terms, unbundled price components (product cost, transshipment, delivery container, etc.)</li> <li>• Other documentation that may be needed by the ERC in the course of the evaluation, such as, but not limited to the following: <ul style="list-style-type: none"> <li>○ Certification (from the engine manufacturer or IPP) of the net heat rate (initial and every after major maintenance schedule) in liters per kWh</li> <li>○ Simulation of the no. of operating units necessary to meet MEOT and/or additional energy/demand requirements of the DU</li> </ul> </li> </ul>	<b>K and series</b>

o Potential Cost (absolute amounts and PhP/kWh) of Ancillary Services as and when the IPP or the DU is connected to the main grid	
SPTC's latest General Information Sheet (GIS)	<b>L</b>
SPTC's Corporate Structure	<b>L-1</b>
Write-up on and Board of Investment (BOI) Certificate of Registration for SPTC's solar power plant with attached terms and conditions	<b>M</b>
Amended and original Environmental Compliance Certificates (ECCs) for SPTC's solar power plant	<b>N-1 and N-2</b>
Write-up on and SPTC's Application for Certificate of Compliance (COC) for its solar power plant	<b>O</b>
DOE Certificate of Endorsement (CoE) for SPTC's solar power plant	<b>P</b>
DOE letter on and Solar Energy Service Contract for SPTC's solar power plant	<b>Q-1 and Q-2</b>
SPTC's DOE Certificate of Registration	<b>R</b>
Transmission line project details and SPTC's Application for Authority to Develop, Own, and Operate a Dedicated Point-to-Point Limited Transmission Facilities for its solar power plant	<b>S-1 and S-2</b>
Project Feasibility Study*	<b>T*</b>
Executive Summary of the PSA	<b>U</b>
Source of Funds/ Financial Plans *	<b>V and series*</b>
Generation Rate and Derivation *	
Cash Flow *	
All cost analysis related to the generation in support of the proposed pricing provisions of the contract *	
All relevant technical and economic characteristics of the generation capacity; Installed Capacity, Mode of Operation, Dependable Capacity; Auxiliary load; Scheduled and Unscheduled Outages; Basis/Justification of day used	<b>W</b>
SPTC's Latest and Complete Set of Audited Financial Statements (Balance Sheet, Income Statement, and Statement of cash flows)	<b>X</b>

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

## **ALLEGATIONS IN SUPPORT OF PROVISIONAL AUTHORITY**

15. It is reiterated that the timely implementation of the PSA will best serve the interests of the consumers.

15.1. Considering that SPTC's solar power plant is expected to achieve commercial operations in the fourth quarter of 2017, an immediate implementation of the PSA would redound to the benefit of the consumers in terms of environmental benefits and would also contribute to the government initiative of encouraging the development of renewable energy in the country. Further, SPTC undertakes to provide replacement

energy at the Contract Price even prior to commercial operations of SPTC's solar power plant, subject to the provisions of the PSA.

15.2. Verily, the Php2.9999 per kWh rate under the PSA is significantly lower than the prevailing Feed-In Tariff (FIT) rates and the lowest tariff offer that MERALCO has received thus far for a solar technology.

15.3. The simulated delivered price of Php3.0999 per kWh provides for a much lower cost of power compared to the simulated effective cost at WESM of Php3.8524, thereby resulting in savings to the consumers of about Php0.7525 per kWh.

16. In support of this Joint Application and the prayer for issuance of a Provisional Authority, the Judicial Affidavit of **MR. CIPRINILO C. MENESES**, Head of MERALCO's Energy Sourcing Office, is attached hereto as **ANNEX "B."**

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

17. With respect to the document marked and attached as **ANNEX "G-2"** (Supply and Demand Scenario of MERALCO), MERALCO respectfully moves that it be treated as confidential and not be disclosed to any party for the reason that it contains information which are commercially sensitive in nature and may affect price offers that MERALCO may receive under a power supply agreement. In addition, such information falls within the bounds of valuable proprietary interest under "trade secrets" which are entitled to protection under the Constitution, statutes, and rules and regulations.

18. With respect to the documents marked as **Annexes "T"** and **"V and series"**, SPTC respectfully moves that they be treated as confidential and not be disclosed to any party since these documents contain numbers, methodology, and calculations which provide valuable information and insight on how SPTC arrives at its power generation rate and would accordingly reflect SPTC's bidding strategy for distribution utilities undertaking competitive process for the selection of their power suppliers, and SPTC's trading in the WESM. They also contain information regarding the debt or equity ratio, capital costs, weighted average cost of capital, and fuel cost, among other information. All these information are considered classified business

information by SPTC, which, if released to the public including its competitors, would place the latter at an undue advantage against SPTC. In addition, such information falls within the bounds of valuable proprietary interest under "trade secrets" which are entitled to protection under the Constitution, statutes, rules and regulations.

19. 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, the Applicants respectfully pray for the issuance of a protective order declaring **Annexes "G-2," "T" and "V and series"** as confidential information, since the Applicants intend to present them as evidence in the instant Application.

20. 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 "G-2," "T" and "V and series"** should therefore be entitled to the protection of confidential information provided under Rule 4 of the ERC Rules of Practice and Procedure.

21. The Applicants hereby submit 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 **GRANTING PROVISIONAL AUTHORITY** to implement the PSA;

(ii) issue an Order **TREATING Annexes "G-2," "T" and "V and series" 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

(iii) after hearing on the merits, render a Decision **APPROVING THE PSA** between Applicants MERALCO and SPTC.

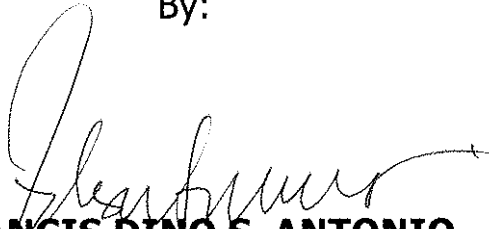
Pasig City and Makati City for Pasig City, 16 October 2017.

**MANILA ELECTRIC COMPANY**

*Co-Applicant*

Lopez Building, Ortigas Avenue,  
Barangay Ugong, Pasig City

By:



**FRANCIS DINO S. ANTONIO**

Roll of Attorneys No. 48145

PTR No. 2684871; 01/27/17; Pasig City

IBP No. 1061089; 01/10/17; RSM

MCLE Compliance No. V-0004608; 6 November 2014



**CARMEN GRACE S. RAMOS**

Roll of Attorneys No. 55945

PTR No. 2684872; 01/27/17; Pasig City

IBP No. 1061090; 01/10/17; RSM

MCLE Compliance No. VI-0000248; 11 July 2016



**ANGELICA DIANE B. MONTEZA**

Roll of Attorneys No. 55575

PTR No. 2684878; 01/27/17; Pasig City

IBP No. 1061091; 01/10/17; RSM

MCLE Compliance No. VI-0000242; 11 July 2016

7<sup>th</sup> Floor, Lopez Building,  
Ortigas Avenue, Barangay Ugong, Pasig City  
Tel no. 1622-2260; Fax No: 1622-3550

**GATMAYTAN YAP PATACSIL  
GUTIERREZ & PROTACIO<sup>1</sup>**

Counsel for SPTC  
30/F 88 Corporate Center  
Sedeño corner Valero Streets  
Salcedo Village, Makati City  
Tel. Nos.: (632) 894-0377 to 79;  
(632) 894-4931 to 32; (632) 552-1977  
Fax Nos.: (632) 552-1978

By:



**BEN DOMINIC R. YAP**

PTR No. 5915321; 1/6/2017; Makati City  
IBP No. LRN No. 013932  
Email address: bdryap@cagatlaw.com  
Roll No. 43257

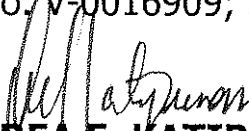
MCLE Compliance No. V-0014979; 2/19/2016; Pasig City



**VLADI MIGUEL S. LAZARO**

PTR No. 5915328; 1/6/2017; Makati City  
IBP No. 1062741; 1/9/2017; Calmana  
Email address: vmslazaro@cagatlaw.com  
Roll No. 59608

MCLE Compliance No. V-0016909; 3/16/2016; Pasig City



**ANDREA E. KATIPUNAN**

PTR No. 5915329; 1/6/2017; Makati City  
IBP No. 1062742; 1/9/2017; Makati City Chapter  
Email address: andrea.katipunan@cagatlaw.com  
Roll No. 62407

MCLE Compliance No. V-0016904; 03/16/2016; Pasig City

<sup>1</sup> Pursuant to Office of the Court Administrator Circular No. 56-2015, the MCLE Compliance Numbers of the undersigned firm's name partners are as follows:

Name	MCLE Compliance No.	Date of Issuance
Jaime Renato B. Gatmaytan	V-0020890	5/2/2016
Ben Dominic R. Yap	V-0014979	2/19/2016
Norma Margarita B. Patacsil	V-0014967	2/19/2016
Anthony Mark A. Gutierrez	V-0011252	10/20/2015
Jesus Paolo U. Protacio	V-0014969	2/19/2016

**KATRINE PAULA V. SUYAT**

PTR No. 5915335; 1/6/2017; Makati City

IBP No. 1062748; 1/9/2017; Pangasinan Chapter

Email address: kat.suyat@cagatlaw.com

Roll No. 63734

MCLE Compliance No. V-0016975; 03/16/2016; Pasig City



REPUBLIC OF THE PHILIPPINES )  
CITY OF PASIG ) s.s.

**VERIFICATION**  
**AND CERTIFICATION OF NON-FORUM SHOPPING**

I, **JOSE RONALD V. VALLES**, Filipino, of legal age, married, with office address at 7<sup>th</sup> Floor, Lopez Building, MERALCO Compound, Ortigas Avenue, Barangay Ugong, Pasig City, after being sworn in accordance with law, hereby depose and say that –

1. I am the Vice President and Head, Regulatory Affairs Office, of Applicant Manila Electric Company (“MERALCO”). In such capacity, I have caused the preparation and filing of the foregoing Application;

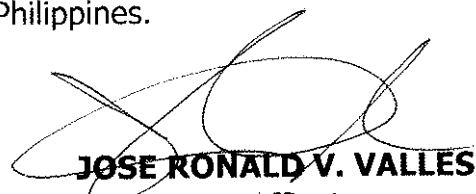
2. Moreover, I have been authorized by the Board of Directors of MERALCO to certify that Applicant has not heretofore filed any similar action, pleading or application involving the same issues before the Supreme Court, the Court of Appeals or any other lower courts or administrative bodies. A copy of the Secretary’s Certificate authorizing me to cause the preparation of the instant Application and sign this Verification and Certification is attached hereto as **ANNEX “Y”**;

3. I have read and understood the allegations contained therein and the same are true and correct based on my personal knowledge and authentic records made available to me in the ordinary course of business of MERALCO;

4. To the best of my knowledge, no similar action or proceeding is pending before the Supreme Court, the Court of Appeals, the lower courts or administrative bodies;

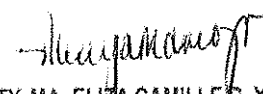
5. If I should hereafter learn that a similar action has been filed before the Supreme Court, the Court of Appeals, the lower courts or administrative bodies, I undertake to report such fact to this Honorable Commission within five (5) days from notice of such fact.

**IN WITNESS WHEREOF**, I have hereunto affixed my signature this 16<sup>th</sup> day of October 2017 at Pasig City, Philippines.

  
**JOSE RONALD V. VALLES**  
Affiant

**SUBSCRIBED and SWORN** to before me this 16<sup>th</sup> day of October 2017, affiant having exhibited to me his Social Security System ID bearing the number 33-10900088.

Doc. No. 350 ;  
Page No. 71 ;  
Book No. V ;  
Series of 2017.

  
ATTY. MA. ELIZA CAMILLE B. YAMAMOTO  
Notary Public  
Pasig, San Juan and Pateros  
Issued on July 24, 2017 at Pasig City  
Appointment No. 192(2017-2018)  
Roll No. 59329/ IBP No. 1062728/ 01-09-17 RSM Chapte.  
PTR No. 2682558/ 01-02-17 Pasig City  
MCLE VI-G000259/ 07-11-15  
8th Floor Lopez Bldg. Ortigas Avenue, Pasig City

REPUBLIC OF THE PHILIPPINES)  
MAKATI CITY )s.s.

**VERIFICATION AND CERTIFICATION  
OF NON-FORUM SHOPPING**

I, **Leandro Antonio L. Leviste**, Filipino, of legal age, and with office address at 2<sup>nd</sup> Floor LPL Towers, 112 Legaspi Street, Makati City, after having been sworn in accordance with law depose and state:

1. I am the President and duly appointed attorney-in-fact of Solar Philippines Tarlac Corporation ("**SPTC**"), the Co-Applicant in this case.

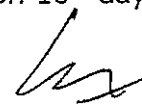
2. I caused the preparation of the foregoing Joint Application. I have read the allegations therein and certify that the same are true and correct of my own knowledge and belief and based on authentic documents made available to me in the ordinary course of business of SPTC.

3. Moreover, I have been authorized by the Board of Directors of SPTC to certify that SPTC, the Co-Applicant, has not heretofore filed any similar action, pleading or application involving the same issues before the Supreme Court, the Court of Appeals or any other lower courts or administrative bodies. Copies of the Secretary's Certificates authorizing me to cause the preparation of the instant Joint Application and sign this Verification and Certification and the law firm of Gatmaytan Yap Patacsil Gutierrez & Protacio to prepare and file the instant Joint Application are attached hereto as **ANNEXES "Z"** and **"Z-1"**, respectively.

4. To the best of my knowledge, SPTC has not commenced any action or proceeding involving the same issues before any other tribunal or quasi-agency, and to the best of my knowledge, no such action or proceeding is pending involving the same issues and parties.

5. If SPTC or I should hereafter learn that the same or similar petition or proceeding has been filed or is pending, I undertake to promptly inform the Honorable Commission within five (5) days therefrom.


IN WITNESS WHEREOF, I have hereunto set my hand on 16<sup>th</sup> day of October 2017 in Makati City, Philippines.



**Leandro Antonio L. Leviste**  
Affiant

**SUBSCRIBED and SWORN**, to before me on this 16<sup>th</sup> day of October 2017, at Makati City, by Affiant who has satisfactory proven to me his identity through his Passport No. P2911921A issued at DFA Manila on 05 May 2017, valid until 04 May 2022, and that he is the same person who personally signed before me the foregoing Verification and Certification of Non-Forum Shopping and acknowledged that he executed the same.

Doc. No. 292;  
Page No. 59;  
Book No. II;  
Series of 2017.

  
**IRENE MAE B. ALCOBILLA**  
Notary Public for and in the City of Makati  
Appointment No. M-131 (2017-2018)  
2/F LPL Towers, 112 Legaspi Street,  
Makati City 1229  
Attorney's Roll No. 64106  
PTR No. 5926625; 01/12/2017, Makati City  
IBP No. 1007266, Lifetime/04-16-2015, Antique  
MCLE Compliance No. V-0019617; 04/22/2016