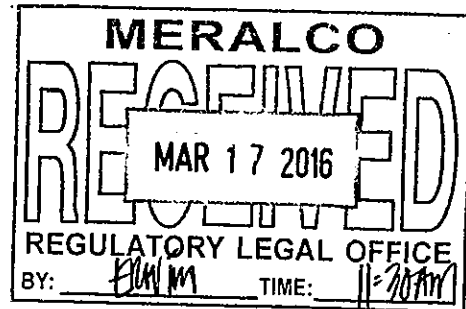


Republic of the Philippines  
**ENERGY REGULATORY COMMISSION**  
San Miguel Avenue, Pasig City

**IN THE MATTER OF THE  
APPLICATION FOR THE  
APPROVAL OF THE INTERIM  
POWER SUPPLY  
AGREEMENTS BETWEEN:  
(A) MANILA ELECTRIC  
COMPANY (MERALCO) AND  
TOLEDO POWER CO. (TPC);  
AND (B) MERALCO AND  
PANAY POWER  
CORPORATION (PPC), WITH  
PRAYER FOR PROVISIONAL  
AUTHORITY**



**ERC CASE NO. 2016-009 RC**

**MANILA ELECTRIC  
COMPANY (MERALCO),  
TOLEDO POWER CO. (TPC),  
AND PANAY POWER  
CORPORATION (PPC),  
Applicants.**

**D O C K E T E D**  
Date: MAR 16 2016  
By: [signature]

X -----X

**ORDER**

On 10 February 2016, Applicants Manila Electric Company (MERALCO), Toledo Power Co. (TPC), and Panay Power Corporation (PPC), filed a Joint Application for approval of their respective Interim Power Supply Agreements (IPSA), with prayer for provisional authority.

In their Joint Application, MERALCO, TPC, and PPC alleged, among others, the following:

1. Applicant MERALCO is a private corporation existing under the laws of the Republic of the Philippines, with principal office located at Ortigas Avenue, Barangay Ugong, Pasig City. It may be served with notices and other processes at its principal office address or through its legal counsels.

A handwritten signature or mark, possibly initials, located below the first item of the list.

2. MERALCO has a legislative franchise to operate and maintain a distribution system within Metro Manila and in the cities and municipalities in Bulacan, Cavite, and Rizal, and certain cities, municipalities, and barangays in the Provinces of Batangas, Laguna, Quezon, and Pampanga, pursuant to Republic Act No. 9209, and is authorized to charge its customers for their electric consumption at the rates approved by the Energy Regulatory Commission (ERC).
3. Applicant TPC is a partnership duly organized and existing under the laws of the Republic of the Philippines, with principal office address at Barangay Daanlungsod, Toledo City, Cebu. TPC owns and operates a 40 MW diesel-fired power plant located in Carmen, Toledo City, Cebu. It may be served with notices and other processes through its counsels.
4. Applicant PPC is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at Barangay Ingore, La Paz, Iloilo City. It owns and operates a 72 MW diesel-fired power plant located in Brgy. Ingore, La Paz, Iloilo City. It may be served with notices and other processes through its legal counsels.
5. Based on the power situation outlook for 2016, MERALCO foresees a significant capacity deficit in its portfolio, especially for the summer months of 2016. The deficit is due to the expected high demand and the scheduled maintenance shutdowns of its contracted generating units as well as possible occurrences of forced plant outage.
6. In view thereof and in order to mitigate exposure to the Wholesale Electricity Spot Market (WESM), there is a need for MERALCO to source additional capacity through short-term 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."



8. After the conduct of a competitive selection process in accordance with ERC Resolution No. 13, Series of 2015, and subsequent good faith negotiations, on 22 January 2016, MERALCO executed Interim Power Supply Agreements (IPSAs) with TPC and PPC for the energy capacities indicated below:

POWER SUPPLIER	CONTRACT ENERGY
TPC	Up to 28 MW (firm basis) from trading intervals 1000H to 2100H, Mondays to Saturdays
PPC	Up to 45 MW (firm basis) from trading intervals 1000H to 2100H, Mondays to Saturdays

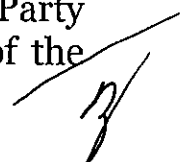
9. ***The IPSA between MERALCO and TPC*** – The IPSA between MERALCO and TPC, a copy of which was attached to the Joint Application as Annex “A”, contains the following salient features:

**Article 1**  
**Term and Effectivity**

1.1 Term of Agreement

1.1.1 This Agreement shall become effective immediately upon execution provided that Power Supplier’s obligation to deliver and MERALCO’s obligation to purchase Contract Energy shall commence upon Energy Regulatory Commission (ERC) Provisional Authority (PA) or Final Approval (FA) (the Commencement Date) and shall expire on 25 February 2017, unless terminated earlier in accordance with the terms of this Agreement or extended by the parties by the application of Section 1.1.2 (Term).

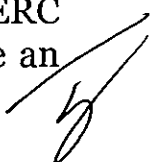
1.1.2 The Term shall be automatically extended for an additional period of one (1) year under the same terms and conditions set forth in this Agreement, unless terminated by either Party by sending written notice to the other Party ninety (90) days prior to the expiration of the



Term. In no case shall the automatic extension of this Agreement exceed four (4) years.

1.2 ERC Approval

- 1.2.1. Within five (5) days after the date of this Agreement, the Parties shall file a joint application with the ERC for the approval of this Agreement, including the Contract Price as detailed in Appendix "A" (ERC Application).
- 1.2.2. If the ERC PA or FA requires any portion of any sum that has been paid by MERALCO to Power Supplier to be adjusted, the 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.
- 1.2.3. If the ERC FA requires an amendment of any provision herein, including provisions on amounts payable under this Agreement, or subjects such approval to any material term or condition that is not acceptable to either Party, acting reasonably (ERC Conditional Approval), the Parties shall cooperate in good faith to resolve the required ERC amendment(s) or to address the material term or condition. The Parties shall agree to:
  - (a) Within fifteen (15) days after the receipt by the Parties of the ERC Conditional Approval, seek a reconsideration of the ERC Conditional Approval. During the period that the motion for reconsideration is pending, Power Supplier shall make available the Contract Energy following the rate in the ERC Conditional Approval, subject to the ERC's Final Approval; and/or
  - (b) If necessary, within thirty (30) days after receipt by the Parties of the ERC Conditional Approval, revise and file an



amended Agreement for approval by the ERC; provided that if the motion for reconsideration is denied by the ERC, or if the Parties fail to agree on the amendment of this Agreement within the period prescribed in Section 1.2.3 (b), or the amended Agreement is disapproved by the ERC, or approved by the ERC but still with any material term or condition that is not acceptable to either Party, acting reasonably, the Agreement can be terminated by any Party by giving a thirty (30)-day prior written notice of such termination to the other Party.

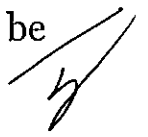
## **Article 2**

### **Sale and Purchase of Contract Energy**

#### **2.1. Supply of Power**

Subject to the terms and conditions of this agreement:

- 2.1.1 Immediately upon the approval by the ERC of this Agreement, Power Supplier shall make available, sell, and deliver to MERALCO and MERALCO shall purchase from Power Supplier the Contract Energy at the Contract Price as detailed in Appendix "A". The Parties agree that Power Supplier shall have no obligation to supply more than the Contract Energy.
- 2.1.2 Subject to Section 2.1.3, Power Supplier shall not, without MERALCO's prior written consent, sell, divert, transfer, dedicate, reserve, or assign all or any portion of the Contract Energy to any Person other than MERALCO.
- 2.1.3 Power Supplier shall, under certain conditions, trade in the WESM any portion of the Contract Energy that is not taken by MERALCO. The Parties acknowledge and agree that any trading of this energy shall be




for the sole benefit of MERALCO. Except for the market participation fees of Power Supplier, any and all costs, taxes, fees, and charges imposed by the Market Operator with respect to such energy traded in the WESM for the portion of the Contract Energy not taken by MERALCO, including the proportionate billing adjustments in relation thereto, such as, but not limited to price substitution mechanism adjustments, shall be for the sole account of MERALCO. MERALCO hereby authorizes Power Supplier to offset any and all of the foregoing amounts against the revenues derived from the trading of the portion of the Contract Energy not taken by MERALCO, in accordance with formula E. (Net WESM Sales) as detailed in Appendix A.

- 2.1.4 On a day-after and month-after basis, in the event that the WESM line rental charges exceed PhP0.30/kWh in any trading interval, MERALCO shall have the option to not take the Contract Energy for such trading interval. If MERALCO exercises such option, it shall not be required to make any Capacity Payment and Fixed O&M Payment with respect to Contract Energy that is not taken by MERALCO.
- 2.1.5 Power Supplier shall not be entitled to any planned/scheduled or forced outage allowances. In case of any such outage, Power Supplier shall procure replacement energy and MERALCO shall pay for the same at the Contract Price.

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#### 4.2 Payments

- 4.2.1 Each Final Invoice shall be due and payable not later than the last day of the calendar month following the month in which the end of the Billing Period for such Final Invoice relates; provided, that if such day is not a business day, then the Final Invoice shall be



due and payable on the next succeeding business day (Payment Date); provided further that in the event that the Final Invoice is not received by MERALCO within the time set forth in Section 4.1.6, the payment shall be due and payable on the due date for the subsequent Billing Period; provided finally, that MERALCO shall not be required to make payment on any Final Invoice that is manifestly in error, apparently invalid, or not in the form or substance contemplated by this Agreement.

- 4.2.2 If MERALCO disputes all or any portion of a Final Invoice for a reason other than a manifest error in or the patent invalidity or incorrect form or substance of such Final Invoice, MERALCO shall, nonetheless, pay the full amount of such Invoice. Any payment by MERALCO under this Section is without prejudice to MERALCO's right at a later date to dispute, protest, or question any amount so paid.

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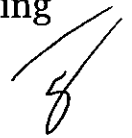
## **Article 5**

### **Taxes, Fees and Costs**

#### **5.1 Responsibility for Taxes, Fees, and Costs**

- 5.1.1. Power Supplier shall be responsible for and shall make timely payment of the following amounts:
- (a) WESM costs attributable to Power Supplier;
  - (b) Benefits to host communities charges; and
  - (c) VAT on the foregoing amounts, if any.

Power Supplier shall also be liable for the payment of all other existing taxes, fees, charges, and costs, including penalties, arising



from this Agreement that properly pertain to the business of Power Supplier.

5.1.2. The following amounts that MERALCO is responsible for paying to third parties shall form part of the price that MERALCO will charge to its customers:

- (a) VAT on Contract Energy in accordance with Bureau of Internal Revenue (BIR) Memorandum Circular No. 61-2005 and ERC Resolution No. 20-2005, except in respect of any portion thereof that applies to VAT zero-rated and VAT-exempt customers of MERALCO;
- (b) WESM line rental charges associated with the declaration of Bilateral Contract Quantities from the Plant to MERALCO's WESM Node, subject to adjustments provided for in Section 2.1.4. and Appendix "A"; and
- (c) NGCP charges.

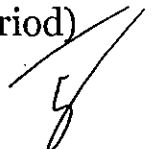
Notwithstanding this Section, MERALCO shall, at all times, be liable for payment of all other existing taxes, fees, charges, and costs, including penalties, arising from this Agreement that properly pertain to the business of MERALCO.

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## **Article 9 Termination**

9.1 If for any reason, except as provided in Article 7, there is an actual failure on the part of Power Supplier to deliver the Contract Energy to MERALCO for a period of ten (10) days, MERALCO shall send written notice to Power Supplier stating that such a breach has occurred.

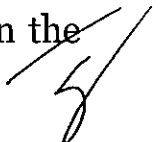
9.2 If within thirty (30) days after receipt from MERALCO of such written notice (the Curing Period)





the actual failure on the part of Power Supplier to deliver the Contract Energy to MERALCO has not been remedied by Power Supplier, MERALCO may terminate this Agreement and pursue any remedy available to it under this Agreement, at law or in equity.

- 9.3 MERALCO shall, from and after the occurrence of a breach under Section 9.1 and even during the Curing Period, be entitled to source energy from the WESM or other parties and Power Supplier shall be liable to pay MERALCO the difference between the amount MERALCO actually paid for such energy and the Contract Price.
- 9.4 Upon the early termination of this Agreement due to: (i) an actual failure on the part of Power Supplier to deliver the Contract Energy to MERALCO, or (ii) the failure of MERALCO to pay for the Contract Price under the terms and conditions of this Agreement that results in the early termination of this Agreement, and without prejudice to any other provisions of this Agreement prior to such early termination, the Party in breach shall pay liquidated damages in an amount equivalent to the present value of the Capacity Recovery Fees for the remaining Term discounted at twelve percent (12%).
- 9.5 Either Party shall have the right to terminate this Agreement by serving thirty (30)-day advance written notice to the other due to violation of any of the provisions hereof or any of the grounds provided for herein; Provided, that the termination under this Section shall not prejudice the right of the aggrieved Party to liquidated damages under Section 9.4.
- 9.6 Subject to seven (7) days prior written notice to MERALCO, Power Supplier may terminate this Agreement if:
- (a) After forty (40) days from filing of the ERC Application for approval of this Agreement, no ERC approval has been issued; or
  - (b) If ERC PA or FA has been issued, Power Supplier is not amenable to any changes in the



terms and conditions of the PSA, including the rate, as may be provided in the ERC PA or FA.

9.7 In the event of pre-termination of this Agreement on grounds as provided in this Agreement, MERALCO shall purchase energy from the WESM.

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10. Based on simulations, the effective delivered price under the IPSA between Applicants MERALCO and TPC for the supply month of May 2016 is PhP8.2706 per kWh, as shown in the sample calculation below:

**TPC IPSA - Sample Calculation**

May 2016

BILLING COMPONENT	UNIT	BILLING RATE	CPI Adj Factor	BILLING DETERMINANT	AMOUNT (PHP)
A. Capital Recovery Payment					
Peso Portion	{Php/kW-mo}	183.7840		28,000 (kW)	5,145,952.00
B. Fixed O&M Payment					
Peso Portion	{Php/kW-mo}	398.2160	1.032656	25,000 (kW)	11,456,335.49
C. Variable O&M Payment					
Peso Portion	{Php/kWh}	0.2349	1.032656	7,165,000 (kWh)	1,738,748.21
D. Fuel Payment					
Peso Portion	{Php/kWh}	4.9130		7,165,000 (kWh)	35,216,634.52
<b>TOTAL PAYMENT</b>	<b>{Php}</b>				<b>53,557,670.22</b>
<b>Effective Rate at Plant Gate</b>	<b>{Php/kWh}</b>				<b>7.4718</b>
<b>WESM Line Rental Rate<sup>(2)</sup></b>	<b>{Php/kWh}</b>				<b>0.7989</b>
<b>Delivered Rate</b>	<b>{Php/kWh}</b>				<b>8.2706</b>
<b>Effective Cost at WESM Price<sup>(3)</sup></b>	<b>{Php/kWh}</b>				<b>13.2424</b>
<b>Increase / (Decrease) over WESM Price</b>	<b>{Php/kWh}</b>				<b>(4.9717)</b>
<b>Meralco Captive Energy Demand<sup>(4)</sup></b>	<b>{kWh}</b>				<b>2,861,523,324</b>
<b>Increase / (Decrease) in Generation Cost</b>	<b>{Php}</b>				<b>(35,637,282.44)</b>
<b>Increase / (Decrease) in Generation Cost</b>	<b>{Php/kWh}</b>				<b>(0.0125)</b>

**Assumptions:**

- (1) CPI Adj for Fixed O&M and Variable O&M based on FH CPI (2006=100) = 142.30, Dec 2015, base PH CPI (2006=100) = 137.8, Feb 2014
- (2) Estimated TPC line rental rate based on actual Apr - Jun 2014 average line rental of TPC
- (3) Cost if equivalent volume of TPC was sourced instead from the WESM based on May 2016 forecast hourly prices
- (4) Meralco Captive Energy Demand based on May 2016 forecast

11. The simulated delivered price for the duration of the term of the IPSA between Applicants MERALCO and TPC would result in an overall savings of PhPo.0003 per kWh, as seen in the rate impact below:

Impact to MERALCO Generation Charge

	Generation Charge PHP/kWh
	Mar 2016 - Feb 2017 Overall
Without Toledo Interim PSA	4.5328
With Toledo Interim PSA	4.5325
<i>inc / -dec, P/kWh</i>	<i>-0.0003</i>
<i>inc / -dec, Million PhP</i>	<i>-7.82</i>

12. In addition to such overall savings, the IPSA between Applicants MERALCO and TPC provides for a WESM rebate mechanism wherein TPC shall, under certain conditions, trade in the WESM any portion of the Contract Energy not taken by MERALCO. Such trading shall be for the sole benefit of MERALCO and shall redound to the benefit of its customers.
13. ***The IPSA between MERALCO and PPC*** – The IPSA between MERALCO and PPC, a copy of which was attached to the Application as Annex “B”, contains the following salient features:

**Article 1**  
**Term and Effectivity**

1.1. Term of Agreement

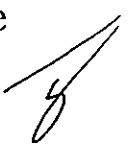
1.1.1 This Agreement shall become effective immediately upon execution, provided that Power Supplier’s obligation to deliver and MERALCO’s obligation to purchase Contract Energy shall commence upon Energy Regulatory Commission (ERC) Provisional Authority (PA) or Final Approval (FA) (the Commencement Date) and shall expire on 25 February 2017, unless terminated earlier in accordance with the terms of this Agreement or extended by the parties by the application of Section 1.1.2 (Term).

1.1.2 The Term shall be automatically extended for an additional period of one (1) year under the same terms and conditions set forth in this Agreement, unless terminated by either Party by sending written notice to the other Party ninety (90) days prior to the expiration of the

Term. In no case shall the automatic extension of this Agreement exceed four (4) years.

1.2. ERC Approval

- 1.2.1 Within five (5) days after the date of this Agreement, the Parties shall file a joint application with the ERC for the approval of this Agreement, including the Contract Price as detailed in Appendix "A" (ERC Application).
- 1.2.2 If the ERC PA or FA requires any portion of any sum that has been paid by MERALCO to Power Supplier to be adjusted, the 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.
- 1.2.3 If the ERC FA requires an amendment of any provision herein, including provisions on amounts payable under this Agreement, or subjects such approval to any material term or condition that is not acceptable to either Party, acting reasonably (ERC Conditional Approval), the Parties shall cooperate in good faith to resolve the required ERC amendment(s) or to address the material term or condition. The Parties shall agree to:
  - (a) Within fifteen (15) days after the receipt by the Parties of the ERC Conditional Approval, seek a reconsideration of the ERC Conditional Approval. During the period that the motion for reconsideration is pending, Power Supplier shall make available the Contract Energy following the rate in the ERC Conditional Approval, subject to the ERC's Final Approval; and/or
  - (b) If necessary, within thirty (30) days after receipt by the Parties of the ERC Conditional Approval, revise and file an amended Agreement for approval by the



ERC; Provided, that if the motion for reconsideration is denied by the ERC, or if the Parties fail to agree on the amendment of this Agreement within the period prescribed in Section 1.2.3 (b), or the amended Agreement is disapproved by the ERC, or approved by the ERC but still with any material term or condition that is not acceptable to either Party, acting reasonably, the Agreement can be terminated by any Party by giving a thirty (30)-day prior written notice of such termination to the other Party.

## **Article 2**

### **Sale and Purchase of Contract Energy**

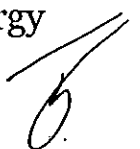
#### 2.1. Supply of Power

Subject to the terms and conditions of this Agreement:

2.1.1 Immediately upon the Commencement Date, Power Supplier shall make available, sell, and deliver to MERALCO and MERALCO shall purchase from Power Supplier the Contract Energy at the Contract Price as detailed in Appendix "A". The Parties agree that Power Supplier shall have no obligation to supply more than the Contract Energy.

2.1.2 Subject to Section 2.1.3, Power Supplier shall not, without MERALCO's prior written consent, sell, divert, transfer, dedicate, reserve, or assign all or any portion of the Contract Energy to any Person other than MERALCO.

2.1.3 Power Supplier shall, under certain conditions, trade in the WESM any portion of the Contract Energy that is not taken by MERALCO. The Parties acknowledge and agree that any trading of this energy shall be for the sole benefit of MERALCO. Except for the market participation fees of Power Supplier, any and all costs, taxes, fees, and charges, imposed by the Market Operator with respect to such energy

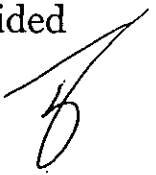


traded in the WESM for the portion of the Contract Energy not taken by MERALCO, including the proportionate billing adjustments in relation thereto, such as but not limited to price substitution mechanism adjustments, shall be for the sole account of MERALCO. MERALCO hereby authorizes Power Supplier to offset any and all of the foregoing amounts against the revenues derived from the trading of the portion of the Contract Energy not taken by MERALCO, in accordance with formula E, (Net WESM Sales) as detailed in Appendix A.

- 2.1.4 On a day-after and month-after basis, in the event that the WESM line rental charges exceed PhP0.30/kWh in any trading interval, MERALCO shall have the option not to take the Contract Energy for such trading interval. If MERALCO exercises such option, it shall not be required to make any Capacity Payment and Fixed O&M Payment with respect to Contract Energy that is not taken by MERALCO.
- 2.1.5 Power Supplier shall not be entitled to any planned/scheduled or forced outage allowances. In case of any such outage, Power Supplier shall procure replacement energy and MERALCO shall pay for the same at the Contract Price.

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#### 4.2. Payments

- 4.2.1. Each Final Invoice shall be due and payable not later than the last day of the calendar month following the month in which the end of the Billing Period for such Final Invoice relates; provided, that if such day is not a business day, then the Final Invoice shall be due and payable on the next succeeding business day (Payment Date); provided further, that in the event that the Final Invoice is not received by MERALCO within the time set forth in Section 4.1.6, the payment shall be due and payable on the due date for the subsequent Billing Period; provided
- 

finally, that MERALCO shall not be required to make payment on any Final Invoice that is manifestly in error, apparently invalid or not, in the form or substance contemplated by this Agreement.

4.2.2. If MERALCO disputes all or any portion of a Final Invoice for a reason other than a manifest error in, or the patent invalidity or incorrect form or substance of such Final Invoice, MERALCO shall, nonetheless, pay the full amount of such Invoice. Any payment by MERALCO under this Section is without prejudice to MERALCO's right at a later date to dispute, protest, or question any amount so paid.

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## **Article 5 Taxes, Fees, and Costs**

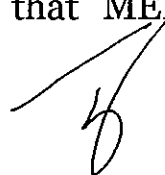
### 5.2 Responsibility for Taxes, Fees, and Costs

5.1.1. Power Supplier shall be responsible for and shall make timely payment of the following amounts:

- (a) WESM costs attributable to Power Supplier;
- (b) Benefits to host communities charges; and
- (c) VAT on the foregoing amounts, if any.

Power Supplier shall also be liable for the payment of all other existing taxes, fees, charges, and costs, including penalties, arising from this Agreement that properly pertain to the business of Power Supplier.

5.1.2. The following amounts that MERALCO is responsible for paying to third parties shall form part of the price that MERALCO will charge to its customers:



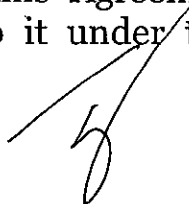
- (a) VAT on Contract Energy in accordance with Bureau of Internal Revenue (BIR) Memorandum Circular No. 61-2005 and ERC Resolution No. 20-2005, except in respect of any portion thereof that applies to VAT zero-rated and VAT-exempt customers of MERALCO;
- (b) WESM line rental charges associated with the declaration of Bilateral Contract Quantities from the Plant to MERALCO's WESM Node, subject to adjustments provided for in Section 2.1.4. and Appendix "A"; and
- (c) NGCP Charges.

Notwithstanding this Section, MERALCO shall, at all times, be liable for payment of all other existing taxes, fees, charges, and costs, including penalties, arising from this Agreement that properly pertain to the business of MERALCO.

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### **Article 9 Termination**

- 9.1. If for any reason, except as provided in Article 7, there is an actual failure on the part of Power Supplier to deliver the Contract Energy to MERALCO for a period of ten (10) days, MERALCO shall send written notice to Power Supplier stating that such a breach has occurred.
- 9.2. If within thirty (30) days after receipt from MERALCO of such written notice (the Curing Period) the actual failure on the part of Power Supplier to deliver the Contract Energy to MERALCO has not been remedied by Power Supplier, MERALCO may terminate this Agreement and pursue any remedy available to it under this Agreement, at law or in equity.





- 9.3. MERALCO shall, from and after the occurrence of a breach under Section 9.1 and even during the Curing Period, be entitled to source energy from the WESM or other parties and Power Supplier shall be liable to pay MERALCO the difference between the amount MERALCO actually paid for such energy and the Contract Price.
- 9.4. Upon the early termination of this Agreement due to: (i) an actual failure on the part of Power Supplier to deliver the Contract Energy to MERALCO or (ii) the failure of MERALCO to pay for the Contract Price under the terms and conditions of this Agreement that results in the early termination of this Agreement, and without prejudice to any other provisions of this Agreement prior to such early termination, the Party in breach shall pay liquidated damages in an amount equivalent to the present value of the Capacity Recovery Fees for the remaining Term discounted at twelve percent (12%).
- 9.5. Either Party shall have the right to terminate this Agreement by serving thirty (30)-day advance written notice to the other due to violation of any of the provisions hereof or any of the grounds provided for herein; Provided, that the termination under this Section shall not prejudice the right of the aggrieved Party to liquidated damages under Section 9.4.
- 9.6. Subject to seven (7) days prior written notice to MERALCO, Power Supplier may terminate this Agreement if:
- (a) After forty (40) Days from filing of the ERC Application for approval of this Agreement, no approval has been issued; or
  - (b) If ERC PA or FA has been issued, Power Supplier is not amenable to any changes in the terms and conditions of the PSA, including the rate, as may be provided in the ERC PA or FA.
- 9.7. In the event of pre-termination of this Agreement on grounds as provided in this Agreement, MERALCO shall purchase energy from the WESM.



XXX

14. Based on simulations, the effective delivered price under the IPSA between MERALCO and PPC for the supply month of May 2016 is PhP5.6754 per kWh, as shown in the sample calculation below:

**PPC IPSA - Sample Calculation**

May 2016

BILLING COMPONENT	UNIT	BILLING RATE	CPI Adj Factor	BILLING DETERMINANT	AMOUNT (PHP)
A. Capital Recovery Payment					
Peso Portion	(Php/kW-mo)	161.1100		45,000 (kW)	7,249,950.00
B. Fixed O&M Payment					
Peso Portion	(Php/kW-mo)	418.8800	1.032656	45,000 (kW)	19,464,223.53
C. Variable O&M Payment					
Peso Portion	(Php/kWh)	0.3449	1.032656	13,410,000 (kWh)	4,776,146.67
D. Fuel Payment					
Peso Portion	(Php/kWh)	3.2121		13,410,000 (kWh)	43,074,571.42
<b>TOTAL PAYMENT</b>	(Php)				<b>74,564,891.69</b>
Effective Rate at Plant Gate	(Php/kWh)				<b>5.5604</b>
WESM Line Rental Rate <sup>(2)</sup>	(Php/kWh)				<b>0.1151</b>
Delivered Rate	(Php/kWh)				<b>5.6754</b>
Effective Cost at WESM Price <sup>(3)</sup>	(Php/kWh)				<b>11.9620</b>
Increase / (Decrease) over WESM Price	(Php/kWh)				<b>(6.2866)</b>
Meralco Captive Energy Demand <sup>(4)</sup>	(kWh)				<b>2,861,523,324</b>
Increase / (Decrease) in Generation Cost	(Php)				<b>(84,302,973.11)</b>
Increase / (Decrease) in Generation Cost	(Php/kWh)				<b>(0.0295)</b>

**Assumptions:**

- (1) CPI Adj for Fixed O&M and Variable O&M based on PH CPI (2006=100) = 142.30, Dec 2015, base PH CPI (2006=100) = 137.8, Feb 2014  
 (2) Estimated PPC line rental rate based on actual Apr - Jul 2014 average line rental of PPC  
 (3) Cost if equivalent volume of PPC was sourced instead from the WESM based on May 2016 forecast hourly prices  
 (4) Meralco Captive Energy Demand based on May 2016 forecast

15. The simulated delivered price for the duration of the term of the IPSA between MERALCO and PPC would result in an overall savings of PhP0.0074 per kWh, as seen in the rate impact below:

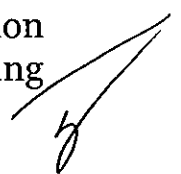
**Impact to MERALCO Generation Charge**

	Generation Charge PHP/kWh
	Mar 2016 - Feb 2017 Overall
Without Panay Interim PSA	4.5328
With Panay Interim PSA	4.5254
<i>inc / -dec, P/kWh</i>	<i>-0.0074</i>
<i>inc / -dec, Million PhP</i>	<i>-229.03</i>

16. In addition to such overall savings, the IPSA between MERALCO and PPC provides for a WESM rebate mechanism wherein PPC shall, under certain conditions, trade in the WESM any portion of the Contract Energy not taken by MERALCO. Such trading shall be for the sole

benefit of MERALCO and shall redound to the benefit of its customers.

17. ***Allegations in Support of the Prayer for Provisional Authority*** – Based on the supply-demand outlook for 2016, MERALCO foresees a significant capacity deficit in its portfolio, especially for the summer months. The deficit is due to expected high demand and scheduled maintenance shutdowns of its contracted generating units as well as possible occurrences of forced plant outage.
18. Applicants alleged that if the IPSAs are not implemented during said period, Applicant MERALCO will be constrained to source from the WESM, where prices are volatile, especially during the summer months. This can be further aggravated and would likely result in higher WESM prices. The higher prices can be attributed the very tight supply under thin reserve margin conditions during said period.
19. Applicants, thus, argued that there is a paramount necessity for the timely approval of the Joint Application and for the issuance of a provisional authority. The timely approval and issuance would enable MERALCO to immediately implement the IPSAs allowing it to reduce its purchases from WESM. This in turn would protect MERALCO's customers from forecasted high WESM prices, helping ensure reasonable prices for such customers especially during the summer months of 2016.
20. In support of the Joint Application, the Judicial Affidavit of Mr. Ciprinilo C. Meneses, Head of MERALCO's Energy Sourcing Office, was attached as Annex "C".
21. Applicants MERALCO, TPC, and PPC prayed for the following:
  - a. Issuance of an Order, after initial review of the Joint Application and pending hearing on the merits, approving provisionally the implementation of the IPSAs between: (a) MERALCO and TPC; and (b) MERALCO and PPC, thereby authorizing TPC and PPC to charge and collect from MERALCO electricity fees based on rates that the Commission may provisionally approve, and authorizing



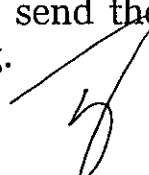
Applicant MERALCO to pass the full amount thereof to its customers.

- b. Issuance of a Decision, after trial on the merits, approving the IPSAs, thereby authorizing TPC and PPC to charge and collect from MERALCO the electricity fees based on the final rates approved by the Commission, and authorizing MERALCO to pass the full amount thereof to its customers.
- c. Allowing TPC and PPC to recover from MERALCO the rate difference, and authorizing MERALCO to pass the full amount thereof to its customers, in the event that the rate provisionally approved is lower than the rate finally approved.
- d. Granting of such other reliefs, just and equitable, under the circumstances.

Finding the said Joint Application sufficient in form and substance with the required fees having been paid; the same is hereby set for determination of compliance with the jurisdictional requirements, expository presentation, pre-trial conference, and presentation of evidence on **05 April 2016 at ten o'clock in the morning (10:00 A.M.), at the ERC Hearing Room, 15<sup>th</sup> Floor, Pacific Center Building, San Miguel Avenue, Pasig City.**

MERALCO, TPC, and PPC are hereby directed to cause the publication of the attached Notice of Public Hearing in two (2) newspapers of general circulation in the Philippines at their own expense, twice (2x) within (2) successive weeks, the dates of publication not being less than seven (7) days apart, with the date of last publication made not later than ten (10) days before the date of the scheduled initial hearing. They are also directed to inform the consumers within the franchise area of MERALCO, by any other means available and appropriate, of the filing of the Joint Application, its reasons therefor, and of the scheduled hearing thereon.

Let copies of the Joint Application, this Order, and the attached Notice of Public Hearing be furnished the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress. They are hereby requested, if they so desire, to send their duly authorized representatives at the scheduled hearing.



Likewise, let copies of this Order and the attached Notice of Public Hearing be furnished the Offices of the Provincial Governors and the Mayors of the Cities/Municipalities within MERALCO's franchise area for the appropriate posting thereof on their respective bulletin boards.

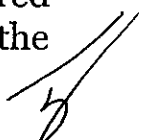
MERALCO, TPC, and PPC are hereby directed to furnish all those making requests therefor with copies of the Joint Application and its attachments, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing, MERALCO, TPC, and PPC must submit to the Commission their written Compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidences on the actual posting and publication of the Notice of Public Hearing consisting of certifications issued to that effect, signed by the afore-mentioned Governor and Mayors or their duly authorized representatives, bearing the seals of their offices, and the affidavits of the Editors or Business Managers of the newspapers where the said Notice of Public Hearing were published together with the complete issues of the said newspapers, and such other proofs of compliance with the requirements of the Commission.

MERALCO, TPC, PPC, and all interested parties are directed to submit, at least five (5) days before the date of initial hearing and pre-trial conference, their respective Pre-trial Briefs containing, among others:

- a. A summary of admitted facts and proposed stipulation of facts;
- b. The issues to be tried or resolved;
- c. The documents or exhibits to be presented, stating the purposes and proposed markings therefore; and
- d. The number and names of the witnesses, with their written testimonies in an individual affidavit form, to be attached to the Pre-trial Brief.

Failure of MERALCO, TPC, and PPC to submit the required Pre-trial Brief and Judicial Affidavits of their witnesses within the



prescribed period shall be a ground for cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from said date of cancellation.

As part of the pre-trial conference, MERALCO, TPC, and PPC must also be prepared to make an expository presentation of their Joint Application, aided by whatever communication medium that they may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties, what the Joint Application is all about and the reasons and justifications being cited in support thereof.

**SO ORDERED.**

Pasig City, 07 March 2016.

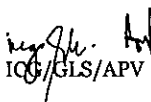
FOR AND BY AUTHORITY  
OF THE COMMISSION:

**ERC**  
*Office of the Chairman*



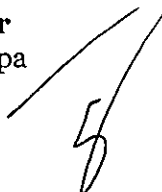
C-2016-015-OC-01357

  
**JOSE VICENTE B. SALAZAR**  
*Chairman and CEO*

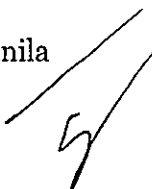
  
ICG/GLS/APV

**Copy Furnished:**

1. **Attys. Francis Dino S. Antonio, Carmen Grace S. Ramos, Katherine Mari S. Garcia-Moreno, and Raymond B. Yap**  
*Counsels for MERALCO*  
7<sup>th</sup> Floor, Lopez Building, Ortigas Avenue, Barangay Ugong, Pasig City
2. **Attys. Amanda R. Abrera Bengson, Rogelio D. Puno, Jr, and Mark Jorel O. Calida**  
*Counsels for TPC and PPC*  
Global Business Power Corporation  
22<sup>nd</sup> Floor, GT Tower International, 6813 Ayala Avenue, corner H.V. dela Costa Street, Makati City
3. **Toledo Power Company (TPC)**  
Barangay Daanlungsod, Toledo City, Cebu
4. **Panay Power Corporation (PPC)**  
Barangay Ingore, La Paz, Iloilo City
5. **Office of the Solicitor General**  
134 Amorsolo Street, Legaspi Village  
Makati City, Metro Manila
6. **Commission on Audit**  
Commonwealth Avenue  
Quezon City, Metro Manila
7. **Senate Committee on Energy**  
GSIS Bldg. Roxas Blvd., Pasay City  
Metro Manila
8. **House Committee on Energy**  
Batasan Hills, Quezon City, Metro Manila
9. **Philippine Chamber of Commerce and Industry (PCCI)**  
Campus Avenue corner Park Avenue,  
McKinley Town Center, Fort Bonifacio, Taguig City
10. **The City Mayor**  
City of Manila
11. **The City Mayor**  
Quezon City
12. **The City Mayor**  
City of Caloocan
13. **The City Mayor**  
City of Makati
14. **The City Mayor**  
City of Malabon
15. **The City Mayor**  
City of Mandaluyong
16. **The City Mayor**  
City of Muntinlupa

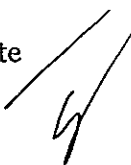


17. **The City Mayor**  
City of San Jose del Monte, Bulacan
18. **The City Mayor**  
City of Valenzuela
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City of Pasig
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Pasay City
21. **The City Mayor**  
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Cavite City
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Trece Martirez City
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Las Piñas City
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San Juan City
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Lucena City
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Batangas City
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San Pablo City, Laguna
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City of Marikina
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Antipolo City, Rizal
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Tagaytay City, Cavite
32. **The City Mayor**  
Calamba, Laguna
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Sta. Rosa, Laguna
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Biñan, Laguna
35. **The City Mayor**  
Navotas, Metro Manila

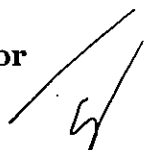




36. **The Municipal Mayor**  
Taguig, Metro Manila
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Pateros, Metro Manila
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General Aguinaldo, Cavite
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Magallanes, Cavite
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Gen. Trias, Cavite
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Rosario, Cavite
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Tanza, Cavite
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Dasmariñas, Cavite
55. **The Municipal Mayor**  
Gen. Mariano Alvarez, Cavite

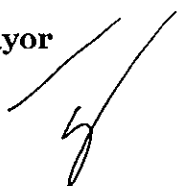


56. **The Municipal Mayor**  
Silang, Cavite
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Carmona, Cavite
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Norzagaray, Bulacan
75. **The Municipal Mayor**

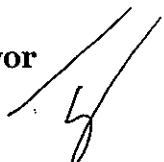


Sta. Maria, Bulacan

76. **The Municipal Mayor**  
Angat, Bulacan
77. **The Municipal Mayor**  
Doña Remedios Trinidad, Bulacan
78. **The Municipal Mayor**  
Plaridel, Bulacan
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Malolos, Bulacan
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Calumpit, Bulacan
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Bustos, Bulacan
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Pandi, Bulacan
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Bocaue, Bulacan
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Bulacan, Bulacan
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Balagtas, Bulacan
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Baliwag, Bulacan
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San Rafael, Bulacan
92. **The Municipal Mayor**  
San Miguel, Bulacan
93. **The Municipal Mayor**  
San Ildefonso, Bulacan
94. **The Municipal Mayor**  
Victoria, Laguna



95. **The Municipal Mayor**  
Nagcarlan, Laguna
96. **The Municipal Mayor**  
Magdalena, Laguna
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Calauan, Laguna
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Pila, Laguna
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Sta.Cruz, Laguna
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Liliw, Laguna
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San Pedro, Laguna
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Alaminos, Laguna
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Rizal, Laguna
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Los Baños, Laguna
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Tayabas, Quezon
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Candelaria, Quezon
113. **The Municipal Mayor**  
Sariaya, Quezon
114. **The Municipal Mayor**



- San Antonio, Quezon
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Mauban, Quezon
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Tiaong, Quezon
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Majayjay, Quezon
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Luisiana, Quezon
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Sto. Tomas, Batangas
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San Pascual, Batangas
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Candaba, Pampanga
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San Simon, Pampanga
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Apalit, Pampanga
  124. **Office of the Governor**  
Province of Rizal
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Province of Bulacan

