

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

**IN THE MATTER OF THE
JOINT APPLICATION FOR
THE APPROVAL OF THE
INTERIM POWER SUPPLY
AGREEMENT (IPSA)
BETWEEN MANILA
ELECTRIC COMPANY
(MERALCO) AND
MILLENNIUM ENERGY, INC.
(MEI), WITH MOTION FOR
CONFIDENTIAL TREATMENT
OF INFORMATION**

ERC CASE NO. 2019-030 RC

**MANILA ELECTRIC
COMPANY (MERALCO) AND
MILLENNIUM ENERGY, INC.
(MEI),**

Applicants.

x ----- x

MAY 24 2019

NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 17 April 2019, Manila Electric Company (MERALCO) and Millennium Energy, Inc. (MEI) filed a *Joint Application* dated 15 April 2019, seeking the approval of their Interim Power Supply Agreement (IPSA), with motion for confidential treatment of information.

The pertinent portions of the said *Joint Application* are hereunder quoted as follows:

1. 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.

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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. MEI is a corporation duly organized and existing under the laws of the Republic of the Philippines, with its office address at E-3204-B Philippine Stock Exchange Centre, Exchange Road, Ortigas Center, Pasig 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. MEI owns and operates a 1 x 100 MW Gas-Turbine Power Plant, also known as the Millennium Gas Turbine Power Plant, located in Navotas Fishport Complex, Navotas City ("Plant").
5. The National Grid Corporation of the Philippines ("NGCP"), for the period May to June 2019, forecasted localized low voltage situations in the Luzon Grid each time peak demand exceeds 11,200 MW. During this period, several NGCP-Meralco delivery point substations will be affected, which could trigger Manual Load Dropping ("MLD") or power interruptions during the critical period of the May 2019 elections and up to June 2019 (together with water shortage and effects of El Niño).
6. MERALCO acknowledges that while this is not a supply adequacy issue but an ancillary service problem caused mainly by insufficient MVAR supply to load center, one of the identified remedial measures is to ensure that the embedded generators in the area, which includes the Plant, is operational, available, and dispatched.
7. To help find a solution to the current emergency situation and assist NGCP and the Department of Energy ("DOE"), MERALCO will facilitate the dispatch of the Plant by executing an emergency Interim Power Supply Agreement ("IPSA") with MEI for the period of April 26, 2019 to June 25, 2019 in order to mitigate the low voltage situations forecasted by NGCP during the period of May to June 2019.
8. Section 2.2.2 of the DOE's Department Circular No. DC2018-02-0003¹ allows exemption from a Competitive Selection Process ("CSP") of any "[n]egotiated procurement of emergency power supply; Provided, that the cooperation period of the corresponding PSA shall not exceed one (1) year; Provided further, that the rate shall not be higher than the latest ERC approved generation tariff for same or similar technology".

¹ Entitled "Adopting and Prescribing the Policy for the Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreement for the Captive Market".

9. On 10 April 2019, MERALCO and MEI wrote a joint letter² to the DOE requesting for exemption from CSP of the negotiated IPSA of the Parties.
10. On 15 April 2019, MERALCO and MEI executed an IPSA for the purchase of 70 MW of electric power ("Contract Capacity and Associated Energy) from the Plant, subject to a net dependable capacity test in accordance with the IPSA, from 26 April 2019 until 25 June 2019, provided the instant Joint Application has been filed before this Honorable Commission.
11. 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*".
12. The IPSA between MERALCO and MEI, a copy of which is attached as **ANNEX "A"** and made an integral part hereof, 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 signing. Power Supplier's obligation to deliver, and Meralco's obligation to purchase, Contract Capacity and Associated Energy shall commence on **April 26, 2019**, provided that the Parties have filed a joint application with the ERC for the approval of this Agreement (including the Contract Price, as defined in Section 4.1) (the "**Commencement Date**"). This Agreement shall expire on **June 25, 2019**, unless terminated earlier in accordance with the terms of this Agreement ("**Term**").

1.1.2 This Agreement may be extended up to a period of one (1) year, upon mutual agreement by the Parties.

1.2 ERC Approval

1.2.1 Within five (5) days from signing of this Agreement, the Parties shall file a joint application with the ERC for the approval of this Agreement (including the Contract Price, as defined in Section 4.1) ("**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 and/or filing of urgent motion(s) required to expedite the approval of the Agreement.

1.2.2 If the ERC 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

² Copy of the letter is attached as Annex "I".

any disallowances in the Contract Price or the imposition of penalties, the same shall be for the account of Power Supplier, and for clarity, this shall be regardless of whether or not the Term had already lapsed.

Article 2 Sale and Purchase of Contract Capacity and Associated 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 Capacity and Associated Energy at the Contract Price.
- 2.1.2 Subject to the provisions of Section 3.2, the Contract Capacity and Associated Energy shall be delivered to Meralco from Commencement Date to end of the Term.
- 2.1.3 Upon signing of this Agreement, Power Supplier shall conduct an online net dependable capacity test of the Plant, and the results thereof shall be used as basis for determining the Contract Capacity under this Agreement. During the first eight (8) hours of such test, Meralco is not obligated to pay for the output of the Plant.
- 2.1.4 Power Supplier shall not be entitled to any outage allowances.
- 2.1.5 Power Supplier shall not be obliged to deliver any energy from the Plant during instances of force majeure. Moreover, in case of any force majeure which results in the available capacity falling below the Contract Capacity and Associated Energy, Power Supplier shall not be obliged to provide for the corresponding shortfall and Meralco shall pay for the Monthly Fixed Payment as proportionately reduced by fifty percent (50%) in accordance with Appendix A.

xxx

Article 3 Operation and Maintenance of the Plant

xxx

3.2 WESM Declarations

- 3.2.1 Power Supplier shall ensure that its day-after daily declaration of bilateral contract quantities submitted to the Market Operator, as required by the WESM Rules, accurately reflects the metered quantity of the Plant. xxx

XXX

Article 4 Contract Price, Billing and Payment

4.1 Contract Price

The Contract Price shall consist of the following:

Monthly Fixed Payment	PhP 30,730,000.00 (PhP439.00/kWmonth)
Variable Payment	PhP 1.93/kWh – Variable O&M PhP 13.62/kWh (estimate) – Actual Fuel Pass-through

where the Monthly Fixed Payment is to be paid whether or not the Plant is nominated for dispatch by Meralco, and an additional Variable Payment is to be paid to the extent the Plant is actually dispatched regardless of Meralco’s nominations. The calculation of the payments shall be in accordance with **Schedule 1** of this Agreement.

xxx”

13. The following table shows the indicative rate impact of implementation of the IPSA on MERALCO’s blended generation rates:

MEI IPSA - Rate Impact
(May 2019 to June 2019)

BILLING COMPONENT	UNIT	BASE RATE ^(a)	BILLING DETERMINANT ^(b)		Number of Months	AMOUNT (PHP)
A. Fixed Payment (MFP)						
Peso Portion	(Php/kW-mo)	439.0000	70,000	(kW)	2	61,460,000.00
B. Variable O&M Payments (MVOMP)						
Peso Portion	(Php/kWh)	1.9900	28,000,000	(kWh)		54,040,000.00
C. Actual Fuel Payment (MAFP)						
Peso Portion	(Php/kWh) ^(c)	13.6204	28,000,000	(kWh)		381,371,200.00
D. Replacement Energy Payment (MREP)						
Peso Portion	(Php/kWh) ^(d)	-	-	(kWh)		0.00
TOTAL PAYMENT	(Php)					496,871,200.00
Effective Rate at Plant Gate	(Php/kWh)					17.7454
WESM Line Rental Rate ^(e)	(Php/kWh)					0.0000
Delivered Rate	(Php/kWh)					17.7454
Effective Cost at WESM Price ^(f)	(Php/kWh)					9.1196
Increase / (Decrease) over WESM Price	(Php/kWh)					8.6258
Meralco Captive Energy Demand ^(g)	(kWh)					5,826,000,000
Increase / (Decrease) in Generation Cost	(Php)					241,522,950.00
Increase / (Decrease) in Generation Cost	(Php/kWh)					0.0415

NOTE:

^(a) Base Rates as set forth in Schedule 1 of Appendix A of the IPSA

^(b) Energy Billing Determinant based on 26.88% pct

^(c) Monthly Actual Fuel Payment calculated based on Diesel Fuel Oil (DFO) price = 34.0000 Php/liter, and DFO consumption rate = 0.4006 liter/kWh (Forecasted oil price for May 2019)

^(d) No Replacement Energy was assumed for this rate Impact

^(e) No line rental was assumed since MEI is embedded within MERALCO franchise area

^(f) Cost if equivalent volume of MEI was sourced from the WESM based on forecasted May 2019 to June 2019 hourly prices

^(g) Meralco Captive Energy Demand based on forecast for May 2019 to June 2019

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14. MERALCO notes that the rates offered by MEI, which translates to about **PhP17.7454/kWh (at Plant Gate)**, is lower than its previous power supply offer of PhP20.4696/kWh (at Plant Gate) to MERALCO in 2017, thus:

Comparison of MEI Offered Rates (26.9% pcf)

		2017 Offer	2019 Offer	Difference of 2019 Offer from 2017 Offer
CR Fee	PhP/kW-yr	9,341	2,282	-7,059
FOM Fee	PhP/kW-yr	2,782	2,986	204
Fixed Fees	PhP/kW-yr	12,123	5,268	-6,855
CR Fee	PhP/kW-mo	778	190	-588
FOM Fee	PhP/kW-mo	232	249	17
Fixed Fees	PhP/kW-mo	1,010	439	-571
Fixed Fees	PhP/mo	70,716,800	30,730,000	-39,986,800
CR Fee	PhP/kWh	3.8920	0.9507	-2.9413
FOM Fee	PhP/kWh	1.1592	1.2443	0.0851
Fixed Fees	PhP/kWh	5.0512	2.1950	-2.8562
VOM Fee	PhP/kWh	1.7980	1.9300	0.1320
Fuel Fee	PhP/kWh	13.6204	13.6204	0.0000
Variable Fees	PhP/kWh	15.4184	15.5504	0.1320
Plant Gate	PhP/kWh	20.4696	17.7454	-2.7242

Notes:

Fuel consumption rate of 0.40 liters/kWh

Diesel oil fuel price for MEI (PhP 34/liter) based on February 2019 price level

15. In support of this Joint Application, the Judicial Affidavits of **ENGR. RYAN S. MORALES**, Head of MERALCO's Energy Sourcing Office, and **ENGR. ANTONIO O. MERCADO**, Tariff and Regulatory Affairs Manager of MEI, are attached hereto as **ANNEXES "B"** and **"C"**, respectively.
16. 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 Honorable Commission, the Applicants provide the following documents:

Description of Document	Annex
MERALCO's Articles of Incorporation	D
MERALCO'S By-Laws	E
MERALCO's latest General Information Sheet (GIS)	F
MERALCO's Demand Side Management program	G
MERALCO's Distribution Development Plan; with Average Daily Load Curve scenarios; and Supply and Demand Scenario, with capacity utilization*; and Write-up on Non-Applicability of National Power Corporation ("NPC") Certification regarding whether or not Transition Supply Contract ("TSC") capacity and energy is expected to be available during the contractual period	H H-1 H-2* H-3

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Letter to DOE requesting for exemption from CSP of the negotiated IPSA	I
SEC Certificate of Registration for MEI's Articles of Incorporation and SEC Certificate of Registration for MEI's Amended Articles of Incorporation	J J-1
MEI's Amended Articles of Incorporation	K
MEI's By-laws	L
MEI's latest GIS	M
MEI's Ownership, Organizational Structure and Generation Company Information Sheet (GCIS)	N N-1 N-2
MEI's Environmental Compliance Certificates ("ECC")	O
MEI's Certificates of Compliance ("COC")	P
MEI's Transmission Service Agreement ("TSA") Certification from NGCP Write up on non-applicability of point-to-point limited facilities	Q Q-1
MEI's Metering Service Agreement ("MSA") with NGCP	R
MEI's Generation/Power Rate Derivation*	S*
Sample Bill	T*
Rate Simulation	U
MEI's Sworn Statement on Fuel Procurement Process*	V*
MEI's Audited Financial Statements*	W*
MEI's Net Heat Rate	X
MEI's Details of the PSA (sources of funds/financial plans)	Y
Write Ups on Non-Applicability of the Following: <ul style="list-style-type: none"> • Shareholders' Agreement • Board of Investment (BOI) Certificate of Registration • Certification from Department of Energy (DOE) regarding Philippine Development Plan (PDP) or Certificate of Endorsement • Renewable Energy Service/Operating Contract from the DOE • Certificate of Registration or Certification of Confirmation of Commerciality by an RE Developer and after due confirmation by the DOE • Other documentation that may be needed by the ERC in the course of the evaluation, such as, but not limited to: <ul style="list-style-type: none"> ○ Simulation of the no. of operating units necessary to meet MEOT and/or additional energy/demand requirements of the DU ○ Potential Cost (absolute amounts and PhP/kWh) of Ancillary Services as/when the IPP/ DU is connected to the main grid 	Z and series

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

**ALLEGATIONS IN SUPPORT OF PRAYER FOR
PROVISIONAL AUTHORITY**

17. It bears noting that Department Circular No. DC2018-02-0003 of the DOE allows immediate implementation of the PSAs contemplated under Section 2.2.2 thereof. Pursuant thereto, Applicants shall implement the IPSA upon filing of this Joint

Application, subject to this Honorable Commission's confirmation/approval of the rate, provisional or otherwise.

18. It must be emphasized that the timely and immediate implementation of the IPSA is of paramount importance in order to avert MLD or power interruptions and ensure that power is continuous and reliable during the critical period of the May 2019 elections up to June 2019.
19. It should be also highlighted that even as the summer season for 2019 is just beginning, as of 12 April 2019, NGCP has declared the Luzon power grid under "yellow alert" status for fifty-three (53) hours and "red alert" status for twenty-one (21) hours. Notably, for 12 April 2019 alone, there were thirteen (13) hours of red alert notice declared by NGCP. This has resulted in significant increase in prices at the Wholesale Electricity Spot Market ("WESM") and prompted an increase in generation cost. In fact, over the last two (2) weeks, market clearing prices at the WESM have repeatedly hit the ceiling price of PhP32/kWh in at least twenty-five (25) occasions. In addition, the situation already resulted in MLD and rolling power interruptions across MERALCO's franchise area to address the stability of the Luzon Grid during red alert hours. Notably, the Luzon Grid has not even reached NGCP's projected peak demand this year, which means that more red alerts are forthcoming given the current status of power plants.
20. In view of the foregoing, there is indeed paramount relevance and necessity to immediately implement the IPSA between MERALCO and MEI in order to ensure continuous and reliable electricity for MERALCO customers and during the critical period of the May 2019 elections up to June 2019.

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

21. 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.
22. With respect to the documents marked as **Annexes "N", "N-1", "N-2", "S", "T", "V" and "W"**, MEI respectfully moves that they be treated as confidential and not be disclosed to any party since they contain commercial and financial information of MEI. The information contained in these documents contains details which go into MEI's business and pricing which are not generally known to the public. MEI therefore has proprietary

interest to protect the information contained in these documents.

23. 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, it is respectfully prayed that a protective order be issued by the Honorable Commission declaring **Annex "G-2"** as confidential information, since Applicants intend to present the same as evidence in the instant Application.
24. One (1) copy of **ANNEXES "G-2", Annexes "N", "N-1", "N-2", "S", "T", "V" and "W"** are hereby submitted 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 "G-2", Annexes "N", "N-1", "N-2", "S", "T", "V" and "W"** 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 IPISA between MERALCO and MEI.

On 3 May 2019, the Commission issued an *Order and Notice of Public Hearing*, both dated 29 April 2019, setting the *Application* for determination of compliance with jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on 24 May 2019.

On 17 May 2019, MERALCO filed a *Manifestation with Motion to Reset Hearing and Issue Necessary Order* (Motion), praying that the hearing set on 24 May 2019 be reset because of Applicants' inability to comply with the publication requirement within the prescribed period.

Finding the *Motion* in order, the same has been granted by the Commission.

Accordingly, the Commission has set the *Joint Application* for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of

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evidence on **21 June 2019 (Friday) at one o'clock in the afternoon (1:00 P.M.), at the ERC Hearing Room, 15th Floor Pacific Center Building, 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:

- 1) The petitioner's name and address;
- 2) 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
- 3) A statement of the relief desired.

All such persons who wish to have a copy of the *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 *Application* and its attachments, subject to the reimbursement of reasonable photocopying costs. Any such person may likewise examine the *Application* and other pertinent records filed with the Commission during the standard office hours.

WITNESS, the Honorable Chairperson and CEO **AGNES VST DEVANADERA**, and Honorable Commissioners **ALEXIS M. LUMBATAN**, **CATHERINE P. MACEDA** and **PAUL CHRISTIAN M. CERVANTES**, Energy Regulatory Commission, this 21st day of May 2019 in Pasig City.

FOR AND BY AUTHORITY
OF THE COMMISSION:


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Oversight Commissioner for Legal

LS: MVM/LSA/GLO
