

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 MOTION FOR
CONFIDENTIAL
TREATMENT OF
INFORMATION**

ERC CASE NO. 2019-023 RC

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

Applicants.

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Promulgated

JUL 22 2019

NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 18 March 2019, Manila Electric Company (MERALCO) and Solar Philippines Tarlac Corporation (SPTC) filed a *Joint Application* dated 13 March 2019, seeking the Commission's approval of their Power Supply Agreement (PSA) with motion for confidential treatment of information.

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

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

ERC CASE NO. 2019-023 RC
NOTICE OF PUBLIC HEARING/12 JULY 2019
PAGE 2 OF 12

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 second phase ("Phase 2") of its solar power plant, capable of supplying electric energy up to 50 MW_{AC} (net), which is located in the Municipality of Concepcion, Tarlac.
5. Based on the power situation outlook for 2019 and succeeding years, MERALCO foresees a peaking capacity deficit in its portfolio due to the expected high peak demand as well as possible occurrences of scheduled maintenance shutdowns and forced outage of power plants.
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 22 February 2019, MERALCO executed a Power Supply Agreement ("**PSA**") with SPTC, for the purchase of all electric energy generated by its solar power plant corresponding to 50 MW_{AC} (net), 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 22 December 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 (with a proposed energy price of PhP2.9887 per kWh, subject to an annual escalation of two percent (2%), 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 25 January 2018, MERALCO's Power Supply Agreements Bids and Awards Committee (the "PSA BAC") sent letter-notices, of even date, to SPTC informing it that as the sole Price Challenger, it failed to submit complete qualification documents, hence, there are no Qualified Price Challenger. Thus, the PSA BAC decided to not proceed with the first round of the Price Challenge and to subject the PSA to a second round of Price Challenge.
 - 8.3. Thereafter, on 1 February 2018, MERALCO caused the publication of a Final Invitation for Price Challenge, inviting anew all interested and qualified parties to participate in the Price Challenge with respect to an original power supplier's proposed supply of electricity. At the same time, MERALCO caused the posting thereof on its website.
 - 8.4. On 20 July 2018, MERALCO's PSA BAC sent a letter-notice to the original power supplier and the Qualified Price Challenger, SPTC, informing them that the proposed energy price of **PhP2.3456 per kWh (subject to an annual escalation of sixteen percent (16%) starting on the eleventh (11th) Contract Year)** 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.
 - 8.5. Considering the original power supplier's failure to match the best bid, on 17 August 2018, 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 (20th) 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 Commercial Operations 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.

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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 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 a condition in this Section 3.2 having been satisfied, either Party may terminate this Agreement.

3.3. *Scheduled Commercial Operations Date.* Power Supplier covenants that the Plant shall achieve Commercial Operations Date on December 31, 2018 or eight (8) months after the issuance of

ERC Final Approval, whichever comes later (the “Scheduled Commercial Operations Date”).

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5.2 *Take and Pay Contract.* Subject to circumstances of Force Majeure under this Agreement, Meralco shall accept all electric energy deliveries from Power Supplier and Meralco shall pay the corresponding Contract Price (subject to Section 3.6) for all electric energy (in kWh or MWh) up to Maximum Hourly Generation declared by Power Supplier at the WESM for Meralco, which quantity shall be based on the Billing Energy readings of the Billing Meter.

5.3 *Contract Price.* The Contract Price is PhP 2.3456 per kWh, subject to an annual escalation of sixteen percent (16%) starting on the eleventh (11th) Contract Year, *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.

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7. ASSIGNMENT OR TRANSFER OF PRODUCT

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 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.

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 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.

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- 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.

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- 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 0.20 per kWh, reckoned on a monthly basis, shall be for the account of Power Supplier.

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13. TERMINATION

- 13.1. For termination after Commencement Date but prior to Commercial Operations Date under

ERC CASE NO. 2019-023 RC
NOTICE OF PUBLIC HEARING/12 JULY 2019
PAGE 7 OF 12

Sections 3.4 and 3.5, Meralco shall provide Power Supplier a sixty (60)-day prior written notice. For clarity, replacement energy shall continue to be procured under Section 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 Php2.3456 per kWh (at plant gate), as shown in the rate impact analysis below:

Solar Philippines Tarlac Corporation PSA - Rate Impact
(YEAR 2020)

BILLING COMPONENT	UNIT	BASE RATE ^[a]	BILLING DETERMINANT ^[b]		AMOUNT (PHP)
Energy Payment					
Contract Price	(Php/kWh)	2.3456	81,030,000	(kWh)	190,063,968.00
TOTAL PAYMENT	(Php)				190,063,968.00
Effective Rate at Plant Gate	(Php/kWh)				2.3456
WESM Line Rental Rate ^[c]	(Php/kWh)				0.2000
Delivered Rate	(Php/kWh)				2.5456
Effective Cost at WESM Price ^[d]	(Php/kWh)				5.0818
Increase / (Decrease) over WESM Price	(Php/kWh)				(2.5362)
Meralco Captive Energy Demand ^[e]	(kWh)				36,012,655,029
Increase / (Decrease) in Generation Cost	(Php)				(205,508,808.36)
Increase / (Decrease) in Generation Cost	(Php/kWh)				(0.0057)

Assumptions:

- ^[a] Base Rates as set forth in Schedule 1 of the PSA
- ^[b] Energy billing determinant based on 50,000 kW contract capacity and 18.50% solar plant capacity factor
- ^[c] Line Rental rate for SPTC is based on maximum allowable value as stated in the PSA
- ^[d] Cost if equivalent volume of SPTC was sourced from the WESM based on forecasted weighted average of Jan 2020 - Dec 2020 hourly prices from 6am to 6pm
- ^[e] Meralco Captive Energy Demand based on 2020 forecast

ERC CASE NO. 2019-023 RC
NOTICE OF PUBLIC HEARING/12 JULY 2019
PAGE 8 OF 12

11. Also, as seen in the rate impact above, given a similar set of assumptions, the simulated delivered price under the PSA would be Php2.5456 per kWh, resulting in a reduction of MERALCO's generation charge by about Php 0.0057 per kWh.
12. It bears emphasis that, as previously mentioned, considering MERALCO's foreseen peaking capacity deficit in its portfolio due to the expected high peak demand as well as possible occurrences of scheduled maintenance shutdowns and forced outage of power plants, there is an urgent need for 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:

Description of Document	Annex
MERALCO's Articles of Incorporation	C
MERALCO'S By-Laws	D
MERALCO's latest General Information Sheet (GIS)	E
MERALCO's Demand Side Management program	F
MERALCO's Distribution Development Plan; with Average Daily Load Curve scenarios; and Supply and Demand Scenario *	G G-1 G-2 * G-3
Write-up on Non-Applicability of National Power Corporation (NPC) Certification	G-3
Documents showing MERALCO's conduct of a Competitive Selection Procurements (CSP)	H and series
SPTC's SEC Certificate of Registration	I
SPTC's Articles of Incorporation	J-1
SPTC By-laws	J-2
Write Ups on Non-Applicability of the following: <ul style="list-style-type: none"> • Shareholders' Agreement • 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.) • 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"> ○ Certification (from the engine manufacturer or IPP) of the net heat rate (initial and every after major maintenance schedule) in liters per kWh ○ 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) 	K and series

ERC CASE NO. 2019-023 RC
NOTICE OF PUBLIC HEARING/12 JULY 2019
PAGE 9 OF 12

Description of Document	Annex
of Ancillary Services as and when the IPP or the DU is connected to the main grid	
SPTC's latest General Information Sheet (GIS)	L
SPTC's Corporate Structure	L-1
Write-up on and Board of Investment (BOI) Certificate of Registration for SPTC's solar power plant with attached terms and conditions	M
Amended and original Environmental Compliance Certificates (ECCs) for SPTC's solar power plant	N-1 and N-2
Write-up on and SPTC's Application for Certificate of Compliance (COC) for its solar power plant	O
DOE Certificate of Endorsement (CoE) for SPTC's solar power plant	P
DOE letter on and Solar Energy Service Contract for SPTC's solar power plant	Q-1 and Q-2
SPTC's DOE Certificate of Registration	R
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	S-1 and S-2
Project Feasibility Study*	T *
Executive Summary of the PSA	U
Source of Funds/ Financial Plans *	V and series *
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	W
SPTC's Latest and Complete Set of Audited Financial Statements (Balance Sheet, Income Statement, and Statement of cash flows)	X

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

15. In support of this Joint Application, the Judicial Affidavit of **MR. DAVIDJOHN A. ZUÑIGA**, Officer of MERALCO's Energy Resource Planning & Risk Management - Energy Sourcing Office, is attached hereto as **ANNEX "B."**

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

16. 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.

17. 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 processes for the selection of their power suppliers, and SPTC’s trading in the WESM. They also contain information regarding the debt-to-equity ratio, capital costs, weighted average cost of capital, and operation and maintenance costs, among other information. All these information are considered classified business information of 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.
18. Under Rule 4 of the ERC Rules of Practice and Procedure, the Honorable Commission may, upon request of a party and determination of the existence of conditions, which would warrant such remedy, treat certain information submitted to it as confidential. Pursuant to such provision, 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.
19. Information that 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.
20. 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 **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

ERC CASE NO. 2019-023 RC
NOTICE OF PUBLIC HEARING/12 JULY 2019
PAGE 11 OF 12

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

Other relief just and equitable under the premises are likewise prayed for.

The Commission has set the *Joint Application* for determination of compliance with the jurisdictional requirements, expository presentation, Pre-Trial Conference, and presentation of evidence on **22 August 2019 (Thursday) at two o'clock in the afternoon (2:00 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 ERC 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 other persons who may want their views known to the Commission with respect to the subject matter of the case may file their Opposition or Comment thereon at any stage of the proceeding before Applicants rest their case, subject to the requirements under Rule 9 of the 2006 ERC Rules of Practice and Procedure. No particular form of Opposition or Comment is required, but the document, letter, or writing should contain the following:

- 1) The name and address of such person;
- 2) A concise statement of the Opposition or Comment; and
- 3) The grounds relied upon.

ERC CASE NO. 2019-023 RC
NOTICE OF PUBLIC HEARING/12 JULY 2019
PAGE 12 OF 12

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

WITNESS, the Honorable Chairperson and CEO **AGNES VST DEVANADERA**, and the Honorable Commissioners **ALEXIS M. LUMBATAN** and **CATHERINE P. MACEDA**, Energy Regulatory Commission, this 12th day of July 2019 in Pasig City.


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Oversight Commissioner for Legal

LS: SSI/MCC/BSA/CEO
