

AGREEMENT

This AGREEMENT made this day of 2008 between:

[Name of Expert company], [description of the nature of the company], with its principal office at [address], herein represented by [representative in terms of the contract] (“xxx”)

– and –

The **Private Electric Power Operators Association Inc**, an association of privately owned electricity distribution utilities, who has agreed to represent the following member utilities, as duly organized by virtue of a Special Power of Attorney,

ANGELES ELECTRIC CORPORATION (AEC);

CABANATUAN ELECTRIC CORPORATION (CELCOR);

CAGAYAN ELECTRIC POWER AND LIGHT COMPANY, (CEPALCO);

COTABATO LIGHT AND POWER COMPANY, INCORPORATED (CLPC);

DAGUPAN ELECTRIC CORPORATION (DECORP);

DAVAO LIGHT AND POWER COMPANY (DLPC);

IBAAN ELECTRIC AND ENGINEERING CORPORATION (IEEC);

ILIGAN LIGHT AND POWER COMPANY, INCORPORATED (ILPI);

LA UNION ELECTRIC COMPANY (LUECO);

MACTAN ELECTRIC COMPANY (MECO);

PANAY ELECTRIC COMPANY (PECO);

SAN FERNANDO ELECTRIC LIGHT AND POWER COMPANY (SFELAPCO);

SUBIC ENERZONE CORPORATION (SEZC);

TARLAC ELECTRIC INCORPORATED (TEI); and

VISAYAN ELECTRIC COMPANY (VECO),

for contracts related to the implementation and operation of performance-based rate-setting (PBR) under the Rules for Distribution Wheeling Rates (RDWR) and in terms of a Memorandum of Agreement with the Energy Regulatory Commission regarding the funding mechanism for Performance Based Regulation, herein represented by its **PRESIDENT, RANULFO M. OCAMPO;**

hereafter referred to as **PEPOA,**

– and –

The **MANILA ELECTRIC COMPANY**, a private electric distribution utility, duly organized and existing under and by virtue of Republic Act No. 9209, with its principal office address at

Lopez Building, Ortigas Avenue, Pasig City, herein represented by its **PRESIDENT, JESUS P. FRANCISCO**, who is duly authorized by virtue of Board Resolution dated **[date]** to represent it in this transaction;

hereafter referred to as **MERALCO**.

WHEREAS

- A. The Energy Regulatory Commission of the Republic of the Philippines (ERC) requires a Regulatory Reset Expert to assist it with the valuation of the regulatory asset base of three privately owned electricity distribution utilities:
- COTABATO LIGHT & POWER COMPANY (CLPC)
 - ILIGAN LIGHT & POWER, INCORPORATED (ILPI)
 - MACTAN ELECTRIC COMPANY (MECO)
- B. **[XXX]**, a suitably experienced and capable consultant, has submitted a proposal to execute the work which was accepted by the ERC;
- C. In accordance with the PBR regulatory regime adopted by the ERC on December 10, 2004, originally described in the "Distribution Wheeling Rates Guidelines" (DWRG), re-issued on December 13, 2006 as the "Rules for Setting Distribution Wheeling Rates for Privately Owned Distribution Utilities Entering Performance Based Regulation (Second & Later Entry Points)" (RDWR); where these Rules confer on the ERC the right or obligation to retain a Regulatory Reset Expert, the costs of that Regulatory Reset Expert must be borne by all the privately owned electricity distribution utilities ("the Utilities") in the Philippines as identified in the Third Schedule and who are, or will be regulated in terms of PBR with entry points into PBR between July 1, 2007 and July 1, 2011 (dates inclusive), as agreed to by **PEPOA and MERALCO** in a Memorandum of Agreement with the ERC on the PBR Funding Mechanism;
- D. The **PEPOA members, MERALCO and the Bohol Light Company (BLCI)** (note that the agreement with BLCI is covered under a separate contract) will contribute to the total costs of this project as set out in the Second Schedule and in accordance with the proportions indicated in the Third Schedule;
- E. In the Memorandum of Agreement it was stipulated that the expenses incurred for this type of transaction shall form part of the regulated Utilities' approved expenditure on levies, and any costs incurred on this contract will therefore be recoverable from consumers as part of the price-setting arrangements under PBR.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS:

In this Agreement, which is to be read in conjunction with the price and scope, the following expressions shall have the meanings hereby assigned to them except where the context otherwise requires:

- 1.1 **Letter of Offer, Tender, Proposal:** means the letter, tender or proposal accompanying this Agreement addressed to the ERC.

2. SCOPE OF SERVICES:

The Scope of Services to be performed by **[XXX]** shall be as specified in the attached First Schedule ('the Valuation Services').

3. COMPENSATION AND PAYMENT:

- 3.1 Compensation for the performance of the Valuation Services by [XXX] shall be as specified in the Second Schedule attached hereto. [XXX] shall invoice **PEPOA and MERALCO**, with a copy to the ERC on achieving each milestone described in the Second Schedule attached hereto. This invoice shall at the first instance be submitted to the ERC, who shall, in accordance with Clause 5 of the Memorandum of Agreement between the ERC and **PEPOA and MERALCO**¹, review the invoice to ensure its validity and that it covers only work that had been performed and delivered to the satisfaction of the ERC. After certifying its approval of the invoice, the ERC shall forward the invoice to **PEPOA and MERALCO** for payment.
- 3.2 The **PEPOA members and MERALCO** shall make payment of the amount of the invoice into [XXX] designated bank account within thirty (30) days of receiving the approved invoice from the ERC. Any amount not paid within that period shall attract interest from the due date until receipt of payment by [XXX] at a rate equivalent to four percent (4%) per annum over and above the simple average of the monthly 180 day weighted-average Manila Reference Rate as published by the Bangko Sentral ng Pilipinas. Compensation shall be exclusive of any value added or equivalent tax, and any such tax which is payable on the provision of Valuation Services to the ERC or the Utilities shall be paid by the **PEPOA members and MERALCO** as part of the invoiced sum and invoices will separately identify this tax.

4. CHANGES:

4.1. Scope:

The Valuation Services described in accordance with the attached documents are based on facts known at the time of preparation of the Proposal, which include information made available to [XXX] by the ERC. Subsequent information may indicate that the Scope of Services must be redefined. In this case, [XXX] will promptly provide the ERC with the proposed amendment to the Scope of Services, with a copy to **PEPOA and MERALCO**, and this amended scope will be deemed to have been approved by the ERC if not objected to within fifteen (15) days of receipt by the ERC. The ERC will consult with the Utility in this regard but will be the sole party making the final decision on whether to approve the amendment to the Scope of Services. In the event that the ERC disagrees on the redefinition of scope, the ERC shall instruct [XXX] on the action to be taken. Additionally, the ERC may by written instruction make changes to the Scope of Services. In any of the above circumstances, [XXX]'s compensation shall be adjusted accordingly by agreement and thereafter [XXX] shall commence performance of the additional services.

In the event that any of the Utilities withdraws from PBR, the ERC and [XXX] shall renegotiate and agree any consequent changes in scope, schedule or reimbursement due to [XXX], together with any changed responsibility for payment. On completion of any such agreement [XXX] will continue with provision of the Valuation Services.

4.2. Schedule:

The ERC shall upon the request of [XXX] grant an extension to any planned schedule for performance of the Valuation Services and, if appropriate, an adjustment to [XXX]'s compensation, if [XXX] has been delayed or impeded in the performance of the Valuation Services by (a) a change order granted hereunder, (b) any delay caused by the ERC or the Second Entry Group or **PEPOA and MERALCO**, (c) an event of Force Majeure being any event beyond the control of [XXX], (d) any change of law or ERC rules and regulations, or (e) any other reason mutually agreed by the parties.

¹ Supra note 2

- 4.3 **Force Majeure:** Force Majeure shall mean events beyond the control of **[XXX]** that affect the provision of the Valuation Services, and will include:
- (i) any accident due to natural causes, directly, exclusively without human intervention, such as could not have been prevented by any kind of oversight, pains and care reasonably to have been expected;
 - (ii) acts of terrorism, war, kidnapping, social or political disturbance, vandalism, military activity, riot, insurgency or strikes; and
 - (iii) the occurrence of pandemic or epidemic disease in or near the locations where the Valuation Services are carried out that affects **[XXX]**'s capability to perform the Valuation Services.

5. **WARRANTY AND LIABILITY:**

- 5.1 **[XXX]** warrants that the Valuation Services shall be performed by **[XXX]** with reasonable skill, care and diligence in accordance with accepted professional consulting standards and practices existing at the date of performance of the Valuation Services and subject to those provisions shall comply with existing law and ERC rules and regulations. **[XXX]**'s liability arising out of the performance of the Valuation Services for any breach of this warranty shall be limited to (a) re-performance of any portion of the services to correct the breach or (b) the direct consequences of such breach where such breach was reported to **[XXX]** in writing within one year of the date of performance of the relevant portion of the Valuation Services. However, **[XXX]**'s maximum liability arising out of or related to the Valuation Services shall be limited to the lesser of one-and-a half (1.5) times **[XXX]**'s compensation for the Valuation Services or the limits of professional indemnity insurance coverage specified herein.
- 5.2 **[XXX]** shall not be responsible for the construction, means, methods, techniques, sequences, procedures, safety precautions, and programmes incident thereto; nor for the acts or omissions of the ERC, the Second Entry Group, or the **PEPOA members or MERALCO** or any of the ERC's or the Second Entry Group's or **PEPOA's or MERALCO's** agents, employees or subcontractors; nor for the acts or omissions of material or equipment manufacturers or suppliers; nor for the acts or omissions of any other consultant or expert.
- 5.3 All warranties other than the above, whether express or implied, including without limitation any warranties of merchantability or fitness for purpose, are expressly excluded.
- 5.4 **[XXX]** shall defend, indemnify and hold harmless the ERC and **PEPOA and MERALCO** from and against all claims, demands, or causes of action for damage to or loss of any equipment or property of **[XXX]**, its vendors, subcontractors, subconsultants or for injury to or death of any employees of **[XXX]** arising out of the performance of the Valuation Services howsoever caused and regardless of whether such loss or damage shall result in whole or in part from the ERC, the Second Entry Group, and **PEPOA and MERALCO**.
- 5.5 The ERC and **PEPOA and MERALCO** shall defend, indemnify and hold harmless **[XXX]** from and against all claims, demands, or causes of action for damage to or loss of any equipment or property of the ERC, the Second Entry Group, and **PEPOA and MERALCO** or their customer(s), or their respective contractors, consultants or vendors (other than **[XXX]**) or for injury to or death of any employee of the ERC, the Second Entry Group, and **PEPOA and MERALCO** arising out of the performance of the Valuation Services howsoever caused and regardless of whether such loss or damage shall result in whole or in part from **[XXX]**.
- 5.6 Notwithstanding any other provision herein, except in the case of gross negligence, willful misconduct or deliberate withholding of information, **[XXX]** shall not be liable to

the ERC or **PEPOA and MERALCO** for any indirect or consequential losses or for loss of profit, loss of revenue, loss of use of any facilities, or loss of product or production and the ERC and **PEPOA and MERALCO** shall defend, indemnify and hold harmless **[XXX]** in respect thereof.

6. INSURANCES:

[XXX] shall at its own cost and expense, maintain workers compensation, employer's liability, motor vehicle, comprehensive general liability and professional indemnity insurance coverage in amounts in accordance with legal requirements and **[XXX]**'s own business requirements. For the purposes of the warranty and liability provisions above, unless otherwise agreed in writing, **[XXX]**'s professional indemnity insurance shall be maintained in the sum of one million five hundred thousand United States Dollars (US\$ 1,500,000).

7. PROJECT INFORMATION:

7.1 The ERC shall make available to **[XXX]** or shall cause to be made available by the Second Entry Group all data on project scope, schedule, cost and quality requirements and other information reasonably necessary to allow **[XXX]** to perform the Valuation Services. **[XXX]** shall be entitled to rely upon all such information made available by the ERC and the Second Entry Group.

7.2 In case **[XXX]** considers that any of the distribution utilities making up the Second Entry Group has reasonable access to information that is essential to allow **[XXX]** to perform the Valuation Services, but is not prepared to share this information, it will inform the ERC in writing of this situation, detailing the further information that is required. The ERC will assess the request and, if it is deemed reasonable, will take further steps to procure the required information. If the required information is still not received within twenty (20) days after giving such written notice to the ERC, **[XXX]** may decide to qualify the outputs from the Valuation Services to indicate the impact of insufficient information or, in extreme cases, it may constitute grounds for termination of the Valuation Services, as described in paragraph 10.3.

8. INTELLECTUAL PROPERTY RIGHTS:

Copyright of all software models, reports, and other documents provided by **[XXX]** in connection with the Valuation Services shall remain vested in **[XXX]** but the ERC, **PEPOA and MERALCO** and the Second Entry Group shall have a license to copy, publish, distribute and use such reports and other documents for any purpose related to the project in relation to which the Valuation Services are performed, including for future regulatory reset periods under PBR. **[XXX]** shall not be liable for any use by the ERC or the Second Entry Group of any of the reports or other documents for any purpose other than that for which the same were prepared and provided by **[XXX]**.

9. CONFLICTS OF INTEREST:

Whilst [XXX] have established procedures to identify situations where a conflict of interest may arise, [XXX] cannot be certain that it will identify all of those which exist or may develop. If the ERC is aware or become aware of any potential conflict affecting [XXX]'s provision of the Valuation Services, the ERC will notify [XXX] immediately. Where a potential conflict is identified and [XXX] believes that the ERC's interests can be properly safeguarded by the implementation of appropriate procedures, [XXX] will agree with the ERC the arrangements that [XXX] will implement to preserve confidentiality and to ensure that the advice and opinions that [XXX] give are wholly independent. Just as [XXX] will not use information confidential to the ERC or the Second Entry Group for the advantage of a third party, [XXX] will not use confidential information obtained from any other party for the ERC's or the Second Entry Group' advantage.

10. TERMINATION/SUSPENSION:

- 10.1 The ERC may, by itself or upon considering notice from any distribution utility in the Second Entry Group, terminate the performance of the Valuation Services if [XXX] is in substantial breach of its obligations herein and [XXX] has not commenced to remedy that breach within thirty (30) days after receipt of a written notice to that effect from the ERC and has not substantially resolved the breach of its obligations within forty-five (45) days after receipt of such written notice.
- 10.2 [XXX] may suspend or terminate performance of the Valuation Services if any compensation payable to [XXX] has been outstanding for more than sixty (60) days from the date of [XXX]'s relevant invoice, after giving the ERC at least two (2) weeks advance written notice of such outstanding payment and [XXX]'s intention to terminate performance of the Valuation Services.
- 10.3 [XXX] may suspend or terminate performance of the Valuation Services if any distribution utility in the Second Entry Group fails to provide sufficient information to which it (the distribution utility) has reasonable access and where such unavailability of information makes the effective performance of the Valuation Services impossible, even after [XXX] has considered making allowances to qualify the project outputs to account for unavailability of required information.
- 10.4 In the event of termination of the performance of the Valuation Services, the **PEPOA members and MERALCO** shall make payments to [XXX] for, (a) all invoice and interest amounts outstanding at the date of termination and (b) the proportion of the overall cost for which the **PEPOA members and MERALCO** is responsible for that part of the Valuation Services completed up to the time of termination, as agreed to by the ERC. If, at the time of termination of the performance of the Valuation Services, [XXX] has received compensation for any service not yet undertaken or substantially progressed, such compensation shall be repaid to the **PEPOA members and MERALCO** within thirty (30) days of such termination.

11. GOVERNING LAW:

The performance of the Valuation Services shall be governed by and construed in accordance with the laws of the Philippines.

12. CHANGE IN LAW:

Should the applicable law, rules or regulations of the Philippines be changed, enacted or reinterpreted after submission of [XXX]'s offer for the Valuation Services in such a manner as to cause an increase in cost to [XXX] or to delay the planned schedule, compensation and schedule shall be adjusted accordingly.

13. NOTICES:

Unless otherwise agreed, notices shall be served on the registered office of the relevant party. Notices may be served personally, by pre-paid mail or by facsimile. Notices shall be deemed served immediately if served personally or by facsimile or seven days from the date of the notice if served by pre-paid mail. Notice of termination may not be served by facsimile.

14. DISPUTES:

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration administered by the Philippine Dispute Resolution Center, Inc. in accordance with its own International Arbitration Rules as at present in force. Any arbitration shall be conducted by a single arbitrator appointed by mutual agreement of the parties. Should the parties be unable to agree, the arbitrator shall be appointed by the National President of the Integrated Bar of the Philippines.

The place of arbitration shall be Manila.

The language to be used in the arbitral proceedings shall be English.

15. SPECIAL TERMS:

Any special terms shall be set out in the attached documentation hereto. In the event of conflict, such special terms shall take precedence over these standard terms.

16. ENTIRE AGREEMENT:

These terms and the Schedules attached hereto constitute the entire agreement between the parties and no changes, modifications or amendments to these terms shall be valid unless agreed to by the parties in writing and signed by their authorised officers. Should there be any conflict between these terms and any other documentation or correspondence then these Terms shall prevail.

IN WITNESS WHEREOF the above parties hereto have set their respective hands the day and year first above written.

Signed by Name (print).....
for and on behalf of
[XXX]

Signed by Name (print).....
for and on behalf of
Private Electric Power Operators Association

Signed by Name (print).....
for and on behalf of
Manila Electric Company

Signed in the presence of

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

ACKNOWLEDGEMENT

BEFORE ME, A Notary Public for and in _____, Philippines, personally appeared:

| Name | CTC No./Passport No. | Issued on | Issued at |
|--------------------|-----------------------------|------------------|------------------|
| | | | |
| Jesus P. Francisco | 18147685 | January 25, 2007 | Pasig City |
| Ranulfo M. Ocampo | 13839773 | January 24, 2007 | Marikina City |

Known to me and to me known to be the same persons who executed the foregoing instrument consisting of ?? pages, including this page whereon the acknowledgement is written, all pages signed by all parties and their instrumental witnesses and they acknowledged before me that the same is their free and voluntary act and deed and of the entities herein represented.

WITNESS MY HAND AND NOTARIAL SEAL on this _____ of _____, 2008 at _____, Philippines.

Doc. No. _____;
Page No. _____;
Book No. _____;
Series of 2008.

SPECIAL TERMS

S1. Confidentiality

The ERC will make the Confidential Information available to [XXX] on the basis that the confidential nature of that information is preserved, and otherwise on the terms and conditions of this Agreement.

"Confidential Information" means all Information disclosed or communicated to [XXX] by or on behalf of the ERC, but does not include:

- (a) Information which, at the time it is disclosed or communicated to [XXX]:
 - (i) is publicly known; or
 - (ii) is already known to or is in the possession of [XXX] and was not acquired from the ERC; or
- (b) Information which, after the time when it is disclosed or communicated to [XXX], comes into the public domain other than as a result of any breach by [XXX] of its obligations under this Agreement.

[XXX] shall return to the ERC all Confidential Information provided by or on behalf of the ERC to [XXX] within seven (7) days after the ERC gives [XXX] notice in writing requiring [XXX] to take such action and shall ensure that all copies of such information that was in [XXX]'s possession, whether in electronic or other format, is destroyed.

FIRST SCHEDULE: SCOPE OF SERVICES

[To be completed based on scope of services offered in Proposal and accepted by ERC]

SECOND SCHEDULE: PAYMENT TERMS, CONDITIONS AND TIMELINE

1. TIMELINE

[To be completed based on scope of services offered in Proposal and accepted by ERC]

2. COST

[To be completed based on costs submitted in the Proposal and accepted by ERC]

3. PROPORTIONS PAYABLE

3.1. Proportion Payable by MERALCO

In terms of the regulatory funding mechanism the ERC that spells out the contribution of each regulated entity to the regulatory reset costs, MERALCO has to contribute 81.11% of the value of each assignment. Based on this proportional allocation, the estimated professional fees and disbursements for this contract for which MERALCO will be liable is therefore:

[To be completed based on costs submitted Proposal and accepted by ERC]

3.2 Proportion Payable by the PEPOA members

In terms of the regulatory funding mechanism the ERC that spells out the contribution of each regulated entity to the regulatory reset costs, the utilities represented by **PEPOA** have to contribute 18.68% of the value of each assignment. Based on this proportional allocation, the estimated professional fees and disbursements for this contract for which the **PEPOA members** will be liable is therefore:

[To be completed based on costs submitted Proposal and accepted by ERC]

The proportional contribution required from those utilities represented by PEPOA to meet this cost is as follows (the proportions are indicated as a percentage of the total project costs due from each utility):

| DISTRIBUTION UTILITY | PROPORTIONAL CONTRIBUTION | CONTRIBUTION (PHP) |
|---|---------------------------|--------------------|
| Cagayan d'Oro Electric Power & Light Company | 1.95% | |
| Dagupan Electric Corp | 0.71% | |
| Cotabato Light and Power Company, Inc. | 0.37% | |
| Iligan Light and Power, Inc. | 0.56% | |
| Mactan Electric Company | 0.67% | |
| Cabanatuan Electric Corporation | 0.45% | |
| La Union Electric Co., Inc. | 0.34% | |
| Ibaan Electric and Engineering Corporation | 0.05% | |
| Tarlac Electric, Incorporated | 0.64% | |
| Visayan Electric Company, Inc. | 4.96% | |
| Davao Light & Power Company, Inc. | 4.11% | |
| Panay Electric Company, Inc. | 1.11% | |
| Angeles Electric Company, Inc. | 1.04% | |
| Subic Enerzone Corporation | 0.55% | |
| San Fernando Electric Light & Power Co., Inc. | 1.17% | |
| TOTAL | | |

4. PAYMENT TERMS

4.1 Progress payments

[To be completed based on scope of services offered in Proposal and accepted by ERC]

THIRD SCHEDULE: DISTRIBUTION UTILITIES ENTERING PERFORMANCE BASED REGULATION

In the table below the privately owned electricity distribution utilities who will be subject to PBR are listed, with the dates at which they will be entering PBR and the proportion to which each will contribute to the overall cost for the Valuation Services.

| ENTRY GROUP | UTILITY | PROPORTIONAL CONTRIBUTION TO TOTAL RESET COSTS |
|--|--|--|
| 1 st (Entry date Jul 1, 2007) | Cagayan Electric Light & Power Company (CEPALCO) | 1.95% |
| | Dagupan Electric Corporation (DECORP) | 0.71% |
| | Manila Electric Company (MERALCO) | 81.11% |
| 2 nd (Entry date Apr 1, 2009) | Cotabato Light and Power Company, Inc. (COLIGHT) | 0.37% |
| | Iligan Light and Power, Inc. (ILPI) | 0.56% |
| | Mactan Electric Company (MECO) | 0.67% |
| 3 rd (Entry date Jul 1, 2010) | Ibaan Electric and Engineering Corporation (IEEC) | 0.05% |
| | Cabanatuan Electric Corporation (CELCOR) | 0.45% |
| | La Union Electric Co., Inc. (LUECO) | 0.34% |
| | Tarlac Electric, Incorporated (TEI) | 0.64% |
| | Bohol Light Company, Inc. (BLCI) | 0.21% |
| | Visayan Electric Company, Inc. (VECO) | 4.96% |
| 4 th (Entry date Apr 1, 2011) | Davao Light & Power Company, Inc. (DLPC) | 4.11% |
| | Panay Electric Company, Inc. (PECO) | 1.11% |
| | Subic Enerzone Corporation (SEC) | 0.55% |
| | Angeles Electric Company, Inc. (AEC) | 1.04% |
| | San Fernando Electric Light & Power Co., Inc. (SPELAFCO) | 1.17% |

[Note that the ERC may change these proportions for one or more of the initial contracts to correct for the contribution already made by the first entry group to the reset process. Also note that the final sequencing of the entry groups is also still subject to change.]