

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

IN THE MATTER OF THE
APPLICATION FOR APPROVAL OF
THE CONTRACT FOR THE SUPPLY
OF ELECTRICITY BETWEEN
BACAVALLEY ENERGY INC. (BEI),
AND MANILA ELECTRIC COMPANY
(MERALCO), WITH PRAYER FOR
PROVISIONAL AUTHORITY,

ERC CASE NO. _____

MANILA ELECTRIC COMPANY
(MERALCO),

Applicant.

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APPLICATION

Applicant MANILA ELECTRIC COMPANY (MERALCO for brevity),
through the undersigned counsel, most respectfully avers that:

1. Applicant is a private corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office located at Lopez Building, MERALCO Compound, Ortigas Avenue, Pasig City. It may be served with notices and other processes of this Honorable Commission through its undersigned counsel at the address indicated herein.

2. Bacavalley Energy Inc. (BEI), a corporation organized and existing under the laws of the Republic of the Philippines, and engaged in the operation of San Pedro Methane Power Plant, ("SPMPP"), powered by the methane extracted from the San Pedro Landfill, located at San Pedro, Laguna, offered to

supply and sell to Applicant MERALCO its electric power produced from its Power Plant.

3. Applicant MERALCO, in support of the development of renewable energy in the country, accepted the offer of BEI. Accordingly, on November 12, 2010, applicant MERALCO and BEI executed a Contract for the Supply of Electricity ("CSE" for brevity), under a "Take and Pay" arrangement, with a contract price equivalent to the ERC-approved NPC Time of Use (TOU) rates. Said contract has a term of two (2) years from the *delivery period commencement date*, unless sooner terminated upon any of the grounds mentioned in the CSE.

4. The salient features of the aforesaid CSE are:

"2.2. Take and Pay Contract. Subject to Section 2.5 hereof, Buyer shall accept all deliveries allocated by Seller and Buyer shall pay for the kWh delivered by Seller as measured by the Buyer's Billing Meter based on the Contract Price.

2.3. Contract Price. The Contract Price is the ERC-Approved NPC Time-Of-Use ('TOU') Rates for Luzon, including any changes thereto as approved by the ERC, governmental and WESM charges stipulated in Sections 6.2 and 6.3, Franchise and Benefits to Host Communities (FBHC) charge. *Provided*, that, GRAM and ICERA charges and other NPC Automatic Cost Adjustments (ACA), including but not limited to Fuel and Purchase Power Cost Adjustment, (FPPCA) and Foreign Exchange Adjustment ,(FxA), shall not form part and are excluded from the computation of the Contract Price; *Provided*, further, that when the existing TOU Rates are no longer in effect or are no longer applicable, and the ERC approves a new set of TOU Rates or Benchmark Rates, such new rates shall be used; *Provided*, finally, that when no new set of TOU Rates or Benchmark Rates have been approved by the ERC pursuant to this Section, the parties shall, as soon as it has become manifest that the existing TOU Rates are no longer applicable, meet and renegotiate the Contract Price to ensure its complete pass-through. Any violation of this Section shall be a ground for termination of this Contract upon prior notice.

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2.6. *Regulatory Approvals.* As soon as practical after the execution of the Contract, the Buyer shall file an application with the ERC for the approval of this Contract. However, both parties shall cooperate in this undertaking and shall provide all the necessary support including the submission of all the documents required to expedite the approval of the Contract. This Contract shall not become effective unless the terms and conditions hereof, including the complete pass-through of the Contract Price and all other charges and taxes stipulated herein, have been approved, provisional or otherwise, by the ERC. Any disallowance of the generation cost or contract price, or any component thereof, as stipulated herein, for recovery from end-users, shall be for the sole account of the Seller and shall not prejudice the Buyer.

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xxx"

A copy of the said CSE is hereto attached as ANNEX "A" and made integral part hereof.

5. At present, the existing NPC TOU rates for Luzon are those provisionally approved by the ERC in its Order dated February 16, 2009, under ERC Case No. 2009-004RC, entitled "In the Matter of the Application for the Approval of the Proposed New Basic Generation Rates for Luzon, Visayas and Mindanao Grids with Prayer for Provisional Authority".

6. It must be emphasized that the CSE, aside from allowing Applicant MERALCO to take clean energy at lower cost, offers certain benefits to its customers. For one, it will reduce the dependence of Applicant MERALCO in sourcing its power requirements from the Wholesale Electricity Spot Market (WESM), thereby protecting its customers from the price volatility in the WESM. In another, the CSE is on a "take and pay" arrangement and has no capacity fee. Moreover, since BEI is an embedded generator, there will be no additional burden on the customers in terms of transmission line losses.

7. The governmental and WESM charges stipulated in Sections 6.2 and 6.3 of the CSE, and which form parts of the Contract Price, are as follows:

“6.2. Governmental Charges. All value added taxes, sales taxes, goods and services taxes, excise taxes, import duties, stamp taxes and similar taxes imposed by any government authority (“Governmental Charges”) on or with respect to the Product, including taxes on fuel purchased by the Seller to generate and deliver electricity pursuant to this Contract, or the transactions contemplated by this Contract, shall be for the account of the buyer and shall form part of the Contract Price. The seller’s own income taxes, property taxes and local business taxes are for its account. In the event that the Seller is required by Applicable Laws to remit or pay any such Governmental Charges, such amounts will be set forth in the invoice the next subsequent Billing Period and shall be due and payable by the buyer according to the provisions of this Contract. Any changes to these Governmental Charges, upward or downward, or the imposition of additional Governmental Charges that are approved to be collected from the end-users, will affect the Contract Price invoiced to the Buyer. Any disallowance by the ERC of any Governmental charge for the complete pass-through by the Buyer to end-users shall be for the sole account of the Seller and shall not prejudice the Buyer.

6.3. WESM Charges. Except for market fees, all other fees and charges imposed by the Wholesale Electricity Spot Market (“WESM Charges”) on or with respect to the Product that are approved to be collected from the end-users shall be for the account of the Buyer and shall form part of the Contract Price. Market fees shall be for the sole account of the Seller and shall not be charged to the Buyer as part of the Contract Price.”

8. Pursuant to Rule 6, Section 2 and Rule 20 B, Section 2 of the ERC Rules of Practice and Procedure and Article IV, Section 2 of the ERC Guidelines for the Recovery of Costs for Generation Component of the Distribution Utilities’ (DUs) Rates, Applicant MERALCO has also attached the following documents in support of the instant Application:

	Document	Annex
1.	Acknowledgement receipt by the Sangguniang Panlungsod of Pasig of a copy of the Application.	“B”

2.	Affidavit of Publication stating the fact of publication of the Application in a newspaper of general circulation.	"C"
3.	Complete issue of the newspaper of general circulation where the Application was published.	"D"
4.	Articles of Incorporations of Bacavalley Energy Inc.	"E"
5.	Securities and Exchange Commission (SEC) Certificate of Incorporation of the said Articles of Incorporation.	"F"
6.	General Information Sheet of Bacavalley Energy Inc. (BEI) as submitted with the SEC	"G"
7.	Board of Investment (BOI) Certificate of Registration	"H"
8.	Environmental Compliance Certificate issued by the Department of Environment and Natural Resources.	"I"
9.	Details of the Power Supply Agreements.	"J"
10.	Agreement for Methane Recovery and Electricity Generation between BEI and Pilotage Trading & Construction.	"K"
11.	Connection Agreement between MERALCO and Bacavalley Energy Inc. (BEI)	"L"
12.	Letter of Mr. Peregrino Fernandez Jr. with stamped receipt of the ERC, in connection with BEI's Application for the issuance of Certificate of Compliance.	"M"
13.	General Plant Description	"N"
14.	Letters/Correspondence between MERALCO and BEI leading to the signing of the CSE.	"O"
15.	Certificate of Endorsement issued by the Department of Energy.	"P"
16.	Excerpts from MERALCO's Distribution Development Plan, pages 5-6 and 38-39.	"Q"
17.	MERALCO's Demand Side Management (DSM) program	"R"
18.	BEI's Audited Financial Statement for Years 2009 and 2008	"S"
19.	Certification issued by the Development Bank of the Philippines	"T"

ALLEGATIONS IN SUPPORT OF THE PRAYER FOR PROVISIONAL AUTHORITY

9. Last December 10, 2008, Republic Act No. 9513 otherwise known as “An Act Promoting the Development, Utilization and Commercialization of Renewable Energy Resources and for other Purposes”, was signed into law by the President of the Philippines. One of its primary objectives is to “encourage the development and utilization of renewable energy resources as tools to effectively prevent or reduce harmful emissions and thereby balance the goals of economic growth and development”.

10. The execution of the CSE between applicant MERALCO and BEI brings the government closer to the realization of this objective. This is applicant and BEI’s way of showing their support not only to the government’s efforts to increase the utilization of indigenous and renewable energy but more importantly, to the global call for sustainable development.

11. The immediate implementation of the CSE will encourage and stimulate the development of emerging renewable energy resources in the country thereby contributing to the realization of the government’s objective of having an alternative source of power in the Philippines to ease up dependence in non-renewable sources of energy. In addition, the immediate implementation of the CSE will redound to the benefit of the customers of Applicant MERALCO as the advantages under the CSE as herein previously mentioned can already be effected. Accordingly, there is a paramount relevance and urgent need for the immediate issuance of a provisional authority to implement the subject CSE. In support of this Application and the prayer for provisional authority, a copy of

the Judicial Affidavit of Mr. Vicente C. Sioson, Senior Manager and Head of Energy Sourcing Office, is attached hereto as ANNEX "U."

PRAYER

WHEREFORE, it is respectfully prayed to this Honorable Commission that upon filing of the instant Application, and pending hearing thereon, a provisional authority be immediately issued authorizing the implementation of the Contract for the Supply of Electricity between MERALCO and BEI; and after hearing on the merits, a Decision be rendered **APPROVING** the said Contract and all the charges stipulated therein.

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

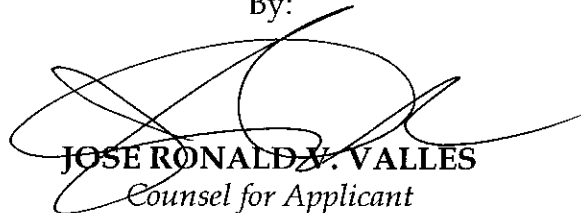
Pasig City, 13 December 2010.

MANILA ELECTRIC COMPANY

Applicant

MERALCO Compound
Ortigas Avenue, Pasig City

By:



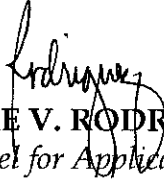
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IBP No. 815930; 01/22/10; RSM
MCLE Compliance No. III-0002562; 11 August 2009



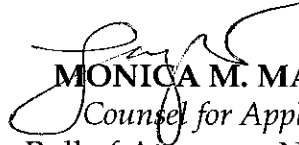
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MCLE Compliance No. III-0002564; 11 August 2009



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Ortigas Avenue, Pasig City
Telephone No.: 1622-2260/Fax No. 1622-3550
Email: regulatory.legal.admin@meralco.com.ph

VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING

I, **IVANNA G. DELA PEÑA**, Filipino, of legal age, married, with office address at 12th Floor, Lopez Building, MERALCO Compound, Ortigas Avenue, Pasig City, after being sworn in accordance with law, hereby depose and say that—

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

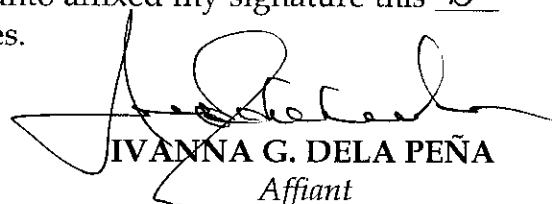
2. Moreover, I have been authorized by the Board of Directors of MERALCO to certify that Applicant has not heretofore filed any similar action, pleading or application involving the same issues before the Supreme Court, the Court of Appeals or any other lower courts or administrative. A copy of the Secretary's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

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

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

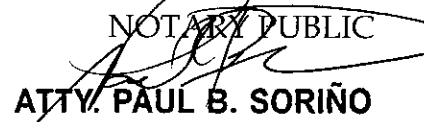
5. If I should hereafter learn that a similar action has been filed before the Supreme Court, the Court of Appeals, the lower courts or administrative bodies, I undertake to report such fact to this Honorable Commission within five (5) days from notice of such fact.

IN WITNESS WHEREOF, I have hereunto affixed my signature this 19th day of December 2010 at Pasig City, Philippines.


IVANNA G. DELA PEÑA
Affiant

SUBSCRIBED and SWORN to before me this 19th day of December 2010, affiant exhibited to me her Social Security System ID bearing the number 03-5122810-4.

Doc. No. 11
Page No. 4
Book No. I
Series of 2010.


NOTARY PUBLIC
ATTY. PAUL B. SORIANO
NOTARY PUBLIC
Pasig, Pateros, Taguig & San Juan
Issued on August 9, 2010 at Pasig City
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Roll No. 55095 / IBP No. 815932; 01/22/10 / RSM Chapter
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7th Floor, Lopez Bldg., Ortigas Ave., Pasig City