

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
MONTALBAN METHANE POWER
CORPORATION (MMPC) 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. Montalban Methane Power Corporation (MMPC), a corporation organized and existing under the laws of the Republic of the Philippines, and engaged in the production of renewable energy from methane extracted from

the Montalban Landfill, offered to supply and sell to applicant MERALCO its electric capacity produced from its Montalban Methane Power Plant (MMPP).

3. Applicant MERALCO, in support of the development of renewable energy in the country, accepted the offer of MMPC. Accordingly, on April 3, 2009, applicant MERALCO and MMPC 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*.

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 and Capital Recovery Charge, which may subsequently be determined and computed in accordance with a separate Schedule to be signed by both parties and approved by ERC. *Provided*, that, GRAM and ICERA charges 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.

The Capital Recovery Charge shall not be charged by the Seller to Buyer unless a separate Schedule showing its computation has been signed by both parties and approved by ERC as a pass-through charge to the end-users. Upon approval by ERC, said Schedule shall form part of this Contract.

xxx

xxx

xxx

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.

xxx

xxx

xxx

7.10. *Change in Circumstances.* The Parties shall faithfully perform all their obligations in accordance with the provisions of this Contract as well as the applicable laws and ERC rules and regulations. xxx

When the Implementing Rules and Regulations (IRR) of the Renewable Energy Law come into effect after the Effective Date of this Contract, the Parties shall meet and amend the terms and conditions of this contract to comply with the mandatory provisions of said Law and its IRR, to recognize the potential special status, and corresponding selling conditions, given to electricity produced from renewable sources."

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. 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, are considered pass-through charges, which shall form part of the Contract Price and shall be paid and collected in accordance with government regulations. xxx 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.

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."

7. Pursuant to Rule 6, Section 2 and Rule 20 B, Section 2 of the ERC

Rules of Practice and Procedure, applicant MERALCO has also attached the following documents in support of the instant application:

Document	Annex
1. Articles of Incorporations of Montalban Methane Power Corporation	"B"
2. Securities and Exchange Commission (SEC) Certificate of Incorporation of the said Articles of Incorporation;	"C"
3. General Information Sheet of Montalban Methane Power Corporation as submitted with the SEC	"D"
4. Board of Investment (BOI) Certificate of Registration	"E"
5. Contract for the Supply of Electricity between Montalban Methane Power Corporation (MPPC) and MERALCO	"F"

6. Details of the Contract for the Supply of Electricity between Montalban Methane Power Corporation (MPPC) and MERALCO	"G"
7. Transmission Service Agreement between TransCo and MPPC	"H"
8. Certificate of Compliance (COC) No. 09-02-GN-29-16602 granted to Montalban Methane Power Corporation by the Energy Regulatory Commission (ERC)	"I"
9. Acknowledgement receipt by the Sangguniang Panlungsod of Pasig of a copy of the Application	"J"
10. Affidavit of Publication stating the fact of publication of the Application in a newspaper of general circulation	"K"
11. Complete issue of the newspaper of general circulation where the Application was published	"L"

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

8. 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".

9. The execution of the CSE between applicant MERALCO and MMPC brings the government closer to the realization of this objective. This is applicant's and MMPC'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.

10. 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. 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 "M"

PRAYER

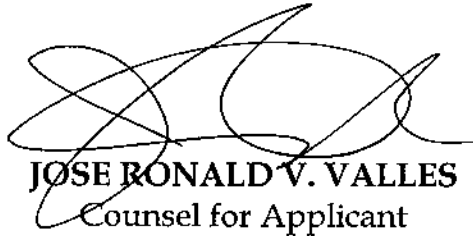
WHEREFORE, it is respectfully prayed to this Honorable Commission that upon filing of the instant Application, and pending hearing thereon, a provisional authority be immediately issued authorizing the implementation of the Contract for the Supply of Electricity between MERALCO and MMPC; and after hearing 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, April 23, 2009.

MANILA ELECTRIC COMPANY
Applicant
MERALCO Compound, Lopez Building,
Ortigas Avenue, Pasig City

By:



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MCLE Compliance No. II-0001104; 4/28/08



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

VERIFICATION

I, JOSE P. DE JESUS, Filipino, of legal age, and with office address at 12th Floor, Lopez Building, MERALCO Center, Ortigas Avenue, Pasig City, after being sworn in accordance with law, depose and say, that—

1. I am the President and Chief Operating Officer of Applicant MERALCO;

2. I have caused the preparation and filing of the instant Application;


3. I have read and understood the allegations contained therein and all the facts stated therein are true and correct based on authentic records made available to me in the ordinary course of business of MERALCO. A copy of the Secretary's Certificate authorizing the undersigned to file the instant Application and sign herein verification is attached as ANNEX "N".

IN WITNESS WHEREOF, I have hereunto affixed my signature this APR 24 2009, at Pasig City, Philippines.


JOSE P. DE JESUS
Affiant

SUBSCRIBED AND SWORN to before me this APR 24 2009, at Pasig City, Philippines, affiant exhibited to me his Passport with No. WW0188185 issued on September 12, 2007 in Manila.

Doc. No. 40 ;
Page No. 9 ;
Book No. VII ;
Series of 2009.


ATTY. ROMMEL L. YAP
NOTARY PUBLIC
Pasig, Pateros, Taguig & San Juan
Issued on January 7, 2008 at Pasig City
until December 31, 2009
Roll No. 43007/IBP No. 768573; 01/05/2009/RSM Chapter
PTR No. 5100033 ; 01/05/2009 / Pasig City
7th Floor, Lopez Bldg., Ortigas Ave., Pasig City

CERTIFICATION OF NON-FORUM SHOPPING

I, **ANTHONY V. ROSETE**, Filipino, of legal age, with office address at 8th Floor, Lopez Bldg., Ortigas Ave., Pasig City, after being sworn in accordance with law, depose and say, that—

1. I am the Vice President and Head of Legal Services of Applicant **MERALCO**;

2. I have been authorized by the Board of Directors of Applicant (**ANNEX "N"**) 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 bodies;

3. 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;


4. 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 ___ day of **APR 24 2009** at Pasig City, Philippines.


ANTHONY V. ROSETE
Affiant

SUBSCRIBED AND SWORN to before me this **APR 24 2009**, at Pasig City, Philippines, affiant exhibited to me his Driver's License No. N16-77-00607 with expiry date on December 1, 2009 issued by the Land Transportation Office (LTO) as his competent proof of identity.

Doc. No. 41 ;
Page No. 10 ;
Book No. VII ;
Series of 2009.


ATTY. ROMMEL L. YAP
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