

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



**IN THE MATTER OF THE  
APPLICATION FOR  
APPROVAL OF THE RATE  
SCHEDULES AND  
APPRAISAL OF  
PROPERTIES, WITH  
PRAYER FOR PROVISIONAL  
AUTHORITY**

**ERC CASE NO. 2001-243  
(ERB Case No. 93-118)**

**MANILA ELECTRIC  
COMPANY (MERALCO),  
*Applicant.***

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Promulgated:  
OCT 01 2019.

**ORDER**

Before this Commission for resolution is the motion for confidential treatment of information filed by Manila Electric Company (MERALCO), pursuant to Rule 4 of the Commission's Rules of Practice and Procedure (RPP).

On 28 December 1993, MERALCO filed an *Application* dated 27 December 1993 for approval of the rate schedules and appraisal of properties, with prayer for provisional authority.

In the *Partial Compliance with Manifestation and Motion* dated and filed on 18 February 2019 (Partial Compliance), MERALCO moved, among others, that the following documents/information be considered confidential in accordance with Rule 4 of the Commission's RPP:

| <b>Markings</b>         | <b>Documents</b>   |
|-------------------------|--|
| Annex<br>"E" and series | Documents showing the refund of the eligible customers/accounts that are still being processed |

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MERALCO contended that the documents contain sensitive information pertaining to some of MERALCO's customers.

### Discussion

Sections 1 and 2, Rule 4 of the Commission's RPP provide that:

**Section 1. Request for Confidential Treatment of Information.** A party to any proceeding before the Commission may request that information about that party in the Commission's possession not be disclosed. To do so, said party shall:

- (a) Submit a request that information not be disclosed describing therein with particularity the information to be treated as confidential; specifying the grounds for the claim of confidential treatment of the information and, if applicable, specifying the period during which the information must not be disclosed.
- (b) Submit to the Commission one copy of the document that contains the information sought to be treated as confidential, placed in a sealed envelope, with the envelope and each page of the document stamped with the word "Confidential".

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The party seeking to have the information protected from disclosure has the burden of proof to demonstrate that the information sought to be disclosed is entitled to that protection.

**Section 2. Action by the Commission on the Request.** For the purpose of determining whether or not to accord confidential treatment to information, the Commission may review the information claimed to be confidential.

The Commission may deny the request for confidential treatment of information on grounds such as, but not limited to the following:

- (a) The party requesting confidential treatment of information has no actual, valuable proprietary interest to protect with respect to the information sought to be treated as confidential.
  - (b) The information is, at the time of the request, generally available to the public by means other than through a breach of any confidentiality obligation with respect to such information.
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- (c) The information is, at the time of the request, available to or already in the possession of the Commission on a non-confidential basis from a source that, to the knowledge of the Commission, has lawfully acquired such information on a non-confidential basis.

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Under the aforesaid Rules, a party to any proceeding before the Commission may request the same not to disclose certain information and treat such information as confidential, specifying the grounds for the claim of confidential treatment of the information and, if applicable, specifying the period during which the information must not be disclosed. To determine whether or not to approve said request, the Commission may review the information claimed to be confidential pursuant to Section 2 of the same Rules.

In the case of *Air Philippines Corporation v. Pennswell, Inc.*<sup>1</sup>, the Supreme Court affirmed Pennswell's "right to guard its trade secrets, manufacturing formulas, marketing strategies, and other confidential programs and information against public disclosure on the ground that such information can be illegally and unfairly utilized by business competitors who, through their access to Pennswell's business secrets, may use the same for their own private gain, to the irreparable prejudice of the latter."

In the same case, *trade secret* was defined, as follows:

A trade secret is defined as a plan or process, tool, mechanism or compound known only to its owner and those of his employees to whom it is necessary to confide it.<sup>2</sup> The definition also extends to a secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade having a commercial value.<sup>3</sup> A trade secret may consist of any formula, pattern, device, or compilation of information that: (1) is used in one's business; and (2) gives the employer an opportunity to obtain an advantage over competitors who do not possess the information.<sup>4</sup> Generally, a trade secret is a process or

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<sup>1</sup> G.R. No. 172835, 13 December 2007;

<sup>2</sup> *Ibid.*, citing BLACKS LAW DICTIONARY 1494 (1991), 6<sup>TH</sup> ed.;

<sup>3</sup> *Ibid.*, citing *Id.*, citing *Palin Mfg. Co., Inc. v. Water Technology, Inc.*, 103 Ill.App.3d 926, 59 Ill. Dec. 553, 431;

<sup>4</sup> *Ibid.*, citing AMJUR EMPLOYMENT 178, citing *Saunders v. Florence Enameling Co., Inc.*, 540 So. 2d 651 (Ala. 1988); *Air Products and Chemicals, Inc. v. Johnson*, 296 Pa. Super. 405, 442 A.2d 1114 (1982). The foregoing citation also expounded that trade secrets need not be technical in nature. Market-related information such as information on current and future projects, as well as potential future opportunities for a firm, may constitute a trade secret., citing *Air Products and Chemicals, Inc. v. Johnson*, 296 Pa. Super. 405, 442 A.2d 1114 (1982);

device intended for continuous use in the operation of the business, for example, a machine or formula, but can be a price list or catalogue or specialized customer list.<sup>5</sup> It is indubitable that trade secrets constitute proprietary rights. The inventor, discoverer, or possessor of a trade secret or similar innovation has rights therein which may be treated as property, and ordinarily an injunction will be granted to prevent the disclosure of the trade secret by one who obtained the information "in confidence" or through a "confidential relationship."<sup>6</sup> American jurisprudence has utilized the following factors<sup>7</sup> to determine if an information is a trade secret, *to wit*:

- (1) the extent to which the information is known outside of the employer's business;
- (2) the extent to which the information is known by employees and others involved in the business;
- (3) the extent of measures taken by the employer to guard the secrecy of the information;
- (4) the value of the information to the employer and to competitors;
- (5) the amount of effort or money expended by the company in developing the information; and
- (6) the extent to which the information could be easily or readily obtained through an independent source.<sup>8</sup>

In *Cocoland Development Corporation v. NLRC*<sup>9</sup>, the Supreme Court held that trade secrets must have substantial factual basis which can pass judicial scrutiny.

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<sup>5</sup> *Ibid.*, citing *Id.*, citing *Saunders v. Florence Enameling Co., Inc.*, 540 So. 2d 651 (Ala. 1988); *Air Products and Chemicals, Inc. v. Johnson*, 296 Pa. Super. 405, 442 A.2d 1114 (1982). A former employee of an insurance company, who routinely received information regarding the company's customer list and policy termination dates while serving as vice-president, was barred from disclosing that information, even though the company had partially disclosed the customer list in attempts to secure new clients. *Alexander & Alexander, Inc. v. Drayton*, 378 F. Supp. 824 (E.D. Pa. 1974), *aff'd*, 505 F.2d 729 (3d Cir. 1974);

<sup>6</sup> *Ibid.*, citing 9 A.L.R.3d 665, citing *Am Jur, Injunctions* (Rev ed 72). The Restatement of the Law of Torts 757, emphasizes that liability for the disclosure of a trade secret learned under conditions giving no privilege of disclosure or use is not based on the mere copying or use but on the improper means by which the information was procured.;

<sup>7</sup> *Ibid.*, citing *Id.*, as adopted from the Uniform Trade Secrets Act which is intended to provide states with a legal framework for improved trade-secret protection.;

<sup>8</sup> *Ibid.*, citing *Id.*;

<sup>9</sup> G.R. No. 98458, 17 July 1996; and



Executive Order No. 02, Series of 2016<sup>10</sup> (EO No. 02) on the People's Constitutional Right to Information was considered in the evaluation of this motion. The Commission determined that Section 4 of the subject EO No. 02, in relation to the *Memorandum* from the Executive Secretary dated 24 November 2016, allowed for exceptions under which the instant case is covered.

After reviewing the information sought to be declared confidential by the Applicant, the Commission rules that the following documents with proprietary value be treated confidential:

| <b>Markings</b>   | <b>Documents</b>   |
|---|--|
| Annex<br>"E" and series of the<br><i>Partial Compliance</i><br>dated 18 February 2019 | Documents showing the refund of the eligible customers/accounts that are still being processed |

The documents contain personal information of eligible customers of MERALCO and their corresponding amount of refund, which should be treated confidential due to the nature of the personal information contained therein. However, should the Commission require a Third-Party Audit, the subject documents shall be made available for audit purposes.

Relative to the foregoing, the Commission's personnel who have custody of the documents declared confidential are hereby directed to abide by the following rules and conditions:

1. The Commission's personnel in charge of the case shall use the confidentially treated information only for the purpose of evaluating the application and/or such other purpose/s as may have been agreed upon by the parties in its Protective Agreement;
2. The Commission's personnel in charge of the case shall refer to the confidentially treated information based only on its caption and/or description, as enumerated above, without divulging the salient portions thereof to unauthorized persons/entities;

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<sup>10</sup> Operationalizing in the Executive Branch the People's Constitutional Right to Information and the State Policies of Full Public Disclosure and Transparency in the Public Service and Providing Guidelines Therefor.

3. The Commission's personnel in charge of the case shall continue to protect the information from public disclosure by maintaining the documents containing the confidential information/data, separate and apart from the records of the case for the duration of the non-disclosure period;
4. The Commission's personnel in charge of the case shall keep the confidentially treated information in its original envelope/packaging, locked in a repository, with the key to be kept by the Commission's duly authorized personnel, only to be taken out during the proceedings should the same be ordered by the Commission; and
5. The Commission's personnel in charge of the case shall execute an Affidavit of Non-Disclosure containing the foregoing undertaking.

**WHEREFORE**, the foregoing premises considered, the Commission hereby **GRANTS** the motion for confidential treatment of information of Manila Electric Company (MERALCO).

**ACCORDINGLY**, the following documents are hereby **GRANTED** confidential treatment:

| <b>Markings</b>   | <b>Documents</b>   |
|---|--|
| Annex<br>"E" and series<br>of the <i>Partial<br/>Compliance</i> dated<br>18 February 2019 | Documents showing the refund of the eligible customers/accounts that are still being processed |

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**RELATIVE THERETO**, the Commission hereby **DIRECTS** its personnel in charge of this case to:

1. Comply with the rules and conditions specified herein;
2. Maintain the confidentiality of the information/data declared confidential until the Commission directs otherwise; and
3. Ensure that the said documents are separate and kept apart from the case record for the said duration.

**SO ORDERED.**

Pasig City, 11 September 2019.



(On Leave)  
**AGNES VST DEVANADERA**  
*Chairperson and CEO*

*[Signature]*  
**JOSEFINA PATRICIA A. MAGPALE-ASIRIT**  
*Commissioner*

*[Signature]*  
**ALEXIS M. LUMBATAN**  
*Commissioner*

*[Signature]*  
**CATHERINE P. MACEDA**  
*Commissioner*

*[Signature]*  
**PAUL CHRISTIAN M. CERVANTES**  
*Commissioner*

LS: *[Signature]* /HH/ARC/CAO

Copy Furnished:

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