

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



**IN THE MATTER OF THE
APPLICATION FOR THE
APPROVAL OF THE
INTERIM POWER SUPPLY
AGREEMENT (IPSA)
BETWEEN MANILA
ELECTRIC COMPANY
(MERALCO) AND
STRATEGIC POWER DEVT.
CORP. (SPDC), WITH
MOTION FOR
CONFIDENTIAL
TREATMENT OF
INFORMATION,**

ERC CASE NO. 2017-004 RC

**MANILA ELECTRIC
COMPANY (MERALCO)
AND STRATEGIC POWER
DEVT. CORP. (SPDC),
Applicant.**

D O C K E T E D
Date: MAR 21 2017
By: W

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NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 26 January 2017, Manila Electric Company (MERALCO) and Strategic Power Devt. Corp (SPDC) filed a *Joint Application (with Motion for Confidential Treatment of Information) (Joint Application)* seeking the Commission's approval of the *Interim Power Supply Agreement* executed by both parties on 24 January 2017, including therein a *Motion for confidential treatment of information*.

MERALCO and SPDC likewise alleged the following in their *Joint Application*:

1. Applicant MERALCO is a private corporation existing under the laws of the Republic of the Philippines, with principal office located at Ortigas Avenue, Barangay Ugong, Pasig City. It may be served with notices and other 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 and 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 this Honorable Commission.

3. Applicant SPDC is a corporation duly organized and existing under the laws of the Republic of the Philippines, with its office address at 2/F, 808 Bldg, Meralco Ave. cor. Gen. Lim St., San Antonio Village, Pasig City. It may be served with notices and other processes of this Honorable Commission through its counsel at the address indicated herein.

4. SPDC is the Independent Power Producer Administrator ("IPPA") of the 345 MW San Roque hydroelectric power plant in Barangay San Roque, San Miguel, Pangasinan (the "Plant").

5. MERALCO foresees a capacity deficit in its portfolio for the period of 28 January to 16 February 2017, due to the following:

5.1 The Shell Philippines Exploration B.V. ("SPEX") Malampaya gas facility that supplies fuel to the Ilijan, Sta. Rita, San Lorenzo, Avion and San Gabriel power plants will be on maintenance shutdown. These power plants supply an aggregate capacity of 3,211 MW to the Luzon Grid, 2,565 MW of which is supplied to MERALCO's franchise area.

5.2 The maintenance shutdown of the SPEX Malampaya gas facility will coincide with scheduled maintenance of other power plants and possible occurrences of forced plant outage.

6. In view thereof, and in order to mitigate exposure to the Wholesale Electricity Spot Market ("WESM") and to provide additional capacity for such period that could contribute to the availability and affordability of the supply of electricity to MERALCO's customers, there is a need for MERALCO to source the corresponding deficiency through interim bilateral supply contracts with power suppliers who have available capacity.

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. Thus, in accordance with ERC Resolution No. 13, Series of 2015, MERALCO conducted a competitive selection process.

8.1 On 12 January 2017, MERALCO caused the publication of an Invitation for Price Challenge, including the terms and conditions of the proposal of SPDC, inviting power generation companies to submit better tariff proposals on or before 17 January 2017. Said publication provides that, if no qualified submissions are received per the deadline set, MERALCO shall have a second invitation published in a newspaper of general circulation, and that, should there still be no qualified submissions received as of the second deadline set, MERALCO shall execute the Interim Power Supply Agreement (“IPSA”) with SPDC.

8.2 Having received no qualified submissions by 17 January 2017, MERALCO caused the publication of a Final Invitation for Price Challenge on 18 January 2017, again including the terms and conditions of SPDC’s proposal, inviting power generation companies to submit better tariff proposals on or before 23 January 2017.

8.3 Having received no qualified submissions by the final deadline set as published, MERALCO awarded the IPSA to SPDC, after which MERALCO and SPDC proceeded with finalization and execution of the IPSA.

9. Thereafter, on 24 January 2017, MERALCO executed an IPSA with SPDC for 100 MW per hour of electric power from 0901H to 1000H and 2001H to 2100H, and 150 MW per hour of electric power from 1001H to 2000H, on a firm basis.

10. The IPSA, a copy of which is attached as ANNEX “A” and made an integral part hereof, contains the following salient features:

“Article 1 Term and Effectivity

1.1 Term of Agreement

This Agreement shall become effective immediately upon execution provided that Power Supplier’s obligation to deliver, and Meralco’s obligation to purchase, Contract Energy shall commence on January 28, 2017 and shall expire on February 16, 2017, subject to Energy Regulatory Commission (“ERC”) approval, unless terminated earlier in accordance with the terms of this Agreement (“Term”).

1.2 ERC Approval

1.2.1 Immediately after execution of this Agreement, the Parties shall file a joint application with the ERC for the approval of this Agreement, including the Contract Price as detailed in Appendix “A” (“ERC Application”).

- 1.2.2 If the ERC approval requires any portion of any sum that has been paid by Meralco to Power Supplier to be adjusted, the Power Supplier shall make the necessary adjustments in accordance with the direction of the ERC. In the event of any disallowances in the Contract Price or the imposition of penalties, the same shall be for the account of Power Supplier.

Article 2 Sale and Purchase of Contract Energy

2.1 Supply of Power

Subject to the terms and conditions of this Agreement:

- 2.1.1 Beginning January 28, 2017, Power Supplier shall make available, sell and deliver to Meralco and Meralco shall purchase from Power Supplier the Contract Energy at the Contract Price of PhP4.35 per kWh, as detailed in Appendix "A." The Parties agree that Power Supplier shall have no obligation to supply more than the Contract Energy.
- 2.1.2 Power Supplier shall not, without Meralco's prior written consent, sell, divert, transfer, dedicate, reserve or assign all or any portion of the Contract Energy to any Person other than Meralco.
- 2.1.3 Power Supplier shall not be entitled to any planned/scheduled or forced outage allowances. In case of any such outage, Power Supplier shall procure replacement energy, and Meralco shall pay for the same, at the Contract Price.

xxx

Article 4 Billing and Payment

xxx

4.2 Payments

- 4.2.1 Each Final Invoice shall be due and payable not later than the last day of the calendar month following the month in which the end of the Billing Period for such Final Invoice relates; provided that if such day is not a business day, then the Final Invoice shall be due and payable on the next succeeding business day ("Payment Date"); provided further that in the event that the Final Invoice is not received by Meralco within the time set forth in Section 4.1.6, the

payment shall be due and payable on the last day of the calendar month following the Payment Date; provided finally that Meralco shall not be required to make payment on any Final Invoice that is manifestly in error, apparently invalid or not in the form or substance contemplated by this Agreement.

- 4.2.2 If Meralco disputes all or any portion of a Final Invoice for a reason other than a manifest error in, or the patent invalidity or incorrect form or substance of, such Final Invoice, Meralco shall, nonetheless, pay the full amount of such Invoice. Any payment by Meralco under this Section is without prejudice to Meralco's right at a later date to dispute, protest or question any amount so paid.

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Article 5 Taxes, Fees and Costs

5.1 Responsibility for Taxes, Fees and Costs

5.1.1 Power Supplier shall be responsible for and shall make timely payment of the following amounts:

- (a) WESM costs attributable to Power Supplier; and
- (b) VAT on the foregoing amounts, if any.

Power Supplier shall also be liable for the payment of all other existing taxes, fees, charges and costs, including penalties, arising from this Agreement that properly pertain to the business of Power Supplier.

5.1.2 The following amounts that Meralco is responsible for paying to third parties shall form part of the price that Meralco will charge to its customers:

- (a) VAT on Contract Energy in accordance with Bureau of Internal Revenue ("BIR") Memorandum Circular No. 61-2005 and ERC Resolution No. 20-2005, except in respect of any portion thereof that applies to VAT zero-rated and VAT-exempt customers of Meralco;
- (b) WESM line rental charges associated with the declaration of Bilateral

Contract Quantities from the plant to Meralco's WESM Node; and

(c) NGCP charges.

Notwithstanding this Section, Meralco shall, at all times, be liable for payment of all other existing taxes, fees, charges and costs, including penalties, arising from this Agreement that properly pertain to the business of Meralco.

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Article 8 Termination

- 8.1 If for any reason, except as provided in Article 6, there is an actual failure on the part of Power Supplier to deliver the Contract Energy to Meralco for a period of five (5) days, Meralco shall send written notice to Power Supplier stating that such a breach has occurred.
- 8.2 If, within ten (10) days after receipt from Meralco of such written notice (the "Curing Period"), the actual failure on the part of Power Supplier to deliver the Contract Energy to Meralco has not been remedied by Power Supplier, Meralco may terminate this Agreement and pursue any remedy available to it under this Agreement, at law or in equity.
- 8.3 Meralco shall, from and after the occurrence of a breach under Section 8.1 and even during the Curing Period, be entitled to source energy from the WESM or other parties and Power Supplier shall be liable to pay Meralco the difference between the amount Meralco actually paid for such energy and the Contract Price.
- 8.4 Upon the early termination of this Agreement due to: (i) an actual failure on the part of Power Supplier to deliver the Contract Energy to Meralco, or (ii) the failure of Meralco to pay for the Contract Price under the terms and conditions of this Agreement, that results in the early termination of this Agreement, and without prejudice to any other provisions of this Agreement prior to such early termination, the Party in breach shall pay liquidated damages in an amount equivalent to the Contract Price multiplied by the Contract Energy for the remaining Term.

xxx"

11. The Contract Price is a straight energy fee of PhP4.35 per kWh, exclusive of Value-Added Tax ("VAT") and line rental.

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12. Based on simulations, the effective delivered price under the IPSA for the period of 28 January to 16 February 2017 is PhP4.4901 per kWh, as shown in the sample calculation below:

SPDC IPSA - Rate Impact
 (January 28, 2017 to February 16, 2017)

BILLING COMPONENT	UNIT	ENERGY PRICE ^(a)	BILLING DETERMINANT ^(b)	AMOUNT (PHP)
Energy Payment	(Php/kWh)	4.3500	34,000,000 (kWh)	147,900,000.00
TOTAL PAYMENT	(Php)			147,900,000.00
Effective Rate at Plant Gate	(Php/kWh)			4.3500
WESM Line Rental Rate ^(c)	(Php/kWh)			0.1401
Delivered Rate	(Php/kWh)			4.4901
Effective Cost at WESM Price ^(d)	(Php/kWh)			6.1664
Increase / (Decrease) over WESM Price	(Php/kWh)			(1.6763)
Meralco Captive Energy Demand ^(e)	(kWh)			2,635,020,476
Increase / (Decrease) in Generation Cost	(Php)			(56,992,799.20)
Increase / (Decrease) in Generation Cost	(Php/kWh)			(0.0216)

Assumptions:

- ^(a) Energy Price as set forth in the SPDC IPSA
- ^(b) Energy billing determinant based on take-or-pay volume of 1,700 MWh per day from January 28 - February 16
- ^(c) Line Rental rate for SPDC is based on the assumed weighted average line rental rate of San Roque (PhP 0.1630/kWh) and Angat (PhP 0.0853/kWh)
- ^(d) Cost of equivalent volume of SPDC will be sourced from the WESM, based on forecast average WESM price (9am to 9pm) for Jan 28 - Feb 16, 2017
- ^(e) Forecast of Meralco Captive Energy Demand in February 2017

13. As seen in the rate impact above, for the duration of the term of the IPSA, the simulated delivered price thereunder would result in an overall savings of PhP0.0216 per kWh.

14. In support of this Application, the Judicial Affidavit of MR. CIPRINILO C. MENESES, Head of MERALCO's Energy Sourcing Office, is attached as ANNEX "B" and made an integral part hereof.

15. Likewise, in support of this Application, the Applicants provide this Honorable Commission with the following documents, which underwent the pre-filing conference of this Honorable Commission, to wit:

NAME OF DOCUMENT	ANNEX
Articles of Incorporation of MERALCO	C
By-Laws of MERALCO	D
General Information Sheet of MERALCO	E
Demand Side Management Plan of MERALCO	F
Distribution Development Plan of MERALCO	G
MERALCO Supply-Demand Outlook for 28 January to 16 February 2017	G-1*
MERALCO Forecasted Daily Load Curve for 28 January to 16 February 2017	G-2
Write-up on Non-Applicability of National Power	G-3

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Corporation ("NPC") Certification	
Documents showing MERALCO's conduct of a Competitive Selection Process ("CSP")	H and series
Articles of Incorporation of SPDC	I
Securities and Exchange Commission ("SEC") Certificate of Registration of the said Articles of Incorporation of SPDC	J
General Information Sheet of SPDC	K
Write-up on SPDC's Shareholders' Agreement	L
Document showing information related to SPDC's Ultimate Parent Company, its Subsidiaries and all its affiliates	M
Board of Investment ("BOI") Certificate of Registration with attached Terms and Conditions	N
Environmental Compliance Certificate ("ECC") of the power plant issued by the Department of Environment and Natural Resources ("DENR")	O
Certificate of Compliance ("COC") issued by the ERC pursuant to the Guidelines for the issuance of COC for Generation Companies/Facilities	P
Write-up on SPDC's Certification from Department of Energy ("DOE") regarding Philippine Development Plan ("PDP") or Certificate of Endorsement ("CoE")	Q
Write-up on SPDC's Renewable Energy Service/Operating Contract from the DOE	R
Write-up on SPDC's Certificate of Registration or Certificate of Confirmation of Commerciality by an RE Developer and after due confirmation by the DOE	S
SPDC's Transmission Service Agreement	T
Write-up on SPDC's IPPA Agreement	U
Executive Summary of the IPSA	V
Cost-based calculation of SPDC's True Cost Generation Rate ("TCGR") including all cost analysis related to the pricing provisions in the contract such as the operating expenses.	W and series*
Write-up on SPDC's Fuel Procurement Process	X
Technical Description of the San Roque Multi-Purpose Hydroelectric Power Plant	Y
Latest and Complete Set of Audited Financial Statement of SPDC	Z

** These documents are requested to be treated as confidential and are attached to this Application in sealed envelopes.*

ALLEGATIONS IN SUPPORT OF MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION

16. Under Rule 4 of the ERC Rules of Practice and Procedure, a party to any proceeding before the Honorable Commission may request that certain information not be disclosed and be treated as confidential, by describing with particularity the information to be treated as confidential, specifying the ground for the claim of confidential treatment of the information and, if applicable, specifying the period during which the information must not be disclosed.

17. With respect to the document marked and attached as ANNEX "G-1" (MERALCO Supply-Demand Outlook for 28 January to 16 February 2017), 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 of commercially sensitive 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 rule and regulations.

18. With respect to the documents marked and attached as ANNEX "W and series," SPDC respectfully moves for the confidential treatment thereof, considering that SPDC is bound by the confidentiality clause prohibiting the disclosure of any business, technical, marketing, operational, organizational, financial or other information and trade secrets and other confidential documents, paper and information.

19. SPDC's confidential, proprietary, and private information included in said annex should be protected from public dissemination. Otherwise, such information can be illegally and unfairly utilized by business competitors who may use the same for their own private gain and to the irreparable prejudice of SPDC.

20. Applicants hereby submit one (1) copy of each of the foregoing confidential documents in sealed envelopes, with the envelopes and each page of the documents marked "Confidential."

PRAYER

WHEREFORE, premises considered, it is respectfully prayed that this Honorable Commission:

1. ISSUE an Order treating Annexes "G-2" and "W and series" and all other information contained therein as confidential, directing their non-disclosure to persons other than officers and staff of this Honorable Commission, continuously protecting the said information from public disclosure by maintaining the same separate and apart from the records of the case, and ensuring that these are not divulged to unauthorized persons, pursuant to Rule 4 of the ERC Rules of Practice and Procedure; and
2. After due notice and hearing, render a Decision APPROVING the IPISA between MERALCO and SPDC.

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

The Commission has set the said *Joint Application* for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on **25 May 2017 at two o'clock in the afternoon (2:00 P.M.), at the ERC Hearing Room, 15th Floor, Pacific Center, 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 Rules of Practice and Procedure, indicating therein the docket number and title of the case and stating the following:

- i. The petitioner's name and address;
- ii. 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
- iii. 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 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.

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 Chairman **JOSE VICENTE B. SALAZAR**, and the Honorable Commissioners **ALFREDO J. NON**, **GLORIA VICTORIA C. YAP-TARUC**, **JOSEFINA PATRICIA A. MAGPALE-ASIRIT**, and **GERONIMO D. STA. ANA**, Energy Regulatory Commission, this 6th day of March 2017 at Pasig City.

ATTY. NATHAN J. MARASIGAN
Chief of Staff
Office of the Chairman and CEO

LS: ICS/RFM/APV