

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



**IN THE MATTER OF THE
APPLICATION FOR THE
APPROVAL OF THE POWER
SUPPLY AGREEMENT (PSA)
BETWEEN MANILA
ELECTRIC COMPANY
(MERALCO) AND SOLAR
PHILIPPINES TANAUAN
CORPORATION (SPTC) WITH
MOTION FOR
CONFIDENTIAL TREATMENT
OF INFORMATION,**

ERC CASE NO. 2017-014 RC

**MANILA ELECTRIC
COMPANY (MERALCO) AND
SOLAR PHILIPPINES
TANAUAN CORPORATION
(SPTC),**

Applicants.

X-----X

D O C K E T E D
Date: **FEB 22 2018**
By: **W**

ORDER

For the Commission's consideration is the Urgent Motion for Early Resolution (Motion) dated 16 November 2017 filed by Solar Philippines Tanauan Corporation (SPTC) seeking the immediate resolution of the instant Application.

THE FACTS

On 27 February 2017, Applicants Manila Electric Company (MERALCO) and SPTC filed a *Joint Application with Motion for Confidential Treatment of Information* (Joint Application) dated 09 February 2017 seeking the Commission's approval of their Power Supply Agreement (PSA).

An *Order with a Notice of Public Hearing*, both dated 03 April 2017 was issued by the Commission, setting the case for determination of compliance with jurisdictional requirements,

expository presentation, pre-trial conference and presentation of evidence on 22 June 2017.

During the hearing on 22 June 2017, only applicants MERALCO and SPTC appeared. No petition for intervention or any manifestation to participate as an Oppositor was likewise filed before the Commission during the allowed period. Thus, an Order of General Default was issued by the Commission in the same hearing upon motion of Applicants.

Subsequently, MERALCO filed its Formal Offer of Evidence (FOE) on 11 July 2017. Similarly, SPTC filed its Formal Offer of Evidence on 11 August 2017.

Applicant MERALCO filed a *Manifestation* on 08 September 2017 informing the Commission that it has agreed with SPTC to mutually extend the Longstop Date for three months from 27 August 2017, or until 27 November 2017, without prejudice to any further extension for a definite period, subject to the terms and conditions mutually agreed by the Parties and taking into consideration the best interest of the consumers¹. Attached to the *Manifestation* is a letter dated 25 August 2017 proving the said allegation.

On 16 November 2017, SPTC filed its *Urgent Motion for Early Resolution* with even date, alleging the following:

1. On 27 February 2017, Applicants filed the present Joint Application for the Power Supply Agreement dated 22 December 2017 (PSA). The PSA stipulated a Longstop Date to be six (6) months after the filing of the present Joint Application, or on 27 August 2017;
2. On 22 June 2017, the Commission held the initial hearing on the Joint Application as scheduled in its Notice of Public Hearing. During the said hearing, after proving compliance with the jurisdictional requirements, the Commission issued an order of general default. Thereafter, the Applicants proceeded with, and completed, the presentation of their respective evidence in support of the Joint Application;
3. MERALCO and SPTC filed their Formal Offer of Evidence on 11 July and 11 August 2017, respectively. On separate dates, SPTC filed additional documents in compliance with this Commission's Orders;
4. In a letter dated 25 August 2017, the Applicants mutually agreed to extend the Longstop Date for "three (3) months from

¹ Paragraph 2, *Manifestation* dated 08 September 2017.

27 August 2017, or until 27 November 2017, without prejudice to any further extension for a definite period, subject to terms and conditions mutually agreed by the Parties and taking into consideration the best interest of the consumers;²

5. After the Applicants' Formal Offer of Evidence and submission of additional documents required by the Commission, Citizenwatch, Inc. belatedly filed a Petition for Intervention with Entry of Appearance dated 18 September 2017 (the "Petition"). SPTC opposed the Petition in its Opposition and Comment dated 30 October 2017 (the "Petition") on the following grounds: (a) Citizenwatch does not have an interest in the subject matter; (b) the Petition was filed out of time; and (c) the Petition will not unduly broaden the issues as it extends the scope of the Joint Application;
6. As of present date, or after the lapse of almost nine (9) months from the filing of the present Joint Application, the Commission has yet to resolve the present Joint Application. Considering the general order of default issued by this Honorable Commission, the filing of the Formal Offer of Evidence by the Applicants, and the belated filing of the Petition by Citizenwatch, the Applicants respectfully move for the immediate resolution of the Joint Application; and
7. The final approval of the present Joint Application will trigger the Commencement Date and Scheduled Commercial Operations Date in accordance with Sections 3.2 and 3.3 of the PSA. More importantly, the final resolution of the present Joint Application and the consequent implementation of the projects will greatly benefit the electricity consumers, as well as fulfil the declared State policies in Republic Act No. 9513, or the Renewable Energy Act of 2008.

PRAYER

WHEREFORE, SOLAR PHILIPPINES TANAUAN CORPORATION respectfully prays that this Honorable Commission immediately resolve and approve the present Joint Application to implement the provision of the PSA.

Other reliefs as may be appropriate under the circumstances are likewise prayed for.

THE ISSUE

The issue for the Commission's resolution is whether applicants MERALCO and SPTC are entitled to the issuance of an interim relief.

² In a Manifestation dated 8 September 2017, MERALCO submitted to the Honorable Commission the original of the letter dated 25 August 2017 embodying the agreement between MERALCO and SPTC to mutually extend the Longstop Date until 27 November 2017.

THE COMMISSION'S RULING

During the deliberation held on 28 November 2017, the Commission resolved to GRANT INTERIM RELIEF to applicants MERALCO and SPTC, subject to certain conditions.

DISCUSSION

I. THE COMMISSION IS AUTHORIZED TO GRANT INTERIM RELIEF IN THE INSTANT CASE.

Sections 2 and 3, Rule 14 (Provisional Authority) of *ERC's Rules of Practice and Procedure* (RPP) empower the Commission to issue an interim relief, *to wit*:

Section 2. Allegations in Support of the Motion and Supporting Documents.- The motion must be accompanied by supporting affidavits and documents, and must allege such facts and circumstances as would justify the Commission's exercise of discretion by granting **provisional authority or interim relief** prior to a final decision.

Section 3. Action on the Motion.- Motions for **provisional authority or interim relief may be acted upon** with or without hearing. The Commission shall act on the motion on the basis of the allegations of the application or petition and supporting documents and other evidences that applicant or petitioner has submitted and the comments or opposition filed by any interested person, if there be any.

xxx

(Emphasis supplied.)

The authority of the Commission to grant provisional or interim relief was likewise upheld by the Supreme Court in the landmark case of *Freedom from Debt Coalition (FDC) vs. Energy Regulatory Commission (ERC)*,³ *to wit*:

Similarly, Section 8 of E.O. No. 172 of the ERB Charter continues to be in full force by virtue of Sections 44 and 80 of the EPIRA. Said provision of the ERB charter reads:

³ G.R. No. 161113, 15 June 2004.

SEC. 8. *Authority to Grant Provisional Relief.* -- **The Board may**, upon the filing of an application, petition or complaint or at any stage thereafter and without prior hearing, on the basis of the supporting papers duly verified or authenticated, **grant provisional relief on motion of a party in the case or on its own initiative**, without prejudice to a final decision after hearing, should the Board find that the pleadings, together with such affidavits, documents and other evidence which may be submitted in support of the motion, substantially support of the provisional order;

xxx

(Emphasis supplied.)

Section 44 of Republic Act No. 9136 or the *Electric Power Industry Reform Act* (EPIRA) provides that “the powers and functions of the Energy Regulatory Board not inconsistent with the provisions of this Act are hereby transferred to the ERC.”

In the instant case, the Commission, in the exercise of its quasi-judicial power, treated the Urgent Motion for Early Resolution filed by the SPTC as a motion for the grant of interim relief considering that the allegations thereof require urgent action while the Commission evaluates the instant case for its final disposition.

It must be remembered that the Applicants have already submitted before the Commission several documents that have already been identified by the witnesses during the hearing conducted on 22 June 2017. The same documents were likewise formally offered by applicants MERALCO and SPTC in their respective Formal Offers of Evidence submitted on 11 July 2017 and 11 August 2017.

Thus, the Commission acted within its power when it resolved to grant this interim relief.

II. THE APPLICANTS HAVE COMPLIED WITH THE PRE-FILING REQUIREMENTS.

On 22 February 2017, Applicants MERALCO and SPTC filed the instant Joint Application dated 09 February 2017. Attached to the said Joint Application are the following:

1. Verification and Certification of Non-Forum Shopping dated 10 February 2017, signed by Mr. Jose Ronald V. Valles, the Vice President and Head of the Regulatory Affairs Office of MERALCO;
2. Verification and Certification of Non- Forum Shopping dated 09 February 2017, signed by Mr. Leandro Antonio L. Leviste, the President of SPTC;
3. Certification attesting to the service of a copy of the Joint Application and its annexes to the Sangguniang Panglungsod of Makati and Pasig;
4. Affidavit of Publication issued by Business World attesting to the publication of the herein Joint Application in its newspaper issue of 13 February 2017; and
5. Copy of the Business World newspaper issue where the Joint Application was published.

The above-mentioned documents are necessary for the filing of rate applications, pursuant to Sections 2⁴ and 3⁵, Rule 6 of the RPP.

⁴ Section 2. Pre-filing Requirements for Rate Applications and other Applications/Petitions for Relief Affecting the Consumers.- Before the Commission shall accept and docket rate applications and other applications or petitions for relief affecting the consumers, the applicant or petitioner must comply with the following requirements:

- (a) The applicant or petitioner must furnish the Local Government Unit (LGU) Legislative Body (and not the office of the Mayor) of the city or municipality where it principally operates, a copy of the application or its petition, and not a mere notice of application/petition, with all its annexes and accompanying documents. If such principal place of operation is a component city or a municipality, the applicant or petitioner shall likewise furnish the LGU Legislative Body of the province of which such component city or municipality is part.
- (b) The applicant or petitioner must cause the publication of the entire application or petition, excluding its annexes, and not a mere notice of filing or notice of application or petition, in a newspaper of general circulation within its franchise area or area where it principally operates.

⁵ Proof of Compliance with the Pre-filing Requirements.- To demonstrate compliance with the foregoing requirements, the applicant or petitioner shall attach to its application or petition a certification issued by the Presiding Officer, Secretary of the LGU Legislative Body concerned, or their duly authorized representatives, attesting to the fact that such LGU Legislative Body was served a copy of the application or petition, with all its annexes and accompanying documents, and the date of such service. In the absence of such certification, the applicant or petitioner shall prove compliance by attaching the affidavit of the person that served the application or petition on the LGU Legislative Body, attesting to such fact and the date of such service. The affiant shall also attach to the affidavit a copy of the page of the application or petition bearing the stamp "received" or acknowledgement of receipt by the LGU Legislative Body.

The applicant or petitioner shall also attach to the application or petition an affidavit of publication executed by the editor-in-chief or other responsible officer of the newspaper of general circulation wherein the application or petition was published, together with a copy of the newspaper issue containing the published application or petition. The affidavit of publication shall also contain information on the area or areas where the newspaper is being circulated.

Further, during the hearing on 22 June 2017, the Commission verified that the Applicants have fully complied with the jurisdictional requirements. Thus, the Commission has acquired jurisdiction over this case.

Considering that the instant case remains pending before the Commission and that the Applicants were able to comply with the pre-filing and jurisdictional requirements, it becomes apparent that the Commission has jurisdiction to issue **interim relief** prayed for in the instant case.

III. THERE IS A PRESSING NEED TO GRANT THE URGENT MOTION.

The instant case involves two (2) solar power plants that SPTC will construct, own, operate, manage and maintain. SPTC intends to build the said plants in the Municipality of Tanauan, Batangas and Municipality of Naic, Cavite.⁶

The plants shall be two power generation facilities each capable of supplying at least 25 Megawatts (AC, net), to be constructed either in the Original Sites or an Alternative Site, and able to produce at least 50 Megawatts (AC, net) from solar photovoltaic panels.

On 02 February 2017, the Department of Environment and Natural Resources (DENR) issued ECC No. ECC-OL-R4A-2017-0036 in favor of SPTC covering the Tanauan Solar Power Plant. Consequently, on 03 February 2017, the DENR issued ECC No. ECC-OL-R4A-2017-0037 in favor of SPTC covering Phase 1 of the Maragondon Solar Power Plant.

On 20 March 2017, the Department of Energy (DOE) also issued a Certificate of Endorsement (No. 2017-02-004) certifying that power plants owned and operated by the Solar Power Tanauan Corporation is consistent with the Power Development Plan (PDP) of the government.

The said power plant projects are still to be constructed hence, are not yet covered by a COC. Nonetheless, SPTC has manifested that it undertakes to file the necessary application for a COC.

⁶ Paragraph 4, *Joint Application*.

MERALCO and SPTC allege in their Joint Application that MERALCO foresees a peaking capacity deficit in its power situation outlook, especially during the summer months due to high demand and possible outages. Therefore, there is an apparent need for MERALCO to source additional peaking capacity for it to be able to ensure the stable, reliable, and affordable supply of electric power to the consumers within its franchise area.

Corollary thereto, SPTC prays in its Urgent Motion for Early Resolution that the Commission urgently resolve its Joint PSA Application with MERALCO, considering that the final approval will trigger the Commencement Date and Scheduled Commercial Operations Date in accordance with Sections 3.2 and 3.3 of their PSA.

More importantly, SPTC alleges that the final resolution of the instant Application, and the consequent implementation of the projects, will greatly benefit the electricity consumers and will fulfil the declared State policies in Republic Act No. 9513, or the Renewable Energy Act of 2008.

The Commission finds that the allegations made by SPTC in the instant case are sufficient bases for the issuance of an interim relief.

**IV. THE PSA SOUGHT TO
BE IMPLEMENTED IN
THE INTERIM IS
REASONABLE.**

Based on the power situation outlook for 2017 and succeeding years, MERALCO foresees a peaking capacity deficit in its portfolio, especially for the summer months, due to the expected high demand as well as possible outages. Further, MERALCO's Distribution Development Plant for the years 2015 to 2024 shows a forecasted growth by a compounded average rate of 3.7% in its aggregate capacity requirement.

MERALCO found it necessary to enter into bilateral power supply contracts in order to ensure continuous and reliable electricity for its consumers.

Thus, to begin its procurement, on 23 September 2016, MERALCO published an Invitation for Price Challenge containing the basic terms of reference and conditions of the proposal of SPTC, as well as the summary of the process and timelines of the Price

Challenge process. MERALCO likewise invited power generation companies to submit better tariff proposals on or before the timelines set out in the said invitation. The invitation was also posted by MERALCO in its website⁷.

On 10 November 2016, MERALCO's Power Supply Agreements Bids and Awards Committee (PSA BAC) sent a letter-notice to SPTC, informing them that no Qualified Price Challenger submitted any Financial Proposal; thus, the PSA BAC decided to not proceed with the instant Price Challenge and to subject the PSA to another Price Challenge.

Thereafter, on 11 November 2016, MERALCO caused the publication of a Final Invitation for Price Challenge, inviting anew all interested and qualified parties to participate in the Price Challenge with respect to SPTC's proposed supply of electricity. At the same time, MERALCO caused the posting thereof on its website.

Having received no qualified submissions within the deadline indicated in the Final Invitation for Price Challenge, on 14 December 2016, MERALCO awarded the PSA to SPTC through a letter-notice.

A. Non-Rate Provisions

According to Section 2.1 of the PSA, the Agreement shall commence on Effective Date and shall remain in full force and effect until the last day of the twentieth (20th) Contract Year for Site 2, unless otherwise extended in accordance with Section 2.2 or earlier terminated in accordance with the Agreement.

Subject to the terms and conditions of the PSA, SPTC shall sell and deliver, and MERALCO shall pay for, the Product up to the Maximum Hourly Generation (MHG), at the Contract Price.

SPTC shall, during the Term of the PSA, and unless otherwise expressly stipulated therein, sell and deliver to MERALCO energy up to the MHG in accordance with Section 6.1 of the PSA. Further, Section 6.1.1 of the PSA provides that SPTC shall supply the power solely from the Plant. However, should the Plant not be able to generate the MHG on an hourly basis from 9:01 A.M. to 5:00 P.M., Monday to Friday, the difference between actual generation and the MHG may be sourced, at SPTC's sole option, from any of the Other Plants at the contract price.

⁷ Paragraph 8.1, Joint Application.

Subject to existing ERC rules and regulations, SPTC shall be free to sell and deliver to the WESM or third parties additional energy produced by the Plant or Other Plants in excess of the MHG at a given hour, or energy within the MHG but which MERALCO is unable to purchase or accept.⁸

SPTC shall ensure that its day-after daily declaration of Bilateral Contract Quantities (BCQ) submitted to the Market Operator, as required by the WESM Rules, accurately reflects the nominations furnished by MERALCO⁹.

Schedule I of the PSA provides that the Maximum Hourly Generation (MHG) shall be 25 MWh for each of the two (2) sites, subject to restatement upon Commercial Operations Date (COD) and Annual MHG Test¹⁰.

According to Paragraph 9 of the Joint Application, the commencement date of the PSA shall occur upon the satisfaction of the following conditions, to wit:

- (a) The conditions set out in Section 3.1. have been fulfilled;
- (b) Each Party has delivered to the other Party a certification dated no earlier than two (2) Days prior to the proposed Commencement Date to the effect that its representations and warranties contained herein shall be true and correct in all material respects on and as of the Commencement Date; and
- (c) On or before the Longstop Date, (i) the ERC shall have issued an ERC Final Approval, including the pricing structure as set out herein (or as otherwise acceptable to Power Supplier), and (ii) the Acceptance Date has occurred pursuant to Section 5.4.

Within seven (7) Days after the satisfaction of the conditions referred to in this Section 3.2, MERALCO and Power Supplier shall issue a joint certification confirming that the Commencement Date has occurred.

SPTC covenants that the Plant shall achieve COD for Site 1 by the later of 28 February 2017, four (4) months from Commencement

⁸ Section 6.1.3., PSA.

⁹ Section 6.4., PSA.

¹⁰ Section 6.8. Power Supplier shall at its own cost, conduct on an annual basis, an MGH Test on the Plant at a date agreed to by the Parties. As a consequence thereof, the MHG under Schedule 1 shall be re-stated to reflect the results of such MHG Test.

Date. In addition, SPTC covenants to achieve COD for Site 2 within two (2) months from the COD of Site 1.¹¹

Section 3.5 of the PSA states that if SPTC has experienced a delay in designing, constructing, testing or commissioning the Site 1 or Site 2, after the commencement date as a result or to the extent of any of the following (Excused Delay Event):

- (a) any action or inaction or delay in action of any Governmental Authority; or
- (b) the occurrence of an event of Force Majeure,

then the scheduled commercial operations date shall be extended by the same period that any Excused Delay Event subsists. This excused delay is allowed provided that SPTC has exerted due diligence in achieving its declared COD and has no contributory negligence with respect to any Excused Delay Event. Any such extension or relief shall not exceed one hundred eighty (180) Days (Excused Delay Limit).

At the sole and exclusive option of SPTC, it may extend the Excused Delay Limit for an additional period of one hundred eighty (180) days, or such longer period as may be agreed upon by the Parties, on the condition that SPTC shall provide Replacement Energy to MERALCO at the WESM price or Contract Price, whichever is lower, during the period beyond the Excused Delay Limit.

Similarly, Section 6.6 of the PSA provides that the failure by MERALCO to receive energy deliveries for a continuous period of twenty-four (24) hours as a result of unscheduled maintenance, or an extension of a scheduled maintenance, of MERALCO 's distribution facilities shall result in the adjustment or extension of the contract term equivalent to the aggregate period for which MERALCO failed to receive such energy deliveries. However, in no event shall such extension of the contract term be less than one (1) day nor shall it exceed one hundred eighty (180) days.

Section 8.1 of the PSA states that MERALCO shall be entitled to assign, transfer, designate, delegate or allocate its rights and obligations any excess energy that is no longer required by MERALCO as a result of Retail Competition and Open Access or a reduction in demand of its captive customers, to any of its business segments or wholly-owned Affiliates, that is engaged in generation, distribution, supply or aggregation of electricity and is a registered member of the WESM, without the prior consent of SPTC. MERALCO

¹¹ Section 3.3., PSA.

may only exercise the above-mentioned right subject to existing laws and rules and regulations.¹²

Similarly, MERALCO shall also be entitled to transfer its rights and obligations to purchase any excess energy that is no longer required by MERALCO due to the Retail Competition and Open Access or a reduction in demand of its captive customers to any other Person, subject to the prior written consent of SPTC, which consent shall not be unreasonably withheld, delayed or conditioned.¹³

Further, MERALCO shall be entitled to seek a reduction of its contracted energy equivalent to the reduction in the demand of its captive customers by reason of the enforcement of Retail Competition and Open Access, Renewable Energy Law and other Applicable Laws. If so, MERALCO shall give a written notice to SPTC of the reduction at least five (5) days prior to the first day of the next Billing Period or by such date as would be sufficient for timely notice to WESM of such change.¹⁴

Subject to the Rules on Renewable Portfolio Standards (RPS) that may be promulgated pursuant to the Renewable Energy Law (RPS Rules), MERALCO and SPTC acknowledge and agree that the Product under the PSA shall be utilized by MERALCO for the purpose of partially complying with the RPS Rules requirements in the proportion that it bears to the sum of (i) the aggregate capacity and/or energy generated under MERALCO's PSA with all its RPS-qualified renewable energy suppliers and (ii) MERALCO's procured renewable energy certificates.¹⁵

Section 14 of the PSA governs the termination of the contract. The afore-cited provision in the PSA states that the party who is not guilty of any material breach may terminate the agreement, upon sixty (60) days prior written notice to the other party. The same provision also states that MERALCO and SPTC agree that any material beach with respect to one site shall be considered independent of, and shall not affect, the other site.¹⁶

(This space is intentionally left blank.)

¹² Section 8.1., PSA.

¹³ *Id.*

¹⁴ Section 8.3., PSA.

¹⁵ Section 6.5., PSA.

¹⁶ Section 14., PSA.

B. Rate Provisions

Section 6.2 of the PSA provides that the PSA is a Take and Pay Contract. Subject to circumstances of Force Majeure under this Agreement and Section 6.1.1, MERALCO shall accept all electric energy deliveries from Power Supplier up to the MHG and MERALCO shall pay the corresponding Contract Price for all electric energy (in kWh or MWh) declared by SPTC at the WESM for MERALCO, which quantity shall be based on the readings of MERALCO's Billing Meter.

All WESM charges attributable to SPTC (e.g., WESM Market Fees) are not to be passed on to MERALCO. If the Product or a portion thereof is delivered from one of the Other Plants, the line rental charges that will form part of the price that MERALCO will charge to its customers shall be the lower of (i) the actual line rental charge for the applicable Other Plant; and (ii) the line rental charge for the applicable Site, provided that line rental charges in excess of P0.20 per kwh, reckoned on a monthly basis, shall be for the account of SPTC.¹⁷

Likewise, SPTC's own income taxes, property taxes and local business taxes are for its account. If applicable, all Value Added Tax (VAT) on the Product shall form part of the price that MERALCO will charge to its customers¹⁸.

A perusal of the PSA and the instant Application shows that the Contract Price is PhP5.39 per kwh, which shall be subject to two percent (2%) annual escalation, provided, that the Franchise and Benefits to Host Communities (FBHC) Charge, if any, shall not form part of and is excluded from the computation of the Contract Price.

It is also worthy to note that according to the PSA, all taxes pertaining to the Power Supplier, including but not limited to the FBHC Charge, shall be shouldered by, and be for the sole account of the Power Supplier. Any violation of this provision in the PSA shall be a ground for termination of their PSA upon prior notice.

In determining the reasonableness of the rate to be implemented by the Applicants, the Commission opted to apply the benchmarking methodology due to the following reasons:

¹⁷ Section 9.3., PSA

¹⁸ Section 9.2., PSA.

1. SPTC belatedly submitted its compliance on the required technical information only on 17 November 2017;
2. Upon checking of said compliance, the Commission found that the same are inconsistent with the components of the proposed rates as stated in the Joint Application;
3. The costs of Dedicated Point-to-Point Facilities which are still to be filed and approved by the Commission, are also part of the rates being proposed in their PSA; and
4. A cost-based rate cannot be determined at this time since the parties will still be required to further substantiate and explain the components of its proposed cost for the final evaluation of the instant Application.

Considering that the Commission's current policy is to look into specific cost for the power plant, the parties were required to further substantiate and explain the components of its proposed cost for the final evaluation of their application. Relative thereto, applicants on various dates, submitted several compliances with supporting documents, as well as SPTC's corrected financial model.

After reviewing said documents, the Commission observed a higher indicated cost in some components, especially the Engineering, Procurement and Construction (EPC). Applying the figures submitted by SPTC, the Commission arrived at higher resultant rates as compared to applicants' proposal.

Thus, for purposes of Interim Relief, the Commission considered benchmarking the proposed rates with those recently approved power supply agreements involving power plants of the same technology.

In its benchmarking, the Commission made reference to several power plants that it believes would be comparable in terms of technology, to validate the claim of competitive rates by the applicants, as follows:

Particulars	KSEC ¹⁹	ASTRONERGY ²⁰	LSEC ²¹	KTEC ²²	SPTC
Gross Installed Capacity	12.5MWdc	(24 x 1MW) 24 MWdc	20 MWdc	12.5 MWdc	-
Net Installed Capacity	10.0MWac	20 MWac	16 MWac	10.0 MWac	(2 x 25 MW) 50 MWac
Rate, PhP/kWh	8.75	8.54	8.50	8.50	5.39

From the above table, SPTCs proposed rate is PhP5.39kWh which is the lowest among the previously approved power supply agreements of generation companies involving the same technology.

C. Rate Impact

Based on the evaluation provided by the applicants in the Joint Application, given a certain set of assumptions, the annual effective rate under the PSA is PhP5.39 per kWh (at plant gate), as shown in the rate impact analysis below:

BILLING COMPONENT	UNIT	BASE RATE ^(a)	BILLING DETERMINANT ^(b)	AMOUNT (PHP)
Energy Payment				
Contract Price	(Php/kWh)	5.3900	98,550,000 (kWh)	531,184,500.00
TOTAL PAYMENT	(Php)			531,184,500.00
Effective Rate at Plant Gate	(Php/kWh)			5.3900
WESM Line Rental Rate ^(c)	(Php/kWh)			0.2000
Delivered Rate	(Php/kWh)			5.5900
Effective Cost at WESM Price ^(d)	(Php/kWh)			9.4421
Increase / (Decrease) over WESM Price	(Php/kWh)			(3.8521)
Meralco Captive Energy Demand ^(e)	(kWh)			32,232,597,988
Increase / (Decrease) In Generation Cost	(Php)			(379,623,886.19)
Increase / (Decrease) In Generation Cost	(Php/kWh)			(0.0118)

Assumptions:

- ^(a) Base Rates as set forth in Schedule 1 of the PSA
- ^(b) Energy billing determinant based on 50,000 kW contract capacity and 22.50% solar plant capacity factor
- ^(c) Line Rental rate for SPTC is based on maximum allowable value as stated in the PSA
- ^(d) Cost if equivalent volume of SPTC was sourced from the WESM based on forecast weighted average of Jan - Dec 2017 hourly prices from 7am to 5pm
- ^(e) Meralco Captive Energy Demand based on 2017 forecast

¹⁹ KSEC Order dated 04 May 2015 in ERC Case No. 2014-020 RC.

²⁰ ASTRONERGY Order dated 13 October 2015 in ERC Case No. 2015-148 RC.

²¹ LSEC Order dated 20 October 2015 in ERC Case No. 2015-151 RC.

²² KTEC Order dated 20 October 2015 in ERC Case No. 2015-152 RC.

As seen from the above table, the simulated delivered price under the PSA would be PhP5.59 per kWh, resulting in a reduction of MERALCO's generation charge by about PhPo.0118 per kWh.

The grant herein of an interim relief in favor of Applicants MERALCO and SPTC will ultimately redound to the benefit of the consumers.

Thus, the Commission deems it appropriate to act favorably upon the *Urgent Motion for Early Resolution*, herein treated as a motion for interim relief, in order to protect consumer interests affected by the rates and services of electric utilities and other providers of electric power.

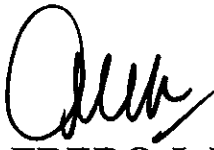
WHEREFORE, IN VIEW OF THE FOREGOING, Applicant Solar Philippines Tanauan Corporation (SPTC) is hereby **GRANTED INTERIM RELIEF** to implement its Power Supply Agreement (PSA) with Manila Electric Company (MERALCO), subject to the following conditions:

- a. The Applicable Rate shall be the base rate amounting to PhP5.39/kWh and not subject to adjustment or escalation;
- b. The Applicable Rate is inclusive of the costs associated with the dedicated point-to-point facilities for the two plants of SPTC. However, this is still without prejudice to the evaluation to be made on the point-to-point application by the Commission;
- c. Applicant SPTC is enjoined to file with the Commission its application for approval of the dedicated point-to-point facilities relative to the above subject case;
- d. The final generation cost that can be recovered shall be determined by the Commission in its Decision in the application;
- e. In the event that the final rate is higher than that granted in the interim, the resulting additional charges shall be collected by SPTC from MERALCO. On the other hand, if the final rate is lower than that granted in the interim, the amount corresponding to the reduction shall be refunded by SPTC to MERALCO;

- f. MERALCO be directed to include in its monthly calculation of its generation rate in accordance with the Automatic Generation Rate Adjustment (AGRA) Rules; and
- g. The interim relief of the PSA is without prejudice to any findings by the Commission in its evaluation of proponent's application for Certification of Compliance (COC).

SO ORDERED.

Pasig City, 28 November 2017.



ALFREDO J. NON
OIC- Chairman and CEO



GLORIA VICTORIA C. YAP-TARUC
Commissioner



JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner



GERONIMO D. STA. ANA
Commissioner

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Puno and Puno
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Exchange Road, Ortigas Center, Pasig City
3. Manila Electric Company
Applicant
Lopez Building, Ortigas Avenue,
Brgy. Ugong, Pasig City
4. Solar Power Tanauan Corporation (SPTC)
Applicant
112 Legaspi Street, Makati City
Metro Manila

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5. Office of the Solicitor General (OSG)
134 Amorsolo Street, Legaspi Village
Makati City, Metro Manila
6. Commission on Audit (COA)
Commonwealth Avenue
Quezon City, Metro Manila
7. Senate Committee on Energy
GSIS Bldg. Roxas Blvd., Pasay City
Metro Manila
8. House Committee on Energy
Batasan Hills, Quezon City, Metro Manila
9. Philippine Chamber of Commerce and Industry (PCCI)
Campus Avenue corner Park Avenue,
McKinley Town Center, Fort Bonifacio, Taguig City
10. The City Mayor
City of Manila
11. LGU Legislative Body
City of Manila
12. The City Mayor
Quezon City
13. LGU Legislative Body
Quezon City
14. The City Mayor
City of Caloocan
15. LGU Legislative Body
City of Caloocan
16. The City Mayor
City of Makati
17. LGU Legislative Body
City of Makati
18. The City Mayor
City of Malabon
19. LGU Legislative Body
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20. The City Mayor
City of Mandaluyong
21. LGU Legislative Body
City of Mandaluyong
22. The City Mayor
City of Muntinlupa
23. LGU Legislative Body
City of Muntinlupa
24. The City Mayor
City of San Jose del Monte, Bulacan
25. LGU Legislative Body
City of San Jose del Monte, Bulacan

26. The City Mayor
City of Valenzuela
27. LGU Legislative Body
City of Valenzuela
28. The City Mayor
City of Pasig
29. LGU Legislative Body
City of Pasig
30. The City Mayor
Pasay City
31. LGU Legislative Body
Pasay City
32. The City Mayor
City of Parañaque
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City of Parañaque
34. The City Mayor
Cavite City
35. LGU Legislative Body
Cavite City
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Trece Martirez City
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Trece Martirez City
38. The City Mayor
Las Piñas City
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40. The City Mayor
San Juan City
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San Juan City
42. The City Mayor
Lucena City
43. LGU Legislative Body
Lucena City
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Batangas City
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Batangas City
46. The City Mayor
San Pablo City, Laguna
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San Pablo City, Laguna

48. The City Mayor
City of Marikina
49. LGU Legislative Body
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50. The City Mayor
Antipolo City, Rizal
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52. The City Mayor
Tagaytay City, Cavite
53. LGU Legislative Body
Tagaytay City, Cavite
54. The City Mayor
Calamba, Laguna
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Calamba, Laguna
56. The City Mayor
Sta. Rosa, Laguna
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Sta. Rosa, Laguna
58. The City Mayor
Biñan, Laguna
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Biñan, Laguna
60. The City Mayor
Navotas, Metro Manila
61. LGU Legislative Body
Navotas, Metro Manila
62. The Municipal Mayor
Taguig, Metro Manila
63. LGU Legislative Body
Taguig, Metro Manila
64. The Municipal Mayor
Pateros, Metro Manila
65. LGU Legislative Body
Pateros, Metro Manila
66. The Municipal Mayor
General Aguinaldo, Cavite
67. LGU Legislative Body
General Aguinaldo, Cavite
68. The Municipal Mayor
Magallanes, Cavite
69. LGU Legislative Body
Magallanes, Cavite

70. The Municipal Mayor
Amadeo, Cavite
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Amadeo, Cavite
72. The Municipal Mayor
Indang, Cavite
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Indang, Cavite
74. The Municipal Mayor
Mendez, Cavite
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76. The Municipal Mayor
Alfonso, Cavite
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78. The Municipal Mayor
Imus, Cavite
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Imus, Cavite
80. The Municipal Mayor
Kawit, Cavite
81. LGU Legislative Body
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82. The Municipal Mayor
Noveleta, Cavite
83. LGU Legislative Body
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Bacoor, Cavite
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86. The Municipal Mayor
Maragondon, Cavite
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88. The Municipal Mayor
Ternate, Cavite
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Ternate, Cavite
90. The Municipal Mayor
Gen. Trias, Cavite
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Gen. Trias, Cavite

92. The Municipal Mayor
Naic, Cavite
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Rosario, Cavite
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Rosario, Cavite
96. The Municipal Mayor
Tanza, Cavite
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Dasmariñas, Cavite
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Dasmariñas, Cavite
100. The Municipal Mayor
Gen. Mariano Alvarez, Cavite
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Gen. Mariano Alvarez, Cavite
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Silang, Cavite
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Carmona, Cavite
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Cainta, Rizal
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Taytay, Rizal
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Jala-jala, Rizal
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Pililla, Rizal
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Pililla, Riza
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Morong, Rizal
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Rodriguez, Rizal
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Meycauayan, Bulacan
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Obando, Bulacan
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136. The Municipal Mayor
Marilao, Bulacan
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Norzagaray, Bulacan
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Angat, Bulacan
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Doña Remedios Trinidad, Bulacan
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Paombong, Bulacan
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158. The Municipal Mayor
Bustos, Bulacan
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Guiguinto, Bulacan
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Pandi, Bulacan
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Baliwag, Bulacan
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San Rafael, Bulacan
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San Miguel, Bulacan
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San Miguel , Bulacan
176. The Municipal Mayor
San Ildefonso, Bulacan
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San Ildefonso, Bulacan
178. The Municipal Mayor
Victoria, Laguna
179. LGU Legislative Body
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181. LGU Legislative Body
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183. LGU Legislative Body
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Calauan, Laguna
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Candaba, Pampanga
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Candaba, Pampanga
234. The Municipal Mayor
San Simon, Pampanga
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San Simon, Pampanga
236. The Municipal Mayor
Apalit, Pampanga
237. LGU Legislative Body
Apalit, Pampanga
238. Office of the Governor
Province of Rizal
239. LGU Legislative Body
Province of Rizal
240. Office of the Governor
Province of Laguna
241. LGU Legislative Body
Province of Laguna
242. Office of the Governor
Province of Batangas
243. LGU Legislative Body
Province of Batangas
244. Office of the Governor
Province of Cavite
245. LGU Legislative Body
Province of Cavite

- 246. Office of the Governor
Province of Pampanga
- 247. LGU Legislative Body
Province of Pampanga
- 248. Office of the Governor
Province of Quezon
- 249. LGU Legislative Body
Province of Quezon
- 250. Office of the Governor
Province of Bulacan
- 251. LGU Legislative Body
Province of Bulacan