



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 TARLAC  
CORPORATION (SPTC), WITH  
PRAYER FOR PROVISIONAL  
AUTHORITY AND MOTION  
FOR CONFIDENTIAL  
TREATMENT OF  
INFORMATION**

**ERC CASE NO. 2017-094 RC**

**MANILA ELECTRIC COMPANY  
(MERALCO) AND SOLAR  
PHILIPPINES TARLAC  
CORPORATION (SPTC),  
Applicants.**

Promulgated:  
MAR 04 2019

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### **ORDER**

Before this Commission for resolution are the following submissions:

1. *Manifestation* filed by Manila Electric Company (MERALCO) on 29 June 2018;
2. *Motion for Partial Reconsideration (Of the Order dated February 20, 2018) and Confidential Treatment of Information* filed by Solar Philippines Tarlac Corporation (SPTC) on 03 July 2018; and
3. *Comment with Opposition* filed by MERALCO on 13 July 2018.

### **FACTUAL ANTECEDENTS**

On 19 October 2017, Applicants Manila Electric Company (MERALCO) and Solar Philippines Tarlac Corporation (SPTC) filed a

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*Joint Application* dated 16 October 2017 for approval of their Power Supply Agreement (PSA).

On 23 November 2017, MERALCO and SPTC filed a *Joint Motion for Provisional Authority* dated 22 November 2017 wherein it prayed that the Commission issue an order granting them provisional authority to begin the implementation of their PSA.

Finding the *Joint Application* sufficient in form and substance, the Commission issued an *Order and Notice of Public Hearing* on 11 December 2017 setting the instant case for hearing on 01 February 2018.

The initial hearing for the instant case took place on 01 February 2018. Applicants MERALCO and SPTC appeared. At the outset, the Commission acknowledged having received the following:

1. *Motion for Intervention* filed by Matuwid na Singil sa Kuryente Consumer Alliance, Inc. (MSK) on 03 November 2017; and
2. *Petition for Intervention with Entry of Appearance* filed by CitizenWatch, Inc. (CitizenWatch) on 08 December 2017.

There were no representatives from either MSK or CitizenWatch who appeared at the hearing despite due notice. Thereafter, the applicants' full compliance with the jurisdictional requirements was verified. The proofs of their compliance were marked as Exhibits "D" to "S-1" and "NN" to "OO". Applicants delivered their respective expository presentations. After the termination of the pre-trial conference, the case was set for continuation of hearing on 23 February 2018.

During the 23 February 2018 hearing, MERALCO, SPTC and CitizenWatch appeared. SPTC manifested that it has no objection to the *Petition for Intervention* filed by CitizenWatch. MERALCO likewise did not raise any objection to the same. In light of SPTC's and MERALCO's respective manifestations, and considering that the CitizenWatch's *Petition* was filed within the allowable period under the Commission's 2006 Rules of Practice and Procedure (2006 ERC RPP), CitizenWatch was admitted as an intervenor in the instant case. The continuation of the hearing for the cross-examination of the applicants' witnesses by intervenors and for intervenors' presentation of evidence was set for 19 March 2018 (Monday), from two o'clock in the afternoon (2:00 P.M.), at the ERC Hearing Room, 15<sup>th</sup> Floor, Pacific Center Building, San Miguel Avenue, Pasig City.

On 26 February 2018, having found the *Motion for Intervention* filed by MSK to be in accordance with the 2006 ERC RPP, the Commission issued an *Order* granting the same and admitting MSK as an intervenor in the instant case.

On 01 March 2018, MERALCO filed an *Urgent Motion for Issuance of an Interim Relief* dated 28 February 2018 wherein it reiterated its request for the Commission to issue an order granting interim relief to authorize the immediate implementation of the PSA.

During the 19 March 2018 hearing MERALCO and SPTC appeared. Intervenors MSK and CitizenWatch appeared through their authorized representatives. CitizenWatch conducted its cross-examination of the applicants' witnesses. Thereafter, the continuation of the hearing for the cross-examination of the applicants' witnesses by intervenor MSK was set on 16 April 2018.

During the 16 April 2018 hearing MERALCO and SPTC appeared. Intervenors MSK and CitizenWatch likewise appeared. MSK conducted its cross-examination of the applicants' witnesses. The hearing for the instant case was thereafter terminated after intervenors manifested that it will no longer be presenting evidence. The case was then submitted for resolution.

On 26 April 2018, MERALCO filed a *Very Urgent Motion for Issuance of Interim Relief with Attached Formal Offer of Evidence*.

On 08 June 2018, the Commission issued an *Order* dated 20 February 2018 provisionally authorizing MERALCO and SPTC to implement their PSA, subject to the certain conditions, the dispositive portion of the *Order* reads, *to wit*:

In view of the foregoing, MERALCO and SPTC are hereby **GRANTED INTERIM RELIEF** provisionally authorizing them to implement their Power Purchase Agreement, subject to the following conditions:

1. That the Applicable Rate shall be base rate amounting to Php 2.999/kWh and not subject to adjustments or escalation;
2. That the approved generation rate is inclusive of the transmission cost or the cost of their dedicated point to point facilities, thus, the same cannot be adjusted upward when they file with the ERC for approval of its dedicated point to point limited facilities;
3. Direct MERALCO to submit the monthly calculation of its generation rate in accordance with Automatic Generation Rate Adjustment (AGRA) Rules. Further, for monitoring purposes, the



indices and other details used by MERALCO in the calculation of monthly payment shall be included in the submission;

4. The final generation cost that can be recovered shall be determined by the Commission in its Decision in the instant application; and
5. In the event that the final rate is higher than that provisionally granted, the resulting additional charges shall be collected by SPTC from MERALCO. On the other hand, if the final rate is lower than that provisionally granted, the amount corresponding to the reduction shall be refunded by SPTC to MERALCO.

**SO ORDERED.**

On 29 June 2018, MERALCO filed a *Manifestation* wherein it informed the Commission of SPTC's refusal to accept the Commission's *Order* dated 20 February 2018 because of the disallowance of the annual escalation rate of 2% provided in Section 5.3 of the PSA. In the said *Manifestation*, MERALCO alleged that it received such information through a letter from SPTC dated 26 June 2018.

On 03 July 2018, SPTC filed a *Motion for Partial Reconsideration (of the Order dated February 20, 2018) and Confidential Treatment of Information (Motion for Partial Reconsideration)* wherein it alleged the following, *to wit*:

- 1) On June 18, 2018, SPTC received this Honorable Commission's Order dated February 20, 2018 (the "**Order**") which provisionally authorized SPTC and Manila Electric Company ("**MERALCO**") to implement their Power Supply Agreement dated October 6, 2017 (the "**PSA**"). However, the Order also provided that "The Applicable Rate shall be the base rate amounting to PhP2.9999/kWh and not subject to adjustment or escalation".<sup>1</sup>
- 2) In disallowing the annual escalation rate of 2% (the "**2% Annual Escalation**") on the PSA Rate,<sup>2</sup> this Honorable Commission cited its Decision dated January 19, 2009 in ERC Case No. 2008-021 (the "**Decision**"), where the Honorable Commission disallowed an escalation clause in the proposed rate of a generation company on the reason that the Capital Recovery Fee should not be subject to indexation during the cooperation period.<sup>3</sup> Further, this Honorable Commission stated in its Order that the basis of the 2% Annual Escalation under the PSA is yet to be verified.<sup>4</sup>

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<sup>1</sup> Order, p. 18;

<sup>2</sup> Section 5.3 of the PSA states that "[t]he Contract Price is PhP 2.9999 per kWh, subject to an annual escalation of two percent (2%), provided, that the Franchise and Benefits to Host Communities Charge, if any, shall not form part of and is excluded from the computation of the Contract Price.\*\*\*";

<sup>3</sup> Order, p. 17;

<sup>4</sup> Order, p. 18;

- 3) With all due respect, this Honorable Commission's disallowance of the 2% Annual Escalation in its Order should be reconsidered and set aside for the following reasons:
  - a. SPTC is not similarly situated with the applicants in ERC Case No. 2008-021.
  - b. SPTC has established the basis of the 2% Annual Escalation in its PSA.
  - c. Even with the application of the 2% Annual Escalation, the PSA Rate is still significantly lower than the prevailing Feed-in-Tariff ("FIT") rate and the approved rates for other solar power plants in the country. Thus, its approval will still redound to the benefit of the consumers.
  - d. Alternatively, and should this Honorable Commission still disallow the 2% Annual Escalation in the PSA, SPTC should be allowed to charge the levelized average rate of PhP3.7144/kWh in the meantime.
- 4) Aside from the foregoing, SPTC respectfully moves that the timeline for the performance of SPTCs obligations under the PSA should be adjusted in light of this Honorable Commission's lack of quorum from December 2017 to February 2018, which constitutes force majeure under the PSA.

**I. SPTC is not similarly situated with the applicants in ERC Case no. 2008-21**

- 5) The Decision which the Honorable Commission cited in disallowing the 2% Annual Escalation under the PSA is not applicable to this case.
- 6) ERC Case No. 2008-021 involved an Electricity Supply Agreement between First Catanduanes Electric Cooperative, Inc. and Sunwest Water and Electric Company, Inc. ("SUWECO"). In their agreement, the parties proposed a generation rate of PhP5.4147/kWh, subject to a 2% cumulative increase. Based on SUWECO's financial model, the cumulative rate adjustment "was assumed to compensate for the increase in the cost of fuel used in thermal plants." In denying the 2% cumulative increase, this Honorable Commission explained that:

The base rate should not be adjusted throughout the entire 30-year cooperation period since it will result in the adjustment of the Capital Recovery Fee component (which covers for the capital cost) for the duration of the said period. Said costs are considered sunk costs. The capital cost will no longer be incurred during the contract period considering that this will be incurred before the commercial operation of the power plants. Thus, inflation will not necessarily affect the capital recovery. Moreover, the subject mini-hydro power plants are not comparable to fuel oiled power plants.
- 7) The foregoing does not apply to SPTC's 2% Annual Escalation. As explained in the financial model previously submitted to the

Honorable Commission<sup>5</sup> and in **Annexes A, B, and C** of this motion, SPTC does not seek to profit from its capital expenditures in implementing the 2% Annual Escalation. Rather, SPTC structured the PSA Rate in such a way so that (a) it can still recover a reasonable return on its investment, and (b) SPTC's recovery of its investment will not be a burden to consumers.

- 8) Stated differently, the 2% Annual Escalation of the PSA Rate is only a structure employed by SPTC to (a) spread out the recovery of its investments (plus a reasonable return over the 20-year term of the PSA, and (b) allow the [Public to benefit from a lower rate. Indeed, had SPTC structured the PSA Rate so that it would only charge a uniform rate for the entire duration of the PSA, SPTC would be constrained to charge a rate at PhP3.7144/kWh for the entire term of the PSA. Furthermore, the 2% Annual Escalation was part of the original price structure of MERALCO's original proponent, Citicore Power, Inc. ("**Citicore**"), which was the subject of the SPTC price challenge.
- 9) It bears emphasizing that for the first ten (10) years of the PSA, and based on this Honorable Commission's simulation,<sup>6</sup> the current PSA Rate structure will allow SPTC to charge rates which are lower than the 20-year average of the PSA Rate. In particular, the rates for the first ten (10) years of the PSA range from PhP2.9999/kWh to PhP3.6569/kWh -- all of which are lower than the 20-year average of the PSA amounting to PhP3.7144/kWh.
- 10) Moreover, and as will be explained in further detail in Annexes A, B and D of this motion, the absence of the 2% Annual Escalation will make the PSA financially unviable, to the prejudice not only of SPTC but also of the consuming public in general. Indeed, without the 2% Annual Escalation, and if the rate is fixed at PhP2.9999/kWh, SPTC would incur losses for the entire 20-year term of the PSA and would not be able to recover its investment. A generation company, such as SPTC, is also entitled to recover a reasonable return on its investment in line with this Honorable Commission's mandate under Republic Act No. 9136, or the Electric Power Industry Reform Act of 2001 ("EPIRA"), to "fix rates that will allow the recovery of just and reasonable costs and a reasonable return on rate base (RORB) to operate viably."<sup>7</sup> The unviability of the PSA because of the disallowance of the 2% Annual Escalation would also constrain SPTC to cancel the PSA which, in turn, would deprive consumers of one of the lowest rates, if not the lowest, from a solar power plant in the Philippines.

**II. SPTC has established the basis of the 2% Annual Escalation in its PSA.**

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<sup>5</sup> SPTC's financial documents were marked as Annex V and series. SPTC moved for the confidential treatment of the financial model in its Joint Application dated October 16, 2017;

<sup>6</sup> See *Order*, pp. 16 to 17;

<sup>7</sup> EPIRA, Section 43(f);



- 11) SPTC has submitted, as part of its submission in its Joint Application with MERALCO, its financial model as justification for its PSA Rate, including the 2% Annual Escalation. In any event, and to further clarify the basis of the 2% Annual Escalation, SPTC is submitting the documents attached as **Annexes A to D** of this motion.

**III. Even with the application of the 2% Annual Escalation, the PSA Rate is still significantly lower than the prevailing FIT rate and the approved rates for other solar power plants in the country. Thus, its approval will still redound to the benefit of the consumers.**

- 12) In its Order, the Honorable Commission prepared a simulation of the PSA Rate over the course of its 20-year term.<sup>8</sup> The Honorable Commission determined that the average PSA Rate for the 20-year duration of the PSA would amount to PhP3.7144/kWh. Moreover, taking into consideration the 2% Annual Escalation, the PSA Rate would range from PhP2.999/kWh on the first year of the PSA to PhP4.4577/kWh on its final year.<sup>9</sup>
- 13) The Honorable Commission also compared the average PSA Rate for the 20-year term of the PSA with the following: (a) the rates approved for other solar power plants, and (b) the prevailing FIT rate.
- 14) In this connection, and based on the Order's simulation, the average PSA Rate during the 20-year term of the PSA, even with the application of the 2% Annual Escalation, is still significantly lower than (a) the rates approved for other solar power plants, (b) the prevailing FIT rate, and (c) the average rate proposed by Citicore to Meralco, which was also subject to escalation. **In fact, SPTC's rate for the final year of the PSA (i.e., PhP4.4577/kWh), which is the highest rate during the 20-year term of the PSA, is still lower than the approved rates for the other solar power plants, and the current FIT rate.**
- 15) Moreover, the structure of the PSA Rate is advantageous to the general consuming public. As mentioned, based on the simulation in the Order,<sup>10</sup> the rates for the first ten (10) years of the PSA (which ranges from PhP2.9999/kWh to PhP3.6569/kWh) are lower than the average rate for the entire 20-year term of the PSA (i.e., PhP3.7144/kWh).

**IV. Alternatively, and should this Honorable Commission still disallow the 2% Annual Escalation in the PSA, SPTC should be allowed to charge the**

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<sup>8</sup> See Order, pp. 16 to 17;

<sup>9</sup> Order, PP. 16-17;

<sup>10</sup> See Order, pp. 16 to 17;

**levelized average rate of  
PhP3.7144/kWh in the meantime.**

- 16) As mentioned earlier, the EPIRA provides, as a matter of policy, that this Honorable Commission may "fix rates that will allow the recovery of just and reasonable costs and a reasonable return on rate base (RORB) to operate viably."<sup>11</sup>
- 17) In this connection, SPTC has offered the lowest possible rate that any solar power plant within the country may offer. Indeed, even with the 2% Annual Escalation, the PSA rate remains one of the lowest, if not the lowest, rate from a solar power plant.
- 18) However, SPTC would not be able to offer the rate it is currently offering if this Honorable Commission disallows the 2% Annual Escalation. As mentioned, without the 2% Annual Escalation, the PSA would not be viable to SPTC. This is explained in further detail in **Annexes A, B, and D** of this motion.
- 19) SPTC wants the general consuming public to benefit from the favorable rate it has extended to MERALCO. However, to be able to do this, SPTC would need the 2% Annual Escalation. For this reason, If the 2% Annual Escalation would not be allowed, SPTC respectfully moves that it should be allowed to charge at a rate following the levelized average rate which the Order has computed at PhP3.7144/kWh.<sup>12</sup>
- 20) It bears reiterating that even if the PSA Rate is adjusted to PhP3.7144/kWh, that rate remains one of the lowest rate among solar power plants in the country – even lower than those previously approved by this Honorable Commission and the FIT rate.

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**PRAYER**

WHEREFORE, SPTC respectfully prays that this Honorable Commission:

- (a) PARTIALLY RECONSIDER its Order and ALLOW the 2% Annual Escalation under the PSA. In the alternative, and should this Honorable Commission still disallow the 2% Annual Escalation, apply a levelized average rate using at PhP3.7144/kWh;

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On 13 July 2018, MERALCO filed its *Comment with Opposition (Comment with Opposition)* wherein it prayed that the Commission deny SPTC's prayer to allow the use of a levelized average rate of PhP3.7144/kWh in lieu of the 2% Annual Escalation, should the latter be disallowed. In support of the said argument, MERALCO clarified that the PhP3.7144/kWh levelized average rate is not the same offer that was agreed upon during the Price Challenge Process that

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<sup>11</sup> EPIRA, Section 43(f);

<sup>12</sup> See *Order*, pp. 16 to 17;



commenced on 28 June 2017. According to its own simulation, MERALCO claimed that the alleged PhP3.7144/kWh levelized average rate of SPTC will only be arrived at using a base value of PhP3.1957/kWh at 2% Annual Escalation. Furthermore, MERALCO alleged that it is on the basis of SPTC's offer (a proposed rate of PhP2.9999/kWh with 2% Annual Escalation) that it emerged as the winning bidder, considering that the same is still lower than the original proponent's offer.

Consequently, on 05 November 2018, the Commission set the *Motion for Partial Reconsideration* for hearing on 19 November 2018.

During the 19 November 2018 hearing, MERALCO, SPTC and intervenor CitizenWatch appeared. Intervenor MSK failed to appear despite due notice.

The Commission gave SPTC sufficient time to discuss the allegations and arguments contained in its *Motion for Partial Reconsideration*. SPTC reiterated that the proposed rate of PhP2.9999/kWh without any escalation clause, as provisionally approved by the Commission in its *Order* dated 20 February 2018, would make the project unviable. SPTC likewise discussed several of the Commission's previous orders<sup>13</sup> wherein the latter allegedly recognized the need for an adjusted rate.

SPTC also manifested that it is already implementing the subject PSA with MERALCO while waiting for the resolution of its *Motion for Partial Reconsideration*. According to SPTC, it is reimbursing the cost of electricity being sourced by MERALCO. SPTC further explained that it will be shouldering the difference between the said cost of electricity and rate agreed upon in the PSA. However, MERALCO clarified that it has not yet billed SPTC for the costs it has incurred pending the resolution of the *Motion for Partial Reconsideration*.

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<sup>13</sup> Page 8 of the TSN:

Particularly, I'm referring to ERC Case Nos. 2017-012 RC, this is the MERALCO – Power Source Application. I'm also referring to 2015-148 RC, this pertains to SOCOTECO II – Astroenergy Application. And Your Honor, in other cases also we'd like to make reference by analogy, this is the CEPALCO – Kirahon Application which is 2014-020 RC and DECORP – Sun Asia Application which is the (*sic*) 2016-154 RC. Your Honor, in this case, there is a recognition that there was a need or at least this Honorable Commission adjusted the rates. In this case, Your Honor, the difference here in this case is that the rate was not adjusted instead it was pegged at P2.9999 unless otherwise mention (*sic*) by this Honorable Commission. And again, we'd like to reiterate that if that is (*sic*) case, it will make the project unviable;

Similar to SPTC, the Commission also gave MERALCO the opportunity to discuss the concerns it raised in its *Opposition*. MERALCO manifested that the levelized cost of PhP3.7144/kWh prayed for by SPTC in its *Motion for Partial Reconsideration* is not the rate that was originally contemplated under the Competitive Selection Process (CSP) it undertook, and therefore, approving the same could be considered inconsistent with the existing rules on CSP.

After the applicants presented their respective positions, CitizenWatch was given the opportunity to propound clarificatory questions in relation to the issues raised by both MERALCO and SPTC. However, CitizenWatch opted to move for additional time to submit its written comments on the *Motion for Partial Reconsideration*. SPTC opposed the same on the basis of timeliness, arguing that it has been four (4) months since CitizenWatch's receipt of the said document. The Commission ruled that CitizenWatch, being admitted as an intervenor who advocates for the protection of consumer interest, may submit its comment on the *Motion for Partial Reconsideration*, subject to the discretion of the Commission. Therefore, the Commission directed CitizenWatch to submit its written comment on SPTC's *Motion for Partial Reconsideration* within five (5) working days from the hearing or until 26 November 2018. MERALCO and SPTC were given the same period of five (5) working days to submit their comments, if any.

SPTC then moved for the conduct of a post-hearing conference with the Commission's technical staff in order to discuss the merits of its *Motion for Partial Reconsideration* insofar as it involved matters that are covered by a motion for confidential treatment of information. There being no objections from MERALCO or CitizenWatch, the Commission granted the same.

The Commission propounded questions to MERALCO and SPTC, which they were able to address. The Commission likewise required applicants to submit the following additional documents:

For MERALCO:

1. The computation or basis for the proposed rate of PhP3.1957/kWh in Paragraph 5.1.2 of its *Comment with Opposition*; and
2. Supporting documents showing when MERALCO began purchasing replacement power from WESM, to be reimbursed by SPTC, pursuant to its PSA.

For SPTC:

1. Relevant updates on the progress of the project and construction of the Power Plant.

On 26 November 2018, intervenor CitizenWatch filed its *Comment with Opposition* wherein it prayed that the Commission deny the *Motion for Partial Reconsideration*, especially SPTC's prayer seeking approval of the levelized average rate of PhP3.7144/kWh. CitizenWatch argued that the said rate cannot be approved by the Commission as the same did not go through the requirements of publication and posting. Moreover, CitizenWatch alleged that it is not the same rate that was subjected to the CSP. Lastly, it posited the view that allowing the adjustment of the timelines under the PSA would be to the detriment of the consuming public.

### ISSUES

The issue subject to the Commission's resolution is whether or not to allow the 2% Annual Escalation under the PSA, as prayed for by SPTC in its *Motion for Partial Reconsideration*.

### THE COMMISSION'S RULING

The Commission resolved to **PARTIALLY GRANT** the *Motion for Partial Reconsideration* particularly by **ALLOWING** the 2% Annual Escalation under the PSA, as prayed for.

### DISCUSSION

In resolving the *Motion for Partial Reconsideration*, the Commission noted its ruling in the *Order* dated 20 February 2018, the relevant portions of which are hereunder quoted below:

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The table below shows the approved rate for other solar power plants in the country, vis-a-vis SPTC's solar power plant:

**Table No. 1. Comparative Table – SPTC's proposed rate vis-à-vis other solar power plants**

ERC Case No.	Applicants	Capacity (MW, AC, Net)	Rate (PhP/kWh)	Remarks
2017-014 RC	MERALCO & SPTC (Tanauan)	50	5.3900	Interim Relief
2017-012 RC	MERALCO & PFBS	50	4.7268	Interim Relief
<b>2017-094 RC</b>	<b>MERALCO &amp;</b>	<b>85</b>	<b>2.9999</b>	

	SPTC (Tarlac)			
2011-006 RM	FIT	10	8.6900	

Based on the above table, the Applicant's proposed rate is the lowest among other similar plants. **However, the Commission has yet to verify the basis of the 2% percent escalation factor under the proposed PSA.** In this regard, the proposed adjustment to the base rate of PhP2.9999 per kWh is not allowed.

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(Emphasis supplied.)

It is on the basis of the above pronouncement and SPTC's allegations in the course of the proceedings for the instant *Motion for Partial Reconsideration* that the Commission conducted further review to verify the basis of the 2% Annual Escalation under the PSA.

Under the PSA, the proposed rate is PhP2.9999/kWh subject to 2% Annual Escalation. It is worthy to note that the said rate is mainly a result of the CSP undertaken by MERALCO. During the course of the proceedings for the instant case, SPTC admitted that during the procurement process, the proposed rate of PhP2.9999/kWh with a 2% Annual Escalation clause was offered as part of its business strategy, keeping in mind its desire to deliver low power rates and its need to recover its investments.

To calculate its proposed rates, SPTC used a financial model which projects the discounted cash flow or the discounted present value of a future stream of expected revenues and expenses. The Commission notes that the financial model used by SPTC is consistent with the model used in other PSA applications involving solar power plants, specifically the Feed-in-Tariffs (FIT) model.

The Commission further notes that SPTC had structured its business model in a way that it will be able to offer low power rates by spreading out the recovery of its investments over the twenty (20)-year term of the PSA. The Commission also took note of SPTC's claim that, without the 2% Annual Escalation, it would incur losses for the entire 20-year term of the PSA, thus, denying it the opportunity to recover its investments.

In evaluating the reasonableness of the proposed rate of PhP2.9999/kWh, the Commission resolved to allow SPTC to apply the 2% annual escalation clause, as prayed for in its *Motion for Partial Reconsideration*. The Commission believes that allowing the same is reasonable and justifiable for reasons discussed below:

**I. The PSA underwent CSP.**

Section 23 of Republic Act No. 9136, or the Electric Power Industry Reform Act of 2001 (EPIRA) requires Distribution Utilities (DUs) to supply electricity in the least cost manner to its captive market within the franchise area, subject to the collection of retail rates duly approved by the Commission. Consistent with the afore-cited EPIRA provision, the Commission promulgated ERC Resolution No. 13, Series of 2015 which provides that undergoing a CSP is advantageous in terms of ensuring transparency in the DU's supply procurement and providing opportunities to elicit best price offer and other PSA terms and conditions from suppliers. This is without prejudice to the Commission's evaluation and review of the PSA as an outcome of the CSP. The review shall involve verification of the CSP that the DU undertook, as well as the reasonableness of the generation rate as a product of the CSP.

In this case, the applicants' PSA, including its proposed rate, resulted from the conduct of a valid CSP. The CSP was undertaken in the following manner:

1. On 28 June 2017, MERALCO caused the publication of an Invitation for Price Challenge, which contained the basic Terms of Reference and Conditions of Citicore Power, Inc., the original proponent, as well as a summary of the stages and timelines of the Price Challenge process, and inviting generation companies to submit better tariff proposals on or before the timelines set out in the said invitation. At the same time, MERALCO caused the posting thereof on its website. The following are the details of the price challenge:

**Table No. 2. Details of MERALCO's Price Challenge**

Power Supplier	Citicore Power, Inc.
Plant Description/Location	Solar Power plants of: <ul style="list-style-type: none"> <li>▪ Next Generation Power Technology, Corporation. (Mariveles, Bataan);</li> <li>▪ First Toledo Solar Energy, Corporation (Toledo, Cebu); and</li> <li>▪ Silay Solar Power, Inc. (Silay, Negros Occidental).</li> </ul>
Net Plant Capacity	Aggregate of 85MW (AC, net), from up to three (3) solar power plants.
Product	Electric energy generated by the Plant corresponding to:

	<ul style="list-style-type: none"> <li>▪ At least 75MW (AC, net) up to 85MW (AC, net) from 1<sup>st</sup> to 5<sup>th</sup> Contract Years; and</li> <li>▪ 85MW (AC, net) from 6<sup>th</sup> to 20<sup>th</sup> Contract Years.</li> </ul>
Contract Type	Take and Pay
Current Status of Plant	Operational
Generation Source	Solar energy
Required Contract Period	Twenty (20) Years from Commencement Date
Required Contract Start Date/ Commencement Date	Upon ERC Provisional Approval or Final Approval, whichever comes earlier
Tariff Structure	Straight Energy Price (subject to escalation)
Offered Price	PhP3.50/kWh subject to: <ul style="list-style-type: none"> <li>▪ 1.5% annual escalation beginning from the 2<sup>nd</sup> to the 10<sup>th</sup> Contract Years; and</li> <li>▪ 1.0% annual escalation from 11<sup>th</sup> to the 20<sup>th</sup> Contract Years;</li> </ul> In both cases applied to 100% of the Offered Price

2. On 17 August 2017, MERALCO's Power Supply Agreements Bids and Awards Committee (PSA BAC) sent a letter-notice to the original proponent and qualified price challenger SPTC, informing them that the proposed energy price of **PhP2.9999/kWh** submitted by SPTC was found to be the best bid. The said letter-notice also explained that the original proponent had the right to match the proposed energy price of SPTC.
  
3. On 25 August 2017, the original proponent sent a letter-notice to MERALCO informing the latter that it is not exercising its right to match SPTC's proposed energy price of PhP2.9999/kWh. Thus, MERALCO's PSA BAC issued a Notice of Award in favor of SPTC.

The foregoing selection process was duly supported by relevant documents attached to the *Joint Application*. The Commission found the same to be in accordance with the ERC Resolution No. 13, Series of 2015 and ERC Resolution No. 1, Series of 2016.

At the end of the duly conducted CSP, the proposed rate of applicant SPTC emerged as the best price offer or the lowest bid price.

**II. In addition to the verification of the CSP conducted by applicant MERALCO, the Commission also evaluated the reasonableness of the proposed rate.**

In finding that SPTC's original proposed rate is reasonable, the Commission makes reference to Castalia's recommendations in its Final Report on PSA approvals. In the said Report, Castalia recommended the streamlining of cost-based assessment, and therefore, contract prices should be evaluated against the following, *to wit*:

- a. Existing Precedents – within the range of prices previously approved for that type of plant, load factor and contract duration;
- b. WESM Prices – within the range of average spot prices for that type of load and load factor over a period of the previous 3 to 5 years;
- c. Benchmarking Pricing – within the range of prices from interim benchmark model.

The Commission likewise takes note of SPTC's allegations in its *Motion for Partial Reconsideration*, the relevant portion of which is hereunder quoted as follows:

- 8) Stated differently, the 2% Annual Escalation of the PSA Rate is only a structure employed by SPTC to (a) spread out the recovery of its investments (plus a reasonable return over the 20-year term of the PSA, and (b) allow the [Public to benefit from a lower rate. Indeed, had SPTC structured-the PSA Rate so that it would only charge a uniform rate for the entire duration of the PSA, SPTC would be constrained to charge a rate at PhP3.7144/kWh for the entire term of the PSA. Furthermore, the 2% Annual Escalation was part of the original price structure of MERALCO's original proponent, Citicore Power, Inc. ("Citicore"), which was the subject of the SPTC price challenge.

Following Castalia's recommendation, as a measure to test the reasonableness of the proposed rates, the Commission compared SPTC's proposed rate to those which were recently approved in other PSA applications with the same technology, and other similar pending cases, *to wit*:

**Table No. 3. Comparative Table – SPTC's proposed rate vis-à-vis similarly situated cases**

ERC Case No.	Applicants	Rate in PhP/kWh	Status
2014-020 RC <sup>a</sup>	CEPALCO-KSEC	8.75	Decided

2015-148 RC <sup>b</sup>	SOCOTECO II - ASTRONERGY	8.54	Provisional Authority granted
2015-152 RC <sup>a</sup>	CEPALCO – KTEC	8.50	Provisional Authority granted
2016-090 RC <sup>c</sup>	ASELCO – GPower	7.50	Interim Relief granted
2016-099 RC <sup>c</sup>	BUSECO – SUNASIA	8.30	Decided
2016-154 RC <sup>c</sup>	DECORP – SUNASIA	6.58	Decided
2017 -094 RC <sup>d</sup>	MERALCO – SPTC	2.9999	Interim Relief granted (Subject of the instant <i>Motion for Partial Reconsideration</i> )

Note. a- Adjusted based on the FIT Rules  
b- Not subject to adjustment or escalation  
c- Only the Capital Recovery Fee (CRF) is not subject to adjustment  
d- Subject to 2% annual escalation rate

The table above shows that SPTC’s proposed rate under the subject case is the lowest among the Commission’s previously approved PSA applications with the same technology (solar). The Commission likewise observed that even upon the occurrence of the twentieth (20<sup>th</sup>) year of the contract, with the corresponding applicable rate of PhP4.4577/kWh<sup>14</sup> as a result of 2% annual escalation, the same is still the lowest rate among the previously approved PSA applications for solar power plants.

The Commission likewise took note that under its proposal, the rate of return over the project’s 20-year term is only 0.05% which is much lower than the rate of return allowed by the Commission in other applications. Furthermore, it was noted that the project is not foreseen to earn any profit until several years from commencement of operation. Denying, therefore, the 2% Annual Escalation, which is part of the rate in the PSA adopted by SPTC and MERALCO, will deny SPTC the opportunity to recover its investments in the project. This is deemed to be inconsistent with EPIRA which mandates the Commission to “fix rates that will allow the recovery of just and reasonable costs and a reasonable return on rate base (RORB)”<sup>15</sup> for investors to operate viably.

Lastly, the Commission’s current policy in evaluating PSA applications is to arrive at the generation rate after employing the cost-based methodology. However, in the instant case, SPTC’s proposed rate of PhP2.9999/kWh was found to be significantly lower than the calculated generation rate computed by the Commission using the said methodology.

<sup>14</sup> Based on the Order dated 20 February 2018, Pages 16-17, issued by the Commission granting Interim Relief to the subject case;

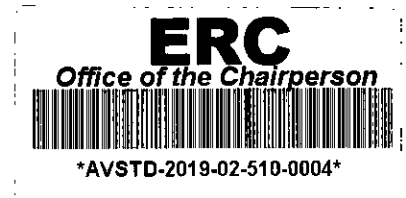
<sup>15</sup> EPIRA, Section 43 (f).



WHEREFORE, the foregoing premises considered, the Commission hereby **PARTIALLY GRANTS** the *Motion for Partial Reconsideration* with respect its first prayer and **ALLOWS** the 2% Annual Escalation under the PSA.

**SO ORDERED.**

Pasig City, 23 January 2019.




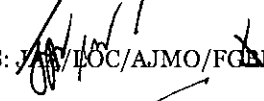
  
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*Chairperson and CEO*

  
**JOSEFINA PATRICIA A. MAGPALE-ASIRIT**  
*Commissioner*

(On Official Leave)  
**ALEXIS M. LUMBATAN**  
*Commissioner*

  
**CATHERINE P. MACEDA**  
*Commissioner*

  
LS: MCC/BSA/GIO

  
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