

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



IN THE MATTER OF THE
APPLICATION FOR APPROVAL
OF THE POWER SUPPLY
AGREEMENT (PSA) BETWEEN
MANILA ELECTRIC COMPANY
(MERALCO) AND MONTALBAN
METHANE POWER
CORPORATION (MMPC), WITH
PRAYER FOR PROVISIONAL
AUTHORITY

ERC CASE NO. 2014-074 RC

MANILA ELECTRIC COMPANY
(MERALCO) AND MONTALBAN
METHANE POWER CORP.
(MMPC),

Applicants.

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DOCKETED
Date: JUN 20 2014
By: *W*

ORDER

On June 2, 2014, Manila Electric Company (MERALCO) and Montalban Methane Power Corporation (MMPC) filed an application for approval of their Power Supply Agreement (PSA), with prayer for provisional authority.

In the said application, MERALCO alleged, among others, that:

1. It is a private corporation existing under the laws of the Republic of the Philippines, with principal office located at Lopez Building, Meralco Center, Ortigas Avenue, Pasig City;
2. It 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/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 the Commission;

3. MMPC is a corporation duly organized and existing under the laws of the Philippines. It owns and operates the Montalban Methane Power Plant (Power Plant), powered by the methane extracted from the Montalban Landfill, located at Montalban, Rizal and it offered to supply and sell to MERALCO its electric capacity and energy produced from said Power Plant;
4. In support of the development of renewable energy in the country, it accepted the offer of MMPC. Thus, on April 16, 2014, it executed a PSA with MMPC for the purchase of electric capacity and energy from the Power Plant for up to 8,190 kW. The Contract Price under Section 2.3 of the PSA is as follows:

“2.3. *Contract Price.* The Contract Price is P5.50 per kWh, plus any governmental charges stipulated in Section 6.2. Provided, that, the Franchise and Benefits to Host Communities (FBHC) charge shall not form part and are excluded from the computation of the Contract Price. Any violation of this Section shall be a ground for termination of this Agreement upon prior notice.”;

5. As previously determined by the Commission in its December 3, 2012 Decision in ERC Case No. 2009-027 RC¹ for approval of the Contract for the Supply of Electricity (CSEE) between MERALCO and MMPC dated April 3, 2009, which shall terminate upon approval of the PSA, MMPC’s true cost of generation is PhP6.3779/kWh. It should be noted that the Contract Price under the PSA is PhP5.50/kWh, which is lower than said true cost of generation of PhP6.3779/kWh;

¹ In the Matter of the Application for Approval of the Contract for the Supply of Electricity (CSEE) Between Manila Electric Company (MERALCO) and Montalban Methane Power Corporation (MMPC), with Prayer for Provisional Authority, MERALCO – Applicant

6. The PSA between MERALCO and MMPC, a copy of which is attached to the application and made an integral part thereof, contains the following salient features:

"2.

OBLIGATIONS, DELIVERIES & CONTRACT PRICE

2.2. *Take and Pay Contract.* Subject to Section 2.5 hereof, Meralco shall accept all energy deliveries by Power Supplier and Meralco shall pay for such energy (in kWh) delivered by Power Supplier as measured by Meralco's Billing Meter based on the Contract Price.

x x x.

2.6. *Regulatory Approvals.* After signing, Meralco shall file an application with the ERC for the approval of this Agreement. However, both parties shall cooperate in this undertaking and Power Supplier shall provide all the necessary support including the submission of all the documents required to expedite the approval of the Agreement. This Agreement shall not become effective unless the terms and conditions hereof, including the complete pass-through of the Agreement Price and all other charges and taxes stipulated herein, have been approved, provisional or otherwise, by the ERC ("Effective Date"). Any disallowance of the Contract Price, or any of its components for recovery from end-users shall be for the sole account of the Power Supplier and shall not prejudice Meralco.

3.

CONTRACT DURATION

3.1. *Term of Agreement.* After Effective Date, this Agreement shall remain in full force and effect for a period of TWO (2) YEARS from the Delivery Period Commencement Date unless earlier terminated under Sections 9.1 and 9.2.

3.2. *Extension.* This Agreement may be extended by agreement of both parties.

4.

BILLING AND PAYMENT

X X X.

4.2. *Timeliness and Manner of Payment.* All invoices under this Agreement shall be paid on due date by Meralco unless the same is disputed due to manifest error, apparent invalidity and not in accordance with the terms of this Agreement. Any undisputed amounts which is not paid by due date will be deemed delinquent and will accrue interest under Section 4.10 hereof.

X X X.

4.7 Disputed bills, other than manifest error, apparent invalidity and not in accordance with the terms of this Agreement, shall be paid by Meralco without deductions or offsets and shall not be an excuse or ground for Meralco to delay payment of succeeding billings or to unilaterally deduct any amount therefrom, provided, however, that Power Supplier shall act in good faith in resolving the dispute and shall not unreasonably withhold action or delay the resolution of the dispute. Disputed bills, other than manifest error, apparent invalidity and not in accordance with the terms of this Agreement, not paid by Meralco shall be subject to Section 4.10. However, if the dispute is resolved in favor of Meralco, the payment for the bill including interest shall be offset against outstanding obligations of Meralco to the Power Supplier.

X X X.

6.

GOVERNMENTAL CHARGES AND WESM
CHARGES

X X X.

6.2. *Governmental Charges.* All value added taxes, sales taxes, goods and services taxes, excise taxes, import duties, documentary stamp taxes and similar taxes imposed by any government authority ("Governmental Charges") on or with respect to the Product, including taxes, if any, on fuel purchased by the Power Supplier to generate and deliver electricity pursuant to this Agreement, or the transactions contemplated by this Agreement, shall form part of the Contract Price and are considered pass-through charges.. The Power Supplier's own income taxes, property taxes and local business taxes are for its account. In the event the Power Supplier is required by Applicable Laws to remit or pay any such Governmental Charges, such amounts will be set forth in the invoice for the next subsequent Billing Period and shall be due and payable by Meralco according to the provisions of this Agreement. Any changes to these Governmental Charges, upward or downward, or the imposition of additional Governmental Charges that are approved to be collected from the end-users, will affect the Contract Price invoiced to Meralco.

6.3. *WESM Charges.* Except for market fees, all other fees and charges imposed by the Wholesale Electricity Spot Market ("WESM Charges") on or with respect to the Product that are approved to be collected from the end-users shall be for the account of Meralco and shall form part of the Contract Price. Market fees shall be for the sole account of the Power Supplier and shall not be charged to Meralco as part of the Contract Price.

7.

MISCELLANEOUS

7.1. This Agreement shall be binding upon the parties from the Effective Date up to, and including, the Termination Date unless otherwise earlier terminated by either party in accordance with this Agreement; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any such termination.

x x x.

9.

TERMINATION

9.1 Either party may terminate the PSA for any material breach of its terms and conditions upon thirty (30) Days prior written notice to the other party.

9.2 This Agreement shall terminate, subject to fifteen (15) day prior notice, upon effectivity of the Feed-in Tariff Allowance (FIT-All) and qualification of Power Supplier to avail of the FIT rates under Republic Act 9513 (otherwise known as the Renewable Energy Act of 2008 and its Implementing Rules and Regulations.

x x x.”

7. The following shows its simulation of the rate impact of the PhP5.50/kWh Contract Price under the MMPC-MERALCO PSA as against the Wholesale Electricity Spot Market (WESM) rate:

Rate Impact Simulation

WESM Price vs PHP5.50/kWh

March 2014

Capacity (MW)	Energy Supplied (GWh)	Load Factor	Average Monthly Rate (P/kWh)		Generation Cost Savings / (Losses) of PSA over WESM Rates		Meralco Generation Charge (P/kWh)		Increase / (Decrease) in Generation Charge due to MMPC PSA (P/kWh)
			@ WESM Rate	@ PSA Rate	(P/kWh)	(PhP million)	w/o PSA	w/ PSA	
8.19	1.54	26.17%	6.2420	5.5000	0.7420	1.14	5.9008	5.9003	-0.000524

Notes:

MMPC energy, WESM prices and Generation Charge were based on actual billing data for the March 2014 supply month

8. As seen above, the PhP5.50/kWh Contract Price would result in cost savings in the blended generation rate of about PhP0.7420/kWh. This translates into a PhP(0.000524)/kWh decrease in the generation charge should the MMPC-MERALCO PSA be implemented;
9. It submits that the Contract Price, aside from being lower than MMPC's true cost of generation as computed by the Commission, provides for a lower cost of power compared to that of WESM, where the simulated cost is PhP6.242 /kWh. In addition to this benefit of lower cost of power, the Power Plant is an embedded generator. Thus, the delivery of power from said Plant provides benefits in terms of support for its distribution system and savings on purchased power since there are no transmission charges and systems losses;
10. It reiterates that the immediate implementation of the PSA would not only redound to the benefit of the customers in terms of environmental benefits but would also contribute to the government initiative of encouraging the development of renewable energy in the country by providing available market for renewable energy;
11. Accordingly, there is a paramount urgency and necessity to implement the subject PSA. In support of the instant application, the Judicial Affidavit of Mr. Ciprinilo C. Meneses, its Head of Energy Sourcing Office, is attached thereto; and

Prayer

12. Thus, it prays that after hearing on the merits, a Decision be immediately rendered approving its PSA with MMPC and pending hearing, a provisional authority be immediately issued authorizing it to implement the proposed project.

On June 6, 2014, MMPC filed a "Motion to Join Montalban Methane Power Corporation as Co-Applicant with Entry of Appearance" praying, among others, for its inclusion as joint applicant in the instant proceeding.

In the said motion, MMPC alleged, among others, that:

1. During the filing, MERALCO was informed that the Commission had recently resolved to require that applications for approval of PSA be filed jointly by the distribution utility and generation company which are parties to the PSA. MERALCO thus informed it of the said directive of the Commission; and
2. In compliance with the directive of the Commission, it being the energy supplier/generation company in the subject PSA, prays for its inclusion in the instant application as a joint applicant alongside MERALCO.

Finding the aforementioned motion meritorious, the same is hereby granted. Accordingly, MMPC is hereby considered as a co-applicant in the instant application.

Likewise, finding the said application to be sufficient in form and in substance with the required fees having been paid, the same is hereby set for jurisdictional hearing, pre-trial conference, expository presentation and evidentiary hearing on **July 15, 2014 (Tuesday) at two o' clock in the afternoon (2:00 P.M.) at the 15th Floor, Pacific Center Building, San Miguel Avenue, Pasig City.**

MERALCO and MPPC are hereby directed to cause the publication of the attached Notice of Public Hearing, at their own expense, twice (2x) for two (2) successive weeks in two (2) newspapers of general circulation in the Philippines, with the date of the last publication to be made not later than ten (10) days before the

date of the scheduled initial hearing. They are also directed to inform the customers within MERALCO's franchise area, by any other means available and appropriate, of the filing of the instant application, their reasons therefor, and of the scheduled hearing thereon.

Let copies of the application, this Order and the attached Notice of Public Hearing be furnished the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress. They are hereby requested, if they so desire, to send their duly authorized representatives at the scheduled hearing.

Likewise, let copies of this Order and the attached Notice of Public Hearing be furnished the Offices of the Provincial Governors of and the Mayors of the Cities and Municipalities within the franchise area of MERALCO for appropriate posting thereof on their respective bulletin boards.

MERALCO and MMPC are hereby directed to furnish all those making requests therefor with copies of the application and its attachments, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing, MERALCO and MMPC must submit to the Commission their written Compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidences on the actual posting and publication of the Notice of Public Hearing consisting of certifications issued to that effect, signed by the aforementioned Governors and Mayors or their duly authorized representatives, bearing the seals of their offices, and the affidavits of the Editors or Business Managers of the newspapers where the said Notice of Public Hearing were published together with the complete issues of the said newspapers, and such other proofs of compliance with the requirements of the Commission.

MERALCO and MMPC, and all other interested parties are directed to submit, at least five (5) days before the date of initial hearing and pre-trial conference, their respective Pre-trial Briefs containing, among others:

- (a) a summary of admitted facts and proposed stipulation of facts;

- (b) the issues to be tried or resolved;
- (c) the documents or exhibits to be presented, stating the purposes thereof and proposed markings therefore; and
- (d) the number and names of the witnesses, with their written testimonies in an individual affidavit form, to be attached to the Pre-trial Brief.

Failure of MERALCO and MMPC to submit the required Pre-Trial Brief and Judicial Affidavits of their witnesses within the prescribed period shall be a ground for cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from said date of cancellation.

As part of the pre-trial conference, MERALCO and MMPC must also be prepared to make an expository presentation of their application, aided by whatever communication medium that they may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the customers and other concerned parties, what the application is all about and the reasons and justifications being cited in support thereof.

SO ORDERED.

Pasig City, June 16, 2014.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ZENAIDA G. CRUZ-DUCUT
Chairperson *pub 4*

Copy Furnished:

1. Manila Electric Company (MERALCO)
7th Floor, Lopez Building, Ortigas Avenue, Pasig City
2. Office of the Solicitor General (OSG)
134 Amorsolo Street, Legaspi Village, City of Makati 1229
3. Commission on Audit (COA)
Commonwealth Avenue, Quezon City 1121
4. Senate Committee on Energy
GSIS Building, Roxas Boulevard, Pasay City 1300
5. House of Representatives Committee on Energy
Batasan Hills, Quezon City 1126
6. Philippine Chamber of Commerce and Industry (PCCI)
3rd Floor, ECC Building, Sen. Gil Puyat Avenue, Makati City
7. The City Mayor
City of Manila
8. The City Mayor
Quezon City
9. The City Mayor
City of Caloocan
10. The City Mayor
City of Makati
11. The City Mayor
City of Malabon
12. The City Mayor
City of Mandaluyong
13. The City Mayor
City of Muntinlupa
14. The City Mayor
City of San Jose del Monte, Bulacan
15. The City Mayor
City of Valenzuela
16. The City Mayor
City of Pasig

17. The City Mayor
Pasay City
18. The City Mayor
City of Parañaque
19. The City Mayor
Cavite City
20. The City Mayor
Trece Martirez City
21. The City Mayor
Las Piñas City
22. The City Mayor
San Juan City
23. The City Mayor
Lucena City
24. The City Mayor
Batangas City
25. The City Mayor
San Pablo City, Laguna
26. The City Mayor
City of Marikina
27. The City Mayor
Antipolo City, Rizal
28. The City Mayor
Tagaytay City, Cavite
29. The City Mayor
Calamba, Laguna
30. The Municipal Mayor
Navotas, Metro Manila
31. The Municipal Mayor
Taguig, Metro Manila
32. The Municipal Mayor
Pateros, Metro Manila
33. The Municipal Mayor
General Aguinaldo, Cavite

34. The Municipal Mayor
Magallanes, Cavite
35. The Municipal Mayor
Amadeo, Cavite
36. The Municipal Mayor
Indang, Cavite
37. The Municipal Mayor
Mendez, Cavite
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Alfonso, Cavite
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Imus, Cavite
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Kawit, Cavite
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Noveleta, Cavite
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Bacoor, Cavite
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Maragondon, Cavite
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Ternate, Cavite
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Gen. Trias, Cavite
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Naic, Cavite
47. The Municipal Mayor
Rosario, Cavite
48. The Municipal Mayor
Tanza, Cavite
49. The Municipal Mayor
Dasmariñas, Cavite

50. The Municipal Mayor
Gen. Mariano Alvarez, Cavite
51. The Municipal Mayor
Silang, Cavite
52. The Municipal Mayor
Carmona, Cavite
53. The Municipal Mayor
Cainta, Rizal
54. The Municipal Mayor
Taytay, Rizal
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Teresa, Rizal
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Jala-jala, Rizal
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Cardona, Rizal
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Baras, Rizal
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Tanay, Rizal
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Pililla, Rizal
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Morong, Rizal
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Binangonan, Rizal
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Rodriguez, Rizal
65. The Municipal Mayor
San Mateo, Rizal
66. The Municipal Mayor
Meycauayan, Bulacan

67. The Municipal Mayor
Obando, Bulacan
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Marilao, Bulacan
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Norzagaray, Bulacan
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Sta. Maria, Bulacan
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Angat, Bulacan
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Doña Remedios Trinidad, Bulacan
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Plaridel, Bulacan
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Pandi, Bulacan
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Bocaue, Bulacan

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Balagtas, 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 Idefonso, Bulacan
89. The Municipal Mayor
Biñan, Laguna
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Sta. Rosa, Laguna
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Victoria, Laguna
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Nagcardan, Laguna
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Magdalena, Laguna
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Calauan, Laguna
95. The Municipal Mayor
Pila, Laguna
96. The Municipal Mayor
Sta.Cruz, Laguna
97. The Municipal Mayor
Liliw, Laguna
98. The Municipal Mayor
San Pedro Tunasan, Laguna
99. The Municipal Mayor
Alaminos, Laguna

100. The Municipal Mayor
Rizal, Laguna
101. The Municipal Mayor
Los Baños, Laguna
102. The Municipal Mayor
Cabuyao, Laguna
103. The Municipal Mayor
Bay, Laguna
104. The Municipal Mayor
Dolores, Quezon
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Sampaloc, Quezon
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Pagbilao, Quezon
107. The Municipal Mayor
Lucban, Quezon
108. The Municipal Mayor
Tayabas, Quezon
109. The Municipal Mayor
Candelaria, Quezon
110. The Municipal Mayor
Sariaya, Quezon
111. The Municipal Mayor
San Antonio, Quezon
112. The Municipal Mayor
Mauban, Quezon
113. The Municipal Mayor
Tiaong, Quezon
114. The Municipal Mayor
Majayjay, Quezon
115. The Municipal Mayor
Luisiana, Quezon

116. The Municipal Mayor
Sto. Tomas, Batangas
117. The Municipal Mayor
San Pascual, Batangas
118. The Municipal Mayor
Candaba, Pampanga
119. The Municipal Mayor
San Simon, Pampanga
120. The Municipal Mayor
Apalit, Pampanga
121. Office of the Governor
Province of Rizal
122. Office of the Governor
Province of Laguna
123. Office of the Governor
Province of Batangas
124. Office of the Governor
Province of Cavite
125. Office of the Governor
Province of Pampanga
126. Office of the Governor
Province of Quezon
127. Layug Law Office
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San Miguel Avenue corner Shaw Boulevard,
Ortigas Center, Pasig City