

REPUBLIC OF THE PHILIPPINES
ENERGY REGULATORY COMMISSION
PASIG CITY

IN THE MATTER OF THE APPLICATION FOR
APPROVAL OF EMERGENCY OR TRANSITION
POWER SUPPLY AGREEMENT BETWEEN
MACTAN ELECTRIC COMPANY, INC. AND
TOTALPOWER INC. WITH PRAYER FOR
PROVISIONAL AUTHORITY AND INTERIM
RELIEF

ERC CASE NO. _____-RC

MACTAN ELECTRIC COMPANY, INC.
AND TOTALPOWER, INC.,

Applicants.

X-----X

JOINT APPLICATION

MACTAN ELECTRIC COMPANY, INC. (“MECO”) and TOTAL POWER INC. (“TPI”), by
counsels, respectfully state:

I. PARTIES

1. **MECO** is a private corporation created and organized under the Philippine laws with principal office located at MECO Building, Sangi Road, Lapu-Lapu City 6015, Cebu, Philippines, and SEC Registration No. 31-388. By virtue of Republic Act No. 10890, MECO was granted franchise to operate the electric light and power distribution system and service in the City of Lapu-Lapu and in the Municipality of Cordova. MECO operates with a valid Certificate of Public Convenience and Necessity (CPCN No. 2018-01) issued by the Energy Regulatory Commission.
2. **TPI** is a corporation created and organized under the Philippine laws with principal office located at 1216 Acacia Avenue, Ayala Alabang, Muntinlupa City 1780, Philippines and SEC Registration No. CS201202308.
3. MECO and TPI are represented by their officers, Engr. Gilbert A. Pagobo and Juanito C. Tan, Jr., respectively. Both parties may be served with notices and official documents through the undersigned counsel.

II. BACKGROUND

4. MECO’s franchise area includes Olango Island which consists of the following barangays: Baring, Caw-oy, Sabang, San Vicente, Santa Rosa, Talima, Tingo, and

Tungasan. Olango island is an off-grid island with 4,332 active customers or registered end-users.

5. Olango Island used to be a member of the Small Power Utilities Group under the National Power Corporation (NPC-SPUG) which operated the Olango Diesel Power Plant (ODPP). At that time, NPC supplied the island 500kW on a 12-hour rotational basis. To address the power supply deficit, the city government of Lapu-lapu, through a resolution, requested NPC and MECO to arrange a 24-hour power supply in Olango.
6. Heeding the city's clamor for a stable and reliable power supply, NPC turned over the generation facilities to MECO. Eventually, SPC Power Corporation (SPC), and its subsidiary, SPC Island Power Corporation (SIPC), took over the operation and management of the generating facilities and installed generating units at 2x450kW and 1x450kW, which had been in operation for nearly 20 years.
7. On June 11, 2015, the Department of Energy issued **Department Circular (DC) 2015-06-0008** which mandates all distribution utilities to undergo *competitive selection process* (CSP) in securing PSA (hereinafter, **2015 CSP Policy**).
8. Following this issuance, the DOE, as the policy-making body, and the ERC, being the regulatory agency charged with the enforcement and implementation of DOE's policies issued **DOE and ERC Joint Resolution No. 1, Series of 2015** on October 20, 2015, enjoining all DUs to conduct CSP, and further agreeing that the ERC shall issue the appropriate regulations on the prescribed CSP. Consistent with such agreement and pending the issuance of the appropriate rules on CSP, the ERC issued **ERC Resolution No. 13, Series of 2015**, Section 2 of which states that:

Section 2. Competitive Selection Process. - Pending the issuance by the ERC of a prescribed CSP, a DU may adopt any accepted form of CSP. At the minimum, the terms of reference to be used by the DU shall include the following:

- (a) Required/Contracted Capacity and/or Energy Volumes.*
- (b) Generation sources (Hydro, Coal, Natural Gas, Diesel and others).*
- (c) Method of procurement for fuel, if applicable.*
- (d) Cooperation/Contract Period.*
- (e) Tariff Structure unbundled to Capacity Fees, Variable and Fixed Operating and Maintenance (O&M) Fee, Fuel Fee and others, including the derivation of each component. Base Fee adjustment formula, if any.*
- (f) Form of Payment (Pesos or Foreign Currency Denominated).*
- (g) Penalties (if applicable).*
- (h) If applicable, details regarding any transmission projects or Grid connection projects necessary to complement the proposed generation capacity, including identification of the parties that will develop and/or own such facilities, any costs related to such projects and specification of the parties responsible for recovery of any cost related to such projects; and*
- (i) Other key parameters.*

9. In 2017, with the increasing demand in Olango, and as a response to the clamor of the local government unit to address the unstable power supply, MECO designed and adopted a two-phase program as a solution to the energy supply problem in Olango –
 - 9.1 **Phase 1:** the supply, installation, and commissioning of a prime-rated generator, with 700kW minimum and 800kW maximum step-up transformer of 13,800Y/ 440, 3-phase, and synchro system to address the power supply deficit;
 - 9.2 **Phase 2:** the procurement of a *power supply agreement* (PSA) to provide a long-term supply of electricity in Olango island.
10. Thus, MECO conducted a CSP in compliance with the relevant issuances in force and prevailing at that time, *viz:*
 - 10.1 **DOE-ERC Joint Resolution No. 1, Series of 2015 (October 20, 2015)** which enjoins all DUs to conduct a CSP in the procurement of supply for their captive market; and
 - 10.2 **ERC Resolution No. 13, Series of 2015 (November 6, 2015)** which directs all DUs to conduct CSP in the procurement of supply to the captive market (hereinafter, **2015 CSP Resolution**).
11. The CSP was completed on May 19, 2017. Accordingly, a Power Supply Agreement was executed between MECO and TPI attached as **Addendum 1**.
12. In a **letter dated December 8, 2017**, addressed to the DOE, MECO informed the DOE that it had conducted a CSP for the power supply for its captive customers in Olango Island, and TPI was selected as the most qualified and beneficial *supplier* with the rate of Php 2.64/kWh plus fuel fee at a 3570 kW, and that based on the documents submitted, TPI's offer was found to be the most beneficial to MECO's consumers. Accordingly, as mandated by the ERC, MECO requested for a certification that CSP has been conducted as a requirement of the ERC by virtue of DOE DC 2004-01-001 and ERC Resolution No. 21, Series of 2011 which applies to off-grid areas.
13. In its **letter-reply dated January 15, 2018**, the DOE recognized MECO's compliance with the 2015 CSP Policy, and further clarified that while Olango Island is an off-grid area, it was already being supplied by a power generating company not owned by the NPC; thus, not covered by DOE DC 2004-01-001 which applies only to existing NPC-SPUG areas. Therefore, insofar as DOE DC 2004-01-001 is concerned, no certification is necessary; but the DOE nonetheless confirmed MECO's compliance with DOE DC 2015-06-008 (see DOE confirmatory letter dated December 15, 2022).
14. Thus, MECO and TPI entered into a Power Supply Agreement in February 2018. However, it was only in 2022 that MECO and TPI were able to finalize and complete all the requirements necessary to file their application, due to several supervening and fortuitous events.

III. SUPERVENING & FORTUITOUS EVENTS

15. Over the course of time, supervening and fortuitous events beyond the control of MECO and TPI have transpired, to wit:

CY 2018

- Issuance and effectivity of DOE DC 2018-02-0003 which superseded DOE DC 2015-06-008 prescribing the policies for the CSP;
- Effects of Typhoon Ompong which delayed the completion of the powerplant construction in Olango.

CY 2019

- Difficulty in securing the requirements for the Certificate of Compliance (COC);
- Postponements in testing and commissioning due to technical problems;

CY 2020

- Declaration of the state of national emergency following the World Health Organization (WHO) announcement of global pandemic in light of Covid-19;
- Imposition of community quarantine, travel bans and restrictions;
- Onslaught of Typhoon Odette;
- Rejection of the DOE letter by the ERC as it allegedly did not comply with DOE DC 2018-02-0003 (hereinafter, **2018 CSP Policy**) by virtue of the Supreme Court decision in SC-G.R. No. 227670 (hereinafter, *the Alyansa Case*).

15. The *supervening events*, its effects and consequences, as well as the period of time that lapsed from the time of the CSP up to the present, and the application of the *Alyansa Case* by the ERC insofar as the CSP conducted by MECO is concerned, have caused and continue to cause delay to the detriment of the consuming public; such events and effects continuously expose Olango Island to a potential emergency risk.
16. By way of emphasis, MECO's compliance with the 2015 CSP Policy was reiterated and re-affirmed by the DOE in its **letter dated December 15, 2022**, which was furnished to the ERC, the DOE categorically stated that MECO complied with DOE DC 2015-06-008. The entire letter reads:

[*This portion was intentionally left blank.*]



Republic of the Philippines
DEPARTMENT OF ENERGY
(Kagawaran ng Enerhiya)

15 December 2022

ENGR. GILBERT A. PAGOBO
Senior Vice-President and General Manager
Mactan Electric Company, Inc. (MECO)
Sangi Road, Pajo Lapu-Lapu City

Attention : **MR. JULITO O. GULTIANO, JR.**
Chief Finance Officer

Dear Engr. Pagobo:

We acknowledge receipt of MECO's letter to the Department of Energy (DOE) dated 07 November 2022 regarding the filing of the Power Supply Agreement with Total Power, Inc. (TPI) to the Energy Regulatory Commission (ERC) for the 3.57MW power plant in Olango Island, Cebu.

Anent to our letter to MECO dated 15 January 2018 (Annex A), we recognize that MECO referred and complied with the DOE's Department Circular No. DC2015-06-008¹ in conducting the Competitive Selection Process (CSP) for Olango Island which was completed before the issuance of the DOE's Department Circular No. DC2018-02-0003².

Further, we would like to note that Olango Island has been privatized, i.e. energized by MECO, before the issuance of the DOE's Department Circular No. DC2004-01-001³ which only applies to off-grid and missionary areas being served by the National Power Corporation.

Thank you.

Very truly yours,


IRMA C. EXCONDE 
Director III
Officer-in-Charge
Electric Power Industry Management Bureau

Cc: Secretary Raphael P.M. Lotilla
Assistant Secretary Mario C. Marasigan, CESO III
Chairperson Monalisa C. Dimalanta, Energy Regulatory Commission
Administrator Antonio Mariano C. Almeida, National Electrification Administration
President Fernando Martin Y. Roxas, National Power Corporation

¹ Entitled "Mandating All Distribution Utilities to Undergo Competitive Selection Process in Securing Power Supply Agreements"

² Entitled "Adopting and Prescribing the Policy for the Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreement for the Captive Market"

³ Entitled "Prescribing the Rules and Procedures for Private Sector Participation in Existing NPC-SPUG Areas Pursuant to Rule 13 of the Implementing Rules and Regulations of the Electric Power Industry Reform Act of 2001 (EPIRA-IRR)"

17. The application for the approval of the long-term PSA reached the pre-filing stage and was endorsed by the Regulatory Operations Service (ROS) to the Legal Service. However, in an email dated March 8, 2023, the application was outrightly rejected by the Legal Service for *alleged* "non-compliance with 2018 CSP Guidelines of the DOE" as mandated by the Supreme Court ruling in *Alyansa Para sa Bagong Pilipinas, Inc. v. Energy Regulatory Commission, et al*, G.R. No. 227670, May 3, 2019.
18. **It is the humble position of the applicants that the 2018 CSP Guidelines is not applicable to the CSP conducted by MECO simply because the same was still non-existent at the time of the CSP. Therefore, the CSP should be evaluated based on DOE DC 2015-06-008 and other related issuances prevailing at the time when MECO's CSP was conducted and should not be based on the then non-existent 2018 CSP Guidelines.**
19. MECO re-submitted all the letters from the DOE, sought reconsideration and explained its position to the Commission in its **letters dated March 7, 2023 and May 26, 2023** both of which remained unacted upon by the ERC.
19. Be that as it may, on August 10, 2023, the ERC issued an Advisory which states:

ERC Advisory, August 10, 2024

“All DUs with Power Supply Agreements (PSAs) affected by the Supreme Court's Decision in the Alyansa Para sa Bagong Pilipinas, Inc. v. Energy Regulatory Commission, et al. (Alyansa Ruling) are hereby advised that the Commission has approved a Transition Period to allow the DUs the opportunity to source their power supply requirements through an Emergency Power Supply Agreement (EPSA). The Transition Period will be counted from the day after the DU receives the ERC's Order or Decision implementing the Alyansa Ruling and until the date the DU executes an EPSA or thirty (30) days, whichever is earlier. xxx”

20. Thus, on March 27, 2024, MECO and TPI executed an Emergency Power Supply Agreement.
21. Meanwhile on August 7, 2024, while the parties are completing the requirements for the joint application the DOE issued DOE Advisory 2024-08-003-SEC, thus:

DOE Advisory, August 7, 2024

Accordingly, the DOE hereby issues this Advisory to allow for a Transition PSA (TSA) as an interim measure of all affected DUs, subject to the following conditions:

1. DUs with PSAs affected by the Alyansa Ruling, which have not yet applied for, and have not been granted a CSP Exemption (COE-CSP) pursuant to the 2019 Advisory may negotiate and enter into a TSA. DUs that have been issued COE - CSP and have executed emergency PSA pursuant to the 2019 Advisory are not qualified to negotiate and enter into TPSAs.

2. The TPSA shall be effective until the commencement of power supply procured pursuant to the DOE 2023 CSP Policy, but not longer than one (1) year which shall be the maximum and non-extendible term of the TSA.

19. On September 3, 2024, MECO and TPI executed an **Addendum 2** to their EPSA to treat the same as a TPSA pursuant to the DOE Advisory, insofar as the same as applicable.
20. At any rate, MECO and TPI jointly file this application for the approval of their Emergency PSA subject to DOE DC 2023-06-0021(**2023 CSP Policy**) and ERC Resolution No. 16, Series of 2023 (**2023 CSP Guidelines**) or Transition PSA pursuant to DOE Advisory 2024-08-003-SEC, to whatever extent applicable, in consideration of the following material facts, viz:
 - (1) Olango Island is an off-grid island;
 - (2) There are no other power producers available in the island;
 - (3) TPI operates the power plant and generation facilities for 24 hours in Olango island;

- (4) MECO conducted a successful CSP in 2017 in accordance with the 2015 CSP Policy of the DOE and ERC Resolution No. 13, Series of 2015 wherein TPI was declared as the winning bidder;
- (5) There is already a long-term PSA executed in February 2018 as a result of the 2017 CSP conducted by MECO;
- (6) Several supervening and fortuitous events have occurred which affected and delayed the filing of the joint application for the approval of the long-term PSA;
- (7) ERC rejected the joint application for the approval of the long-term PSA last March 6, 2023;
- (8) MECO and TPI executed an EPSA dated March 27, 2024 pursuant to the ERC Advisory dated August 10, 2023; and
- (9) MECO and TPI executed an addendum to the EPSA pursuant to the DOE Advisory 2024-08-003-SEC dated August 7, 2024.

IV. SALIENT FEATURES OF THE EMERGENCY/TRANSITION PSA

21. The following are the salient features of the Emergency/Transition PSA –

- **Contracted Capacity**

“Contracted Capacity” shall mean the firm capacity of **3.718 MW** from the Four (4) brand new Generating Units, as demonstrated in the yearly Performance Tests under this Agreement, which shall be provided by the SUPPLIER to the BUYER, for the duration of the Contract Period. Additional capacities may be requested by BUYER as the need arises during the term of the agreement.

- **Term**

This Agreement shall be effective immediately and shall have a Term (the “Contract Period”) of **one (1) year** from execution of this Agreement.

- **Electricity Fees***

5.1 Electricity Fees Generator Set 1 (ABC Gensets)
5.1.1 Electricity Fees

Capacity Recovery Fee (CRF)	=	Php 1.84/kW-hr
Fixed O&M Fee (FOM)	=	Php 0.3/kW-hr
Variable O&M Fee (VOM)	=	Php 0.5/kW-hr

5.2 Electricity Fees Generator Set 2 (Cummins Gensets)
5.2.1 Electricity Fees

Capacity Recovery Fee (CRF)	=	Php 1.47/kW-hr
Fixed O&M Fee (FOM)	=	Php 0.3/kW-hr
Variable O&M Fee (VOM)	=	Php 0.5/kW-hr

5.3 Monthly Power Bill (MPB)

MPB = AED1 + AED2
where, MPB – Monthly power bill in PHP

**Sample computation is available in Schedule 7, EPSA*

- **Responsibilities of the Supplier**

SUPPLIER shall ensure that the Contracted Capacity is available to the BUYER and shall supply and deliver electricity to BUYER from the Power Plant during the Contract Period in accordance with the terms and conditions of this Agreement; xxx.

- **Responsibilities of the Buyer**

BUYER shall procure its energy requirement for Olango Island from the SUPPLIER during the Contract Period provided SUPPLIER is in an actual position to supply the same consistent with the terms of this Agreement; xxx.

- **Letter of Credit**

This Agreement shall be guaranteed by a letter of credit which shall answer for any unpaid obligations, including any unpaid bills, penalties and interest at the expiration or termination of this Agreement.

- **Supplier Invoice**

Each Supplier Invoice shall be due and payable on the 26th day of the succeeding month after the end of the billing period (“*Payment Period*”) and after receipt of said Supplier Invoice by BUYER. If the last day of the Payment Period falls on a Saturday, Sunday, or holiday, then payment shall be made on the immediately succeeding business day.

In relation to the supply of electricity by SUPPLIER to BUYER, it is understood that any charges, costs, expenses, and fees that may be charged to, incurred and/or assumed by SUPPLIER or any Governmental Authority, the Market Operator, or any other third party, and other related services in connection with the delivery of electricity hereunder, except fuel prices, shall be paid by the BUYER, as approved by the ERC. All fees payable to SUPPLIER pursuant to this Agreement shall be paid together with Value Added Tax thereon which shall be separately stated in all invoices. xxx

- **Events of Force Majeure**

Events of *Force Majeure* shall mean any circumstance not within the reasonable control of the Party affected, but only if and to the extent that such circumstance, despite the exercise of reasonable diligence, cannot be or caused to be prevented, avoided or removed by such Party and is not attributable to the negligence or willful misconduct or the failure of such Party to perform any of its obligations. xxx

- **Events of Termination**

This Agreement may be terminated by a Party upon the occurrence of the relevant event and subject to the applicable procedure provided in Section 9.5 of this Agreement (“*Process of Termination*”) xxx

- **Disputes**

Regular Meetings. Throughout the Contract Period covered in this Agreement, authorized representatives of the BUYER and the SUPPLIER shall meet regularly at not less than yearly intervals during the rest of the Contract Period to discuss any concern arising from the implementation of the Agreement to ensure that arrangements between Parties proceed on a mutually satisfactory basis.

Procedure. The Parties agree that in the event that there is any dispute, controversy, claim, or difference between them arising out of or relating to this Agreement, or the breach thereof, or in the interpretation of any of the provisions hereof, they shall meet and endeavor to resolve such dispute xxx

▪ **Schedule**

The following Schedules are attached to the Emergency/Transition PSA –

Annex	Description
A	Facility Specification (details the engine, generator, and technical specifications and system particulars for Generator Sets 1 and 2)
B	Plant Site and Description
C	Measurement and Recording of Electricity
D	Delivery Points
E	Electricity Fees
F	Annual Contract Energy – Not Applicable
G	Sample Computation of Monthly Contract Electricity Fees
H	Dispatch Protocol
I	Settlement
J	Generation Schedule (Form)
K	Single Line Diagram (MECO's 13.8kV Substation + 3.57MW Embedded Diesel Power Plant of TPI)
L	Operating Parameters
M	Engine Performance Test Procedure

V. RATE IMPACT

22. Rate computation and analysis shows the following rate impact –

	January	February	March	April	May	June	July	
WESM Generation Cost	185,607,939.97	195,059,182.38	148,210,872.24	179,607,286.50	309,800,528.69	290,574,120.36	403,036,042.75	
CEDC Generation Cost	69,992,976.19	73,238,413.63	73,983,328.01	68,011,462.11	71,372,892.83	68,479,712.40	66,651,547.82	
Net-Metering Generation Cost	31,673.56	33,893.83	41,204.34	65,143.19	90,503.15	106,311.42	87,265.62	
Energy Input (kWhGR)	47,787,367.00	48,355,344.00	46,302,819.00	47,130,122.00	55,943,636.00	58,776,539.00	57,370,294.00	
50% Net Prompt Payment Discount	267,307.53	275,874.92	255,191.46	235,922.87	260,468.11	254,893.31	247,467.85	
Pilferage Cost Recoveries (PCR)	83,929.00	64,705.37	159,035.69	15,053.57	8,570.04	189,914.00	14,043.94	
TPI Generation Cost @ NPC TOU Ave Rate	2,376,495.88	2,503,204.05	2,338,125.74	2,327,933.45	2,865,146.79	2,977,981.47	2,747,062.00	
Implemented Rate	5.3918	5.5939	4.8412	5.2994	6.8615	6.1537	8.2318	
At Emergency Power Supply Agreement								
Energy Generated	ABC	588,445.39	615,606.45	619,418.73	548,671.50	592,342.32	679,820.68	620,143.99
	CUMMINS	61,713.21	65,704.95	19,317.27	86,973.30	192,471.08	137,446.12	181,034.01
CRF: 1.84 (FOR ABC) AND 1.47 (FOR CUMMINS)	ABC	1,082,739.52	1,132,715.87	1,139,730.46	1,009,555.56	1,089,909.87	1,250,870.05	1,141,064.94
	CUMMINS	90,718.42	96,586.28	28,396.39	127,850.75	282,932.49	202,045.80	266,119.99
Total CRF	1,173,457.94	1,229,302.14	1,168,126.85	1,137,406.31	1,372,842.36	1,452,915.85	1,407,184.94	
Operation and Maintenance and Fuel	12,707,882.87	11,897,516.44	11,269,202.17	11,675,653.35	14,213,584.59	15,032,964.53	14,379,695.50	
TPI Generation Cost	13,881,340.81	13,126,818.58	12,437,329.02	12,813,059.66	15,586,426.95	16,485,880.38	15,786,880.44	
Recalculated Rate								
Rates	5.6325	5.8136	5.0593	5.5219	7.0889	6.3835	8.4591	
RATE IMPACT								
(-Dec/Inc)	0.2407	0.2197	0.2181	0.2225	0.2274	0.2298	0.2273	

VI. TECHNICAL REQUIREMENTS AND OTHER DOCUMENTS

23. The following documents are appended and form an integral part of this Application –

PART 1. TECHNICAL REQUIREMENTS

SUPPLY & DEMAND SCENARIO

- DU's Supply and Demand Scenario (during the time of emergency situation), Details of Existing Suppliers, Contract Utilization, Average Daily Load Curve, in accordance with Commission's templates under **Annex "1" and "2"** of the Prefiling Checklist Requirement.

PSA & OTHER AGREEMENTS

- Duly signed Emergency/Transition PSA

GENERATION / POWER RATE

- Executive Summary of the PSA
- Generation Rate & Derivation
 - Financial model containing the derivation of rates (excel file of the financial model required)
 - Project Cost Breakdown of the base prices; Capital Recovery Fee, Fixed and Variable O&M, and Fuel Fee
 - Breakdown of Project Cost and O&M Cost including the description and justification/supporting of each component
 - Sample Computation of Power Rates with the supporting documents on the assumptions taken
 - Basis/rationale of indexation including the sources, reference date, and weight of indexation (only applicable for PSA in which Tariff Structure involves indexation)
 - Basis of proposed escalation, if applicable
 - Basis/rationale/derivation of Other Charges such as replacement, start-up, pre-commercial (only applicable for PSA in which Tariff Structure involves indexation)
 - Equivalent PhP/kWh with assumptions for foreign-denominated rates.
- Fuel Supply Contract including –
 - Details of procurement process, subject to confidentiality rules, if any
 - Sworn Statement by competent Genco officer detailing how fuel was competitively procured, contract terms, unbundled price components (product cost, transshipment, delivery container, etc.)
 - All relevant technical and economic characteristics of the generation capacity; Installed Capacity, Mode of Operation, Dependable Capacity; Auxiliary load; Scheduled and Unscheduled Outages; Basis/Justification of day used
 - All costs analysis related to the generation in support of the proposed pricing provisions of the contract.

PART 2. LEGAL REQUIREMENTS (OTHER DOCUMENTS)

- Pre-filing requirements
- Verification & Certification of Non-Forum Shopping
- Secretary's Certificate with the required authority

- Electronic copy of the submissions

VII. MOTIONS

A. Confidential Treatment of Information

24. Pursuant to Rule 4 of the ERC Revised Rules of Practice and Procedure, applicants respectfully request that the following documents be accorded confidentiality –

- Generation Rate & Derivation
 - Financial model containing the derivation of rates (excel file of the financial model required)
 - Project Cost Breakdown of the base prices; Capital Recovery Fee, Fixed and Variable O&M, and Fuel Fee
 - Breakdown of Project Cost and O&M Cost including the description and justification/supporting of each component
 - Basis of proposed escalation, if applicable
- Fuel Supply Contract including –
 - Details of procurement process, subject to confidentiality rules, if any
 - Sworn Statement by competent Genco officer detailing how fuel was competitively procured, contract terms, unbundled price components (product cost, transshipment, delivery container, etc.

25. These documents contain information that relate to:

- (a) Rights, interests, liabilities, and obligations of third persons that may not be directly material and relevant in this application;
- (b) Personal sensitive information such as financial standing of individuals and corporations;
- (c) Trade secrets and/or valuable proprietary interest and information on the business operations, commercial transactions, and pricing structures and formula;
- (d) Information owned by persons other than MECO and TPI and any unauthorized disclosure thereof may expose applicants to liability; and
- (e) Information covered by a non-disclosure agreement.

B. Provisional Authority and/or Interim Relief

26. At any rate, given the *peculiarity* of the circumstances of this application and the *supervening events* that transpired beyond the control of the applicants, MECO and TPI jointly move that their case be covered under Section 2.3.5 of the **2023 CSP Policy** of the DOE in relation to Section 6 of the **2023 CSP Guidelines** of the ERC or by the **DOE Advisory 2024-08-003-SEC** as a Transition PSA, and that said Emergency/Transition PSA be allowed until such time that a CSP is conducted pursuant to the new guidelines which superseded the rules followed by MECO in 2017.

27. Finally, on the basis of the documents submitted in support of this application, applicants likewise pray for the issuance of a provisional authority and/or other

interim relief to the extent that it would benefit MECO, its consumers, end-users, and residents of Olango Island, and minimize any damage which may be sustained by the applicants and the consuming public.

VIII. REFERENCES & OTHER SUPPORTING DOCUMENTS

28. MECO and TPI further submits the references and documents in support of the allegations contained in this Joint Application –

- MECO Letter to DOE dated December 8, 2017
- DOE Letter to MECO dated January 15, 2018
- MECO Letter to DOE dated November 7, 2022
- DOE Letter to MECO dated December 15, 2022 furnished to the ERC
- MECO thru Counsel Letter to ERC dated March 7, 2023
- MECO Letter to ERC dated May 26, 2023

RELIEF

APPLICANTS MECO and TPI respectfully pray that the Honorable Commission –

- (1) CONSIDER AND SET FOR HEARING this Joint Application;
- (2) GRANT *provisional authority or interim relief* allowing the applicants to avail of the ERC Advisory dated August 10, 2023 and or the DOE Advisory 2024-08-003-SEC dated August 7, 2024, whichever is applicable;
- (3) GRANT applicants' *motion for confidential treatment of information*;
- (4) APPROVE the Emergency/Transition Power Supply Agreement between MECO and TPI;
- (5) Accordingly, allow MECO and TPI to prove the CSP conducted by MECO based on the prevailing rules at the time; and
- (6) GRANT applicants other equitable relief.

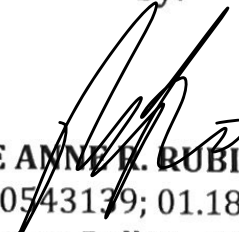
Muntinlupa City for Pasig City, September 3, 2024.

For Mactan Electric Company, Inc.,



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By:


MISHELLE ANNE E. RUBIO-AGUINALDO
PTR No. MUN 10543139; 01.18.24; Muntinlupa City
IBP Lifetime Roll No. 014910; PPLM
Roll of Attorneys No. 65873
MCLE Compliance No. VII-0020499; 14 April 2025
mra@raattorneyslaw.com

NATASSIA MARIE S. TUASON
PTR No. MUN ; Muntinlupa City
IBP OR No: 423012; PPLM
Roll of Attorneys No. 89398
MCLE Compliance No. Within 8th Compliance Period
+63 920 956 0716
nst@raattorneyslaw.com

For Total Power, Inc.,


MARDIE G. DIAZ
PTR No. 5424864; 01.04.24; Mandaluyong City
IBP No. 402843; 01.05.24; RSM
Roll of Attorneys No. 81473
MCLE Compliance No. VIII-0001598
mgdiaz.legal@gmail.com

IN THE MATTER OF THE APPLICATION FOR THE APPROVAL OF EMERGENCY POWER SUPPLY AGREEMENT BETWEEN MACTAN ELECTRIC COMPANY, INC. AND TOTALPOWER INC. WITH PRAYER FOR PROVISIONAL AUTHORITY AND INTERIM RELIEF, MACTAN ELECTRIC COMPANY, INC. (MECO) AND TOTALPOWER, INC. (TPI), APPLICANTS.

X-----X

REPUBLIC OF THE PHILIPPINES)
MUNTINLUPA CITY) S.S.

**JOINT VERIFICATION &
CERTIFICATION OF NON-FORUM SHOPPING**

I, **GILBERT A. PAGOBO**, Filipino, of legal age, with office address at MECO Building, Sangi Road, Lapu-Lapu City, hereby state under oath that I am the authorized representative of **MACTAN ELECTRIC COMPANY, INC.**, the applicant in this Application before the Energy Regulatory Commission (ERC), entitled, *"In The Matter of the Application for the Approval of Emergency Power Supply Agreement Between Mactan Electric Company Inc. and TotalPower Inc., Mactan Electric Company, Inc. and TotalPower Inc., Applicants."* Attached is a copy of the Secretary's Certificate attesting to my authority.

1. By virtue of such authority, I attest that I caused the preparation of the said Joint Application; read and understood its contents; and further attest that the allegations contained therein are true and correct based on my personal knowledge and on authentic records.
2. The Joint Application is filed in compliance with the directive of the Energy Regulatory Commission, and is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation.
3. The factual allegations therein have evidentiary support or will likewise have evidentiary support after a reasonable opportunity for discovery.
4. I affirm the truthfulness of the statements contained in the Application and its supporting documents.

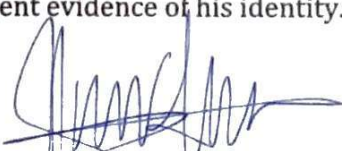
I have not commenced any other action or filed any claim involving the same facts in any court, tribunal, or quasi-judicial agency, and to the best of my knowledge, no such other action or claim is pending. If I should hereafter learn that the same or similar action or claim has been filed or is pending, I shall report such fact within five (5) days from knowledge thereof to the Energy Regulatory Commission.

IN WITNESS WHEREOF, I affix my signature this September 3, 2024, in Muntinlupa City, before a Notary Public, avowing to the whole truth of the contents of this document, under the penalty of law.


GILBERT A. PAGOBO
Affiant

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public for and in the City of Muntinlupa, this **GILBERT A. PAGOBO** by the affiant, who presented to me his Philippine ID No. 2041-3967-3910-5937 bearing his name and photograph, as competent evidence of his identity.

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Page No.: 11
Book No.: 1
Series of 2024.


NATASSIA MARIE S. TUASON
Notary Public for Muntinlupa City
Appointment No. 24-071
Valid Until December 31, 2025
Unit 802 Prime Land Tower, Market Street
Madrigal Business Park, Ayala Alabang
Muntinlupa City 1780
Roll of Attorneys No. 89398
PTR No. MUN: MCF 4637844; 03 13.24, Muntinlupa
IBP OR No: 423012; PPLM

IN THE MATTER OF THE APPLICATION FOR THE APPROVAL OF EMERGENCY POWER SUPPLY AGREEMENT BETWEEN MACTAN ELECTRIC COMPANY, INC. AND TOTALPOWER INC. WITH PRAYER FOR PROVISIONAL AUTHORITY AND INTERIM RELIEF, MACTAN ELECTRIC COMPANY, INC. (MECO) AND TOTALPOWER, INC. (TPI), APPLICANTS.

X-----X

REPUBLIC OF THE PHILIPPINES)
MUNTINLUPA CITY) S.S.

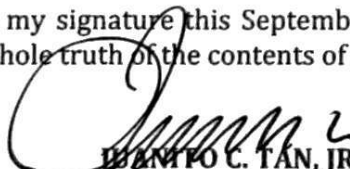
**JOINT VERIFICATION &
CERTIFICATION OF NON-FORUM SHOPPING**

I, **JUANITO C. TAN, JR.**, Filipino, of legal age, with office address at MECO Building, Sangi Road, Lapu-Lapu City, hereby state under oath that I am the authorized representative of **TOTAL POWER, INC.**, the applicant in this Application before the Energy Regulatory Commission (ERC), entitled, "*In The Matter of the Application for the Approval of Emergency Power Supply Agreement Between Mactan Electric Company Inc. and Total Power Inc., Mactan Electric Company, Inc. and TotalPower Inc., Applicants.*" Attached is a copy of the Secretary's Certificate attesting to my authority.

5. By virtue of such authority, I attest that I caused the preparation of the said Joint Application; read and understood its contents; and further attest that the allegations contained therein are true and correct based on my personal knowledge and on authentic records.
6. The Joint Application is filed in compliance with the directive of the Energy Regulatory Commission, and is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation.
7. The factual allegations therein have evidentiary support or will likewise have evidentiary support after a reasonable opportunity for discovery.
8. I affirm the truthfulness of the statements contained in the Application and its supporting documents.

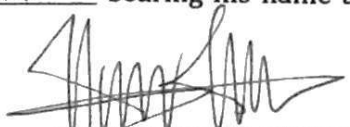
I have not commenced any other action or filed any claim involving the same facts in any court, tribunal, or quasi-judicial agency, and to the best of my knowledge, no such other action or claim is pending. If I should hereafter learn that the same or similar action or claim has been filed or is pending, I shall report such fact within five (5) days from knowledge thereof to the Energy Regulatory Commission.

IN WITNESS WHEREOF, I affix my signature this September 3, 2024, in Muntinlupa City, before a Notary Public, avowing to the whole truth of the contents of this document, under the penalty of law.


JUANITO C. TAN, JR.
Affiant

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public for and in the City of Muntinlupa, by the affiant, who presented to me his Philippine ID No. PASSPORT No. P99205561A bearing his name and photograph, as competent evidence of his identity.

Doc. No.: 46
Page No.: 11
Book No.: []
Series of 2024.


NATASSIA MARIE S. TUASON
Notary Public for Muntinlupa City
Appointment No. 24-071
Valid Until December 31, 2025
Unit 802 Prime Land Tower, Market Street
Madngal Business Park, Ayala Alabang
Muntinlupa City 1780
Roll of Attorneys No. 89398
PTR No. MUN MCF 4637844-03 13 24. Muntinlupa
IBP OR No. 423012; PPLM

SECRETARY'S CERTIFICATE

I, **ALFREDO ALEX S. CRUZ III**, a Filipino, of legal age, with address at Unit 204 A1C Gold Tower Condominium, F. Ortigas Jr. Road, Ortigas Center, Pasig City, the duly elected Secretary of **MACTAN ELECTRIC COMPANY, INC.** (the Corporation), a corporation duly organized and existing under the laws of the Republic of the Philippines, with business address at MECO Building, Sangi Road, Lapu-Lapu City, under oath, hereby certify that during the special meeting of the Board of Directors on December 5, 2023, the following resolutions were adopted:

“WHEREAS, MECO, the *Buyer*, is a distribution utility as defined under Republic Act No. 9136, or the Electric Power Industry Reform Act of 2001 (EPIRA), with a legislative franchise under Republic Act No. 10890 and a Certificate of Public Convenience and Necessity to operate the electric light and power distribution service in Lapu-Lapu City and in the Municipality of Cordova, both in the Province of Cebu.

WHEREAS, in 2017, pursuant to its mandate to ensure the quality, reliability, security, and affordability of supply of electric power for its captive customers in Olango Island, an off-grid island within its franchise area, MECO conducted a competitive selection process (CSP) in accordance with the prevailing rules at that time, namely: Joint Resolution No. 1, Series of 2015 between the Department of Energy (DOE) and the Energy Regulatory Commission (ERC) and ERC Resolution No. 13, Series of 2015, for the award of a contracted capacity of 3570 kW.

WHEREAS, thru its letter dated December 8, 2017, MECO informed the DOE that it had conducted a CSP for the power supply for its captive customers in Olango Island, and Total Power, Inc. (TPI) was selected as the most qualified and beneficial *supplier* with the rate of Php 2.64/kWh plus fuel fee at a 3570 kW, and that based on the documents submitted, TPI's offer was found to be the most beneficial to MECO's consumers.

WHEREAS, as mandated by the ERC, MECO requested the DOE for a certification pursuant to DOE Department Circular No. 2004-01-001¹ and ERC Resolution No. 21, Series of 2011².

WHEREAS, in a letter dated January 15, 2018, the DOE confirmed MECO's compliance with DOE DC 2015-06-008 and further declared that CSP Certification is not necessary for the reason that Olango Island has long been transferred to MECO by the NPC, and the plant has been operated by an

¹ Prescribing the Rules and Procedure for Private Sector Participation in Existing NPC-SPUG Areas Pursuant to Rule 13 of the Implementing Rules and Regulations of the Electric Power Industry Reform Act of 2001 (EPIRA-IRR)
² A Resolution Adopting the Amended Guidelines for the Setting and Approval of Electricity Generation Rates and Subsidies for Missionary Electrification Areas



Independent Power Producer (IPP) long before said issuances came into effect. Accordingly, DOE Department Circular No. 2004-01-001 and ERC Resolution No. 21, Series of 2011 do not apply in this transaction.

WHEREAS, MECO and TPI heeded the advice of the DOE and entered into a Power Supply Agreement in February 2018. However, it was only in 2022 that MECO and TPI were able to finalize and complete all the requirements necessary to file their application, due to several supervening events, namely: (1) the declaration of the state of national emergency following the World Health Organization (WHO) announcement of global pandemic in light of Covid-19; (2) the imposition of community quarantine, travel bans and restrictions; (3) onslaught of typhoon Odette; and (4) the rejection of the Joint Application by the ERC during the pre-filing stage by virtue of the Supreme Court decision in the *Alyansa Case*.

WHEREAS, despite earnest efforts to file the application, the supervening events and the period of time that lapsed from the time of the CSP up to the present, and with the application of the *Alyansa decision* by the ERC insofar as this application is concerned, have caused and continue to cause further delay in the application to the detriment of the consuming public.

NOW THEREFORE, in view of the foregoing premises, and considering further that (1) Olango Island is an off-grid area; (2) there are no other power producers available; (3) the rates of TPI are reasonably lower as compared to their counterparts in other areas; and (4) there is already an existing Power Supply Agreement as a result of the 2018 Competitive Selection Process, the Board of Directors hereby resolve and approve as follows:

“RESOLVED, as it is hereby resolved, that the Corporation is authorized to enter into an Emergency Power Supply Agreement (EPSA) with Total Power Inc. (TPI); for this purpose, the Corporation hereby appoints its President, **Mr. Douglas LuYm**, to represent and act on behalf the Corporation with full power and authority to: (1) negotiate the terms and conditions thereof, (2) sign, execute, and deliver the EPSA and other related documents and instruments; and (3) delegate these functions in the event of incapacity, unavailability, and or absence, and (4) perform such acts necessary to attain the purpose and objective herein set forth.

“RESOLVED, FURTHER, that the Corporation is authorized to file an application with the Energy Regulatory Commission (ERC) for the approval of the EPSA and other related applications or documents and for this purpose, the Corporation authorizes its Senior Vice President and General Manager, **Engr. Gilbert A. Pagobo**, to represent the Corporation in the said application with power to sign and execute the verification and certification of non-forum shopping and other related documents as may be necessary in the application, to appoint a substitute representative in the event of

A handwritten signature in black ink, appearing to be the name 'Gilbert A. Pagobo', written over the end of the text in the previous block.

incapacity, unavailability, and or absence, and to perform such acts necessary to attain the purpose and objective herein set forth.

“RESOLVED, FURTHERMORE, that the Corporation authorizes **Atty. Mishelle Anne R. Rubio-Aguinaldo of Rubio-Aguinaldo and Attorneys Law Firm** to prepare and file the application and other related documents necessary as a precondition for its prefilling and submission, act as counsel and represent the Corporation in the proceedings before the ERC, the DOE, and other concerned government agencies in any stage of the proceedings, to delegate such functions to the members of her law firm, and to perform such acts necessary to attain the purpose and objective herein set forth.

“RESOLVED, FINALLY, that the foregoing resolutions amend or modify existing resolutions previously issued.”

DEC 14 2023


IN WITNESS WHEREOF, I have hereunto set my hand and signed this ___th day of December 2023 in Pasig City.


ALFREDO ALEX S. CRUZ III
Secretary

DEC 14 2023

SUBSCRIBED AND SWORN to before me this ___ day of **QUEZON CITY**, affiant exhibiting to me his Philippine Driver's License with Driver's License No. X01-78-001305, bearing his photograph and signature.

Doc. No. 765 ;
Page No. 73 ;
Book No. LXXVI
Series of 2023.


ATTY. JAY T. BORROMEO
Notary Public
For and in Quezon City
Valid Until Dec. 31, 2024
IBP No. 248673/10-13-2022 for 2023, Quezon City
PTR No. 4030524 / 01-03-2023, Quezon City
Roll No. 49649 / TIN 156-545-237
Admin Matter No. NP-008 (2023-2024)
ABA Compliance No. VI-0002196
Issued On 04/26/2020, Until 04/14/2025
Acc. No. 115 Commonwealth Avenue
Brgy. Cinar, Quezon City

SECRETARY'S CERTIFICATE

I, **EARL MIGUEL N. RAMIREZ**, of legal age, Filipino with office address at U201 Alabang Business Tower, 1216 Acacia Avenue, Madrigal Business Park, Ayala Alabang, Muntinlupa City, Philippines, after being duly sworn in accordance with law, hereby depose and state that:

1. I am the duly elected and qualified Corporate Secretary of **TOTALPOWER INC.** (the "Corporation"), a corporation duly organized and existing under and by virtue of the Republic of the Philippines, with principal office at U201 Alabang Business Tower, 1216 Acacia Avenue, Madrigal Business Park, Ayala Alabang, Muntinlupa City;
2. I hereby certify that based on the minutes of the Meeting of the Corporation's Board of Directors held on January 17, 2024, during which a quorum was present, the following resolution was passed and adopted, to wit:

"RESOLVED, as it is hereby resolved, that **JUANITO C. TAN, JR** ("Mr. Tan") be authorized by the Corporation, to be its authorized representative and official signatory in relation to the execution of Emergency Power Supply Agreement ("EPSA") by and between the Corporation and Mactan Electric Company, Inc. ("MECO");

RESOLVED FURTHER, as it is further resolved, that the authority given to Mr. Tan as representative and authorized signatory of the Corporation in the aforesaid Agreement, includes any and all acts pertaining to the joint application for approval of the with the Energy Regulatory Commission ("ERC"), including but not limited to signing of Verification and Certification against Forum Shopping or other legal documents, which are deemed necessary to the application with the ERC; and

RESOLVED FINALLY, as it is hereby finally resolved, that relative to Mr. Tan's authority, the latter shall do any and all things necessary or appropriate in connection with the foregoing and/or furtherance thereof, including but not limited to process, submission and/or requesting of any documents to or from ERC in relation to the joint application for approval of the EPSA."

3. I hereby certify that the above resolution is still valid, effective and subsisting.

IN WITNESS WHEREOF, I have hereunto set my hand this 11 day of SEP 2024, at MUNTINLUPA City, Philippines.


EARL MIGUEL N. RAMIREZ
Corporate Secretary

SUBSCRIBED AND SWORN before me this 11 SEP 2024, affiant personally known to me and having exhibited to me his _____, as competent evidence of his identification, bearing his photograph and signature.

Doc. No. 495 ;
Page No. 100 ;
Book No. XXV ;
Series of 2024.
1.

ATTY. MICHAEL KENNETH S. ASBAN
Notary Public for Muntinlupa City
Notarial Commission No. 24-013 until December 31, 2025
Unit 302 Sycamore Prime Bldg., Alabang-Zapote Rd., Muntinlupa City
IBP Official Receipt No. 384671; January 2, 2024
PTR No. MUN1047436; January 2, 2024; Muntinlupa City
MCLE Compliance VII-0022541
Roll of Attorneys No. 71718

SECRETARY'S CERTIFICATE

I, **EARL MIGUEL N. RAMIREZ**, of legal age, Filipino with office address at U201 Alabang Business Tower, 1216 Acacia Avenue, Madrigal Business Park, Ayala Alabang, Muntinlupa City, Philippines, after being duly sworn in accordance with law, hereby depose and state that:

1. I am the duly elected and qualified Corporate Secretary of **TOTALPOWER INC.** (the "Corporation"), a corporation duly organized and existing under and by virtue of the Republic of the Philippines, with principal office at U201 Alabang Business Tower, 1216 Acacia Avenue, Madrigal Business Park, Ayala Alabang, Muntinlupa City;
2. I hereby certify that based on the minutes of the Meeting of the Corporation's Board of Directors held on July 29, 2024, during which a quorum was present, the following resolution was passed and adopted, to wit:

"RESOLVED, as it is hereby resolved, that Atty. Mardie Diaz ("Atty. Diaz"), be authorized by the Corporation as its legal counsel, representative and official signatory in filing the Corporation's joint application for approval of the Emergency Power Supply Agreement ("EPSA") by and between the Corporation and Mactan Electric Company, Inc. ("MECO") with the Energy Regulatory Commission; and

RESOLVED FINALLY, as it is hereby finally resolved, that relative to Atty. Diaz's authority, the latter shall do any and all things necessary or appropriate in connection with the foregoing and/or furtherance thereof, including but not limited to represent the Corporation in all hearings, settings, dealings or transactions relating to the joint application for approval of the EPSA."


3. I hereby certify that the above resolution is still valid, effective and subsisting.

IN WITNESS WHEREOF, I have hereunto set my hand this 11 day of SEP 2024,
2024, at _____ City, Philippines.


EARL MIGUEL N. RAMIREZ
Corporate Secretary
11 SEP 2024

SUBSCRIBED AND SWORN before me this _____, affiant personally known to me and having exhibited to me his _____, as competent evidence of his identification, bearing his photograph and signature.

Doc. No. 495 ;
Page No. 100 ;
Book No. XXV ;
Series of 2024.


ATTY. MICHAEL KENNETH S. ASBAN
Notary Public for Muntinlupa City
Notarial Commission No. 24-012 until December 31, 2025
Unit 302 Sycamore Professional Center, Zapote Rd., Muntinlupa City
IBP Official Receipt No. 00071; January 2, 2024
PTR No. MUN10474136; January 2, 2024; Muntinlupa City
MCLE Compliance VII-0022541
Roll of Attorneys No. 71718