

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

**IN THE MATTER OF THE
JOINT APPLICATION FOR
APPROVAL OF THE
TRANSITION POWER
SUPPLY AGREEMENT
DATED 25 SEPTEMBER 2024
BETWEEN MALITA POWER
INC. AND COTABATO
ELECTRIC COOPERATIVE,
INC., WITH MOTION FOR
CONFIDENTIAL
TREATMENT OF
INFORMATION AND
PRAYER FOR PROVISIONAL
AUTHORITY OR INTERIM
RELIEF**

ERC CASE NO. 2025-095 RC

**MALITA POWER INC. AND
COTABATO ELECTRIC
COOPERATIVE, INC.,**
Applicants.
X-----X

Promulgated:
July 30, 2025

ORDER

On 29 April 2025, Cotabato Electric Cooperative, Inc. (COTELCO) and Malita Power Inc. (MPI) filed a *Joint Application*, dated 13 February 2025, seeking the Commission’s approval of their Transition Power Supply Agreement (TPSA), dated 25 September 2024, with motion for confidential treatment of information and prayer for provisional authority or interim relief.

The docketed copy of the *Joint Application*, excluding its annexes, is attached as Annex “A” of the *Notice of Virtual Hearing*.

Finding the *Joint Application* to be sufficient in form and with the required fees having been paid, the Commission hereby sets the same for hearing, pursuant to the pertinent rules of the Commission, as follows:

Date and Time	Platform	Activity
17 September 2025 (Wednesday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Teams	Determination of compliance with jurisdictional requirements and Expository Presentation
24 September 2025 (Wednesday) at nine o'clock in the morning (9:00 A.M.)		Pre-Trial Conference and Presentation of Evidence

Accordingly, Applicants are hereby directed to mirror the virtual hearings, to be hosted by the Commission, at **COTELCO’s principal office located at Brgy. Manubuan, Matalam, Cotabato**, as the designated venue for the conduct thereof and ensure that the same is open to the public. Moreover, Applicants shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

RELATIVE THERETO, Applicants are hereby directed to:

- 1) Cause the publication of the attached *Notice of Virtual Hearing*, including Annex “A” thereof, in two (2) newspapers of nationwide circulation in the Philippines at their own expense, twice (2x) within two (2) successive weeks, the dates of publication not being less than seven (7) days apart, and the date of the last publication to be made not later than ten (10) days before the date of the scheduled initial virtual hearing;
- 2) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing*, including Annex “A” thereof, the Offices of the Provincial Governor, the Mayors, and their respective Local Government Unit (LGU) legislative bodies within COTELCO’s franchise area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within COTELCO’s franchise area, by any other means available and appropriate, of the filing of the *Joint Application*, their reasons therefor, and of the scheduled virtual hearings thereon;
- 4) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing*, including Annex “A” thereof, 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 and attend the scheduled hearings; and

- 5) Furnish with copies of the *Joint Application* and its attachments, except those subject of a motion for confidential treatment of information, all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

Within five (5) calendar days prior to the date of the initial virtual hearing, Applicants must submit to the Commission via electronic mail (e-mail) at docket@erc.ph, and copy furnish the Legal Service through legal@erc.ph, the scanned copies of their written compliance to the aforementioned jurisdictional requirements, attaching the following methodically arranged and duly marked documents:

- 1) The evidence of publication of the attached *Notice of Virtual Hearing*, including Annex “A” thereof, consisting of affidavits of the Editors or Business Managers of the newspapers where the same were published, and the complete issues of the said newspapers;
- 2) The evidence of actual posting of this *Order* and the attached *Notice of Virtual Hearing* including Annex “A” thereof, consisting of certifications issued to that effect, signed by the aforementioned Governor, Mayors and LGU legislative bodies or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by Applicants to inform the consumers within COTELCO’s franchise area of the filing of the *Joint Application*, their reasons therefor, and of the scheduled hearings;
- 4) The evidence of receipt of copies of this *Order* and the attached *Notice of Virtual Hearing* including Annex “A” thereof, by the OSG, the COA, and the Committees on Energy of both Houses of Congress;

- 5) The evidence of receipt of copies of the *Joint Application* and its attachments, except those subject of a motion for confidential treatment of information, if any, by all those making requests therefor; and
- 6) Such other proofs of compliance with the requirements of the Commission.

Moreover, Applicants are hereby required to post on their bulletin boards, the scanned copies of the foregoing jurisdictional requirements and to submit the proof of posting thereof.

Applicants and all interested parties are also required to submit to the Commission via e-mail at doCKET@erc.ph, and copy furnish the Legal Service through legal@erc.ph, **at least five (5) calendar days** before the date of the scheduled virtual hearing and Pre-trial Conference, their respective Pre-Trial Briefs containing, among others:

- 1) A summary of admitted facts and proposed stipulation of facts;
- 2) The issues to be tried or resolved;
- 3) The documents or exhibits to be presented, stating the purposes and proposed markings therefor, which must be attached to the Pre-trial Brief; and
- 4) The names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-trial Brief.

Failure of the Applicants to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearings.

Applicants must also be prepared to make an expository presentation of the instant *Joint 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 consumers and other concerned parties, the nature of the *Joint Application*. Relevant information and pertinent details substantiating the reasons and justifications for the *Joint Application* must be cited in support thereof.

Applicants are hereby directed to file a copy of their Expository Presentation via e-mail at docket@erc.ph, and copy furnish the Legal Service through legal@erc.ph, **at least five (5) calendar days** prior to the scheduled virtual hearing. Applicants are also required to provide a copy of their Expository Presentation to any stakeholder requesting therefor **at least five (5) calendar days** prior to the scheduled virtual hearing.

Applicants and interested parties are hereby directed to submit, either through personal service, registered mail or ordinary mail/private courier, all the pleadings and required submissions, **within five (5) working days** from the date that the same were electronically submitted, as reflected in the acknowledgment receipt e-mail sent by the Commission.

Finally, Applicants, including their authorized representatives and witnesses, and interested parties who wish to attend the scheduled virtual hearings are hereby directed to provide the Commission, thru legal.virtualhearings@erc.ph, their respective e-mail addresses upon receipt of this *Order*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearings.

SO ORDERED.

Pasig City, 30 July 2025.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ATTY. KRISHA MARIE T. BUELA
Director III, Legal Service


LS: VMA/LSP

ERC CASE NO. 2025-095 RC
ORDER/ 30 JULY 2025
PAGE 6 OF 7

Copy Furnished:

1. Cotabato Electric Cooperative, Inc. (COTELCO)
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5. Office of the Solicitor General (OSG)
134 Amorsolo Street, Legaspi Village, Makati City
docket@osg.gov.ph
6. Commission on Audit (COA)
Commonwealth Avenue, Quezon City
citizensdesk@coa.gov.ph
7. Senate Committee on Energy
GSIS Building, Roxas Boulevard, Pasay City
senateenergycommittee@gmail.com
8. House Committee on Energy
Batasan Hills, Quezon City
committee.energy@house.gov.ph
9. Office of the Governor
Province of North Cotabato
10. Office of the Local Government Unit (LGU) Legislative Body
Province of North Cotabato
11. Office of the Mayor
City of Kidapawan, North Cotabato
12. Office of the Local Government Unit (LGU) Legislative Body
City of Kidapawan, North Cotabato
13. Office of the Mayor
Kabacan, North Cotabato
14. Office of the Local Government Unit (LGU) Legislative Body
Kabacan, North Cotabato

15. Office of the Mayor
Mlang, North Cotabato
16. Office of the Local Government Unit (LGU) Legislative Body
Mlang, North Cotabato
17. Office of the Mayor
Matalam, North Cotabato
18. Office of the Local Government Unit (LGU) Legislative Body
Matalam, North Cotabato
19. Office of the Mayor
Carmen, North Cotabato
20. Office of the Local Government Unit (LGU) Legislative Body
Carmen, North Cotabato
21. Office of the Mayor
Banisilan, North Cotabato
22. Office of the Local Government Unit (LGU) Legislative Body
Banisilan, North Cotabato
23. Office of the Mayor
Tulunan, North Cotabato
24. Office of the Local Government Unit (LGU) Legislative Body
Tulunan, North Cotabato
25. Office of the Mayor
Makilala, North Cotabato
26. Office of the Local Government Unit (LGU) Legislative Body
Makilala, North Cotabato
27. Office of the Mayor
Magpet, North Cotabato
28. Office of the Local Government Unit (LGU) Legislative Body
Magpet, North Cotabato
29. Office of the Mayor
Pres. Roxas, North Cotabato
30. Office of the Local Government Unit (LGU) Legislative Body
Pres. Roxas, North Cotabato
31. Office of the Mayor
Antipas, North Cotabato
32. Office of the Local Government Unit (LGU) Legislative Body
Antipas, North Cotabato
33. Office of the Mayor
Arakan, North Cotabato
34. Office of the Local Government Unit (LGU) Legislative Body
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14th Floor, Exquadra Tower, 1 Jade Drive,
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Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

**IN THE MATTER OF THE
JOINT APPLICATION FOR
APPROVAL OF THE
TRANSITION POWER
SUPPLY AGREEMENT
DATED 25 SEPTEMBER 2024
BETWEEN MALITA POWER
INC. AND COTABATO
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ERC CASE NO. 2025-095 RC

**MALITA POWER INC. AND
COTABATO ELECTRIC
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Applicants.
X-----X

Promulgated:
July 30, 2025

NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 29 April 2025, Cotabato Electric Cooperative, Inc. (COTELCO) and Malita Power Inc. (MPI) filed a *Joint Application*, dated 13 February 2025, seeking the Commission’s approval of their Transition Power Supply Agreement (TPSA), dated 25 September 2024, with motion for confidential treatment of information and prayer for provisional authority or interim relief.

The docketed copy of the *Joint Application*, excluding its annexes, is attached as Annex “A” of the *Notice of Virtual Hearing*.

The Commission has set the instant *Joint Application* for hearing, pursuant to the pertinent rules of the Commission, as follows:

Date and Time	Platform	Activity
17 September 2025 (Wednesday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Teams	Determination of compliance with jurisdictional requirements and Expository Presentation
24 September 2025 (Wednesday) at nine o'clock in the morning (9:00 A.M.)		Pre-Trial Conference and Presentation of Evidence

Accordingly, Applicants are hereby directed to mirror the virtual hearings, to be hosted by the Commission, at **COTELCO’s principal office located at Brgy. Manubuan, Matalam, Cotabato**, as the designated venue for the conduct thereof and ensure that the same is open to the public. Moreover, Applicants shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

Any interested stakeholder may submit its comments and/or clarifications at least **one (1) calendar day** prior to the scheduled initial virtual hearing, via e-mail at docket@erc.ph, copy furnish the Legal Service through legal@erc.ph. The Commission shall give priority to the stakeholders who have duly submitted their respective comments and/or clarifications, to discuss the same and propound questions during the course of the expository presentation.

Moreover, all persons who have an interest in the subject matter of the instant case may become a party by filing with the Commission via e-mail at docket@erc.ph, and copy furnishing the Legal Service through legal@erc.ph, a verified Petition to Intervene at **least five (5) calendar days** prior to the date of the initial virtual hearing. The verified Petition to Intervene must follow the requirements under Rule 9 of the ERC Revised Rules of Practice and Procedure, indicate therein the docket number and title of the case, and state the following:

- 1) The petitioner’s name, mailing address, and e-mail address;
- 2) The nature of petitioner’s interest in the subject matter of the proceeding and the way and manner in which such

interest is affected by the issues involved in the proceeding;
and

- 3) A statement of the relief desired.

Likewise, all other persons who may want their views known to the Commission with respect to the subject matter of the case may file through e-mail at doCKET@erc.ph, and copy furnish the Legal Service through legal@erc.ph, their Opposition or Comment thereon at **least five (5) calendar days** prior to the initial virtual hearing. Rule 9 of the ERC Revised Rules of Practice and Procedure shall govern. No particular form of Opposition or Comment is required, but the document, letter, or writing should contain the following:

- 1) The name, mailing address, and e-mail address of such person;
- 2) A concise statement of the Opposition or Comment; and
- 3) The grounds relied upon.

All interested parties filing their Petition to Intervene, Opposition or Comment are required to submit the hard copies thereof through personal service, registered mail or ordinary mail/private courier, **within five (5) working days** from the date that the same were electronically submitted, as reflected in the acknowledgment receipt e-mail sent by the Commission.

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Finally, all interested persons may be allowed to join the scheduled virtual hearing by providing the Commission, thru legal.virtualhearings@erc.ph, their respective e-mail addresses and indicating therein the case number of the instant *Joint Application*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearing.

WITNESS, the Honorable Chairperson and CEO **MONALISA C. DIMALANTA**, and the Honorable Commissioners **FLORESINDA G. BALDO-DIGAL**, **MARKO ROMEO L. FUENTES**, **AMANTE A. LIBERATO**, and **PARIS G. REAL**, Energy Regulatory Commission, this 30th day of July 2025 in Pasig City.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ATTY. KRISHA MARIE T. BUELA
Director III, Legal Service


LS: VMA/LSP

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Exquadra Tower, Ortigas Center
Pasig City

IN THE MATTER OF THE JOINT
APPLICATION FOR APPROVAL
OF THE TRANSITION POWER
SUPPLY AGREEMENT DATED
25 SEPTEMBER 2024 BETWEEN
MALITA POWER INC. AND
COTABATO ELECTRIC
COOPERATIVE, INC., WITH
MOTION FOR CONFIDENTIAL
TREATMENT OF
INFORMATION AND PRAYER
FOR PROVISIONAL
AUTHORITY OR INTERIM
RELIEF,

ERC CASE NO. 2025-095 RC

MALITA POWER INC. AND
COTABATO ELECTRIC
COOPERATIVE, INC.,
Applicants.

April 29, 2025

x-----x

**JOINT APPLICATION FOR APPROVAL OF
TRANSITION POWER SUPPLY AGREEMENT
DATED 25 SEPTEMBER 2024
(with Motion for Confidential Treatment of Information)**

Applicants **MALITA POWER INC. ("MPI")** (formerly San Miguel Consolidated Power Company), and **COTABATO ELECTRIC COOPERATIVE, INC. ("COTELCO")** (collectively, the "Applicants"), by their respective undersigned counsel, and to this Honorable Commission, most respectfully state:

I.

PARTIES

1. MPI is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office located at Sitio Inaburan, Culaman 8012 Malita, Davao Occidental. MPI owns and operates the 2 x 150 MW Circulating

Fluidized Bed Coal-Fired Thermal Power Plant located in its principal office.

2. COTELCO is an electric cooperative duly organized and existing under the laws of the Republic of the Philippines with principal office address at Brgy. Manubuan, Municipality of Matalam, Province of Cotabato. COTELCO operates an electric light and power distribution service, for which it was issued an exclusive franchise, pursuant to the provisions of Republic Act No. 6038, Presidential Decree No. 269, as amended by Republic Act No. 10531, in the following municipalities of Kabacan, Mlang, Matalam, Carmen, Banisilan, Tulunan, Makilala, Magpet, Kidapawan, Pres. Roxas, Antipas, Arakan and City of Kidapawan, all in the province of North Cotabato.

3. The Applicants may be served with notices and other processes of this Honorable Commission through their respective counsel at the addresses indicated herein.

II.

STATEMENT OF FACTS

Termination of the Power Supply Contract ("PSC") between COTELCO and San Miguel Consolidated Power Company ("SMCPC") involving 5,000 KW.

4. On 28 April 2016, COTELCO and SMCPC filed a *Joint Application* dated 4 April 2016 ("Joint Application") before this Honorable Commission seeking the approval of the PSC entered into by the parties on 12 July 2014.

5. On 19 July 2016, SMCPC filed with this Honorable Commission an *Urgent Ex Parte Motion for the Issuance of Interim Relief and Expeditious Resolution of the Joint Application* dated 18 July 2016.

6. After the conduct of the public hearing and presentation of evidence, on 21 August 2017, this Honorable Commission issued an *Order* dated 6 June 2017, granting interim relief to the Applicants allowing them to execute their PSC during the pendency of their Joint Application before this Honorable Commission, subject to certain conditions listed in said Order. The dispositive portion reads, thus:

"WHEREFORE, the foregoing premises considered, the *Urgent Motion* is GRANTED. Applicants Cotabato

Electric Cooperative, Inc. (COTELCO) and San Miguel Consolidated Power Corporation (SMCPC) are hereby GRANTED INTERIM RELIEF in the form of an authority to implement their Power Supply Contract (PSC), subject to the following conditions:

xxx

SO ORDERED."

7. Thereafter, on 3 May 2019, the Supreme Court issued a *Decision* in the case entitled "*Alyansa Para sa Bagong Pilipinas, Inc. v. Energy Regulatory Commission, et. al.*" (the "*Alyansa Case*"),¹ wherein it held that all PSA applications filed with this Honorable Commission on or after 30 June 2015 must comply with the Competitive Selection Process ("CSP") requirement provided under the Department of Energy ("DOE") Circular No. 2018-02-0003 ("2018 DOE Circular").²

8. On 23 July 2019, the Supreme Court rendered its *Resolution* resolving to deny with finality the Motion for Reconsideration filed by this Honorable Commission.

9. Considering that the *Decision* for the *Alyansa Case* has attained finality, on 20 September 2019, this Honorable Commission issued an *Order* dated 11 September 2019 which directed all affected parties, including COTELCO, to comply with the CSP requirements found in the 2018 DOE Circular and to submit a DOE Certification attesting to such compliance within ninety (90) days from receipt of the said *Order*. The dispositive portion of the *Order* dated 11 September 2019 reads, thus:

"IN VIEW OF THE FOREGOING, COTELCO and SMCPC are hereby DIRECTED to comply with the pertinent rules and regulations of the Department of Energy (DOE) relative to the CSP requirements pursuant to the Supreme Court *Decision* in the ABP case, and to SUBMIT the necessary DOE Certification attesting the Parties' compliance thereto. Such Certification should be submitted within ninety (90) days from receipt of COTELCO of this *Order*.

Failure of the Applicants to comply with the foregoing directives within the prescribed period shall constrain

¹ G.R. No. 227670, May 03, 2019.

² *Id.*

the Commission to dismiss the instant case with prejudice.

SO ORDERED.”

10. On 24 February 2020, COTELCO and SMCPC filed with this Honorable Commission a *Motion for Reconsideration (of the 11 September 2019 Order)* requesting this Honorable Commission to rule that the Applicants’ PSC underwent a CSP already, and to proceed with the instant Joint Application until Judgement (“Motion for Reconsideration”).

11. On 1 March 2023, this Honorable Commission issued an *Order* of even date which denied the Motion for Reconsideration. In addition, the Order dated 1 March 2023, among others, (a) dismissed the Joint Application with prejudice for failure to comply with the *Order* dated 11 September 2019 and the CSP policy under the DOE 2018 CSP Circular, as directed by the Supreme Court in the *Alyansa Case*; and (b) directed COTELCO and SMCPC to stop implementing the PSC immediately upon receipt of the Order.

12. On 5 April 2024, COTELCO received this Honorable Commission’s *Order* dated 1 March 2023.

13. COTELCO was constrained to comply with this Honorable Commission’s *Order* dated 1 March 2023, which effectively caused the termination of the PSC with SMCPC that supplied 5,000 KW or 5MW to COTELCO’s end consumers living within its Franchise Area.

14. With the termination of the PSC with SMCPC, COTELCO is left with a power supply gap of about five (5) MW, which can be as great as 16.76 MW during peak hours. As such, COTELCO was constrained to resort to the Wholesale Electricity Spot Market (“WESM”) to supply the variance, which exposed COTELCO’s end consumers to volatility in the market price of their electricity.

15. On 7 August 2024, the Department of Energy issued Advisory No. 2024-08-003-SEC (“DOE Advisory”),³ which allows Transition Power Supply Agreements (“TPSA”) as an interim measure for DUs with PSAs affected by the *Alyansa Case* to ensure the continued

³ A copy of Department of Energy Advisory No. 2024-08-003-SEC is hereto attached as Annex “A” and made an integral part hereof.

supply of electricity of end consumers in their respective franchise. The DOE Advisory provides:

“Accordingly, the DOE hereby issues this Advisory to allow for a Transition PSA (TPSA) 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 TPSA.

x x x

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 TPSA.
3. The TPSA shall cover the capacity affected by the Alyansa Ruling, and shall be eligible to the Universal Charge for Missionary Electrification (UC-ME) subsidy.”⁴

16. In line with the provisions of the DOE Advisory, on 4 September 2024, COTELCO sent a letter to the National Electrification Administration (“NEA”),⁵ and copy furnished the DOE and ERC, informing said government agencies of COTELCO’s intent to enter into a TPSA for a period of one (1) year pursuant to the DOE Advisory to ensure the continuous supply of electricity to the end consumers in its Franchise Area and to minimize COTELCO’s exposure to the volatile prices of WESM.

17. Thereafter, on 5 September 2024, COTELCO sent Invitations to Bid to MPI.⁶ In turn, based on MPI’s offer, MPI was able to meet the requirements set by COTELCO.⁷

⁴ Emphasis and underscoring supplied.

⁵ A copy of the Letter to the NEA dated 4 September 2024 is hereto attached as Annex “B” and made an integral part hereof.

⁶ A copy of the Invitation Letter to MPI dated 5 September 2024 is hereto attached as Annex “C” and made an integral part hereof.

⁷ A copy of MPI’s Offer to COTELCO is hereto attached as Annex “D” and made an integral

18. Accordingly, on 25 September 2024, COTELCO entered into a TPSA with MPI of even date for a period of one (1) year in order to provide electric power to its consumers.⁸

19. The termination of the PSA resulted in an unavoidable situation where the parties had to resort to measures that would meet the growing demand of electric power supply from its end consumers in the least cost manner. Pursuant to the DOE Advisory, on 14 September 2024, COTELCO entered into a TPSA with MPI ("COTELCO-MPI September 2024 TPSA") in order to ease the burden of end consumers brought about by the volatile prices of electric power supply sourced from WESM.

III.

SALIENT FEATURES OF THE TPSA

20. The COTELCO-MPI September 2024 TPSA contains the following salient features:

“1.1. The following terms as used in this Agreement shall have the meanings given to them below:

x x x

Contract Capacity – means the capacity, expressed in kilowatts (“kW”) that the BUYER may utilize and the SELLER shall supply during each trading interval of the Billing Period within the Agreement Term, in quantities specified in Annex I.

x x x

2.1 This Agreement shall be binding and effective between the Parties on the date of signing (“Execution Date”) and the supply duration shall be up to a maximum period of one (1) year or twelve (12) Billing Periods from Supply Effective Date (“SED”) unless earlier terminated due to circumstances:

2.1.1 The BUYER secured an ERC approval for the power supply agreement it has executed after its conduct of a Competitive Selection Process as required under prevailing applicable circulars for that purpose; or

⁸ part hereof.
A copy of the Transition Power Supply Agreement dated 14 September 2024 between Malita Power Inc. and COTELCO is attached hereto as Annex “E” and made an integral part hereof.

2.1.2 Favorable outcome/results of the remedies availed by the SELLER relative to ERC Case No. 2016-065 RC, more specifically but not limited to the reversal of the dismissal of the joint application dated April 29, 2016, filed by the BUYER and SELLER covered by the subject rate case.

2.2 The term of this Agreement shall be renewed accordingly subject to the conditions set forth in the immediately preceding paragraph.

2.3 The SED shall be on 00:01H on 26 September 2024, or on the 26th day of the calendar month, whichever comes later, subject to the condition that copies of resolutions approved by the BUYER's Board of Directors authorizing the execution, delivery and performance of the BUYER of this Agreement, duly certified by the BUYER's Board Secretary, have been received by SELLER from the BUYER.

ARTICLE 3 ERC APPROVAL

ERC Approval. The Parties shall jointly file the application for the approval of the Agreement ("ERC Application") with the ERC. The Parties shall exert their best efforts to secure the ERC Approval of the Agreement within a reasonable time.

x x x

ARTICLE 5 SALE AND PURCHASE OF CONTRACT CAPACITY AND ASSOCIATED ENERGY

5.1. Contract Capacity and Associated Energy

5.1.1 Beginning SED, the SELLER shall make available to the BUYER, and the BUYER shall purchase from the SELLER the Contract Capacity as stated in Annex I. The quantities specified in Annex I shall not be changed by either Party except in cases provided for this Agreement.

5.1.2. The Contract Capacity and Associate Energy shall be delivered by the SELLER at the high voltage side of the main transformer of the Plant, as provided in Annex V, or from plants owned and/or operated by any of its Affiliates, other electricity generators, including the WESM. This will be used for purposes of declaration of BCQ's, billing and settlement. Title and risk of loss for the Contract Capacity and Associated Energy, such as but not limited to, Line Rental and other WESM Charges, shall be transferred to the BUYER at the high voltage side of the Plant's transformer.

5.2. Supply

5.2.1 SELLER shall have no obligation to supply more than the Contract Capacity as provided for in Annex I. The BUYER acknowledges that it is obligated to take and pay no less than the Associated Energy.

5.2.2 For Associated Energy, the BUYER shall submit to the SELLER, a month-ahead and binding day-ahead nomination translated into five (5) minute and daily schedule referred as the BCQ in five (5) Days prior to the start of the next Billing Period, in accordance with the "Nomination Protocol" as agreed by the Parties. The BUYER may submit revisions on the BCQ schedule on day-ahead basis. If the BUYER fails or is unable for any reason to submit such nominations, the SELLER shall use the BUYER's best available data for the same hour, day or week, and the BUYER shall be bound by this. In the event that the capability of the SELLER to deliver Contract Capacity or the capability of the BUYER to take the Contract Capacity are each affected by the occurrence of an Event of Force Majeure, the provisions in Article 11 (Force Majeure) shall apply.

x x x

ARTICLE 6 OUTAGES

During the term of this Agreement, except during Force Majeure Events, the SELLER shall guarantee the supply of the Contract Capacity and Associated Energy to the BUYER, even during Scheduled and Unscheduled Outages of the Plant. For avoidance of doubt, an Event of Force Majeure as defined in Article 11 shall not be considered as an Outage.

x x x

ARTICLE 8 CHARGES AND ADJUSTMENTS

8.1 Monthly Contract Charges. Beginning SED and subject to the terms and conditions of this Agreement, the BUYER shall pay the following:

8.1.1. Contract Price ("CP"). The SELLER's base CP is at PhP6.1700/kWh or PhP5.9103/kWh, net of Collection Efficiency Discount and Prompt Payment Discount, as provided for in Annex II-A. The SELLER shall bill the BUYER based on the actual energy consumption at the prevailing CP, which includes a Fuel Fee subject to monthly price adjustments according to the Fuel Fee Adjustment Formula provided in Annex III.

8.1.2. Throughout the duration of the Agreement, except during Force Majeure Events, the SELLER shall guarantee the supply of Contract Capacity and Associated Energy to the BUYER, even during Scheduled and/or Unscheduled Outages of the Plant, the same to be paid by the BUYER at Contract Charges.

8.1.3. The BUYER agrees that it will pay the adjusted CP for the Contract Capacity and Associated Energy. If at any time during the implementation of this Agreement and before

the Parties receive ERC Approval, the BUYER refuses to pay or makes payments lower than the adjusted CP due to any government regulatory issuance, the BUYER acknowledges the SELLER's right to immediately suspend the energy supply. If an amicable solution is not reached within the period of five (5) Days after the suspension, the BUYER acknowledges the SELLER's right to terminate the Agreement. Termination is without prejudice to the SELLER's right to pursue remedies, including the collection of all outstanding accounts accrued prior to the termination.

x x x

8.3 Associated Charges. All charges related to WESM, including line rental, site specific loss adjustments, transmission line loss, and interconnection charges, among other, shall be for the account of the BUYER.

ARTICLE 9 DISCOUNTS

9.1 Prompt Payment Discount ("PPD"). The BUYER may avail of the PPD equivalent to one percent (1.0%) applied to the total prevailing Contract Price net of Collection Efficiency Discount (excluding Replacement Power cost, if any, Associated Charges and VAT) provided that:

9.1.1. The BUYER has no arrears from previous power billings including the Security Deposit or any unpaid charges or penalties including VAT;

9.1.2. The BUYER has submitted all necessary BIR Tax Certificates for all taxes withheld as well as for all zero-rated VAT end-consumers and;

9.1.3. The BUYER pays the power bill in full on or before the tenth (10th) Day of the calendar month following the current Billing Period.

9.2 Collection Efficiency Discount ("CED"). The BUYER shall be entitled to the CED provided that it has complied with the requirements set forth under Annex IV of this Agreement.

x x x"

ANNEX I
CONTRACT CAPACITY AND ASSOCIATED
ENERGY

- 1. BUYER's Contract Capacity shall be 5,000 kW.
- 2. BUYER shall take and pay Associated Energy supplied by the SELLER for every Billing Period and paid at Contract Charges

x x x

ANNEX II-A
CONTRACT PRICE ("CP")

Price Components	Rate, PhP/kWh
Capacity Fee	3.1000
Fuel Fee	3.0700
Contract Price (Gross)	6.1700
Less: PhP0.20/kWh Collection Efficiency Discount ("CED")	-0.2000
Less: 1% Prompt Payment Discount ("PPD")	-0.0597
Contract Price (Net)	5.9103

Note:

- o Capacity Fee at 100% Capacity Utilization Factor ("CUF") shall be non-adjusting for the entire term of the Agreement.
- o Capacity Fee shall be subject to actual CUF as provided in Annex II-B and Annex II-C.
- o Fuel Fee is subject to monthly adjustment based on Fuel Fee Adjustment Formula provided in Annex III.
- o Base NEWC is USD120.00/MT and Base FOREX is PhP53.000/USD.
- o Guaranteed Supply except during Events of Force Majeure. No Outage Allowance.
- o WESM Charges including Line Rental shall be for the account of the BUYER (pass-through cost).
- o Contract Price shall be subject to a maximum of PhP0.2000/kWh CED and 1.0% PPD.
- o Prevailing Contract Price (Gross) and other Contract Charges shall be subject to applicable VAT.

x x x

ANNEX II-B
CAPACITY FEE AT DIFFERENT LEVELS
OF CAPACITY UTILIZATION FACTOR ("CUF")

CUF	Capacity Fee, PhP/kWh
100%	3.1000
99%	3.1222
98%	3.1449
97%	3.1680
96%	3.1917
95%	3.2158
94%	3.2404
93%	3.2656
92%	3.2913
91%	3.3176
90%	3.3444
89%	3.3719
88%	3.4000
87%	3.4287
86%	3.4581
85%	3.4882
84%	3.5190
83%	3.5506
82%	3.5829
81%	3.6160
80%	3.6500
79%	3.6848
78%	3.7205
77%	3.7571
76%	3.7947
75%	3.8333
74%	3.8730
73%	3.9137
72%	3.9556
71%	3.9986
70% and below	4.0429

IV.

GENERATION RATE IMPACT

21. Based on the simulations of the Generation Rate Impact Analysis with MPI, the total amount electricity fees for MPI, for the period covering September 2024 to September 2025, is Twenty-Two Million Nine Hundred Fifty-Two Thousand Four Hundred Pesos (PhP22,952,400.00). This amount accounts for 100% of the load factor of energy, with energy produced amounting to Three Million Seven Hundred Twenty kWh, equivalent to Six Pesos and 17/100 (PhP6.17) per kWh, as shown in the calculation below:

FORECASTED PURCHASED ENERGY 2024 - WITH TPSA (100%LF)					
Suppliers	Capacity (KW)	Load Factor	Energy Produced (KWH)	Billing (PHP)	Cost per kWh (PHP)
Supplier 1	10,000	100%	7,440,000	51,659,553.00	6.94
Supplier 2	5,000	100%	3,720,000	24,464,174.16	6.58
Supplier 3	10,000	100%	7,440,000	51,988,971.39	6.99
Supplier 4	5,000	100%	3,720,000	24,573,363.86	6.61
Supplier 5	10,000	50%	3,720,000	10,936,800.00	2.94
MPI (TPSA)	5,000	100%	3,720,000	22,952,400.00	6.17
WESM			184,479	1,199,110.28	6.50
			0	-	
Blended Cost Per kWh			29,944,479	187,774,373	6.271
FORECASTED PURCHASED ENERGY 2024 - WITHOUT TPSA					
Suppliers	Capacity (KW)	Load Factor	Energy Produced (KWH)	Billing (PHP)	Cost per kWh (PHP)
Supplier 1	10,000	100%	7,440,000	51,659,553.00	6.94
Supplier 2	5,000	100%	3,720,000	24,464,174.16	6.58
Supplier 3	10,000	100%	7,440,000	51,988,971.39	6.99
Supplier 4	5,000	100%	3,720,000	24,573,363.86	6.61
Supplier 5	10,000	50%	3,720,000	10,936,800.00	2.94
MPI (TPSA)				-	
WESM			3,904,479	25,379,110.28	6.50
Blended Cost Per kWh			29,944,479	189,001,973	6.312
Analysis			-		
Increase in Blended Cost from Current					
With 5MW TPSA					6.271
Without 5MW TPSA					6.312
Rate Impact (php per kwh)					(0.041)
note: Rate impact may increase/decrease further depending on WESM price					

22. The supply period of September 2024 to September 2025 was selected. The simulation uses the actual energy purchased for the period, the actual rates implemented by COTELCO power suppliers, and actual WESM rates at the time. Among the suppliers with a Load Factor of One Hundred Percent (100%), MPI with a fixed rate of Six Pesos and 17/100 (PhP6.17) has the lowest cost per kWh.

23. As such, COTELCO entered into a TPSA with MPI to help mitigate the impact of increasing prices in the world market. Verily,

the fixed tariff structure of MPI helped lessen its exposure to the volatility of WESM prices.

24. In view of the foregoing, COTELCO and MPI respectfully seek the confirmation and approval of the Honorable Commission of its TPSA.

V.

COMPLIANCE WITH DOCUMENTARY
REQUIREMENTS

25. In support of this Joint Application with Motion for Confidential Treatment of Information, the Affidavit of **Joel V. De Guzman, Jr.**, the General Manager of COTELCO, which details the due diligence exercised by COTELCO in view of the emergency situation and the events that transpired which led to the necessity to enter into a TPSA, is attached hereto as **Annex “K”**.

26. Applicants provide the following documents, which underwent the pre-filing conference and pre-filing marking of annexes with the Honorable Commission:

DESCRIPTION OF DOCUMENT	ANNEX
COTELCO’s Supply and Demand Scenario (during the time of emergency situation), Details of Existing Suppliers, Contract Utilization, Average Daily Load Curve, in accordance with the ERC’s templates under Annex “1” and “2” of the Prefiling Checklist Requirement	“F” and series
Executed Transition Power Supply Agreement dated 25 September 2024	“E” and series
Executive Summary of the TPSA	“G”
Generation Rate and Derivation (<i>Confidential</i>); Rate Impact Analysis	“H” and series
Sworn Statement detailing how fuel was competitively procured, contract terms, unbundled price components (product cost, transshipment, delivery container, etc.). (<i>Confidential</i>)	“I” and series
Relevant technical and economic characteristics of the generation capacity; Scheduled and Unscheduled Outages	“J” and series

ALLEGATIONS IN SUPPORT OF THE MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION

27. Applicants respectfully highlight that the documentary evidence, **Annex "D"** and series, except the Rate Impact Analysis, and **Annex "E" and series** (collectively, the "Confidential Documents"), contain numbers, methodology, and calculations such as debt or equity ratio, capital costs, weighted average cost of capital, and fuel cost that provide valuable information and insight on how it arrives at its power generation rate and/or on its trading in the WESM.

28. Applicants therefore respectfully submit that the Confidential Documents fall within the bounds of proprietary "trade secrets", which are entitled to protection under the Constitution, statutes, and rules and regulations of this Honorable Commission.

29. Under Section 1, Rule 4 of the Revised ERC Rules of Practice and Procedure (the "Revised ERC Rules"), this Honorable Commission may, upon request of a party and determination of the existence of conditions, which would warrant such remedy, treat certain information submitted to it as confidential. Pursuant to such provision, MPI respectfully prays for the issuance of a protective order declaring the foregoing documents confidential, since MPI intends to present them as evidence in the instant Application.

30. The data contained in the Confidential Documents constitute "trade secrets" of MPI; thus, MPI has actual and valuable proprietary interest to protect with respect to such information. If the information contained in these documents is unduly disclosed, it will seriously prejudice the competitiveness of MPI.

31. The Supreme Court, in the case of *Air Philippines Corporation vs. Pennswell, Inc.*,⁹ had the opportunity to discuss the definition of "trade secrets" and the great extent to which the same are protected under our laws, thus:

"A trade secret may consist of any formula, pattern, device, or compilation of information that: (1) **is used in one's business**; and (2) **gives the employer an opportunity to obtain an advantage over competitors who do not possess the information**. Generally, a trade secret is a process or device intended for continuous use in the operation of the business, for example, a machine

⁹ G.R. No. 172835, 13 December 2007.

or formula, but can be a price list or catalogue or specialized customer list. It is indubitable that trade secrets constitute proprietary rights. The inventor, discoverer, or possessor of a trade secret or similar innovation has rights therein which may be treated as property, and ordinarily an injunction will be granted to prevent the disclosure of the trade secret by one who obtained the information 'in confidence' or through a 'confidential relationship.' American jurisprudence has utilized the following factors to determine if an information is a trade secret, to wit:

- (1) the extent to which the information is known outside of the employer's business;
- (2) the extent to which the information is known by employees and others involved in the business;
- (3) the extent of measures taken by the employer to guard the secrecy of the information;
- (4) the value of the information to the employer and to competitors;
- (5) the amount of effort or money expended by the company in developing the information; and
- (6) the extent to which the information could be easily or readily obtained through an independent source."¹⁰

32. Further, in *Philpotts vs. Philippine Manufacturing Company*¹¹ and *Garcia vs. Board of Investments*,¹² the Supreme Court has held that the confidential nature of trade secrets protects such from disclosure even in the face of the right of inspection given to stockholders or the constitutional right to information.

33. Additionally, in the Decision of this Honorable Commission in ERC Case No. 2015-111 RC dated 30 May 2017 entitled "*In the Matter of the Application for Approval of the Power Supply Agreement Between Nueva Ecija II Electric Cooperative, Inc.- Area 2 (NEECO II – Area 2) and PNOC Renewables Corporation (PNOC RC)*", the Honorable Commission categorically stated that formulas and pricing structures of a generation company must be treated as confidential and may not be publicly disclosed, thus:

¹⁰ Emphasis and underscoring supplied.

¹¹ G.R. No. L-15568, 8 November 1919.

¹² G.R. No. 88637, 7 September 1989.

“In the case of PNOC RC, the documents sought to be protected from disclosure contains formula and pricing structures used in arriving at their proposed tariff. In fact, all three (3) documents were used by the Commission in evaluating the reasonableness of the proposed rate. In the electric power industry w(h)ere prices is[sic] a major consideration in selecting one’s supplier, it is apparent that the assumptions used in arriving at one’s proposed tariff is considered a competitive leverage by one player against its competitors.

Thus, the Commission resolves to treat the said documents confidential and may not be publicly disclosed.”¹³

34. The foregoing evidently shows that this Honorable Commission has consistently recognized the importance of maintaining pricing structures as confidential in order to ensure the competitiveness of the generation sector. Information, which falls within the definition of a trade secret as defined by jurisprudence, is clearly information that merits the confidential treatment provided for under Rule 4, Section 1 of the Revised ERC Rules. The Confidential Documents should therefore be entitled to the protection of confidential information provided under Rule 4 of the Revised ERC Rules.

35. The interest of the consuming public is sufficiently protected by the review and evaluation of the rates under the TPSA by this Honorable Commission, without the need to disclose the contents of the Confidential Documents. Further, the negotiating power of MPI with parties it plans to contract with or with whom it is currently doing business will be impeded if it is compelled to disclose such information.

36. Considering the foregoing, the Confidential Documents qualify as “confidential information”.

37. Accordingly, one (1) copy of each of the foregoing confidential documents is placed in a sealed envelope, with the envelope and each page of the document stamped with the word “Confidential.”

¹³ Emphasis and underscoring supplied.

**ALLEGATIONS IN SUPPORT OF THE PRAYER FOR
PROVISIONAL AUTHORITY OR INTERIM RELIEF**

38. Under Rule 14 of the Revised ERC Rules, the Honorable Commission is authorized to issue provisional authority or interim relief prior to a final decision, provided the facts and circumstances alleged warrant such remedy.

39. As earlier stated, the parties were compelled to immediately implement the TPSA beginning 00:01HH 26 September 2024 for the following reasons:

- (i) the cessation of the PSC between COTELCO and SMCPC as a result of this Honorable Commission's *Order* dated 11 September 2019 and its *Order* dated 1 March 2023, resulting in an energy supply shortage of at least five (5) MW;
- (ii) most importantly, in the interest of providing least cost to COTELCO end customers, it is beneficial to its customers by averting their exposure to the volatile prices of the WESM.

40. As shown from the rate impact analysis, the TPSA reflects the most beneficial generation charges with a resultant estimated generation rate reduction of PhP0.041 per kWh.

41. The implementation of the TPSA will afford COTELCO's end-users with a reliable supply of electricity at reasonable rates.

42. The foregoing notwithstanding, the grant of provisional authority and/or interim relief shall confirm the proper implementation of the TPSA which ultimately redounds to the benefit of COTELCO's customers who stand to be exposed to volatile prices at the WESM.

43. Pursuant to the ERC Revised Rules, this Honorable Commission may exercise its discretion by granting provisional authority and/or interim relief prior to a final decision.

44. Therefore, MPI and COTELCO's request for a provisional authority or interim relief confirming the authority of MPI and COTELCO to implement the TPSA, including the rates and tariff structure thereof, from the start of the supply by MPI to COTELCO under the subject TPSA.

45. This confirmation by the ERC will allow MPI and COTELCO to continuously implement the TPSA based on the rates indicated therein, and COTELCO to have a steady, continuous, guaranteed, and reliable source of electricity, which redounds to the benefit of COTELCO's end-users in terms of providing a more reasonable rate.

PRAYER

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

- a) Issue an Order **TREATING Annex "D"** and series, except the Rate Impact Analysis, **and Annex "E" and series**, and all other information contained therein as **CONFIDENTIAL**, directing their non-disclosure to persons other than officers and staff of this Honorable Commission, continuously protecting the said information from public disclosure by maintaining the same separate and apart from the records of the case, and ensuring that these are not divulged to unauthorized persons, and that the same will be returned to the Applicants, as applicable, pursuant to Rule 4 of the Revised ERC Rules; and
- b) After hearing on the merits, **RENDER** a Decision **GRANTING** the Joint Application and **APPROVING** the TPSA including all the rates, fees, charges, and tariff adjustment mechanism set out therein at the rates provided in the TPSA, and authorizing COTELCO to charge and collect the fees therein from its customers reckoned from the start of the power supply by MPI to COTELCO under the TPSA.

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

Pasig City, 13 February 2025.

(signature pages of counsel will follow)

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¹⁴

The surname of Atty. Filemon Ray Javier has been temporarily removed from the firm name of the Tolosa Javier Lim & Chua Law Firm in light of his appointment to the government.

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