

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

**IN THE MATTER OF THE
APPLICATION FOR THE
APPROVAL OF THE POWER
SUPPLY AGREEMENT
BETWEEN MERIDIAN POWER
INC. (MPI) AND VISAYAN
ELECTRIC COMPANY, INC.
(VISAYAN ELECTRIC), WITH
MOTION FOR CONFIDENTIAL
TREATMENT OF INFORMATION**

ERC Case No. 2024-115 RC

September 16, 2024

**MERIDIAN POWER INC. (MPI)
AND VISAYAN ELECTRIC
COMPANY, INC. (VISAYAN
ELECTRIC)**

Applicants.

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**JOINT APPLICATION
(with MOTION FOR CONFIDENTIAL TREATMENT
OF INFORMATION)**

Applicants **MERIDIAN POWER INC. (MPI)** and **VISAYAN ELECTRIC COMPANY, INC. (VISAYAN ELECTRIC)**, through their respective undersigned counsels, respectfully state:

PARTIES

1. Applicant Visayan Electric is a domestic corporation duly organized and existing under the virtue of the laws of the Republic of the Philippines, with principal office address at J. Panis Street, Banilad, Cebu City. It is a grantee of legislative franchise under Republic Act No. 9339, amending Republic Act

No. 3499, to construct, operate, and maintain, in the public interest and commercial purposes, a distribution system for the conveyance of electric power to the end-users in the cities of Naga, Talisay, Cebu, and Mandaue, and the Municipalities of Minglanilla, San Fernando, Consolacion, and Lilo-an, Province of Cebu (the “Franchise Area”).

2. Applicant MPI is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal place of business at 9th Floor, Oakridge IT Center 3, Oakridge Business Park, A.S. Fortuna Street, Brgy. Banilad, Mandaue City, Cebu. MPI is the owner of the 70.59MW Bunker C-Fired Diesel Power Plant generation facility located in Old VECO Compound, Brgy. Ermita, Carbon, Cebu City. The installed capacity of the generation plant is 70.59 MW while its net dependable capacity is 65 MW.

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

STATEMENT OF FACTS

4. Section 23 of the Electric Power Industry Reform Act of 2001 (EPIRA) mandates that a distribution utility has the obligation to supply electricity in the least cost manner to its captive market, subject to collection of retail rate duly approved by this Honorable Commission. In relation to this, Section 45 (b) of the EPIRA expressly allows distribution utilities to enter into bilateral power supply contracts subject to the review of this Honorable Commission. The same are consistent with the State’s policy to ensure the quality, reliability, security, and affordability of the supply of electric power.

Brief Description of the CSP Conducted

5. Visayan Electric is in need of supply of electricity for its power requirements to meet the demand of its captive customers beginning December 2023. In particular, Visayan Electric sought the supply of 30MW of firm capacity within the Franchise Area of Visayan Electric for its peaking requirement.

6. To address this need, Visayan Electric conducted a Competitive Selection Process (CSP) to procure power supply for a period of three (3) years, based on the Department of

Energy (DOE) Department Circular No. DC2023-06-0021,¹ and Energy Regulatory Commission (ERC) Resolution No. 16, Series of 2023.²

7. On 16 January 2023, the Board of Directors of Visayan Electric (“BOD”) authorized Visayan Electric to conduct a bidding for its peaking capacity of 30 MW on a three-year term power supply contract. Further, the BOD approved the selection process of its Bids and Awards Committee (“BAC”).

8. Through Invitation Letters, Visayan Electric invited the relevant parties to observe the conduct of the scheduled competitive selection process (CSP) for the supply of its peaking capacity of 30 MW.

9. On 10 and 17 January 2024, Visayan Electric published in The Philippine Star an Invitation to Submit Proposal for the Supply of Power (for the First Round), which includes the Invitation to Bid and Instructions to Bidders.

10. On 2 February 2024, Visayan Electric conducted its Pre-bid Conference. During the Pre-bid Conference, the comments and questions submitted by the bidders were reviewed and discussed. After, Visayan Electric issued a Supplemental Bid Bulletin, which was uploaded in the DOE portal on 16 February 2024.

11. On 4 March 2024, Visayan Electric’s BAC declared a failure of bidding (for the First Round) since only one bidder, MPI, submitted the necessary documents for the pre-qualification process, and no proposal was received by the BAC on the bid submission deadline.

12. Thereafter, on 20 and 27 March 2024, Visayan Electric caused again the publication in The Philippine Star of an Invitation to Submit Proposal for the Supply of Power (for the Second Round), which includes the Invitation to Bid and Instructions to Bidders.

13. Again, through Invitation Letters, Visayan Electric invited the relevant parties to observe the conduct of the scheduled CSP (for the Second Round) for the supply of its peaking capacity of 30 MW.

¹ Prescribing the Policy for the Mandatory Conduct of the Competitive Selection Process by the Distribution Utilities for the Procurement of Power Supply for their Captive Market.

² Implementing Guidelines for the Procurement, Execution, and Evaluation of Power Supply Agreements Entered Into By Distribution Utilities for the Supply of Electricity to their Captive Market (“2023 CSP Guidelines”).

14. On 16 April 2024, Visayan Electric conducted its Pre-bid Conference (for the Second Round). During the Pre-bid Conference (for the Second Round), the queries of the bidders were discussed. After, Visayan Electric issued a Supplemental Bid Bulletin, which was uploaded in the DOE portal on 2 May 2024.

15. On 17 May 2024, Visayan Electric's BAC declared again a failure of bidding (for the Second Round) since MPI was the only bidder that proceeded with the bid submission.

16. Hence, pursuant to DOE Department Circular No. DC2023-06-0021,³ and ERC Resolution No. 16, Series of 2023, Visayan Electric proceeded to direct negotiations for the procurement of its power supply requirements.

17. Visayan Electric's BAC sent a Letter of Invitation to the previous bidder, MPI, inviting the latter to participate in the direct negotiations.

18. Consequently, on 3 July 2024, Visayan Electric's Board of Directors authorized Visayan Electric to enter into a PSA with MPI.

19. Thus, on 15 August 2024, Visayan Electric and MPI executed the Power Supply Agreement (PSA) with a term of three (3) years, commencing on 26 December 2024 or upon the approval of this Honorable Commission, whichever comes first, with a contract capacity of 30MW.

20. Hence, this instant *Joint Application* for the approval of the PSA between Visayan Electric and MPI.

SALIENT TERMS OF THE PSA

21. The PSA between Visayan Electric and MPI, a copy of which is attached as **ANNEX "A"**, contains the following salient features:

21.1. Contract Period. Three (3) years from Commencement Date and subject to the condition precedent to start of supply. Commencement Date is on December 26, 2024 or upon the approval of the ERC, whichever comes first.

³ Prescribing the Policy for the Mandatory Conduct of the Competitive Selection Process by the Distribution Utilities for the Procurement of Power Supply for their Captive Market.

21.2. Contract Capacity. Contract Capacity refers to the capacity that the Supplier shall make available to the Customer per Interval as set out in item 2 of Schedule 3 (Conditions), *to wit*:

Capacity: 30,000 kW

Monthly Minimum Energy Off-take: 0 kWh

Maximum Contract Energy: 262,800 MWh/year
(Equivalent MWh at 100% availability per annum less the allowance for Forced and Scheduled outages)

21.3. Scheduled Outages. Scheduled Outage refers to a removal of the Plant or any portion thereof from service initiated by the Supplier for regular scheduled inspection, testing, preventive maintenance, corrective maintenance, repairs, replacement or improvement.

MPI shall be allowed Scheduled Outages not to exceed the Allowable Scheduled Outage Days each Contract Year during the Contract Period, during which times reduced or no supply of Contract Capacity will be available to Visayan Electric.

“Allowable Scheduled Outage Days” means 5.0 days or the number of allowed Planned Outage Days set in ERC Resolution No. 10, series of 2020 for the technology of Supplier.

21.4. Forced Outages. Forced Outage means (a) any interruption of the Plant’s generating capability resulting in an unplanned reduction or suspension of the electrical output from the Plant and/or unavailability of capacity in whole or in part from the Plant; (b) any automatic shutdown of any part of the Plant; and (c) any other unavailability of the Plant for operation (in whole or in part), maintenance and/or repair, and in each of (a), (b) or (c), that is not a Scheduled Outage and not the result of an event of Force Majeure, and that affects the Plant’s ability to generate and export all or any portion of the Contract Capacity or Associated Energy. Any interruption, reduction or suspension of the Plant’s output as instructed by the System Operator shall not be considered as a Forced Outage, provided, that, such interruption, reduction

or suspension does not arise, directly or indirectly, from any fault or negligence of the Supplier.

MPI shall be allowed Forced Outages not to exceed the Allowable Forced Outage Days each Contract Year during the Contract Period, during which times reduced or no supply of Contract Capacity will be available to the Customer.

“Allowable Forced Outage Days” means 14.0 days or the number of allowed Unplanned Outage Days set in ERC Resolution No. 10, series of 2020 for the technology of Supplier.

21.5. Replacement Power. Replacement Power refers to energy made available to Visayan Electric and supplied to or obtained by Visayan Electric from the WESM, third parties or any other alternative source.

During outages within the Allowable Forced Outage Days and Allowable Scheduled Outage Days for the Contract Year, MPI shall not be required to supply Visayan Electric with Replacement Power. In such circumstances, Visayan Electric, at its own cost, shall source the Replacement Power from the WESM or other sources and MPI shall not bill Visayan Electric for these quantities. In case Visayan Electric fails to source the Replacement Power, MPI, in coordination with Visayan Electric may provide Replacement Power, and shall be paid by Visayan Electric based on the ERC-approved rates.

During any period of Scheduled Outage which is beyond the Allowable Scheduled Outage Days or Forced Outage which is beyond the Allowable Forced Outage Days, MPI shall procure for Visayan Electric and purchase Replacement Power from the WESM or third parties. Replacement Power quantities procured by the Supplier under this Article 8.3.3 shall be declared as BCQ and shall be paid by Visayan Electric at the Contract Price or actual cost of the Replacement Power purchased, whichever is lower.

21.6. Payment of Fees. MPI shall deliver to Visayan Electric an itemized Billing Statement setting out

the Contract Price due on account of the Contract Capacity made available and the Associated Energy (or Replacement Power, as the case may be) Delivered during each Billing Period on or before the fifth (5th) Day of the Payment Month, subject to the conditions under item 4 of Schedule 3.1. The energy levels per interval that will be used for purposes of the Billing Statement will be based on the levels of Associated Energy (or Replacement Power, as the case may be) Delivered by MPI in accordance with Schedule 7.3 (Nomination Procedure).

21.7. Performance Bond. MPI shall deliver to Visayan Electric a security (the "Performance Bond") in the amount equivalent to the three (3)-month contract cost of this PSA within ten (10) calendar days from the execution of this agreement. The Performance Bond shall stand as security for delay or failure in the filing of the application. The Performance Bond shall be in the form of cash, manager's check, or an on-demand irrevocable, unconditional stand-by letter of credit. If the Performance Bond is in the form of an on-demand irrevocable, unconditional stand-by letter of credit, it shall: (i) at the time of the issuance thereof, be issued by an international bank or domestic bank acceptable to Visayan Electric; (ii) have a face value equivalent to not less than the Security Amount; and (iii) be in the form set out in Schedule 5.3.1 (Performance Bond).

21.8. Electricity Fees. Electricity Fees refer to the total amount of charges due from Visayan Electric in respect of the Contract Capacity and all Energy supplied by MPI during a Billing Period computed in accordance with Schedule 7.1 (Rate Schedule).

The computation of Electricity Fees contained in Schedule 6.1.2 (Rates Schedule) of the PSA is as follows:

$$\text{Electricity Fees} = A + B + C + D + E$$

All computations on payments to Supplier shall not be rounded off, except for the final PHP amount, which shall be rounded off to the nearest Philippine centavo.

Where:

$$A = \text{CRF} \times \text{CC} \times \text{Adj}$$

CRF = 265.00 Php/kW/mo

CC = the contracted capacity in kW for the Billing Period as indicated in the attached Delivery Schedule

$$Adj = \sum_{j=i}^n \sum_{i=1}^{Int} \frac{ACC_{ij}}{CC \times Int \times n}$$

ACC_{ij} = CC less affected capacity due to Force Majeure Outage within allowance for interval i and day j

Int = the number of Trading Intervals per day

n = the number of days for the current Billing Period

B = FOM x CC x Adj

$$FOM = Base\ FOM \times \frac{RPCPI_m}{RPCPI_0}$$

Base FOM = 302.26 Php/kW-mo

RPCPI_m = the Philippine Consumer Price Index for All Income Households in the Philippines – All Items (2018=100) published as the current billing month.

RPCPI₀ = the Philippine Consumer Price Index for All Income Households in the Philippines – All Items (2018=100) of 124.10 as of December 2023

CC = as previously defined

Adj = as previously defined

C = VOM x TED

$$VOM = Base\ VOM \times \frac{RPCPI_m}{RPCPI_0}$$

Base VOM = 0.6435 Php/kWh

RPCPI_m = the Philippine Consumer Price Index for All Income Households in the Philippines – All Items (2018=100) published as the current billing month.

RPCPI₀ = the Philippine Consumer Price Index for All Income Households in the Philippines – All Items (2018=100) of 124.10 as of December 2023

TED = the total energy delivered (in kWh) within CC per Trading Interval and within the Maximum Contract Energy per Billing Period during the current Billing Period.

D = Fuel x TED

Fuel = (HFCR x PHFO) + (LOCR x PLO) + (DOCR x PDO) + Related Actual Fuel Cost
HFCR = Heavy Fuel Oil Consumption Rate of 0.24 li/kWh or actual, whichever is lower

PHFO = the monthly actual cost per liter of heavy fuel oil (HFO), calculated based on weighted average price using the data of actual monthly invoices of deliveries, inventories and consumption.

LOCR = Lube Oil Consumption Rate of 0.0016 li/kWh or actual, whichever is lower

PLO = the monthly actual cost per liter of lube oil (LO), calculated based on weighted average price using the data of actual monthly invoices of deliveries, inventories and consumption.

DOCR = Diesel Oil Consumption Rate of 0.0070 li/kWh or actual, whichever is lower
 PDO = the monthly actual cost per liter of diesel oil (DO), calculated based on weighted average price using the data of actual monthly invoices of deliveries, inventories and consumption.
 Related Actual Fuel Cost = other fuel costs including start-up and shutdown costs that the Supplier/Seller may incur in relation to fuel for a corresponding Billing month
 TED = as previously defined

E = all future taxes, fees and imposts (including increases, or adjustments thereon and increases, or adjustments on existing taxes, fees and imposts), such as but not limited to real property taxes, excise taxes, and other future charges imposed on the Power Plant for the generation of electricity, in Philippine Pesos

22. Visayan Electric simulated a rate impact analysis based on assumed quantities, the indicative rate impact on its overall generation rate with and without supply from MPI under the PSA are as follows:

Visayan Electric Generation Rate (Php/kWh)		
Without MPI PSA	With MPI PSA	Rate Impact
6.3197	6.3124	-0.0073

**Note: Actual WESM prices and indices for the first seven months of 2024*

23. As shown in the rate impact analysis, the implementation of the PSA between MPI and Visayan Electric will benefit Visayan Electric and its consumers with an estimated generation rate reduction of Php0.0073/kWh. Thus, the PSA subject of this Application will ultimately provide Visayan Electric’s end-users with a continuous and reliable supply of electricity at affordable rates.

24. The Applicants submit the following documents for the evaluation of the Joint Application:

Description of Document	Annex
Power Supply Agreement (PSA) between Visayan Electric and MPI dated 15 August 2024.	“A”
Visayan Electric’s Amended Articles of Incorporation	“B”
Visayan Electric’s Amended By-Laws	“B-1”

Visayan Electric's Latest General Information Sheet	"C"
Visayan Electric's Verified Certification showing the list of Board of Directors and Board Members	"D"
Visayan Electric's Demand Side Management Program	"E"
Visayan Electric's Write-up on Non-Applicability of Certain Document/s: <ul style="list-style-type: none"> Transition Supply Contract with the National Power Corporation 	"F"
Visayan Electric's Supply and Demand Scenario and Average Daily Load Curve (Confidential)*	"G and series"
Visayan Electric's Single-line Diagram Connection	"H"
Visayan Electric's Performance Assessment of the System (Confidential)*	"I*"
Visayan Electric's Estimated Potential Reduction in Load Supply (Confidential)*	"J*"
Visayan Electric's Secretary's Certificate showing the Board Resolution authorizing the conduct of the CSP and Bids and Awards Committee ("BAC") selection	"K"
Invitation Letters to CSP Observers (First Round)	"L and series"
Invitation Letters to CSP Observers (Second Round)	"M and series"
Certificate of Conformity (First Round)	"N"
DOE Letter (Re: Re-Issuance of Certificate of Conformity) dated 13 March 2024 (Second Round)	"N-1"
Visayan Electric's Invitation to Bid with Instructions to Bidders, and Proofs of Publication and Posting (First Round)	"O and series"
Visayan Electric's Invitation to Bid with Instructions to Bidders, and Proofs of Publication and Posting (Second Round)	"P and series"
Visayan Electric's Terms of Reference and Invitation to Submit Proposal (First Round)	"Q"

Visayan Electric's Terms of Reference and Invitation to Submit Proposal (Second Round)	"Q-1"
Supplemental Bid Bulletin No. 1 dated 9 February 2024 and proof of posting (First Round)	"R"
Supplemental Bid Bulletin No. 1 dated 2 May 2024 and proof of posting (Second Round)	"R-1"
Visayan Electric's BAC Letter dated 6 March 2024 declaring the failure of bidding (First Round)	"S"
Visayan Electric's BAC Letter declaring the failure of bidding (Second Round)	"S-1"
Visayan Electric's Secretary's Certificate showing the Board Resolution authorizing Visayan Electric to enter into Direct Negotiations	"T"
Visayan Electric's Letter of Invitation (Direct Negotiations)	"U"
Visayan Electric's Secretary's Certificate showing the Board Resolution authorizing Visayan Electric to enter into a PSA with MPI (Direct Negotiations)	"V"
Visayan Electric's Notice to Proceed	"W"
Visayan Electric's Certification on the Conduct of CSP	"W-1"
Visayan Electric's Protest Mechanism	"X"
Visayan Electric's Indicative Rate Impact	"Y"
Visayan Electric's Wholesale Electricity Spot Market (WESM) Registration	"Z"
MPI's Certificate of Registration of Articles of Incorporation	"AA"
MPI's Amended Articles of Incorporation	"AA-1"
MPI's By-Laws	"AA-2"
MPI's Latest General Information Sheet	"BB"
MPI's Verified Certification showing the list of Board of Directors and Board Members of the Ultimate Parent Company dated 07 August 2024	"CC"

MPI's Amended Environmental Compliance Certificate Ref. No. ECC-CO-9702-001-207C	“DD”
MPI's Provisional Authority to Operate Certification dated 07 June 2024	“EE”
MPI's Amended Certificate of Endorsement from Department of Energy (DOE) PDP No. 2024-04-047	“FF”
MPI's Single-line Diagram Connection	“GG”
NGCP's Certification on MPI's Transmission Service Agreement (TSA) and Metering Service Agreement (MSA) dated 23 May 2024	“HH”
MPI's Interconnection Agreement dated 13 May 2024	“II”
Executive Summary of Visayan Electric-MPI PSA	“JJ”
MPI's Sources of Funds (Confidential)*	“KK*”
MPI's Generation Rate and Derivation (Confidential)*	“LL*”
MPI's Financial Model (Confidential)*	“MM*”
MPI's Cash Flow (Confidential)*	“NN*”
MPI's Sample Bill	“OO”
MPI's Write-up on its Fuel Supply Agreement (Confidential)*	“PP*”
Sworn Statement Re: MPI's Explanation on Fuel Supply Agreement (Confidential)*	“QQ*”
MPI's Write-up on Relevant Technical and Economic Characteristics of the Generation Capacity	“RR”
MPI's Latest Audited Financial Statements	“SS”
MPI's Net Heat Rate Certification (Confidential)*	“TT*”
MPI's WESM Registration as Direct WESM Member and Trading Participant	“UU”
MPI's WESM Registration as Ancillary Services Provider	“UU-1”
Wheeling Service Agreement (Confidential)*	“VV*”

<p>MPI's Omnibus Certification on the Non-Applicability of Certain Documents:</p> <ul style="list-style-type: none"> ● Shareholders Agreement; ● Certificate of Registration with attached Terms and Conditions issued by the DTI – Board of Investments (BOI); ● Renewable Energy Service and Operating Contract from the DOE; ● Certificate of Confirmation of Commerciality issued by the DOE to the developer; ● Certificate of Confirmation of Commerciality issued by the DOE to the developer ● Water Permit from the National Water Resources Board (NWRB); ● Copy of any Related Agreements (such as: EPC Contract, IPPA Agreement, Project Feasibility Study, Wholesale Aggregator Agreement); ● Certification from the Bank or Lending Institution specifying the principal amortization, term, and interest during the cooperation period of the loan agreement; ● Life of Asset versus Term of Loan (Computation Levelized Cost); ● Bank Certification of Long-Term Loans, including Schedule of Original Loan (principal amount, interest payable, term of the loan) and updated balances (principal Amount, interest payable, and term of the loan); ● If the cost is different from previously filed PSA, Applicant/s should include all updated costs (such as BIR Receipts, Seller's Receipt, Purchase Orders with Annotations of Acceptance or Transfers of Materials/Services, Deeds of Sale and other forms of Conveyance of Ownership (Build Operate Transfer), Costs that will justify / explain the reasons for the different cost in the PSA versus other PSAs submitted to the Commission ● Simulation for MEOT 	<p>“WW”</p>
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** Subject of the Motion for Confidential Treatment of Information*

MOTION FOR CONFIDENTIAL TREATMENT OF ANNEXES “G and series”, “I”, “J”, “KK”, “LL”, “MM”, “NN”, “PP”, “QQ”, “TT”, and “VV”

25. Under the ERC Rules of Practice and Procedure, a party to any proceeding before the Honorable Commission may request that certain information not be disclosed and be treated as confidential.⁴ Pursuant to this, Applicants pray for the confidential treatment of the information contained in the following annexes:

Documents and/or Information	Annex
Visayan Electric's Supply and Demand Scenario and Average Daily Load Curve (Confidential)*	"G and series*"
Visayan Electric's Performance Assessment of the System (SAIFI and SAIDI) (Confidential)*	"I*"
Visayan Electric's Certification on Potential for a Reduction in Load Supply (Confidential)*	"J*"
MPI's Sources of Funds (Confidential)*	"KK*"
MPI's Generation Rate and Derivation (Confidential)*	"LL*"
MPI's Financial Model (Confidential)*	"MM*"
MPI's Cash Flow (Confidential)*	"NN*"
MPI's Write-up on its Fuel Supply Agreement (Confidential)*	"PP*"
Sworn Statement Re: MPI's Explanation on Fuel Supply Agreement (Confidential)*	"QQ*"
MPI's Net Heat Rate Certification (Confidential)*	"TT*"
Wheeling Service Agreement (Confidential)*	"VV*"

26. **Annexes "G and series", "I", and "J"** contain sensitive business information and data that impacts Visayan Electric's planning, operations, and negotiations including the competitiveness of its CSPs; and **Annexes "KK", "LL", "MM", "NN", "PP", "QQ", "TT", and "VV"** contain financial models, computation/calculation for rate determination and cost components. Hence, Applicants have actual and valuable proprietary interest to protect such information and data, which fall within the bounds of "trade secrets" that are entitled to

⁴ Section 1, Rule 4, Rules of Practice and Procedure of the Energy Regulatory Commission

protection under the Constitution, statutes, and rules and regulations of this Honorable Commission.

26.1. The foregoing annexes contain non-public, proprietary information and data involving Applicants' investments, business operations, and financial calculations. Applicants determine, among others, their competitive rates through its power rate calculations, and its financial model through these information. Thus, the methodology thereof is privileged and confidential in nature. Furthermore, these information and data are not generally available to the public. Applicants' competitiveness will seriously be prejudiced if these information are unduly disclosed.

27. In the case of *Air Philippines Corporation vs. Pennswell, Inc.*,⁵ the Supreme Court defined "trade secrets" and explained that:

"A trade secret is defined as a plan or process, tool, mechanism or compound known only to its owner and those of his employees to whom it is necessary to confide it. The definition also extends to a secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade having a commercial value. 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 or formula, but can be a price list or catalogue or specialized customer list. It is indubitable that trade secrets constitute proprietary rights." (Emphasis supplied.)

27.1. Moreover, the Honorable Commission categorically acknowledged in its Decision in ERC Case No. 2015-111 RC⁶ that formulas and pricing structures of a generation company must be accorded confidential protection, to wit:

⁵ 564 Phil. 774 (2007), G.R. No. 172835.

⁶ Decision, 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).*"

“In the case of PNOG RC, the documents sought to be protected from disclosure contain 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.” (*Emphasis supplied*).

27.2. Clearly, the Honorable Commission recognizes the importance of treating pricing structures as confidential in order to ensure competitiveness of the generation sector. This information, which falls within the definition of a trade secret as defined by jurisprudence, merits the confidential treatment provided for under Rule 4 of the ERC Rules of Practice and Procedure.

28. Further, the treatment of the information contained in **Annexes “KK”, “LL”, “MM”, “NN”, “PP”, “QQ”, “TT”, and “VV”** as confidential information is consistent with the Honorable Commission’s *Matrix of Confidential and Non-Confidential Document and Information (as of 13 November 2023)* (“Matrix”). In the *Matrix*, financial models, computation/calculation for rate determination and cost components should be treated with confidentiality because they have proprietary value that constitute trade secrets. Therefore, as described above, since the information in the subject documents fall in these categories, **Annexes “KK”, “LL”, “MM”, “NN”, “PP”, “QQ”, “TT”, and “VV”** should likewise be treated with confidentiality.

29. In view of the foregoing and pursuant to Rule 4 of the Honorable Commission’s Revised Rules of Practice and Procedure, Applicants respectfully request that the attached **Annexes “G and series”, “I”, “J”, “KK”, “LL”, “MM”, “NN”, “PP”, “QQ”, “TT”, and “VV”** and the information contained therein be treated as confidential and privileged, and not be disclosed to persons other than the necessary officers and staff of this Honorable Commission.

30. Applicants hereby submit **Annexes “G and series”, “I”, “J”, “KK”, “LL”, “MM”, “NN”, “PP”, “QQ”, “TT”, and “VV”** via: (i) password-protected electronic copies, and (i) one (1) physical copies each of the respective confidential documents in a sealed envelope, with the envelope and each page of the documents stamped with the word “Confidential”.

PRAYER

WHEREFORE, premises considered, Applicants **MERIDIAN POWER INC. (MPI)** and **VISAYAN ELECTRIC COMPANY, INC. (VISAYAN ELECTRIC)** respectfully pray that the Honorable Commission:

1. **ISSUE** an Order treating **Annexes “G and series”, “I”, “J”, “KK”, “LL”, “MM”, “NN”, “PP”, “QQ”, “TT”, and “VV”** as confidential in perpetuity, directing their non-disclosure to persons other than the officers and staff of the Honorable Commission, perpetually 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, pursuant to Rule 4 of its Rules of Practice and Procedure;
2. After hearing on the merits, **ISSUE** a Decision **APPROVING** the Joint Application and PSA between Visayan Electric and MPI, including all the rates, fees, charges, and tariff adjustment mechanisms set out therein at the rates provided in the PSA, and authorizing Visayan Electric to charge and collect such rates, fees, charges, and tariff adjustments therein from its customers reckoned from the start of the supply by MPI to Visayan Electric under the PSA.

Other relief just and reasonable are likewise prayed for.

Taguig City and Pasig City for Pasig City, 2 September 2024.

<Signature Pages Follow.>

VISAYAN ELECTRIC COMPANY, INC.

By:

PAUL B. SORIÑO

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NIÑA DIANNE R. SANTIAGO

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ALBERT G. CUKINGNAN, JR.
PTR No. 0174194 / 01-08-2024 / Pasig City
IBP Lifetime Member No. 010772 / O.R. No. 892677 / Calmana
Roll No. 61125
MCLE Compliance No. VII – 0016929 valid until 04/14/2025
Email address: agcukingnan@symecslaw.com



DIANE MARGRET V. UY
PTR No. 0174196 / 01-08-2024 / Pasig City
IBP No. 414886/01-10-2024/PPLM
Roll No. 72748
MCLE Compliance No. VII-0017140 valid until 4/14/2025
Email address: dvuy@symecslaw.com



XIAN JUSTIN R. ALDEN
PTR No. 0174195/ 01-08-2024 / Pasig City
IBP No. 414904/01-10-2024/Tarlac City
Roll No. 76147
MCLE Compliance – Admitted 2022
Email address: xralden@symecslaw.com



MARIVIC A. WAYAH
PTR No. 0174187/01-08-2024/ Pasig City
IBP No. 414890/01-10-2024 /Baguio City
Roll No. 87890
MCLE Compliance – Admitted 2023
Email address: mawayah@symecslaw.com

**VERIFICATION AND
CERTIFICATION OF NON-FORUM SHOPPING**

I, **YVONNE SINGUIT**, of legal age, Filipino and with office address at J. Panis Street, Banilad, Cebu City after having been duly sworn in accordance with law, hereby depose and state that:

1. I am the authorized representative of **VISAYAN ELECTRIC COMPANY, INC. (VISAYAN ELECTRIC)**, Co-Applicant in the above-captioned case, per attached Secretary's Certificate;

2. I caused the preparation and filing of this *Joint Application with Motion for Confidential Treatment of Information* and have read the contents thereof, and, based on my own personal knowledge, belief and on authentic records of Visayan Electric, all the allegations contained therein on the part of Visayan Electric are true and correct. Furthermore, the *Joint Application* is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and that the factual allegations therein have evidentiary support or, if specifically so identified, will have evidentiary support after a reasonable opportunity for discovery.

3. Visayan Electric has not commenced any other action or proceeding involving the same issue/s in the Supreme Court, the Court of Appeals or any court, tribunal, or quasi-judicial agency and, to the best of my knowledge, no such other action or claim is pending therein; and

4. Should I hereinafter learn that the same or a similar action or claim has been filed or is pending in the Supreme Court, the Court of Appeals or any court, tribunal, or quasi-judicial agency, I shall report said fact within five (5) days from discovery thereof to this Honorable Commission.


IN WITNESS WHEREOF, I have hereunto set my hand this 02 September 2024 at Mandaue City.


YVONNE SINGUIT
Affiant

SUBSCRIBED AND SWORN to before me this SEP 02 2024 in Mandaue City City. Affiant exhibited to me her Driver's License No. G06-05-000086 issued in Cebu City which will expire on September 1, 2034.

Doc. No. 156 ;
Page No. 33 ;
Book No. I ;
Series of 2024.




ATTY. KATRINA MARIE C. SURABILLA
Notarial Commission No. 2024-65 until 12/31/25
City of Mandaue and the Municipalities under its Jurisdiction
Unit 2-902, 9th Floor, OITC-2, Oakridge Business Park
A.S. Fortuna Street, Banilad, Mandaue City 6014
Roll of Attorneys No. 72246
PTR No.: MC 1753949, 01-16-24; Mandaue City
IBP No.: 416401; 01-11-2024; Cebu Chapter
MCLE Compliance No.: VII-0005939; 4-14-2025

**VERIFICATION AND
CERTIFICATION OF NON-FORUM SHOPPING**

I, **Douglas E. Subang**, of legal age, Filipino and with office address at 9th Floor OITC3 Oakridge Business Park, A.S. Fortuna St. Banilad, Mandaue City after having been duly sworn in accordance with law, hereby depose and state that:

1. I am the authorized representative of **MERIDIAN POWER INC. (MPI)**, Co-Applicant in the above-captioned case, per attached Secretary's Certificate;

2. I caused the preparation and filing of this *Joint Application with Motion for Confidential Treatment of Information* and have read the contents thereof, and, based on my own personal knowledge, belief and on authentic records of MPI, all the allegations contained therein on the part of MPI are true and correct. Furthermore, the *Joint Application* is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and that the factual allegations therein have evidentiary support or, if specifically so identified, will have evidentiary support after a reasonable opportunity for discovery.

3. MPI has not commenced any other action or proceeding involving the same issue/s in the Supreme Court, the Court of Appeals or any court, tribunal, or quasi-judicial agency and, to the best of my knowledge, no such other action or claim is pending therein; and

4. Should I hereinafter learn that the same or a similar action or claim has been filed or is pending in the Supreme Court, the Court of Appeals or any court, tribunal, or quasi-judicial agency, I shall report said fact within five (5) days from discovery thereof to this Honorable Commission.

IN WITNESS WHEREOF, I have hereunto set my hand this SEP 02 2024 at Mandaue City.


DOUGLAS E. SUBANG
Affiant

SUBSCRIBED AND SWORN to before me this SEP 02 2024 in Mandaue City
City. Affiant exhibited to me his/her JMVD 10 CRN-0006-1619107-3 issued on
and valid until _____.

Doc. No. 2516 ;
Page No. 53 ;
Book No. 11 ;
Series of 2024.




ATTY. KRISBEN ZILNER P. BUOT
Notarial Commission No. 2024-62 until 12/31/2025
City of Mandaue and the Municipalities Under its Jurisdiction
Unit 2-902, 9th Floor, OITC-2 Bldg., Oakridge Business Park,
A.S Fortuna St., Banilad, Mandaue City, 6014
Roll of Attorneys No. 63880
PTR No. MC 1753948/01-16-2024/Mandaue City
IGP No. 423447/01-16-2024/Cebu Chapter
MCLE Compliance No. VII-0009175; 02/12/2022

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

SECRETARY'S CERTIFICATE

We, **JOAN A. GIDUQUIO-BARON** and **JUSTINE MAE A. CABATINGAN**, Filipinos, of legal age and residents of Cebu City, Philippines, after having been duly sworn according to law, hereby depose and state that:

1. We are the Acting Corporate Secretary and Assistant Corporate Secretary, respectively, of **VISAYAN ELECTRIC COMPANY, INC.** (the "Company"), a corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office address at J. Panis Street, Baniad, Cebu City;
2. At the regular meeting of the Board of Directors held on **July 3, 2024** at which meeting a quorum was present and acting throughout, the following resolutions were unanimously passed and approved:

"RESOLVED, that the Board of Directors of **VISAYAN ELECTRIC COMPANY, INC.** (the "Company") authorize, as it hereby authorizes the Company to file for a Joint Application and other necessary pleadings before the Energy Regulatory Commission ("ERC") for the approval of its Power Supply Agreement with Meridian Power, Inc. (the "Joint Application");

RESOLVED FURTHER, that in connection with the foregoing, the Company authorizes any one (1) of **Attys. Paul B. Sorioño, Celeni Kristine G. Guinto, Leo Angelo E. Fornesa, Rosanne Jeli G. Magtagñob, Niña Dianne R. Santiago**, and/or any person appointed or designated by them, to represent the Company before the ERC to do any of the following:

- a. File the Joint Application and subsequent pleadings to represent the Company and to appear for or on its behalf in all proceedings, including pre-trial conferences, hearings, meetings and discussions before the court in respect of the Joint Application, to perform any and all acts and deeds and to submit and sign such documents and pleadings necessary to implement this authority;
- b. Act as agent of and appear in behalf of the Company in the proceedings relating to the Joint Application, with full power to make commitments and take positions, and to consider (i) the possibility of an amicable settlement or a submission to arbitration, mediation or other modes of alternative dispute resolution; (ii) the simplification of the issues; (iii) the necessity or desirability of amendments to the pleadings; (iv) the possibility of obtaining stipulations or admissions of facts and of documents totally or

partially to avoid unnecessary proof; (v) the limitation of the number of witnesses or time allocated to particular witnesses and issues; (vi) the advisability of a preliminary reference of issues to a commissioner; (vii) the necessity or desirability of having an expository hearing or consumer forum; (viii) the procedures at the hearing and hearing schedule; (ix) the submission of written testimonies and exhibits to be offered and the marking thereof; (x) the agreements regarding service of documents; and (xi) such other matters as may aid in the prompt disposition of the proceedings;

- c. Negotiate, conclude, enter into and execute a compromise or amicable settlement of the Joint Application, if appropriate, or to submit the Joint Application to alternative modes of dispute resolution, under such terms and conditions as they may deem just and reasonable;
- d. File any appeal or represent the Company in further proceedings; and
- e. Do and perform on behalf of the Company any act and deed relating to the Joint Application which the Company could legally do and perform.

RESOLVED FURTHER, that the Company authorize, as it hereby authorizes Ms. Yvonne Singuit, Attorney-in-Fact, to sign, subscribe, and execute for and in behalf of the Company, or to appoint any other person to sign, and execute the necessary papers and/or documents, the Verification and Certification Against Forum Shopping, and for all other pleadings required to be verified relative to the Joint Application, indemnity agreements, settlement or compromise agreement, special power of attorney and any other pleading or document required in the course of the Joint Application, to represent the Company as its witness during the hearings of the Joint Application, to appoint any other person as witness, and to do and perform all such other acts and things as may be deemed necessary or appropriate, and convenient in order to effect the foregoing resolutions;

RESOLVED FINALLY, that the Company hereby affirms, confirms and ratifies all that the foregoing representatives have done in connection with the Joint Application."

- 3. The foregoing board resolutions have not been revoked, amended, or modified, and are in full force and effect as of the date hereof.
- 4. The foregoing statements are in accordance with the records of the Company.

IN WITNESS WHEREOF, I have hereunto set my hand this AUG 07 2024 2024 at Mandaue City, Philippines.

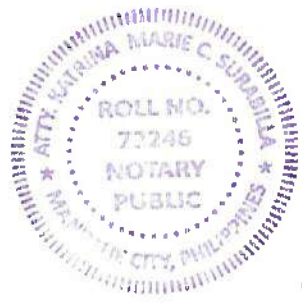
Joan A. Giduquio-Baron
JOAN A. GIDUQUIO-BARON
Acting Corporate Secretary

Justine Mae A. Cabatingan
JUSTINE MAE A. CABATINGAN
Assistant Corporate Secretary

SUBSCRIBED AND SWORN to before me this AUG 07 2024 at Mandaue City, Philippines, Affiants, who are personally known to me, exhibited to me and presented their competent evidence of identity, to wit:

Name	Competent Evidence of Identity	Issue on/at
Joan A. Giduquio-Baron	Passport No. P1346441C	August 17, 2022; DFA Manila
Justine Mae A. Cabatingan	Passport no. P0123877B	January 5, 2019; DFA Cebu

Doc No. 88
Page No. 19
Book No. 1
Series of 2024.



Katrina Marie C. Surabilla
ATTY. KATRINA MARIE C. SURABILLA
Notarial Commission No. 2024-65 until 12/31/25
City of Mandaue and the Municipalities under its Jurisdiction
Unit 2-90219 Floor, OITC-2, Oakridge Business Park
A.S. Fortuno Street, Banilad, Mandaue City 6014
Roll of Attorneys No. 73246
PTR No.: MC 1753949, 01-16-24; Mandaue City
IBP No.: 436401; 01-11-2024; Cebu Chapter
MCLE Compliance No.: VII-0005930; 4-14-2025

Republic of the Philippines)
Mandaluyong City) S.S.

SECRETARY'S CERTIFICATE

I, **MA. ROFIL E. CARPESO**, Filipino, of legal age and with office address at 3rd Floor, La Paz Centre Building, Salcedo Street Corner V.A. Rufino Street, Legaspi Village, Makati City, Philippines, after having been sworn in accordance with law, hereby depose and state that:

1. I am the duly elected Corporate Secretary of **MERIDIAN POWER INC.** (the "Corporation"), a corporation duly organized and existing pursuant to and under the laws of the Republic of the Philippines, with principal business address at 9th Floor, Oakridge IT Center 3, Oakridge Business Park, A.S. Fortuna Street, Brgy. Banilad, Mandaue City, Cebu, Philippines.

2. At the special meeting of the Board of Directors held on July 30, 2024, at which meeting a quorum was present and acting throughout, the following resolutions were unanimously passed and approved:

"RESOLVED, that, MERIDIAN POWER INC. (the "Corporation") be authorized, as it is hereby authorized, to file with the Energy Regulatory Commission ("ERC") an Application for Approval of the Power Supply Agreement ("PSA") between VISAYAN ELECTRIC COMPANY, INC. ("VECO") and the Corporation, with Motion for Final Authority (the "ERC Application");"

"RESOLVED FURTHER, that the Corporation be authorized, as it is hereby authorized, to appoint **DOUGLAS E. SUBANG** as the Corporation's Authorized Representative, with authority:

- a) to represent the Corporation in the ERC Application;
- b) to execute, sign, and obtain any document, including verifications, certifications against forum shopping, verified declaration and other similar affidavits which may be required during the course of the ERC Application;
- c) to represent the Corporation as witness and/or appoint any person to represent the Corporation as its witness during the hearing of the ERC Application; and
- d) to do and perform on behalf of the Corporation any act necessary to be done in the premises, and the

Corporation hereby ratifies and confirms all that he has done or caused to be done in the course of the ERC Application, and all that he shall do or cause to be done by virtue of his authority;

"RESOLVED FURTHERMORE, that **SYMECS LAW** and/or any of its lawyers, namely: **ATTY. ALBERT G. CUKINGNAN, JR., ATTY. MIGUEL S. REGAL, ATTY. DIANE MARGRET V. UY, ATTY. XIAN JUSTIN R. ALDEN, ATTY. MARIVIC A. WAYAH, and ATTY. ALEJANDRO C. QUINTAYO, JR.** be authorized to represent the Corporation in the ERC Application, with authority to:

- a) to represent the Corporation and to appear for or on its behalf in all proceedings, including pre-trials, hearings, meetings, and discussions before the ERC in respect of the ERC Application, to perform any and all acts and deeds and to submit and sign such documents, affidavits, and pleadings necessary to implement this authority;
- b) to act as an agent of and appear on behalf of the Corporation in the proceedings relating to the ERC Application, with full power to make commitments and take positions, and to consider (i) the possibility of an amicable settlement or a submission to arbitration, mediation, or other modes of alternative dispute resolution; (ii) the simplification of the issues; (iii) the necessary or desirability of amendments to the pleadings; (iv) the possibility of obtaining stipulations or admissions of facts and of documents totally or partially to avoid unnecessary proof; (v) the limitation of the number of witnesses or time allocated to particular witnesses and issues; (vi) the advisability of a preliminary reference of issues to a commissioner; (vii) the necessity or desirability of having an expository hearing or consumer forum; (viii) the procedure at the hearing and hearing schedule; (ix) the submission of written testimony and exhibits to be offered and the marking thereof; (x) such other matters as may aid in the prompt disposition of the proceedings;
- c) to negotiate, conclude, enter into, and execute a compromise or amicable settlement of the ERC Application, if appropriate, or to submit the same to alternative models of dispute resolution, under

such terms and conditions as they may deem just and reasonable;

- d) to file any appeal or represent the Corporation in further proceedings;
- e) to appoint such other counsel as may be necessary; and
- f) to do and perform on behalf of the Corporation any act and deed relating to the ERC Application which the Corporation could legally do and perform."

"RESOLVED, FINALLY, that the Corporation hereby ratifies and confirms all that the aforesaid authorized representatives have done or caused to be done on behalf of the Corporation in the course of the ERC Application."

3. That above board resolutions have not been revoked, amended, or modified, and are in full force and effect as of the date hereof.

4. The foregoing statements are in accordance with the records of the Corporation.

(Signature page follows)

IN WITNESS WHEREOF, we have hereunto set our hands this

in Mandaluyong City, Philippines.


12 AUG 2024



ATTY. MA. ROFIL E. CARPESO
Corporate Secretary

SUBSCRIBED AND SWORN to before me this 12 AUG 2024, in Mandaluyong City, Philippines, Affiant, is personally known to me, exhibited to me her Driver's License No. N03-13-007205 which will expire on 11 September 2033.

Doc. No. 07 ;
Page No. 03 ;
Book No. VI ;
Series of 2024.



REDMOND ALEJANDRO B. LIM
Notary Public for Mandaluyong City
Appointment No. 0584-23
Until December 31, 2024
No. 7 Pioneer St., Mandaluyong City
Roll of Attorneys No. 75322
PTR No. 3194982/01.08.2024/Mandaluyong City
IBP No. 394103/01.04.2024/Makati City
MCLE Compliance No. VII-0011437 / 02.24.2022 / Pasig City