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

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IN THE MATTER OF THE JOINT APPLICATION FOR APPROVAL OF THE EMERGENCY POWER SUPPLY AGREEMENT DATED 3 FEBRUARY 2023 BETWEEN MANILA ELECTRIC COMPANY AND GNPOWER DINGININ LTD. CO., WITH MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION

ERC CASE NO. 2023-031 RC
April 13, 2023

MANILA ELECTRIC COMPANY AND GNPOWER DINGININ LTD. CO.,
Applicants.

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JOINT APPLICATION FOR APPROVAL OF EMERGENCY POWER SUPPLY AGREEMENT DATED 3 FEBRUARY 2023
(WITH MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION)

Applicants **MANILA ELECTRIC COMPANY ("MERALCO")** and **GNPOWER DINGININ LTD. CO. ("GNPD"; together with MERALCO, the "Applicants"),** by undersigned counsels, and to this Honorable Commission, most respectfully state:

I. The APPLICANTS

A. MERALCO

1. Applicant MERALCO is a private corporation existing under the laws of the Republic of the Philippines, with principal office located at Lopez Building, Ortigas Avenue, Brgy. Ugong, Pasig City. It may be

served with notices and other processes of this Honorable Commission through its counsel at the address indicated herein.

2. MERALCO has a legislative franchise to operate and maintain a distribution system in the cities/municipalities of Metro Manila, Bulacan, Cavite and Rizal and certain cities/municipalities/barangays in Batangas, Laguna, Quezon and Pampanga, pursuant to Republic Act No. 9209, and is authorized to charge all its customers for their electric consumption at the rates approved by the Honorable Commission.

B. GNPD

3. Applicant GNPD is a partnership duly organized and existing under the laws of the Philippines, with principal place of business at GNPower Energy Complex, Sitio Dinginin, Brgy. Alasasin, Mariveles 2105, Bataan, Republic of the Philippines. It may be served with notices and other processes of this Honorable Commission through its counsel at the address indicated herein.

4. GNPD owns and operates a 1,366 MW coal-fired power plant (the "**Plant**") at Sitio Dinginin, Barangay Alasasin, Municipality of Mariveles, Province of Bataan.

II. STATEMENT OF FACTS

A. MERALCO's Power Situation Outlook for 2023

5. Based on its power situation outlook for 2023, MERALCO foresees a capacity deficit in its portfolio. In addition, MERALCO's bilateral power supply contracts portfolio was reduced by 670 MW starting 07 December 2022, due to the suspension of the MERALCO and South Premiere Power Corp. ("**SPPC**") 670 MW power supply agreement (dated 13 September 2019; docketed as ERC Case No. 2019-081 RC) ("**MERALCO-SPPC PSA**") as a result of Temporary Restraining Order ("**TRO**") and, subsequently, a Writ of Preliminary Injunction ("**WPI**") issued by the Court of Appeals on 23 November 2022 and 25 January 2023, respectively, in connection with SPPC's *Petition for Certiorari with application for [TRO] and Writ of Preliminary Injunction* dated 4 November 2022 (docketed as CA G.R. SP No. 176036).

6. The abovementioned suspension of the MERALCO-SPPC PSA resulted in the imperative need to replace the 670 MW and contribute to the availability and affordability of the supply of electricity to MERALCO's customers. That said, the Applicants respectfully submit that

there is a need to execute an Emergency Power Supply Agreement ("**EPSA**") up to 25 February 2023 (the "**MERALCO-GNPD February 2023 EPSA**").

B. Nature of the Application and exemption from Competitive Selection Process ("CSP")

7. On 3 February 2023, MERALCO and GNPD executed the MERALCO-GNPD February 2023 EPSA for the purchase of capacity and energy from the Plant from Operations Effective Date until 25 February 2023. MERALCO started sending the corresponding nominations to the Wholesale Electricity Spot Market ("WESM") as of 12:01 a.m. of 3 February 2023.

8. Under Section 45(b) of Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 ("**EPIRA**"), it is provided that "*Distribution utilities ["**DUs**"] may enter into bilateral power supply contracts subject to review by the ERC xxx*".

9. Corollary to that, Section 2.2 of DOE Department Circular No. DC2018-02-0003 (the "**2018 CSP Rules**"),[1] as amended by DOE Department Circular No. DC2021-09-0030 (the "**2021 Revised CSP Rules**"),[2] reads as follows:

> **2.2. EXEMPTION FROM CSP.**
>
> 2.2.1 **The following instances shall warrant a [COE] from the conduct of [CSP] (COE-CSP) from the DOE**:
>
> xxx xxx xxx
>
> 2.2.1.2 **Negotiated procurement of emergency power supply** wherein the cooperation period of the corresponding Emergency Power Supply Agreement (EPSA) shall not exceed one (1) year, and such EPSA shall be filed immediately before the Energy Regulatory Commission (ERC) upon the issuance and within the effectivity of the COE-CSP; *Provided*, that the DU shall prove and certify that it has performed all the necessary and required due diligence, and solicited proposal from at least one (1) power supplier for EPSA to address the emergency situation and to avert and/or mitigate its consequences, and the offer/s from the available Power Supplier/s shall be attached in the request for COE-CSP; *Provided also*, that the procurement of emergency

[1] Series of 2018 entitled "Adopting and Prescribing the Policy for the Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreement for the Captive Market."

[2] Series of 2021 entitled "Amending Certain Provisions of and Supplementing Department Circular No. DC2018-02-0003 on the Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreement for the Captive Market."

power supply shall be not be entitled to any form of subsidy. *Provided finally*, that the rate shall be equivalent to or lower than the latest ERC-approved generation tariff for same or similar technology in comparable areas." (*Emphasis and underscoring supplied*)

10. Likewise, the 2021 Revised CSP Rules defines emergency power as follows:

> 3.13 "**Emergency Power**" refers to the power required by the DU in the event that a DU's actual power supply falls below its load demand due to Force Majeure or Fortuitous Events that are beyond the control of the DU, and such shortfall cannot be addressed through any reasonable means and cannot be supplied by the Wholesale Electricity Spot Market (WESM), subject to the final determination by the DOE. (*Underscoring supplied*)

11. On 2 September 2022, MERALCO submitted its letter to the DOE requesting for a COE-CSP.[3] On 29 November 2022, the DOE issued the COE-CSP.[4] On 2 February 2023, MERALCO submitted its letter to the DOE informing it of the execution of the MERALCO-GNPD February 2023 EPSA and its implementation based on the COE-CSP.[5] On 3 February 2023, MERALCO and GNPD executed the MERALCO-GNPD February 2023 EPSA.

III. SALIENT FEATURES OF THE MERALCO-GNPD EPSA

12. The MERALCO-GNPD February 2023 EPSA, a copy of which is attached as **ANNEX "D"** and made an integral part hereof, contains the following salient features:

> 1.1 **Definitions**
>
> xxx
>
> **Contract Capacity** shall be set at 300MW sourced from the Plant, as may be adjusted from time to time in accordance with Article 8.
>
> xxx
>
> 2.2. **Term of Agreement**
>
> 2.2.1. Subject to Article 3, this Agreement shall become effective on the Execution Date.

[3] Attached as ANNEX "C"
[4] Attached as ANNEX "C-1"
[5] Attached as ANNEX "C-2"

2.2.2. The term of this Agreement shall commence on the Operations Effective Date, and shall expire on February 25, 2023, unless terminated earlier in accordance with the terms of this Agreement (the "**Term**").

xxx

3.2. **Operations Effective Date**

The obligations of Power Supplier with respect to the Contract Capacity and Associated Energy shall commence upon the later of effectivity of the CA Resolution and grant of DOE certificate of exemption from competitive selection process (the "**Operations Effective Date**"); provided that the conditions set out in Section 3.2.1 have been satisfied.

xxx

Article 4. **Sale and Purchase of Contract Capacity and Associated Energy**

4.1. **Supply of Power**

Subject to the Terms and Conditions of this Agreement, from the Operations Effective Date until the expiration of the Term or earlier termination of this Agreement:

(a) Power Supplier shall make available the Contract Capacity and deliver the Associated Energy to Meralco, at the Contract Price determined in accordance with Appendix D; provided, however, that Power Supplier shall be allowed to deliver and sell to Meralco the Replacement Power from WESM or any other source only when the Plant is on Outage beyond Full Load Equivalent Scheduled Outage Allowance Days and/or Full Load Equivalent Forced Outage Allowance Days.

(b) Meralco shall purchase from Power Supplier, to the extent of Meralco's relevant day-ahead nominations, at the Contract Price determined in accordance with Appendix D.

xxx

Article 7. **Outages**

7.1. **Outages Allowances and Replacement Power**

7.1.1. After Operations Effective Date, Power Supplier shall be allowed, on an annual basis, Scheduled Outages not exceeding 22.5 Full Load Equivalent Outage Days ("Full Load Equivalent Scheduled Outage Allowance Days") and Forced Outages not exceeding 22.5 Full Load Equivalent Outage Days ("Full Load Equivalent Forced Outage Allowance Days"). For clarity, Power Supplier shall be entitled to Full Load Equivalent Scheduled Outage Allowance Days and Full Load Equivalent Forced Outage Allowance Days, as pro-rated to the number of days of the Term, computed in accordance with Appendix D.

7.1.2. During Scheduled Outages within the Full Load Equivalent Scheduled Outage Allowance Days and Forced Outages within the Full Load Equivalent Forced Outage Allowance Days, Meralco shall procure Replacement Power from the WESM and Power Supplier shall not bill Meralco for these quantities. For clarity, the cost of Replacement Power shall form part of the price that Meralco will charge to its customers.

7.1.3. During Scheduled Outages that exceed the Full Load Equivalent Scheduled Outage Allowance Days and Forced Outages that exceed the Full Load Equivalent Forced Outage Allowance Days, Power Supplier shall purchase Replacement Power, which shall be declared as BCQ and paid by Meralco at Contract Price.

7.1.4. During any period in which an Event of Force Majeure affects Power Supplier or Meralco, Meralco shall procure replacement energy from the WESM to the extent supply or offtake is so affected. For clarity, the cost of such replacement energy shall form part of the price that Meralco will charge to its customers.

7.1.5. The supply by Power Supplier of quantities of Replacement Power under this Section 7.1 shall be deemed fulfilment of Power Supplier's obligation to make available the Contract Capacity and to deliver the Associated Energy during such period.

xxx

7.5. **Fine for Failure to Provide Replacement Power**

7.5.1. Except during an Event of Force Majeure or during a Scheduled Outage or Forced Outage that is within the Full Load Equivalent Scheduled Outage Allowance Days or Full Load Equivalent Forced Outage Allowance Days, in case Power Supplier fails to provide Replacement Power from any other source or WESM due to inadequate supply, Power Supplier shall pay a fine equivalent to Nine Hundred Eight Philippine Peso (PhP908) multiplied by each affected MWh nomination by Meralco, which shall be used to reduce the generation charge to the consumers. For the avoidance of doubt, in case Power Supplier fails or refuses to supply Replacement Power despite availability thereof, then Section 13.3.1 shall apply.

xxx

10. **Charges due to Change in Circumstances**

10.1 In the event that, as a result of Change in Circumstances and pursuant to a corresponding order of the ERC or any relevant Government Instrumentality:

(a) Meralco is prevented from making a timely pass through to its customers of any charges under this Agreement as approved by the ERC in the ERC Final Approval as accepted by Power Supplier (such amounts referred to hereinafter as "**Disallowed Pass-Through Amounts**"); or,

(b) any portion of the Contract Price that has been paid to Power Supplier is required to be refunded to Meralco or Meralco's customers in connection with the ERC Application or any petition, claim, case, proceeding, or other action involving any of the Parties brought before any judicial, administrative, or quasi-judicial body (such portion of the Contract Price referred to hereinafter as "**Refundable Amounts**"),

the Parties shall enter into good faith negotiations to agree on a satisfactory solution regarding the amendment of this Agreement to restore Meralco's commercial position prior to such Change in Circumstances, including an adjustment of the Contract Price; provided that in the case of Section 10.1.(b), Power Supplier shall refund all Refundable Amounts to Meralco or Meralco's customers in the manner and within the period as required by the ERC or any other relevant Governmental Instrumentality (as applicable). In the Parties fail to reach a mutually satisfactory resolution within sixty (60) Days from the commencement of negotiations, the provision of Section 13.5.4. will apply.

xxx

11.2. **ERC Approval**

11.2.1. Upon receipt of the ERC Final Approval, Meralco shall provide a copy of such ERC Final Approval to Power Supplier. Power Supplier shall have ten (10) Days from its receipt from ERC or from Meralco of such ERC Final Approval, whichever is earlier, to notify Meralco in writing that: (i) it accepts such ERC Final Approval or (ii) it does not accept the ERC Final Approval, stating the grounds for non-acceptance; provided, that if the ERC Final Approval does not contain any adjustment or modification, the ERC Final Approval shall be (i) deemed accepted by Power Supplier and (ii) implemented by the Parties immediately. For clarity, ERC Final Approval may be promulgated subsequent to the Operations Effective Date.

11.2.2. In case of Power Supplier's non-acceptance, Power Supplier shall be free to file a motion for reconsideration with the ERC. In case Power Supplier decides to file a motion for reconsideration, and pending resolution thereof by the ERC, the Parties shall implement the ERC Final Approval subject to any adjustment or amendment that the ERC may direct. Any order on a motion for reconsideration shall be treated as an ERC Final Approval for purposes of the processes under this Section 11.2. If the ERC Final Approval requires any amendment to or modification of any provision of this Agreement that is not acceptable to either Party, acting reasonably, then the Parties shall cooperate in good faith to resolve the required amendment, including seeking a reconsideration by the ERC. If the Parties are unable to agree on the required amendment within thirty (30) Days from receipt of the ERC Final Approval resolving the motion for reconsideration, or if the motion for reconsideration is not resolved by the ERC within one hundred twenty (120) days after its filing, or the amendment is disapproved by the ERC, or approved by the ERC but still contains any material term or condition that is not

acceptable to either Party, acting reasonably, then either Party may terminate this Agreement. For clarity, if, following the ERC Final Approval, Power Supplier does not file a motion for reconsideration with the ERC and/or notifies Meralco that it intends to terminate this Agreement, the ERC Final Approval shall be deemed accepted by Power Supplier and this Agreement shall continue to be implemented in accordance with the ERC Final Approval.

11.2.3. If the ERC Final Approval requires any portion of the sum that has been paid by Meralco to Power Supplier to be adjusted, Power Supplier shall make the necessary adjustments in accordance with the direction of the ERC. In the event of any disallowance in the Contract Price, the same shall be for the account of Power Supplier.

xxx

Appendix D

Calculation of Payment

xxx

B. **MONTHLY POWER BILL UPON OPERATIONS EFFECTIVE DATE**

The Monthly Power Bill or MPB means the payment to be made by Meralco in each Billing Period.

$$MPB = (MEOT_M + RP) * CP + BHCC$$

where:

$MEOT_M$ = Minimum Energy Offtake for the relevant Billing Period, generated by the Plant, in kWh, calculated as follows:

$$MEOT_M = CC * 1000 * 24 * (BPD - SOT_M - FOT_M - FMT_M)$$

where:

CC = Contract Capacity, in MW, as indicated in this Schedule 1 of this Appendix D

BPD = Billing Period Days, the number of Days in a Billing Period

SOT_M = Full Load Equivalent Scheduled Outage Days for the Billing Period as calculated based on Schedule 4 of this Appendix D

FOT_M = Full Load Equivalent Forced Outage Days for the Billing Period as calculated based on Schedule 4 of this Appendix D

FMT_M = Full Load Equivalent Outage Days due to Force Majeure for the Billing Period as calculated based on Schedule 4 of this Appendix D

RP = Replacement Power

CP = Contract Price as indicated in Schedule 1 of this Appendix D

CP = (CF + EF) * FX

where:

CP = as previously defined

CF = Capacity Fee as indicated in Schedule 1 of this Appendix D

EF = Energy Fee, in USD/kWh, calculated as follows:

$EF = EF_o * (CIF_n / CIF_o)$

where:

EF_o = Initial Energy Fee as indicated in Schedule 1 of this Appendix D

CIF_n = CIF Cost of Fuel for Billing $Period_n$ in USD/million kcal

CIF_o = Initial CIF Cost of Fuel as indicated in Schedule 1 of this Appendix D

FX = the exchange rate based on the BSP reference date published in www.bsp.gov.ph within three (3) Days prior to the invoice date.

BHCC = payment for Benefits to Host Communities Charges pursuant to Section 9.2 of this Agreement.

xxx

SCHEDULE 1

TABLE 1. BASE RATES

Base Rates		Unit	Agreed Values
Contract Capacity	CC	MW	300
Capacity Fee	CF	USD/kWh	0.0471
Initial Energy Fee	EFo	USD/kWh	0.0328
Initial CIF Cost of Fuel	CIFo	USD/million kcal	10.2514
Base Full Load Equivalent Scheduled Outage Allowance Days*	BSOA	Days	22.50
Base Full Load Equivalent Forced Outage Allowance Days*	BFOA	Days	22.50

*The above BSOA and BFOA are annual values and shall be pro-rated for the purposes of the Term"

IV. GENERATION RATE IMPACT

13. Based on the foregoing, and given a certain set of assumptions, the effective rate under the MERALCO-GNPD February 2023 PSA is **PhP 7.6216 per kWh (at plant gate, VAT exclusive),** as shown in the **RATE IMPACT ANALYSIS** below:

Rate Impact of GN Power Dinginin Ltd. Co. (GNPD) February 2023 EPSA at 100.00 % pcf

BILLING COMPONENT	UNIT	BASE RATES [a]	Adjustment Factor [b]	BILLING DETERMINANT [c]		AMOUNT (PHP)
A.) Contract Price						
1. Capacity Fee	(USD/kWh)	0.0471	-	165,600,000	(kWh)	434,321,055.86
2. Energy Fee	(USD/kWh)	0.0328	2.7315	165,600,000	(kWh)	826,161,666.09
B.) Benefits to Host Communities Charges [d]	(Php/kWh)	0.0100	-	165,600,000	(kWh)	1,656,000.00
Total Payment (VAT Exclusive)	**(Php)**					**1,262,138,721.96**
Plant Gate Rate (VAT Exclusive)	**(Php/kWh)**					**7.6216**
WESM Line Rental Rate [e]	**(Php/kWh)**					**0.5193**
Delivered Rate (VAT Exclusive)	**(Php/kWh)**					**8.1409**
Effective Cost if sourced from WESM [f]	(Php/kWh)					8.6528
Increase / (Decrease) over WESM	(Php/kWh)					(0.5119)
Meralco Captive Energy Demand [g]	(kWh)					2,142,849,873
Increase / (Decrease) in Generation Charge	**(Php)**					**(84,768,878)**
Increase / (Decrease) in Generation Charge	**(Php/kWh)**					**(0.0396)**

Assumptions:

[a] Base Rates as indicated in Schedule 1 of Appendix D of the EPSA.

[b] Adjustment factor calculated in accordance with formula indicated in Appendix D of the EPSA.

[c] Energy billing determinant for the duration of the EPSA (23 days) based on 100.00% pcf with respect to the Contract Capacity.

[d] Rate based on ER 1-94 or the Benefits to Host Communities Program.

[e] Line Rental is a pass-through cost. Assumed line rental rate is based on actual Jan 2023 line rental of GNPD EPSA.

[f] Cost if equivalent volume was sourced from WESM.

[g] Forecasted Meralco Captive Energy for Feb 3 to 25, 2023 based on the latest Power Supply Procurement Plan as submitted to DOE.

14. The Applicants note that the delivered rate of **PhP 8.1409 per kWh (VAT exclusive and line rental inclusive)** is **lower** by about PhP 0.5119 per kWh than the effective cost of PhP 8.6528 per kWh, if the equivalent capacity under the MERALCO-GNPD February 2023 PSA is to be sourced from the WESM. In fact, by sourcing the capacity through the MERALCO-GNPD February 2023 PSA, MERALCO's average blended generation rate will be reduced by about PhP 0.0396 per kWh (as seen in the **RATE IMPACT ANALYSIS** above) resulting in savings to consumers of about PhP 84.7 million.

V. COMPLIANCE WITH DOCUMENTARY REQUIREMENTS

15. In support of this Joint Application with Motion for Confidential Treatment of Information, the Judicial Affidavit of **ENGR. DAVIDJOHN A. ZUÑIGA**, Officer of MERALCO's Energy Resource Planning - Energy

Sourcing Office is attached as **ANNEX "E"** and made an integral part hereof.

16. Likewise, in support of the instant Joint Application, the 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
A. Applicants' Authority	
MERALCO's Secretary's Certificate	**"A"**
GNPD's Secretary Certificates	**"B"** and**"B-1"**
B. MERALCO's Documents	
MERALCO Letter-Request for COE-CSP dated 2 September 2022 DOE COE-CSP dated 29 November 2022 MERALCO Letter to the DOE dated 2 February 2023	**"C"** **"C-1"** **"C-2"**
MERALCO-GNPD February 2023 EPSA	**"D"**
Judicial Affidavit of Engr. Davidjohn A. Zuñiga	**"E"**
MERALCO's Articles of Incorporation and By-Laws	**"F"**
MERALCO's Latest General Information Sheet ("GIS") Verified Certification of True Copies of MERALCO's Articles of Incorporation, By-Laws, and GIS and of MERALCO's Ultimate Parent Company, all of its subsidiaries and affiliates	**"G"** **"G-1"**
MERALCO's Demand Side Management Program	**"H"**
Write-up on the non-applicability of National Power Corporation Certification regarding whether or not Transition Supply Contract capacity and energy is expected to be available during the contractual period	**"I"**
Excerpt of MERALCO's Distribution Development Plan – Power Supply Procurement Plan (Supply and Demand Scenario); • Average Daily Load Curve scenarios • Details of Existing Suppliers • Details of Power Supply Contract Utilization • Details of SAIDI and SAIFI • Estimation of the potential for a reduction in load supplied by MERALCO due to RCOA	**"J"** **"J-1"** **"J-2"** **"J-3"** **"J-4"** **"J-5"** **"J-6"**

Description of Document	Annex
• Write-up of no inconsistencies/differences from documents presented	
C. GNPD's Documents	
SEC Certificate of Registration including the Articles of Partnership of GNPD	**"K"**
Verified Certification of the list of Board Directors and members of the Ultimate Parent Company, subsidiaries and all affiliates or Information Sheet of GNPD	**"L"**
Write up on the non-applicability of the following requirements to GNPD: • Shareholders' Agreement • Renewable Energy Service/Operating Contract and Certificate of Registration or Certification of Commerciality by an RE Developer and After Due Confirmation by the DOE • Distribution Wheeling Service Agreement • Water Permit from the National Water Resources Board • Copy of Related Agreements (i.e., Transmission Wheeling Contract, IPPA Agreement, EPC Contract, O&M Contract, Wholesale Aggregator Agreement, Project Feasibility Study, etc.).	**"M and Series"**
The Partnership Structure showing the Ultimate Parent Company, Subsidiaries, and all Affiliates of GNPD	**"N"**
The Plant's Environmental Compliance Certificate issued by the Department of Environment and Natural Resources	**"O"**
Certificate of Compliance of GNPD	**"P"**
Executive Summary of the EPSA	**"Q"**
Verified certification that the GNPD Plant is ready to deliver power to address the emergency and that the rates being charged are no more than the latest rate approved by the ERC for the same or relevant technology in the area.	**"R"**
Transmission Service Agreement, or application for dedicated Point to Point Limited Transmission Facility to ERC, e.g., ERC Case No. of Point to Point, Decision of Commission of the point-to-point application.	**"S"**
Single-line Diagram Connection	**"T"**
Sources of Funds/Financial Plans **(Confidential)*** Generation Rate and Derivation **(Confidential)*** Financial model in soft copy containing derivation of rates **(Confidential)*** Cash Flow **(Confidential)***	**"U and Series" ***
Certification on Financing Arrangement **(Confidential)***	**"V" ***
Explanation on the Fuel Procurement Process of GNPD	**"W" ***

Description of Document	Annex
(Confidential)*	
Technical and Economic Characteristics of the GNPD Plant	**"X"**
Latest Audited Financial Statements of GNPD	**"Y"**
Certification regarding the net heat rate of GNPD **(Confidential)***	**"Z" ***
WESM Registration Certificate of GNPD	**"AA"**
Certification from the Department of Energy (DOE) regarding Philippine Development Plan (PDP) or Certificate of Endorsement (COE).	**"BB"**
Board of Investment (BOI) Certificate of Registration with attached Terms and Conditions.	**"CC"**
Simulation of the no. of operating units necessary to meet the MEOT	**"DD"**
Sample Computation of Power Rates	**"EE"**

**Subject of the Motion for Confidential Treatment of Information*

ALLEGATIONS IN SUPPORT OF THE MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION

17. GNPD respectfully highlights that its own documentary evidence, **Annexes "U"** and **series," "V", "W" and "Z"** 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 GNPD arrives at its power generation rate and/or on GNPD's trading in the WESM.

18. GNPD therefore submit respectfully submits that **Annexes "U"** and **series," "V", "W" and "Z"** falls within the bounds of proprietary "trade secrets", which are entitled to protection under the Constitution, statutes, and rules and regulations of this Honorable Commission.

19. Under Rule 4 of the Revised ERC Rules of Practice and Procedure (the "Revised ERC Rules"), the 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, GNPD respectfully prays for the issuance of a protective order declaring **Annexes "U"** and **series," "V", "W" and "Z"** as confidential information, since GNPD intends to present them as evidence in the instant Application.

20. The data contained in **Annexes "U"** and **series," "V", "W" and "Z"** constitute "trade secrets" of GNPD; thus, GNPD has actual and

valuable proprietary interest to protect with respect to such information. If the information contained in these documents are unduly disclosed, it will seriously prejudice the competitiveness of GNPD.

21. The Supreme Court, in the case of *Air Philippines Corporation vs. Pennswell, Inc.* (540 SCRA 215 [2007]), had the opportunity to discuss the definition of "trade secrets" and the great extent to which the same are protected under our laws. In other instances, 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. (*Philpotts vs. Philippine Manufacturing Company*, 40 Phil. 471 [1919]; *Garcia vs. Board of Investments*, G.R. 88637 [1989]).

22. In the *Decision* 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, to wit:

> 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.** [Emphasis supplied].

23. Thus, the Honorable Commission has 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 of the Revised ERC Rules. **Annexes "U"** and **series," "V", "W" and "Z"** should therefore be entitled to the protection of confidential information provided under Rule 4 of the Revised ERC Rules.

24. 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."

PRAYER

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

a) Issue an Order **TREATING Annexes "U"** and **series," "V", "W" and "Z"** 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 Applicant GNPD, as applicable, pursuant to Rule 4 of the Revised ERC Rules; and

b) After hearing on the merits, render a Decision **APPROVING** the MERALCO-GNPD EPSA and the terms and conditions thereunder, including the price.

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

Pasig City and Makati City for Pasig City, 21 February 2023.

MANILA ELECTRIC COMPANY
Co-Applicant
Lopez Building, Ortigas Avenue
Brgy. Ugong, Pasig City

By:

FRANCIS DINO S. ANTONIO
Roll of Attorneys No. 48145
PTR No. 8131470; 01/06/2022; Pasig City
IBP No. 179335; 01/21/2022; RSM
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IBP No. 208012; 05/10/2022; Rizal Chapter
Email address: francis.bautista@cagatlaw.com
Roll No. 77451
Admitted to the Bar on May 10, 2022

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[6] Pursuant to Office of the Court Administrator Circular No. 56-2015, the MCLE Compliance Numbers of the undersigned firm's name partners are as follows:

Name	MCLE Compliance No.	Date of Issuance
Jaime Renato B. Gatmaytan	VI-0019861	03/29/2019
Ben Dominic R. Yap	VII-0003193	05/27/2021
Norma Margarita B. Patacsil	VI-0022070	03/26/2019
Anthony Mark A. Gutierrez	VII-0020031	06/01/2022
Jesus Paolo U. Protacio	VII-0014292	03/31/2022

VERIFICATION with CERTFICATION OF NON-FORUM SHOPPING

I, **JOSE RONALD V. VALLES**, of legal age, Filipino and with office address at 7th Floor, Lopez Building, Ortigas Avenue, Pasig City, after having been sworn in accordance with law, hereby depose and state:

1. I am the First Vice President and Head of the Regulatory Management Office of the **MANILA ELECTRIC COMPANY** ("MERALCO"), the Petitioner in this case. I am duly authorized by MERALCO to cause the preparation and filing of the foregoing **Joint Application for Approval of the Emergency Power Supply Agreement dated 3 February 2023 between Manila Electric Company and GNPower Dinginin Ltd. Co., with Motion for Confidential Treatment ("Joint Application")** as evidenced by the attached Secretary's Certificate;

2. I have read and understood the foregoing Joint Application, the allegations of which are true and correct based on my own personal knowledge and/or on authentic records;

3. The Joint Application is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

4. The factual allegations in the Joint Application have evidentiary support, or if specifically so identified, will likewise have evidentiary support;

5. I certify that I have not commenced any other action involving the same issues in this Joint Application with this Honorable Commission, or any tribunal or quasi-judicial agency and to the best of my knowledge, no such action or proceeding is pending in this Honorable Commission or any tribunal or quasi-judicial agency.

6. Should I hereafter learn that a similar action or proceeding has been filed or is pending before this Honorable Commission or any tribunal or quasi-judicial agency, I undertake to promptly inform this Honorable Commission and other tribunal or agency thereof within five (5) calendar days therefrom.

JOSE RONALD V. VALLES
Affiant

SUBSCRIBED AND SWORN TO before me this FEB 21 2023 February 2023 at Pasig City, affiant exhibiting to me his SSS ID No. 33-10900088.

Doc. No. 116;
Page No. 5;
Book No. VII;
Series of 2023.

ATTY. MADELYN C. DELOS SANTOS
NOTARY PUBLIC
Appointment No. 138 (2023-2024)
Pasig, San Juan and Pateros
Roll No. 64977 IBP No. 260482; 01/05/2023; RSM Chapter
PTR No.0112713; 01/04/2023; Pasig City
MCLE Compliance No. VII-0001999; 05 December 2019
7th Floor, Lopez Bldg., Ortigas Ave., Pasig City

VERIFICATION AND CERTIFICATION
OF NON-FORUM SHOPPING

I, **RONALD P. GUTIERREZ,** Filipino, of legal age, and with office address at GNPower Energy Complex, Sitio Dinginin, Brgy. Alasasin, Mariveles 2105, Bataan, Philippines subscribing under oath, state that:

1. I am the duly authorized representative of GNPower Dinginin Ltd. Co., the co-applicant in this application, and I caused the preparation and filing of the foregoing Joint Application for Approval of the Emergency Power Supply Agreement between Manila Electric Company and GNPower Dinginin Ltd. Co. with Motion for Confidential Treatment (the **"Joint Application"**).

2. I certify that I have read and understood the foregoing Joint Application, the contents of which are true and correct, based on my own personal knowledge, and on authentic documents;

3. The Joint Application is not filed to harass, cause unnecessary delay or needlessly increase the cost of litigation;

4. The factual allegations therein have evidentiary support, or if so specifically identified, will likewise have evidentiary support after a reasonable opportunity for discovery;

5. I certify that I have not commenced any other action involving the same issues in this Joint Application with this Honorable Commission, or any tribunal or quasi-judicial agency and to the best of my knowledge, no such action or proceeding is pending in this Honorable Commission or any tribunal or quasi-judicial agency.

6. Should I hereafter learn that a similar action or proceeding has been filed or is pending before this Honorable Commission or any tribunal or quasi-judicial agency, I undertake to promptly inform this Honorable Commission and other tribunal or agency thereof within five (5) calendar days therefrom.

RONALD P. GUTIERREZ
Affiant

SUBSCRIBED AND SWORN to before me on this 21st day of February 2023 at MANILA, exhibiting his PRC ID no. 0000868, valid until November 14, 2024.

Doc. No. 1022;
Page No. 205;
Book No. III;
Series of 2023.

ATTY. MERVIN JAY R. FERNANDO
NOTARY PUBLIC
Notarial Commission No. 2023-052
Valid until 12/31/2024
PTR No. 0861930 Valid until 21/31/2023
IBP No. 227311 Valid until 21/31/2023
Roll No. 65628, Admission Date: June 20, 2016
TIN 274-142-405-000
MCLE Compliance No. VII-0008369
1363 F. Jhocson st., Sampaloc Mla
09209465251

VERIFIED DECLARATION

I, **RAYMOND B. YAP**, of legal age, Filipino, with office address at the Lopez Building, Ortigas Avenue, Pasig City, after having duly sworn in accordance with law, hereby depose and state:

1. I am one of the duly authorized representatives to undertake the pre-filing process with respect to the application to be pre-filed by MERALCO and **GNPOWER DINGININ LTD. CO. ("GNPD")** for the **Approval of the Power Supply Agreement between MERALCO and GNPD dated 3 February 2023**.

2. I hereby declare that, in compliance with ERC Resolution No. 9, Series of 2020, the documents submitted by MERALCO electronically as part of the virtual pre-filing process are complete and true copies of the original documents.

IN WITNESS WHEREOF, I hereby affix my signature this day of **15 March 2023**.

RAYMOND B. YAP

SUBSCRIBED AND SWORN to before me this **15 March 2023** at Pasig City, affiant exhibiting to me his Drivers License No. F04-99-042540, with expiry date at 25 March 2032.

Doc. No. 83;
Page No. 18;
Book No. VII;
Series of 2023.

ATTY. MADELYN C. DELOS SANTOS
NOTARY PUBLIC
Appointment No. 138 (2023-2024)
Pasig, San Juan and Pateros
Roll No. 64977 IBP No. 260482; 01/05/2023; RSM Chapter
PTR No.0112716; 01/04/2023; Pasig City
MCLE Compliance No. VII-0001999; 05 December 2019
7th Floor, Lopez Bldg., Ortigas Ave., Pasig City