Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

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

MANILA ELECTRIC COMPANY AND GNPOWER DINGININ LTD. CO.,
Applicants.
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Promulgated:
April 27, 2023

NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 13 April 2023, Manila Electric Company (MERALCO) and GNPower Dinginin Ltd. Co. (GNPD) filed a *Joint Application* dated 21 February 2023, seeking the Commission's approval of their Emergency Power Supply Agreement (EPSA), with motion for confidential treatment of information.

The pertinent allegations of the *Joint Application* are hereunder quoted as follows:

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 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." (*Underscoring supplied*)

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[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."

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

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.

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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 *(sic)* 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.

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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.

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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:

(This space is intentionally left blank.)

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 • Write-up of no inconsistencies/differences from documents presented	"J" "J-1" "J-2" "J-3" "J-4" "J-5" "J-6"
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	"M and Series"

Description of Document	Annex
• Copy of Related Agreements (i.e., Transmission Wheeling Contract, IPPA Agreement, EPC Contract, O&M Contract, Wholesale Aggregator Agreement, Project Feasibility Study, etc.).	
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 (Confidential)*	"W" *
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.

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.

The Commission hereby sets the *Joint Application* for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on the following dates and online platforms for the conduct thereof, pursuant to Resolution No. 09, Series of 2020[6] and Resolution No. 01, Series of 2021[7] (ERC Revised Rules of Practice and Procedure):

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[6] A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

[7] A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

Date	Platform	Activity
09 June 2023 (Friday) at nine o'clock in the morning (9:00 A.M)	**Microsoft Teams or Zoom Applications**	Determination of compliance with jurisdictional requirements and Expository Presentation
16 June 2023 (Friday) at nine o'clock in the morning (9:00 A.M)	**Microsoft Teams or Zoom Applications**	Pre-trial Conference and Presentation of Evidence

Any interested stakeholder may submit its comments and/or clarifications **at least one (1) calendar day** prior to the scheduled initial virtual hearing, via electronic mail (e-mail) at docket@erc.ph, and 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, any 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.

Any of the persons mentioned in the preceding paragraphs may access the copy of the *Joint Application* on the Commission's official website at www.erc.gov.ph.

Finally, all interested persons may be allowed to join the scheduled virtual hearings 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 hearings.

WITNESS, the Honorable Commissioners **ALEXIS M. LUMBATAN, CATHERINE P. MACEDA, FLORESINDA G. BALDO-DIGAL,** and **MARKO ROMEO L. FUENTES,** Energy Regulatory Commission, this 27th day of April 2023 in Pasig City.

MONALISA C. DIMALANTA
Chairperson and CEO

LS: VMA/LSP/MCCG

ERC
Office of the Chairperson and CEO
MCD2023-003255