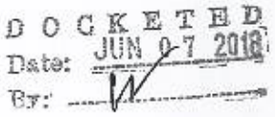
Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City

IN THE MATTER OF THE APPLICATION FOR THE APPROVAL OF THE POWER SUPPLY AGREEMENT (PSA) BETWEEN MANILA ELECTRIC COMPANY (MERALCO) AND FIRST NATGAS POWER CORP. (FNPC), WITH PRAYER FOR PROVISIONAL AUTHORITY AND MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION

ERC CASE NO. 2018-013 RC

MANILA ELECTRIC COMPANY (MERALCO) AND FIRST NATGAS POWER CORP. (FNPC),
Applicants.
x - x



ORDER

On 19 March 2018, the applicants Manila Electric Company (MERALCO) and First NatGas Power Corp. (FNPC) filed a *Joint Application* dated 15 March 2018 for the approval of their Power Supply Agreement (PSA), with prayer for provisional authority and motion for confidential treatment of information.

In the said *Joint Application*, MERALCO and FNPC alleged the following:

> Applicants **MANILA ELECTRIC COMPANY** ("**MERALCO**") and **FIRST NATGAS POWER CORP.** ("**FNPC**"), through their respective undersigned counsels, and to this Honorable Commission, respectfully state:
>
> 1. MERALCO is a private corporation existing under the laws of the Republic of the Philippines, with principal office located at Lopez Building, Meralco Center, Ortigas Avenue, 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.

3. FNPC is a corporation duly organized and existing under the laws of the Republic of the Philippines, with its principal office address at 6th Floor Rockwell Business Center Tower 3, Ortigas Avenue, Pasig City. It may be served with notices and other processes of this Honorable Commission through its counsel at the address indicated herein.

4. FNPC constructed, owns, operates, manages and maintains the San Gabriel Power Plant, which is an approximately 414 MW combined-cycle power generating facility fired on natural gas, located in Batangas, on the island of Luzon in the Philippines (the "**Plant**").

5. Based on the power situation outlook for 2017 and succeeding years, MERALCO foresees a capacity deficit in its portfolio due to the expected high demand as well as possible occurrences of scheduled maintenance shutdowns and forced outage of power plants. Moreover, based on MERALCO's Distribution Development Plan, from 2018 to 2023, MERALCO's aggregate demand is forecasted to grow by a compounded average growth rate of 4.13%.

6. In order to ensure continuous and reliable electricity for MERALCO's customers, there is a need for MERALCO to source additional capacity through bilateral power supply contracts.

7. Under Section 45(b) of Republic Act No. 9136 (EPIRA), it is provided that "*Distribution utilities may enter into bilateral power supply contracts subject to review by the ERC xxx*".

8. Accordingly, following conduct and completion of a competitive selection process, MERALCO confirmed effectivity of the Power Supply Agreement ("**PSA**") with FNPC dated 13 December 2017, for the purchase of electric energy generated by its Plant upon the Honorable Commission's approval, and ending on 23 February 2024. The conduct of a competitive selection process proceeded as follows:

   8.1. On 19 December 2017, MERALCO caused the publication of an Invitation for Price Challenge ("**IPC**"), which contained the basic terms of reference and conditions of the proposal of FNPC, the original power supplier,

indicating a summary of the process and timelines of the Price Challenge process, and inviting power generation companies to submit better tariff proposals on or before the timelines set out in the said invitation. At the same time, MERALCO caused the posting thereof on its website.

8.2. In its letter dated 05 January 2018, MERALCO's Power Supply Agreements Bids and Awards Committee ("**PSA BAC**") informed FNPC that: (i) the PSA BAC has exercised its right to declare a failed bidding in respect of the Price Challenge considering that only FNPC submitted the Qualification Documents by the Qualification Documents Submission Date; and (ii) the PSA shall be subjected to another round of Price Challenge.

8.3. On 01 February 2018, MERALCO caused the publication of an IPC for the Second (2nd) Round of the Price Challenge. On even date, MERALCO caused the posting thereof on its website.

8.4. On March 7, 2018, there being no qualified Price Challenger, MERALCO's PSA BAC sent a Notice of Award to FNPC.

9. The PSA between MERALCO and FNPC, a copy of which is attached as **ANNEX "A"** and made an integral part hereof, contains the following salient features:

"Contract Capacity	the Net Dependable Capacity of the Plant in MW multiplied by 1000, and as determined in accordance with clause 9.2 (*Net Dependable Capacity*) and Appendix J (*Net Dependable Capacity Testing*) from time to time as may be adjusted pursuant to clause 11 (*Implementation of Retail Competition and Open Access, Renewable Energy Law and other Legal Requirements*).[1]

xxx

Effective Date	the date of signing of this Agreement by both Parties.[2]

xxx

23 February 2024, as may be

[1] *See* PSA, p. 4, clause 1.1, "Contract Capacity".
[2] *See* PSA, p. 6, clause 1.1, "Effective Date".

Expiry Date	extended pursuant to clause 3.2 (Extension of the Term) and 3.3 (as applicable).[3]

xxx

Target Commercial Sale Date	26 January 2018.[4]

xxx

3.1 Term

The term of this Agreement (the **Term**):
(a) commences on the Effective Date; and
(b) ends on the Expiry Date,
unless terminated earlier in accordance with its terms.

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5.2 ERC Approval process

(a) Both Parties shall use best efforts to secure ERC Final Approval by the Target Commercial Sale Date.

(b) If the ERC Final Approval requires any provision of this Agreement to be amended or, in granting its approval, the ERC imposes any material condition that is unacceptable to either Party (acting reasonably):
  (1) the Party adversely affected may give a notice to the other Party immediately suspending the operation of this Agreement; and
  (2) the Parties shall negotiate in good faith with a view to accommodating the ERC's required amendment or otherwise addressing the impact of the material condition.

(c) If the Parties are unable to negotiate a solution acceptable to both Parties under clause 5.2(b) (*ERC Approval process*) within twenty (20) Business Days of commencing negotiations, either Party may terminate this Agreement by prior written notice in accordance with clause 23.1 (*Termination following unacceptable Final ERC Approval*).

(d) If ERC Final Approval;
  (1) is issued but not in a form and substance satisfactory to the Seller, any time within twelve (12) months from the date the ERC Application is filed, the Seller may immediately terminate this Agreement in accordance with clause 23.2 (*Termination Upon Non-Occurrence of Commercial Sale Date*); or

[3] *See* PSA, p. 7, clause 1.1, "Expiry Date".
[4] *See* PSA, p. 19, clause 1.1, "Target Commercial Date".

(2) is not issued after twelve (12) months from the date the ERC Application is filed, unless a longer period is agreed upon by the Parties, either Party may immediately terminate this Agreement in accordance with clause 23.2 (*Termination Upon Non-Occurrence of Commercial Sale Date*). For the purpose of this clause, ERC Final Approval shall include any order on a motion for reconsideration.

(e) For the avoidance of doubt, until such time as a Party terminates this Agreement pursuant to clause 5.2(c) (*ERC Approval process*) or 5.2(d) (*ERC Approval process*) or otherwise in accordance with this Agreement, the parties shall continue to comply with their obligations in relation to securing the ERC Final Approval under this clause 5 (*ERC Approval*) and neither party is discharged from any of its obligations under this Agreement.

5.3 ERC Approval and the Commercial Sale Date

(a) The Parties acknowledge that the Commercial Sale Date will occur upon the giving of notice by the Seller in accordance with clause 5.3(b) (*ERC Approval and the Commercial Sale Date*) (the **Commercial Sale Date Notice**).

(b) The Seller, within ten (10) Business Days:
(1) after receipt of ERC Final Approval on terms acceptable to the Seller (in its absolute discretion), shall give a Commercial Sale Date Notice; or
(2) after receipt of ERC Provisional Authority on terms acceptable to the Seller (in its absolute discretion), may give a Commercial Sale Date Notice, provided that any difference in the Price under the ERC Provisional Authority and the ERC Final Approval shall be for the account of the Seller.

(c) For clarity, the Parties agree that notwithstanding that the Seller may give a Commercial Sale Date Notice prior to receipt of ERC Final Approval, the Parties shall continue to seek to obtain the ERC Final Approval in accordance with clause 5.2 (*ERC Approval process*).

xxx

7.1 Sale of Contract Capacity and Net Electrical Output

(a) Subject to the terms and conditions of this Agreement, on and from the Commercial Sale Date, the Seller shall:

(1) make available to Meralco at the Delivery Point, and Meralco shall purchase from the Seller and pay for, the Contract Capacity at the Price determined in accordance with Appendix G (*Calculation of Payment*); and

(2) sell and deliver to Meralco at the Delivery Point, and Meralco shall purchase and accept from the Seller and pay for, the Net Electrical Output at the Price determined in accordance with Appendix G (*Calculation of Payment*).

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9.2 Net Dependable Capacity

(a) The Net Dependable Capacity shall be determined in accordance with Appendix J *(Net Dependable Capacity Testing).*

(b) Prior to the demonstration of the initial Net Dependable Capacity pursuant to an initial eight (8) hour NDC Test of the Plant in accordance with Appendix J (*Net Dependable Capacity Testing*) and clause 9.2(c) (*Net Dependable Capacity*), the Net Dependable Capacity is deemed to be 414MW.

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10.1 Outage Allowance

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Schedule of Outages

Type of Contract Year	**Full Load Equivalen Outage Allowance Day for Contract Year**
Contract Years without Major Maintenance Outages	forty five (45) Full Loa Equivalent Outage Days
Contract Years with Major Maintenance Outages	sixty five (65) Full Loa Equivalent Outage Days

xxx

10.6 Consequences of Outages and Providing Replacement Energy

(a) The provision by the Seller of Replacement Energy shall be deemed fulfillment of the Seller's obligations to make available the Contract Capacity and to deliver the Net Electrical Output during such period.

(b) Where a Scheduled Outage, Forced Outage or Major Maintenance Outage that is within the Outage Allowance for a Contract Year occurs, Meralco shall source Replacement Energy from the WESM during such Outage/s.

(c) Where a Scheduled Outage, Forced Outage or Major Maintenance Outage that is beyond the Outage Allowance for a Contract Year occurs:
  (1) during a Low WESM Price Period, Meralco shall source Replacement Energy from the WESM during such Outage/s;
  (2) during a High WESM Price Period:
    (A) the Seller shall provide Replacement Energy to Meralco for the Affected Trading Intervals; and
    (B) Meralco shall pay the Seller the Price for the Replacement Energy provided by the Seller in respect of the Affected Trading Intervals.

(d) Where a Scheduled Outage, Forced Outage or Major Maintenance Outage that is beyond the Outage Allowance for a Contract Year occurs during a High WESM Price Period:
  (1) Meralco shall confirm on a day-after basis the Trading Intervals during the relevant Outage that the Seller shall provide Replacement Energy to Meralco under clause 10.6(c)(2)(A) (*Consequences of Outages and Providing Replacement Energy*) (the **Affected Trading Intervals**); and
  (2) by no later than 0800H on the Day after the relevant Outage, Meralco will communicate to the Seller the list of Affected Trading Intervals for the relevant Outage.

xxx

11.1 Transfers on implementation of RCOA

(a) Meralco shall be entitled to Transfer its rights and obligations to purchase a portion of the Contract Capacity and Net Electrical Output (together with its associated rights and obligations under this Agreement) to:

(1) any of its business segments or Affiliates; or
(2) a third party,

where such Contract Capacity and Net Electrical Output is no longer required by Meralco as a direct result of the implementation and enforcement of Retail Competition and Open Access; and for clause 11.1(a)(2) (*Transfers on implementation of RCOA*), where the Seller has consented to such Transfer in accordance with clause 11.1(b) (*Transfers on implementation of RCOA).*

xxx

11.2 Reduction of Contract Capacity on implementation of RCOA

(a) Meralco shall, from time to time, be entitled to a reduction in its Contract Capacity and Net Electrical Output in response to the reduction in the demand of its captive customers as a direct result of the implementation and enforcement of Retail Competition and Open Access where, in Meralco's reasonable opinion, such reduction is consistent with Meralco's obligation under EPIRA to supply electricity in the least cost manner to its captive market.

xxx

11.3 Reduction of Contract Capacity on implementation of the Renewable Energy Law and other Legal Requirements

(a) Meralco shall, from time to time, be entitled to a reduction in its Contract Capacity and Net Electrical Output in response to the imposition upon it of, and its compliance with, the Renewable Energy Law or other Legal Requirements where, in Meralco's reasonable opinion, such reduction is consistent with Meralco's obligation under EPIRA to supply electricity in the least cost manner to its captive market.

xxx

14.1 Change in Law affecting Price pass-through

(a) If as a result of a Change in Law and pursuant to a corresponding order of the ERC or any relevant Governmental Authority, Meralco becomes liable to pay any new charges, fees, taxes, duties, assessments or other similar amounts (the **New Charges**), or any increase in existing charges, fees, taxes, duties, assessments or other similar amounts (the **Increased Charges**) become payable with respect

to this Agreement, the New Charges or Increased Charges shall form part of the price that Meralco will charge to its customers.

(b) In the event that as a result of a Change in Law and pursuant to a corresponding order of the ERC or any relevant Governmental Authority:

(1) Meralco is prevented from making a pass through to its customers of any charges under this Agreement as approved by the ERC in the ERC Final Approval as accepted by the Seller (the **Disallowed Pass-Through Amounts**) and the Seller is no longer able to require payment from Meralco for Disallowed Pass-Through Amounts; or

(2) any portion of the Price that has been paid to the Seller is required to be refunded to Meralco's customers in connection with the ERC Final Approval or any petition, claim, case, proceeding, or other action involving any of the Parties brought before any judicial, administrative or quasi-judicial body (the **Refundable Amounts**),

the Parties shall enter into good faith negotiations to agree on a mutually satisfactory solution regarding the amendment of this Agreement, including an adjustment of the Price; provided that in the case of clause 14.1(b)(1) (*Change in Law affecting Price pass-through*), the Seller shall refund all Refundable Amounts to Meralco's customers in the manner and within the period as ordered by the ERC or any other relevant Governmental Authority (as applicable). If the Parties fail to reach a mutually satisfactory resolution within sixty (60) Days from the commencement of negotiations, the Seller shall be entitled to terminate this Agreement in accordance with the provisions of clause 23.6 (*Termination in the Event of Change in Law*).

14.2 Change in Law affecting Seller

(a) If as a result of a Change in Law affecting the Seller:

(1) the Seller becomes liable to pay any New Charges or any Increased Charges in connection with this Agreement;
(2) there is a material increase in the operating costs or capital expenditures associated with the Plant;
(3) there is a material and adverse effect on the Seller's cost of performing, or its ability to perform, its obligations under this Agreement, or an adverse effect on the cost or sale of

Contract Capacity or the associated Net Electrical Output in accordance with this Agreement;

(4) the Seller's administration or the operational aspects of its performance is made materially more burdensome (whether made at the direction of any Governmental Authority or otherwise); or

(5) there is serious damage to, or a material and adverse effect, on the financial condition of the Seller,

the Seller shall send a notice to Meralco of the occurrence of such Change in Law (**Notice of Change in Law**), together with an analysis of the cost impact of such Change in Law and the changes to the Price, which the Seller reasonably considers as necessary to maintain the Seller's commercial, financial and risk position in connection with this Agreement after the Change in Law is taken into account.

(b) If the Seller gives a Notice of Change In Law to Meralco, Parties shall jointly file the necessary application with the ERC for the adjustment of the Price (the **Application for Price Adjustment**) within thirty (30) Days from receipt of the Notice of Change in Law and take all reasonable steps to obtain ERC approval of the Application for Price Adjustment as soon as reasonably practicable; provided that, Meralco shall not be liable to pay any adjustment in the Price from the time the Change in Law becomes effective until the ERC approves the Application for Price Adjustment; and provided, further, that New Charges or Increased Charges for which the Seller sends a Notice of Change in Law in accordance with this clause 14.2 (*Change in Law affecting Seller*) shall not include charges, fees, taxes, duties or other similar amounts relating to:

(1) taxes on the income of the Seller;

(2) taxes on the real property owned, held by or in possession of the Seller; and

(3) business taxes on the operations of the Seller.

(c) In the event that:

(1) the ERC denies, in whole or in part, the Application for Price Adjustment, or

(2) if no order is issued granting the Application for Price Adjustment within twelve (12) months from receipt of the Notice of Change in Law,

the Parties shall enter into good faith negotiations to agree on a satisfactory solution regarding the amendment of this Agreement, including an adjustment of the Price. If the Parties fail to reach a mutually

satisfactory resolution within sixty (60) Days from the commencement of negotiations, the Seller shall be entitled to terminate this Agreement in accordance with the provisions of clause 23.6 (*Termination in the Event of Change in Law*).

xxx"

10. The Payment Structure under Appendix G of the PSA is as follows:

"**1.2 Payment Structure**

The Price to be paid by Meralco to the Seller consists of the following:

(a) Monthly Capacity Charge (**MCC**): the monthly payment for the Contract Capacity for each Billing Period;

(b) Monthly Fixed Operation and Maintenance Charge (**MFOMC**): the monthly payment for the fixed operating and maintenance costs for each Billing Period;

(c) Not used;

(d) Monthly Fuel Charge (**MFC**): the monthly payment for the costs of all Fuel actually consumed by the Plant as defined in Appendix S (AFCm) for each Billing Period;

(e) Monthly Transmission Charge (T): the monthly payment for any charges incurred by the Seller for each Billing Period in connection with:

(1) the transmission of Net Electrical Output from the Plant at the Delivery Point to the Meralco Distribution System; and

(2) the ownership, development, engineering, design, permitting, siting, construction, installation, commissioning, testing, financing, operation and maintenance of any required expansion of the Transmission Facilities to permit transmission of Net Electrical Output from the Plant at the Delivery Point to the Meralco Distribution System,

in each case, as required by the Transmission Services Agreement or otherwise; and

(f) Monthly Sales Tax Charge: the monthly payment for any tax imposed on the Seller in respect of the Contract Capacity and Net Electrical Output delivered to Meralco for each Billing Period.

1.3 Supplemental Payments

In addition to the components of the Price described in section 1.2 above, certain supplemental payments set out in section 2.7 of this Appendix G (**Supplemental Payments**) shall be payable, if any, by Meralco to the Seller or by the Seller to Meralco. With respect to section 2.7(d), the Parties acknowledge that the Seller may satisfy any obligation to pay any amounts that are due and payable to Meralco by the Seller by deducting any such amounts from any amounts that are due and payable to the Seller by Meralco."

11. Based on the foregoing, given certain set of assumptions, the annual effective rate under the PSA is Php3.7712 per kWh (at plant gate), as shown in the rate impact analysis below:

First NatGas Power Corp. (FNPC) PSA - Rate Impact

BILLING COMPONENT	UNIT	BASE RATE [a]	CPI Adj Factor [f]	BILLING DETERMINANT		AMOUNT (PHP)
A. Capacity Charge (MCC)						
Peso Portion	(Php/kW-yr)	8,672.4000		414,000	(kW)	3,590,373,600.00
B. Fixed O&M Charge (MFOMC)						
Peso Portion	(Php/kW-mo)	68.5500	1.010	414,000	(kW)	343,864,051.20
US Dollar Portion	(USD/kW-mo)	4.5500	1.006	414,000	(kW)	1,146,440,493.49
C. Fuel Charge (MFP)						
US Dollar Portion	(USD/kWh) [b]	0.0431		3,179,520,000	(kWh) [g]	6,909,977,705.46
TOTAL PAYMENT	(Php)					11,990,655,850.16
Effective Rate at Plant Gate	(Php/kWh)					**3.7712**
WESM Line Rental Rate [c]	(Php/kWh)					0.0925
Delivered Rate	(Php/kWh)					**3.8637**
Effective Cost of Displaced Coal PSAs and WESM [d]	(Php/kWh)					4.4405
Increase / (Decrease) over Coal PSAs and WESM	(Php/kWh)					(0.5768)

NOTE:

[a] Base Rates as set forth in Attachment 1 of Appendix G of the PSA

[b] Fuel Payment calculated based on: Guaranteed Net Heat Rate of 6,428.6 kJ/kWh (NCV) corresponding to 100% load factor (Table A4 of the PSA), weighted average natural gas price of USD 6.0534/GJ (peak/off-peak pricing), and Forex rate of PhP 50.4037/USD based on average for 2017

[c] FNPC line rental based on average line rental of FGP Corp-San Lorenzo plant in 2017

[d] Cost of equivalent volume from FNPC if sourced from the WESM

[e] Energy consumption of Meralco captive customers for 2017

[f] Values for PH CPI = 148.608 and US CPI = 245.120 based on average for 2017

[g] Billing determinant for energy based on 87.67% annual capacity factor

12. As seen in the rate impact above, the simulated delivered price under the PSA would be Php3.8637 per kWh, resulting in a reduction of MERALCO's generation charge by about Php0.0561 per kWh.

13. It bears emphasis that, as previously mentioned, based on MERALCO's foreseen capacity deficit in its portfolio due to the expected high demand as well as possible occurrences of scheduled maintenance shutdowns and forced outage of power plants, there is an urgent need for the provisional approval of the PSA.

14. Likewise, in support of the instant Joint Application and pursuant to Rule 6 (Pre-Filing Requirements) of the Rules of Practice and Procedure of this Commission, the Applicants provide the following documents:

Description of Document	Annex
MERALCO's Articles of Incorporation	C
MERALCO'S By-Laws	D
MERALCO's latest General Information Sheet (GIS)	E
MERALCO's Demand Side Management program	F
MERALCO's Distribution Development Plan; with Average Daily Load Curve scenarios;	G G-1

Description of Document	Annex
Supply and Demand Scenario*; and Write-up on Non-Applicability of National Power Corporation (NPC) Certification	**G-2*** **G-3**
Documents showing MERALCO's conduct of a Competitive Selection Procurements (CSP)	**H and series**
FNPC's SEC Certificate of Registration	**I**
FNPC's Articles of Incorporation	**J**
FNPC By-laws	**K**
FNPC's latest General Information Sheet (GIS)	**L**
FNPC's 2016 Annual Report indicating its corporate structure	**M**
Board of Investment (BOI) Certificate of Registration for FNPC's natural gas power plant with attached terms and conditions	**N**
Environmental Compliance Certificates (ECC) for FNPC's natural gas power plant	**O**
FNPC's Certificate of Compliance (COC) for its natural gas power plant	**P**
DOE Certificate of Endorsement (CoE) for FNPC's natural gas power plant	**Q**
Transmission Service Agreement	**R**
Write-up on related agreements	**S**
Executive Summary of the PSA	**T**
Source of Funds/ Financial Plans*	**U and series***
Generation Rate and Derivation with Financial Model (including Cash Flow and all cost analysis related to the generation in support of the proposed pricing provisions of the contract)*	**V and series***
Sworn statement on fuel procurement process	**W**
All relevant technical and economic characteristics of the generation capacity; Installed Capacity, Mode of Operation, Dependable Capacity; Auxiliary load; Scheduled and Unscheduled Outages; Basis/Justification of day used	**X**
FNPC's Latest and Complete Set of Audited Financial Statements (Balance Sheet, Income Statement, and Statement of cash flows)	**Y**
Certification on Net Heat Rate	**Z**
Write Up on Non-Applicability of the following: • Shareholders' Agreement • Renewable Energy Service Contract/ Operating Contract from the Department of Energy (DOE) • Certificate of Registration or Certification of Confirmation of Commerciality by an RE Developer and after due confirmation by the DOE • Other documentation that may be needed by the ERC in the course of the evaluation, such as, but not limited to the following: o Simulation of the no. of operating units necessary to meet MEOT and/or additional energy/demand requirements of the DU o Potential Cost (absolute amounts and PhP/kWh) of Ancillary Services as and when the IPP or the DU is connected to the main grid	**AA**

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

ALLEGATIONS IN SUPPORT OF PROVISIONAL AUTHORITY

15. The timely implementation of the PSA will best serve the interests of the consumers.

    15.1. The simulated delivered price of Php3.8637 per kWh provides for a lower cost of power compared to the simulated effective cost at WESM of Php4.4405 per kWh.

    15.2. Vis-à-vis the simulated effective cost at WESM, the 414-MW capacity and corresponding net electrical output from the existing San Gabriel plant at the contract price can reduce MERALCO's generation cost. It is thus imperative that this PSA be implemented as soon as possible as any delay in its implementation would translate into foregone savings of about Php0.0561 per kWh and missed economic opportunities for MERALCO's captive customers.

16. In support of this Joint Application and the prayer for issuance of a Provisional Authority, the Judicial Affidavit of **MR. CIPRINILO C. MENESES**, Head of MERALCO's Energy Sourcing Office, is attached hereto as **ANNEX "B."**

ALLEGATIONS IN SUPPORT OF THE MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION

17. With respect to the document marked and attached as **ANNEX "G-2"** (Supply and Demand Scenario of MERALCO), MERALCO respectfully moves that it be treated as confidential and not be disclosed to any party for the reason that it contains information which are commercially sensitive in nature and may affect price offers that MERALCO may receive under a power supply agreement. In addition, such information falls within the bounds of valuable proprietary interest under "trade secrets", which are entitled to protection under the Constitution, statutes, and rules and regulations.

18. With respect to the documents marked as **Annexes "U and series"** and **"V and series"**, FNPC respectfully moves that they be treated as confidential and not be disclosed to any party since the information contained in these documents are proprietary to FNPC and confidential. FNPC has actual and valuable proprietary interest to protect with respect to the information contained in these documents, which are not generally available to the public. These details are part of FNPC's competitive advantage in the power generation industry with an economic value (actual or potential) derived from not being generally known to, and not being readily ascertainable by, other persons such as FNPC's competitors, who can obtain economic value from the disclosure of the information to the detriment of FNPC. Furthermore, the nature of the information in these documents, which go into FNPC's pricing and business, is such that significant and unquantifiable damage could result to FNPC if these

information were to be shown to FNPC's competitors, including other power generators.

19. Under Rule 4 of the ERC Rules of Practice and Procedure, 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, the Applicants respectfully pray for the issuance of a protective order declaring **Annexes "G-2," "U and series"** and **"V and series"** as confidential information, since the Applicants intend to present them as evidence in the instant Application.

20. 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 ERC Rules of Practice and Procedure. **Annexes "G-2", "U and series" and "V and series"** should therefore be entitled to the protection of confidential information provided under Rule 4 of the ERC Rules of Practice and Procedure.

21. The Applicants hereby submit one (1) copy of each of the foregoing confidential documents in separate sealed envelopes, with the envelope and each page of the document marked with the word "Confidential."

PRAYER

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

(i) issue an Order **GRANTING PROVISIONAL AUTHORITY** to implement the PSA;

(ii) issue an Order **TREATING Annexes "G-2," "U and series" and "V and series" AS CONFIDENTIAL INFORMATION** pursuant to Rule 4, Section 1 of the ERC Rules of Practice and Procedure and prescribing the guidelines for the protection thereof; and

(iii) after hearing on the merits, render a Decision **APPROVING THE PSA** between Applicants MERALCO and FNPC.

Finding the said *Joint Application* to be sufficient in substance, with the required fees having been paid, the same is hereby set for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on **05 July 2018 (Thursday) at two o'clock in the afternoon (2:00 P.M.), 15th Floor, ERC Hearing Room, Pacific Center Building, San Miguel Ave., Pasig City.**

Accordingly, MERALCO and FNPC are hereby directed to:

1) Cause the publication of the attached Notice of Public Hearing in two (2) newspapers of nationwide circulation in the Philippines at their own expense, twice (2x) within two (2) successive weeks, the dates of publication not being less than seven (7) days apart, and the date of the last publication to be made not later than ten (10) days before the date of the scheduled initial hearing;

2) Furnish with copies of this Order and the attached Notice of Public Hearing the Offices of the Provincial Governor, the City and Municipal Mayors, and the Local Government Unit (LGU) legislative body within the affected franchise area for the appropriate posting thereof on their respective bulletin boards;

3) Inform the consumers within the affected franchise area of the filing of the *Joint Application*, its reasons therefor, and of the scheduled hearing thereon, by any other means available and appropriate;

4) Furnish with copies of this Order and the attached Notice of Public Hearing the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress. They are hereby requested, if they so desire, to send their duly authorized representatives at the scheduled hearing; and

5) Furnish with copies of the *Joint Application* and its attachments all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing, Applicants must submit to the Commission their written compliance with the aforementioned jurisdictional requirements attaching therewith, methodically arranged and duly marked the following:

1) The evidence of publication of the attached Notice of Public Hearing consisting of affidavits of the Editors or Business Managers of the newspapers where the said Notice of Public Hearing was published, and the complete issues of the said newspapers;

2) The evidence of actual posting of this Order and the attached Notice of Public Hearing consisting of certifications issued to that effect, signed by the aforementioned Governor, Mayors, and LGU legislative body or their duly authorized representatives, bearing the seals of their offices;

3) The evidence of other means employed by Applicants to inform the consumers within the affected franchise area of the filing of the *Joint Application,* its reasons therefor, and of the scheduled hearing thereon;

4) The evidence of receipt of copies of this Order and the attached Notice of Public Hearing by the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress;

5) The evidence of receipt of copies of the *Joint Application* and its attachments by all those making requests therefor, if any; and

6) Such other proof of compliance with the requirements of the Commission.

Applicants and all interested parties are also required to submit, at least five (5) days before the date of the initial hearing and Pre-trial Conference, their respective Pre-trial Briefs containing, among others:

1) A summary of admitted facts and proposed stipulation of facts;

2) The issues to be tried or resolved;

3) The documents or exhibits to be presented, stating the purposes and proposed markings therefor; and

4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-trial Brief.

Failure of Applicants to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from the said date of cancellation.

MERALCO and FNPC must also be prepared to make an expository presentation of the instant *Joint Application*, aided by whatever communication medium that they may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties, what the *Joint Application* is all about and the reasons and justifications being cited in support thereof.

SO ORDERED.

Pasig City, 05 June 2018.

FOR AND BY AUTHORITY
OF THE COMMISSION:

JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Oversight Commissioner for Legal

LS: JGM/LSP/APV

Copy furnished:

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and Angelica Diane B. Monteza
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Barangay Ugong, Pasig City

2. Attys. Ben Dominic R. Yap, Andrea E. Katipunan, Veda Marie D. Vedan,
Perry Evan C. Lao and Carren Jean V. Ramirez
Gatmaytan Yap Patacsil Gutierrez & Protacio
Counsel for Applicant FNPC
30/F 88 Corporate Center, Sedeño cor. Valero Streets,
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3. Manila Electric Company
Applicant
Lopez Building, Ortigas Avenue,
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4. First NatGas Power Corp.
Applicant
6/F Rockwell Business Center Tower 3,
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5. Office of the Solicitor General (OSG)
134 Amorsolo Street, Legaspi Village
Makati City, Metro Manila

6. Commission on Audit (COA)
Commonwealth Avenue
Quezon City, Metro Manila

7. Senate Committee on Energy
GSIS Bldg. Roxas Blvd., Pasay City
Metro Manila

8. House Committee on Energy
Batasan Hills, Quezon City, Metro Manila

9. Philippine Chamber of Commerce and Industry (PCCI)
Campus Avenue corner Park Avenue,
McKinley Town Center, Fort Bonifacio, Taguig City

10. The City Mayor
City of Manila

11. LGU Legislative Body
City of Manila

12. The City Mayor
Quezon City

13. LGU Legislative Body
Quezon City

14. The City Mayor
City of Caloocan

15. LGU Legislative Body
City of Caloocan

16. The City Mayor
City of Makati

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City of Malabon

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City of Mandaluyong

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22. The City Mayor
City of Muntinlupa

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24. The City Mayor
City of San Jose del Monte, Bulacan

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City of San Jose del Monte, Bulacan

26. The City Mayor
City of Valenzuela

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Cavite City

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Trece Martirez City

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Las Piñas City

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San Juan City

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Lucena City

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Batangas City

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San Pablo City, Laguna

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San Pablo City, Laguna

48. The City Mayor
City of Marikina

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50. The City Mayor
Antipolo City, Rizal

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Antipolo City, Rizal

52. The City Mayor
Tagaytay City, Cavite

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Tagaytay City, Cavite

54. The City Mayor
Calamba, Laguna

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Calamba, Laguna

56. The City Mayor
Sta. Rosa, Laguna

57. LGU Legislative Body
Sta. Rosa, Laguna

58. The City Mayor
Biñan, Laguna

59. LGU Legislative Body
Biñan, Laguna

60. The City Mayor
Navotas, Metro Manila

61. LGU Legislative Body
Navotas, Metro Manila

62. The Municipal Mayor
Taguig, Metro Manila

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Taguig, Metro Manila

64. The Municipal Mayor
Pateros, Metro Manila

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Pateros, Metro Manila

66. The Municipal Mayor
General Aguinaldo, Cavite

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General Aguinaldo, Cavite

68. The Municipal Mayor
Magallanes, Cavite

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Magallanes, Cavite

70. The Municipal Mayor
Amadeo, Cavite

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Amadeo, Cavite

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Indang, Cavite

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Mendez, Cavite

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Alfonso, Cavite

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Kawit, Cavite

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Noveleta, Cavite

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Maragondon, Cavite

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Ternate, Cavite

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Ternate, Cavite

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Gen. Trias, Cavite

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Gen. Trias, Cavite

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Naic, Cavite

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Rosario, Cavite

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Rosario, Cavite

96. The Municipal Mayor
Tanza, Cavite

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Tanza, Cavite

98. The Municipal Mayor
Dasmariñas, Cavite

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Dasmariñas, Cavite

100. The Municipal Mayor
Gen. Mariano Alvarez, Cavite

101. LGU Legislative Body
Gen. Mariano Alvarez, Cavite

102. The Municipal Mayor
Silang, Cavite

103. LGU Legislative Body
Silang, Cavite

104. The Municipal Mayor
Carmona, Cavite

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Carmona, Cavite

106. The Municipal Mayor
Cainta, Rizal

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Cainta, Rizal

108. The Municipal Mayor
Taytay, Rizal

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Taytay, Rizal

110. The Municipal Mayor
Teresa, Rizal

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Teresa, Rizal

112. The Municipal Mayor
Jala-jala, Rizal

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Jala-jala, Rizal

114. The Municipal Mayor
Cardona, Rizal

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Cardona, Rizal

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Baras, Rizal

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Angono, Rizal

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Tanay, Rizal

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Tanay, Rizal

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Pililla, Rizal

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Pililla, Riza

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Morong, Rizal

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Morong, Rizal

126. The Municipal Mayor
Binangonan, Rizal

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128. The Municipal Mayor
Rodriguez, Rizal

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Rodriguez, Rizal

130. The Municipal Mayor
San Mateo, Rizal

131. LGU Legislative Body
San Mateo, Rizal

132. The Municipal Mayor
Meycauayan, Bulacan

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Obando, Bulacan

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Norzagaray, Bulacan

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Sta. Maria, Bulacan

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Doña Remedios Trinidad, Bulacan

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Guiguinto, Bulacan

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San Rafael, Bulacan

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San Miguel, Bulacan

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San Ildefonso, Bulacan

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Victoria, Laguna

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Nagcarlan, Laguna

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Sta.Cruz, Laguna

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San Pedro, Laguna

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Rizal, Laguna

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Los Baños, Laguna

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Los Baños, Laguna

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Cabuyao, Laguna

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Bay, Laguna

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Dolores, Quezon

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Dolores, Quezon

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Sampaloc, Quezon

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Tayabas, Quezon

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Candelaria, Quezon

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Mauban, Quezon

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Majayjay, Quezon

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Luisiana, Quezon

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Luisiana, Quezon

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Sto. Tomas, Batangas

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San Pascual, Batangas

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232. The Municipal Mayor
Candaba, Pampanga

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Candaba, Pampanga

234. The Municipal Mayor
San Simon, Pampanga

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San Simon, Pampanga

236. The Municipal Mayor
Apalit, Pampanga

237. LGU Legislative Body
Apalit, Pampanga

238. Office of the Governor
Province of Rizal

239. LGU Legislative Body
Province of Rizal

240. Office of the Governor
Province of Laguna

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242. Office of the Governor
Province of Batangas

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Province of Cavite

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246. Office of the Governor
Province of Pampanga

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248. Office of the Governor
Province of Quezon

249. LGU Legislative Body
Province of Quezon

250. Office of the Governor
Province of Bulacan

251. LGU Legislative Body
Province of Bulacan

252. Regulatory Operations Service
17/F, Energy Regulatory Commission, Pacific Center Bldg.,
San Miguel Ave., Ortigas Center, Pasig City