

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

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

MERALCO
RECEIVED
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By: *[Signature]* Time: 7:11 pm
via email

ERC CASE NO. 2024-125 RC

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

Promulgated:
October 15, 2024

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ORDER

On 02 October 2024, the Manila Electric Company (MERALCO) and GNPowder Dinginin Ltd. Co. (GNPD) filed their *Joint Application* dated 17 September 2024, seeking the Commission’s approval of their Power Supply Agreement (PSA), with motion for confidential treatment of information.

The pertinent allegations in the said *Application* are hereunder quoted, as follows:

xxx

- 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, Bataan. 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 1,336 MW coal-fired power plant (the "Plant") at Sitio Dinginin, Brgy. Alasasin, Municipality of Mariveles, Bataan.

II. STATEMENT OF FACTS AND TIMELINESS

5. In accordance with MERALCO's latest and duly accepted Distribution Development Plan ("DDP") and posted Power Supply Procurement Plan ("PSPP") approved by the Department of Energy ("DOE"), MERALCO foresees a baseload capacity deficit in its portfolio of 600 MW (net) based on its power situation outlook for the third quarter of 2025.
6. Thus, in order to ensure continuous and reliable electricity for MERALCO's customers there is a need for MERALCO to source additional mid-merit 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, pursuant to *Section 4, Article IV of the Energy Regulatory Commission's ("ERC") Resolution No. 16, Series of 2023 ("ERC CSP Guidelines")*, MERALCO conducted a Competitive Selection Process ("CSP") for the procurement of 600 MW (net) baseload supply requirement. The conduct of CSP proceeded as follows:
 - 8.1. On 24 May 2024, MERALCO submitted to the DOE, the Invitation to Bid ("ITB")/Terms of Reference ("TOR") for its 600 MW (net) Effective September 2025 (the "600 MW CSP"),

to request for issuance of a Certificate of Conformity in accordance with MERALCO's latest and duly accepted DDP and posted PSPP, pursuant to *Section 4.3 of DOE Department Circular No. DC2023-06-0021, Series of 2023 and Section 5, Appendix B of the ERC CSP Guidelines.*

- 8.2. On 6 June 2024, the DOE issued in favor of MERALCO a Certificate of Conformity No. DOE-EPIMB-COC-2024-06-006 of even date (the "*DOE COC*") covering MERALCO's 600 MW (net) baseload supply requirement, which MERALCO received on the same day and endorsed to its Bids and Awards Committee for Power Supply Agreements ("*BAC-PSA*") for commencement of the 600 MW CSP. On the same day, pursuant to requirements provided in the ERC CSP Guidelines, the BAC-PSA Secretariat furnished the ERC a copy of the DOE COC and formally notified the DOE (copy furnished the ERC) of the commencement of the 600 MW CSP in relation to the DOE COC.
- 8.3. On 11 June 2024 and 18 June 2024, the BAC-PSA caused the publication of the ITB in The Philippine Star, a newspaper of general circulation in the Philippines. The ITB contained the TOR, a summary of the process and timelines of the CSP, and invitation to power generation companies to pay the Participation Fee and submit an Expression of Interest and set of documents on or before the deadline set out in said Invitation. The ITB and the TOR were likewise posted on MERALCO's website and on the DOE e-based CSP Portal.
- 8.4. On 13 June 2024, MERALCO posted on its website, an "Invitation to Participate as CSP Observers," which informed the public that the following entities or groups identified in Section 9 of the ERC CSP Guidelines are invited to signify to the BAC-PSA of their interest to participate as observer. By 25 June 2024, five (5) CSP Observers submitted their intent to (and were admitted by) the BAC-PSA as CSP Observers.
- 8.5. On 4 July 2024, a Pre-Bid Conference was held to allow interested bidders an opportunity to clarify any provisions, requirements, and/or terms and conditions of the bidding documents and/or any other matter that the interested bidders may raise. The Pre-Bid Conference was held at least thirty (30) calendar days before the 600 MW CSP's bid submission deadline;

attended by CSP Observers; and broadcasted livestream in MERALCO's YouTube page.

- 8.6. On 1 August 2024, the BAC-PSA announced, via Bid Bulletin No. 5, the suspension of the CSP activities until further notice, in compliance with the Temporary Restraining Order ("*TRO*") dated 31 July 2024 issued by Branch 15-FC of the Regional Trial Court of Taguig City, pursuant to the Complaint for Injunction filed by Prime Energy Resources Development B.V., UC38LLC, Prime Oil and Gas, Inc., and PNO Exploration Corp. against MERALCO.
- 8.7. On 19 August 2024, the BAC-PSA announced, via Bid Bulletin No. 6, the resumption of CSP activities for this CSP (starting with the previously scheduled Bid Submission Deadline of 2 August 2024 to the new schedule, 27 August 2024) pursuant to an Order (dated 17 August 2024) issued by Branch 267 of the Regional Trial Court of Taguig City received by MERALCO on 19 August 2024 ("*RTC Order*") and endorsed to the BAC-PSA (with instructions to resume all upcoming CSP activities for the 600 MW CSP without further delay). The RTC Order held that the TRO was without force and effect and dismissed the Complaint for Injunction for lack of jurisdiction.
- 8.8. On 27 August 2024, the bidders submitted their bid document submissions in compliance with all the bidding documents for the 600 MW CSP, and the respective submissions of the bidders were opened by the BAC-PSA. The bid submission and bid opening were held at least forty-five (45) days after the ITB/TOR's last publication and were attended by CSP Observers and were broadcasted livestream in MERALCO's YouTube page.
- 8.9. Following the BAC-PSA's evaluation of each of the bidders' bid submissions, and after reducing its offered contract capacity by 200 MW, Applicant GNP emerged as one of the bidders with the lowest calculated responsive bid ("*Best Bid*"), offering 100 MW (net) out of the required contract capacity of 600 MW (net) for the said bidding.
- 8.10. On 30 August 2024, the BAC-PSA conducted the post-qualification of the document submissions of GNP and found the submissions to be compliant and responsive to all the requirements and conditions specified in the bidding documents, as amended, or clarified

by pertinent bid bulletins, for the 600 MW (net) CSP. The post-qualification was attended by CSP Observers and was broadcasted livestream in MERALCO's YouTube page.

- 8.11. On 30 August 2024, the BAC-PSA submitted its report and recommendation to MERALCO's Board of Directors recommending GNPDP, as one of the bidders with the best bids in the 600 MW CSP, to be declared as one of the Winning Power Suppliers and be awarded a power supply agreement for its offer of PhP 5.7392/kWh (total Delivered LCOE Rate, VAT and Line Rental inclusive) for 100 MW (net).
- 8.12. On 30 August 2024, MERALCO's Board of Directors approved the BAC-PSA's recommendation, and on the same day, a Notice of Award was issued by the BAC-PSA in favor of GNPDP.
- 8.13. On 3 September 2024, the Power Supply Agreement between MERALCO and GNPDP was dated, signed and executed ("*MERALCO-GNPDP PSA*"). Thereafter, after a performance bond was submitted by GNPDP on 5 September 2024 and a Notice to Proceed was issued in its favor on the same day.

A copy of the BAC-PSA Summary-Report and the DOE COC regarding the conduct of the 600 MW_{AC} (net) CSP are attached hereto as ANNEXES "C" and "C-1".

9. The said Joint Application together with its Annexes was pre-filed with the Honorable Commission starting on ____ September 2024. Hence, this Joint Application is timely filed within the reglementary period provided under the ERC CSP Guidelines.

III. SALIENT FEATURES OF THE MERALCO-GNPDP PSA

10. The MERALCO-GNPDP PSA, a copy of which is attached as ANNEX "D" and made an integral part hereof, contains the following salient provisions:

"Article I Definitions and Interpretations"

1.1 *Definitions*

xxx

Availability of Supply or Available means one hundred percent (100%) of the Contract Capacity is available for twenty-four (24) hours and seven (7) days a week, subject to Section 8.1.1.

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Contract Capacity or CC shall be, subject to Section 3.2.2, Article 8, Article 9 and Section 19.1, 100 MW (net), sourced from the Plant.

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Material Adverse Government Action means:

- (a) *any Law or Directive coming into effect after the signing of this Agreement, including the adoption or enactment, or any change or repeal with respect to the imposition of taxes, duties, levies, fees, charges and similar impositions, and the right to remit or convert currencies. This does not include any Legal Requirement or the application or interpretation thereof in existence at the date of the signing of this Agreement, but which by its explicit terms or due to any other circumstance, became effective or could be implemented only after the date of this Agreement; or*
- (b) *the amendment, modification, repeal or withdrawal of any Law or Directive (including any official interpretation thereof which the Parties have relied upon in entering into this Agreement) in force at the date of this Agreement; or*
- (c) *the modification in the application, enforcement, interpretation or implementation of any Law or Directive by a Governmental Instrumentality which the Parties have relied upon in entering into this Agreement, which modification occurred at any time after the date of this Agreement.*

which causes or may cause serious damage to, or materially and adversely affects the financial condition of, any of the Parties. It is understood that there is serious damage to, or material and adverse effect on the financial condition of, a Party if the cost impact is more than ten percent (10%) of the annual capacity payment.

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2.2 Term of Agreement

Subject to Article 3, this Agreement shall become effective on the Execution Date, and shall remain in force and effect until the last day of the 15th Contract Year, unless terminated earlier in accordance with the terms of this Agreement and upon approval by the ERC, or extended by the application of Section 15.3.3 (the "Term").

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3.2 Operations Effective Date

- 3.2.1** *Subject to Section 3.2.2, the obligations of Power Supplier with respect to the Contract Capacity and Associated Energy shall commence on the later between August 26, 2025 and the ERC Approval (the "Operations Effective Date").*

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Article 8. Outages

8.1 Outage Allowances and Replacement Power

- 8.1.1 *After Operations Effective Date, Power Supplier shall be allowed Scheduled Outages not exceeding zero (0) Full Load Equivalent Outage Days ("Full Load Equivalent Schedule Outage Allowance Days") and Forced Outages not exceeding zero (0) Full Load Equivalent Outage Days ("Full Load Equivalent Forced Outage Allowance Days") each Contract Year; provided that, a Forced Outage may only be counted towards the Full Load Equivalent Forced Outage Allowance Days upon provision by Power Supplier to Meralco of a copy of the acknowledgment letter from the System Operator or report from the Market Operator that a Forced Outage has occurred.*
- 8.1.2 *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 energy from other sources or the WESM, at its own expense, which expense shall be passed on to its customers as part of generation costs.*
- 8.1.3 *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 for by Meralco at the lower between (a) the actual price of the Replacement Power, and (b) Price as specified in Appendix E. In the event of failure by Power Supplier to source the Replacement Power despite availability from WESM or any other source, Meralco shall be allowed to source replacement energy from WESM. If the WESM price for the replacement energy is higher than the Price, Power Supplier shall reimburse MERALCO the difference between (i) WESM price and (ii) the Price as specified in Appendix E, plus all relevant transaction cost and taxes. If the WESM price for the replacement energy is lower than the Price, MERALCO shall not be liable to Power Supplier for the difference between WESM price and Price.*
- 8.1.4 *On and after the Operations Effective Date, 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 replacement energy shall form part of the price that Meralco will charge its customers.*
- 8.1.5 *The supply by Power Supplier of quantities of Replacement Power under this Section 8.1 shall be deemed fulfilment of Power Supplier's obligation to make available the Contract Capacity and to deliver the Associated Energy during such period.*

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Article 9. Reduction in Contract Capacity and Associated Energy

- 9.1 *Subject to the provisions of Section 9.2 below, Meralco shall, from time to time, be entitled to a reduction in the Contract Capacity and Associated Energy (the "Reduction in Contract Capacity and Associated Energy") equivalent to the reduction in the demand of its captive customers in order to avoid stranded contract*

capacities or costs, or by reason of the enforcement of Retail Competition and Open Access (RCOA), the Renewable Energy Law, Renewable Portfolio Standards (RPS), Green Energy Option Program (GEOP), Net Metering program, and other similar government programs, Laws and Legal Requirements.

- 9.2 *Meralco shall give a written notice at least five (5) Days prior to the first Day of the next Billing Period to Power Supplier, specifying the Reduction in Contract Capacity and Associated Energy pursuant to Section 9.1, indicating when such reductions shall take place. Upon receipt by Power Supplier of such written notice, Meralco shall cease to have any rights and obligations under this Agreement in respect of such Reduction in Contract Capacity and Associated Energy. Any such reduction shall be limited to the extent of the Contract Capacity and Associated Energy that will allow Meralco to comply with its obligation to supply electricity in the least cost manner to its customers as of the date indicated in the notice when such Reduction in Contract Capacity and Associated Energy shall commence. Except for such Reduction in Contract Capacity and Associated Energy and the resulting reduction in Capacity Payment, all other terms and conditions of this Agreement, as approved by the ERC, shall remain in full force and effect. For this purpose, Parties shall execute an operations protocol and provide a copy thereof to the ERC.*

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12.3 *ERC Approval*

- 12.3.1 *Subject to the non-occurrence of the Longstop Date, upon receipt of the ERC Approval, Meralco shall provide a copy of such ERC Approval to Power Supplier. Power Supplier shall have ten (10) Days from its receipt from ERC or from MERALCO of such ERC Approval, whichever is earlier, to notify Meralco in writing that (a) it accepts such ERC Approval or (b) it does not accept the ERC Approval, stating the grounds for non-acceptance; provided that, if the ERC Approval does not contain any adjustment or modification, the ERC Approval shall be (i) deemed accepted by Power Supplier and (ii) implemented by the Parties immediately."*

IV. GENERATION RATE IMPACT

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11. Based on the foregoing, and given a certain set of assumptions, the effective rate under the MERALCO-GNPD PSA is PhP 4.9217 per kWh (at plant gate, VAT exclusive), as shown in the RATE IMPACT ANALYSIS below:

GNPower Dinginin Ltd. Co. (GNPD) PSA - Rate Impact at 100% pcf (YEAR 2025)						
BILLING COMPONENT	UNIT	BASE RATE ^(a)	CPI Adj Factor ^(b)	BILLING DETERMINANT ^(c)		AMOUNT (PHP)
A. Capacity Payment (MCP)						
Peso Portion	(Php/kW-yr)	17,228.8800		100,000	(kW)	1,722,888,000.00
B. Fixed O&M Payment (MFOM)						
Non-escalating Peso Portion	(Php/kW-yr)	2,661.0433		100,000	(kW)	266,104,330.00
C. Fuel Cost Payment (MFCP) ^(d,e)	(USD/kWh) ^(d)	0.0444		876,000,000	(kWh)	2,290,738,758.92
D. Variable O&M Payment (MVOM)						
Escalating Peso Portion	(Php/kWh)	0.0350	1.0342	876,000,000	(kWh)	31,708,572.00
Total Payment (VAT exclusive)						4,311,439,660.92
Effective Rate at Plant Gate						4.9217
WESM Line Rental Rate ^(f)						0.3000
Delivered Rate (VAT exclusive)						5.2217
Effective Cost if sourced from WESM ^(g)						7.2825
Increase / (Decrease) over WESM Price						(2.0608)
Meralco Captive Energy Demand ^(h)						39,683,089,284.22
Increase / (Decrease) in Generation Cost						-1,805,266,743.08
Increase / (Decrease) in Generation Cost						(0.0455)

NOTES:

^(a) Base Rates as set forth in Schedule 1 of Appendix E of the PSA.

^(b) CPI assumptions were based on values used during evaluation for Year 2025.

^(c) Energy Payments based on 100% plant capacity factor.

^(d) Dollar components shall be paid in USD, however values shown here were converted to Peso amount using exchange rate of PhP 58.835 / USD.

^(e) Fuel Payment calculated based on Guaranteed Net Plant Heat Rate at 100.00% load factor for Contract Year 1.

^(f) Line Rental rate for GNPD is based on the maximum allowable value for Contract Year 1 as stated in the PSA.

^(g) Cost if equivalent volume of GNPD was sourced from the WESM based on forecasted average hourly prices from September 2025 to August 2026.

^(h) Forecasted Meralco Captive Energy for September 2025 to August 2026 based on 2024 Power Supply Procurement Plan as submitted to DGE.

12. MERALCO notes that the delivered rate of PhP 5.2217 per kWh (line rental inclusive and VAT exclusive) is lower by about PhP 2.0608 per kWh than the effective cost of PhP 7.2825 per kWh if the equivalent capacity under the MERALCO-GNPD PSA is to be sourced from the Wholesale Electricity Spot Market (“WESM”). In fact, by sourcing the capacity through the MERALCO-GNPD PSA, MERALCO’s average blended generation rate will be reduced by about PhP 0.0455 per kWh (as seen in the RATE IMPACT ANALYSIS above) resulting in savings to consumers of about PhP 1.805 billion.
13. In support of this Joint Application, the Judicial Affidavit of ENGR. DAVIDJOHN A. ZUNIGA, Officer of MERALCO’s Energy Sourcing Office – Energy Resource Planning, is attached as ANNEX “E” and made an integral part hereof.
- V. COMPLIANCE WITH DOCUMENTARY REQUIREMENTS
14. 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's Certificate dated 2 September 2024	"B"
GNPD's Special Power of Attorney	"B-1"
B. MERALCO's Documents	
BAC-PSA Summary-Report regarding the conduct of the CSP	"C"
DOE Certificate of Conformity No. DOE-EPIMB-COC-2024-06-006 dated 6 June 2024	"C-1"
MERALCO- GNPD PSA dated 3 September 2024	"D"
Judicial Affidavit of MERALCO's witness, Engr. Davidjohn A. Zuñiga, Officer of MERALCO's Energy Sourcing Office – Energy Resource Planning	"E"
MERALCO's Articles of Incorporation and By-Laws (SEC-certified true copy)	"F"
MERALCO's Latest General Information Sheet ("GIS") (SEC-certified true copy) 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 ("NPC") Certification regarding whether or not Transition Supply Contract ("TSC") capacity and energy is expected to be available during the contractual period	"I"
<ul style="list-style-type: none">• Excerpt of MERALCO's DDP – 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, GEOP, etc.	"J" "J-1" "J-2" "J-3" "J-4" "J-5"
Documents showing MERALCO's conduct of CSP	"K" and series
C. GNPD's Documents	
SEC Certificate of Registration including the Articles of Partnership dated 21 May 2014	"L"

Description of Document	Annex
Amended Articles of Partnership dated 18 February 2022	“L-1”
Certificate dated 31 January 2024 with attached Information Sheet of GNPDP	“M”
Certificate dated 19 December 2023 with attached Project Ownership Structure Chart of GNPDP	“M-1”
Certification on Partnership Agreement dated 6 February 2023	“N”
GNPDP’s Certificate of Registration No. 2022-058 dated 29 December 2021	“O”
GNPDP’s Environmental Compliance Certificate No. ECC-CO-1406-0012 dated 10 November 2015 with attached Terms and Conditions issued by the Department of Environment and Natural Resources	“P”
Certificate of Compliance No. 22-10-M-00203L with attached Terms and Conditions issued by this Honorable Commission to GNPDP	“Q”
DOE Amended Certificate of Endorsement DOE-EPIMB-ERC No. 2021-08-172 dated 3 August 2021 issued to GNPDP	“R”
Write-up on non-applicable documents: <ul style="list-style-type: none">• Shareholder’s Agreement• By-Laws of Generation Company• Renewable Energy Service Contracts from the DOE• Certificate of Registration or Certificate of Confirmation of Commerciality by an RE Developer• Water Permit from the National Water Resources Board• Copies of related agreements (i.e., Transmission Wheeling Contract, Independent Power Producer Agreement, Engineering-Procurement-Construction Contract, Operation and Maintenance Contract, Wholesale Aggregator Agreement, Project Feasibility Study, etc.)• Updated costs in relation to a previously filed PSA• Distribution Wheeling Service Agreement• Potential cost of ancillary services	“S”
Single-line diagram connection	“T”
Executive Summary of the PPSA	“U”
Sources of Funds/Financial Plans (Confidential)*	“V”*
Certification on Financing Arrangement and Bank Certifications (Confidential)*	“W and series”*

Description of Document	Annex
Generation Rate and Derivation (Confidential)*	“X”*
Financial model in soft copy containing derivation of rates (Confidential)*	“Y”*
Cash Flow (Confidential)*	“Z”*
Explanation on the Fuel Procurement Process of GNPD (Confidential)*	“AA”*
Technical and Economic Characteristics of the Facility	“BB”
Latest Audited Financial Statements of GNPD	“CC”
Certification regarding the net heat rate of GNPD (Confidential)*	“DD”*
Simulation of the no. of operating units necessary to meet the MEOT and/or additional energy/demand requirements of MERALCO	“EE”
WESM Registration Information dated 21 December 2022 of GNPD	“FF”
Decision dated 06 November 2020 of this Honorable Commission on the point-to-point application of GNPD	“GG”

**Subject of a motion for Confidential Treatment of Information*

VII. ALLEGATIONS IN SUPPORT OF THE MOTION FOR
CONFIDENTIAL TREATMENT OF INFORMATION

15. Under Rule 4 of this Honorable Commission’s Revised Rules of Practice and Procedure (“RRPP”), a party to any proceeding before the Honorable Commission may request that certain information not be disclosed and be treated as confidential, by describing with particularity the information to be treated as confidential, specifying the ground for the claim of confidential treatment of the information and, if applicable, specifying the period during which the information must not be disclosed.
16. With respect to the following documents marked as “V”, “W and series”, “X”, “Y”, “Z”, “AA”, and “DD” (collectively, the “Confidential Documents”) GNPD respectfully moves that these be treated as confidential and not be disclosed to any party for the reason that these contain non-public, proprietary information, data and calculations involving the investments, financial calculations, and business operations of GNPD. The data and information contained therein are part of the overall formula and process in arriving at the competitive rates of GNPD. These formulas and processes are specifically developed for the use of GNPD and are treated as trade secrets. If the information contained in these documents are unduly disclosed, it will seriously prejudice the competitiveness of GNPD. These documents are neither generally available to the

public nor already in the possession of the Honorable Commission on a non-confidential basis.

17. In the case of *Air Philippines Corporation vs. Pennswell Inc.*,¹ the Supreme Court defined “trade secret” as follows:

A trade secret is defined as a plan or process, tool, mechanism or compound known only to its owner and those of his employees to whom it is necessary to confide it. The definition also extends to a secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade having commercial value. A trade secret may consist of any formula, pattern, device, or compilation of information that (1) is used in one’s business; and (2) gives the employer an opportunity to obtain advantage over competitors who do not possess the information. Generally, a trade secret is a process or device intended for continuous operation of the business, for example, a machine or formula, but can be a price list or catalogue or specialized customer list. It is indubitable that trade secrets constitute proprietary rights.” (Emphasis supplied.)

18. The protection of trade secrets is likewise recognized by the Honorable Commission in its Decision in ERC Case No. 2015-111 RC:

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. The prices cited in the documents were components of the proposed tariff. In fact, all three (3) documents were used by the Commission in evaluating the reasonableness of the proposed rate. In electric power industry [where] prices is a major consideration in selecting one’s supplier, it is apparent that the assumption used in arriving at one’s proposed tariff is considered a competitive leverage by one player against its competitors.

*Thus, the Commission resolved to treat the said documents confidential and may not be publicly disclosed.*²

19. GNPD hereby submits one (1) copy each of the foregoing Confidential Documents in a sealed envelope, with the envelope and each page of the documents marked “Confidential.”

¹ G. R. No. 172835, 13 December 2007.

² *In the Matter of the Application for the 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) with Prayer for Provisional Authority*, ERC Case No. 2015-111 RC, Decision dated 30 May 2017, p. 26.

20. The interest of MERALCO's consumers is sufficiently protected by the review and evaluation of the rates under the PSA by the Honorable Commission, without the need to disclose the contents of the Confidential Documents. The reasonableness and transparency of the prices of electricity is to be assured by the Honorable Commission through its own review and verification of the foregoing documents sought to be afforded confidential treatment in the evaluation and handling thereof.
21. Lastly and corollary to the foregoing, GNPDP would like to implore the discerning wisdom of the Honorable Commission to include in its issuance for this purpose the *"procedures for handling or returning the confidential information, as may be appropriate, upon the close of the proceedings."*³
22. GNPDP will seek the return of the Confidential Documents after their utilization as evidence in this case and/or at the close of the proceedings hereof, so as to relieve the Honorable Commission of the burden of safekeeping the trade secrets of GNPDP enclosed in the subject annexes.

PRAYER

WHEREFORE, premises considered, Applicants respectfully pray that the Honorable Commission:

- a) Issue an Order TREATING ANNEXES "V", "W and series", "X", "Y", "Z", "AA", and "DD" (i.e., the "Confidential Documents") 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 Confidential Documents will be returned to Applicant GNPDP, pursuant to Rule 4 of the RRPP;
- b) After hearing on the merits, render a Decision APPROVING the MERALCO-GNPDP PSA and the terms and conditions thereunder, including the price.

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

³ RRPP, Rule 4, Section 2.

Finding the said *Joint Application* to be sufficient in form and with the required fees having been paid, the Commission hereby sets the same for determination of compliance with the jurisdictional requirements, expository presentation, Pre-Trial Conference, and presentation of evidence on the following dates and online platform for the conduct thereof, pursuant to Resolution No. 09, Series of 2020⁴ and Resolution No. 01, Series of 2021⁵ (ERC Revised Rules of Practice and Procedure):

Date	Platform	Activity
12 December 2024 (Thursday) at two o'clock in the afternoon (2:00 P.M.)	Microsoft Teams Application	Determination of compliance with the jurisdictional requirements and expository presentation
09 January 2025 (Thursday) at two o'clock in the afternoon (2:00 P.M.)		Pre-Trial Conference and presentation of evidence

Accordingly, MERALCO and GNPD are hereby directed to host the virtual hearings at **MERALCO’s principal office located at Lopez Building, Ortigas Avenue, Brgy. Ugong, Pasig City**, as the designated venue for the conduct thereof, and ensure that the same is open to the public. Moreover, the Applicants shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

RELATIVE THERETO, MERALCO and GNPD is hereby directed to:

- 1) Cause the publication of the attached *Notice of Virtual 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 virtual hearing;
- 2) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing* the Offices of the Provincial Governors, the Mayors and the Local Government Unit (LGU) legislative bodies within MERALCO’s franchise area for the

⁴ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

⁵ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

appropriate posting thereof on their respective bulletin boards;

- 3) Inform the consumers within MERALCO's franchise area, by any other means available and appropriate, of the filing of the *Application*, the reasons therefor, and of the scheduled virtual hearings thereon;
- 4) Furnish with copies of this *Order* and the attached *Notice of Virtual 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 and attend the scheduled hearings; and
- 5) Furnish with copies of the *Application* and its attachments, except those subject of a motion for confidential treatment of information, all those making requests therefor, if any, subject to reimbursement of reasonable photocopying costs.

Within **five (5) calendar days** prior to the date of the initial virtual hearing, Applicants must submit to the Commission via electronic mail (e-mail) at docket@erc.ph, copy furnish the Legal Service through legal@erc.ph, the scanned copies of 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 Virtual Hearing* consisting of affidavits of the Editors or Business Managers of the newspapers where the said *Notice of Virtual 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 Virtual Hearing* consisting of certifications issued to that effect, signed by the aforementioned Governors, Mayors, and LGU legislative bodies or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by MERALCO and GNPD to inform the consumers within MERALCO's franchise area of the filing of the *Application*, the reasons therefor, and of the scheduled hearings thereon;

- 4) The evidence of receipt of copies of this *Order* and the attached *Notice of Virtual Hearing* by the OSG, the COA, and the Committees on Energy of both Houses of Congress;
- 5) The evidence of receipt of copies of the *Joint Application* and its attachments, except those subject of a motion for confidential treatment of information, by all those making requests therefor, if any; and
- 6) Such other proof of compliance with the requirements of the Commission.

Moreover, MERALCO and GNPD are hereby required to post on their bulletin boards, the scanned copies of the foregoing jurisdictional requirements, together with the newspaper publications and certifications issued by concerned Offices of the Governors, Mayors, and Local Legislative Bodies, and to submit proof of posting thereof.

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

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

MERALCO and GNPD must ensure that all the documents or exhibits proposed to be presented have already been duly submitted to the Commission **at least five (5) calendar days** before the date of the scheduled virtual hearing and Pre-Trial Conference, pursuant to the preceding paragraph.

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

MERALCO and GNPD 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 consumers and other concerned parties, the nature of the *Joint Application*. Relevant information and pertinent details substantiating the reasons and justifications for the *Joint Application* must be cited in support thereof.

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

MERALCO and GNPD are further directed to submit, either through personal service, registered mail or ordinary mail/private courier, one (1) set of the original or certified true hard copies of their jurisdictional compliance, Expository Presentation, Pre-Trial Brief, and Judicial Affidavits of witnesses, **within five (5) working days** from the date that the same were electronically submitted, as reflected in the acknowledgment receipt e-mail sent by the Commission.

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

SO ORDERED.

Pasig City, 15 October 2024.

FOR AND BY AUTHORITY
OF THE COMMISSION:


KRISHA MARIE T. BUELA
Director III, Legal Service


LS: NMK/ARG

Copy Furnished:

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Applicant
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8. House Committee on Energy
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10. Office of the Local Government Unit (LGU) Legislative Body
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11. Office the City Mayor
City of Las Piñas
12. Office of the LGU Legislative Body
City of Las Piñas
13. Office of the City Mayor
City of Makati
14. Office of the LGU Legislative Body
City of Makati
15. Office of the City Mayor
City of Malabon
16. Office of the LGU Legislative Body
City of Malabon
17. Office of the City Mayor
City of Mandaluyong
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City of Mandaluyong
19. Office of the City Mayor
City of Manila
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City of Manila
21. Office of the City Mayor
City of Marikina
22. Office of the LGU Legislative Body
City of Marikina
23. Office of the City Mayor
City of Muntinlupa

- 24. Office of the LGU Legislative Body
City of Muntinlupa
- 25. Office of the City Mayor
City of Navotas
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City of Parañaque
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- 29. Office of the City Mayor
City of Pasay
- 30. Office of the LGU Legislative Body
City of Pasay
- 31. Office of the City Mayor
City of Pasig
- 32. Office of the LGU Legislative Body
City of Pasig
- 33. Office of the Municipal Mayor
Municipality of Pateros
- 34. Office of the LGU Legislative Body
Municipality of Pateros
- 35. Office of the City Mayor
City of Quezon
- 36. Office of the LGU Legislative Body
City of Quezon
- 37. Office the City Mayor
City of San Juan
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- 39. Office of the City Mayor
City of Taguig
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- 41. Office of the City Mayor
City of Valenzuela
- 42. Office of the LGU Legislative Body
City of Valenzuela
- 43. Office of the Municipal Mayor
Angat, Bulacan
- 44. Office of the LGU Legislative Body
Angat, Bulacan
- 45. Office of the Municipal Mayor
Balagtas, Bulacan
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Balagtas, Bulacan
- 47. Office of the The Municipal Mayor
Baliwag, Bulacan
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Baliwag, Bulacan
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Bocaue, Bulacan
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Bulacan, Bulacan

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Calumpit, Bulacan
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Doña Remedios Trinidad, Bulacan
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Guiguinto, Bulacan
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Hagonoy, Bulacan
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Malolos, Bulacan
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Marilao, Bulacan
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Meycauayan, Bulacan
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Norzagaray, Bulacan
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Paombong, Bulacan
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Plaridel, Bulacan
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Pulilan, Bulacan

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San Ildefonso, Bulacan
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- 83. Office of the City Mayor
San Jose del Monte, Bulacan
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- 85. Office of the Municipal Mayor
San Miguel, Bulacan
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San Rafael, Bulacan
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Sta. Maria, Bulacan
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- 91. Office of the Municipal Mayor
Alfonso, Cavite
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- 93. Office of the Municipal Mayor
Amadeo, Cavite
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- 95. Office of the City Mayor
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- 97. Office of the Municipal Mayor
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- 99. Office of the City Mayor
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- 101. Office of the City Mayor
Dasmariñas, Cavite
- 102. Office of the LGU Legislative Body
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- 103. Office of the Municipal Mayor
General Emilio Aguinaldo, Cavite
- 104. Office of the LGU Legislative Body
General Emilio Aguinaldo, Cavite
- 105. Office of the Municipal Mayor
General Mariano Alvarez, Cavite
- 106. Office of the LGU Legislative Body
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- 136. Office of the LGU Legislative Body
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- 164. Office of the LGU Legislative Body
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Candaba, Pampanga
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- 235. Office of the Municipal Mayor
San Simon, Pampanga
- 236. Office of the LGU Legislative Body
San Simon, Pampanga
- 237. Office of the Governor
Province of Bulacan
- 238. Office of the LGU Legislative Body
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- 247. Office of the Governor
Province of Quezon

- 248. Office of the LGU Legislative Body
Province of Quezon
- 249. Office of the Governor
Province of Pampanga
- 250. Office of the LGU Legislative Body
Province of Pampanga
- 251. Office of the Governor
Province of Bataan
- 252. Office of the LGU Legislative Body
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