

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

ERC CASE NO. 2024-163 RC

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

Promulgated:
January 3, 2025

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NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 06 December 2024, the Manila Electric Company (MERALCO) and GNPowder Dinginin Ltd. Co. (GNPD) filed their *Joint Application* dated 15 November 2024, seeking the Commission’s approval of their Power Supply Agreement (PSA), with motion for confidential treatment of information.

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

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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. Alas-asin, 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 (net) supercritical coal-fired power generation facility and private port facility at Sitio Dinginin, Barangay Alas-asin, Municipality of Mariveles, Province of Bataan, on the island of Luzon in the Philippines (the "Plant").

II. STATEMENT OF FACTS AND TIMELINESS

5. In accordance with MERALCO's latest and duly accepted Distribution Development Plan and posted Power Supply Procurement Plan ("PSPP") approved by the Department of Energy ("DOE"), MERALCO foresees a mid-merit capacity deficit in its portfolio of 400 MW (net) beginning September 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 400 MW (net) mid-merit supply requirement. The conduct of CSP proceeded as follows:

- 8.1. On 30 May 2024, MERALCO submitted to the DOE, the Invitation to Bid ("ITB")/Terms of Reference ("TOR") for

its 400 MW (net) mid-merit supply requirement ("400 MW CSP"), to request for issuance of a Certificate of Conformity in accordance with MERALCO's latest and duly accepted Distribution Development Plan 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 13 June 2024, the DOE issued in favor of MERALCO a Certificate of Conformity No. DOE-EPIMB-COC-2024-06-007 dated 11 June 2024 (the "DOE COC") covering MERALCO's 400 MW (net) mid-merit supply requirement, which MERALCO received on the same day, 13 June 2024, and endorsed to its Bids and Awards Committee for Power Supply Agreements ("BAC-PSA") for commencement of the 400 MW CSP. On the same day, 13 June 2024, 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 400 MW CSP in relation to the DOE COC.
- 8.3. On 18 June 2024 and 25 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 an 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 ITB. The ITB and the TOR were likewise posted on MERALCO's website and on the DOE e-based CSP Portal.
- 8.4. On 21 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. On 01 July 2024, three (3) Observers submitted their intent to (and were admitted by) the BAC-PSA as CSP Observers.
- 8.5. On 1 August 2024, the BAC-PSA announced, via Bid Bulletin No. 4, 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 PNOG Exploration Corp. against MERALCO.
- 8.6. On 20 August 2024, the BAC-PSA announced, via Bid Bulletin No. 5, the resumption of CSP activities for this CSP (starting with the previously scheduled Pre-Bid

Conference of 01 August 2024 to the new schedule, 29 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 400 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.

- 8.7. On 29 August 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 400 MW CSP's bid submission deadline; was attended by CSP Observers; and was broadcasted via livestream on MERALCO's YouTube page.
- 8.8. On 01 October 2024, the bidders submitted their bid document submissions in compliance with all the bidding instructions for the 400 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 via livestream on MERALCO's YouTube page.
- 8.9. Following the BAC-PSA's evaluation of each of the bidders' bid submissions, Applicant GNPDP emerged as the bidder with the lowest calculated responsive bid ("Best Bid"), with GNPDP offering 400 MW (net) for the said bidding.
- 8.10. On 07 October 2024, the BAC-PSA conducted the post-qualification of the document submissions of GNPDP and found the submissions to be compliant with, and are responsive to, all the requirements and conditions specified in the bidding documents, as amended, or clarified by pertinent bid bulletins, for the 400 MW CSP. The post-qualification was attended by CSP Observers and was broadcasted via livestream on MERALCO's YouTube page.
- 8.11. On 11 October 2024, the BAC-PSA submitted its recommendation and report to MERALCO's Board of Directors recommending GNPDP to be declared as the Winning Power Supplier and be awarded a power supply agreement for its offer of PhP7.6816/kWh (total Delivered LCOE, VAT and Line Rental inclusive) for 400 MW (net).

8.12. On 16 October 2024, MERALCO's Board of Directors approved the BAC-PSA's recommendation and on 18 October 2024, a Notice of Award was issued by the BAC-PSA in favor of GNPDP.

8.13. On 07 November 2024, the Power Supply Agreement between MERALCO and GNPDP was dated, signed and executed ("MERALCO-GNPDP PSA"). On 08 November 2024, a performance bond was submitted by GNPDP and a Notice to Proceed was issued in its favor on 11 November 2024.

A copy of the BAC-PSA Summary-Report and the DOE COC regarding the conduct of the 400 MW (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 15 November 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 1 Definitions and Interpretation

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Availability of Supply means one hundred percent (100%) of the Contract Capacity is dispatchable during the Available Hours, subject to Section 8.1.1.

Available Hours means the continuous periods of: (a) fifteen (15) hours from Mondays to Saturdays covering peak hours of 9:00 AM (Trading Interval 10) to 12:00 MN (Trading Interval 24), and (b) ten (10) hours on Sundays covering the peak hours from 2:00 PM (Trading Interval 15) to 12:00 MN (Trading Interval 24); provided that, the Available Hours may change during the Term of this Agreement, upon mutual agreement of the Parties.

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Contract Capacity or CC shall be, subject to Section 3.2.2, Article 8, Article 9 and Section 19.1, 400 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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5.1. Supply of Power

Subject to the terms and conditions of this Agreement:

5.1.1 From the Operations Effective Date of the Plant until the expiration of the Term or earlier termination of this Agreement, Power Supplier shall:

- (a) make available to Meralco, and Meralco shall purchase from Power Supplier, at the Price determined in accordance with Appendix E, the Contract Capacity of the Plant; and
- (b) deliver and sell to Meralco, and Meralco shall purchase from Power Supplier, at the Price determined in accordance with Appendix E, the Associated Energy (and Replacement Power), to the extent of Meralco's relevant day-ahead nominations.

The Dispatch of Contract Capacity and Associated Energy shall meet the requirements set out in the Performance Guarantees.

5.1.2 Unless otherwise expressly permitted by this Agreement, Power Supplier shall not, without Meralco's prior written consent:

- (a) sell, divert, grant, transfer, dedicate, reserve or assign all or any portion of the Contract Capacity and Associated Energy to any Person other than Meralco; or
- (b) provide Meralco with capacity and/or electrical energy from any source other than the Plant; provided, however, that Power Supplier shall be allowed to deliver and sell to Meralco the Associated Energy 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, to be paid for by Meralco at the lower between the actual Replacement Power cost and Price, in accordance with Appendix E. Should Power Supplier fail to source from the Plant when it is available, Meralco shall pay the lower between WESM price and Price, in accordance with Appendix E.

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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.

8.1.4. 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.

8.2. Scheduling Outages

8.2.1 Power Supplier shall inform and coordinate with Meralco, and secure Meralco's favorable endorsement of the Plant's annual Scheduled Outages and Major Maintenance Outages for the succeeding calendar year as submitted to the System Operator ("Annual Maintenance Plan"). In case of any revisions to the Annual Maintenance Plan approved or initiated by the System Operator, Power Supplier shall coordinate with and keep Meralco informed thereof immediately, and procure Meralco's favorable endorsement thereof.

8.2.2 In case of Scheduled Outages other than those in the Annual Maintenance Plan, Power Supplier shall (i) notify Meralco in writing prior to notifying the System Operator and (ii) comply with the requirements of the System Operator, including obtaining Meralco's favorable endorsement, which endorsement will not be unreasonably withheld, delayed or conditioned.

8.2.3 Meralco shall reasonably endeavour to coordinate its maintenance of interconnection facilities with the Scheduled Outage to minimize any disruption to Plant operations.

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 ERC Approval having been received on or prior to 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.

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IV. GENERATION RATE IMPACT

11. Based on the foregoing, and given a certain set of assumptions, the effective rate under the MERALCO-GNPD PSA is PhP 6.7628 per kWh (at plant gate, VAT exclusive), as shown in the RATE IMPACT ANALYSIS below:

(Rate Impact Analysis table follows)

GNPower Dinginin Ltd. Co. (GNPD) PSA - Rate Impact at 59.52% 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)	18,000.0000		400,000	(kW)	7,200,000,000.00
B. Fixed O&M Payment (MFOM)						
Escalating Peso Portion	(Php/kW-yr)	2,661.0433	1.0342	400,000	(kW)	1,100,820,392.34
C. Fuel Cost Payment (MFCP) ^[d,e]						
Escalating Peso Portion	(USD/kWh) ^[d]	0.0467		2,085,580,800	(kWh)	5,728,063,612.40
D. Variable O&M Payment (MVOM)						
Escalating Peso Portion	(Php/kWh)	0.0350	1.0342	2,085,580,800	(kWh)	75,491,768.22
Total Payment (VAT exclusive)		(Php)				14,104,375,772.96
Effective Rate at Plant Gate		(Php/kWh)				6.7628
WESM Line Rental Rate ^[f]		(Php/kWh)				0.0000
Delivered Rate (VAT exclusive)		(Php/kWh)				6.7628
Effective Cost if sourced from WESM ^[g]		(Php/kWh)				9.0830
Increase / (Decrease) over WESM Price		(Php/kWh)				(2.3202)
Meralco Captive Energy Demand ^[h]		(kWh)				39,683,089,284.22
Increase / (Decrease) in Generation Cost		(Php)				(4,839,009,870.33)
Increase / (Decrease) in Generation Cost		(Php/kWh)				(0.1219)

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 59.52% 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 peak 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 DOE.

12. MERALCO notes that the delivered rate of PhP 6.7628 per kWh (line rental inclusive and VAT exclusive), is lower by about PhP 2.3202 per kWh than the total effective cost of PhP 9.0830 per kWh if the equivalent capacity under the MERALCO-GNPD PSA is to be sourced from the Wholesale Electricity Spot Market (“WESM”). By sourcing the capacity through the MERALCO-GNPD PSA, MERALCO's average blended generation rate will be reduced by about PhP 0.1219 per kWh (as seen in the RATE IMPACT ANALYSIS above) resulting in savings to consumers of about PhP 4.8 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 Certificate	“B”
GNPD’s SPA	“B-1”

Description of Document	Annex
B. MERALCO's Documents	
BAC-PSA Summary-Report regarding the conduct of the CSP	"C"
DOE Certificate of Conformity No. DOE-EPIMB-COC-2024-06-007 dated 11 June 2024	"C-1"
MERALCO- GNPDP SA	"D"
Judicial Affidavit of MERALCO's witness, Engr. Davidjohn A. Zuñiga, Officer of MERALCO's Energy Sourcing – 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)	"G"
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-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 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, GEOP, etc. 	"J" "J-1" "J-2" "J-3" "J-4" "J-5"
Documents showing MERALCO's conduct of CSP	"K" and series
C. GNPDP's Documents	
SEC Certificate of Registration, including the Articles of Partnership	"L"
Amended Articles of Partnership dated 18 February 2022	"L-1"
Certificate dated 06 September 2024 with attached Information Sheet of GNPDP	"M"
Certificate dated 08 November 2024 with attached Project Ownership Structure Chart of GNPDP	"M-1"
Certification on Partnership Agreement dated 06 February 2023	"N"
GNPDP's Certificate of Registration No. 2022-058 dated 29 December 2021, with attached Terms and Conditions	"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 issued by the ERC to GNPDP	"Q"
DOE Amended Certificate of Endorsement DOE-EPIMB-ERC No. 2021-08-172 dated 03 August 2021	"R"
Written Explanation on Inapplicable Documents: <ul style="list-style-type: none"> Renewable Energy Service Contracts from the DOE Certificate of Registration or Certificate of Confirmation of Commerciality by an RE Developer 	"S"

Description of Document	Annex
<ul style="list-style-type: none"> Shareholder’s Agreement By-Laws Water Permit from the National Water Resources Board Copies of related agreements (i.e., Transmission Wheeling Contract, Independent Power Producer Administrators 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; and Potential cost of ancillary services. 	
Single-line Diagram connection	“T”
Executive Summary of the MERALCO-GNPD PSA	“U”
Sources of Funds/Financial Plans (Confidential)*	“V”*
Certification on Financing Arrangement and Bank Certifications (Confidential)*	“W and series”*
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”*
Fuel Supply Agreement (Confidential)*	“AA-1”*
Technical and Economic Characteristic 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”
GNPD EPC Contract	“HH”*

- VI. ALLEGATIONS IN SUPPORT OF THE MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION
15. Under Rule 4 of the ERC Revised Rules of Practice and Procedure (“ERC-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. In line with this, GNPD prays that ANNEXES “V”, “W and series”, “X”, “Y”, “Z”, “AA”, “AA-1”, “DD”, and “HH” (collectively, the “Confidential Documents”) and the information contained

therein be treated as confidential and should not be disclosed to any persons other than the officers and staff of the ERC.

17. The foregoing documents contain information and data involving GNPDP's power rate calculations and financial model, as well as how these are derived. They are not generally available to the public, are proprietary, privileged, and confidential in nature, and should be protected as trade secrets. 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. GNPDP hereby submits one (1) copy 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 the consumers of MERALCO 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 ANNEXES "V", "W and series", "X", "Y", "Z", "AA", "AA-1", "DD", and "HH". 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, GNPD 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. This is guided by the fact that GNPD will seek for the return of these sought to be declared confidential annexes after its utilization as evidence in this case and/or at the close of the proceedings hereof, to relieve the Honorable Commission of the burden of safekeeping the trade secrets of GNPD 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", "AA-1", "DD", and "HH" (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 GNPD, pursuant to Rule 4 of the ERC-RRPP;

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

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

The Commission sets the instant *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 platform for the conduct

³ ERC-RRPP, Rule 4, Section 2.

thereof, pursuant to Resolution 09, Series of 2020⁴ and Resolution No. 01, Series of 2021⁵ (ERC Revised Rules of Practice and Procedure):

Date	Platform	Activity
14 March 2025 (Friday) at two o'clock in the afternoon (2:00 PM)	Microsoft Teams Application	Determination of compliance with the jurisdictional requirements and expository presentation
21 March 2025 (Friday) at two o'clock in the afternoon (2:00 PM)		Pre-Trial Conference and presentation of evidence

MERALCO and GNPD are directed to host the virtual hearings at **MERALCO’s Principal Office 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. MERALCO and GNPD shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

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 person who has 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:

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.

- 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 **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* through 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, through 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 Chairperson **MONALISA C. DIMALANTA**, and Honorable Commissioners **ALEXIS M. LUMBATAN**, **CATHERINE P. MACEDA**, **FLORESINDA G. BALDO-DIGAL** and **MARKO ROMEO L. FUENTES**, Energy Regulatory Commission, this 3rd day of January 2025 in Pasig City.

FOR AND BY AUTHORITY
OF THE COMMISSION:


KRISHA MARIE T. BUELA
Director III, Legal Service


LS: JRBC/ARG