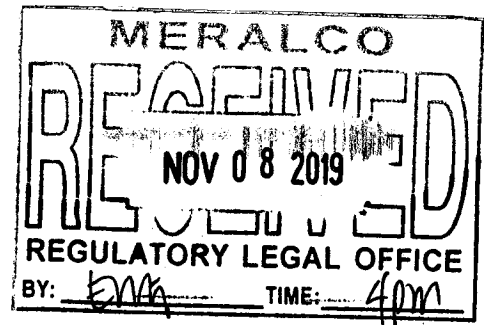


Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City

IN THE MATTER OF THE
APPLICATION FOR THE
APPROVAL OF THE POWER
SUPPLY AGREEMENT
(PSA) BETWEEN MANILA
ELECTRIC COMPANY
(MERALCO) AND FIRST
GEN HYDRO POWER
CORPORATION (FGHPC)
WITH PRAYER FOR
PROVISIONAL AUTHORITY
AND/OR INTERIM RELIEF
AND MOTION FOR
CONFIDENTIAL
TREATMENT OF
INFORMATION



ERC CASE NO. 2019-082 RC

MANILA ELECTRIC
COMPANY (MERALCO)
AND FIRST GEN HYDRO
POWER CORPORATION
(FGHPC),

Applicants.

X-----X

NOV 07 2019

ORDER

On 22 October 2019, the Manila Electric Company (MERALCO) and First Gen Hydro Power Corporation (FGHPC) filed a *Joint Application* dated 21 October 2019, seeking the Commission's approval of their Power Supply Agreement (PSA), with prayer for provisional authority and/or interim relief and motion for confidential treatment of information.

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

1. Applicant MERALCO is a private corporation duly organized and existing under the laws of the Philippines, with principal office located at Lopez Building, Ortigas Avenue, Barangay

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.
3. Applicant FGHPC is a private corporation duly organized and existing under the laws of the Philippines, with principal office located at 6th Floor Rockwell Business Center Tower 3, Ortigas Avenue, Pasig City, Metro Manila. It may be served with notices and other processes of this Honorable Commission through its counsel at the address indicated below.
4. FGHPC: (i) owns, operates, manages, and maintains the Pantabangan-Masiway Hydroelectric Power Plant, a 132 MW power plant complex located in Nueva Ecija; and (ii) administers and manages: (1) 24 MW (net) output of Bac-Man Geothermal Power Plant, a 150 MW power plant located in Bacon, Sorsogon City and Manito, Albay, Bicol; (2) 16 MW (net) output of Nasulo Geothermal Power Plant, a 49.4 MW power plant located in Valencia, Negros Oriental; (3) 38 MW (net) output of Tongonan Geothermal Power Plant, a 120.5 MW power plant located in Tongonan, Leyte; and (4) 8 MW (net) output of the Unified Leyte Geothermal Power Plant, a 588.4 MW power plant located in Kananga, Leyte (collectively referred to as "Plant"). It offered to supply and sell to MERALCO its electric energy corresponding to 100 MW (net) produced from said Plant, the Wholesale Electricity Spot Market ("WESM"), or any other source.
5. Based on the power situation outlook for 2020 and succeeding years, MERALCO foresees a capacity deficit in its portfolio due to the expiration of its power supply agreements covering 1905 MW by December 25, 2019.
6. In order to ensure continuous and reliable electricity for MERALCO's customers, there is a need for MERALCO to source 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, following the conduct of a competitive selection process ("CSP") for the procurement of mid-merit capacity, on 16 September 2019, MERALCO executed a Power Supply

Agreement ("PSA") with FGHPC, for the purchase of electric energy by its Plants corresponding to 100 MW (net). The conduct of a CSP proceeded as follows:

- 8.1. On 16 July 2019, MERALCO caused the publication of an Invitation to Bid, which contained basic terms of reference, indicating a summary of the process and timelines of the CSP, and inviting power generation companies to submit an Expression of Interest and Confidentiality Undertaking on or before the deadline set out in the said invitation. At the same time, MERALCO caused the posting thereof on its website and the Department of Energy's ("DOE") e-based portal.
 - 8.2. On 11 September 2019, the bidders submitted their Bid Requirements, followed by the opening of the respective submissions by the Third-Party Bids and Awards Committee ("TPBAC") on the same day, FGHPC's bid was declared as one of the best bids.
 - 8.3. On 12 September 2019, the TPBAC sent a letter-notice to FGHPC, as one of the winning power suppliers, confirming after post-qualification evaluation that its proposed energy price was found to be among the best bids. The said letter-notice also contained the Notice of Award in favor of FGHPC.
 - 8.4. On 19 September 2019, and upon the directive of this Honorable Commission, MERALCO wrote DOE for a written certification that the aforesaid CSP is compliant with DOE Circular No. 2018-02-003, series of 2018. In lieu of the requested certification that has not been issued to date, the TPBAC Chairman has executed an affidavit attesting to such compliance.¹
9. The PSA between MERALCO and FGHPC, a copy of which is attached as ANNEX "C" and made an integral part hereof, contains the following salient features:
- "2.2. Term of Agreement
 - 2.2.1 Subject to Article 3, this Agreement shall become effective on the Execution Date.
 - 2.2.2 The term of this Agreement (the "Term") shall commence on the Operations Effective Date, and shall expire on December 25, 2024, unless terminated earlier in accordance with the terms of this Agreement or extended by the application of Section 2.2.3.

¹ A copy of MERALCO's letter-request stamped received by the DOE and the affidavit of the TPBAC's Chairman are attached as part of the documents showing MERALCO's conduct of a competitive selection process marked as Annex "K" series.

- 2.2.3 The Term may be renewed for an additional period of up to one (1) year under the same terms and conditions, at the option of Meralco, by giving prior written notice to Power Supplier at least one hundred eighty (180) Days prior to the end of the Term.

xxx

3.3. Operations Effective Date

- 3.3.1. The obligations of Power Supplier with respect to the Contract Capacity and Associated Energy shall commence on December 26, 2019 (the "Operations Effective Date"), provided that Commencement Date has occurred.
- 3.3.2. If the Operations Effective Date has not occurred by the Longstop Date, then the provisions of Section 14.5.1 shall apply. If the Parties agree to extend the Longstop Date, then the Parties shall also stipulate the revised date by which the Operations Effective Date shall occur.

xxx

4.1 Supply of Power

Subject of the terms and conditions of this Agreement, from the Operations Effective Date until the expiration of the Term or earlier termination of this Agreement:

- (a) Power Supplier shall make available to Meralco, the Contract Capacity to be sourced from the Plant, WESM or any other source, and deliver and sell to Meralco the Associated Energy, at the Contract Price determined in accordance with Appendix C; and
- (b) Meralco shall purchase from Power Supplier, to the extent of Meralco's relevant day-ahead nominations, the MEOT, and at its option, the Excess Energy, at the Contract Price determined in accordance with Appendix C.

4.2. Contract Price

The Contract Price for the first Contract Year is PhP5.1908 per kWh,¹ subject to zero-rated value-added tax (VAT) and an annual escalation as computed and shown in Schedule 1 of Appendix C; provided, that the Benefits to Host Communities Charges, if any shall not form part of and is excluded from the computation of the Contract Price. For the avoidance of doubt, all taxes pertaining to Power Supplier, including but not limited to the Benefits to Host Communities Charges, shall be shouldered by, and be for the sole account of, Power Supplier. Any

violation of this Section 4.2 shall constitute a Power Supplier Event of Default as provided for under Section 14.1.

¹Based on sixty percent (60%) plant capacity factor corresponding to the Contract Capacity.

xxx

Article 7. Outages

- 7.1 Power Supplier shall not be entitled to any Outage during the Term of this Agreement. For clarity, this means that notwithstanding Outage of the Plant, Power Supplier shall make available the Contract Capacity and deliver the Associated Energy to Meralco.

xxx

- 7.3 In case Power Supplier fails to make available the Contract Capacity and deliver the Associated Energy to Meralco due to unavailability of supply from its Plant, WESM, and any other source, Power Supplier shall pay a fine equivalent to Nine Hundred Eight Philippine Peso (PhP908) multiplied by each MWh during a Day, which shall be used to reduce the generation charge to the consumers. For the avoidance of doubt, in case Power Supplier fails or refuses to supply Contract Capacity and Associated Energy despite availability thereof, then Section 14.3.1 shall apply.

Article 8. Assignment or Transfer of Contract Capacity

- 8.1 Meralco shall be entitled to assign, transfer, designate, delegate or allocate (collectively in this context, "Transfer") its rights and obligations to purchase a portion of Contract Capacity and Associated Energy that is no longer required by Meralco to any of its business segments or wholly-owned Affiliates, to the extent allowed by Law, or to any other Person acceptable to Power Supplier (which consent shall not be unreasonably withheld, delayed, or conditioned).
- 8.2 In respect of Transfers not requiring Power Supplier's consent, Meralco shall give a written notice to Power Supplier of such Transfer at least five (5) Days prior to the first Day of the next Billing Period or by such date as would be sufficient for timely notice to WESM of such change. In respect of Transfers requiring Power Supplier's consent, Meralco shall give a written notice to Power Supplier of such Transfer at least sixty (60) Days prior to the first Day of the next Billing Period or by such date as would be sufficient for timely notice to WESM of such change.

Subject to the receipt of Meralco and Power Supplier of the written acceptance of such Transfer by the transferee:

- (a) Meralco shall cease to have any rights and obligations under this Agreement, and
- (b) the transferee shall assume all rights and obligations of Meralco under this Agreement.

8.3. Reduction in Contract Capacity and Associated Energy

8.3.1 Subject to the provisions of Section 8.3.2, 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 by reason of the enforcement of Retail Competition and Open Access, the Renewable Energy Law, other Laws, and Legal Requirements.

8.3.2 Meralco shall give a written notice to Power Supplier of such reduction at least five (5) Days prior to the first Day of the next Billing Period. 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.

xxx

12.2. ERC Approval

12.2.1. 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 the date of receipt from Meralco of such ERC Approval to notify Meralco in writing that: (i) it accepts such ERC Approval or (ii) it does not accept the ERC Approval, stating the grounds for non-acceptance.

12.2.2. In case of Power Supplier's non-acceptance, Power Supplier shall be free to file with the ERC a motion for reconsideration. In case Power Supplier decides to file a motion for reconsideration, and pending resolution thereof by the ERC, the Parties shall implement the ERC Approval subject to any adjustment or amendment that the ERC may direct. Any order on a motion for reconsideration shall be treated as an ERC Approval for purposes of the processes under Section 12.2. If the ERC Approval requires any amendment to or modification of any provision of this Agreement

that is not acceptable to either Party, acting reasonably, then the Parties shall cooperate in good faith to resolve the required amendment. If the Parties are unable to agree on the required amendment within thirty (30) Days from receipt of the ERC Approval resolving the motion for reconsideration, or if the motion for reconsideration is not resolved by the ERC within one hundred twenty (120) days after its filing, Power Supplier may terminate this Agreement upon thirty (30) Days prior written notice to Meralco.

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

12.2.4. Following (i) a written notice of acceptance from Power Supplier with respect to the ERC Approval (including upon reconsideration under Section 12.2.2. above), or (ii) the lapse of the period referred to in Section 12.2.1. without Power Supplier communicating its acceptance or non-acceptance in writing, the acceptance date shall be considered as having occurred on the date of the written notice of acceptance or on the last Day of such period, as applicable ("Acceptance Date"), provided, in each case, that Meralco has not filed any motion for reconsideration or appeal subsequent to the Power Supplier's acceptance of such ERC Approval and the Longstop Date has not occurred.

Xxx

13.2 Instance of Force Majeure

Subject to the provisions of Section 13.1., Events of Force Majeure shall include, but not be limited to:

- (a) acts of war or the public enemy whether war is declared or not;
- (b) public disorders, civil disturbance, insurrection, rebellion, acts or campaigns of terrorism, piracy, embargo, sabotage, blockade, revolution, riots or violent demonstrations;
- (c) explosions, fires, earthquakes, lightning, typhoon, tsunami, flood, cyclone, volcanic eruptions, landslide or other natural disasters, acts of God, epidemic, quarantine or plague;
- (d) any action or aggregation of actions or failure to act by any Governmental Instrumentality, including expropriation, requisition,

confiscation, nationalization or other compulsory acquisition;

- (e) strikes, lockouts or other collective or industrial action by workers or employees other than non-manual personnel (in each instance, occurring in the Philippines); provided that any Party that seeks to invoke such a strike, lockout or other collective or industrial action as an Event of Force of Majeure must first utilize all reasonable efforts to continue performance of its obligations hereunder; and
- (f) any Transmission Failure that prevents delivery by Power Supplier, or acceptance by Meralco, of Contract Capacity and Associated Energy. In case of disagreement as to the existence of a Transmission Failure, the Parties shall secure the necessary certification from the ERC, which certification shall bind both Parties;

For clarity, the Power Supplier shall not be allowed to claim Force Majeure under Article 13 in case there is supply available from the WESM or any other source.

XXX

13.5. Event Not Excused

Lack or unavailability of supply in itself shall not be considered as an Event of Force Majeure, unless the circumstances in Section 13.1 concur.”

- 10. Based on the foregoing, and given a certain set of assumptions, the annual effective rate under the PSA is Php5.1908 per kWh (at plant gate, VAT inclusive), as shown in the rate impact analysis below:

FGHPC PSA (100 MW) - Annual Rate Impact					
(YEAR 2020)					
BILLING COMPONENT	UNIT	BASE RATES ^[a]	BILLING DETERMINANT ^[b]		AMOUNT (PHP)
Energy Payment					
Contract Price for energy up to MEOT PCF (45%)	(Php/kWh)	5.1908	395,280,000	(kWh)	2,051,819,424.00
Excess Energy Price for energy greater than MEOT PCF up to 60% pcf	(Php/kWh)	5.1908	131,760,000	(kWh)	683,939,808.00
Total Energy Payment (VAT exclusive)	(Php/kWh)	5.1908	527,040,000	(kWh)	2,735,759,232.00
VAT Payment ^[c]	(Php)				0.00
Total Payment (VAT inclusive)	(Php)				2,735,759,232.00
Effective Rate at Plant Gate (VAT inclusive)	(Php/kWh)				5.1908
WESM Line Rental Rate ^[d]	(Php/kWh)				0.0000
Delivered Rate (VAT Inclusive)	(Php/kWh)				5.1908
Effective Cost at representative Mid-merit PSA ^[e]	(Php/kWh)				7.5049
Increase / (Decrease) over representative Mid-merit PSA	(Php/kWh)				(2.3141)
Meralco Captive Energy Demand ^[f]	(kWh)				35,005,615,519
Increase / (Decrease) in Generation Cost	(Php)				(1,219,638,029.70)
Increase / (Decrease) in Generation Cost	(Php/kWh)				(0.0348)

Assumptions:

[a] Contract Price (VAT exclusive) and Excess Energy Price (VAT exclusive) as set forth and computed in Appendix C of the PSA.

[b] Energy billing determinant for one year based on 60% plant capacity factor with respect to the Contract Capacity (100,000 kW).

[c] VAT rate of 0.00% as stated in the PSA.

[d] Line Rental rate for FGHPC is based on the maximum allowable value as stated in the PSA.

[e] Cost if equivalent volume of FGHPC was sourced from representative Mid-merit PSA (SMEC) that will expire on Dec. 25, 2019 using average of actual Sep 2018 to Aug 2019 prices (VAT and line rental inclusive).

[f] Forecasted Meralco Captive Energy for 2020 based on Power Supply Procurement Plan as submitted to DOE.

11. MERALCO notes that the annual delivered rate of PhP5.1908 per kWh (VAT and line rental inclusive) is lower by about PhP2.3141 per kWh than the effective cost of PhP7.5049 per kWh (VAT and line rental inclusive), if the equivalent capacity under the instant PSA will be sourced from MERALCO's representative mid-merit PSA. In fact, by sourcing the capacity through the instant PSA, MERALCO's average blended generation rate² of PhP5.84 per kWh (VAT and line rental inclusive) will be reduced by about PhP0.0348 per kWh (as seen in the rate impact above), resulting in savings to consumers of about PhP 1.22 Billion.
12. It bears emphasis that MERALCO's foreseen capacity deficit due to the expiration of its several power supply agreements by 25 December 2019 is 1905 MW. Thus, there is an urgent need for provisional authority and/or interim relief to implement the PSA by 26 December 2019; otherwise, MERALCO will be constrained to source its capacity deficit from the WESM, thereby exposing its customers to volatile WESM prices. More importantly, it should be considered that the immediate approval and implementation of the instant PSA would redound to the best interest of the consumers since aside from the very competitive rate, the supply availability under the instant PSA is guaranteed 100% by FGHPC as no outage allowance is provided therein.
13. In support of this Joint Application, and the prayer for provisional authority and/or interim relief, the Judicial Affidavits of MR. RYAN S. MORALES, Head of MERALCO's Energy Sourcing Office, and MR. MARC WENDOLF N. DUQUE, Senior Analyst of FGHPC's affiliate, First Gen Energy Solutions, Inc., are attached as ANNEXES "D" and "E", respectively, and made integral parts hereof.
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 this Honorable Commission:

Description of Document	Annex
MERALCO's Articles of Incorporation and By-Laws	F
MERALCO's latest General Information Sheet (GIS)	G
Demand Side Management Program	H
Write-up on non-applicability of a Certification by NPC re: whether Transition Supply Contract (TSC) capacity and energy is expected to be available	I
Excerpt of Distribution Development Plan – Power Supply Procurement Plan	J
Supply and Demand Scenario	J-1
Average Daily Load Curve scenarios	J-2
Documents showing MERALCO's conduct of a competitive selection process	K and series
FGHPC's Amended Articles of Incorporation	L
FGHPC's Articles of Incorporation and By-Laws	L-1

²

Prior twelve (12) month period.

Bac-Man Geothermal Inc.'s Amended Articles of Incorporation (amending Article II)	L-2
Bac-Man Geothermal Inc.'s Amended Articles of Incorporation (amending Article VII)	L-3
Bac-Man Geothermal Inc.'s Articles of Incorporation and By-Laws	L-4
Energy Development Corporation's Amended Articles of Incorporation (amending Article VII)	L-5
Energy Development Corporation's Amended By-Laws	L-6
Energy Development Corporation's Articles of Incorporation and By-Laws	L-7
Green Core Geothermal Inc.'s Amended Articles of Incorporation (Amending Article II Primary Purpose thereof)	L-8
Green Core Geothermal Inc.'s By-Laws	L-9
Unified Leyte Geothermal Energy, Inc.'s Amended Articles of Incorporation	L-10
Unified Leyte Geothermal Energy, Inc.'s By-Laws	L-11
Certificate of Incorporation of First Gen Hydro Power Corporation	M
Certificate of Incorporation of Bac-Man Geothermal Inc.	M-1
Certificate of Incorporation of Energy Development Corporation	M-2
Certificate of Incorporation of Green Core Geothermal Inc.	M-3
Certificate of Incorporation of Unified Leyte Geothermal Inc.	M-4
FGHPC's latest General Information Sheet (GIS) showing list of Shareholders	N
Bac-Man Geothermal Inc.'s latest General Information Sheet	N-1
Energy Development Corporation's latest General Information Sheet	N-2
Green Core Geothermal Inc.'s latest General Information Sheet	N-3
Unified Leyte Geothermal Energy, Inc.'s latest General Information Sheet	N-4
Document showing information related to the Ultimate Parent Company, its Subsidiaries and all its affiliates	O
FGHPC's Board of Investments ("BOI") Certificate of Registration No. 2007-070	P
Bac-Man Geothermal Inc.'s BOI Certificate of Registration No. 2013-048	P-1
Energy Development Corporation's BOI Certificate of Registration No. 2014-027	P-2
Green Core Geothermal Inc.'s BOI Certificate of Registration No. 2015-254	P-3
Energy Development Corporation's BOI Certificate of Registration No. 2012-024	P-4
FGHPC's Environmental Compliance Certificate ("ECC") No. 03NE-0706-05228-120A	Q
Bac-Man Geothermal Inc.'s ECC No. ECC-CO-1607-0019	Q-1
Energy Development Corporation's ECC No. ECC-Co-1507-0021	Q-2
Green Core Geothermal Inc.'s ECC Ref Code 1204-0007	Q-3
FGHPC's Certificate of Compliance ("COC") No. 16-03-M-00286pL	R
Bac-Man Geothermal Inc.'s COC No. 16-03-M-00286jL	R-1
Energy Development Corporation's COC No. 19-07-M-00357V	R-2

Energy Development Corporation's COC No. 17-03-M-13348V	R-3
Energy Development Corporation's COC No. 17-03-M-13347V	R-4
Energy Development Corporation's COC No. 17-03-M-13346V	R-5
Energy Development Corporation's COC No. 18-04-M-00152V	R-6
Energy Development Corporation's COC No. 18-04-M-00151V	R-7
Energy Development Corporation's COC No. 18-04-M000153V	R-8
Green Core Geothermal, Inc.'s COC No. 15-07-M-286fV	R-9
Hydropower Operating Contract	S*
Geothermal Renewable Energy (RE) Service Contract – Bacon-Manito, Albay-Sorsogon	S-1*
Geothermal Renewable Energy (RE) Service Contract – Southern Negros	S-2*
Geothermal Renewable Energy (RE) Service Contract – Tongonan	S-3*
FGHPC Department of Energy (“DOE”) Certificate of Registration No. HOC 2016-06-665	T
FGHPC Department of Energy Certificate of Registration No. HOC 2016-06-666	T-1
Bac-Man Geothermal Inc.'s DOE Certificate of Registration No. GRESC 2012-04-039	T-2
Energy Development Corporation's DOE Certificate of Registration No. GRESC 2009-10-001	T-3
Energy Development Corporation's DOE Certificate of Registration No. GRESC 2009-10-002	T-4
Green Core Geothermal Inc.'s DOE Certificate of Registration No. GOC 2012-04-038	T-5
Transmission Service Agreement between FGHPC and the NGCP	U*
Transmission Service Agreement between BGI and the NGCP	U-1*
Transmission Service Agreement between EDC and the NGCP	U-2*
Transmission Service Agreement between GCGI and the NGCP	U-3*
Transmission Service Agreement between PSALM and the NGCP	U-4*
Sources of Funds/Financial Plans; Generation Rate and Derivation; Cash Flow; Costs analysis related to generation in support of the proposed pricing provisions of the contract; Potential Cost of Ancillary Services - with Financial model in compact disc containing derivation of rates	V*
FGHPC's latest Audited Financial Statements	W
BGI's latest Audited Financial Statements	W-1
EDC's latest Audited Financial Statements	W-2
GCGI's latest Audited Financial Statements	W-3
ULGEI's latest Audited Financial Statements	W-4
Write-up on the non-submission of certain documentary requirements	X

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

ALLEGATIONS IN SUPPORT OF THE MOTION FOR
CONFIDENTIAL TREATMENT OF INFORMATION

15. Annexes “S” and series, “U” and series, and “V” and series contain numbers, methodology, and calculations which provide valuable information and insight on how FGHPC

and its affiliates arrive at its power generation rate and would accordingly reflect FGHP's bidding strategy for distribution utilities undertaking competitive process for the selection of their power suppliers, and FGHP's trading in the WESM. It also contains information regarding the debt or equity ratio, capital costs, weighted average cost of capital, and fuel cost, among other information.

- 15.1. Pursuant to agreements of FGHP and the relevant entities with its respective lenders and other counterparties, Annexes "S" and series, "U" and series, and "V" and series likewise contain certain non-public information involving its commercial and financial trade secrets. The information contained in Annexes "S" and series, "U" and series, and "V" and series, when disclosed together with Annexes "S" and series, "U" and series, and "V" and series would certainly provide an indication of FGHP's bidding strategy and trading in the WESM.
- 15.2. Applicant FGHP is bound by confidentiality agreements prohibiting the disclosure of any business, technical, marketing, operational, organizational, financial or other information and trade secrets and other confidential documents, papers and information, such as those contained in Annexes "S" and series, "U" and series, and "V" and series.
- 15.3. It is therefore submitted that Annexes "S" and series, "U" and series, and "V" and series fall within the bounds of proprietary "trade secrets" which are entitled to protection under the Constitution, statutes, and rules and regulations of this Honorable Commission.
16. 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, Applicant FGHP respectfully prays for the issuance of a protective order declaring Annexes "S" and series, "U" and series, and "V" and series as confidential information, since the Applicant FGHP intends to present them as evidence in the instant Application.
17. The data contained in Annexes "S" and series, "U" and series, and "V" and series constitute "trade secrets" of Applicant FGHP; thus, FGHP has actual and valuable proprietary interest to protect with respect to such information. The Supreme Court, in the recent case of *Air Philippines Corporation vs. Pennswell, Inc.* (540 SCRA 215 [2007]), had the opportunity to discuss the definition of "trade secrets" and the great extent to which the same are protected under our laws. In other instances, the Supreme Court has held

that the confidential nature of trade secrets protects such from disclosure even in the face of the right of inspection given to stockholders or the constitutional right to information. (*Philpott's vs. Philippine Manufacturing Company*, 40 Phil. 471 [1919]; *Garcia vs. Board of Investments*, G.R. 88637 [1989]).

18. Information, which falls within the definition of a trade secret, as defined by jurisprudence is clearly information which merits the confidential treatment provided for under Rule 4 of the ERC Rules of Practice and Procedure. Annexes "S" and series, "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.
19. FGHPC hereby submits one (1) copy of each of the foregoing confidential documents in a sealed envelope, with the envelope and each page of the document stamped with the word "Confidential."

PRAYER

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

- (i) ISSUE an Order treating Annexes "S" and series, "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;
- (ii) Immediately ISSUE a provisional authority and/or interim relief authorizing the Applicants to implement the Power Supply Agreement by 26 December 2019; and
- (iii) After hearing on the merits, render a Decision APPROVING the Power Supply Agreement.

Other relief just and reasonable are likewise prayed for.

Finding the said *Joint Application* to be sufficient in form and 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 **at the ERC Hearing Room, 15th Floor, Pacific Center Building, San Miguel Avenue, Pasig City** on the following dates:

Date and Time	Particulars
05 December 2019 (Thursday) at nine o'clock in the morning (9:00 A.M.)	Jurisdictional Hearing and Expository Presentation
16 January 2020 (Thursday) at nine o'clock in the morning (9:00 A.M.)	Pre-trial Conference and Evidentiary Hearing
23 January 2020 (Thursday) at nine o'clock in the morning (9:00 A.M.)	Evidentiary Hearing
30 January 2020 (Thursday) at nine o'clock in the morning (9:00 A.M.)	Evidentiary Hearing

Accordingly, MERALCO and FGHPC 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 Governors, the City and Municipal Mayors, and the Local Government Unit (LGU) legislative bodies within MERALCO's franchise area for the 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 *Joint Application*, its reasons therefor, and of the scheduled hearings thereon;
- 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 hearings; 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, MERALCO and FGHPC 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* were 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 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 FGHPC to inform the consumers affected of the filing of the *Joint Application*, its reasons therefor, and of the scheduled hearings thereon;
- 4) The evidence of receipt of copies of this *Order* and the attached *Notice of Public Hearing* by the OSG, 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 proofs of compliance with the requirements of the Commission.

MERALCO and FGHPC 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 therefore; 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 MERALCO and FGHPC to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearings, and the resetting of which shall be six (6) months from the said date of cancellation.

MERALCO and FGHPC 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, the nature of the *Joint Application*, with relevant information and pertinent details substantiating the reasons and justifications being cited in support thereof.

SO ORDERED.

Pasig City, 28 October 2019.

FOR AND BY AUTHORITY
OF THE COMMISSION:


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner

LS:  LSP/ALO

ERC CASE NO. 2019-82 RC
ORDER/28 OCTOBER 2019
PAGE 17 OF 27

Copy Furnished:

1. Manila Electric Company (MERALCO)
Applicant
Lopez Building, Ortigas Avenue, Barangay Ugong, Pasig City
2. Attys. Francis Dino S. Antonio, Carmen Grace S. Ramos, Angelica Diane B. Monteza, and
Madelyn C. Delos Santos
Counsels for Applicant MERALCO
7th Floor, Lopez Building, Ortigas Avenue, Barangay Ugong, Pasig City
3. First Gen Hydro Power Corporation (FGHPC)
Applicant
6th Floor Rockwell Business Center Tower 3, Ortigas Avenue, Pasig City
4. Quiason Makalintal Barot Torres Ibarra Sison & Damaso
Counsel for Applicant FGHPC
21st Floor, Robinsons-Equitable Tower,
4ADB Avenue corner Poveda Street, 1605 Ortigas Center, Pasig City
5. Office of the City Mayor
City of Caloocan
6. Office of the Local Government Unit (LGU) Legislative Body
City of Caloocan
7. Office the City Mayor
City of Las Piñas
8. Office of the LGU Legislative Body
City of Las Piñas
9. Office of the City Mayor
City of Makati
10. Office of the LGU Legislative Body
City of Makati
11. Office of the City Mayor
City of Malabon
12. Office of the LGU Legislative Body
City of Malabon
13. Office of the City Mayor
City of Mandaluyong
14. Office of the LGU Legislative Body
City of Mandaluyong
15. Office of the City Mayor
City of Manila
16. Office of the LGU Legislative Body
City of Manila
17. Office of the City Mayor
City of Marikina
18. Office of the LGU Legislative Body
City of Marikina
19. Office of the City Mayor
City of Muntinlupa
20. Office of the LGU Legislative Body
City of Muntinlupa
21. Office of the City Mayor
City of Navotas
22. Office of the LGU Legislative Body
City of Navotas

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

48. Office of the LGU Legislative Body
Bulacan, Bulacan
49. Office of the Municipal Mayor
Bustos, Bulacan
50. Office of the LGU Legislative Body
Bustos, Bulacan
51. Office of the Municipal Mayor
Calumpit, Bulacan
52. Office of the LGU Legislative Body
Calumpit, Bulacan
53. Office of the Municipal Mayor
Doña Remedios Trinidad, Bulacan
54. Office of the LGU Legislative Body
Doña Remedios Trinidad, Bulacan
55. Office of the Municipal Mayor
Guiguinto, Bulacan
56. Office of the LGU Legislative Body
Guiguinto, Bulacan
57. Office of the Municipal Mayor
Hagonoy, Bulacan
58. Office of the LGU Legislative Body
Hagonoy, Bulacan
59. Office of the City Mayor
Malolos, Bulacan
60. Office of the LGU Legislative Body
Malolos, Bulacan
61. Office of the Municipal Mayor
Marilao, Bulacan
62. Office of the LGU Legislative Body
Marilao, Bulacan
63. Office of the City Mayor
Meycauayan, Bulacan
64. Office of the LGU Legislative Body
Meycauayan, Bulacan
65. Office of the Municipal Mayor
Norzagaray, Bulacan
66. Office of the LGU Legislative Body
Norzagaray, Bulacan
67. Office of the Municipal Mayor
Obando, Bulacan
68. Office of the LGU Legislative Body
Obando, Bulacan
69. Office of the Municipal Mayor
Pandi, Bulacan
70. Office of the LGU Legislative Body
Pandi, Bulacan
71. Office of the Municipal Mayor
Paombong, Bulacan
72. Office of the LGU Legislative Body
Paombong, Bulacan

73. Office of the Municipal Mayor
Plaridel, Bulacan
74. Office of the LGU Legislative Body
Plaridel, Bulacan
75. Office of the Municipal Mayor
Pulilan, Bulacan
76. Office of the LGU Legislative Body
Pulilan, Bulacan
77. Office of the Municipal Mayor
San Ildefonso, Bulacan
78. Office of the LGU Legislative Body
San Ildefonso, Bulacan
79. Office of the City Mayor
San Jose del Monte, Bulacan
80. Office of the LGU Legislative Body
San Jose del Monte, Bulacan
81. Office of the Municipal Mayor
San Miguel, Bulacan
82. Office of the LGU Legislative Body
San Miguel, Bulacan
83. Office of the Municipal Mayor
San Rafael, Bulacan
84. Office of the LGU Legislative Body
San Rafael, Bulacan
85. Office of the Municipal Mayor
Sta. Maria, Bulacan
86. Office of the LGU Legislative Body
Sta. Maria, Bulacan
87. Office of the Municipal Mayor
Alfonso, Cavite
88. Office of the LGU Legislative Body
Alfonso, Cavite
89. Office of the Municipal Mayor
Amadeo, Cavite
90. Office of the LGU Legislative Body
Amadeo, Cavite
91. Office of the City Mayor
Bacoar, Cavite
92. Office of the LGU Legislative Body
Bacoar, Cavite
93. Office of the Municipal Mayor
Carmona, Cavite
94. Office of the LGU Legislative Body
Carmona, Cavite
95. Office of the City Mayor
Cavite, Cavite
96. Office of the LGU Legislative Body
Cavite, Cavite
97. Office of the City Mayor
Dasmariñas, Cavite

98. Office of the LGU Legislative Body
Dasmariñas, Cavite
99. Office of the Municipal Mayor
General Emilio Aguinaldo, Cavite
100. Office of the LGU Legislative Body
General Emilio Aguinaldo, Cavite
101. Office of the Municipal Mayor
General Mariano Alvarez, Cavite
102. Office of the LGU Legislative Body
General Mariano Alvarez, Cavite
103. Office of the City Mayor
General Trias, Cavite
104. Office of the LGU Legislative Body
General Trias, Cavite
105. Office of the City Mayor
Imus, Cavite
106. Office of the LGU Legislative Body
Imus, Cavite
107. Office of the Municipal Mayor
Indang, Cavite
108. Office of the LGU Legislative Body
Indang, Cavite
109. Office of the Municipal Mayor
Kawit, Cavite
110. Office of the LGU Legislative Body
Kawit, Cavite
111. Office of the Municipal Mayor
Magallanes, Cavite
112. Office of the LGU Legislative Body
Magallanes, Cavite
113. Office of the Municipal Mayor
Maragondon, Cavite
114. Office of the LGU Legislative Body
Maragondon, Cavite
115. Office of the Municipal Mayor
Mendez, Cavite
116. Office of the LGU Legislative Body
Mendez, Cavite
117. Office of the Municipal Mayor
Naic, Cavite
118. Office of the LGU Legislative Body
Naic, Cavite
119. Office of the Municipal Mayor
Noveleta, Cavite
120. Office of the LGU Legislative Body
Noveleta, Cavite
121. Office of the Municipal Mayor
Rosario, Cavite
122. Office of the LGU Legislative Body
Rosario, Cavite

123. Office of the Municipal Mayor
Silang, Cavite
124. Office of the LGU Legislative Body
Silang, Cavite
125. Office of the City Mayor
Tagaytay, Cavite
126. Office of the LGU Legislative Body
Tagaytay, Cavite
127. Office of the Municipal Mayor
Tanza, Cavite
128. Office of the LGU Legislative Body
Tanza, Cavite
129. Office of the Municipal Mayor
Ternate, Cavite
130. Office of the LGU Legislative Body
Ternate, Cavite
131. Office the City Mayor
Trece Martires, Cavite
132. Office of the LGU Legislative Body
Trece Martires, Cavite
133. Office of the Municipal Mayor
Angono, Rizal
134. Office of the LGU Legislative Body
Angono, Rizal
135. Office of the City Mayor
Antipolo, Rizal
136. Office of the LGU Legislative Body
Antipolo, Rizal
137. Office of the Municipal Mayor
Baras, Rizal
138. Office of the LGU Legislative Body
Baras, Rizal
139. Office of the Municipal Mayor
Binangonan, Rizal
140. Office of the LGU Legislative Body
Binangonan, Rizal
141. Office of the Municipal Mayor
Cainta, Rizal
142. Office of the LGU Legislative Body
Cainta, Rizal
143. Office of the Municipal Mayor
Cardona, Rizal
144. Office of the LGU Legislative Body
Cardona, Rizal
145. Office of the Municipal Mayor
Jala-Jala, Rizal
146. Office of the LGU Legislative Body
Jala-Jala, Rizal
147. Office of the Municipal Mayor
Morong, Rizal

- 148. Office of the LGU Legislative Body
Morong, Rizal
- 149. Office of the Municipal Mayor
Pililla, Rizal
- 150. Office of the LGU Legislative Body
Pililla, Rizal
- 151. Office of the Municipal Mayor
Rodriguez, Rizal
- 152. Office of the LGU Legislative Body
Rodriguez, Rizal
- 153. Office of the Municipal Mayor
San Mateo, Rizal
- 154. Office of the LGU Legislative Body
San Mateo, Rizal
- 155. Office of the Municipal Mayor
Tanay, Rizal
- 156. Office of the LGU Legislative Body
Tanay, Rizal
- 157. Office of the Municipal Mayor
Taytay, Rizal
- 158. Office of the LGU Legislative Body
Taytay, Rizal
- 159. Office of the Municipal Mayor
Teresa, Rizal
- 160. Office of the LGU Legislative Body
Teresa, Rizal
- 161. Office of the City Mayor
Batangas, Batangas
- 162. Office of the LGU Legislative Body
Batangas, Batangas
- 163. Office of the Municipal Mayor
San Pascual, Batangas
- 164. Office of the LGU Legislative Body
San Pascual, Batangas
- 165. Office of the City Mayor
Sto. Tomas, Batangas
- 166. Office of the LGU Legislative Body
Sto. Tomas, Batangas
- 167. Office of the Municipal Mayor
Alaminos, Laguna
- 168. Office of the LGU Legislative Body
Alaminos, Laguna
- 169. Office of the Municipal Mayor
Bay, Laguna
- 170. Office of the LGU Legislative Body
Bay, Laguna
- 171. Office of the City Mayor
Biñan, Laguna
- 172. Office of the LGU Legislative Body
Biñan, Laguna

173. Office of the City Mayor
Cabuyao, Laguna
174. Office of the LGU Legislative Body
Cabuyao, Laguna
175. Office of the City Mayor
Calamba, Laguna
176. Office of the LGU Legislative Body
Calamba, Laguna
177. Office of the Municipal Mayor
Calauan, Laguna
178. Office of the LGU Legislative Body
Calauan, Laguna
179. Office of the Municipal Mayor
Liliw, Laguna
180. Office of the LGU Legislative Body
Liliw, Laguna
181. Office of the Municipal Mayor
Los Baños, Laguna
182. Office of the LGU Legislative Body
Los Baños, Laguna
183. Office of the Municipal Mayor
Luisiana, Laguna
184. Office of the LGU Legislative Body
Luisiana, Laguna
185. Office of the Municipal Mayor
Magdalena, Laguna
186. Office of the LGU Legislative Body
Magdalena, Laguna
187. Office of the Municipal Mayor
Majayjay, Laguna
188. Office of the LGU Legislative Body
Majayjay, Laguna
189. Office of the Municipal Mayor
Nagcarlan, Laguna
190. Office of the LGU Legislative Body
Nagcarlan, Laguna
191. Office of the Municipal Mayor
Pila, Laguna
192. Office of the LGU Legislative Body
Pila, Laguna
193. Office of the Municipal Mayor
Rizal, Laguna
194. Office of the LGU Legislative Body
Rizal, Laguna
195. Office of the City Mayor
San Pablo, Laguna
196. Office of the LGU Legislative Body
San Pablo, Laguna
197. Office of the City Mayor
San Pedro, Laguna

198. Office of the LGU Legislative Body
San Pedro, Laguna
199. Office of the City Mayor
Sta.Cruz, Laguna
200. Office of the LGU Legislative Body
Sta.Cruz, Laguna
201. Office of the City Mayor
Sta. Rosa, Laguna
202. Office of the LGU Legislative Body
Sta. Rosa, Laguna
203. Office of the Municipal Mayor
Victoria, Laguna
204. Office of the LGU Legislative Body
Victoria, Laguna
205. Office of the Municipal Mayor
Candelaria, Quezon
206. Office of the LGU Legislative Body
Candelaria, Quezon
207. Office of the Municipal Mayor
Dolores, Quezon
208. Office of the LGU Legislative Body
Dolores, Quezon
209. Office of the Municipal Mayor
Lucban, Quezon
210. Office of the LGU Legislative Body
Lucban, Quezon
211. Office of the City Mayor
Lucena, Quezon
212. Office of the LGU Legislative Body
Lucena, Quezon
213. Office of the Municipal Mayor
Mauban, Quezon
214. Office of the LGU Legislative Body
Mauban, Quezon
215. Office of the Municipal Mayor
Pagbilao, Quezon
216. Office of the LGU Legislative Body
Pagbilao, Quezon
217. Office of the Municipal Mayor
Sampaloc, Quezon
218. Office of the LGU Legislative Body
Sampaloc, Quezon
219. Office of the Municipal Mayor
San Antonio, Quezon
220. Office of the LGU Legislative Body
San Antonio, Quezon
221. Office of the Municipal Mayor
Sariaya, Quezon
222. Office of the LGU Legislative Body
Sariaya, Quezon

- 223. Office of the City Mayor
Tayabas, Quezon
- 224. Office of the LGU Legislative Body
Tayabas, Quezon
- 225. Office of the Municipal Mayor
Tiaong, Quezon
- 226. Office of the LGU Legislative Body
Tiaong, Quezon
- 227. Office of the Municipal Mayor
Apalit, Pampanga
- 228. Office of the LGU Legislative Body
Apalit, Pampanga
- 229. Office of the Municipal Mayor
Candaba, Pampanga
- 230. Office of the LGU Legislative Body
Candaba, Pampanga
- 231. Office of the Municipal Mayor
San Simon, Pampanga
- 232. Office of the LGU Legislative Body
San Simon, Pampanga
- 233. Office of the Governor
Province of Bulacan
- 234. Office of the LGU Legislative Body
Province of Bulacan
- 235. Office of the Governor
Province of Cavite
- 236. Office of the LGU Legislative Body
Province of Cavite
- 237. Office of the Governor
Province of Rizal
- 238. Office of the LGU Legislative Body
Province of Rizal
- 239. Office of the Governor
Province of Batangas
- 240. Office of the LGU Legislative Body
Province of Batangas
- 241. Office of the Governor
Province of Laguna
- 242. Office of the LGU Legislative Body
Province of Laguna
- 243. Office of the Governor
Province of Quezon
- 244. Office of the LGU Legislative Body
Province of Quezon
- 245. Office of the Governor
Province of Pampanga
- 246. Office of the LGU Legislative Body
Province of Pampanga

ERC CASE NO. 2019-82 RC
ORDER/28 OCTOBER 2019
PAGE 27 OF 27

- 247. Office of the Solicitor General
134 Amorsolo Street, Legaspi Village, Makati City
- 248. Commission on Audit
Commonwealth Avenue, Quezon City
- 249. Senate Committee on Energy
GSIS Bldg., Roxas Boulevard, Pasay City
- 250. House Committee on Energy
Batasan Hills, Quezon City
- 251. Office of the President of PCCI
Philippine Chamber of Commerce and Industry (PCCI)
3rd Floor, Chamber and Industry Plaza (CIP)
1030 Campus Avenue corner Park Avenue
McKinley Town Center, Fort Bonifacio
Taguig City
- 252. Regulatory Operations Service
17th Floor, Pacific Center Building, San Miguel Avenue,
Ortigas Center 1600, Pasig City