

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.

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NOV 07 2019

NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that 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.

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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.

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.

2.2.2 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.

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.

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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.

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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.

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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.

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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.

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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.

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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.

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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:

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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.

² Prior twelve (12) month period.

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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
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

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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	V*

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	
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 FGHPC's bidding strategy for distribution utilities undertaking competitive process for the selection of their power suppliers, and FGHPC'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 FGHPC 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 FGHPC's bidding strategy and trading in the WESM.
 - 15.2. Applicant FGHPC 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 FGHPC 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 FGHPC 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 FGHPC; thus, FGHPC 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

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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.

The Commission has set the *Joint Application* 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

All persons who have an interest in the subject matter of the instant case may become a party by filing with the Commission a verified Petition to Intervene at least five (5) days prior to the initial hearing and subject to the requirements under Rule 9 of the 2006 ERC Rules of Practice and Procedure, indicating therein the docket number and title of the case and stating the following:

- 1) The petitioner's name and 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.


All other persons who may want their views known to the Commission with respect to the subject matter of the case may file


their Opposition or Comment thereon at any stage of the proceeding before Applicants rest their case, subject to the requirements under Rule 9 of the 2006 ERC Rules of Practice and Procedure. No particular form of Opposition or Comment is required, but the document, letter, or writing should contain the following:

- 1) The name and address of such person;
- 2) A concise statement of the Opposition or Comment; and
- 3) The grounds relied upon.

All such persons who wish to have a copy of the *Joint Application* may request from Applicants that they be furnished with the same prior to the date of the initial hearing. Applicants are hereby directed to furnish all those making such request with copies of the *Joint Application* and its attachments, subject to the reimbursement of reasonable photocopying costs. Any such person may likewise examine the *Joint Application* and other pertinent records filed with the Commission during the standard office hours.

WITNESS, the Honorable Chairperson and CEO **AGNES VST DEVANADERA**, and the Honorable Commissioners **ALEXIS M. LUMBATAN**, **CATHERINE P. MACEDA**, and **PAUL CHRISTIAN M. CERVANTES**, Energy Regulatory Commission, this 28th day of October 2019 in Pasig City.


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Oversight Commissioner for Legal

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