

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

**IN THE MATTER OF THE
APPLICATION FOR
APPROVAL OF THE
EMERGENCY POWER
SUPPLY AGREEMENT
BETWEEN ILOCOS NORTE
ELECTRIC COOPERATIVE,
INC. AND GNPOWER
DINGININ LTD. CO., WITH
PRAYER FOR
CONFIDENTIAL
TREATMENT OF
INFORMATION**

ERC CASE NO. 2023-144 RC

**ILOCOS NORTE ELECTRIC
COOPERATIVE, INC. (INEC)
AND GNPOWER DINGININ
LTD. CO. (GNPD),**

Applicants.

X-----X

Promulgated:
December 29, 2023

NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 20 December 2023, Ilocos Norte Electric Cooperative, Inc. (INEC) and GNPower Dinginin Ltd. Co. (GNPD) filed a *Joint Application* dated 16 November 2023, seeking the Commission's approval of their Emergency Power Supply Agreement (EPSA), with prayer for confidential treatment of information.

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

The Parties

1. INEC is a non-stock and non-profit electric cooperative duly organized and existing under and by virtue of the laws of the Philippines, with principal office located at Barangay Suyo, Municipality of Dingras, Province of Ilocos Norte. It is the

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exclusive holder of a franchise issued by the National Electrification Commission (“NEC”) under Certificate of Franchise No. 001 dated 10 August 1977 which will expire on 11 August 2027. As of October 2023, INEC supplies electricity to the whole of Ilocos Norte, which is composed of two (2) cities, twenty-one (21) municipalities, and five hundred fifty-nine (559) barangays with an aggregate of 155,067 member-consumers.

2. GNPD is a limited partnership duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at GNPower Energy Complex, Sitio Dinginin, Barangay Alasasin, Municipality of Mariveles, Province of Bataan. GNPD owns and operates a 1,336-megawatt (“MW”) coal-fired power plant (the “Facility”) which it uses to supply power to its customers.
3. The Applicants may be served with notices, orders, and processes of the Honorable Commission through their respective counsels at the addresses indicated below.

Statement of Facts

4. On 03 May 2019, the Supreme Court promulgated its decision in *Alyansa Para sa Bagong Pilipinas, Inc. v. Energy Regulatory Commission* (“Alyansa Ruling”),¹ which declared that power supply agreements (“PSAs”) submitted to this Honorable Commission on or after 30 June 2015 were required to undergo the competitive selection process (“CSP”) prescribed by this Honorable Commission’s issuances.
5. This Honorable Commission’s *Advisory* date 10 August 2023 informed all Distribution Utilities (“DUs”) with PSAs affected by the Alyansa Ruling of the Commission’s approval of a transition period to allow DUs the opportunity to source their power supply requirements through emergency PSAs.
6. One of the PSAs affected by the Alyansa Ruling was INEC’s PSA with Masinloc Power Partners Co. Ltd. (“MPPCL”). In an *Order* dated 05 July 2023 (the “July 5 Order”),² this Honorable Commission directed MPPCL and INEC to stop implementing their PSA. After receipt of the July 5 Order, INEC received offers for emergency PSAs from GNPD, MPPCL, and DMCI. After careful consideration of the offers received, INEC found GNPD’s offer to be the most advantageous for its customers.
7. However, sometime in August 2023, while INEC was about to sign the emergency PSA with GNPD, the cooperative underwent a change in management. It was only on 06 September 2023 that a new Acting General Manager was appointed. It was only after thorough discussions regarding the supply scenario and in-depth negotiations that the

¹ G.R. No. 227670, May 3, 2019.

² Issued in ERC Case No. 2015-214 RC.

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Applicants executed an *Emergency Power Supply Agreement* dated 12 October 2023 (the “EPSA”) to meet the load demand created by the cessation of supply from MPPCL. Upon INEC’s request, GNPD started its supply the following day, 13 October 2023. A copy of the EPSA is attached as Annex “A”.

8. On 27 October 2023, INEC sent a *Notification of Force Majeure/Fortuitous Event* (“Notice of FM/FE) of the same date to the Administrator of the NEA notifying him of the fortuitous event which was composed of the following:
 - a. Issuance of the July 5 Order suspending its supply contract;
 - b. Non-implementation of its emergency PSA with Therma Visayas, Inc.;
 - c. Unexpected change in INEC’s management; and
 - d. Issuance of this Honorable Commission’s Resolution No. 16, Series of 2023 (the “2023 CSP Rules”)³ on 03 October 2023 and published on 08 October 2023.
9. The Notice of FM/FE was issued in accordance with the new notification requirement under the 2023 CSP Rules which took effect on 23 October 2023. According to the Notice of FM/FE, INEC gave notice of the occurrence of the fortuitous event on 23 October 2023. A copy of the Notice of FM/FE is attached as Annex “JJ”.
10. The EPSA was the result of a negotiated procurement of emergency power supply due to the occurrence of *force majeure* or fortuitous event under Section 2.3.5⁴ of the Department of Energy Department Circular No. 2023-06-0021.⁵ Thus, the EPSA was immediately implemented to address the fortuitous event disclosed in the Notice of FM/FE.
11. The instant Joint Application seeks the approval of the EPSA.

Salient Features of the EPSA

12. The duly executed EPSA contains the following salient provisions:

³ *Implementing Guidelines for the Procurement, Execution, and Evaluation of Power Supply Agreement Entered into by Distribution Utilities for the Supply of Electricity to their Captive Market.*

⁴ 2.3.5. Negotiated procurement of Emergency Power supply wherein the Emergency Power Supply Agreement (EPSA) shall be filed with the ERC within thirty (30) calendar days after the occurrence of the Force Majeure/Fortuitous Events, without need of any prior clearance or certification from the DOE, and shall have a maximum and non-extendible period of one (1) year from its execution. The EPSA shall be immediately implemented to address the emergency, subject to conditions to be defined by the ERC; Provided, that the procurement of emergency power supply shall not be entitled to any form of subsidy;

⁵ *Prescribing the Policy for the Mandatory Conduct of the Competitive Selection Process by the Distribution Utilities for the Procurement of Power Supply for their Captive Market.*

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12.1. **TERM AND CONTRACTED CAPACITY.** The EPSA shall be valid for a period of twelve (12) months from 13 October 2023 to 12 October 2024.

12.2. **CONTRACT PRICE.** The EPSA contains the following provision on Contract Price:

The Electricity Fees shall be computed as the product of the Contract Price multiplied by the Quantity of the Product delivered as the Delivery Point.

$$\text{Electricity Fees} = A + B$$

$$A = \text{Contract Price} \times \text{MAE}$$

$$\text{Contracted Capacity} \times \text{Adj.} \times \text{No. of hourly Trading Intervals for the Billing Period}$$

Where:

$$\text{Contract Price} = \text{Php } 6.7500/\text{kWh}$$

$$\text{MAE} = \text{monthly actual energy in kWh, or max (MEOT, AE)}$$

$$\text{MEOT} = 70\% \times \text{Contracted Capacity} \times \text{Billing Period Days} \times \text{Int, in kWh}$$

$$\text{AE} = \text{actual energy delivered}$$

$$= \text{Contracted Capacity} \times \text{Adj.} \times \text{No. of Trading Intervals for the Billing Period}$$

$$\text{Adj} = \sum_{j=1}^n \sum_{i=1}^{\text{int}} \left(\frac{\text{ACC}_{ij}}{\text{CC} \times \text{Int} \times n} \right)$$

$$\text{ACC}_{ij} = \text{Contracted Capacity less affected capacity due to Force Majeure for interval } i \text{ and day } j \text{ within the Billing Period } n$$

$$\text{Int} = \text{The number of hourly Trading Intervals per day}$$

$$n = \text{The number of current Billing Period, Days}$$

$$\text{Contracted Capacity} = 51,000\text{kW}$$

B = all existing and future taxes, fees and imposts, (including increase, or adjustments thereon and increases, or adjustments on existing taxes, fees and imposts), provide ERC allows it as a pass on charge, such as but not limited to real property taxes, excise taxes, and other future charges imposed on the Power Plant for the generation of electricity, in Philippine Peso.

13. Because the July 5 Order stopped the implementation of INEC's PSA with MPPCL, INEC's forecasted supply-demand scenario from 2023 to 2030 shows a deficit of 64.38MW to 75.82MW. A copy of INEC's detailed supply-demand scenario is attached as Annex "G".

14. The indicative rate impact on INEC's overall generation rate with and without the additional supply from GNPD are as follows:

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Without GNPD EPSA	
Supplier	Rate (Php/kWh)
Mini Hydro Power Plant	4.3648
Wholesale Electricity Spot Market	8.3175
Total	8.2474

With GNPD EPSA	
Supplier	Rate (Php/kWh)
GNPower Dinginin	6.7500

With GNPD EPSA	
Supplier	Rate (Php/kWh)
Mini Hydro Power Plant	4.3648
Wholesale Electricity Spot Market	8.3175
Total	7.0737

15. The Applicants respectfully submit copies of the following documents in support of the Joint Application:

Description of Document	Annex
EPSA	"A"
GNPD's Articles of Partnership dated 21 May 2014	"B"
GNPD's Amended Articles of Partnership dated 18 February 2022	"B-1"
Certificate dated 10 October 2023 with attached Information Sheet of GNPD	"C"
GNPD Project Ownership Structure Chart dated 31 August 2021	"D"
GNPD's Certification on Partnership Agreement dated 06 February 2023	"E"
GNPD's Board of Investments Certificate of Registration No. 2022-058 dated 29 December 2021 with attached Terms and Conditions	"F"
GNPD'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	"G"
Certificate of Compliance No. 22-10-M-00203L issued by this Honorable Commission to GNPD	"H"
Department of Energy ("DOE") Amended Certificate of Endorsement DOE-EPIMB-ERC No. 2021-08-172 dated 03 August 2021 issued to GNPD	"I"
Write up on the non-applicability of the following requirements to GNPD: <ul style="list-style-type: none"> • Shareholder's Agreement; • By-laws; • Renewable Energy Service/Operating Contract and Certificate of Registration or Certification of Commerciality by an RE Developer and After Due Confirmation by the DOE; • Distribution Wheeling Service Agreement; • 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.); • Inconsistencies/differences from documents presented; and • Potential cost of ancillary services. 	"J"

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Single-line diagram connection	“K”
Verified Certification dated 10 November 2023	“L”
Decision dated 06 November 2020 of this Honorable Commission on the point-to-point application of GNPD	“M”
Executive Summary of the EPSA	“N”
Sources of Funds/Financial Plans (Confidential)*	“O”
Certification on Financing Arrangement (Confidential)*	“P”
Generation Rate and Derivation (Confidential)*	“Q”
Financial model in soft copy containing derivation of rates (Confidential)*	“R”
Cash Flow (Confidential)*	“S”
Explanation on the Fuel Procurement Process of GNPD (Confidential)*	“T”
Technical and Economic Characteristics of the Facility	“U”
Latest Audited Financial Statements of GNPD	“V”
Certification regarding the net heat rate of GNPD (Confidential)*	“W”
Simulation of the no. of operating units necessary to meet the MEOT and/or additional energy/demand requirements of the DU	“X”
WESM Registration Information dated 21 December 2022 of GNPD	“Y”
COR and Amended Articles of Incorporation of the Ilocos Norte Electric Cooperative, Inc. dated 12 May 2022	“BB”
By-Laws of Ilocos Norte Electric Cooperative, Inc. dated 12 January 2008	“BB-1”
INEC’s Certificate of Franchise dated 10 August 1977	“BB-2”
INEC’s list of members of its board of directors	“CC”
INEC’s Demand Side Management program dated 05 July 2023	“DD”
INEC’s demand forecast based on the Distribution Development Plan	“EE”
INEC’s Supply and Demand Scenario	“FF”
INEC’s Reliability Reports for 2018 to 2023 (i.e., System Average Interruption Duration Index)	“GG”
INEC’s Potential for a Reduction in Load Supplied by the Distribution Utility due to RCOA dated 05 July 2023	“HH”
INEC’s Write-up on non-applicability of: <ul style="list-style-type: none"> • Certification by the National Power Commission regarding Transition Supply Contract; • Procurement process; • Inconsistencies and differences; and • DOE Certificate of Exemption 	“II”
Proof of Exemption from Conduct of CSP	“JJ & series”
INEC’s letter dated 12 October 2023 with the subject “Commencement of Emergency Power Supply Agreement (‘EPSA’)”	“KK”
GNPD’s letter dated 12 October 2023 with the subject “Commencement Date Notice”	“LL”
INEC’s WESM Registration	“MM”

**Subject of the motion for confidential treatment of information.*

Allegations in Support of the Prayer for Confidential Treatment of Information

16. Section 1, Rule 4 of the *Revised Rules of Practice and Procedure of the Energy Regulatory Commission* (“Revised ERC Rules”) provides that a party to any proceeding before the Honorable Commission’s possession be treated as confidential and not be disclosed.
17. In line with this, GNPD prays that Annexes “O”, “P”, “Q”, “R”, “S”, “T”, and “W” (collectively, the “Confidential Documents”) and the information contained therein be treated as

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confidential and should not be disclosed to any persons other than the officers and staff of the Honorable Commission.

18. The foregoing documents contain information and data involving GNPD'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 *Air Philippines Corporation vs. Pennswell, Inc.*,⁶ the Supreme Court held that:

A trade secret may consist of any formula, patter, device, or compilation of information that: **(1) is used in one's business; and (2) gives the employer an opportunity to obtain an advantage over competitors who do not possess the information.** Generally, a trade secret is a process or device intended for continuous use in the 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.** The inventor, discoverer, or possessor of a trade secret or similar innovation has rights therein which may be treated as property, and ordinarily an injunction will be granted to prevent the disclosure of the trade secret by one who obtained the information "in confidence" or through a "confidential relationship." American jurisprudence has utilized the following factors to determine if an information is a trade secret, to wit:

- (1) the extent to which the information is known outside of the employer's business;
- (2) the extent to which the information is known by employees and others involved in the business;
- (3) the extent of measures taken by the employer to guard the secrecy of the information;
- (4) the value of the information to the employer and to competitors;
- (5) the amount of effort or money expended by the company in developing the information; and
- (6) the extent to which the information could be easily or readily obtained through an independent source.⁷

19. In the *Decision* in ERC Case No. 2015-111 RC dated 30 May 2017 entitled *In the Matter of the Application for 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)*, the Honorable Commission categorically stated that formulas and pricing structures of a generation company must be treated as confidential and may not be publicly disclosed, thus:

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. In fact, all three (3) documents were used by the Commission in evaluating the reasonableness of the proposed rate. **In the electric power industry w(h)ere prices is[sic] a major consideration in selecting one's supplier,**

⁶ G.R. No. 172835, December 13, 2007.

⁷ *Emphasis and underscoring supplied.*

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it is apparent that the assumptions used in arriving at one's proposed tariff is considered a competitive leverage by one player against its competitors.

Thus, the Commission resolves to treat the said documents confidential and may not be publicly disclosed.⁸

20. Thus, the Honorable Commission has recognized the importance of maintaining pricing structures as confidential to ensure the competitiveness of the generation sector. Information, which falls within the definition of a trade secret as defined by jurisprudence, is clearly information that merits the confidential treatment provided for under Rule 4 of the Revised ERC Rules.
21. The interest of the consuming public is sufficiently protected by the review and evaluation of the rates under the EPSA by the Honorable Commission, without the need to disclose the contents of the Confidential Documents. The reasonableness and transparency of the prices of electricity is to be assured by the Honorable Commission through its own review and verification of GNPD's operating costs and expenses.
22. Further, if the Confidential Documents and the information contained therein is leaked to GNPD's competitors, they will gain undue advantage and could use such information and documents in their operations. Furthermore, the negotiating power of GNPD with parties it plans to contract with or with whom it is currently doing business, will be diminished if it is compelled to disclose such information.
23. Accordingly, one (1) copy each of the Confidential Documents is placed in a sealed envelope, with the said envelope and each page of the documents and/or information stamped with the words "*Confidential.*"

PRAYER

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

1. ISSUE an Order (a) GRANTING the Applicants' prayer and treating the Confidential Documents (i.e., Annexes "O", "P", "Q", "R", "S", "T", and "W") and all information contained therein, as confidential, (b) DIRECTING their NON-DISCLOSURE to persons other than the officers and staff of the Honorable Commission, (c) continuously PROTECTING the said information from public disclosure by maintaining the same separate and apart from the records of the case, and (d) ensuring that these are NOT DIVULGED to unauthorized persons, pursuant to Rule 4 of the Revised ERC Rules;

⁸ *Emphasis supplied.*

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2. DIRECT that the interim rates to be charged under the EPSA shall be capped at the latest ERC-approved generation tariff specific for the plant; and
3. ISSUE a Decision GRANTING the Joint Application and APPROVING the EPSA, including all the rates, fees, charges, and tariff adjustment mechanisms set out therein at the rates provided in the EPSA, and authorizing INEC to charge and collect the fees therein from its customers reckoned from the start of power supply by GNPD to INEC under the EPSA.

The Applicants also pray for such other reliefs just and equitable under the circumstances.

The Commission hereby 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 thereof, pursuant to Resolution No. 09, Series of 2020⁹ and Resolution No. 01, Series of 2021¹⁰ (ERC Revised Rules of Practice and Procedure):

Date and Time	Platform	Activity
01 March 2024 (Friday) at nine o'clock in the morning (9:00 A.M.)	MS Teams Application	Determination of compliance with the jurisdictional requirements, and Expository Presentation
08 March 2024 (Friday) at nine o'clock in the morning (9:00 A.M.)		Pre-trial Conference and presentation of evidence

Accordingly, INEC and GNPD are directed to host the virtual hearings at **INEC's principal office located at Barangay Suyo, Municipality of Dingras, Province of Ilocos Norte**, as the designated venue for the conduct thereof, and ensure that the same is open to the public and the community quarantine guidelines are observed at all times. Moreover, INEC and GNPD shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

⁹ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

¹⁰ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

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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, all persons who have 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:

- 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 thereon 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.

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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* on the Commission's official website at www.erc.gov.ph.

Finally, all interested persons may be allowed to join the scheduled initial virtual hearings by providing the Commission, thru 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 Commissioners **ALEXIS M. LUMBATAN, CATHERINE P. MACEDA, FLORESINDA G. BALDO-DIGAL**, and **MARKO ROMEO L. FUENTES**, Energy Regulatory Commission, this 29th day of December 2023 in Pasig City.


MONALISA C. DIMALANTA
Chairperson and CEO

ERC
Office of the Chairperson and CEO



MCD2024-013384


LS: MVM / MCCG