

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



**IN THE MATTER OF THE
APPLICATION FOR
APPROVAL OF THE POWER
PURCHASE AND SALE
AGREEMENT BETWEEN
ILOILO II ELECTRIC
COOPERATIVE, INC. AND
GNPOWER MARIVELES
COAL PLANT LTD. CO. WITH
MOTIONS FOR
CONFIDENTIAL TREATMENT
OF INFORMATION AND THE
ISSUANCE OF PROVISIONAL
AUTHORITY**

ERC CASE NO. 2018-119 RC

**ILOILO II ELECTRIC
COOPERATIVE, INC. AND
GNPOWER MARIVELES
COAL PLANT LTD. CO.,
*Applicants.***

DOCKETED
Date: JAN 24 2019
By: *W*

X-----X

ORDER

On 18 December 2018, Applicants Iloilo II Electric Cooperative, Inc. (ILECO II) and GNPower Mariveles Coal Plant Ltd. Co. (GMCP) filed an *Application* dated 11 December 2018, seeking the Commission's approval of their Power Purchase and Sale Agreement, with motions for confidential treatment of information and issuance of provisional authority.

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

1. ILECO II is a non-stock, non-profit electric cooperative organized under Philippine laws, with principal office address at Barangay Cauayan, Pototan, Iloilo. ILECO II currently distributes and provides electricity services to its member consumers in the Municipalities of Barotac Nuevo, Badiangan, Bingawan, Calinog, Dingle, Dueñas, Dumangas,

Janiuay, Lambunao, San Enrique, Mina, Pototan, New Lucena, Zarraga, and City of Passi, all in the Province of Iloilo (the Franchise Area).¹

2. Copies of ILECO II's Certificate of Registration, Articles of Incorporation, By-Laws, Certificate of Franchise, and Certification on the list of ILECO II's Board of Directors are attached hereto as follows:

Annex	DOCUMENT
"A"	ILECO II's Certificate of Registration issued by the National Electrification Administration ("NEA")
"B"	ILECO II's Articles of Incorporation
"C"	ILECO II's Constitution and By-laws
"D"	ILECO II's Certificate of Franchise issued by the NEA
"E"	Certification on the list of ILECO II's Board of Directors

3. Meanwhile, GMCP is a duly registered limited partnership organized and existing under Philippine laws and is the project company established to engage in the business of developing, constructing, operating and owning a 2x316 MW (net) subcritical coal-fired power plant located in Barangay Alasasin, Municipality of Mariveles, Province of Bataan. Its principal office is at 28th Floor, The Orient Square, Don Francisco Ortigas Jr. Road, Ortigas Center, Pasig City. Copies of GMCP's Certificate of Registration, Amended Articles of Limited Partnership, Certification on Partnership Agreement, and GNPow Project Companies Profile are attached hereto as follows:

Annex	DOCUMENT
"F"	GMCP's Certificate of Registration issued by the Securities and Exchange Commission ("SEC")
"G"	GMCP's Amended Articles of Limited Partnership registered with the SEC as of 31 August 2018
"H"	Certification on Partnership Agreement (<i>subject of the Motion for Confidential Treatment</i>)
"I"	GNPow Project Companies Profile

4. The Applicants may be served with this Honorable Commission's orders, notices, and other legal processes

¹ Aside from the fifteen (15) areas it is presently serving, ILECO II previously served the power requirements of the Municipalities of Ajuy, Anilao, Balasan, Banate, Barotac Nuevo, Batad, Carias, Concepcion, Estancia, Lemery, San Dionisio, Sara and San Rafael. The distribution services for these municipalities have been transferred to Iloilo III Electric Cooperative, Inc. (ILECO III) on 10 August 1989.

through the respective addresses of the undersigned counsels.

5. By and pursuant to *Sections 25, 43(u), and 45(b) of Republic Act No. 9136*, otherwise known as the *Electric Power Industry Reform Act of 2001* (EPIRA), and its *Implementing Rules and Regulations*, this *Application* is respectfully submitted to the Honorable Commission for its due consideration and approval of the Power Purchase and Sale Agreement (the PPSA), executed by and between ILECO II and GMCP, a copy of which is attached hereto as Annex "J".

I. STATEMENT OF FACTS

6. Based on its supply-demand forecast, ILECO II's peak demand in 2020 is 36MW, with an annual average growth rate of 3.1%. Therefore, its demand is expected to increase to 45MW in 2029. Copies of the following documents are attached hereto:

ANNEX	DOCUMENT
"K"	ILECO II's Historical, Actual and Forecasted Supply-Demand Scenario from 2016-2032
"L"	ILECO II's Average Daily Load Curve (May Billing Period)
"L-1"	ILECO II's Average Daily Load Curve (June 2017 to May 2018)
"L-2"	ILECO II's Forecasted Average Daily Load Curve (Contract Year 2020)

7. Given this, it is necessary for ILECO II to address the potential deficiency in its power supply due to the increasing demand of its Franchise Area.
8. Accordingly, ILECO II, along with Antique Electric Cooperative, Inc. (ANTECO), Iloilo I Electric Cooperative, Inc. (ILECO I), and Iloilo III Electric Cooperative, Inc. (ILECO III; collectively with ANTECO and ILECO II, the Panay ECs), created the Panay - Guimaras Power Supply Consortium (PGPSC), an association composed of the Panay ECs' General Managers and Board Presidents, which shall facilitate the collective procurement of power supply for the Panay ECs through a competitive selection process (CSP), among others. Consequently, PGPSC formed a Technical Working Group (TWG), which conducted the CSP based on the least cost power supply plan for the ECs, detailed evaluation of the bids, and identification of the least cost supplier.
9. On 15 March 2016, ILECO II identified its projected peak load (2017-2022) and baseload (2020-2030) power supply requirements, which were endorsed to the PGPSC for CSP pursuant to Resolution No. 01-03-15-A Series of 2016.

10. Accordingly, PGPSC conducted the Joint Competitive Power Supply Procurement (JCPSP) where the winning bidder shall supply the (a) baseload power requirements of (i) ANTECO and ILECO III for a maximum of twenty (20) years and (ii) ILECO II for a maximum of ten (10) years, starting in 2018 and 2020, respectively, and (b) peaking power requirements of ILECO I for a maximum of five (5) years starting in 2018.

11. The JCPSP was conducted as follows:
 - 11.1 On 22 and 29 November 2016, PGPSC published an Invitation to Bid for Power Supply Contract for 9.5MW (2018-2022) peak load requirements and 6MW (2018-2037) base load in the Philippine Star and Philippine Daily Inquirer. In addition, PGPSC also sent individual invitations to potential suppliers through electronic mail.

 - 11.2 GMCP, along with Aboitiz Power Corporation (Aboitiz Power), CleanTech Global Renewables, Inc. (CleanTech), Energy Development Corporation (EDC), Global Business Power Corporation (GBPC), Mindoro Grid Corporation (MGC), Panay Energy Development Corporation ("PEDC"), Panay Power Corporation (PPC), Phinma Energy, Inc. (Phinma Energy), SMC Global Power Holdings Corporation (SMC Global), Solar Philippines Renewable Energy Projects, Inc. (Solar Philippines), Salcon Island Power Corporation (SIPC), Vis Solis Philippines, Inc. (Vis Solis), and Vivant Corporation (Vivant), expressed their intent to join the CSP and were provided with a copy of the Instruction to Bidders. In order to clarify and discuss the selection process, requirements, rules, and evaluation methods, a bidding conference was held on 23 January 2017.

 - 11.3 On 30 January 2017, PGPSC issued Supplemental/Bid Bulletin No. 1 dated 24 January 2017 and the minutes of the bidding conference held on 23 January 2017. Subsequently, PGPSC issued Bid Bulletin No. 2 dated 01 February 2017, which extended the submission and opening of bids. Finally, on 10 February 2017, PGPSC issued Bid Bulletin No. 3 dated 10 February 2017, which updated the reference on Fuel Inflation Rate, WESM price for base and peak load, and node for line rental computation.

 - 11.4 On 16 February 2017, seven (7) companies submitted their bids, namely, GMCP, SIPC, MIGC, PEDC, GBPC, Solar, and SMC Global. GMCP, in particular, submitted a bid for the baseload power requirements of the Panay ECs.

- 11.5 PEDC, GBPC, Solar, and SMC Global, which were represented by their respective personnel during the opening of bids, were disqualified for failing to comply with the bid requirements and rules under the Final Instruction to Bidders dated 09 December 2016. Thus, only the bids from GMCP, SIPC, and MGC were opened.
- 11.6 On 30 March 2017, PGPSC submitted a letter requesting for clarification on GMCP's levelized price offer for the baseload supply of the Panay ECs. In response thereto, GMCP presented a step-by-step computation of its submitted bid to the TWG on 7 April 2017 to prove that GMCP's offer is the most advantageous for the Panay ECs.
- 11.7 After the presentation and the conduct of post qualification evaluation on 28 July 2017, the TWG released the final evaluation for the baseload and peak load requirements of the Panay ECs, including ILECO I, and determined that GMCP offered the lowest calculated responsive bid (LCRB) for the baseload supply of the Panay ECs.
- 11.8 On 05 September 2017, PGPSC declared GMCP as the bidder with the LCRB for the power supply procurement of the Panay ECs and recommended the awarding of the contract for the Panay ECs' baseload requirements to GMCP as per PGPSC Resolution No. 13 Series of 2017. Moreover, ILECO II issued Resolution No. 05-09-07 Series of 2017 dated 07 September 2017 ratifying, confirming, and adopting Resolution No. 13 Series of 2017 of the PGPSC, which authorized the issuance of the award to GMCP.
- 11.9 Accordingly, ILECO II issued the Notice of Award to GMCP on 02 October 2017
12. Consequently, however, the signing of the PPSA was deferred in light of the Panay ECs processing of its post-CSP requirements in compliance with relevant government regulations.
13. Eventually, GMCP and ILECO II executed the PPSA on 19 September 2018.
14. Copies of the documents relative to the CSP are hereto attached as follows:

ANNEX	DOCUMENT
"M"	ILECO II Board Resolution No. 01-03-15-A Series of 2016 adopting the recommendation of the TWG pertaining to ILECO II's peak load and baseload power supply requirements and endorsing the same to the PGPSC for CSP.
"M-1"	PGPSC's Letter of Invitation dated 21 November 2016 addressed to GNPowder Ltd. Co.
"M-2"	Letter of Intent from Aboitiz Power Corporation
"M-3"	Letter of Intent from CleanTech
"M-4"	Letter of Intent from EDC
"M-5"	Letter of Intent from GBPC
"M-6"	Letter of Intent from GNPowder Ltd. Co.
"M-7"	Letter of Intent from MGC
"M-8"	Letter of Intent from PEDC
"M-9"	Letter of Intent from PPC
"M-10"	Letter of Intent from Phinma Energy
"M-11"	Letter of Intent from SMC Global
"M-12"	Letter of Intent from Solar Philippines
"M-13"	Letter of Intent from SIPC
"M-14"	Letter of Intent from Vis Solis
"M-15"	Letter of Intent from Vivant
"M-16"	Invitation to Bid as published on November 22 and 29, 2016 issue of the <i>Philippine Star</i>
"M-17"	Advertising Contract dated 16 November 2016 issued by the authorized representative of the <i>Philippine Star</i>
"M-18"	Advertising Contract dated 23 November 2016 issued by the authorized representative of the <i>Philippine Star</i>
"M-19"	Invitation to Bid as published on November 22 and 29, 2016 issue of the <i>Philippine Daily Inquirer</i>
"M-20"	Advertising Contract dated 16 November 2016 issued by the authorized representative of the <i>Philippine Daily Inquirer</i>
"M-21"	Advertising Contract dated 23 November 2016 issued by the authorized representative of the <i>Philippine Daily Inquirer</i>
"M-22"	Final Instructions to Bidders dated 09 December 2016 (subject of the Motion for Confidential Treatment of Information)
"M-23"	PGPSC Terms of Reference
"M-24"	Supplemental Bid Bulletin No. 1 (subject of the Motion for Confidential

	<i>Treatment of Information)</i>
“M-25”	Supplemental Bid Bulletin No. 2 dated 01 February 2017
“M-26”	Supplemental Bid Bulletin No. 3 dated 10 February 2017 <i>(subject of the Motion for Confidential Treatment of Information)</i>
“M-27”	Minutes of the PGPSC Pre-Bid Conference dated 24 January 2017

II. ABSTRACT OF THE PPSA AND OTHER RELATED INFORMATION

15. The following are the salient features of the subject PPSA:
- A. **Term of Agreement.** The PPSA shall be effective at the date of its execution and shall terminate after one hundred twenty (120) billing periods from the date specified in the Commencement Date Notice.²
 - B. **Source of Supply.** GMCP shall make available, sell, and deliver or cause to be delivered to ILECO II the Product³ at the Delivery Point, whether sourced from GMCP’s facility or from other electricity generators, including the Wholesale Electricity Spot Market (“WESM”).
 - C. **Contracted Capacity.** ILECO II is contractually entitled to source from GMCP, at any hour, subject to GMCP’s Available Capacity (as defined in the PPSA) for such hour, the Contracted Capacity (as set forth in Schedule 1 of the PPSA), as follows:

Year	Contracted Capacity (kW)
1	2,000
2	2,000
3	2,000
4	2,000
5	2,000
6	2,000
7	2,000
8	2,000
9	2,000
10	2,000

- C.1. **Option to Increase Contracted Capacity.** Section 3.7 of the PPSA provides that upon written notice to GMCP, ILECO II may, upon approval by GMCP, increase its Contracted Capacity which increase shall be subject to the

² Section 1.3, Schedule 1. Contracted Capacity, Contract Price and Terms of Agreement, PPSA, page 29

³ Refers to Electric Capacity, contracted on a variable Capacity Utilization Factor basis, together with energy, as specified in Schedule 1 of the PPSA, as the context requires, or as otherwise agreed by the Parties. (Section 1.1, Article 1. Definitions and Interpretations, PPSA, page 8)

same terms and conditions contained in the PPSA. In considering whether or not to approve the request for increase in Contracted Capacity, GMCP may take into consideration the capacity available for such increase from its facility in its sole opinion, and/or the willingness of any other buyer to assign its Contracted Capacity. Such increase in Contracted Capacity shall be effective on the date GMCP gives its written approval.

D. **Contract Price.** The Contract Price shall be composed of Capacity Price and Energy Price.

D.1. The *Capacity Fee* is the component of the Contract Price allocated to pay for the cost as well as the operations and maintenance of the power plant and is designated as the Capacity Fee in *Schedule 1* of the PPSA, as such may be adjusted from time to time based on the Capacity Utilization Factor (CUF).⁴

The CUF shall be computed as follows:

$$\text{CUF} = \frac{Q}{\text{CC} \times (\text{H}_T - \text{EH}_{\text{TO}})}$$

Where:

Q = Quantity as defined in Section 1.1 of the Agreement

CC = Contracted Capacity, in kW, as set forth in Schedule 1

H_T = Total number of hours in such Billing Period

EH_{TO} = The sum of the duration, in Equivalent Hours, of Scheduled Outages and Unscheduled Outages in such Billing Period

D.2. The *Energy Fee* is the component of the Contract Price allocated to pay for the coal, including Government Charges, designated as the Energy Fee in *Schedule 1* of the PPSA, as adjusted from time to time due to changes in the delivered price of coal. The Energy Fee shall be computed in accordance with the following formula:

$$\text{Energy Fee} = \text{IEF} \times \left(\frac{\text{CIF}_n}{\text{CIF}_o} \right)$$

⁴ Section 1.2.1, Schedule 1. Capacity Fee, PPSA, page 29

Where:

IEF = Initial Energy Fee

CIF_n = CIF Cost of Fuel for Billing Period *n*

CIF_o = Base CIF Cost of Fuel

- E. **Discounts.** ILECO II is eligible for discounts as provided in Section 5.3 (c) of the PPSA; and
- F. **Scheduled and Unscheduled Outage.** Pursuant to Section 3.2 of the PPSA, GMCP is allowed to have Scheduled Outages not to exceed seven hundred twenty (720) Equivalent Hours for each Contract Year, during which times reduced or no deliveries will be available to ILECO II. Likewise, GMCP is allowed to have Unscheduled Outages not to exceed five hundred four (504) Equivalent Hours for each Contract Year during which times reduced or no deliveries will be available to ILECO II;

III. ADVANTAGES OF GMCP'S SUPPLY OF POWER AND IMPACT ON ILECO II'S OVERALL RATES

16. The Applicants have signed the PPSA as a response to the growing power demand of ILECO II and its member consumers, which its current providers may not be able to supply for the coming years.
17. After careful evaluation, GMCP's rate proved to be more reasonable and competitive among the qualified bidders. Moreover, the Capacity Factor Pricing under the PPSA provides flexibility for ILECO II in the utilization of its Contracted Capacity.
18. The additional supply from GMCP assures the adequate and reliable power service, as well as, the reduction of the risk of price volatility of power for ILECO II member-consumers.
19. In fact, the simulated impact of the generation rate offered by GMCP shows a reduction of PhPO.0673 per kWh, to wit:

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Iloilo II Electric Cooperative, Inc. (ILECO II)
Pototan, Iloilo City

Generation Rate Impact of the Interim Capacity

Simulation of Generation Mix Rate with GMCP for the Year 2020

Power Supplier	Forecasted Energy (kWh)	Amount (Php)	Percent Share (%)	Average Rate (Php/kWh)	Weighted Average Rate (Php/kWh)
GCGI	34,989,574.46	180,955,582.25	17.34%	5.1717	5.9349
PEDC 3	26,245,727.27	118,176,636.17	13.01%	4.5027	
PEDC 1&2	83,826,024.75	595,064,184.50	41.54%	7.0988	
SIPC	21,273,155.99	152,347,706.66	10.54%	7.1615	
WESM QTY	17,956,299.94	73,543,296.57	8.90%	4.0957	
GMCP	17,489,952.23	77,469,084.61	8.67%	4.4293	
TOTAL	201,780,734.64	1,197,556,490.76	100%		

Simulation of Generation Mix Rate without GMCP for the Year 2020

Power Supplier	Forecasted Energy (kWh)	Amount (Php)	Percent Share (%)	Average Rate (Php/kWh)	Weighted Average Rate (Php/kWh)
GCGI	34,989,574.46	180,955,582.25	17.3%	5.1717	6.0022
PEDC 3	26,245,727.27	118,176,636.17	13.0%	4.5027	
PEDC 1&2	86,214,059.28	612,016,364.05	42.7%	7.0988	
SIPC	27,065,894.18	193,832,401.18	13.4%	7.1615	
WESM QTY	27,265,479.45	106,145,547.68	13.5%	3.8930	
GMCP	-		0.0%	0.0000	
TOTAL	201,780,734.64	1,211,126,531.32	100%		

* Without VAT

Rate Impact, Php/kWh **(0.0673)**

Note:

- i. Analysis and simulations are based on ILECO II forecasted energy for the year 2020
- ii. GMCP rate was based on the applicable (i) Capacity fee at resulting Capacity Utilization Factor; (ii) CY 2017 FOREX and Energy Fee
- iii. GCGI rate was based on ILECO II's 2017 data
- iv. PEDC 3 rate was based on ILECO II's 2017 data
- v. PEDC 1&2 rate was based on ILECO II's 2017 data
- vi. SIPC rate was based on ILECO II's 2017 data
- vii. WESM rate was based on ILECO II's 2017 data
- viii. Prices do not include discounts, reductions, etc.

A copy of ILECO II's generation rate impact analysis is attached hereto as Annex "N".

20. Aside from the lower generation cost, ILECO II is also entitled to discounts as provided in the PPSA, subject to certain conditions. In line with this, the proposed rate in the subject PPSA becomes even more competitive.
21. In support of the instant *Application* for the approval of the PPSA, the Applicants respectfully submit the following documents to the Honorable Commission:

ANNEX	DOCUMENTS
"O"	Print-out copy of the GMCP Project Technical Description
"O-1"	Print-out copy of the Write-up on the Technical-related Pre-filing Requirements of the ERC
"P"	Copy of the Transmission Service Agreement between National Grid

ANNEX	DOCUMENTS
	Corporation of the Philippines (NGCP) and GMCP
“Q”	Print-out copy of the Details of the PPSA
“R”	Print-out copy of the Discussion of Rate Calculation and Sample Calculation of Rates
“S”	Soft copy of GMCP’s Financial Model as of October 2018 contained in a compact disk <i>(subject of the Motion for Confidential Treatment)</i>
“S-1”	Print-out copy of the Notes on the Financial Model as of October 2018 and its Assumptions <i>(subject of the Motion for Confidential Treatment)</i>
“S-2”	Print-out copy of the Write-up on the Finance-Related Pre-Filing Requirements of the ERC <i>(subject of the Motion for Confidential Treatment)</i>
“T”	Copy of the Certification on Financing Arrangements dated 10 December 2018 issued by GMCP, China Development Bank, and BDO Unibank, Inc. – Trust and Investment Group <i>(subject of the Motion for Confidential Treatment)</i>
“U”	Print-out copy of the Write-up on the Heat Rate and attached thereto a copy of GMCP’s 2017 Generation Company Management Report indicating the heat rate and the plant capacity
“V”	Copy of the Sworn Statement on Coal Procurement Process
“W”	Copy of GMCP’s 2017 Audited Financial Statements
“X”	Copy of the Certificate of Endorsement No. 2011-11-02 dated 09 December 2011 issued by the Department of Energy confirming that the GMCP Project is consistent with the Power Development Plan
“Y”	Copy of the Environmental Compliance Certificate (ECC) No. 0606-011-4021 issued by the Department of Environment and Natural Resources (DENR)
“Y-1”	Copy of the DENR’s letter dated 14 November 2007 approving the ECC transfer of ownership to GMCP
“Z”	Copy of the Certificate of Registration No. 2006-140 issued by the Board of Investments
“AA”	Copy of the Certification issued by GNPowder Mariveles Coal Plant Ltd. Co. regarding the Engineering, Procurement

ANNEX	DOCUMENTS
	and Construction (EPC) Contract
“BB”	Copy of GMCP’s letter regarding the salient terms of the Coal Supply Agreement enclosing therewith signature pages of the Coal Supply Agreements, as amended ⁵
“CC”	Copy of the Certificate of Compliance No. 17-11-M-00282L issued by the Energy Regulatory Commission
“DD”	Copy of GMCP’s Secretary’s Certificate dated 10 December 2018 attesting to the Management Committee’s resolutions authorizing the execution of the PPSA with ILECO II; designation of authorized representatives/signatories and legal counsels of GMCP; and filing of the Application with the ERC for the approval of the PPSA with ILECO II
“EE”	ERC Order dated 12 March 2012 regarding the Contract for the Supply of Electric Energy between NPC and ILECO II
“FF”	Copy of the Transmission Service Agreement between National Grid Corporation of the Philippines and ILECO II
“GG”	Copy of ILECO II’s Distribution Development Plan for 2014-2027
“HH”	Copy of ILECO II’s Certification on the Demand Side Management

22. Applicants ILECO II and GMCP reserve the right to submit other documents, either in the course of the hearing or as may be required by this Honorable Commission.

IV. COMPLIANCE WITH PRE-FILING REQUIREMENTS

23. The Applicants respectfully manifest its compliance with the pre-filing requirements provided under the *Implementing Rules and Regulations of the EPIRA* and *Rule 6 of the ERC Rules of Practice and Procedure*, through the following:

- a. Certification/Affidavit of Service confirming that copies of this *Application* with annexes were furnished to the legislative bodies of the province and city/municipality where the Applicants principally operate:

ANNEX	DOCUMENT
“II”	Certification/ Affidavit of Service for Sangguniang Panlalawigan of Iloilo
“JJ”	Certification/ Affidavit of Service for Sangguniang Bayan of Pototan

⁵ In lieu of the Fuel Supply Agreement required to be submitted pursuant to Section 2(j) of Rule 20(B) of the ERC Rules of Practice and Procedure

ANNEX	DOCUMENT
“KK”	Certification/ Affidavit of Service for Sangguniang Panlungsod of Pasig
“LL”	Certification/ Affidavit of Service for Sangguniang Panlalawigan of Bataan
“MM”	Certification/ Affidavit of Service for Sangguniang Bayan of Mariveles

- b. Affidavit of Publication stating that the *Application* was published in a newspaper of general circulation within the Franchise Area and/or area of its principal operation of the Applicants, attached herewith as Annex “NN”; and
- c. Complete newspaper issue where the *Application* was published, attached herewith as Annex “NN-1”, and the relevant page thereof where the *Application* appeared, as Annex “NN-2”.

V. MOTION FOR CONFIDENTIAL TREATMENT OF ANNEXES “H”, “M-22”, “M-24”, “M-26”, “M-28”, “M-29”, “M-30”, “M-33”, “S”, “S-1”, “S-2” and “T”

24. Under *Rule 4 of the ERC Rules of Practice and Procedure*, a party to any proceeding before the Honorable Commission may request that certain information should not be disclosed and be treated as confidential, by describing with particularity the information to be treated as confidential, specifying the ground for the claim of confidential treatment of the information and, if applicable, specifying the period during which the information must not be disclosed.
25. In connection with the foregoing, ILECO II respectfully requests for the confidential treatment of Annexes “M-22”, “M-24”, “M-26”, “M-28”, “M-29”, “M-30”, and “M-33” hereof. These annexes show the individual offers of the bidders which participated in the JCPSP. The Panay ECs, which includes ILECO II, are bound by their undertaking that the offers and the proposed terms of supply are secure and are kept in confidence in order not to prejudice or preempt any future CSPs in which these bidders will participate. Otherwise, ILECO II, and the rest of the Panay ECs, may be held liable for damages for breach of confidentiality, and eventually, risk their good relations with the suppliers concerned.
26. Similarly, GMCP most respectfully moves for the confidential treatment of Annexes “H”, “S”, “S-1”, “S-2”, and “T” hereof. These annexes, which are exclusively owned by GMCP, contain documents that are considered part of its business and trade secrets. As such, GMCP has the sole proprietary interest and will be unduly prejudiced should they be disclosed to the public.

27. These annexes contain numbers, data, formula, methodology, and calculations involving valuable and sensitive commercial, financial and technological information reflecting GMCP's business operations and financial trade secrets. Therefore, the disclosure of GMCP's confidential, proprietary, and private information included in the aforesaid annexes should be protected from public dissemination. Otherwise, such information can be illegally and unfairly utilized by business competitors who may use the same for their own private gain and to the irreparable prejudice of GMCP. Negotiations with prospective customers may also be affected.
28. The information contained in Annexes "H", "M-22", "M-24", "M-26", "M-28", "M-29", "M-30", "M-33", "S", "S-1", "S-2", and "T", constitute "trade secrets", for which GMCP and the Panay ECs have actual and valuable proprietary interest. As explained by the Supreme Court, a trade secret may consist of any formula, pattern, device, or compilation of information that is used in one's business and gives the employer an opportunity to obtain an advantage over competitors who do not possess the information.⁶ It is indubitable that trade secrets constitute proprietary rights and jurisprudence has consistently acknowledged the private character of trade secrets.⁷ Further, as ruled in *Garcia vs. Board of Investments*,⁸ trade secrets and confidential, commercial and financial information are exempt from public scrutiny;
29. It is respectfully submitted that the aforementioned Annexes must be accorded confidential treatment. As such, they are to be used *exclusively* by the Honorable Commission and for the *sole* purpose of evaluating this *Application*, thereby protecting these data from unnecessary public disclosure;
30. In accordance with *Section 1(b), Rule 4 of the ERC Rules of Practice and Procedure*, Applicants hereby submit (i) one (1) copy each of Annexes "H", "M-22", "M-24", "M-26", "M-28", "M-29", "M-30", "M-33", "S", "S-1", "S-2", and "T" contained in a sealed envelope, with the envelope and each page of the documents stamped with the word "*Confidential*" and (ii) Annex "S" contained in a compact disk ("CD") enclosed in the same sealed envelope, with the face of the CD stamped with the word "*Confidential*".

VI. MOTION FOR THE ISSUANCE OF PROVISIONAL AUTHORITY

31. All the foregoing allegations are herein re-pleaded by reference in support of the instant *Motion* for the issuance of provisional authority.

⁶ Air Philippines Corporation vs. Pennswell Inc., G.R. No. 172835, December 13, 2007.

⁷ *Ibid.*

⁸ 177 SCRA 374 (1989).

32. Pursuant to Section 3 Rule 14 of the *ERC Rules of Practice and Procedure (provided below)*, the Applicants ILECO II and GMCP move for the issuance of a Provisional Authority or interim relief pending the Honorable Commission's final decision on this Application:

“Section 3. Action on the Motion. – Motions for provisional authority or interim relief may be acted upon with or without hearing. The Commission shall act on the motion on the basis of the allegations of the application or petition and supporting documents and other evidences that applicant or petitioner has submitted and the comments or opposition filed by any interested person, if there be any.”
[Emphasis Ours]

33. Moreover, the Applicants would like to bring to the attention of the Honorable Commission that based on the DOE 2016-2040 Luzon and Visayas Grids Supply-Demand Outlook, Luzon's peak demand in 2017 is 9,870MW with an Annual Average Growth Rate (AAGR) from 2016 to 2040 of 4.79% while Visayas' Peak Demand is 1,997MW with AAGR from 2016 to 2040 of 6.87%. Therefore, Luzon's peak demand is expected to increase to 11,451MW in 2020, and to 18,432MW by the year 2030 and for Visayas, 2,465MW in 2020 and 4,765MW in 2030. This electricity demand growth has led to DOE's call for planning and investments in the power sector.
34. Notably, the baseload demand of ILECO II, which increases at an average rate of 3.1% per year, contributes to the demand growth of the Luzon and Visayas Grid. By contract year 2020, it is projected that ILECO II's existing power suppliers will not be able to meet the power needs of its member consumers, which is expected to have increased to 36MW.
35. In view of ILECO II's increasing demand growth, there is a need for immediate issuance of a Provisional Authority in time for the implementation of the PPSA as any delay in the implementation shall expose ILECO II to supply risk and unstable market prices. Also, the approval of the PPSA guarantees the satisfaction of its forward power needs, without compromising the reasonableness of the generation rate to be passed on to its member-consumers.
36. To emphasize the necessity of the provisional approval of this Application, a copy of the Judicial Affidavit of Mr. Rommier Caro in support of the Motion for Provisional Authority is attached hereto as Annex "OO".
37. In view thereof, and in recognition of the fact that a substantial amount of time is customarily needed to evaluate the documents submitted to support the approval of herein *Application*, Applicants ILECO II and GMCP respectfully

seek the kind consideration of the Honorable Commission to approve the instant *Application*, immediately, albeit, provisionally, at the soonest opportune time.

PRAYER

WHEREFORE, premises considered, it is most respectfully prayed of the Honorable Commission that (i) all information set forth in Annexes "H", "M-22", "M-24", "M-26", "M-28", "M-29", "M-30", "M-33, "S", "S-1", "S-2", and "T" to the instant *Application* be treated as confidential; (ii) pending hearing on the merits, a Provisional Authority be DULY ISSUED authorizing the immediate implementation of the subject PPSA, between the Applicants, including the rate structure therein, as applied; and that after due notice and hearing, the instant *Application*, the PPSA, and the rate structure contained therein be DULY APPROVED.

Further, in the event that a Final Authority shall be issued after GMCP starts the actual delivery of power to ILECO II under the terms of the subject PPSA, said Final Authority shall be retroactively applied to the date of such actual delivery.

Other reliefs as may be just and equitable under the premises are, likewise, most respectfully prayed for.

Finding the said *Application* to be sufficient in form and 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 on **15 February 2019 (Friday) at ten o'clock in the morning (10:00 A.M.) at ILECO II's Principal Office at Barangay Cauayan, Pototan, Iloilo.**

Accordingly, ILECO II and GMCP 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 Governor, the City and Municipal Mayors, and the Local Government Unit (LGU) legislative bodies within ILECO II's franchise area for the appropriate posting thereof on their respective bulletin boards;

- 3) Inform the consumers within ILECO II's franchise area of the filing of the *Application*, their reasons therefor, and of the scheduled hearing thereon, by any other means available and appropriate;
- 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 hearing; and
- 5) Furnish with copies of the *Application* and its attachments all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing, ILECO II and GMCP 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 Provincial Governor, Mayors and LGU legislative bodies or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by ILECO II to inform the consumers within the affected areas of the filing of the *Application*, its reasons therefor, and of the scheduled hearing thereon;
- 4) The evidence of receipt of copies of this *Order* and the attached *Notice of Public Hearing* by the OSG, the COA, and the Committees on Energy of both Houses of Congress;
- 5) The evidence of receipt of copies of the *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.

Applicants and all interested parties are also required to submit, at least five (5) days before the date of 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 Applicants to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from the said date of cancellation.

Applicants must also be prepared to make an expository presentation of the instant *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 *Application* with relevant information and pertinent details substantiating the reasons and justifications being cited in support thereof.

SO ORDERED.

Pasig City, 15 January 2019.

FOR AND BY AUTHORITY
OF THE COMMISSION:

JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner

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Applicant
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4. GNPowder Mariveles Coal Plant Ltd. Co.
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5. Office of the Solicitor General (OSG)
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6. Commission on Audit (COA)
Commonwealth Avenue, Quezon City 1121
7. Senate Committee on Energy
GSIS Building, Roxas Boulevard, Pasay City 1307
8. House Committee on Energy
Batasan Hills, Quezon City 1126
9. Office of the Governor
Province of Iloilo
10. Office of the Local Government (LGU) legislative body
Province of Iloilo
11. Office of the Mayor
Municipality of Barotac Nuevo, Iloilo
12. Office of the Local Government (LGU) legislative body
Barotac Nuevo, Iloilo
13. Office of the Mayor
Municipality of Badiangan, Iloilo
14. Office of the Local Government (LGU) legislative body
Municipality of Badiangan, Iloilo
15. Office of the Mayor
Municipality of Bingawan, Iloilo
16. Office of the Local Government (LGU) legislative body
Municipality of Bingawan, Iloilo
17. Office of the Mayor
Municipality of Calindog, Iloilo
18. Office of the Local Government (LGU) legislative body
Municipality of Calindog, Iloilo
19. Office of the Mayor
Municipality of Dingle, Iloilo
20. Office of the Local Government (LGU) legislative body
Municipality of Dingle, Iloilo

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21. Office of the Mayor
Municipality of Duñas, Iloilo
22. Office of the Local Government (LGU) legislative body
Municipality of Duñas, Iloilo
23. Office of the Mayor
Municipality of Dumangas, Iloilo
24. Office of the Local Government (LGU) legislative body
Municipality of Dumangas, Iloilo
25. Office of the Mayor
Municipality of Janiuay, Iloilo
26. Office of the Local Government (LGU) legislative body
Municipality of Janiuay, Iloilo
27. Office of the Mayor
Municipality of Lambunao, Iloilo
28. Office of the Local Government (LGU) legislative body
Municipality of Lambunao, Iloilo
29. Office of the Mayor
Municipality of San Enrique, Iloilo
30. Office of the Local Government (LGU) legislative body
Municipality of San Enrique, Iloilo
31. Office of the Mayor
Municipality of Mina, Iloilo
32. Office of the Local Government (LGU) legislative body
Municipality of Mina, Iloilo
33. Office of the Mayor
Municipality of Pototan, Iloilo
34. Office of the Local Government (LGU) legislative body
Municipality of Pototan, Iloilo
35. Office of the Mayor
Municipality of New Lucena, Iloilo
36. Office of the Local Government (LGU) legislative body
Municipality of New Lucena, Iloilo
37. Office of the Mayor
Municipality of Zarraga, Iloilo
38. Office of the Local Government (LGU) legislative body
Municipality of Zarraga, Iloilo
39. Office of the Mayor
Passi City, Iloilo
40. Office of the Local Government (LGU) legislative body
Passi City, Iloilo
41. Regulatory Operations Service (ROS)
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