

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 (PPSA)  
BETWEEN QUEZON II  
ELECTRIC COOPERATIVE,  
INC. AND GNPOWER  
MARIVELES COAL PLANT  
LTD. CO. WITH MOTION  
FOR CONFIDENTIAL  
TREATMENT OF  
INFORMATION AND  
ISSUANCE OF  
PROVISIONAL AUTHORITY**

**ERC CASE NO. 2016 -183 RC**

**QUEZON II ELECTRIC  
COOPERATIVE, INC.  
(QUEZELCO II) AND  
GNPOWER MARIVELES  
COAL PLANT LTD. CO.  
(GMCP),**

**Applicants.**

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**D O C K E T E D**  
Date: JAN 06 2017  
By: W

### **NOTICE OF PUBLIC HEARING**

**TO ALL INTERESTED PARTIES:**

Notice is hereby given that on 28 October 2016, Quezon II Electric Cooperative, Inc. (QUEZELCO II) and GNPpower Mariveles Coal Plant Ltd. Co. (GMCP) filed an *Application* seeking the Commission's approval of their Power Purchase and Sale Agreement.

QUEZELCO II and GMCP alleged the following in their *Application*:

1. Applicant QUEZELCO II is a non-stock, non-profit electric cooperative duly organized and existing under Philippine laws,

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with principal office at Brgy. Gumian, Infanta, Quezon. It is duly authorized to distribute electricity in Municipalities of Infanta, Real and General Nakar, all in the province of Quezon (collectively, the “Franchise Area”);

2. Copies of QUEZELCO II’s Certificate of Registration, Articles of Incorporation, By-Laws, Board of Directors Profile and Certificate of Franchise are attached hereto as follows:

<b>Annex</b>	<b>DOCUMENT</b>
“A”	QUEZELCO II’s Certificate of Registration issued by the National Electrification Administration (NEA)
“B”	QUEZELCO II’s Articles of Incorporation
“C”	QUEZELCO II’s By-laws
“D”	QUEZELCO II’s Board of Directors Profile as of 20 October 2016
“E”	QUEZELCO II’s Certificate of Franchise issued by the National Electrification Commission

3. Meanwhile, Applicant GMCP is a duly registered limited partnership organized and existing under Philippine laws, and is engaged in the business of developing, constructing, operating and owning power generation facilities. Its principal office is at the 28<sup>th</sup> Floor, The Orient Square Building, Don Francisco Ortigas Jr. Road, Ortigas Center, Pasig City. Copies of its Certificate of Registration issued by the Securities and Exchange Commission (SEC), Amended Articles of Partnership, Certification on Partnership Agreement, and GNPower Project Companies Profile are attached hereto as follows:

<b>Annex</b>	<b>DOCUMENT</b>
“F”	GMCP’s Certificate of Registration issued by the Securities and Exchange Commission (SEC)
“G”	GMCP’s Amended Articles of Partnership
“H”	Certification on Partnership Agreement ( <i>subject of the Motion for Confidential Treatment</i> )
“I”	GNPower Project Companies Profile

4. Applicants may be served with orders, notices and other legal processes of this Honorable Commission 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 this Honorable Commission for its due consideration and approval of the Power Purchase and Sale Agreement (“PPSA”) executed by and between Applicants QUEZELCO II and GMCP as of 10 October 2016, a copy of which is attached hereto as **Annex “J”**;

**I. STATEMENT OF FACTS**

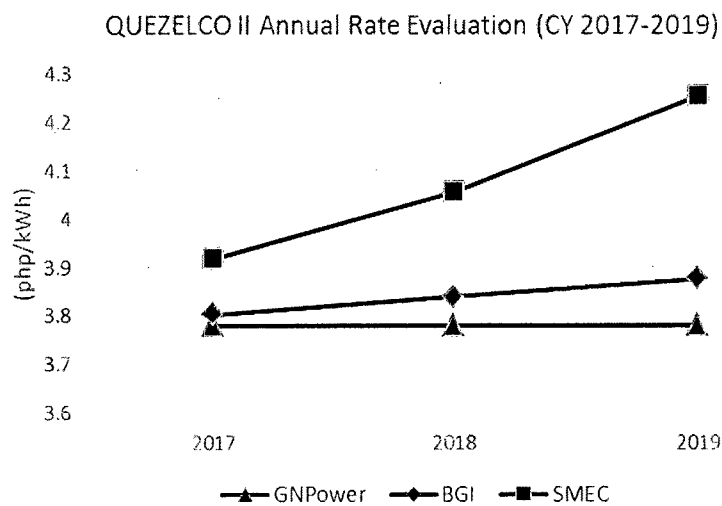
6. QUEZELCO II needs to address the insufficiency of its power supply due to the increasing demand within its Franchise Area;
7. QUEZELCO II's contracts with Trans-Asia Oil and Energy Development Corporation will expire on 25 December 2016;
8. Based on its supply-demand forecast, QUEZELCO II's demand in 2015 is 5.01MW, with an annual average growth rate of 4.2%. Therefore, its demand is expected to increase to 7.162MW in 2026. Copies of the following documents are attached hereto:

<b>ANNEX</b>	<b>DOCUMENT</b>
<b>"K"</b>	QUEZELCO II's Historical, Actual and Forecasted Supply-Demand Scenario from 2014-2026
<b>"L"</b>	QUEZELCO II's Average Daily Load Curve (Latest Billing Period)
<b>"L-1"</b>	QUEZELCO II's Average Daily Load Curve (Last 12 months from the time of Application)
<b>"L-2"</b>	QUEZELCO II's Forecasted Average Daily Load Curve

9. In view of the increasing demand for power in its Franchise Area, QUEZELCO II conducted a Competitive Selection Process (CSP), the details of which are as follows:
  - 9.1 On 15 March 2016, the Office of the General Manager issued a Memorandum No. 5 directing the Bids and Awards Committee (BAC) and the Technical Working Group (TWG) to conduct a CSP for the supply of QUEZELCO II's energy requirements to its Franchise Area.
  - 9.2 On 06 and 11 July 2016, QUEZELCO II published the Invitation to Bid for Power Supply Contract for 5MW demand on Philippine Daily Inquirer.
  - 9.3 GNPowder Ltd. Co. ("GNPower"), along with BACMAN Geothermal, Inc., ("BACMAN") and San Miguel Energy Corporation ("SMEC"), expressed its intent to join the CSP and was provided with a copy of the Instructions to Bidders. Thereafter, a bidding conference was held on 13 July 2016 to clarify and discuss the selection process, requirements, rule and evaluation method.
  - 9.4 The bids of GNPowder, BACMAN and SMEC were declared as compliant with the eligibility requirements of the bidding documents per BAC Minutes of Receipt and Opening of the Bids dated 27 July 2016.
  - 9.5 On 27 July 2016, Each of the qualified bidders made a presentation of its offer to QUEZELCO II's TWG, BAC and Board of Directors. GNPowder confirmed during its presentation that the source of supply to QUEZELCO II

shall be from (i) GMCP's 2x300MW clean coal-fired power plant in Mariveles, Bataan, which has been in commercial operations since 2013, for Contract Years 2017 to 2019 and for 3.5MW and (ii) GNPower Dinginin Ltd. Co.'s ("GNPD") supercritical coal-fired power plant in Mariveles, Bataan, which is currently under construction, for Contract Years 2020 to 2026 and for 5MW.

- 9.6 After such presentation and post-qualification evaluation conducted, the TWG and BAC of QUEZELCO II confirmed that GNPower submitted the most advantageous offer from December 26, 2016 to December 25, 2026 considering the parameters of the offer and QUEZELCO II's evaluation methodology. The comparison of the rate offers is shown in the graph below.



- 9.7 Accordingly, the TWG and the BAC recommended the awarding of the contract to GNPower for the power supply requirements of QUEZELCO II's Franchise Area from December 26, 2016 to December 25, 2026 pursuant to BAC Resolution No. 9 Series of 2016 dated 22 August 2016.
- 9.8 The BAC's recommendation to award the contract to GNPower was approved by the Board of Directors of QUEZELCO II pursuant to Board Resolution No. 57 Series of 2016 dated on 05 September 2016.
- 9.9 Thus, QUEZELCO II issued a Notice of Award to GNPower dated 14 September 2016.
- 9.10 Also, the Board of Directors of QUEZELCO II issued Board Resolution No. 61 Series of 2016 on 27 September 2016 authorizing the approval and signing of the Power Purchase and Sale Agreement between QUEZELCO II and GMCP including its supplement agreements and amendments and other related documents.

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Copies of the documents relative to the CSP are hereto attached as follows:

<b>ANNEX</b>	<b>CSP DOCUMENT</b>
<b>"M"</b>	QUEZELCO II Memorandum No. 5 from the Office of the General Manager directing the conduct of a CSP
<b>"M-1"</b>	Affidavit of Publication dated 13 October 2016 issued by the Classified Ads Account Executive of the <i>Philippine Daily Inquirer</i>
<b>"M-2"</b>	Invitation to Bid as published on 06 July 2016 issue of the <i>Philippine Daily Inquirer</i>
<b>"M-3"</b>	Invitation to Bid as published on 11 July 2016 issue of the <i>Philippine Daily Inquirer</i>
<b>"M-4"</b>	Instruction to Bidders
<b>"M-5"</b>	QUEZELCO II's BAC Minutes of the Pre-Bid Conference dated 13 July 2016
<b>"M-6"</b>	QUEZELCO II's BAC Minutes of the Receipt and Opening of Bids dated 27 July 2016
<b>"M-7"</b>	QUEZELCO II's BAC Resolution No. 9, Series of 2016 dated 22 August 2016 recommending the awarding of the power supply contract of QUEZELCO II for ten (10) years to GNPowder <i>(subject of the Motion for Confidential Treatment)</i>
<b>"M-8"</b>	Abstract of Bid Proposal <i>(subject of the Motion for Confidential Treatment)</i>
<b>"M-9"</b>	QUEZELCO II's Board Resolution No. 57 Series of 2016 dated 05 September 2016 approving the recommendation of the BAC to award power supply contract of QUEZELCO II to GNPowder
<b>"M-10"</b>	Notice of Award dated 14 September 2016 issued by QUEZELCO II to GNPowder
<b>"M-11"</b>	Secretary's Certificate dated 08 October 2016 attesting to QUEZELCO II's Board Resolution No. 61 Series of 2016 issued on 27 September 2016 authorizing the approval and signing of the PPSA between QUEZELCO II and GMCP; authorizing the Board President and/or General Manager to sign the PPSA; authorizing QUEZELCO II to file the instant Application; and designating The Law Firm of Manjares and Manjares as its legal counsel

10. Consequently, Applicants QUEZELCO II and GMCP executed the subject PPSA in counterparts on 08 October 2016 and 10 October 2016, respectively, to assure the adequate and reliable supply of power to QUEZELCO II's Franchise Area;

**II. ABSTRACT OF THE PPSA AND OTHER RELATED INFORMATION**

11. The following are the salient features of the PPSA<sup>1</sup>:

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<sup>1</sup> Capitalized terms used but not defined herein have the meaning as defined in the PPSA.

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- a. **TERM.** The PPSA shall be effective on the date of its execution and shall terminate after thirty six (36) months from the date to be specified in the Commencement Date Notice or upon commencement of delivery from GNPD, whichever is later. Pursuant to Section 2.1 of the PPSA, the target date of commencement of the delivery of QUEZELCO II's contracted capacity is 26 December 2016 or upon the Applicants' official receipt of the ERC's order granting final approval to implement the rate as provided in the PPSA, whichever is later.
- b. **SOURCE OF SUPPLY.** GMCP shall make available, sell, and deliver or cause to be delivered to QUEZELCO II the Product at the Delivery Point, whether sourced from GMCP's facility or from other electricity generators, including the Wholesale Electricity Spot Market (WESM).

GMCP's facility is situated in Mariveles, Bataan and has been operating since 2013.

- c. **CONTRACTED CAPACITY.** QUEZELCO II is contractually entitled to receive from GMCP, at any hour, subject to GMCP's Available Capacity for such hour, the Contracted Capacity, as follows:

Year	Contracted Capacity (kW)
1	3,500
2	3,500
3	3,500

QUEZELCO II shall utilize and pay for the capacity delivered by GMCP at 65% to 100% Capacity Factor (CF).

- c.1. Option to Increase Contracted Capacity. Section 2.8 of the PPSA provides that upon written notice to GMCP, QUEZELCO II may, upon approval by GMCP, increase its Contracted Capacity which increase shall be subjected to the 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 the Capacity Price and the Energy Price. The Capacity Price shall be computed as the product of the Capacity Fee for a Billing Period multiplied by the quantity of Product delivered at the Delivery

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Point. The Energy Price shall be computed as the product of the Energy Fee for a Billing Period multiplied by the quantity of Product delivered at the Delivery Point.

*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*, as such may be adjusted from time to time based on the Capacity Factor.

The corresponding Capacity Fee for a given Capacity Factor is set forth in the table below:

Capacity Factor (%)	Capacity Fee (USD per kWh)
100%	0.0499
99%	0.0503
98%	0.0507
97%	0.05110
96%	0.0514
95%	0.0518
94%	0.0522
93%	0.0526
92%	0.0530
91%	0.0534
90%	0.0539
89%	0.0543
88%	0.0548
87%	0.0552
86%	0.0557
85%	0.0562
84%	0.0567
83%	0.0572
82%	0.0577
81%	0.0583
80%	0.0588
79%	0.0594
78%	0.0599
77%	0.0605
76%	0.0611
75%	0.0618
74%	0.0625
73%	0.0632
72%	0.0639
71%	0.0646
70%	0.0654
69%	0.0661
68%	0.0669
67%	0.0677
66%	0.0686
65%	0.0694

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The Capacity Factor (CF) shall be computed as follows:

$$\text{Capacity Factor (CF)} = \frac{Q}{CC \times (HT - EH_{SO} - EH_{UO})}$$

Where:

**CF** = is the Capacity Factor between 65% and 100%, provided that if the actual CF is below 65% (the "Minimum Capacity Factor"), the Capacity Price shall be calculated based on the Capacity Fee and quantity associated with the Minimum Capacity Factor.

**Q** = Quantity of kWh

**CC** = Contracted Capacity, in kW, as set forth in Schedule 1 of the subject PPSA

**HT** = Total number of hours in such Billing Period

**EH<sub>SO</sub>** = the sum of the duration, in Equivalent Hours, of Scheduled Outages in such Billing Period

**EH<sub>UO</sub>** = the sum of the duration, in Equivalent Hours, of 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 the coal. The Energy Fee shall be computed in accordance with the following formula:

$$\text{Energy Fee} = \text{Initial Energy Fee} \times \frac{\text{CIF Cost of Fuel for Billing Period}}{\text{Base CIF Cost of Fuel}}$$

Where:

**Initial Energy Fee** = \$0.0250/kWh  
**Base CIF Cost of Fuel** = \$7.1073/million kcal



- e. **PROMPT PAYMENT DISCOUNT (PPD).** Section 4.3(c) of the PPSA provides that if QUEZELCO II pays the invoice amount in full within ten (10) days of receipt from GMCP, QUEZELCO II shall receive a discount equal to \$0.0012/kWh multiplied by the actual quantity of the Product actually delivered set forth in such invoice for the Billing Period for which the credit was earned.
- f. **SCHEDULED OUTAGES AND UNSCHEDULED OUTAGES.** Pursuant to Section 2.3 of the PPSA, GMCP is allowed Scheduled Outage not to exceed seven hundred twenty (720) Equivalent Hours for each Contract Year, during which times reduced or no deliveries will be available to QUEZELCO II. Likewise, GMCP is allowed Unscheduled Outage of five hundred four (504) Equivalent Hours for each Contract Year during which times reduced or no deliveries will be available to the Buyer.

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

13. The supply from GMCP will help alleviate and sustain the power supply needs of the Franchise Area of QUEZELCO II to prevent any likelihood of brownouts and power shortages;
14. Among alternative suppliers capable of providing additional energy to QUEZELCO II, GMCP's rate proved to be more reasonable and competitive. Moreover, the Capacity Factor Pricing under the PPSA provides flexibility to QUEZELCO II in its utilization of the Contracted Capacity;
15. QUEZELCO II simulated a generation rate impact which ultimately resulted in a **reduction of Php 0.7269 per kWh** with the execution of the PPSA with GMCP, to wit:

**Simulation of Generation Mix Rate with GMCP for the Year 2017**

Power Supplier	Forecasted Energy (kWh)	Amount (Php)	Percent Share (%)	Average Rate (Php/kWh)	Weighted Average Rate (Php/kWh)
GMCP	27,753,652.75	99,142,056.16	93.76%	3.5722	<b>3.6668</b>
WESM	1,847,975.42	9,401,614.12	6.24%	5.0875	
<b>TOTAL</b>	<b>29,601,628.17</b>	<b>108,543,670.28</b>	<b>100%</b>		

**Simulation of Generation Mix Rate without GMCP for the Year 2017**

Power Supplier	Forecasted Energy (kWh)	Amount (Php)	Percent Share (%)	Average Rate (Php/kWh)	Weighted Average Rate (Php/kWh)
GMCP	-	-	0.0%	0.0000	<b>4.3937</b>
WESM	29,601,628.17	130,059,380.02	100.0%	4.3937	
<b>TOTAL</b>	<b>29,601,628.17</b>	<b>130,059,380.02</b>	<b>100%</b>		

*\*Without VAT*

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**Rate Impact, PhP/kWh = - 0.7269**

**Assumptions:**

1. Analysis and simulations are based on QUEZELCO II forecasted energy for the year 2017.
2. GMCP rate was based on Capacity Fee at resulting Capacity Factor and Effective Energy Fee.
3. WESM average rate was simulated using 2017 hourly forecasted market prices.
4. Prices do not include applicable discounts, etc.

A copy of QUEZELCO II's generation rate impact analysis is attached hereto as **Annex "N"**;

16. In addition and in support of this *Application*, particularly the proposed rate structure, Applicants hereto attach copies of the following documents:

<b>ANNEX</b>	<b>DOCUMENT</b>
"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"	Print-out copy of the Details of the PPSA
"Q"	Print-out copy of the Discussion of Rate Calculation and Sample Calculation of Rates
"R"	Soft copy of GMCP's Financial Model as of 20 September 2016 contained in a compact disk <i>(subject of the Motion for Confidential Treatment)</i>
"R-1"	Print-out copy of the Notes on the Financial Model as of 20 September 2016 and its Assumptions <i>(subject of the Motion for Confidential Treatment)</i>
"R-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>
"S"	Copy of the Certification on Financing Arrangements dated 13 September 2016 issued by GMCP, China Development Bank and BDO Unibank, Inc. – Trust and Investment Group <i>(subject of the Motion for Confidential Treatment)</i>
"T"	Print-out copy of the Write-up on the Heat Rate and attached thereto a copy of GMCP's 2015 Generation Company Management Report indicating the heat rate and the plant capacity
"U"	Copy of the Sworn Statement on Coal Procurement Process
"V"	Copy of GMCP's 2015 Audited Financial Statements
"W"	Copy of the Certificate of Endorsement No. 2011-11-02 dated 09 December 2011 issued by the Department of Energy (DOE) confirming that the GMCP Project is consistent with the Power Development Plan
"X"	Copy of the Environmental Compliance Certificate (ECC) No. 0606-011-4021 issued by the Department of Environment and Natural Resources (DENR)
"X-1"	Copy of the DENR's letter dated 14 November 2007

<b>ANNEX</b>	<b>DOCUMENT</b>
	approving the ECC transfer of ownership to GMCP
<b>“Y”</b>	Copy of the Certificate of Registration No. 2006-140 issued by the Board of Investments (BOI)
<b>“Z”</b>	Copy of the Certification issued by GNPower Mariveles Coal Plant Ltd. Co. regarding the Engineering, Procurement and Construction (“EPC”) Contract
<b>“AA”</b>	Copy of the GMCP’s letter regarding the salient terms of the Coal Supply Agreement enclosing therewith signature pages of the Coal Supply Agreements, as amended <sup>2</sup>
<b>“BB”</b>	Copy of the Certificate of Compliance (COC) No. 12-12-GN 282-19811L issued by the Energy Regulatory Commission
<b>“CC”</b>	Copy of GMCP’s Secretary’s Certificate dated 08 October 2016 attesting to the Management Committee’s resolutions authorizing the execution of the PPSA with QUEZELCO II; the designation of authorized representatives/signatories and legal counsels of GMCP; and the filing of an Application with the ERC for the approval of the PPSA with QUEZELCO II
<b>“DD”</b>	QUEZELCO II’s Certification dated 20 October 2016 confirming the expiration of the Contract for the Supply of Electric Energy (CSEE) between NPC and QUEZELCO II on 25 December 2011
<b>“EE”</b>	Copy of the Transmission Service Agreement between National Grid Corporation of the Philippines and QUEZELCO II
<b>“FF”</b>	Copy of QUEZELCO II’s Distribution Development Plan for 2016-2025
<b>“GG”</b>	Copy of QUEZELCO II’s Certification on the Demand Side Management

17. Applicants QUEZELCO II and GMCP reserve their 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**

18. Applicants manifest compliance with the pre-filing requirements mandated under *Rule 3, Section 4 (e)* of the *Implementing Rules and Regulations of the EPIRA* and *Rule 6* of the *2006 ERC Rules of Practice and Procedure* as evidenced by the following:

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

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<sup>2</sup> 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

<b>ANNEX</b>	<b>DOCUMENT</b>
<b>“HH”</b>	Certification/Affidavit of Service for Sangguniang Panlalawigan of Quezon
<b>“II”</b>	Certification/Affidavit of Service for Sangguniang Bayan of Infanta
<b>“JJ”</b>	Certification/Affidavit of Service for Sangguniang Panlungsod of Pasig

- b. Affidavit of Publication stating that this *Application* (excluding Annexes) was published in a newspaper of general circulation within the Franchise Area and/or the Applicants’ area of principal operation (attached hereto as **Annex “KK”**); and
- c. Complete newspaper issue where this *Application* (excluding Annexes) was published (attached hereto as **Annex “KK-1”**) and the relevant page/s thereof where the Application appears (**Annex “KK-2”**).

**V. MOTION FOR CONFIDENTIAL TREATMENT OF ANNEXES “H”, “M-7”, “M-8”, “R”, “R-1”, “R-2” and “S”**

19. 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 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;
20. Applicant QUEZELCO II most respectfully moves for the confidential treatment of **Annexes “M-7” and “M-8”** hereof. These annexes, exclusively owned by Applicant QUEZELCO II, contain information which are considered part of its business and trade secrets and also contain the offers of the bidders which are essentially confidential in nature. As such, QUEZELCO II has the sole proprietary interest and will be unduly prejudiced should they be disclosed to the public.
21. Applicant GMCP most respectfully moves for the confidential treatment of **Annexes “H”, “R”, “R-1”, “R-2” and “S”** hereof. These annexes, exclusively owned by Applicant GMCP, contain documents which 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;
22. These foregoing annexes contain numbers, data, formula, methodology, and calculations involving valuable and sensitive commercial, financial and technological information reflecting the Applicants’ business operations and financial trade secrets. Therefore, the disclosure of the Applicants’ 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 the Applicants. Negotiations with prospective customers may also be affected;

23. The information contained in Annexes “H”, “M-7”, “M-8”, “R”, “R-1”, “R-2” and “S” constitute “trade secrets”, for which the Applicants 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<sup>3</sup>. It is indubitable that trade secrets constitute proprietary rights and jurisprudence has consistently acknowledged the private character of trade secrets<sup>4</sup>. Further, as ruled in *Garcia vs. Board of Investments*<sup>5</sup>, trade secrets and confidential, commercial and financial information are *exempt* from public scrutiny;
24. 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;
25. In accordance with *Section 1(b), Rule 4 of the ERC Rules of Practice and Procedure*, Applicants hereby submit one (1) hard copy each of Annexes “H”, “M-7”, “M-8”, “R-1”, “R-2” and “S” in a sealed envelope, with the envelope and each page of the documents stamped with the word “Confidential” and Annex “R” 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**

26. All the foregoing allegations are re-pleaded by reference in support of this *Prayer* for provisional authority.
27. The basis by which Applicants QUEZELCO II and GMCP pray for the issuance of a Provisional Authority or interim relief prior to final decision is *Rule 14 of the ERC Rules of Practice and Procedure*:

***“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***

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<sup>3</sup> *Air Philippines Corporation vs. Pennswell Inc.*, G.R. No. 172835, December 13, 2007.

<sup>4</sup> *Ibid.*,

<sup>5</sup> 177 SCRA 374 (1989).

*opposition filed by any interested person, if there be any.”*  
[Emphasis Supplied]

28. The actual delivery of power under the terms and conditions of the PPSA is expected to commence on 26 December 2016, thus, 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 QUEZELCO II to supply risk and unstable market prices;
29. To emphasize the necessity of the provisional approval of this *Application*, a copy of the Judicial Affidavit of Engr. Von Erwin G. Azagra in support of the Motion for Provisional Authority is attached hereto as **Annex “LL”**;
30. 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 this *Application*, Applicants QUEZELCO II and GMCP respectfully seek the kind consideration of the Honorable Commission to approve the instant *Application* immediately, albeit, provisionally.

#### **PRAYER**

**WHEREFORE**, premises considered, it is most respectfully prayed of this Honorable Commission that (i) all information set forth in **Annexes “H”, “M-7”, “M-8”, “R”, “R-1”, “R-2” and “S”** 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 Power Purchase and Sale Agreement (PPSA) including the rate structure therein, as applied; (iii) 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 the Final Authority shall be issued after GMCP starts the actual delivery of power to QUEZELCO 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.

The Commission has set the *Application* for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on **2 February 2017 (Thursday) at ten o’clock in the morning (10:00 A.M.), at QUEZELCO II’s principal office at Brgy. Gumian, Infanta, Quezon.**

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

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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.

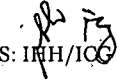
All other persons who may want their views known to the Commission with respect to the subject matter of the case may file their Opposition or Comment thereon at any stage of the proceeding before Applicants rest their case, subject to the requirements under Rule 9 of the 2006 Rules of Practice and Procedure. 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 *Application* may request from Applicant 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 *Application* and its attachments, subject to the reimbursement of reasonable photocopying costs. Any such person may likewise examine the *Application* and other pertinent records filed with the Commission during the standard office hours.

**WITNESS**, the Honorable Chairman **JOSE VICENTE B. SALAZAR**, and the Honorable Commissioners **ALFREDO J. NON**, **GLORIA VICTORIA C. YAP-TARUC**, **JOSEFINA PATRICIA A. MAGPALE-ASIRIT**, and **GERONIMO D. STA. ANA**, Energy Regulatory Commission, this 5<sup>th</sup> day of January 2017 in Pasig City.

  
ATTY. NATHAN J. MARASIGAN  
*Chief of Staff*  
Office of the Chairman and CEO

  
LS: IRH/ICG