

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



IN THE MATTER OF THE APPLICATION FOR APPROVAL OF FORCE MAJEURE CAPITAL EXPENDITURE PROJECTS: (1) RESTORATION AND REHABILITATION OF DISTRIBUTION LINES AND LINE ACCESSORIES AND KILOWATT-HOUR METERS DAMAGED BY TYPHOON GLENDA COSTING A TOTAL OF PHP 65,239,833.00; AND (2) TO SECURE LOAN FROM NEA, WITH PRAYER FOR PROVISIONAL AUTHORITY,

ERC CASE NO. 2015-127 RC

**NORTHERN SAMAR ELECTRIC COOPERATIVE, INC. (NORSAMELCO),
Applicant.**

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D O C K E T E D
Date: AUG 31 2017
By: W

DECISION

THE CASE

Before the Commission for resolution is the Application filed on 7 July 2015 by Northern Samar Electric Cooperative, Inc. (NORSAMELCO) for approval of its force majeure capital expenditure (CAPEX) projects, specifically the restoration and rehabilitation of distribution lines and line accessories and the replacement of kilowatt-hour meters, and of the corresponding amortization schedule for the loan secured to finance the expenses incurred.

THE FACTUAL AND PROCEDURAL ANTECEDENTS

Northern Samar Electric Cooperative, Inc. (NORSAMELCO) is a non-stock, non-profit electric cooperative organized and existing

under and by virtue of the provisions of P.D. 269,¹ as amended by PD 1645,² with principal office address located at Brgy. Magsaysay, Bobon, Northern Samar, represented herein by its Project Supervisor/Acting General Manager, Hector N. Tabilisma.

NORSAMELCO has been granted by the National Electrification Administration (NEA) a 50-year franchise to distribute electric service to its member-consumers in the Municipalities of the Province of Northern Samar, namely: San Isidro, Victoria, Allen, Lavezares, Rosario, San Jose, Bobon, Lope de Vega, Mondragon, Catarman, San Vicente, Capul, San Antonio, Biri, San Roque, Pambujan, Silvino Lobos, Laoang, Catubig, Las Navas, Palapag, Mapanas, Gamay, and Lapinig.

Typhoon Glenda (international code Rammasun) entered the Philippine Area of Responsibility (PAR) on 13 July 2014. It had made its landfall over Southern Luzon on 15 July 2014. Several islands in Southern Luzon, as well as the Eastern, Western, and Central Visayas were put under storm signal. The typhoon left ruin and damages to property in its wake, including NORSAMELCO's electric distribution system.

On 1 April 2015, NORSAMELCO filed a Notice of Force Majeure Event (FME) before the Commission. The Notice was followed by the filing of the instant Application on 7 July 2015 to seek the Commission's approval of its force majeure CAPEX projects for the restoration and rehabilitation of distribution lines and line accessories and the replacement of kilowatt-hour meters damaged by Typhoon Glenda. Additionally, NORSAMELCO prayed that the Commission approve the loan amortization secured from NEA for the expenses incurred in the two force majeure CAPEX projects and allow it to recover the cost.

In its Application, NORSAMELCO summarized its CAPEX projects, as follows:

**RESTORATION AND REHABILITATION OF
DISTRIBUTION LINES AND LINE ACCESSORIES
AND REPLACEMENT OF KILOWATT HOUR METERS**

¹ Entitled, "Creating the 'National Electrification Administration' as a Corporation, Prescribing its Powers and Activities, Appropriating the Necessary Funds therefor and Declaring a National Policy Objective for the Total Electrification of the Philippines on an Area Coverage Service Basis, the Organization, Promotion and Development of Electric Cooperatives to Attain the Said Objective, Prescribing Terms and Conditions for their Operations, the Repeal of Republic Act No. 6038, and for Other Purposes."

² Entitled, "Amending Presidential Decree No. 269, Increasing the Capitalization and Broadening the Lending and Regulatory Powers of the National Electrification Administration and for Other Purposes."

**DAMAGED BY TYPHOON GLENDA COSTING A
TOTAL OF PHP 65,239,833.00**

- a – Project Title – Restoration and Rehabilitation of Distribution lines and line accessories and replacement of damaged kilowatt-hour meters;
- b – Project Description – Recovery of expenses for the restoration and rehabilitation of distribution lines, line accessories and the replacement of kilowatt-hour meters;
- c – Schedule and Cost Estimates – PHP 65,239,833.00;
- d – Technical Evaluation of Alternative Solutions – there was immediate restoration and rehabilitation of lines in two (2) months' time only;

Aside from the above, NORSAMELCO, in its Application, included a prayer for authority to secure a loan from the NEA:

AUTHORITY TO SECURE LOAN FROM NEA – All loan requests for the two projects of restoration and rehabilitation of lines as well as replacement of meters and repairs of substation substations have been released by NEA.

Typhoon Glenda Amortization Schedule for ten (10) years from September 2015 to September 2025.

1. That it was due to the urgent nature of this project that herein applicant immediately requested NEA for the release of needed funds to purchase the materials and equipment to be able to immediately restore and rehabilitate the damaged distribution lines of NORSAMELCO;
2. That the total cost of this Force Majeure CAPEX projects NORSAMELCO has incurred the total cost as follows:
 - 1) **RESTORATION AND REHABILITATION OF DISTRIBUTION LINES AND LINE ACCESSORIES AND REPLACEMENT OF KILOWATT-HOUR METERS DAMAGED BY TYPHOON GLENDA COSTING A TOTAL OF PHP 65,239,833.00;**
3. **FORCE MAJEURE INDICATIVE RATE IMPACT: for Total Calamity loan of Php. 65,239,833.00.**
4. This application is definitely intended to allow NORSAMELCO to render a more reliable, adequate and efficient electric service in compliance to its mandate of total electrification on an area coverage basis; and

5. That as such, herein applicant requests the issuance of an approval for the benefit of its consumer-members.

In compliance with the pre-filing requirements of the Commission, NORSAMELCO filed its Application with the following attachments:

1. A Certification/Acknowledgement from the Office of the Secretary of the Sangguniang Panlalawigan of Catarman, Northern Samar stating that it received a copy of the Application, together with annexes and attachments thereto;³
2. A Certification/Acknowledgement from the Office of the Sangguniang Bayan of Bobon likewise stating that it received a copy of the Application and its annexes;⁴
3. An affidavit attesting to the fact of publication;⁵ and
4. An issue of a newspaper containing the published Application in its entirety.⁶

Having found said Application sufficient in form and in substance, with the required fees having been paid, an Order and a Notice of Public Hearing, both dated 6 October 2015, were issued by the Commission setting the case for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on 26 November 2015.

In the same Order, NORSAMELCO was directed to cause the publication of the Notice of Public Hearing, at its own expense, twice (2x) for two (2) consecutive weeks in two (2) newspapers of general circulation in the Philippines with the date of the last publication to be made not later than ten (10) days before the date of the scheduled initial hearing. It was also directed to inform the consumers, by any other means available and appropriate, of the

³ Certification/Acknowledgement issued by the Sangguniang Panlalawigan of Catarman dated 29 June 2015.

⁴ Certification/Acknowledgement issued by the Sangguniang Bayan of Bobon dated 29 June 2015.

⁵ Affidavit of Publication by Mitchell M. Encarnado dated 7 July 2015.

⁶ Malaya Business Insight, 7 July 2015 issue, Vol. XXXIII.

filing of the instant application, its reasons therefor, and of the scheduled hearing thereon.

The Office of the Solicitor General (OSG), the Commission on Audit (COA) and the Committees on Energy of both Houses of Congress were furnished with copies of the Order and Notice of Public Hearing and were requested to have their respective duly authorized representatives present at the initial hearing.

Likewise, the Offices of the Governor of Northern Samar and the Mayors of the city and municipalities within the franchise area of NORSAMELCO were furnished with copies of the Order and Notice of Public Hearing for the appropriate posting thereof on their respective bulletin boards.

Pursuant to Section 3, Rule 16 of the 2006 Rules of Practice and Procedure,⁷ (2006 RPP) NORSAMELCO filed its Pre-Trial Brief on 16 November 2015.

During the 26 November 2015 initial hearing held at NORSAMELCO's Main Office in Brgy. Magsaysay, Bobon, Northern Samar, only NORSAMELCO appeared. No intervenor or oppositor appeared, neither was there any registered intervention or opposition.

At the said hearing, NORSAMELCO submitted its compliance with the Commission's jurisdictional requirements. Finding the submission to be fully compliant with Section 4, Rule 14 of ERC Rules of Practice and Procedure,⁸ as well as with the Order dated 6

⁷ Section 3. Pre-Trial Brief. - The Commission may require any one or all of the parties to a proceeding to file at least five (5) days before the date of initial hearing or date set for pre-trial conference a pre-trial brief containing, among others:

- (a) a summary of admitted facts and proposed stipulation of facts;
- (b) the issues to be tried or resolved;
- (c) the documents or exhibits to be presented, stating the purpose thereof and proposed markings therefor; and
- (d) the number and names of the witnesses, with their written testimony in affidavit form, if already available, to be attached to the pre-trial brief.

Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial conference.

⁸ Section 4. Publication and Other Requirements. - The notice of hearing for any application or petition for rate adjustment or for any relief affecting the consumers shall be published by the applicant or petitioner, at its own expense, at least twice for two (2) successive weeks in two (2) newspapers of nationwide circulation, the last day of publication not to be later than ten (10) days before the scheduled hearing. In all other applications or petitions, the publication of the notice shall only be once in a newspaper of general circulation in the locality or localities where

October 2015 issued by the Commission, the submissions were duly marked as Exhibits "C" to "F-5."

Thereafter, the Commission proceeded with the expository presentation. Engr. Noel B. Obrar and Ms. Editha G. Perfecto delivered the expository presentation on the application. The Commission propounded clarificatory questions regarding the net loan application, material costs, and labor costs on the presentors. NORSAMELCO was then directed to submit documents to support their presentation.

At the termination of the exposition, Engr. Nilo Estopa, technical engineer of NORSAMELCO, was presented as NORSAMELCO's witness. In his direct examination, he identified and affirmed the Judicial Affidavit he executed on 24 November 2015, as well as several documents adduced as evidence in support of the Application. Engr. Estopa made corrections in his Judicial Affidavit regarding the loan application, which were duly noted. Engr. Estopa was then propounded clarificatory questions by the Commission. Subsequent thereto, the Commission directed NORSAMELCO to submit its *Formal Offer of Evidence* within a period of ten (10) days.

On 21 December 2015, NORSAMELCO submitted the *Itemized Accounting of Funds and Certification* as required during the hearing.

On 17 February 2016, NORSAMELCO filed its *Formal Offer of Evidence* dated 9 February 2016. The Commission issued an Order admitting the exhibits contained in the *Formal Offer of Evidence* submitted by NORSAMELCO, to wit:

The exhibits contained in the Formal Offer of Evidence of Applicant NORSAMELCO have been relevant and material in the evaluation of this case. The proceedings having been terminated, the application of NORSAMELCO is now submitted for resolution.

SO ORDERED.⁹

the applicant or petitioner operates its business, if there be any such local newspaper, or in a newspaper of nationwide circulation, at least ten (10) days before the scheduled hearing.

⁹ Order dated 24 January 2017.

THE ISSUE

The issue to be resolved in this case is whether the Commission should approve Applicant NORSAMELCO's capital expenditure projects due to force majeure.

THE COMMISSION'S RULING

The Commission approves the instant Application with modification.

On 9 February 2017, the Commission deliberated and decided the instant Application. However, due to supervening events¹⁰, the Decision could no longer be promulgated without undergoing reconfirmation by the Commission *En Banc*. Thus, the Commission resolved to reconfirm the Decision on 20 June 2017.

The factors used by the Commission in its evaluation of the Application will be discussed in seriatim.

DISCUSSION

I. NORSAMELCO's Profile

A. Franchise Area

NORSAMELCO's franchise area covers 24 municipalities of the Province of Northern Samar, namely: San Isidro, Victoria, Allen, Lavezares, Rosario, San Jose, Bobon, Lope de Vega, Mondragon, Catarman, San Vicente, Capul, San Antonio, Biri, San Roque, Pambujan, Silvino Lobos, Laoang, Catubig, Las Navas, Palapag, Mapanas, Gamay, and Lapinig.

B. Electric Distribution System

The substations of NORSAMELCO are located in three (3) different areas, namely:

S/S No.	Substation	CAPACITY	LOCATION
1	Dalakit S/S	5 MVA (ONAN)	Dalakit, Catarman

¹⁰ The Chairman was placed on preventive suspension as per Order of the Office of the President (OP-DC Case No. 17-D-094) dated 2 May 2017 and received on 04 May 2017.

2	Allen S/S	5 MVA (ONAN)	Sabang, Allen
3	Lawaan S/S	3.75 MVA	Lawaan, Laoang

C. Number of Customers

The customers of NORSAMELCO are classified into two (2), the number of each class as of 2015 is as follows:

Customer Classes	Year 2015 (January)
Residential	51,384
Low Voltage	2,942
High Voltage	0
TOTAL	54,326

II. Force Majeure Event

A. Typhoon Glenda

Typhoon Glenda, one of only two Category 5 super typhoons on record in the South China Sea, was named a tropical cyclone by the Philippine Atmospheric, Geophysical and Astronomical Services Administration (PAGASA). It had destructive impacts across the Philippines, Vietnam, and South China in July of 2014.

It initially packed 85 kph gusts of wind, moving in a west-southwest direction before shifting its trajectory to west-northwest as it approached Laoang, Northern Samar. Further intensifying as it made its way south to NORSAMELCO's franchise area, the typhoon left damages to property, including NORSAMELCO's electric distribution system. As a consequence, NORSAMELCO had to immediately restore its distribution lines and line accessories, as well as replace its kilowatt-hour meters.

B. Aftermath of Typhoon Glenda

Immediately after Typhoon Glenda moved away from its franchise area, NORSAMELCO linemen began clearing the scattered and damaged parts of the distribution system. At the same time, another team conducted an inspection on estimated 252 circuit kilometers from the Balicuatro Area to the Pacific Area.

Five hundred fifty six (556) different structures toppled down. Aside from this, 49 units of distribution transformers of different ratings and 16,240 kilowatt-hour meters and other different types of

line hardwares were razed to the ground. The H-frame structures passing across the island of Talisay - Laoang and Calumotan - Pangpang were likewise destroyed by Typhoon Glenda.

III. Project Description

The instant Application is for the restoration and rehabilitation of distribution lines and line accessories and replacement of kilowatt-hour meters damaged by Typhoon Glenda.

IV. Project Justification

The restoration and rehabilitation of NORSAMELCO's damaged facilities were immediately implemented in order to restore power and maintain safe, reliable, secure, and efficient operation of the power system.

V. Project Cost

As per its Application, NORSAMELCO's total cost of FME CAPEX is PhP65,239,833.00. However, based on the submitted *Itemized Accounting of Funds*, NORSAMELCO incurred a total cost amounting to **PhP52,503,211.17** only, as shown in the table below:

Items	Cost (PhP)
Materials	46,566,369.32
Labor	3,369,748.20
Overhead	2,567,093.65
Total (PHP)	52,503,211.17

VI. Project Financing

NORSAMELCO informed the Commission that it obtained a calamity loan from NEA amounting to PhP95,443,185.37. Based on the record submitted, NORSAMELCO only received the amounts of PhP29,168,450.10 and PhP23,334,760.08, released by NEA on 14 August 2014 and 11 December 2014, respectively, amounting to a total of PhP52,503,210.18.

On 1 April 2015, NORSAMELCO, through a letter, requested the Commission that their Application for the approval of force majeure CAPEX projects include the damage wrought by Typhoon Ruby, a typhoon that brought massive destruction on

NORSAMELCO's electric distribution system on 6 December 2014. The amounts of PhP58,336,900.20 and PhP37,106,285.17 were used for restoration of damages sustained from Typhoon Glenda and Typhoon Ruby, respectively. However, NORSAMELCO did not include in its Application the costs incurred in the rehabilitation of equipment damaged by Typhoon Ruby nor did it file a separate application for approval of force majeure CAPEX projects.

On 12 November 2015, then Executive Secretary Paquito N. Ochoa, Jr., through a memorandum, informed the Chairman of National Disaster Risk Reduction and Management Council (NDRRMC) Voltaire T. Gazmin of the approval to release the total amount of PhP803,980,000.00, through NEA, for the purpose of immediate rehabilitation or replacement of the distribution system lines and facilities of various cooperatives that were damaged by Typhoon Glenda. NORSAMELCO was one of the recipients, its share amounting to PhP191,860,000.00. This subsidy from the national government will thus defray the cost of the loans obtained from NEA.

NORSAMELCO was requested by NEA to prepare As-Built staking sheets, Accounting Funds, and other pertinent documents as a pre-requisite to the release of the subsidy funds. NORSAMELCO is currently in the process of preparing all the necessary documents. It is important to note that upon submission of these documents, the loans obtained from NEA amounting to PhP52,503,210.18 would be settled from the subsidy funds received.

VII. Project Classification

A Force Majeure Event (FME) is defined as a typhoon, storm, tropical depression, flood, drought, volcanic eruption, earthquake, tidal wave, or landslide.

Section 3.3 of ERC Resolution No. 26, series of 2009 (CAPEX Guidelines) states that:

“If a Force Majeure or Fortuitous event, as the case may be, occurs, the affected Regulated Entity shall seek the ERC’s confirmation of the implementation of capital expenditure projects arising from such event.

To seek the ERC’s confirmation, the affected Regulated Entity must give the ERC a Force Majeure or Fortuitous Event Notice within three (3) months from the occurrence of the Force Majeure or Fortuitous Event xx.

The affected Regulated Entity shall file a formal application within thirty (30) days from the submission of the "Force Majeure" or "Fortuitous Event Notice xxx".

NORSAMELCO filed an FME notice on 1 April 2015, which is beyond the prescribed period of three (3) months from the occurrence of the FME. It is to be recalled that Typhoon Glenda made its landfall on 15 July 2014. NORSAMELCO did not file a request for extension of time to file an FME CAPEX Application. Consequently, the matter was referred to the Investigation and Enforcement Division (IED) of the Commission for the possible issuance of a Show Cause Order due to NORSAMELCO's non-compliance with the prescribed period.

The FME CAPEX project was implemented by NORSAMELCO to comply with its obligation to restore service within the shortest time possible, as provided for in Section 1.2.1 of ERC Resolution No. 12, Series of 2006 (Guidelines for the Monitoring of Reliability Standards for Distribution Utilities):

"Each Distribution Utility shall make reasonable efforts to avoid and prevent Interruptions of service. However, when Interruptions occur, service shall be reestablished within the shortest time practicable."

VIII. Technical Analysis

The project consists of the rehabilitation and restoration of damaged distribution line facilities including poles, meters, conductors, fixtures, and pole line hardwares. The restoration was done immediately by replacing the actual damage of facilities without considering the load growth. The intention was to restore power with the same configuration and design as it was before the onslaught of Typhoon Glenda.

IX. Cost Analysis

As per its application, NORSAMELCO estimated the cost of repair and restoration of the damaged facilities in the amount of PHP65,239,833. However, based on the submitted *Accounting of Funds*, the actual material, overhead, and labor costs are as follows:

Items	Cost (PHP)
Materials	46,566,369.32
Labor	3,369,748.20

Overhead	2,567,093.65
Total (PhP)	52,503,211.17

After the typhoon, the reconstruction and rehabilitation of NORSAMELCO's damaged lines were immediately initiated. NORSAMELCO utilized the materials purchased from suppliers and nearby distribution utilities with materials readily available in their stocks.

The Commission conducted a cost analysis of the materials used in the restoration and rehabilitation of NORSAMELCO's electric distribution system. The details are as follows:

Particulars	Cost based on <i>Accounting of Funds</i> PhP/unit	NPI 2015 Cost PhP/unit
DTs		
10 kVA	44,280.00	48,500.00
15 kVA	52,717.00	56,600.00
25 kVA	67,432.00	75,400.00
37.5 kVA	90,375.00	89,450.00
50 kVA	99,495.00	106,000.00
Poles		
steel 30'	10,200.00	11,250.00
steel 35'	12,550.00	14,000.00
steel 40'	16,000.00	19,150.00
Steel 45'	26,800.00	30,000.00
Steel 75'	95,000.00	127,200.00
Conductors		
ACSR #1/0, bare	30.00	34.00
ACSR #2/0, bare	36.75	41.00
ACSR #4/0, bare	58.50	65.00
SDW Duplex #6 AWG	18.50	22.00
kWh meter, Electronic, 10-(60) DDS 238-A	930.00	1,000.00

Based on the analysis, the actual unit cost of all materials used is less than the unit cost reflected in the NEA Price Index of 2015 (NPI 2015), except for the unit cost of the 37.5 kVA transformer. The difference is a mere Nine Hundred Twenty-Five Pesos (PhP925.00). NORSAMELCO was thus able to incur less material costs, which redounded to the benefit of its member-consumers.

X. Revenue from Scrap Materials

With respect to the revenue generated from sale of the damaged transformers, wires, and metal structures, NORSAMELCO is currently in the process of segregating materials that could be salvaged from materials whose damage is beyond repair. Materials deemed scrap would be sold in bulk through bidding. The revenue generated from the sale of scrap materials would be considered general funds.

XI. Project Schedule

Reconstruction, repair, restoration, and rehabilitation works were immediately initiated after the typhoon subsided. NORSAMELCO was able to energize 100% of household connections on 3 December 2014.

XII. Permit Fees

It should be noted that Article 2.5 of the ERC Resolution No. 26, Series of 2009, otherwise known as the Rules for Approval of Regulated Entities' Capital Expenditure Projects (CAPEX Rules), provides the following:

“The following items are to be excluded from capitalized costs:

xxx

- *applicable government grants in accordance with IAS 20 (Accounting for Government Grants and Disclosure of Government Assistance).”*

Considering that the source of funds used for the repair and restoration of distribution lines and facilities of NORSAMELCO damaged by Typhoon Glenda was a government subsidy, said funds should not be capitalized, in accordance with the CAPEX Rules. Accordingly, no permit fee shall be collected.

WHEREFORE, the foregoing premises considered, the Force Majeure Event (FME) Capital Expenditure (CAPEX) Projects of Northern Samar Electric Cooperative, Inc. (NORSAMELCO) relating to the restoration and rehabilitation of the distribution lines and line accessories and to the replacement of kilowatt-hour meters damaged by the typhoon Glenda amounting to **FIFTY-TWO MILLION FIVE-HUNDRED THREE THOUSAND TWO-**

HUNDRED ELEVEN and 17/100 PESOS (PhP52,503,211.17) is hereby CONFIRMED.

Relative thereto, NORSAMELCO is directed to account for the subsidy granted by the National Government in its Reinvestment Fund for Sustainable Capital Expenditures (RFSC) report as a separate line item.

SO ORDERED.

Pasig City, 20 June 2017.

JOSE VICENTE B. SALAZAR*

Chairman




ALFREDO J. NON
Commissioner



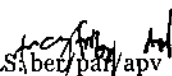
GLORIA VICTORIA C. YAP-TARUC
Commissioner

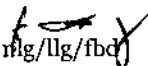


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner



GERONIMO D. STA. ANA
Commissioner


LS: ber/par/apv


ROS: mg/llg/fbd

* The Chairman was placed on preventive suspension as per Order of the Office of the President (OP-DC Case No. 17-D-094) dated 2 May 2017 and received on 04 May 2017.

Copy furnished:

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Province of Northern Samar
9. Office of the Municipal Mayor
San Vicente, Northern Samar
10. Office of the Municipal Mayor
San Antonio, Northern Samar
11. Office of the Municipal Mayor
Lavezares, Northern Samar
12. Office of the Municipal Mayor
Allen, Northern Samar
13. Office of the Municipal Mayor
Victoria, Northern Samar
14. Office of the Municipal Mayor
San Isidro, Northern Samar
15. Office of the Municipal Mayor
Rosario, Northern Samar

16. Office of the Municipal Mayor
San Jose, Northern Samar
17. Office of the Municipal Mayor
Bobon, Northern Samar
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Lope de Vega, Northern Samar
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Catarman, Northern Samar
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Mondragon, Northern Samar
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San Roque, Northern Samar
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Las Navas, Northern Samar
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Laoang, Northern Samar
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Catubig, Northern Samar
27. Office of the Municipal Mayor
Palapag, Northern Samar
28. Office of the Municipal Mayor
Mapanas, Northern Samar
29. Office of the Municipal Mayor
Gamay, Northern Samar
30. Office of the Municipal Mayor
Lapinig, Northern Samar
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