

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 I
ELECTRIC COOPERATIVE,
INC. AND GNPOWER
DINGININ LTD. CO. WITH
MOTION FOR
CONFIDENTIAL
TREATMENT OF
INFORMATION AND
ISSUANCE OF
PROVISIONAL AUTHORITY,**

ERC CASE NO. 2017-048 RC

**QUEZON I ELECTRIC
COOPERATIVE, INC.
(QUEZELCO I) AND
GNPOWER DINGININ LTD.
CO. (GNPD),
Applicants.
X-----X**

D O C K E T E D
Date: AUG 3 / 2017
By: [Signature]

ORDER

On 26 May 2017, Quezon I Electric Cooperative, Inc. (QUEZELCO I) and GNPOWER Dinginin Ltd. Co. (GNPD) filed their Application for the approval of their Power Purchase and Sale Agreement (PPSA), with motion for confidential treatment of information and issuance of a provisional authority.

In its Application, QUEZELCO I and GNPD alleged the following:

1. Applicant QUEZELCO I is a non-stock, non-profit electric cooperative duly organized and existing under Philippine laws, with principal office at Brgy. Poctol, Pitogo, Quezon. It is duly authorized to distribute electricity in Municipalities of Agdangan, Alabat, Atimonan, Buenavista, Calauag, Catanauan, General Luna, Guinyangan, Gumaca, Lopez, Macalelon, Mulanay, Padre Burgos, Perez, Pitogo, Plaridel, Quezon, San Andres, San Francisco, San Narciso, Tagkawayan, and Unisan, which are all in the province of Quezon and Del Gallego, Camarines Sur (collectively, the "Franchise Area");

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

Annex	DOCUMENT
"A"	QUEZELCO I's Certificate of Registration issued by the National Electrification Administration (NEA)
"A-1"	NEA Certification dated 26 September 2011 certifying that Quezon Electric Cooperative, Inc. is one and the same electric cooperative known as QUEZELCO I
"B"	QUEZELCO I's Articles of Incorporation
"C"	QUEZELCO I's By-laws, as amended
"D"	QUEZELCO I's Certificate of Franchise issued by the National Electrification Commission
"E"	Certification on the list of QUEZELCO I's Board of Directors

3. Meanwhile, Applicant GNPD 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 28th Floor, The Orient Square, Don Francisco Ortigas Jr. Road, Ortigas Center, Pasig City. Copies of its Certificate of Registration and Articles of Partnership, Amended Articles of Partnership, Certification on Partnership Agreement, and the GNPower Project Companies Profile are attached hereto as follows:

Annex	DOCUMENT
"F"	GNPD's Certificate of Registration and Articles of Partnership dated 21 May 2014 issued by the Securities and Exchange Commission (SEC)
"G"	GNPD's Amended Articles of Partnership dated 15 March 2017
"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 I and GNPD on 08 October 2016, a copy of which is attached hereto as Annex “J”;

I. STATEMENT OF FACTS

6. QUEZELCO I needs to address the insufficiency of its power supply due to the increasing demand within its Franchise Area;
7. Based on its supply-demand forecast, QUEZELCO I’s demand in 2020 is 35.96 MW, with an annual average growth rate of 2.47%. Therefore, its demand is expected to increase to 41.29 MW in 2026. Copies of the following documents are attached hereto:

ANNEX	DOCUMENT
“K”	QUEZELCO I’s Historical, Actual and Forecasted Supply-Demand Scenario from 2014-2028
“L”	QUEZELCO I’s Average Daily Load Curve (January to December 2016)
“L-1”	QUEZELCO I’s Forecasted Average Daily Load Curve for 2020
“L-2”	QUEZELCO I’s Average Daily Load Curve (March Billing Period)

8. In view of the increasing demand for power in its Franchise Area, QUEZELCO I conducted a Competitive Selection Process (CSP), the details of which are as follows:
 - 8.1 On 05 March 2016, QUEZELCO I’s Board of Directors authorized the conduct of a Competitive Selection Process for the supply of QUEZELCO I’s energy requirements within its Franchise Area pursuant to Board Resolution No. 2016-32.
 - 8.2 Pursuant thereto, QUEZELCO I published an Invitation to Bid on 08 and 14 April 2016 at the Philippine Daily Inquirer for its 27MW power supply requirements to its Franchise Area for ten (10) years from 26 December 2016 to 25 December 2026.

- 8.3 GNPowder Ltd. Co. ("GNPower"), along with First Gen Corporation ("First Gen"), SMC Global Power ("SMC Global"), Southwest Luzon Power Generation Corp. ("SLPGC") and South Luzon Thermal Energy Corp. ("SLTEC"), expressed its intent to join the CSP and was provided with a copy of the Invitation to Bid dated 26 April 2016. Thereafter, bidding conferences were held to clarify and discuss the selection process, requirements, rules, and evaluation method.
- 8.4 All of the five (5) interested bidders submitted their bid offers which were opened on 06 May 2016. The bidders were found to be compliant with the eligibility requirements as well as with the financial and technical requirements.
- 8.5 Each qualified bidder made a presentation of its offer to QUEZELCO I's Power Supply Contracting Team (PSCT) and Bids and Awards Committee (BAC) and Board of Directors. GNPowder confirmed during its presentation that the source of supply to QUEZELCO I shall be from (i) GMCP's 2x316 (net) MW clean coal-fired power plant in Mariveles, Bataan, which has been in commercial operations since 2013, for Contract Years 2017 to 2019 and (ii) GNPowder Dinginin Ltd. Co.'s ("GNPD") supercritical coal-fired power plant in Mariveles, Bataan, which is currently under construction, for Contract Years 2020 to 2026.
- 8.6 After such presentation and post-qualification evaluation, the PSCT and BAC of QUEZELCO I confirmed that GNPowder submitted the most advantageous offer for 27MW from December 26, 2016 to December 25, 2026 based on GNPowder's bid price offer of Php 4.2726/kWh taking into account the parameters of the offer and QUEZELCO I's evaluation methodology.
- 8.7 Accordingly, the PSCT and the BAC recommended the awarding of the contract to GNPowder for the 27MW power supply requirements of QUEZELCO I's Franchise Area from December 26, 2016 to December 25, 2026 pursuant to BAC Resolution No. 2016-04.
- 8.8 The BAC's recommendation to award the contract to GNPowder was approved by the Board of Directors of QUEZELCO I pursuant to Board Resolution No. 2016-132 dated 09 September 2016.
- 8.9 Thus, QUEZELCO I issued a Notice of Award to GNPowder on 13 September 2016.

8.10 Also, the Board of Directors of QUEZELCO I issued Board Resolution No. 2016-136 dated 16 September 2016 authorizing the approval and signing of the Power Purchase and Sale Agreement between QUEZELCO I and GMCP including its supplement agreements and amendments and other related documents.

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

ANNEX	CSP DOCUMENT
"M"	QUEZELCO I Board Resolution No. 2016-32 authorizing the conduct of the CSP
"M-1"	Affidavit of Publication dated 11 October 2016 issued by the Classified Ads Assistant Vice President of the <i>Philippine Daily Inquirer</i>
"M-2"	Invitation to Bid as published on 08 April 2016 issue of the <i>Philippine Daily Inquirer</i>
"M-3"	Invitation to Bid as published on 14 April 2016 issue of the <i>Philippine Daily Inquirer</i>
"M-4"	GNPower's letter of intent dated 11 April 2016
"M-4-a"	First Gen's letter of intent dated 20 April 2016
"M-4-b"	SMC Global's letter of intent dated 14 April 2016
"M-4-c"	SLPGC's letter of intent dated 19 April 2016
"M-4-d"	SLTEC's letter of intent dated 18 April 2016
"M-5"	Invitation to Bid dated 26 April 2016 (<i>subject of the Motion for Confidential Treatment</i>)
"M-6"	QUEZELCO I BAC Resolution No. 2016-04 dated 21 June 2016
"M-7"	BAC Memoranda dated 21 and 22 June 2016 (<i>subject of the Motion for Confidential Treatment</i>)
"M-8"	QUEZELCO I Board Resolution No. 2016-132 dated 09 September 2016 approving the recommendation of the BAC to award the 27MW contract from December 26, 2016 to December 25, 2026 to GNPower
"M-9"	Notice of Award dated 13 September 2016 issued by QUEZELCO I to GNPower
"M-10"	QUEZELCO I Board Resolution No. 2016-136 dated 16 September 2016 authorizing the approval and signing of the PPSA between QUEZELCO I and GNPD; authorizing the Board President and/or OIC/General Manager to sign the PPSA; authorizing QUEZELCO I to file the instant Application; and designating The Law Firm of Manjares and Manjares as its legal counsel
"M-10-a"	QUEZELCO I Board Resolution No. 2016-188 dated December 15, 2016 appointing Ms. Michelle Hutalla as Officer-in-Charge of QUEZELCO I effective January 16, 2017
"M-10-b"	QUEZELCO I Board Resolution No. 2017-83 authorizing the appointed OIC/ General Manager to file the Application with the ERC for the approval of the PPSA between QUEZELCO I and GNPD

9. Consequently, on 08 October 2016, Applicant QUEZELCO I executed a power purchase and sale agreement with GMCP for QUEZELCO I's power requirements for the period of 26 December 2016 to 25 December 2019. On the same day, Applicants QUEZELCO I and GNPD also executed the subject PPSA to assure the adequate, reliable, and continuous supply of power to QUEZELCO I's Franchise Area after the expiration of GMCP's power purchase and sale agreement;

II. ABSTRACT OF THE PPSA AND OTHER RELATED INFORMATION

10. The following are the salient features of the PPSA¹:
- a. **TERM.** The PPSA shall be effective on the date of its execution and shall terminate after eighty four (84) months from the date to be specified in the Commencement Date Notice defined as the written notice that indicates the commencement of the first delivery of the Product after GNPD begins commercial operations in the market, which shall not be later than the first day of the Billing Period immediately after the lapse of thirty six (36) months from the date of ERC's final approval of the subject PPSA;
 - b. **SOURCE OF SUPPLY.** GNPD shall make available, sell, and deliver or cause to be delivered to QUEZELCO I the Product at the Delivery Point, whether sourced from GNPD's facility or from other electricity generators, including the Wholesale Electricity Spot Market (WESM);

GNPD's facility shall be constructed and operated in Sitio Dinginin, Brgy. Alasasin, Mariveles, Bataan and its target availability in the WESM for early commercial operations is on December 26, 2018 (Contract Year 2019);
 - c. **CONTRACTED CAPACITY.** QUEZELCO I is contractually entitled to receive from GNPD, at any hour, subject to GNPD's Available Capacity for such hour, the Contracted Capacity, as follows:

Year	Contracted Capacity (kW)
1	27,000
2	27,000
3	27,000
4	27,000
5	27,000

¹ Capitalized terms used but not defined herein have the meaning as defined in the PPSA.

6	27,000
7	27,000

QUEZELCO I shall utilize and pay for the capacity delivered by GNPD at 65% to 100% Capacity Utilization Factor (CUF).

c.1. Option to Increase Contracted Capacity. Section 3.7 of the PPSA provides that upon written notice to GNPD, QUEZELCO I may, upon approval by GNPD, 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, GNPD 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 GNPD 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 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 Utilization Factor (%)	Capacity Fee (USD per kWh)
100%	0.0486
99%	0.0490
98%	0.0494
97%	0.0497
96%	0.0501
95%	0.0505
94%	0.0509
93%	0.0513

92%	0.0517
91%	0.0521
90%	0.0526
89%	0.0530
88%	0.0535
87%	0.0539
86%	0.0544
85%	0.0549
84%	0.0554
83%	0.0559
82%	0.0564
81%	0.0570
80%	0.0575
79%	0.0581
78%	0.0586
77%	0.0592
76%	0.0598
75%	0.0605
74%	0.0612
73%	0.0619
72%	0.0626
71%	0.0633
70%	0.0641
69%	0.0648
68%	0.0656
67%	0.0664
66%	0.0673
65%	0.0681

The Capacity Utilization Factor (CUF) shall be computed as follows:

$$\text{Capacity Factor (CUF)} = \frac{Q}{CC \times (HT - EH_{TO})}$$

Where:

CUF = is the Capacity Utilization Factor between 65% and 100%, provided that if the actual CUF 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_{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 the coal. The Energy Fee shall be computed in accordance with the following formula:

$$\text{Energy Fee} = \text{IEF} \times \frac{\text{CIF}_n}{\text{CIF}_o}$$

Where:

IEF = Initial Energy Fee equal to \$0.0370/kWh

CIF_n = CIF Cost OF Fuel for Billing Period n

CIF_o = Base CIF Cost of Fuel equal to \$11.5573/million kcal

- e. **PROMPT PAYMENT DISCOUNT (PPD).** Section 5.3(c) of the PPSA provides that if QUEZELCO I pays the invoice amount in full within ten (10) days of receipt from GNPD, QUEZELCO I 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. **CAPACITY UTILIZATION DISCOUNT.** Section 5.3 (d) of the PPSA provides that if QUEZELCO I pays the invoice amount in full in accordance with GNPD's invoice instructions on or before the twenty-fifth (25th) day of the succeeding calendar month from the relevant Billing Period and QUEZELCO I's CUF is greater than or equal to 65%, QUEZELCO I shall receive a credit on the next subsequent bill equal to 2.8% of the Energy Fee 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;
- g. **SCHEDULED OUTAGES AND UNSCHEDULED OUTAGES.** Pursuant to Section 3.2 of the PPSA, GNPD is allowed Scheduled Outage not to exceed five hundred forty (540) Equivalent Hours for each Contract Year, during which times reduced or no deliveries will be available to QUEZELCO I. Likewise, GNPD is allowed Unscheduled Outage of five hundred forty (540) Equivalent Hours for each Contract Year during which times reduced or no deliveries will be available to the Buyer.

III. ADVANTAGES OF GNPD'S SUPPLY OF POWER AND IMPACT ON QUEZELCO I'S OVERALL RATES

- 13. The additional supply from GNPD will help alleviate and sustain the future power supply needs of the Luzon Grid

including the Franchise Area of QUEZELCO I to prevent any likelihood of brownouts and power shortages;

14. Among alternative suppliers capable of providing additional energy to QUEZELCO I, GNPD's rate proved to be more reasonable and competitive. It is worthy to note that the Capacity Utilization Factor Pricing under the PPSA provides flexibility to QUEZELCO I in its utilization of the Contracted Capacity;
15. QUEZELCO I simulated a generation rate impact which ultimately resulted in a **reduction of PhP 0.4986 per kWh** with the execution of the PPSA with GNPD to wit:

Simulation of Generation Mix Rate with GNPD for the Year 2020

Power Supplier	Forecasted Energy (kWh)	Amount (Php)	Percent Share (%)	Average Rate (Php/kWh)	Weighted Average Rate (Php/kWh)
GNPD	199,175,805.38	726,334,695.65	97.18%	3.6467	3.6833
WESM	5,788,150.49	28,618,249.11	2.82%	4.9443	
TOTAL	204,963,955.87	754,952,944.76	100%		

Simulation of Generation Mix Rate without GNPD for the Year 2020

Power Supplier	Forecasted Energy (kWh)	Amount (Php)	Percent Share (%)	Average Rate (Php/kWh)	Weighted Average Rate (Php/kWh)
GNPD	-	-	0.0%	0.0000	4.1819
WESM	204,963,955.87	857,131,916.68	100.0%	4.1819	
TOTAL	204,963,955.87	857,131,916.68	100%		

* Without VAT

Rate Impact, PhP/kWh : (0.4986)

Note:

- i. Analysis and simulations are based on QUEZELCO I forecasted energy for the year 2020
- ii. GNPD rate was based on Capacity fee at resulting Capacity Utilization Factor and Effective Energy Fee
- iii. WESM average rate was simulated using 2020 forecasted market prices
- iv. Prices do not include discounts, reductions, etc.

A copy of QUEZELCO I'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:

ANNEX	DOCUMENT
"O"	Print-out copy of the GNPower Dinginin Power Project Description
"O-1"	Print-out copy of the Write-up on the technical-related pre-filing requirements of the ERC

ANNEX	DOCUMENT
"P"	Print-out copy of the Details of the PPSA
"P-1"	Print-out copy of the Discussion of Rate Calculation and Sample Calculation of Rates
"Q"	Print-out copy of the Transmission Plan of GNPD
"R"	Soft copy of GNPD's Financial Model as of 30 August 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 30 August 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"	Certification dated May 27, 2016 issued by BDO Capital & Investment Corporation and RCBC Capital Corporation, GNPD's Onshore Mandated Lead Arrangers for the construction and term financing of its coal-fired power plant project
"S-1"	Certification on Financing Arrangements dated 22 July 2016 <i>(subject of the Motion for Confidential Treatment)</i>
"T"	Details of Fuel Procurement (as of April 2017) <i>(subject of the Motion for Confidential Treatment)</i>
"U"	Copy of the Sworn Statement on Coal Procurement Process
"V"	Copy of GNPD's 2015 Audited Financial Statements
"W"	Copy of Certificate of Endorsement from the Department of Energy (DOE) that the GNPD Project is included in the DOE's Power Development Plan
"X"	Copy of Environmental Compliance Certificate (ECC) from the Department of Environment and Natural Resources (DENR)
"X-1"	Copy of Letter to the DENR dated 18 May 2016 notifying the Environmental Management Bureau of the assignment of the ECC to GNPD, with attached supporting documents
"X-2"	DENR's letter dated 26 July 2016 approving the transfer of the ECC to GNPD
"Y"	GNPD's Certificate of Registration No. 2017-052 issued by the Authority of the Freeport Area of Bataan (AFAB)
"Z"	Joint Certification issued by Shanghai Electric Power Construction Co. Ltd. and GNPowder Dinginin Ltd. Co. confirming the EPC Cost for the first unit of the Facility
"AA"	Certification issued by PT Bayan Resources Tbk confirming the salient terms of the Coal Supply Agreement ²
"BB"	Copy of GNPD's Secretary's Certificate dated 11 October 2016 attesting to the Management Committee's resolutions authorizing the execution of the PPSA with QUEZELCO I; the designation of authorized representatives/signatories and legal counsels of GNPD; and the filing of an Application with the ERC for the approval of the PPSA with QUEZELCO I
"CC"	Certification dated 09 May 2017 stating the expiration of the Contract for the Supply of Electric Energy (CSEE) between NPC and QUEZELCO I
"DD"	Copy of the Transmission Service Agreement between National Grid Corporation of the Philippines and QUEZELCO I

² 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
"EE"	Copy of QUEZELCO I's Distribution Development Plan
"FF"	Copy of QUEZELCO I's Certification on the Demand Side Management

17. Applicants QUEZELCO I and GNPD 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:

ANNEX	DOCUMENT
"GG"	Certification/Affidavit of Service for Sangguniang Panlalawigan of Quezon
"HH"	Certification/Affidavit of Service for Sangguniang Bayan of Pitogo
"II"	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 "JJ"**); and

- c. Complete newspaper issue where this *Application* (excluding Annexes) was published (attached hereto as **Annex "JJ-1"**) and the relevant page/s thereof where the *Application* appears (**Annex "JJ-2"**).

V. MOTION FOR CONFIDENTIAL TREATMENT OF ANNEXES "H", "M-5", "M-7", "R", "R-1", "R-2", "S-1" and "T"

19. Under *Rule 4* of the *ERC Rules of Practice and Procedure*, a party to any proceeding before the Honorable Commission may request the same not to disclose certain information and treat such information 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 I most respectfully moves for the confidential treatment of Annexes "M-5" and "M-7" hereof. These annexes, exclusively owned by Applicant QUEZELCO I, contain information which are considered part of its business and trade secrets. As such, QUEZELCO I has the sole proprietary interest and will be unduly prejudiced should they be disclosed to the public.
21. Applicant GNPD most respectfully moves for the confidential treatment of Annexes "H", "R", "R-1", "R-2", "S-1" and "T" hereof. These annexes, exclusively owned by Applicant GNPD, contain documents which are considered part of its business and trade secrets. As such, GNPD 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-5", "M-7", "R", "R-1", "R-2", "S-1" and "T" 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 information³. It is indubitable that trade secrets constitute proprietary rights and jurisprudence has consistently acknowledged the private character of trade secrets⁴. Further, as ruled in *Garcia vs. Board of Investments*⁵, 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;

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

⁴ *Ibid.*,

⁵ 177 SCRA 374 (1989).

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-5”, “M-7”, “R-1”, “R-2”, “S-1” and “T”** 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 I and GNPD 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 opposition filed by any interested person, if there be any.” [Emphasis Supplied]

28. Moreover, we would like to bring to the attention of the Honorable Commission that based on the Department of Energy’s (DOE) 2016-2040 Luzon and Visayas Grids Supply-Demand Outlook, Luzon’s peak demand in 2016 is 9,726MW with an Annual Average Growth Rate (AAGR) from 2000 to 2016 of 3.8% while Visayas’ Peak Demand is 1,893MW with AAGR from 2000 to 2016 of 6.1%. 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;
29. The continuous addition of supply shall help keep stable power supply for the increasing demand and low and stable cost of available power at the WESM and for the end-user;
30. Contributing to the Luzon’s Grid’s demand growth is QUEZELCO I’s load demand increases at an average rate of 2.47% per year. By Contract Year 2020, it is projected that QUEZELCO I’s existing power suppliers will not be able to

meet the power needs of its member-consumers, which is expected to increase to 35.96MW;

31. Thus, the PPSA with GNPDP, is crucial for QUEZELCO I to guarantee that its forward power needs are satisfied, without compromising the reasonableness of the generation rate to be passed on to its member-consumers;
32. While actual delivery of power under the terms and conditions of the PPSA is expected to commence only in the Contract Year 2020, Applicants shall nonetheless begin its compliance with all financial and regulatory requirements and processes leading up to the timely operations of GNPDP's facility;
33. It is worthy to note that part of the funds needed to construct GNPDP's facility will be sourced from loans coming from banks/financial institutions. The Honorable Commission's provisional approval of the instant *Application* is a vital requirement for the continuous release of the loan proceeds. In fact, as shown in Annex "S", in consideration for making the aforesaid construction and term loans/facilities, among the approvals required from GNPDP is the provisional approval of the Honorable Commission of its PPSAs. Hence, the continuous loan drawdown ensures stable source of funds and timely construction of the generation facility, and the implementation of the PPSA, as contemplated by the Applicants;
34. With continuous financing, the timely implementation of the GNPDP project shall be assured, to the full benefit of QUEZELCO I. Otherwise, any delay in the implementation of the project shall expose QUEZELCO I to supply risk and unstable market prices in the future;
35. To emphasize the necessity of the provisional approval of this *Application*, a copy of the Judicial Affidavit of Mr. Arnel Bilaoen in support of the Motion for Provisional Authority is attached hereto as Annex "KK";
36. 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 I and GNPDP 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-5”, “M-7”, “R”, “R-1”, “R-2”, “S-1” 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 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 GNPD starts the actual delivery of power to QUEZELCO I 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 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 **12 October 2017 (Thursday) at ten o'clock in the morning (10:00 A.M.) at QUEZELCO I's Main Office in Brgy. Poctol, Pitogo, Quezon.**

Accordingly, QUEZELCO I and GNPD 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 the affected franchise area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform of the filing of the *Application*, its reasons therefor, and of the scheduled hearing thereon, the consumers within the affected franchise area, 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, Applicants 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 aforementioned 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 Applicants to inform of the filing of the Application, its reasons therefore, and of the scheduled hearing thereon, the consumers within the affected franchise area;
- 4) The evidence of receipt of copies of this Order and the attached Notice of Public Hearing by the Office of the Solicitor General (OSG), the Commission on Audit (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:

- (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 purposes thereof and proposed markings therefore; and
- (d) The number and names of the witnesses, with their written testimonies in an individual affidavit form, to be 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.

QUEZELCO I and GNPD 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, what the Application is all about and the reasons and justifications being cited in support thereof.

SO ORDERED.

Pasig City, 14 August 2017.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ALFREDO J. NON
OIC Chairman & CEO

Copy Furnished:

1. Atty. Lourdy Torres, et. al
Counsel for GNPD
28/F, The Orient Square, Don Francisco Ortigas Jr. Road,
Ortigas Center, Pasig City
2. Atty. Norberto Manjares III
Counsel for QUEZELCO I
No. 6 Saint Anne Street
Provident Villages, Marikina City
3. Office of the Solicitor General
134 Amorsolo Street, Legaspi Village , Makati City
4. Commission on Audit
Commonwealth Ave., Quezon City
5. The Senate Committee on Energy
GSIS Building, Roxas Boulevard, Pasay City
6. The House Committee on Energy
Batasan Hills, Quezon City
7. The Municipal Mayor
Agdangan, Quezon
8. Office of the Sangguniang Bayan
Agdangan, Quezon
9. Office of the Municipal Mayor
Alabat, Quezon
10. Office of the Sangguniang Bayan
Alabat, Quezon
11. Office of the Municipal Mayor
Atimonan, Quezn
12. Office of the Sangguniang Bayan
Atimonan, Quezn
13. Office of the Municipal Mayor
Buenavista, Quezon
14. Office of the Sangguniang Bayan
Buenavista, Quezon
15. Office of the Municipal Mayor
Calauag, Quezon
16. Office of the Sangguniang Bayan
Calauag, Quezon
17. Office of the Municipal Mayor
Catanauan, Quezon
18. Office of the Sangguniang Bayan
Catanauan, Quezon
19. Office of the Municipal Mayor
General Luna, Quezon
20. Office of the Sangguniang Bayan
General Luna, Quezon

21. Office of the Municipal Mayor
Guinyangan, Quezon
22. Office of the Sangguniang Bayan
Guinyangan, Quezon
23. Office of the Municipal Mayor
Gumaca, Quezon
24. Office of the Sangguniang Bayan
Gumaca, Quezon
25. Office of the Municipal Mayor
Lopez, Quezon
26. Office of the Sangguniang Bayan
Lopez, Quezon
27. Office of the Municipal Mayor
Macalelon, Quezon
28. Office of the Sangguniang Bayan
Macalelon, Quezon
29. Office of the Municipal Mayor
Mulanay, Quezon
30. Office of the Sangguniang Bayan
Mulanay, Quezon
31. Office of the Municipal Mayor
Padre Burgos, Quezon
32. Office of the Sangguniang Bayan
Padre Burgos, Quezon
33. Office of the Municipal Mayor
Perez, Quezon
34. Office of the Sangguniang Bayan
Perez, Quezon
35. Office of the Municipal Mayor
Pitogo, Quezon
36. Office of the Sangguniang Bayan
Pitogo, Quezon
37. Office of the Municipal Mayor
Plaridel, Quezon
38. Office of the Sangguniang Bayan
Plaridel, Quezon
39. Office of the Municipal Mayor
Quezon, Quezon
40. Office of the Sangguniang Bayan
Quezon, Quezon
41. Office of the Municipal Mayor
San Andres, Quezon
42. Office of the Sangguniang Bayan
San Andres, Quezon

43. Office of the Municipal Mayor
San Francisco, Quezon
44. Office of the Sangguniang Bayan
San Francisco, Quezon
45. Office of the Municipal Mayor
San Narciso, Quezon
46. Office of the Sangguniang Bayan
San Narciso, Quezon
47. Office of the Municipal Mayor
Tagkawayan, Quezon
48. Office of the Sangguniang Bayan
Tagkawayan, Quezon
49. Office of the Municipal Mayor
Unisan, Quezon
50. Office of the Sangguniang Bayan
Unisan, Quezon
51. Office of the Municipal Mayor
Del Gallego, Camarines Sur
52. Office of the Sangguniang Bayan
Del Gallego, Camarines Sur
53. Office of the Provincial Governor
Province of Quezon
54. Office of the Sangguniang Panlalawigan
Province of Quezon
55. Office of the Sangguniang Panlalawigan
Province of Camarines Sur
56. Office of the Provincial Governor
Province of Camarines Sur
57. National Grid Corporation of the Philippines (NGCP)
Quezon Avenue corner BIR Road, Diliman, Quezon City
58. TWG – PSA
17/F, Pacific Center Bldg., San Miguel Ave.,
Ortigas, Pasig City