

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



**IN THE MATTER OF THE
APPLICATION FOR
APPROVAL OF THE POWER
SUPPLY AGREEMENT (PSA)
BETWEEN LEYTE IV
ELECTRIC COOPERATIVE
INC. AND GNPOWER LTD.
CO., WITH PRAYER FOR
CONFIDENTIAL TREATMENT
OF INFORMATION AND THE
ISSUANCE OF PROVISIONAL
AUTHORITY**

ERC Case No. 2016-021 RC

**LEYTE IV ELECTRIC
COOPERATIVE, INC. (LEYECO
IV) AND GNPOWER LTD. CO.
(GNPOWER),**

Applicants.

X-----X

D O C K E T E D
Date: **NOV 07 2017**
By: _____

ORDER

On 15 March 2016, Leyte IV Electric Cooperative, Inc. (LEYECO IV) and GNPower Ltd. Co. (GNPower) filed their joint Application for approval of their Power Supply Agreement (PSA), with prayer for confidential treatment of information and issuance of provisional authority. The subject PSA was executed on 18 September 2015, with a contract term of one (1) year, starting on 26 December 2015 to 25 December 2016.

Relative to their prayer for provisional authority, applicants alleged the following:

31. All the foregoing allegations are re-pleaded by reference in support of their prayer for the issuance of Provisional Authority (PA) to implement the subject PSA;

ERC CASE NO. 2016-021 RC

ORDER/ 22 MAY 2017

PAGE 2 OF 6

32. LEYECO IV and GNPOWER pray for the issuance of a PA or interim relief prior to final decision pursuant to *Rule 14* of the *ERC Rules of Practice and Procedure xxx*;
33. Considering that a substantial amount of time is needed to evaluate the documents submitted to support the approval of herein Application, Applicants seek consideration of the Commission to approve the instant Application, immediately, albeit, provisionally;
34. Owing to the short term of the contract, which is only for a period of one (1) year, a PA is all the more imperative to allow the timely delivery of energy by GNPOWER to LEYECO IV, which is set to start on 26 December 2015 at 12:00 A.M.;
35. The Region 8 EC's, including LEYECO IV, after careful evaluation if they will defer the commencement of the delivery due to delayed filing, decided and required GNPower to commence its delivery immediately after its previous power supply agreement expired last 25 December 2015, this being the reasonable plan to mitigate the risks of WESM exposure, specially with the assumption that the 2015 occurrence of El Nino has an adverse impact on the supply of electricity and the WESM price, particularly during the summer season. LEYECO IV, Moreover, it was projected, as shown in the table below,¹ that the exposure to volatile market prices will cause significant increases in prudential guarantee payments which will constrain Region 8 ECs to avail of high interest-bearing loans in order to comply with PEMC requirement;

No.	EC Name	PEMC Prudential Guarantee (Php)			Capacity Contracted w/ GNPower (kW)	Additional Equivalent Rate ¹ (Php/kWh)
		With GNPower	Without GNPower	Difference		
1	DORELCO	1,198,267.26	2,396,534.52	1,198,267.26	5,000	0.04
2	LEYECO II	15,600,000.00	15,600,000.00	-	1,000	0.00
3	LEYECO III	4,249,015.39	7,954,113.07	3,705,097.68	1,000	0.55
4	LEYECO IV	1,110,915.20	1,827,653.63	716,738.43	1,000	0.11
5	LEYECO V	12,500,000.00	52,000,000.00	39,500,000.00	14,000	0.42
6	SOLECO	5,376,255.00	16,257,945.00	10,881,690.00	5,000	0.33
7	BILECO	(1,999,261.22)	(1,082,258.63)	917,002.59	1,000	0.14
8	SAMELCO I	2,400,000.00	27,271,478.40	24,871,478.40	6,000	0.62
9	SAMELCO II	6,000,000.00	14,800,000.00	8,800,000.00	4,000	0.33
10	ESAMELCO	4,750,000.00	30,966,724.80	26,216,724.80	7,000	0.56
11	NORSAMELCO	28,280,066.75	37,224,625.90	8,944,559.15	7,000	0.19
Weighted Average Additional Equivalent Rate (Php/kWh)						0.36

¹ Additional equivalent rate due to additional Prudential Guarantee required by PEMC (for the undelivered contracted capacity from GNPower) with a conservative loan interest of 6% per annum and baseload load factor of 81%.

36. The additional power from GNPOWER is needed to curtail any power interruptions that may be experienced by LEYECO IV's member-consumers due to inadequate power supply in the region;

xxx

On 23 May 2016, pursuant to the Commission's power to provisionally approve PSAs as provided under Section 4(e), Rule 3 of the *Implementing Rules and Regulations of R.A. 9136, or the Electric Power Industry Reform Act of 2001* (EPIRA-IRR), the Commission issued an Order granting applicants provisional authority to implement their PSA, the dispositive portion of which reads:

WHEREFORE, the foregoing premises considered, Applicants Leyte IV Electric Cooperative, Inc. (LEYECO IV) and GNPower Ltd. Co. (GNPower) are hereby **GRANTED PROVISIONAL AUTHORITY** to implement their Power Supply Agreement (PSA), subject to the following conditions:

1. The applicable rates shall be the GNPower's Contract Price/negotiated price of PhP4.9653/kWh or SLPGC's² Monthly Electricity Fees (generation rates), whichever is lower;
2. GNPower's Fixed O&M (FOM) and Energy Fee shall be adjusted by the indexation based on Schedule I of the PSA;
3. The final generation cost that can be recovered shall be determined by the Commission in its Decision in the instant application;
4. In the event that the final rate is higher than that provisionally granted, the resulting additional charges shall be collected by GNPower from LEYECO IV. On the other hand, if the final rate is lower than that provisionally granted, the amount corresponding to the reduction shall be refunded by GNPower to LEYECO IV;
5. To facilitate the final evaluation of this case, applicants are directed to submit the following:

² ERC Case No. 2015-137 RC entitled "In the Matter of the Application for Approval of the Power Supply Agreement Between Visayan Electric Company, Inc. (VECO) and Southwest Luzon Power Generation Corporation, with Motions for Issuance of Provisional Authority and Confidential Treatment of Information"

- a. PSA between GNPowder and SLPGC, and their arrangement on the supply and billing of electricity;
 - b. Protocol on the Exchange of MW;
 - c. Breakdown of the initial Contract Price of PhP5.0481/kWh;
 - d. Breakdown of the reduced Contract Price of PhP4.9653/kWh;
 - e. Derivation of the Capital Recovery (LCR_{CUF});
 - f. Derivation of the Fixed O&M ($LFOM_{CUF}$);
 - g. Explanation of the values reflected in the formula of Energy Charge (EF) particularly the values 0.2874, 1.5256, and 0.2375; and
 - h. Rationale for the use of Indonesian Coal Price Index (ICI).
6. Finally, the effectivity of Section 3.2, Article III of the PSA is deferred until such time that the applicants have submitted details regarding applicable transaction and administrative charges for arranging Replacement Power as provided in the PSA.

SO ORDERED.

In interpreting the power of the Commission to grant provisional authority, the Supreme Court in the case of *Freedom from Debt Coalition vs. Energy Regulatory Commission*³ explained that a provisional authority is effective for only twelve (12) months.

Inasmuch as the Commission has initiated the evaluation of the subject application taking into consideration all submissions made by the parties, prudence dictates that a meticulous review of applicants' PSA be made pursuant to the Commission's mandate under Section 23 of the EPIRA which is to ensure that distribution utilities supply electricity in the least cost manner to its captive market.

WHEREFORE, considering the fact that the one (1) year Power Supply Agreement is self-limiting and is already terminated, the provisional rate granted to applicants LEYECO IV and GNPowder in

³ G.R. No. 161113, 15 June 2014.

the Order dated 23 May 2016 **stands**. However, such provisional rate is still subject to the final disposition of the application.

SO ORDERED.

Pasig City, 22 May 2017.

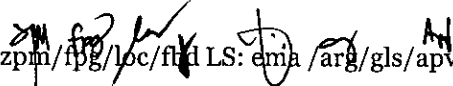
JOSE VICENTE B. SALAZAR*
Chairman & CEO


ALFREDO J. NON
Commissioner


GLORIA VICTORIA C. YAP-TARUC
Commissioner


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner

(on leave)
GERONIMO D. STA. ANA
Commissioner


PSA TWG Team A/zpm/fpg/lc/fhd LS: emia /arg/gls/apv.2016-021 RC LEYECO IV&GNPower.doc

* The Chairman was placed on preventive suspension as per Order of the Office of the President (OP-DC Case No. 17-D-094) dated 02 May 2017 and received on 04 May 2017.

Copy furnished:

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4. Commission on Audit
Commonwealth Ave., Quezon City

ERC CASE NO. 2016-021 RC

ORDER/ 22 MAY 2017

PAGE 6 OF 6

5. The Senate Committee on Energy
GSIS Building, Roxas Boulevard, Pasay City
6. The House Committee on Energy
Batasan Hills, Quezon City
7. Office of the Municipal Mayor
Inopacan, Leyte
8. Office of the Sangguniang Bayan
Inopacan, Leyte
9. Office of the Municipal Mayor
Hindang, Leyte
10. Office of the Sangguniang Bayan
Hindang, Leyte
11. Office of the Municipal Mayor
Hilongos, Leyte
12. Office of the Sangguniang Bayan
Hilongos, Leyte
13. Office of the Municipal Mayor
Bato, Leyte
14. Office of the Sangguniang Bayan
Bato, Leyte
15. Office of the Municipal Mayor
Matalom, Leyte
16. Office of the Sangguniang Bayan
Matalom, Leyte
17. Office of the City Mayor
Baybay, Leyte
18. Office of the Sangguniang Panglungsod
Bayabay, Leyte
19. Office of the Provincial Governor
Province of Leyte
20. National Grid Corporation of the Philippines (NGCP)
Quezon Avenue corner BIR Road, Diliman, Quezon City