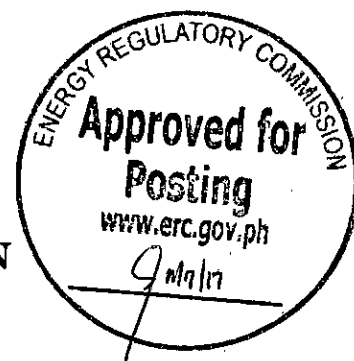


Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Ave., Pasig City



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

ERC Case No. 2016-023 RC

**EASTERN SAMAR ELECTRIC
COOPERATIVE, INC.
(ESAMELCO) AND GNPOWER
LTD. CO. (GNPOWER),**

Applicants.

X-----X

D O C K E T E D
Date: NOV 07 2017
By: [Signature]

ORDER

On 15 March 2016, Eastern Samar Electric Cooperative, Inc. (ESAMELCO) and GNPowder Ltd. Co. (GNPower) filed their Application for approval of their Power Supply Agreement (PSA), as amended, 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:

32. 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, as amended;

ERC CASE NO. 2016-023 RC

ORDER/ 22 MAY 2017

PAGE 2 OF 8

33. ESAMELCO 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*;
34. 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;
35. 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 ESAMELCO, which is set to start on 26 December 2015 at 12:00 A.M.;
36. The Region 8 EC's, including ESAMELCO, 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. ESAMELCO, 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%.

37. The additional power from GNPOWER is needed to curtail any power interruptions that may be experienced by ESAMELCO'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 Eastern Samar Electric Cooperative, Inc. (ESAMELCO) 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 ESAMELCO. 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 ESAMELCO;
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 ESAMELCO 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

Deputy Chair
GLORIA VICTORIA C. YAP-TARUC
Commissioner

Patricia
JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner

(on leave)
GERONIMO D. STA. ANA
Commissioner

PSA TWG Team A/zpm/fps/lcc/fba LS: ema/ars/gls/apv. 2016-023RC ESAMELCO&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:

1. Atty. Maria Concepcion Ojeda
Counsel for ESAMELCO
240 J.P. Rizal St., Marikina City
2. Atty. Lourdy Torres
Counsel for GNPowder
28/F, The Orient Square Bldg.,
Don Francisco Ortigas, Jr., Rd., Ortigas, Pasig 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

ERC CASE NO. 2016-023 RC

ORDER/ 22 MAY 2017

PAGE 6 OF 8

6. The House Committee on Energy
Batasan Hills, Quezon City
7. Office of the Municipal Mayor
Jipapad, Eastern Samar
8. Office of the Sangguniang Bayan
Jipapad, Eastern Samar
9. Office of the Municipal Mayor
Arteche, Eastern Samar
10. Office of the Sangguniang Bayan
Arteche, Eastern Samar
11. Office of the Municipal Mayor
San Policarpo, Eastern Samar
12. Office of the Sangguniang Bayan
San Policarpo, Eastern Samar
13. Office of the Municipal Mayor
Oras, Eastern Samar
14. Office of the Sangguniang Bayan
Oras, Eastern Samar
15. Office of the Municipal Mayor
Dolores, Eastern Samar
16. Office of the Sangguniang Bayan
Dolores, Eastern Samar
17. Office of the Municipal Mayor
Maslog, Eastern Samar
18. Office of the Sangguniang Bayan
Maslog, Eastern Samar
19. Office of the Municipal Mayor
Can-avid, Eastern Samar
20. Office of the Sangguniang Bayan
Can-avid, Eastern Samar
21. Office of the Municipal Mayor
Taft, Eastern Samar
22. Office of the Sangguniang Bayan
Taft, Eastern Samar
23. Office of the Municipal Mayor
Sulat, Eastern Samar
24. Office of the Sangguniang Bayan
Sulat, Eastern Samar
25. Office of the Municipal Mayor
San Julian, Eastern Samar
26. Office of the Sangguniang Bayan
San Julian, Eastern Samar
27. Office of the Municipal Mayor
Maydolong Balangkayan, Eastern Samar

ERC CASE NO. 2016-023 RC
ORDER/ 22 MAY 2017
PAGE 7 OF 8

28. Office of the Sangguniang Bayan
Maydolong Balangkayan, Eastern Samar
29. Office of the Municipal Mayor
Llorente, Eastern Samar
30. Office of the Sangguniang Bayan
Llorente, Eastern Samar
31. Office of the Municipal Mayor
Hernani, Eastern Samar
32. Office of the Sangguniang Bayan
Hernani, Eastern Samar
33. Office of the Municipal Mayor
General MacArthur, Eastern Samar
34. Office of the Sangguniang Bayan
General MacArthur, Eastern Samar
35. Office of the Municipal Mayor
Quinapondan, Eastern Samar
36. Office of the Sangguniang Bayan
Quinapondan, Eastern Samar
37. Office of the Municipal Mayor
Giporlos, Eastern Samar
38. Office of the Sangguniang Bayan
Giporlos, Eastern Samar
39. Office of the Municipal Mayor
Balangiga, Eastern Samar
40. Office of the Sangguniang Bayan
Balangiga, Eastern Samar
41. Office of the Municipal Mayor
Lawaan, Eastern Samar
42. Office of the Sangguniang Bayan
Lawaan, Eastern Samar
43. Office of the Municipal Mayor
Salcedo, Eastern Samar
44. Office of the Sangguniang Bayan
Salcedo, Eastern Samar
45. Office of the Municipal Mayor
Mercedes, Eastern Samar
46. Office of the Sangguniang Bayan
Mercedes, Eastern Samar
47. Office of the Municipal Mayor
Guiuan, Eastern Samar
48. Office of the Sangguniang Bayan
Guiuan, Eastern Samar
49. Office of the City Mayor
Borongan, Eastern Samar

50. Office of the Sangguniang Panglungsod
Borongan, Eastern Samar
51. Office of the Provincial Governor
Province of Eastern Samar
52. Office of the Sangguniang Panlalawigan
Province of Eastern Samar
53. National Grid Corporation of the Philippines (NGCP)
Quezon Avenue corner BIR Road, Diliman, Quezon City