

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

ERC CASE NO. 2016-028 RC

**SAMAR I ELECTRIC
COOPERATIVE, INC.
(SAMELCO I) AND
GNPOWER LTD. CO.
(GNPOWER),
Applicants.**

DOCKETED
Date: NOV 07 2017
By: _____

X- - - - -X

ORDER

On 15 March 2016, Samar I Electric Cooperative, Inc. (SAMELCO I) and GNPower Ltd. Co. (GNPOWER) filed an application seeking the Commission's approval of their Power Supply Agreement (PSA), with prayer for confidential treatment of information and the issuance of a 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:

33. SAMELCO I and GNPOWER pray for the issuance of a Provisional Authority or interim relief prior to final decision

pursuant to *Rule 14 of the ERC Rules of Practice and Procedure*
xxx

34. In recognition of the fact that a substantial amount of time is customarily needed to evaluate the documents submitted to support the approval of herein *Application*, Applicants SAMELCO I and GNPOWER seek the kind consideration of the Honorable 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 year, a Provisional Authority is all the more imperative to allow the timely delivery of energy by GNPOWER to SAMELCO I, which is set to start on 26 December 2015 at 12:00 A.M.;
36. The Region 8 ECs, including SAMELCO I, 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 December 25, 2015, it 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. 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 |

37. The additional power from GNPOWER is needed to curtail any power interruptions that may be experienced by SAMELCO I's

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%.

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, the Commission hereby **PROVISIONALLY APPROVES** the Power Supply Agreement (PSA) between Samar I Electric Cooperative, Inc. (SAMELCO I) and GNPOWER Ltd. Co. (GNPOWER), subject to the following rates and conditions:

- a. The applicable rates shall be the GNPOWER's Contract Price/negotiated price of PhP4.9653/kWh or Southwest Luzon Power Generation Corporation's (SLPGC)² Monthly Electricity Fees (generation rates), whichever is lower;

GNPOWER's Fixed O&M (FOM) and Energy Fee shall be adjusted by the indexation based on Schedule I of the PSA;

- b. The final generation cost that can be recovered shall be determined by the Commission in its Decision in the instant application;
- c. In the event that the final rate is higher than that provisionally granted, the resulting additional charges shall be collected by GNPOWER from SAMELCO I. 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 SAMELCO I; and
- d. Defer consideration of the following provisions of the PSA:

Section 3.2, Article III – Replacement Power

On the imposition by GNPOWER of “any applicable transaction and administrative charges for arranging the Replacement Power”, the Applicants failed to

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”

submit details of such charges providing no basis for the Commission to evaluate the same.

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 SAMELCO I and GNPowerr in 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/lpg/lpc/fba LS: ema/arg/gls/apv 2016-028 RC SAMELCO I & GNPOWER doc

³ G.R. No. 161113, 15 June 2014.

* 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.

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Copy furnished:

1. Atty. Maria Concepcion O. Ojeda
Counsel for Applicant SAMELCO I
Delos Angeles Aguirre Olaguer Salomon Fabro & Ojeda
240 J.P. Rizal, Marikina City
2. Atty. Lourdy D. Torres and Atty. Franchesca T. Ovalles
Counsels for Applicant GNPOWER
28th Floor, The Orient Square Building
Don Francisco Ortigas, Jr. Road
Ortigas Center, Pasig City
3. Office of the Solicitor General
134 Amorsolo Street, Legaspi Village
Makati City, Metro Manila
4. Commission on Audit
Commonwealth Avenue
Quezon City, Metro Manila
5. Senate Committee on Energy
GSIS Building, Roxas Boulevard
Pasay City, Metro Manila
6. House Committee on Energy
Batasan Hills
Quezon City, Metro Manila
7. President
Philippine Chamber of Commerce and Industry (PCCI)
McKinley Hill, Fort Bonifacio
Taguig
8. Office of the Provincial Governor
Province of Samar
9. Office of the Local Government Legislative Body
Province of Samar
10. Office of the City Mayor
Pasig City
11. Office of the Local Government Legislative Body
Pasig City
12. Office of the City Mayor
Calbayog, Samar
13. Office of the Local Government Legislative Body
Calbayog, Samar
14. Office of the Municipal Mayor
Gandara, Samar
15. Office of the Local Government Legislative Body
Gandara, Samar
16. Office of the Municipal Mayor
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Matuguinao, Samar
18. Office of the Municipal Mayor

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San Jorge, Samar

19. Office of the Local Government Legislative Body
San Jorge, Samar
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21. Office of the Local Government Legislative Body
Sta. Margarita, Samar
22. Office of the Municipal Mayor
Tarangnan, Samar
23. Office of the Local Government Legislative Body
Tarangnan, Samar
24. Office of the Municipal Mayor
Pagsanghan, Samar
25. Office of the Local Government Legislative Body
Pagsanghan, Samar
26. PSA-TWG Team A
Energy Regulatory Commission
17/F Pacific Center Bldg., San Miguel Ave., Pasig City