

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



**IN THE MATTER OF THE
APPLICATION FOR
APPROVAL OF THE POWER
PURCHASE AND SALE
AGREEMENT (PPSA), AS
AMENDED, BETWEEN
TARLAC II ELECTRIC
COOPERATIVE, INC. AND
GNPOWER LTD. CO. WITH
PRAYER FOR
CONFIDENTIAL
TREATMENT OF
INFORMATION AND THE
ISSUANCE OF PROVISIONAL
AUTHORITY,**

ERC Case No. 2016-031 RC

**TARLAC II ELECTRIC
COOPERATIVE, INC.
(TARELCO II) AND
GNPOWER LTD. CO.
(GNPOWER)**

Applicants.

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D O C K E T E D
Date: NOV 27 2017
By: [Signature]

ORDER

Before this Commission for resolution is the *Urgent Motion for the Grant of Interim Relief* (Urgent Motion) filed by applicants Tarlac II Electric Cooperative, Inc. (TARELCO II) and GNPower Ltd. Co. (GNPower) on 11 August 2017 seeking authority to implement their Power Purchase and Sale Agreement (PPSA), as amended, pending final evaluation by the Commission.

In their *Urgent Motion*, applicants alleged the following:

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2. The Joint Applicants alleged in paragraphs 40 and 41 of the Application that part of the funds needed to construct GNPOWER's generation facility will be sourced from loans coming from banks/financial institutions and, in connection with such financing, the Honorable Commission's provisional approval is a vital requirement of the lenders. The Joint Applicants further asserted that the issuance of a provisional authority would ensure the continued financing of the GNPOWER project and prevent unwarranted delays in the construction of the generation facility. In support of these allegations, the Joint Applicants submitted a Judicial Affidavit (To Support Prayer for Provisional Authority) dated 29 February 2016 executed by Engr. Arnel O. Bilaoen (the "**Affidavit for PA**"), which was attached as Annex "BB" to the Application.
3. On 14 July 2016, the Joint Applicants received a copy of the Order and Notice of Public Hearing dated 28 June 2016 setting the Application for jurisdictional hearing, expository presentation and evidentiary hearing on 16 August 2016 at TARELCO II's Main Office, San Nicolas, Conception, Tarlac.
4. Before the scheduled date of the hearing, specifically on 15 June 2016, the Joint Applicants submitted a Certification dated 27 May 2016 issued by BDO Capital & Investment Corporation and RCBC Capital Corporation, the Onshore Mandated Lead Arrangers, for the construction and term financing of the GNPOWER Dinginin Project (the "**Bank Certification**"), through the Manifestation with Notice of Compliance dated 15 June 2016 duly filed with the Honorable Commission. The second paragraph of the Bank Certification provides:

Finally, we hereby certify that, in consideration for making such construction and term facilities, one of the approvals required to be obtained and maintained by GNPD under the definitive financing documentation is the Energy Regulatory Commission's provisional approval of the power purchase and sale agreements entered into by and between GNPD and distribution utilities.
5. During the evidentiary hearing, both of the Affidavit for PA and the Bank Certification were presented as documentary evidence and marked as Exhibits "BB" and "GG", respectively. After the hearing or on 15 September 2016, the Applicants filed their Formal Offer of Evidence, which

includes the foregoing documentary evidence, thereby submitting the instant case for resolution by this Honorable Commission.

6. Meanwhile, the Joint Applicants are aware that the Honorable Commission may issue a provisional approval within seventy (75) days from the date of filing of the Application pursuant to Section 3 of Rule 14 of the Honorable Commission's 2006 Rules of Practice and Procedure and, as of the filing of the instant Motion, such seventy five (75)-day period has lapsed already. The Joint Applicants are likewise mindful of the fact that the Honorable Commissions would need substantial time to complete its final evaluation of the Application.
7. Given these time constraints, the Joint Applicants respectfully move the Honorable Commission to grant interim relief in the instant case, which would be in the form of an authority to implement the PPSA, as amended.

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11. To reiterate, the Applicants have alleged in the Application that the Honorable Commission's provisional approval of the PPSA, amended, is a requirement imposed by the lenders. This allegation is substantiated by the Affidavit for PA and the Bank Certification.
12. Moreover, the Applicants respectfully submit that the proposed generation rate is reasonable considering that the rate impact analysis, which is marked as Exhibit "P", shows that TARELCO II will enjoy a lower effective rate of PhP4.0836/kWh or a reduction of PhP3.0391/kWh given GNPOWER's effective rate of PhP3.6562/kWh. Aside from the lower generation cost of power supply arising from the PPSA, as amended, TARELCO II is likewise entitled to Prompt Payment Discount and Capacity Utilization Discount, if certain conditions are met, which makes the proposed PPSA, as amended, rate more competitive.
13. In light of the foregoing, it is respectfully submitted that the generation rate under the PPSA, as amended would definitely redound to the benefit of the end-users of TARELCO II.
14. It is also well to note that the Honorable Commission has provisionally approved the PPSAs, as amended of GNPOWER with Nueva Ecija I Electric Cooperative, Inc.¹ in its Order dated 17 June 2016 and Peninsula Electric

¹ ERC Case No. 2016-037RC, entitled "*In the Matter of the Application for the Approval of the Power Purchase and Sale Agreement (PPSA), as amended, between Nueva Ecija I Electric Cooperative, Inc. and GNPower Ltd. Co. with Prayer for Confidential Treatment of Information and the Issuance of Provisional Authority*".

Cooperative, Inc.² in its Order dated 17 June 2016 which are similar to the subject PPSA, as amended.

15. In view of all the foregoing, and in recognition of the fact that a substantial amount of time is customarily needed to evaluate the documents submitted to support the final approval of the Application, the Applicants respectfully seek the kind consideration of the Honorable Commission to grant the Applicants an interim relief, which would allow them to implement the PPSA, as amended, albeit provisionally.

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TARELCO II entered into a forward contract with GNPowder for the supply of its power requirements from 2019 to 2038. The contracted capacity will start at 19MW and will increase up to 38MW for the duration of the contract. The subject PPSA was signed on 10 June 2014 and amended on 18 September 2015.

The PPSA was procured through a Competitive Selection Process (CSP) conducted by Central Luzon Electric Cooperative Association – First Luzon Aggregation Group, Inc. (CLECAFLAG).

Meanwhile, on 21 June 2017, applicants filed a *Manifestation* informing the Commission that after the filing of the instant application, co-applicant GNPowder assigned all of its interests, rights, and obligations under the subject PPSA with co-applicant TARELCO II to GNPowder Dinginin Ltd. Co. (GNPD), a limited partnership duly organized under Philippine law to engage in the business of developing, constructing, operating, and owning the GNPowder Dinginin project. The said assignment was permitted under the PPSA.

On 23 September 2017, applicants filed a *Motion* requesting for the removal of Exhibits “WW”, “XX”, and “AAA” from the records of this case which were inadvertently and openly submitted to the Commission as part of their documentary compliance and the same be replaced with the documents attached in the said *Motion*.

² ERC Case No. 2016-036RC, entitled “*In the Matter of the Application for the Approval of the Power Purchase and Sale Agreement (PPSA), as amended, between Peninsula Electric Cooperative, Inc. and GNPowder Ltd. Co. with Prayer for Confidential Treatment of Information and the Issuance of Provisional Authority*”.

The above *Manifestation* and *Motion*, including the prayer for the confidential treatment of information of some identified documents, are yet to be resolved by the Commission.

ISSUE

The issue for the Commission's resolution is whether TARELCO II and GNPower are entitled to the grant of interim relief.

THE COMMISSION'S RULING

The Commission grants interim relief.

I. THE COMMISSION IS AUTHORIZED TO GRANT INTERIM RELIEF IN THE INSTANT CASE.

Sections 2 and 3, Rule 14 of the Commission's 2006 Rules of Practice and Procedure (2006 RPP) provide that the Commission may act upon Motions seeking interim relief, to wit:

Section 2. Allegations in Support of the Motion and Supporting Documents.- The motion must be accompanied by supporting affidavits and documents, and must allege such facts and circumstances as would justify the Commission's exercise of discretion by granting provisional authority or interim relief prior to a final decision.

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.)

Further, in the case of *Freedom from Debt Coalition (FDC) vs. Energy Regulatory Commission (ERC)*,³ the Supreme Court traced the source of the Commission's power to grant temporary relief in applications, petitions or complaints filed before it, to wit:

Similarly, Sections 8 and 14 of E.O. No. 172 of the ERB Charter continue to be in full force by virtue of Sections 44 and 80 of the EPIRA. Said provisions of the ERB charter read:

SEC. 8. Authority to Grant Provisional Relief. -- The Board may, upon the filing of an application, petition or complaint or at any stage thereafter and without prior hearing, on the basis of the supporting papers duly verified or authenticated, **grant provisional relief on motion of a party in the case or on its own initiative**, without prejudice to a final decision after hearing, should the Board find that the pleadings, together with such affidavits, documents and other evidence which may be submitted in support of the motion, substantially support of the provisional order;

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(Emphasis ours.)

Considering the foregoing, the Commission has the authority to issue interim relief as prayed for in the *Urgent Motion*.

**II. THE APPLICANTS
HAVE SATISFIED
THE SUBSTANTIAL
REQUIREMENTS
FOR THE GRANT
OF INTERIM
RELIEF.**

More importantly, the Commission looked into the alleged necessity in the grant of interim relief to implement Applicants' PPSA, as prayed for in their Application. After initial review thereof, the Commission determined the need therefor based on the following considerations:

³ G.R. No. 161113, 15 June 2004.

1. Demand-Supply Scenario of TARELCO II

TARELCO II's Distribution Development Plan (DDP) as depicted below shows its current suppliers, Peak Demand, and Supply Deficit.

DESCRIPTION	HISTORICAL			FORECASTED				
	2013	2014	2015	2016	2017	2018	2019	2020
PEAK DEMAND (MW)	36	40	41	45	47	50	52	54
GMCP	22	22	22	22	22	22	22	22
SMEC	0	15	15	15	15	15	15	15
GNPOWER	0	0	0	0	0	0	19	21
TOTAL SUPPLY (MW)	22	37	37	37	37	37	56	58
DEFICIT/SURPLUS	-14	-3	-4	-8	-10	-13	4	4

TARELCO II shall start drawing power from GNPower starting year 2019. As can be gleaned above, TARELCO II has over-contracted capacity of 4MW for years 2019 and 2020. However, Annex "U" of the Application shows that by year 2022, TARELCO II is expected to have a power deficit of 228kW or 0.228MW, which is expected to increase in succeeding years.

2. Evaluation for the Necessity of Interim Relief

Based on the Department of Energy's (DOE) 2015-2030 Luzon and Visayas Grids Supply-Demand Outlook, Luzon's peak demand in 2015 is 8,974MW with an Annual Average Growth Rate (AAGR) of 4.25% while Visayas' Peak Demand is 1,847MW with AAGR of 3.4%. Therefore, Luzon's peak demand is expected to increase to 10,884MW in 2020, and by 16,165MW by the year 2030 and for Visayas, 2,042MW in 2020 and 3,025MW in 2030. This electricity demand growth has led to DOE's call for planning and investments in the power sector.

Contributing to the Luzon Grid's demand growth is TARELCO II's base load demand which increases at a rate of 5.0% per year. By 2020, it is projected that TARELCO II's existing power suppliers will not be able to meet the power needs of its member consumers, which is expected to increase to 28.6%.

While actual delivery of power at full capacity under the terms and conditions of the PPSA, as amended, is expected to commence only in 2020, Applicants, nonetheless, shall begin at the earliest opportune time their compliance with all financial and regulatory requirements and processes leading up to the timely completion of GNPowr's facility.

To reiterate, Applicants alleged in paragraphs 40 and 41 of the Application that part of the funds needed to construct GNPowr's facility will be sourced from loans coming from banks/financial institutions. As such, the Commission's grant of interim relief is a vital requirement of the lenders. Applicants further claimed that the issuance of a provisional authority would ensure the continued financing of the GNPowr project and prevent unwarranted delays in the construction of the generation facility.

Thus, on the basis of Applicants' allegations on urgency and necessity, and eligibility of the power supplier, as supported by several documents, and without prejudice to further findings by the Commission in the final evaluation of this case, it appears that, in so far as interim relief is concerned, there is justifiable basis in granting the immediate relief prayed for.

III. THE PROPOSED INTERIM RATES ARE REASONABLE.

The Commission is consistent with the provisional approval granted in the applications between Nueva Ecija I Electric Cooperative, Inc. (NEECO I)⁴ and Aurora Electric Cooperative, Inc. (AURELCO)⁵ with GNPowr.

In evaluating the reasonableness of the proposed rates in NEECO I and AURELCO, the Commission utilized the method of

⁴ ERC Case No. 2016-037 RC entitled, "In the Matter of the Application for Approval of the Power Purchase and Sale Agreement (PPSA), as Amended, Between Nueva Ecija I Electric Cooperative, Inc. (NEECO I) and GnPower Ltd. Co. (GNPOWER), with Prayer for Confidential Treatment of Information and the Issuance of Provisional Authority".

⁵ ERC Case No. 2016-039 RC entitled, "In the Matter of the Application for Approval of the Power Purchase and Sale Agreement (PPSA), as Amended, Between Aurora Electric Cooperative, Inc. (AURELCO) and GNPowr Ltd. Co. (GNPOWER), with Prayer for Confidential Treatment of Information and the Issuance of Provisional Authority".

benchmarking as the plant is still under construction. The same method was utilized in the instant application.

The process of benchmarking allows the Commission not only to establish the reasonableness of the rate but it also allows the Commission to rule out any excesses in the proposed cost.

Based on benchmarking, the proposed rates were proven to be one of the lowest among the approved rates of coal plants in the Philippines.

It was alleged that the approved PPSA executed by GNPowder Mariveles Coal Plant Ltd. Co. (GMCP) and several distribution utilities (DUs) is similar with the PPSA executed by GNPD and several DUs submitted to the Commission for approval, particularly, the rate components and structure. However, the exact rates slightly differ. Below is the rate comparison:

Capacity Utilization Factor (%)	GMCP ⁶ (With Final Approval)	GNPD	Difference
100%	0.0468	0.0466	0.0002
99%	0.0472	0.0470	0.0002
98%	0.0476	0.0474	0.0002
97%	0.0479	0.0477	0.0002
96%	0.0483	0.0481	0.0002
95%	0.0487	0.0485	0.0002
94%	0.0491	0.0489	0.0002
93%	0.0495	0.0493	0.0002
92%	0.0499	0.0497	0.0002
91%	0.0503	0.0501	0.0002
90%	0.0508	0.0506	0.0002
89%	0.0512	0.0510	0.0002
88%	0.0517	0.0515	0.0002
87%	0.0521	0.0519	0.0002
86%	0.0526	0.0524	0.0002
85%	0.0531	0.0529	0.0002

⁶ GMCP has two (2) sets of Capacity Factor Pricing Table. The data shown above are for distribution utilities that have signed for long-term contract such as TARELCO I, Ilocos Sur Electric Cooperative, Inc. (ISECO), La Union Electric Cooperative, Inc. (LUELCO), Pangasinan III Electric Cooperative, Inc. (PANELCO III), Batangas II Electric Cooperative, Inc. (BATELEC II), Leyte V Electric Cooperative, Inc. (LEYECO V), etc.

84%	0.0536	0.0534	0.0002
83%	0.0541	0.0539	0.0002
82%	0.0546	0.0544	0.0002
81%	0.0552	0.0550	0.0002
80%	0.0557	0.0555	0.0002
79%	0.0563	0.0561	0.0002
78%	0.0568	0.0566	0.0002
77%	0.0574	0.0572	0.0002
76%	0.058	0.0578	0.0002
75%	0.0587	0.0585	0.0002
74%	0.0594	0.0592	0.0002
73%	0.0601	0.0599	0.0002
72%	0.0608	0.0606	0.0002
71%	0.0615	0.0613	0.0002
70%	0.0623	0.0621	0.0002
69%	0.0630	0.0629	0.0001
68%	0.0638	0.0637	0.0001
67%	0.0646	0.0645	0.0001
66%	0.0655	0.0653	0.0002
65%	0.0663	0.0662	0.0001

It can be gleaned therefrom that the difference in the proposed rates under GNPD is US\$0.0002 or slightly lower than that of the approved rates for GMCP.

Further, the proposed rates were also matched with the approved rates of Independent Power Producers (IPPs) operating a coal power plant⁷, as shown hereunder:

Php/kWh	CEDC	PEDC	SEC	TSI	PCPC	GNPower (Dingin Plant)
CRF and O&M	3.3	4.231	3.59	3.991	3.314	3.064
Interconnection			0.15			
Fuel Rate	Pass-through cost					
Total	3.3	4.231	3.74	3.991	3.314	3.064

From the above table, the proposed GNPower rate of Php3.064/kWh⁸ is one of the lowest among the approved rates for coal power plants in the Philippines. Further, it should be noted that

⁷ Comparison was lifted from PA Memo of ERC Case No. 2014-011 RC dated 21 April 2014.

⁸ Based on 65% CUF and Php 46.2845/1USD (average exchange rate for April 2016).

the proposed Capacity Fee which already includes O&M is fixed for the entire term of the PPSA.

To reiterate, the Commission provisionally approved the PPSA of NEECO I and AURELCO as applied. Since, the PPSAs of all the member-Electric Cooperatives (ECs) of the CLECAFLAG are identical, thus, for purposes of granting interim relief, the Commission adopted TARELCO II's proposed rates or as applied.

The proposed interim rates indicated above will form part of TARELCO II's retail rate, under the item generation cost. Thus, a simulation must be made showing the impact of such fees to the retail rate currently charged by TARELCO II to its end-consumers.

Applicants, in their *Urgent Motion* and based on their simulation submitted, claimed that their proposed generation rate is reasonable as TARELCO II will enjoy a lower effective rate of PhP4.0836/kWh with the execution of the PPSA with GNPower, to wit:

Without GNPower:

NAME OF SUPPLIER	KW	LOAD FACTOR, %	BCQ/WESM PURCHASED, KWH	ENERGY COST, Php	EFFECTIVE RATE, Php/KWH
GMCP	22,000	100%	16,060,000	65,910,240.00	4.1040
SCPC	15,000	100%	10,950,000	50,314,155.00	4.5949
WESM	19,000	100%	13,870,000	174,949,870.85	12.6135
TOTAL	56,000	100%	40,880,000	291,174,265.85	7.1227

With GNPower (presented as GLC):

NAME OF SUPPLIER	KW	LOAD FACTOR, %	BCQ/WESM PURCHASED, KWH	ENERGY COST, Php	EFFECTIVE RATE, Php/KWH
GMCP	22,000	100%	16,060,000	65,910,240.00	4.1040
SCPC	15,000	100%	10,950,000	50,314,155.00	4.5949
GLC	19,000	100%	13,870,000	50,711,494.00	3.6562
TOTAL	56,000	100%	40,880,000	166,935,889.00	4.0836

Based on the above simulation, GNPower's rate is lower than the existing suppliers when combined inclusive of 12% Value-Added Tax (VAT) and Prompt Payment Discount (PPD).

It is evident that GNPowder Ltd. Company's (GLC's) base load rate of PhP3.6562/kWh is cheaper than GMCP and Sem-Calaca Power Corp. (SCPC) base load rates at 100% load factor.

Accordingly, all imbalances will all be taken from the Wholesale Electricity Spot Market (WESM).

The Commission has a mandate to protect the interest of the electricity consumers insofar as they are affected by the rates, by ensuring that the tariffs imposed are consistent with the principle of full recovery of prudent and reasonable costs.

The initial evaluation of the instant application disclosed that the immediate implementation of the PPSA entered into by and between TARELCO II and GNPowder will redound to the benefit of TARELCO II's member-consumers in terms of reliable, continuous, and efficient supply of power⁹ within its franchise area especially in light of the urgent power requirement of TARELCO II.

WHEREFORE, the foregoing premises considered, the *Urgent Motion* is **GRANTED**. Applicants Tarlac II Electric Cooperative, Inc. (TARELCO II) and GNPowder Ltd. Co. (GNPowder) are hereby **GRANTED INTERIM RELIEF** in the form of an authority to implement their amended Power Purchase and Sale Agreement (PPSA) as *applied*, subject to the following conditions:

- (1) The final generation cost that can be recovered shall be determined by the Commission in its Decision in the instant application;
- (2) In the event that the final rate is higher than the interim rate granted, the resulting additional charges shall be collected by GNPOWER from TARELCO II. On the other hand, if the final rate is lower than the interim rate granted, the amount corresponding to the reduction shall be refunded by GNPOWER to TARELCO II; and
- (3) GNPowder is directed to submit the comparison between the documents marked as Annexes "L", "M", and "N" as against documents marked as Annexes "UU" and "UU-1" with

⁹ As prescribed under Section 2 of the EPIRA.

detailed explanation on the differences or changes and the reason why the updated information were not available at the time of filing of the application.

SO ORDERED.

Pasig City, 13 September 2017.

JOSE VICENTE B. SALAZAR*

Chairman and CEO



ALFREDO J. NON

Commissioner



GLORIA VICTORIA C. YAP-TARUC

Commissioner



JOSEFINA PATRICIA A. MAGPALE-ASIRIT

Commissioner



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Commissioner



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TWG: rc/ete

*The Chairman was suspended as per Decision of the Office of the President (OP-DC Case No. 17-D- 094) dated 02 August 2017.

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