Republic of the Philippines
**ENERGY REGULATORY COMMISSION**
San Miguel Avenue, Pasig City

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**IN THE MATTER OF THE APPLICATION FOR APPROVAL OF THE POWER SUPPLY AGREEMENT (PSA) BETWEEN BOHOL II ELECTRIC COOPERATIVE INC. (BOHECO II) AND UNIFIED LEYTE GEOTHERMAL ENERGY, INC.(ULGEI) WITH PRAYER FOR CONFIDENTIAL TREATMENT OF INFORMATION AND THE ISSUANCE OF PROVISIONAL AUTHORITY,**

**ERC CASE NO. 2016-152 RC**

**BOHOL II ELECTRIC COOPERATIVE, INC. (BOHECO II) AND UNIFIED LEYTE GEOTHERMAL ENERGY, INC. (ULGEI),**

**Applicants.**

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DOCKETED
Date: NOV 27 2017
By: [signature]

# ORDER

On 04 July 2016, Bohol II Electric Cooperative, Inc. (BOHECO II) and Unified Leyte Geothermal Energy, Inc. (ULGEI) filed their Application for the approval of the Power Supply Agreement (PSA) with prayer for confidential treatment of information and the issuance of provisional authority.

Relative to their prayer for provisional authority, BOHECO II and ULGEI alleged the following in its Application:

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31. All the foregoing allegations are re-pleaded by reference in support of herein Prayer for the issuance of Provisional Authority to implement the subject PSA;

32. BOHECO II and ULGEI 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, to wit:

> "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."

33. The continuous addition of supply shall help keep stable power supply for the increasing demand and low and stable cost of power available at the WESM and for the end-users;

34. To emphasize the necessity of a provisional approval of herein Application, a Judicial Affidavit to support the prayer for provisional authority will be attached to the Application as Annex "GG";

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## ISSUE

The issue to be resolved by the Commission is whether or not Applicants have satisfied the requirements provided by law for the grant of provisional authority.

## THE COMMISSION'S RULING

On 13 September 2016, pursuant to the power of the Commission to provisionally approve the PSA between BOHECO II and ULGEI, as provided under Section 4(e), Rule 3 of the Implementing Rules and Regulations (IRR) of Republic Act No. 9136, or the Electric Power Industry Reform Act of 2001 (EPIRA), the Commission deliberated to grant Applicants provisional authority to implement their PSA, subject to certain conditions. However, due to a supervening event[1], the *Order* cannot be issued without undergoing reconfirmation by the Commission *En Banc* prior to its promulgation.

Since a provisional authority is effective for only twelve (12) months, as held in the case of *Freedom from Debt Coalition vs. Energy Regulatory Commission*[2] (FDC Case), the provisional authority granted to Applicants BOHECO II and ULGEI on 13 September 2016 is hereby extended until revoked or made permanent by the Commission, subject to the same conditions.

## I. THE LAW EMPOWERS THE COMMISSION TO GRANT PROVISIONAL AUTHORITY IN THE INSTANT CASE.

Section 4(e), Rule 3 of the IRR of the EPIRA empowers the Commission to issue provisional authority, to wit:

> SECTION 4. Responsibilities of the ERC. —
>
> (e) Any application or petition for rate adjustment or for any relief affecting the consumers must be verified, and accompanied with an acknowledgment of receipt of a copy thereof by the LGU Legislative Body of the locality where the Applicant or petitioner principally operates together with the certification of the notice of publication thereof in a newspaper of general circulation in the same locality.
>
> The ERC may grant provisionally or deny the relief prayed for not later than seventy-five (75) calendar days from the filing of the application or petition, based on the same and the supporting documents attached thereto and such comments or pleadings the consumers or the LGU concerned may have filed within thirty (30) calendar days from receipt of a copy of the application or petition or from the publication thereof as the case may be.
>
> Thereafter, the ERC shall conduct a formal hearing on the application or petition, giving proper notices to all parties concerned, with at least one public hearing in the affected locality, and shall decide the matter on the merits not

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[1] The Chairman was suspended as per Order of the Office of the President dated 04 August 2017.
[2] G.R. No. 161113, 15 June 2004.

later than twelve (12) months from the issuance of the aforementioned provisional order.

This Section 4(e) shall not apply to those applications or petitions already filed as of 26 December 2001 in compliance with Section 36 of the Act.

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The above provision was upheld by the Supreme Court in the FDC Case[3]. The Court, speaking through Justice Tinga, traced the origin and development of the Commission's authority to grant provisional rates, *to wit*:

> Historically, therefore, in this jurisdiction, at least beginning with the Public Service Act in 1936, the regulatory bodies concerned have exercised the power to grant provisional rate adjustments only because there was a statutory grant of such power.
>
> The foregoing recital establishes the following salient points: (1) Section 16(c) of the Public Service Act authorizing the approval of provisional rate increases has never been repealed and as such continues to be in full force and effect up to the present; (2) The BOPW had the power to grant provisional rate increases on the basis of the provision of the Integrated Reorganization Plan that the pertinent powers of the PSC were transferred to it; (3) The applicability clause found in Section 44 of the EPIRA is the same as or similar to the applicability clauses contained in Sections 11 and 21 of P.D. No. 1206 and Section 14 of E.O. No. 172; and, (4) The applicability clause or transfer of power provision is sufficient to effect the transfer of powers from a regulatory agency to its successor.
>
> **All told, the provisions of the Public Service Act and E.O. No. 172 which relate to the power of the regulatory body to approve provisional rates continue to have full force and effect, and the power was transferred to the ERC by virtue of Section 80 in relation to Section 44 of the EPIRA.** Said provisions are not inconsistent with the EPIRA except the directives therein dispensing with the need for prior hearing. They are deemed modified to the extent that the EPIRA imposes a publication requirement and, through the IRR, assures the customers affected the opportunity to oppose or comment on the application for provisional rate adjustment before it is acted upon by the ERC.
>
> **Indeed, both the letter and spirit of the law require that the authority of the ERC to grant provisional power rate adjustments should be upheld. The law is so clear that it cannot be misread.**

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[3] *Ibid.*

[Emphasis supplied.]

The instant application seeks the Commission's approval of the PSA entered into between BOHECO II and ULGEI. The said PSA prescribes fees which will eventually form part of ULGEI's generation cost. The generation cost in turn forms part of BOHECO II's retail rate. As such, the Commission is empowered to grant provisional approval in the instant application.

## II. THE APPLICANTS HAVE SATISFIED THE DUE PROCESS REQUIREMENTS FOR THE GRANT OF PROVISIONAL AUTHORITY.

Section 4(e), Rule 3 of the IRR of the EPIRA provides the procedural requisites for the grant of provisional authority, to wit:

(1) The Applicant must file with the ERC a verified application/petition for rate adjustment. It must indicate that a copy thereof was received by the legislative body of the LGU concerned. It must also include a certification of the notice of publication thereof in a newspaper of general circulation in the same locality.

(2) Within 30 days from receipt of the application/petition or the publication thereof, any consumer affected by the proposed rate adjustment or the LGU concerned may file its comment on the application/petition, as well as on the motion for provisional rate adjustment.

(3) If such comment is filed, the ERC must consider it in its action on the motion for provisional rate adjustment, together with the documents submitted by the Applicant in support of its application/petition. If no such comment is filed within the 30-day period, then and only then may the ERC resolve the provisional rate adjustment on the basis of the documents submitted by the Applicant.

(4) However, the ERC need not conduct a hearing on the motion for provisional rate adjustment. It is sufficient that it consider the written comment, if there is any.

(5) The ERC must resolve the motion for provisional rate adjustment within 75 days from the filing of the application/petition.

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Applicants have complied with the requirement of filing a verified application. Moreover, Applicants indicated and provided proof in said Application that the legislative bodies of the Local Government Units (LGUs) concerned (i.e. Pasig City and the Municipality of Jagna and the Province of Bohol) have been furnished with copies of the Application. As proof of receipt by the said LGUs, Applicants attached to the Application certifications issued by the said LGUs as Annexes "Z", "AA", and "BB", respectively.

Applicants further provided proof of publication of the Application in a newspaper of general circulation within the franchise area of Applicant BOHECO II. The affidavit of publication including the copy of the newspaper and the relevant page thereof where the Application appears are attached to the Application as Annexes "CC", "DD", and "EE", respectively.

BOHECO II and ULGEI filed their application on 04 July 2016. No Comment on the said Application was received by the Commission within the thirty (30) day period within which the said Comment may be filed, or until 03 August 2016. Thus, the prayer for provisional authority is being resolved on the basis of the documents submitted by Applicants. Likewise, the instant Order granting provisional authority is being issued within the seventy-five (75) day reglementary period which is set to end on 17 September 2016.

In light of these circumstances, the Commission has determined that the procedural requirements for the issuance of a provisional authority have been complied with.

**III. THE APPLICANTS HAVE SATISFIED THE SUBSTANTIAL REQUIREMENTS FOR THE GRANT OF PROVISIONAL AUTHORITY.**

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

**1. Historical and Forecasted Supply-Demand Scenario of BOHECO II**[4]

The table below shows BOHECO II's current power suppliers, Peak Demand, and Supply Deficit. Based on BOHECO II's load forecast, there is a need to obtain additional capacity to address its current shortage of power requirements in order to improve reliability and quality of electric power to its customers, to wit:

| | Historical | | Forecasted | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 2014 | 2015 | 2016 (Current year) | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 |
| Peak Demand (MW) | 19.46 | 18.87 | 19.91 | 20.23 | 21.27 | 22.32 | 23.36 | 24.41 | 25.45 | 46.49 |
| Supplier's (MW) | | | | | | | | | | |
| Greencore | 5 | 7 | 10 | 10 | 10 | 10. | 10 | 10 | 10 | 10 |
| PSALM | 15.8 | 15.80 | | | | | | | | |
| NPC (SPUG) | | 0.03 | 0.07 | 0.08 | 0.09 | 0.09 | 0.10 | 0.09 | | |
| ULGEI | | | 6 | 7 | 8 | | | | | |
| GNPower | | | | | | 12 | 12 | 12 | 12 | 12 |
| Total Supply (MW) | 20.7 | 22.83 | 16.07 | 17.08 | 18.09 | 22.09 | 22.10 | 22.09 | 22 | 22 |
| Deficit/Surplus | 1.33 | 3.96 | (3.84) | (3.15) | (3.18) | (0.22) | (1.26) | (2.31) | (3.45) | (4.49) |

As of year 2016, BOHECO II receives a total of 10 MW from its existing suppliers out of its peak requirement of 19.43 MW. With an annual average growth rate of 7%, BOHECO II forecasts that its average peak demand for the years 2018 to 2019 will be 21.273 MW.[5]

As alleged in the Application, in order to address its power deficit, BOHECO II solicited offers from various suppliers and after much negotiation, it found ULGEI's credentials most eligible to be its power provider under the given premises:

21. The additional supply from ULGEI will significantly augment the supply deficiency of BOHECO II and will decrease the adverse effects thereof by providing a stable and adequate source of electricity; and

22. Among the suppliers capable of providing additional energy to BOHECO II and the rest of the 1BP ECs, ULGEI's rates proved to be more reasonable and competitive.

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4 Annex "U" of the Application ( w/ motion for Confidential Treatment of Information).
5 Paragraph no. 8 of the Application.

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 as may be determined during the actual hearing in this case, it appears that, in so far as provisional approval is concerned, there is justifiable basis in granting the immediate relief prayed for.

## 2. Procurement Process

As alleged in the Application, BOHECO II found ULGEI's credentials most eligible to be its projected base load power provider under the given premises:

> 9. BOHECO II and Bohol I Electric Cooperative, Inc. (BOHECO II), collectively, the "1BP ECs", received an unsolicited proposal from GNPower Ltd. Co.("GNPower") for the supply of their aggregated short-term baseload demand for the period 26 December 2018 to 25 December 2019 and medium-term baseload demand for the period 26 December 2018 to 25 December 2023.
>
> 10. Guided by declared and agreed policy and guidelines as described in the 1BP ECs Rules and Procedures for Unsolicited Proposal, which is Annex A of the Instructions to Proponents[6], the 1BP ECs created the Joint Competitive Power Supply Procurement ("JCPSP") Board, the 1BP JCPSP Bids and Awards Committee ("JBAC") and the 1BP Joint Technical Working Group ("JTWG") to conduct the initial evaluation of GNPower's unsolicited proposal in order to determine its compliance with 1BP EC's policy and guidelines.
>
> 11. The JTWG found the proposal of GNPower consistent with the criteria set forth in the aforementioned policy and guidelines. A copy of the results of the evaluation is attached to the Application as Annex "J".
>
> 12. As required by the JBAC, GNPower submitted a Firm and Final Proposal, containing the Legal, Technical and Financial Documents, the Technical Proposal, and the Financial Proposal.
>
> 13. After a more detailed evaluation, the JBAC endorsed the GNPower proposal to the 1BP JCPSP Board, which granted GNPower the *Original Proponent* status in the Competitive

[6] Attached to the Application as Annex "I".

Selection Process through Comparative Proposals. A copy of the results of the detailed evaluation is attached as Annex "K" of the Application.

14. Other generating companies ("GENCOs") were invited to submit Comparative Proposals to challenge GNPower's offer through publications in newspapers of general and national circulation for two (2) consecutive weeks and through written invitations to the GENCOs published in the Department of Energy website. Copies of the invitation as published twice in the Philippine Daily Inquirer and the Affidavit of Publication are attached to the Application as Annexes "L" to "L-2".

15. Participating GENCOs submitted letters of intent (LOI), and they were provided with a copy of the Instructions to Proponents (ITP) and due diligence data. Thereafter, transaction conferences were held to clarify and discuss the transaction process, requirements, rules, and evaluation methodology. Copies of the LOI from the GENCOs are attached as Annex "M" and series of the Application.

16. During the submission and opening of bids, First Gen and Trans-Asia Oil and Energy Development Corporation submitted comparative proposals. First Gen, through the submitted documents, manifested that its affiliate, ULGEI, will be the proponent in the transaction. Upon evaluation by the JBAC, it was found that the evaluated effective levelized price of ULGEI for the short-term (CY-2016-2018) and of GNPower for the medium-term (CY 2019-2023) were the lowest. The results of the evaluation are shown in the attached Annex "N" of the Application.

17. On 22 January 2016, the JBAC issued a Notice of Award to ULGEI and the same was accepted by ULGEI on 26 January 2016, copies of which are attached to the Application as Annexes "O-1" and "O-2", respectively.

18. The 1BP ECs and ULGEI negotiated the final terms and conditions of the PSA based on the Key Contract Terms provided in the ITP. This led to the execution of separate/individual but identical PSAs by and between each of BOHECO II and BOHECO II and ULGEI.

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## 3. Salient Features of the PSA

| | |
|---|---|
| Contract Term[7] | The Agreement shall take effect immediately from effective date |

[7] Section 3.1 of the PSA.

| | |
|---|---|
| | and shall remain in force and effect until 25 December 2018, subject to extension of the term as may be agreed upon by the Parties. |
| Effective Date[8] | The date of signing of the Agreement |
| Type | Geothermal Power Plants |
| Rated Capacity | 40 MW (Strips of Energy) |

Contracted Capacity[9]

| Term | Contracted Capacity (kW) |
|---|---|
| Effective date until 25 Dec. 2016 | 6,000 |
| 26Dec. 2016 – 25 Dec. 2017 | 7,000 |
| 26 Dec. 2017-25 Dec. 2018 | 8,000 |

| | |
|---|---|
| Security Deposit | BOHECO II shall maintain a security deposit equivalent to one hundred percent (100%) of the estimated amount of the average monthly invoice of the BOHECO II during the year following its delivery. |
| Availability of Capacity[10] | Contracted capacity shall be available at all times except for interruption and/or reduction due to: (a) any Event of Force Majeure, or (b) other cases. For avoidance of doubt, Administrator shall supply the Contracted Capacity during Planned Outage and/or Forced Outage. |

<u>Other Non-Rate Provisions</u>

[8] Section 1.1.21 of the PSA.
[9] Annex A of the PSA.
[10] Section 5.2 of the PSA.

| | |
|---|---|
| Guaranteed Associated Energy[11] | shall be equal to the product of 70% of Contracted Demand, and No. of Hours of the applicable Billing Period, subject to adjustment in kWh due to Force Majeure, Customer's Service Interruption Adjustment, or other causes, such as safety, as may be provided by law, rule, regulation or order of a competent authority in accordance to Annex "B". |
| Exchange in Quantity | In order to maximize capacity utilization, 1BP ECs may exchange quantities of their Contracted Capacity in accordance with Section 4.4, upon noticed by BOHECO II and subject to Section 4.1, ULGEI shall deliver to other 1BP ECs the Contracted Capacity or such portion of the Contracted Capacity not utilized by BOHECO II; provided that the other 1BP EC shall be responsible for the settlement and payment of the Contracted Capacity.<br><br>All charges related to the Exchange in Quantity shall be for the account of the other 1BP EC. |
| Increase in Contracted Capacity | BOHECO II may be allowed to increase the Contracted Capacity at the same rate subject to: (a) Technical Limits of the Plant, the constraints relating to the transmission lines, substations and other facilities, (b) the availability of capacity of ULGEI, and (c) such other terms and conditions as the Parties may agree upon. |
| Transmission Service/ Nodal Pricing | BOHECO II shall be responsible for arranging with the National |

[11] Page 6 of 18 of the Application.

| | |
|---|---|
| | Grid Corp. of the Phil. (NGCP) or its concessionaire for the wheeling of the Plant's output from Point of Delivery through the grid to ULGEI's substation or other substation. |
| Service Interruption Adjustment[12] | In the event that the supply of electricity is interrupted or curtailed to a level resulting in an Applicable Load Factor of less than 70% due to scheduled maintenance of the Customer's facilities, the Applicable Load Factor shall be adjusted according to the Applicable Load Factor formula in Annex "B" for all hours when service was actually curtailed or interrupted.<br><br>In the event that Contracted Capacity and Associated Energy is not taken due to Customer's fault or negligence or other causes affecting Customer's ability to take or consume electricity, including the lack of or Section 5.8, Customer shall not be entitled to any Service Interruption Adjustment and Customer shall pay the guaranteed monthly payment.<br><br>Subject to Section 4.5, Customer may avail of the Service Interruption Adjustment for scheduled maintenance of its facilities, provided that any such adjustment shall be applied to not more than one (1) Billing Period in any calendar year. Customer shall apportion its actual consumption among its existing power suppliers, provided that such consumption is proportionate to the capacity |

[12] Par. 5.6 to 5.8 of the PSA.

supplied by each of Customer's supplier based on their respective power supply agreements, during the applicable Billing Period. The Associated energy shall be adjusted based on the proportionate consumption or fifty percent (50%) of the Associated Energy, whichever is higher, for all hours when service was actually curtailed or interrupted. To be able to avail of this adjustment, Customer must inform Administrator in writing at least thirty (30) days prior to the commencement of the scheduled maintenance of Customer's facilities.

**Cut Out Provision**[13]

In the event that the actual energy taken by Customer during any Billing Period is below the Associated Energy due solely to a disconnection of any customer of Customer that qualifies as a Contestable Customer and the event described below occurs. Customer shall be entitled to a reduction in the Associated Energy to the extent described below.

(i) Customer's Disconnected Customer procures electricity from Administrator, in which case Customer shall be entitled to a reduction in the Contracted Capacity equivalent to the Contracted Capacity (in kW) of such Customer's Disconnected Customer with the Administrator; and

(ii) The Customer's Disconnected Customer procures electricity from any supplier who does not supply electricity to Customer, in which case Customer shall be entitled to a reduction in the contracted capacity equivalent to the maximum monthly load demand (in kW) of such Customer's Disconnected Customer for the last twelve (12) months prior to such disconnection multiplied by the proportion of the Associated Energy to the equivalent energy to the aggregate capacity contracted

[13] Section 5.3 to 5.5 of the PSA.

by Customer with all of its supplier of electricity power (including Administrator).

In each of the cases referred to in subparagraphs (i) and (ii), the reduction in the Contracted Capacity shall take effect at the later of (a) the receipt by Administrator of the written notice from Customer of the disconnection of Customer's Disconnected Customer and availment by Customer of a reduction on the Contracted Capacity, or (b) the effectivity of such disconnection of Customer's Disconnected Customer.

For the avoidance of doubt, Customer shall not be entitled to any reduction in the Contracted Capacity and Associated Energy in the event that the Customer's Disconnected Customer procures electricity from any of Customer's suppliers of electricity other than the Administrator.

**Basic Energy Charge, Applicable Load Factor, and Guaranteed Monthly Payment**

**I. BASIC ENERGY CHARGE**

The Basic Energy Charge or BEC shall be equal to:

$$BEC = CRFALF + VOMF + Generation\ Payment\ Rate + Administration\ Fee$$

Where:

a) **CRF*ALF*** is the Capital Recovery Fee with values for different Capacity Utilization Factors (CUF) or Applicable Load Factors (ALF), effective until 25 December 2018. The Capital Recovery Fees, as tabulated below shall be **fixed** throughout the term of the Agreement.

| Applicable Load Factor (ALF) | Capital Recovery Fee ($CRF_{ALF}$), Php/kWh |
|---|---|
| 99.50-100.00% | 1.6434 |
| 98.50-99.49% | 1.6600 |
| 97.50-98.49% | 1.6769 |
| 96.50-97.49% | 1.6942 |
| 95.50-96.49% | 1.7119 |
| 94.50-95.49% | 1.7299 |
| 93.50-94.49% | 1.7483 |
| 92.50-93.49% | 1.7671 |
| 91.50-92.49% | 1.7863 |
| 90.50-91.49% | 1.8059 |
| 89.50-90.49% | 1.8260 |
| 88.50-89.49% | 1.8465 |
| 87.50-88.49% | 1.8675 |
| 86.50-87.49% | 1.8890 |
| 85.50-86.49% | 1.9109 |
| 84.50-85.49% | 1.9334 |
| 83.50-84.49% | 1.9564 |
| 82.50-83.49% | 1.9800 |
| 81.50-82.49% | 2.0041 |
| 80.50-81.49% | 2.0289 |
| 79.50-80.49% | 2.0543 |
| 78.50-79.49% | 2.0803 |
| 77.50-78.49% | 2.1069 |
| 76.50- 77.49% | 2.1343 |
| 75.50 -76.49% | 2.1624 |
| 74.50%-75.49% | 2.1912 |
| 73.50%-74.49% | 2.2208 |
| 72.50%-73.49% | 2.2512 |
| 71.50%-72.49% | 2.2825 |
| 70.50%-71.49% | 2.3146 |
| 70.00%-70.49% | 2.3477 |

b) VOMF is the Variable O&M Fee equivalent to PhP 0.0529/ kWh, effective until 25 December 2015.

The VOMF shall be adjusted annually at a rate equivalent to the actual increase (or decrease) in the Philippine Consumer Price

Index – base period calendar year 2006=100 ("CPI") published by the Philippines Statistics Authority, or its succeeding entity, for the year. For purposes of adjusting the VOMF, the base CPI shall be Average 2014. The first adjustment to the VOMF shall be made on 26 December 2015 and such adjustment shall take effect from 26 December 2015 up to 25 December 2016.

The VOMF shall be adjusted annually using the following formula:

$$Adjusted\ VOMF_n = VOMF_{n-1} * \frac{CPI_{n-1}}{CPI_{n-2}}$$

Where:

| | | |
|---|---|---|
| $VOMF_n$ | = | VOMF for year ***n*** |
| $VOMF_{n-1}$ | = | VOMF for year ***n-1*** |
| $CPI_{n-1}$ | = | Average Philippine Consumer Price Index (CPI) of year ***n-1***, as published by Philippine Statistics Authority or its successor |
| $CPI_{n-2}$ | = | Average Philippine Consumer Price Index (CPI) of year n-2, as published by Philippines Statistics Authority or its successor |

Illustrative example for the Determination of Adjusted VOMF with Base CPI of Average 2014.

| **Year *n*** | **2016** |
|---|---|
| Previous Year VOMF, PhP/kWh | 0.0529 |
| $CPI_{n-1}$ | 144.2 |
| $CPI_{n-2}$ | 139.5 |
| Adjusted VOMF, PhP/kWh | 0.0547 |
| Applicable to Billing Periods | January to December 2016 |

c) Generation Payment Rate = Rate x $I_n$, such that if $I_n < 1$, $I_n = 1$

Where:

Rate = 2.2442 PhP/kWh subject to inflation factor, $I_n$

$I_n$ = Inflation Factor for the Billing Period under consideration, where Inflation Factor shall be:

$$\frac{FX_1}{FX_0}\left(0.398 + 0.240\frac{CE_1}{CE_0} + 0.080\frac{FCP_1}{FCP_0}\right) + 0.085\frac{LCP_1}{LCP_0} + 0.084\frac{WPG_1}{WPG_0} + 0.085\frac{WPM_1}{WPM_0} + 0.04792$$

Where:

$FX_1$ = Philippine Peso vs US Dollar Reference Rate as published by the Bangko Sentral ng Pilipinas at the last working day of the Billing Period under consideration;

$FX_0$ = Philippine Peso vs US Dollar Reference Rate as published by the Bangko Sentral ng Pilipinas as of 24 May 2013 equivalent to 41.508;

$CE_1$ = US Price Index for Capital Equipment, line 63 bb, International Financial Statistics (2010=100) for the period of price determination;

$CE_0$ = US Price Index for Capital Equipment, line 63 bb, International Financial Statistics (2010=100) for the month of May 2013 equivalent to 104.185;

$FCP_1$ = US Consumer Price Index, All Items, line 64, International Financial Statistics (2010=100) for the period of price determination;

$FCP_0$ = US Consumer Price index, All Items, line 64, International Financial Statistics (2010=100) for the month of May 2013 equivalent to 106.828;

$LCP_1$ = Consumer Price Index for National Capital Region, All Items (2006=100) as published by the National Statistics Office for the period of price determination.

$LCP_0$ = Consumer Price Index for National Capital Region, All Items (2006=100) as published by the National Statistics Office for the month of May 2013 equivalent to 125.7.

$WPG_1$ = Manufactured Goods Classified Chiefly by Materials Component of the General Wholesale Price Index for National Capital Region (1998=100) as published by the

National Statistics Office for the period of price determination.

$WPG_0$ = Manufactured Goods Classified Chiefly by Materials Component of the General Wholesale Price Index for National Capital Region (1998=100) as published by the National Statistics Office for the month of May 2013 equivalent to 170.

$WPM_1$ = Machinery and Transport Equipment component of the General Price Index for National Capital Region (1998=100) as published by the National Statistics Office for the period of price determination.

$WPM_0$ = Machinery and Transport Equipment component of the General Wholesale Price Index for National Capital Region (1998=100) as published by the National Statistics Office for the month of May 2013 equivalent to 152.2.

The abovementioned indices shall be subject to any rebasing by PSALM. Any such rebasing shall be automatically applied to the foregoing formula, provided that the Administrator shall give immediate notice and proof of such rebasing to Customer.

Subject to the succeeding paragraph, any adjustment by PSALM on the indices of the Generation Payment Rate of any invoice shall be passed on to the Customer. In the absence of published indices for the period of price determination, the most recent available published indices shall be used subject to adjustment in subsequent billings immediately after the published indices become available.

In the case of non-publication of any or all of the required indices for the reasonable period of time, a new Inflation factor (In) that is mutually acceptable by PSALM and the Administrator shall be formulated, provided that the Administrator shall, in good faith, negotiate with PSALM with the best interest of the Customer in mind. Pending agreement regarding the new Inflation factor between PSALM and the Administrator, the last prevailing Inflation Rate shall be used until a new Inflation Rate is agreed between PSALM and the Administrator. Such last prevailing Inflation Rate shall then be subject to retroactive adjustment. Administrator shall give due noticed and sufficient proof of such agreed Inflation Factor.

In the event of discrepancies or need for reconciliation, the Metered Quantity for each Billing Period shall be adjusted, upward or downward, in the Generation Payment Rate for the Billing Period.

For purposes of calculating the total Generation Payment Rate for each of the Billing month, the total payment shall be rounded off to the nearest two decimal digits.

Administration Fee shall be equivalent to PhP0.19/kWh, effective until December 25, 2018. For the avoidance of doubt, the Administration Fee shall be fixed throughout the term of the Agreement. Only the Administration Fee shall be subject to 12% VAT.

**II. APPLICABLE LOAD FACTOR:**

**Formula:**

$$ALF\,(\%) = \frac{ED}{(CCx\ N) - \sum_{i=1}^{k} X_i \pm \mathrm{EQ}}$$

Where:

| | | |
|---|---|---|
| ALF | = | Capacity Utilization Factor (CUF) or Applicable Load Factor (ALF) for the Billing Period, in %, rounded off to 2 decimal places (E.g. 85.62%). |
| ED | = | Total energy delivered for the Billing Period inclusive of Exchange in Quantity, if any, kWh |
| CC | = | Contracted Capacity, kW |
| N | = | Total number of hours in a Billing Period |
| k | = | Total number of affected hours in a Billing Period |
| $X_i$ | = | Adjustment in kWh due to Force Majeure, Customer's Service Interruption Adjustment, or other causes, such as safety, as may be provided by law, rule, regulation or order of a competent authority |
| EQ | = | Exchanged Quantity, defined as the total energy delivered to or received from the other 1BP EC, kWh |

**III. GUARANTEED MONTHLY PAYMENT:**

1. If the Applicable Load Factor is less than 70%, the following Minimum Charge formula shall apply:

$$\begin{aligned} &Guaranteed\ Monthly\ Payment \\ &\quad = (Applicable\ CRF\ at\ 70\%\ Load\ Factor + VOMF \\ &\quad + Generation\ Payment\ Rate \\ &\quad + AF)x\ Adjusted\ Associated\ Energy \end{aligned}$$

2. The Adjusted Associated Energy shall be determined as follows:

$$\begin{aligned} &Adjusted\ Associated\ Energy \\ &\quad = 70\% * CC * N - \sum_{i=1}^{k} X_i \pm \mathrm{EQ} \end{aligned}$$

### 4. ULGEI as an IPPA

The Unified Leyte Geothermal Power Plant (ULGPP) is owned by National Power Corporation/Private Sector Assets and Liabilities Management (NPC/PSALM) but were built and operated by Energy Development Corporation (EDC) by virtue of a Power Purchase Agreement (PPA).

Pursuant to the EPIRA, PSALM is mandated to take possession and title over the NPC Independent Power Producer (IPP) Contracts and to appoint qualified independent entities which shall act as the Independent Power Producer Administrators (IPPAs) following a public bidding in transparent and open manner.

These IPPAs refer to qualified independent entities appointed by PSALM to administer, conserve and manage the contracted energy output of the NPC IPP Contracts, including the sale of the contracted energy output of the said contracts and the offer of Ancillary Services (AS), if applicable.

Sometime in 2013, PSALM bid out the Strips of Energy output of ULGPP. It issued invitations to bid for the selection and appointment of IPPAs which shall manage and control the auctioned strips with each strip corresponding to the equivalent and associated energy of 1 MW of ULGPP.

Strip of Energy means the 1 MW of the ULGPP output. The sum of strips refers to the Strips of Energy totaling 240 MW, of which 200 MW was made available for bidding and 40 MW was retained by PSALM as security capacity.

### Unified Leyte Geothermal Power Plant (ULGPP)

To supply under the PSA, ULGEI shall manage and control the awarded "Strips of Energy" or the actual quantity of energy generated and associated with the 40 MW capacity of the ULGPP located in Tongonan, Ormoc City, Leyte.

The IPPA Agreement shall commence upon issuance of PSALM's Certificate of Effectivity until 25 July 2021.

The project shall be funded using one hundred percent (100%) equity.

## 5. Commission's Initial Evaluation of the PSA

Given the unique characteristic of the IPPA structure, the Commission believes that the methodology it typically uses is not applicable since the IPPAs are not required to pay for the plant acquisition cost upfront, but are required to pay the bid price through monthly payments out of cash flow. Thus, an IPPA contract may have a set of building blocks different from that of a regular bilateral contract where an IPP builds, acquires, and owns the power plant.

The Commission's major considerations for the grant of provisional authority are:

1) The continuous addition of supply shall help keep power supply stable for the increasing demand as well as low and stable cost of power available at the WESM and for the end-users;

2) The PSA underwent CSP;

   a. In ERC Resolution No. 13, Series of 2015, the ERC and the Department of Energy (DOE) are convinced that there is an advantage to be gained by having a CSP in place, in terms of ensuring transparency in the Distribution Utilities" (DUs) supply procurement and providing opportunities to elicit best price offers and other PSA terms and conditions from suppliers, and

   b. While there is no existing Commission policy that the Commission is bound by the winning bid price, it must be considered that this is an evaluation for provisional authority.

3) BOHECO II's simulation on rate impact analysis will ultimately result to a decrease of **PhP0. 3363/kWh** with the execution of the PSA with ULGEI; and

4) One of the recommendation on PSA Approvals in Castalia's Final Report is to streamline cost based assessment by evaluating contract prices against:

<u>*Existing Precedents*</u> *– that is within the range of prices previously approved for that type of plant, load factor and contract duration;*

<u>*WESM Prices*</u> *– within the range of average WESM spot prices for that type of load and load factor over a period of the previous 3 to 5 years;* and

<u>*Benchmarking Pricing*</u> *– within the range of prices from interim benchmark model – for purposes of provisional approval only.*

Based therefrom, the Commission undertook two (2) ways to evaluate the contract prices in the instant case, namely; (a) Existing Precedents, and (b) Benchmarking.

The Commission benchmarked the proposed rate with that of the approved two (2) cases[14] for a geothermal power plant. Hereunder is the comparison between the proposed rate with the rates of the aforenamed two approved cases:

| **Power Plants** | **Capacity (MW)** | **Total (PhP/kWh)** |
|---|---|---|
| GCGI[15] | 18 | 5.5251 |
| EPI | 40 | 5.8670 |
| **ULGEI** | **40** | **4.8348** |

From the above table, the proposed ULGEI rate of PhP 4.8348/kWh is one of the lowest among the approved rates for geothermal plants in the Philippines.

The Commission also considered existing precedence on how the generation rates were derived. In the case of AESI-VECO[16], VEC-VECO[17], and Trans-Asia[18], the base generation rate is adjusted by applying the indices. On the other hand, in the case of ULGEI and FDCUI, the base generation rate is adjusted by using the Load Factor.

[14] ERC Case No. 2010-137 RC or the Power Supply Contract between Iloilo I Electric Cooperative, Inc. (ILECO I) and Green Core Geothermal, Inc. (GCGI) and ERC Case No. 2014-083 RC or the Power Supply Agreement between Oriental Mindoro Electric Cooperative, Inc. (ORMECO) and Emerging Power, Inc. (EPI).

[15] Per PSA rate. The Commission approved a base rate for GCGI of PhP4.9943/kWh. However, it is not yet implemented as it is subject to a Motion for Reconsideration (MR).

[16] ERC Case No. 2014-156 RC.

[17] ERC Case No. 2014-161 RC.

[18] ERC Case No. 2015-063 RC.

Under the AESI-VECO case, the Total Energy Delivered was used as multiplier (billing determinant) for the base rate. In VEC-VECO case, the Contracted Capacity was used. In FDCUI and ULGEI, the generation rate was divided by an Actual Load Factor.

The table below illustrates the comparison between the proposed and provisionally approved rates of different IPPAs of ULGPP filed before the Commission:

| | AESI-VECO | VEC-VECO | TA-Oil | FDCUI | ULGEI |
|---|---|---|---|---|---|
| Strips of Capacity (MW) from ULGPP | 40 MW | 17 MW | 10 MW | 40 MW | 40 MW |
| Proposed Total Gen. Rate in PhP/kWh | 4.9602 | 4.9698 | 5.1190 | 5.4350 | 4.8348 |
| Provisionally Approved Rate | 4.8766 | 4.8548 | 4.8766 | 4.8766 | 4.8348 |

It bears stressing that the above comparison was based on the Average Rate and not on a rate per cost component. Inasmuch as the Commission would want to evaluate the itemized rate components, however, there are no reliable or sufficient data that can be used to compare the same. As can be deduced from previously approved generation rates, each Applicant submits different presentation of costs. Thus, some costs of the IPPAs are included in a single item while in others, the costs are included in other components.

Again, based from the above table, the Commission finds ULGEI's proposed Total Generation Rate of PhP 4.8348 /kWh reasonable, being the lowest among all the approved rates for IPPAs of ULGPP.

**6. RATE IMPACT**

Based on the simulation submitted,[19] there will be a decrease in generation cost of BOHECO II by PhP0. 3363/kWh with the execution of the PSA with ULGEI:

[19] Assumptions:

a. WESM hourly Prices are inflated from actual prices of 2014 at the rate of 3.43%
b. CEDC/SPC/SPUG/ULGEI inflatable prices are inflated at the rate of PH CPI of 3.43%
c. Weighted average Price are Present Worth in a 3 year levelizing period (2016 – 2018)

**Simulation of Generation Mix Rate with ULGEI for the Year 2016-2018**

| Power Supplier | Forecasted Demand (kW) | Amount (PhP) (with VAT) | Percent Share (%) | Resulting Capacity Factor (%) | 2016 Average Rate (P/kWh) | Weighted Average Rate (kWh) |
|---|---|---|---|---|---|---|
| GREENCORE | 10,000.00 | 53,591.05 | 52.13% | 100% | 5.3591 | 5.0647 |
| ULGEI | 7,000.00 | 31,326.44 | 36.49% | 100% | 4.4752 | |
| WESM | 3,228.30 | 17,568.13 | 16.83% | 100% | 5.4419 | |
| TOTAL | 20,228.30 | 102,485.62 | | | | |

**Simulation of Generation Mix Rate without ULGEI for the Year 2016-2018**

| Power Supplier | Forecasted Demand (kW) | Amount (PhP) (with VAT) | Percent Share (%) | Resulting Capacity Factor (%) | 2016 Average Rate (P/kWh) | Weighted Average Rate (kWh) |
|---|---|---|---|---|---|---|
| GREENCORE | 10,000.00 | 53,591.05 | 52.13% | 100% | 5.3591 | 5.4010 |
| ULGEI | | | | | | |
| WESM | 10,228.30 | 55,661.57 | 53.32% | 100% | 5.4419 | |
| TOTAL | 20,228.30 | 109,252.63 | | | | |

Generation Rate Impact -0.3363

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 PSA entered into by and between BOHECO II and ULGEI will redound to the benefit of BOHECO II's member-consumers in so far as it will ensure reliable, continuous, and efficient supply of power by BOHECO II to its consumers.

**WHEREFORE**, the foregoing premises considered, the **PROVISIONAL AUTHORITY GRANTED** to Applicants Bohol II Electric Cooperative, Inc. (BOHECO II) and Unified Leyte

d. Actual Prices of Existing Power Suppliers and Evaluated price of ULGEI on September 2015 are used as base in the simulation.
The complete Rate Impact Analysis is attached as Annex "P".

Geothermal Energy, Inc. (ULGEI) on 13 September 2016 to implement their Power Supply Agreement (PSA) is hereby **EXTENDED** until revoked or made permanent by the Commission, subject to the following conditions:

a. Applicable Rate:

| Components | | Rates[20] (PhP/kWh) |
|---|---|---|
| Fixed Charge: | | |
| Admin Fee | 0.1900 | |
| CRF @ 70% CUF | 2.3477 | |
| Generation Rate | 2.2442 | 4.7819 |
| Variable Charge : | | |
| VOM | 0.0529 | 0.0547 |
| **TOTAL** | | **4.8348** |

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 rates provisionally approved are found to be higher than the final rates, the amount corresponding to the excess shall be refunded by BOHECO II to its member-consumers by crediting the same in their electric bills over a period to be determined by the Commission;

d. BOHECO II is directed to submit its monthly generation rate calculation in accordance with the Commission's Automatic Generation Rate Adjustment (AGRA) Rules. Further, for verification and monitoring purposes, the indices and other detailed information used by ULGEI in the calculation of its monthly bill to BOHECO II be included in the submission;

e. On Overdue Account [Section 8.7 of the PSA] – the interest rate and penalty charged by ULGEI to BOHECO II in case of non-payment shall not be allowed to be passed-on to BOHECO II consumers;

[20] Rates shall be subject to adjustment based on the adjustment formula provided in the Schedule B of the PSA.

f. To facilitate final evaluation of the instant Application, Applicants are directed to submit, in hard and soft copies, the following:

1. Explanation and justification on the allocated weights subjected to various indices in Generation Rate calculations particularly the values 0.398, 0.240, 0.080, and 0.10, 0.60, 0.30, respectively;

2. Rationale of using CUF and the reason behind the unique rate structure of ULGEI (CRF, Generation rate, VOM, Admin Fee); and

3. IPPA Agreement with PSALM.

**SO ORDERED.**

Pasig City, 13 September 2017.

**JOSE VICENTE B. SALAZAR***
*Chairman and CEO*

**ALFREDO J. NON**
*Commissioner*

**GLORIA VICTORIA C. YAP TARUC**
*Commissioner*

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PSA TWG Team C: jbb/ece LS: ema/arg/apv.2016-152 RC BOHECO II and ULGEI.doc

* Supra note, 1.

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