

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



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

ERC CASE NO. 2016-060 RC

**BOHOL II ELECTRIC
COOPERATIVE INC.
(BOHECO II) AND
GNPOWER DINGININ LTD.
CO. (GNPD),**

Applicants.

X-----X

D O C K E T E D
Date: **FEB 22 2018**
By: _____

ORDER

For the Commission's consideration is the *Urgent Motion for the Grant of Interim Relief* (Urgent Motion) dated 11 August 2017 filed by Applicants Bohol II Electric Cooperative, Inc. (BOHECO II) and GNPower Dinginin Ltd. Co. (GNPD) on even date.

THE FACTS

Relative to its prayer for issuance of interim relief, applicants BOHECO II and GNPD alleged the following in their Urgent Motion:

1. On 28 April 2016, BOHECO II and GNPD filed their Application for the approval of the Power Purchase and Sale Agreement they entered into on 04 April 2016 (the "PPSA") with Motion for the Confidential Treatment of Information and the Issuance of Provisional Authority.

2. The Joint Applicants alleged in paragraphs 43 and 44 of the Application that part of the funds needed to construct GNPD'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 GNPD 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 21 April 2016 executed by Engr. Arnel O. Bilaoen (the "Affidavit for PA"), which was attached as Annex "JJ" to the Application.
3. On 06 October 2016, the Joint Applicants received a copy of the Order and Notice of Public Hearing dated 29 September 2016 setting the Application for jurisdictional hearing, expository presentation and evidentiary hearing on 03 November 2016 at BOHECO II's Main Office in Cantagay, Jagna, Bohol.
4. Before the scheduled date of the hearing, specifically on 27 October 2016, the Joint Applicants submitted a Certification dated 27 May 2016 issued by BDO Capital & Investment Corporation and RCBC Capital Corporation, the Onshore Mandate Lease Arrangers, for the construction and term financing of the GNPD project (the "Bank Certification"), through the Notice of Compliance with Motion to Expunge and Motion for Confidential Treatment of Information dated 27 October 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 "JJ" and "KK", respectively. After the hearing or on 16 December 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 [five] (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 Commission 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.
8. Section 3, Rule 14 of the Honorable Commission's 2006 Rules of Practice and Procedure provides that the Honorable Commission has the authority to act upon a Motion for Interim Relief, 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 party, if there be any.

For motions filed in applications or petitions covered by Section 1 of Rule 6, the Commission shall hold in abeyance its resolution of the motion until after the lapse of thirty (30) days from the receipt of a copy of the application or petition by the LGU Legislative Body concerned or publication of the application or petition in a newspaper of general circulation, whichever comes later. The Commission shall also resolve the motion within seventy-five (75) days from the filing of the application or petition. If the Commission issues a provisional authority, it shall schedule and start the hearing on the application or petition within thirty (30) days from the date of issuance of the provisional authority and resolve the same within twelve (12) months from the issuance of the provisional authority.

9. Moreover, the Honorable Commission affirmed its authority to grant interim relief in its Order dated 06 June 2017 issued in the case of Cotabato Electric Cooperative, Inc. –PPALMA and San Miguel Power Corporation (ERC Case No. 2016-103-RC), a portion of which reads:

Further, in the case of Freedom from Debt Coalition (FDC) vs. Energy Regulatory Commission¹, 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, Section 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:

¹ G.R. No. 161113, 15 June 2004.

Section 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 in 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;

xxx

(Emphasis supplied)

10. In light of the foregoing, the Applicants respectfully submit that the procedural and substantial requirements for the grant of an interim relief have been satisfied pursuant to Sections 2 and 3, Rule 14 of the Honorable Commission's 2006 Rules of Practice and Procedure.
11. To reiterate, the Applicants have alleged in the Application that the Honorable Commission's provisional approval of the PPSA, 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 imposed generation rate is reasonable considering that the rate impact analysis, which is marked as Exhibit "P", shows that BOHECO II will enjoy a lower effective rate of PhP5.3589/kWh or a reduction of PhP0.4102/kWh given GNPD's effective rate of PhP4.4670/kWh. Aside from the lower generation cost of power supply arising from the PPSA, BOHECO II is likewise entitled to Capacity Utilization Discount, if certain conditions are met, which makes the proposed PPSA rate more competitive.
13. In light of the foregoing, it is respectfully submitted that the generation rate under the PPSA would definitely redound to the benefit of the end-users of BOHECO II.
14. In view of the all the foregoing, and in recognition of the fact that a substantial amount of time is customarily needed to evaluate the document 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, albeit provisionally.

PRAYER

WHEREFORE, in view of all the foregoing, the Applicants respectfully pray the Honorable Commission to grant interim relief in the form of an authority to implement the PPSA.

Other reliefs just and equitable under the premises are likewise prayed for.

Thus, the Applicants pray that the Commission allow them to implement the PPSA pending the Decision for the instant Application.

In support of the said Urgent Motion, applicant GNPD attached thereto the Judicial Affidavit (To Support Prayer for Provisional Authority) dated 21 April 2016 of Engr. Arnel O. Bilaoen, the Head of the Energy Trading and Sales Team of GNPD.

THE ISSUE

The issue for the Commission's resolution is whether applicants BOHECO II and GNPD are entitled to the issuance of an interim relief.

THE COMMISSION'S RULING

The Commission GRANTS INTERIM RELIEF to Applicants, subject to certain conditions.

DISCUSSION

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

Sections 2 and 3, Rule 14 (Provisional Authority) of *ERC's Rules of Practice and Procedure* (RPP) empowers the Commission to issue an 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.

xxx

(Emphasis supplied.)

The authority of the Commission to grant provisional or interim relief was likewise upheld by the Supreme Court in the landmark case of *Freedom from Debt Coalition (FDC) vs. Energy Regulatory Commission (ERC)*,² to wit:

Similarly, Section 8 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 provision of the ERB charter reads:

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;

xxx

(Emphasis supplied.)

II. THE APPLICANTS HAVE COMPLIED WITH THE PRE-FILING REQUIREMENTS.

On 28 April 2016, Applicants BOHECO II and GNPD filed the instant *Application* dated 13 April 2016. Attached to the said *Application* are the following:

² G.R. No. 161113, 15 June 2004.

1. Verification and Certification of Non-Forum Shopping dated 22 April 2016, signed by Engr. Arnel O. Bilaoen, the duly authorized representative of GNPD;
2. Verification and Certification of Non- Forum Shopping dated 13 April 2016, signed by Mr. Eugenio R. Tan, the General Manager of BOHECO II;
3. Acknowledgement and Certifications attesting to the receipt of a copy of the Application and its annexes from the Sangguniang Bayan of Jagna, the Sangguniang Panlalawigan of Bohol, and the Sangguniang Panlungsod of Pasig;
4. Affidavit of Publication issued by Bohol Chronicle Radio Corporation attesting to the publication of the herein Application in its newspaper issue of 24 April 2016; and
5. Copy of The Bohol Chronicle newspaper issue where the Application was published.

The above-mentioned documents are necessary for the filing of rate applications, pursuant to Sections 2³ and 3⁴, Rule 6 of the RPP.

³ Section 2. Pre-filing Requirements for Rate Applications and other Applications/Petitions for Relief Affecting the Consumers.- Before the Commission shall accept and docket rate applications and other applications or petitions for relief affecting the consumers, the applicant or petitioner must comply with the following requirements:

- (a) The applicant or petitioner must furnish the Local Government Unit (LGU) Legislative Body (and not the office of the Mayor) of the city or municipality where it principally operates, a copy of the application or its petition, and not a mere notice of application/petition, with all its annexes and accompanying documents. If such principal place of operation is a component city or a municipality, the applicant or petitioner shall likewise furnish the LGU Legislative Body of the province of which such component city or municipality is part.
- (b) The applicant or petitioner must cause the publication of the entire application or petition, excluding its annexes, and not a mere notice of filing or notice of application or petition, in a newspaper of general circulation within its franchise area or area where it principally operates.

⁴ Proof of Compliance with the Pre-filing Requirements.- To demonstrate compliance with the foregoing requirements, the applicant or petitioner shall attach to its application or petition a certification issued by the Presiding Officer, Secretary of the LGU Legislative Body concerned, or their duly authorized representatives, attesting to the fact that such LGU Legislative Body was served a copy of the application or petition, with all its annexes and accompanying documents, and the date of such service. In the absence of such certification, the applicant or petitioner shall prove compliance by attaching the affidavit of the person that served the application or petition on the LGU Legislative Body, attesting to such fact and the date of such service. The affiant shall also attach to the affidavit a copy of the page of the application or petition bearing the stamp "received" or acknowledgement of receipt by the LGU Legislative Body.

The applicant or petitioner shall also attach to the application or petition an affidavit of publication executed by the editor-in-chief or other responsible officer of the newspaper of general circulation wherein the application or petition was published, together with a copy of the newspaper issue containing the published application or petition. The affidavit of publication shall also contain information on the area or areas where the newspaper is being circulated.

Considering that the instant case remains pending before the Commission and that the Applicants were able to comply with the pre-filing requirements, it becomes apparent that the Commission has jurisdiction to issue **interim relief** prayed for in the instant case.

**III. THERE IS A PRESSING
NEED TO GRANT THE
URGENT MOTION.**

The instant case involves a power plant that GNPower Ltd. Co. (GNPower) will build, own and operate in a 61-hectare property adjacent to its 2 x 300 MW power plant in Barangay Alasasin, Mariveles, Bataan. The proposed power plant (Project) is a 2 x 660 MW (net) coal fired power plant with associated facilities that will supply the baseload requirements of its customers of environmentally clean electric power. Although the Project is adjacent to an existing power plant, there will be no shared facilities between the two.

GNPD's power plant is already considered as a committed project. As proof thereof, GNPD submitted a copy of the Certification of Endorsement (COE) from the Department of Energy (DOE) dated 25 November 2013.

On 10 April 2015, the Department of Environment and Natural Resources (DENR) issued Environmental Compliance Certificate (ECC) No. ECC-CO-1406-0012 for the proposed facilities of GNPower. It was issued to GNPower Mariveles Coal Plant Ltd. Co. (GMCP). In a letter dated 18 May 2016, GNPower informed Director Juan Miguel T. Cuna of DENR's Environmental Management Bureau (EMB) that on 10 May 2016, GMCP executed a Deed of Assignment in favor of GNPD, whereby all rights and obligations of GMCP under the ECC have been assigned to GNPD.

GNPD alleged in its *Urgent Motion* that the construction of the Project would be partly financed through loans. In the process of concluding the financial arrangements with various lenders for the Project, GNPD must secure from the Commission an approval of their application.

Moreover, the Applicants alleged in their *Application* that based on DOE's 2015-2030 Luzon and Visayas Grid Supply-Demand Outlook, Luzon's peak demand in 2015 is 8,974MW with an Annual Average Growth Rate (AAGR) of 4.85%, while Visayas' Peak Demand

is 1,847MW with an AAGR of 3.4%. Therefore, Luzon's peak demand is expected to increase to 11,347MW in 2020 and to 18,264MW 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 sector⁵.

Contributing to the Luzon Grid's demand growth is BOHECO II's base load demand which increases at a rate of 7% per year⁶.

At present, BOHECO II receives a total of 10MW from its existing suppliers out of its peak requirement of 19.43MW. With an annual growth rate of 7%, BOHECO II's peak requirement is expected to increase to 26.49MW by 2023, as shown in the table below:

Table 1. BOHECO II's Supply- Demand Scenario.

	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	26.49
Supplier's (MW)										
Greencore	5	7	10	10	10	10	10	10	10	10
PSALM	15.80	15.8								
NPC (SPUG)		0.03	0.07	0.08	0.09	0.09	0.1	0.09		
ULGEI			6	7	8					
GNPOWER						12	12	12	12	12
TOTAL SUPPLY (MW)	20.796	22.829	16.07447579	17.08118	18.08767	22.09381	22.09944	22.09173	22	22
Deficit/Surplus	1.33	3.96	-3.84	-3.15	-3.18	-0.22	-1.26	-2.31	-3.45	-4.49

With the implementation of the PPSA between BOHECO II and GNPDP, the power requirements of BOHECO II will be met, which will ultimately redound to the benefit of its consumers.

Therefore, the Commission finds that the allegations made and the documents submitted by the Applicants in the instant case are sufficient bases for the issuance of the interim relief.

IV. THE PPSA SOUGHT TO BE IMPLEMENTED IN THE INTERIM IS REASONABLE.

It must be remembered that the instant Application was filed on 28 April 2016, or before the effectivity of ERC Resolution No. 13,

⁵ Par. 39, Application.

⁶ Par. 41, Application.

Series of 2015, as amended by ERC Resolution No. 1, Series of 2016 requiring the conduct of a Competitive Selection Process (CSP), including the observance of the minimum terms of requirements prescribed therein, prior to entering into Power Supply Agreements (PSA) requiring the Commission's approval.

BOHECO II and Bohol I Electric Cooperative, Inc. (BOHECO I) (collectively, 1BP ECs) conducted a joint CSP. Pursuant to the 1BP ECs Rules and Procedures for Unsolicited Proposal, GNPowr submitted an unsolicited proposal to the 1BP ECs for the supply of their aggregated short-term baseload demand for the period 26 December 2015 to 25 December 2018, and medium-term baseload demand for the period 26 December 2018 to 25 December 2023⁷.

Upon initial evaluation, the 1BP Joint Technical Working Group (JTWG) found GNPowr's unsolicited proposal to be consistent with the criteria set forth in their policy and guidelines⁸.

Subsequently, GNPowr submitted a Firm and Final Proposal, which contains the Legal, Technical and Financial Documents; the Technical Proposal; and the Financial Proposal, as required by the Joint Competitive Power Supply Procurement (JCPSP) Bids and Awards Committee (JBAC). GNPowr manifested to the JBAC that a special purpose company was established for the Project, which is GNPDP⁹.

After further evaluation, the 1BP JCPSP Board granted GNPowr the Original Proponent status in the CSP to be conducted¹⁰. Generation Companies (GenCo) were invited to submit comparative proposals to challenge GNPowr's offer through its publication in newspapers of general and national circulation for two (2) consecutive weeks and through written invitations¹¹.

Several GenCos submitted letters of intent and were given a copy of the Instruction to Proponents and due diligence data¹².

Upon evaluation of the bids, the long-term levelized price of GNPowr for the medium-term and of Unified Leyte Geothermal Energy, Inc. (ULGEI) for the short-term were determined to be the most competitive¹³. Thus, on 22 January 2016, the JBAC issued a

⁷ Par. 10, Application.

⁸ Par. 12, Application.

⁹ Par. 13, Application.

¹⁰ Par. 14, Application.

¹¹ Par. 15, Application.

¹² Par. 16, Application.

¹³ Par. 17, Application.

Notice of Award to GNPower, which the latter accepted on 27 January 2016¹⁴.

Accordingly, on 04 April 2016, the PPSA subject of this Application, which contains both rate and non-rate provisions, was executed by and between Applicants BOHECO II and GNPD¹⁵.

A. Non-Rate Provisions

Section 2.3 of the PPSA provides that the obligations of GNPD to deliver and supply the contracted capacity to BOHECO II will begin at 12:01 A.M. of 26 December 2018, and will terminate at 12:00 A.M. of 25 December 2023¹⁶, or a term of five (5) years.

During the life of the PPSA, BOHECO II, as a general rule, is contractually entitled to receive from GNPD, at any hour, the Contracted Capacity equivalent to 12MW¹⁷.

BOHECO II shall purchase the product made available by GNPD at the Delivery Point for its baseload requirement and shall be obligated to utilize and pay for the Product from seventy percent (70%) to one hundred percent (100%) Capacity Utilization Factor (CUF) in accordance with the provisions of Schedule 1. GNPD shall be permitted to increase the Minimum CUF of BOHECO II per contract year up to eighty three percent (83%) or decrease the same to not lower than seventy percent (70%) to achieve a better dispatch of the Facility and the optimal value of BOHECO II's contracted capacity, based on the simulation produced or approved by GNPD. Such increase or decrease in the Minimum CUF shall be binding to BOHECO II for such contract year¹⁸.

Section 3.2 of the PPSA allows GNPD to have Scheduled Outage and Unscheduled Outage not to exceed five hundred forty (540) equivalent hours each for every contract year during which times reduced or no deliveries will be available to BOHECO II.¹⁹

If during any contract year the scheduled outage and/or unscheduled outage each exceed 540 equivalent hours, subject to the risk mitigation mechanism provided in this Section 3.2 and to be

¹⁴ Par. 18, Application.

¹⁵ Par. 20, Application.

¹⁶ Section 2.4, PPSA.

¹⁷ Schedule 1, PPSA.

¹⁸ Section 3.1, PPSA.

¹⁹ Section 3.2, PPSA.

established by the Parties, unless excused by Force Majeure, GNPD shall either (i) make the Deficiency Payment or (ii) make up such Deficiency in accordance with such risk mitigation mechanism²⁰.

Further, GNPD shall establish a plant outage risk mitigation fund, from its own account, which shall mitigate BOHECO II's exposure to the volatility of the price in the market during allowed Scheduled and Unscheduled Outages and address any impact of alternative supply through a mechanism to be established by the Parties²¹.

The Parties shall jointly schedule or arrange for scheduling services with the Transmission Utility pursuant to a relevant Transmission Agreement, as specified by the Parties, or in the absence thereof, in accordance with the practice of the Transmission Utility to deliver the product at the Delivery Point. BOHECO II shall bear the cost of such transmission service at the Delivery Point including the cost of any electric losses incurred in such transmission²².

Section 3.7 of the PPSA allows the Parties to increase their contracted capacity upon written notice of BOHECO II to GNPD and the approval of the latter, which increase shall be subject to the same terms and conditions set forth in the PPSA. In considering whether or not to approve a request for increase in contracted capacity, GNPD may take into consideration the capacity available for such increase from its facility in its sole opinion, and/or the willingness of any other buyer to assign its contracted capacity. Such increase shall be effective on the date GNPD gives its written approval.

The Parties agreed that, upon declaration of commercial availability in the Wholesale Electricity Spot Market (WESM) of the first unit of the facility but prior to its full commercial operations as declared by GNPD, GNPD, subject to its reasonable efforts only, the availability of the facility, and the applicable rules and regulations of any governmental authority or official exchange, will sell and deliver and BOHECO II will purchase the product (including the Available Capacity thereof) generally on the same terms and conditions as are otherwise set out herein²³.

In the event that BOHECO II does not avail of GNPD's provision of interim supply, BOHECO II shall be solely responsible

²⁰ Id.

²¹ Id.

²² Section 3.3, PPSA.

²³ Section 3.8, PPSA.

for procuring its own supply of product during the said period, without any cost or expense to GNPD²⁴.

The Contract Price is denominated and payable in Dollars. However, BOHECO II may pay in Pesos, which, when converted into Dollars at the rate of exchange on the date such payment is actually received by GNPD does not exactly equal the Dollar amount due, then (i) BOHECO II shall be liable to pay GNPD the amount of any resulting underpayment, which amount may be included in subsequent invoices to BOHECO II, at GNPD's option and (ii) GNPD shall be liable to pay BOHECO II the amount of any resulting overpayment, which amount shall be included as a credit in subsequent invoices to BOHECO II. The rate of exchange means the rate at which GNPD is able, on the relevant date, to purchase Dollars with Peso (including through any forward contracts GNPD enters into as required by law, regulation or the terms of its financing), which shall take into account any premium and other costs of exchange²⁵.

If BOHECO II pays the invoice amount in full in accordance with GNPD's invoice instructions on or before the twenty-fifth (25th) day of the succeeding calendar month from the relevant Billing Period and BOHECO II's CUF is greater than or equal to 70%, it shall receive a credit on the next subsequent bill equal to two and 80/100 percent (2.8%) of the Energy Fee multiplied by the actual quantity of the product actually delivered set forth in such invoice for the Billing Period for which the credit was earned. GNPD may likewise offer such a discount on certain types of partial payments in the Settlement Protocol²⁶.

Section 7.4 of the PPSA also provides that all line rental charges, market fees and other similar fees imposed by the WESM on or with respect to the product, including Must-Run Unit (MRU) charges, Market Operator fees, Pricing and Cost Recovery Mechanism are subject to change and shall be for the account of BOHECO II. WESM Charges are not yet included in the Contract Price and any subsequent imposition thereof will be charged separately with the Contract Price invoiced to BOHECO II.

B. Rate Provisions

Pursuant to Schedule 1 of the PPSA, the Contract Price shall be composed of the Capacity and the Energy Price. The Capacity Price

²⁴ Id.

²⁵ Section 5.4, PPSA.

²⁶ Section 5.3 (c), PPSA.

shall be computed as the product of the Capacity Fee for a Billing Period multiplied by the quantity of Product delivered at the Delivery Point. On the other hand, the Energy Price is the product of the Energy Fee for a Billing Period multiplied by the quantity of Product delivered at the Delivery Point. The contract price is already inclusive of the existing Government Charges under Energy Regulations No. 1-94 as of Effective Date.

The Contract Price is computed based on the following formula:

$$\text{Contract Price} = \text{Capacity Fee} + \text{Energy Fee} - \text{Discounts and Adjustments}$$

Capacity Fee

The Capacity Fee is the component of the contract price allocated to pay for the cost of the Facility, as well as for its operations and maintenance, and may be adjusted from time to time based on BOHECO II's CUF. The determination of Capacity Fee relative to BOHECO II's CUF is shown below:

Table 2. CUF vis-à-vis Capacity Fee.

Capacity Utilization Factor (%)	Capacity Fee (\$/kWh)
100%	0.0466
99%	0.0470
98%	0.0475
97%	0.0480
96%	0.0485
95%	0.0489
94%	0.0494
93%	0.0499
92%	0.0505
91%	0.0510
90%	0.0515
89%	0.0521
88%	0.0527
87%	0.0532
86%	0.0538
85%	0.0544
84%	0.0551
83%	0.0557
82%	0.0563

81%	0.0570
80%	0.0577
79%	0.0584
78%	0.0591
77%	0.0599
76%	0.0606
75%	0.0614
74%	0.0622
73%	0.0630
72%	0.0639
71%	0.0647
70%	0.0656

CUF refers to the level of utilization of BOHECO II's Contracted Capacity for a particular Billing Period. It shall be computed as follows:

$$\text{CUF} = 70\% \frac{Q}{\text{CC} * (\text{H}_T - \text{EH}_o)}$$

Where:

Q = The quantity of the Product in kWh which was delivered by GNPD and purchased by BOHECO II at the Delivery Point based on BOHECO II's Nomination and GNPD's deliveries

CC = Contracted Capacity, in kW

H_T = Total number of hours in such billing period

EH_{TO} = The sum of the duration, in equivalent hours of Scheduled and Unscheduled Outages in such billing period

For any resulting CUF that is not a whole number, the Capacity Fee shall be computed using the formula as set forth below:

$$\text{Capacity Fee} = - 0.08667 \times (\text{CUF})^3 + 0.29510 \times (\text{CUF})^2 - 0.37526 \times (\text{CUF}) + 0.21342$$

Where:

Capacity Fee = is the Capacity Fee in \$/kWh

CUF = is the Capacity Utilization Factor between 70% and 100%, provided that if the actual CUF is below 70% (the "Minimum Capacity Utilization Factor"), the Capacity Price shall be calculated based on the Capacity Fee and quantity associated with the Minimum Capacity Utilization Factor.

Energy Fee

The Energy Fee is the component of the contract price allocated to pay for the fuel, including Governmental Charges (All Value Added Tax, Sales Taxes, Goods and Services Taxes, Excise Tax, Import Duties, Stamp Taxes and Similar Taxes imposed by any Governmental Authority) computed as follows:

$$\text{Energy Fee} = \text{IEF} \quad \times \quad \frac{\text{CIF}_n}{\text{CIF}_0}$$

Where:

IEF = Initial Energy Fee of \$0.0278/kWh

CIF_n = Cost, Insurance and Freight (CIF) Cost of Fuel for Billing Period n

CIF₀ = Base CIF Cost of Fuel \$8.6955/million kcal²⁷

BOHECO II and GNPD alleged in their *Application* that GNPD's rates herein applied, as compared to alternative suppliers, proved to be more reasonable and competitive.

To determine the reasonableness of the rates applied, the Commission compared the rates proposed by GNPD with previously approved rates involving other coal plants.

²⁷ Based on 25 March 2014 coal price and is fixed for the term of the Agreement at \$11.5573/million kcal as provided for in Section 1.2.2 of Schedule 1 and Section 2.3 of Schedule 2 of the PPSA.

Table 3. Comparison of Rates of Coal Plants.

PhP/kWh	CEDC	PEDC	SEC	TSI	PCPC	GNPower (Dingin Plant)
CRF and O&M	3.3	4.231	3.59	3.991	3.314	3.337
Interconnection			0.15			
Fuel Rate	Pass-through cost					
Total	3.3	4.231	3.74	3.991	3.314	3.337

It can be seen from Table 3 that the rate of PhP3.337/kWh proposed by GNPD is within the level of approved rates for coal plants in the Philippines. Further, it should be remembered that the proposed Capacity Fee already includes the O&M Fee and is fixed for the entire five-year term of the PPSA. Thus, it is more beneficial to the consumers of BOHECO II.

In addition, the simulated rate impact of GNPD's PPSA to BOHECO II's overall blended generation rate would result in a decrease of PhP0.4102/kWh, as shown in the following tables:

Table 4. Rate Impact Simulation.

Simulation of Generation Mix Rate with GNPD for the Year 2019

Power Supplier	Forecasted 2019 Quantity (kWh)	Amount (PhP)	Percent Share (%)	Resulting Capacity Utilization Factor (%)	2019 Average Rate (PhP/kWh)	Weighted Average Rate (PhP/kWh)
Greencore	72,708,000.00	413,259,147.52	61.99%	83%	5.6838	5.3589
GNPD	36,792,000.00	164,350,161.57	31.37%	35%	4.4670	
WESM	7,798,208.79	50,977,558.44	6.65%	100%	6.5371	
Total	117,298,208.79	628,586,867.53	100.0%			

Simulation of Generation Mix Rate without GNPD for the Year 2019

Power Supplier	Forecasted 2019 Quantity (kWh)	Amount (PhP)	Percent Share (%)	Resulting Capacity Utilization Factor (%)	2019 Average Rate (PhP/kWh)	Weighted Average Rate (PhP/kWh)
Greencore	72,708,000.00	413,259,147.52	61.99%	83%	5.6838	5.7691
GNPD	-	-	0.00%	0%	-	
WESM	44,590,208.79	263,447,370.76	38.01%	100%	5.9082	
Total	117,298,208.79	676,706,518.28	100.0%			

Generation Rate Impact, PhP/kWh	-0.4102
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The grant herein of an interim relief in favor of Applicants will ultimately redound to the benefit of the consumers of BOHECO II.

Thus, the Commission deems it appropriate to act favorably upon the *Urgent Motion* in order to protect consumer interests affected by the rates and services of electric utilities and other providers of electric power.

WHEREFORE, IN VIEW OF THE FOREGOING, Applicants Bohol II Electric Cooperative, Inc. (BOHECO II) and GNPowder Dinginin Ltd. Co. (GNPD) are hereby **GRANTED INTERIM RELIEF** to implement their Power Purchase and Sale Agreement (PPSA), subject to the following conditions:

- a. The final generation cost that can be recovered shall be determined by the Commission in its Decision in the instant application; and
- b. In the event that the final rate is higher than the interim rate granted, the resulting additional charges shall be collected by GNPD from BOHECO 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 GNPD to BOHECO II.

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Likewise, to facilitate the final evaluation of the instant case, GNPD must SUBMIT, within fifteen (15) days from receipt of this Order, a written explanation on the following:

1. The difference between Annexes "S", "T", "U", and "U-1" (Attached to the Application) and Annexes "QQ" and "QQ-1" (Subsequent Attachments intended to replace Annexes "S", "T", "U" and "U-1" based on the *Notice of Compliance with Motion to Expunge and Motion for Confidential Treatment of Information* filed on 27 October 2016 by Applicants); and
2. The reasons why Annexes "QQ" and "QQ-1" should be used by the Commission in its final evaluation instead of Annexes "S", "T", "U" and "U-1".

SO ORDERED.

Pasig City, 19 September 2017.

JOSE VICENTE B. SALAZAR*
Chairman and CEO



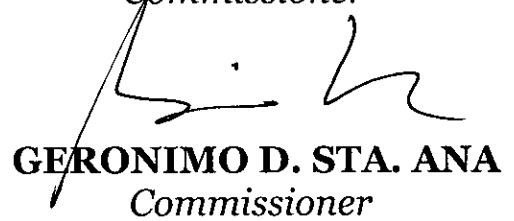
ALFREDO J. NON
Commissioner




GLORIA VICTORIA C. YAP-TARUC
Commissioner

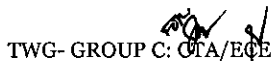


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner



GERONIMO D. STA. ANA
Commissioner

LS: JCS/ARS/APV


TWG- GROUP C: OJA/ECE


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

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