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

IN THE MATTER OF THE ADOPTION OF THE FEED-IN TARIFF (FIT) PURSUANT TO THE FEED-IN TARIFF RULES SPECIFIC TO EXISTING RENEWABLE ENERGY PLANTS, WITH PRAYER FOR PROVISIONAL AUTHORITY,

ERC CASE NO. 2011-060 RC

NORTHWIND POWER DEVELOPMENT CORPORATION (NORTHWIND),

Applicant.

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ORDER

For the Commission for resolution is the *Motion for Partial Reconsideration and Clarification* of the Commission's Decision dated 30 June 2014 (Decision) filed by Applicant Northwind Power Development Corporation (NORTHWIND) on 05 December 2014.

The assailed Decision contained the following dispositive portion:

> WHEREFORE, the foregoing premises considered, the application filed by Northwind Power Development Corporation (NORTHWIND) for the adoption of the Feed-in Tarriff (FIT) Pursuant to the Feed-In Tariff (FIT) Rules specific to the existing renewable energy plants, with prayer for provisional authority, is hereby APPROVED with modification.
>
> The approved FIT for NORTHWIND is equivalent to Php5.76/kWh, without prejudice to the Commission's resolution on NORTHWIND's application for the amendment of its Certificate of Compliance (COC), for purposes of its eligibility for Feed-In-Tariff (FIT).
>
> SO ORDERED.

THE MOTION FOR PARTIAL RECONSIDERATION AND CLARIFICATION

In its *Motion for Partial Reconsideration and Clarification*, NORTHWIND sought to clarify the following statement in the Decision:

> Using the foregoing inputs to NORTH WIND's proposed discounted cash flow model, the Commission calculated a FIT for NORTHWIND, equivalent to PhP5.76/kWh **as of 2009.**[1]
>
> [Emphasis Supplied.]

NORTHWIND pointed out that the above statement appears to be inconsistent with how the Commission derived the approved FIT rate using a levelized rate starting from NORTHWIND's commercial operation in 2005.

In support of its contention, Applicant enumerated the following arguments:

> 14. The Honorable Commission, in its Decision, after discussing its approved parameters for determining a specific FIT for NORTHWIND, stated:
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> *"Using the foregoing* inputs *to NORTHWIND's proposed discounted cash flow model, the Commission calculated a FIT for NORTHWIND, equivalent to PhP5.76/kWh* as *of 2009.*
>
> Xxxxxxx, *the Commission's approved* FIT *is lower by PhP2.77/kWh than the FIT for* wind *approved by the* Commission. *Said approved* FIT *for wind* is *PhP5.54/kWh lower as compared* to *NORTHWIND's proposed FIT. The difference in the calculation* is *due to the treatment of the rates under the ESA and the WESM regime. NORTHWIND's proposed FIT was derived after considering the actual rates during the ESA/WESM regime. Such method shall cover* or *subsidize the revenues that were supposedly collected during such period. As compared to NORTHWIND's derivation,* <u>*the Commission used a levelized rate starting from NORTHWIND's* ***commercial operation in 2005****, that* is *as if NORTHWIND received such* rate *from the*</u>

[1] Page 39 of Decision dated June 30, 2014, ERC Case No. 2011-060 RC.

start of its commercial operation." (emphasis ours)

15. The foregoing is contradicting as to the base year to which the approved FIT for NORTHWIND relates, *i.e.* 2009 or 2005. Accordingly, NORTHWIND respectfully seeks clarification if the approved PhP5.76/kWh is as of 2005, not 2009, considering that NORTHWIND had no operational milestone in 2009, but, as acknowledged by the Commission, has commenced commercial operations in June 2005.

16. Further, the Commission recognized that the twenty (20)-year FIT period refers to 2006 to 2025, or beginning the full year following the 2005 commercial operations of NORTHWIND. On the other hand, no discussion on the relevance of 2009 can be found in the *Decision*. Thus, the Commission may have inadvertently stated that NORTHWIND's FIT of PhP5.76/kWh is as of 2009 instead of 2005.

17. Accordingly, NORTHWIND hereby maintains that the portion of the *Decision* referred to above shall be clarified to read as follows:

"Using the *foregoing* inputs to *NORTHWIND's proposed discounted cash flow model, the* Commission *calculated a FIT for NORTHWIND, equivalent to PhP5.76/kWh* ***as of 2005***."

Another matter raised by NORTHWIND in its *Motion for Partial Reconsideration and Clarification* is the Commission's decision to exclude "Spare Parts, Tools, and Equipment," comprising capital expenditure, as a legitimate cost in determining the approved FIT rate for NORTHWIND.

In support of this argument, NORTHWIND forwarded the following arguments:

4. In evaluating NORTHWIND's All-in Project Cost as one of the parameters for calculating a specific FIT, the Commission resolved that NORTHWIND's proposed forecasted capital expenditure is treated as part of O&M, to wit:

"The Commission *believes that the All-in Project Cost* amounting to *US$1.753 Million per MW* is *reasonable for a wind technology project. Moreover, the proposed forecasted*

capital expenditure is, likewise, **excluded** in *the cost as the same* is ***deemed covered under the O&M Fee*[2].**" *(emphasis* ours)

5. While NORTHWIND interposes no objection to the Commission's exclusion of capital expenditure from the All-in Project Cost because it is said to be deemed covered under O&M Fee, the latter appears not to be the case;

6. In the approved Operating Assumptions for NORTHWIND, the Commission stated that the grant of O&M and General and Administrative (G&A) costs, includes "consultancy fees, insurance, repairs and maintenance, salaries and wages, taxes and licenses, utilities, consumables and other relevant operating costs for the project[3]." Clearly, spare parts, tools and equipment, which comprise capital expenditures, were not included therein;

   6.1 For the operating cost assumptions of NORTHWIND, the Commission adopted the actual cost of both O&M and G&A costs of NORTHWIND from 2006 to 2012 based on its Audited Financial Statements (AFS). On the succeeding years of operating assumptions (2013-2025), the Commission benchmarked NORTHWIND's cost of operations with that of the approved operating cost for the FIT for wind[4] technology amounting to US$2,100,000/year[5], as set out in the *Decision* of 27 July2012 in ERC Case NO.2011-006RM;

7. The Honorable Commission stated in the instant *Decision* that in evaluating the FIT for NORTHWIND, it used the *same* concept and parameters used in the calculation of the FIT rate[6] However, unlike the FIT for wind technology, NORTHWIND was not allowed recovery of spare parts, tools and equipment comprising capital expenditures, to wit:

   7.1. In ERC Case No. 2011-006 RM, under the *Summary of Parameters &*

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[2] Ibid, page 33.
[3] Ibid, page 35-36.
[4] Ibid.
[5] The amount is for US$2.1 million/year, which is the sum of O&M cost of USD100,000/WTG (computed considering that the representative project had 15 turbines or equivalent to an annual cost US$1.5 million) and the G&A cost of US$600,000 approved in ERC Case No. 2011-006 RM.
[6] Ibid, page 31.

Assumptions Used for Wind[7], the Commission granted the following:

	NREB's PROPOSAL	AS APPROVED BY THE COMMISSION
OPERATING ASSUMPTIONS		
18. O&M	US$100,000/WTG/yr.	US$100,000/WTG/yr.
19. Spare Parts, tools and equipment	**US$25,000/MW/yr.**	**US$25,000MW/yr.**
20. G&A Cost	US$600,000/yr.	US$600,000/yr.
21. VAT Recovery Level	70% of VAT	70% of VAT
22. VAT Recovery Period	5 years after COD	5 years after COD

7.2. On the other hand, in the instant case, under *Summary of Parameters*[8], it is clear that NORTHWIND was only granted O&M and G&A costs and there **is no equivalent item for "Spare Parts, Tools and Equipment**", as follows:

	NORTHWIND's PROPOSAL	COMMISSION-APPROVED	APPROVED FIT FOR WIND TECHNOLOGY
OPERATING ASSUMPTIONS			
7. O&M and G&A Cost	**US$2,867,000/yr.**	**US$2,100,000/yr.**	**US$2,100,000/yr.**
8. VAT Recovery Level	70% of VAT	70% of VAT	70% of VAT
9. VAT Recovery Period	5 years after COD	5 years after COD	5 years after COD

10. With all due respect, the Commission's exclusion of "Spare Parts, Tools and Equipment" from the Operating Assumptions of NORTHWIND effectively prevents NORTHWIND from recovering a valid expenditure, which is allowed for other wind power generating plants entitled to FIT. This exclusion inequitably singles out NORTHWIND among other wind energy developers who are entitled to a FIT rate wherein spare parts, tool and equipment expenditures are rightly allowed to be recovered;

11. Moreover, with the exclusion of the operating parameter of "Spare Parts, Tools and Equipment" from the computation of the approved FIT for NORTHWIND, and it is not allowed to recover costs for said capital expenditures, the viable operation of the NORTHWIND Phase I and II wind farm" will be compromised and the Commission-approved Equity IRR of 16.44%[9] for NORTHWIND will not be achievable;

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[7] Page 75
[8] Supra note 2, page 38.
[9] Ibid, pages 37 and 39.

12. In its submissions, NORTHWIND proposed an operating assumption of **US$22,000/MW/year** to cover capital expenditures of spare parts, tools and equipment, similar to the approved Operating Assumptions of the FIT for wind technology. This is lower than the approved benchmark of US$25,000/MW/year for wind technology; and

13. In view thereof, it is respectfully prayed to the Commission to reconsider and include among the operating parameters approved for NORTHWIND the amount of USS22,000/MW/year to account for spare parts, tools, equipment and other capital expenditure, the same being a valid operating assumption and cost parameter in wind farm operations. The inclusion of the same is even more imperative considering that spare parts, tools and equipment, at an even higher amount of US$25,000/MW/year, were allowed in the computation of the FIT for wind technology in ERC Case No. 2011-006 RM.

THE COMMISSION'S RULING

On 05 July 2016, the Commission resolved the *Motion for Reconsideration and Clarification* (Motion), subject to the validation of the subsidy granted by the Danish International Development Agency (DANIDA) to Northwind. Thereafter, on 07 November 2017, the Commission finally resolves the instant Motion partially granting the same.

It is evident from the Decision that the Commission recognized a twenty (20) year recovery period starting 2006 to 2025, as NORTHWIND's full year commercial operation has commenced only by year 2006 and not on 2005. Thus, it is hereby clarified that the levelized rate was determined by using the base year of 2006. As to the consideration of the base year of 2009, for the adjustment of the herein approved rate, it should be clarified that, after determining the levelized rate starting from year 2006, the Commission adjusted the rate by using the adjustment formula as provided in the FIT Rule and considered the actual Philippine Consumer Price Index (CPI) and Foreign Exchange adjustment.

Thus, the rate is already adjusted until year 2009 in order to conform to the base rate applicable under the FIT Rules adjustment formula, as provided below:

$$Adjustment = \left\{ z \ x \ \frac{RPCPIn}{RPCPIo} \right\} + \left\{ y \ x \ \frac{FEAn}{FEAo} \right\}$$

Where:

z	=	perecentage share of local capital
y	=	percentage share of foreign capital
RPCPIn	=	the arithmetic average of the monthly values of the Republic of the Philippines Consumer Price Index for the 12 calendar months immediately preceding the six (6) calendar months immediately preceding the Adjustment Date as published by the National Statistic Coordination Board of the Philippines in http://www.nscb.gov.ph
RPCPIo	=	the arithmetic average of the monthly values of the Republic of the Philippines Consumer Price Index, base period calendar year 2009, which is 160.
FEAn	=	the arithmetic average of the month-end reference rates between the Philippine Peso and the US Dollar for 12 calendar months immediately preceding the six (6) calendar months immediately preceding the Adjustment Date as published by the Treasury Department of the Bangko Sentral ng Pilipinas
FEAo	=	the arithmetic average of the month-end reference rates between the Philippine Peso and the US Dollar for the calendar year 2009 which is PhP47.8125
Adjustment Date	=	January 1 of year n.

In view of the above, the Commission clarifies that the 2009 base rate shall be used.

In evaluating the operating expenses for NORTHWIND, the Commission used the actual cost of Applicant's operation by referring to its Audited Financial Statements (AFS) for the years 2006-2012.

On the other hand, for the succeeding years (2013-2025), the Commission benchmarked the O&M and G&A expense proposed by

NORTHWIND as against the Commission's approved operating expenses under ERC Case No, 2011-006 RM[10].

Since the Commission has already adopted NORTHWIND's cost of operation through the submitted AFS, the cost for Spare Parts, Tools, and Equipment was already deemed covered under this O&M fee.

However, it should be emphasized that the actual cost of operation adopted by the Commission in its calculation covers only the period of 2006-2012, hence, the Commission recalculated the levelized tariff by considering the cost allocated for spare parts, tools and equipment, by utilizing the 2011-2012 actual cost and NORTHWIND's proposed cost for the year 2013-2025, presented as follows:

PARTICULARS	AMOUNT/UNIT
Average cost of spare parts, tools and equipment for years 2011-2025	PhP31,869,811.69
Exchange Rate, PhP:USD	PhP44.00: 1USD
Average cost in USD	USD724,313.90
Installed capacity	33 MW
Spare parts, tools and equipment for years 2011-2025	USD21,948.91/MW

Corollarily, the above approved average cost of spare parts, tools and equipment is still lower than the Commission's approved amount for such cost allowed for wind technology under ERC Case No. 2011-006 RM[11], as seen on the following table:

COMPONENT	ERC CASE NO. 2011-006 RM	ERC CASE NO. 2011-060 RC	DIFFERENCE INC./(DEC)
Spare parts, tools and equipment (USD/MW/yr.)	25,000	21,948.91	(3,051.09)

Meanwhile, the Commission looked into the subsidy granted by Danish International Development Agency (DANIDA) to determine whether the same shall form part of the capitalized asset of NORTHWIND, to wit:

[10] Entitled, In the Matter of the Petition to Initiate Rule-Making for the Adoption of the Feed-In Tariff for Electricity Generated from Biomass, Ocean, Run-of-River Hydropower, Solar and Wind Energy Resources (Petitioner: National Renewable Energy Board-NREB).
[11] Ibid.

1. EKF Premium: Danish Export Credit Facility insurance for the project; and

2. Interest Subsidy: Payment of the interest on the commercial loan of NorthWind from ABN-Amro and Nordea Bank.

In its Letter dated 31 March 2017, NORTHWIND submitted a schedule of its Property Plant and Equipment (PPE) account with the following summary of its sources and uses of funds, to wit:

Total Phase I CAPEX		1,963,492,369.00
Fund used for working capital		35,208,198.00
Total		**1,998,700,567.00**
Funded as follows:		
	Project Loans	1,558,282,072.00
	Net advances from contractors	138,693,495.00
	Equity infusion 2004-2005	301,725,000.00
	Total	**1,998,700,567.00**

NORTHWIND further explained thereto that the project construction of the 24.75MW Bangui Bay Wind Farm commenced in the second quarter of 2004, with down payments to the equipment supplier of PhP246.6 Million, and payment of Value-Added Tax (VAT) on importation, sourced from (i) the initial drawdown on the project loan, and (ii) advances from project contractor in the amount of PhP850.7 Million. The latter amount refers to the cost of wind farm equipment shipped in 2004 by the Engineering, Procurement and Construction (EPC) contractor prior to the full payment. As such, the PPE as of 31 December 2004 amounted to PhP1,048.8 Million.

Further, NORTHWIND explained that according to the 2005 Audited Financial Statement (AFS), by its then external auditor KPMG Laya Mananghaya and Co., (KPMG), the net additional PPE as of 31 December 2005 was PhP959 Million, funded as follows:

1. Full drawdown on the balance of the project loans in the amount ofPhP1,311.7 Million, a significant portion of which was paid to the project contractor;

2. Additional equity of PhP184.9 Million;

3. VAT refund of 104.6 Million (paid in 2004 for the importation of the wind turbine equipment); and

4. Donated capital of PhP48.8 Million

Based on the foregoing explanation of NORTHWIND, it is clear from that the net addition to the PPE was fully funded from sources other than the donated capital. Therefore, the same is not embedded or integral part of the build-up of the PPE.

The amount of PhP48.8 Million credited to donated capital represents a portion of the US$2.85 Million premium for political risk insurance paid by DANIDA directly to EKF (the "EKF Premium"), and as such, these funds were not received nor disbursed by NORTHWIND, and should properly not form part of the PPE of the NORTHWIND.

The donated capital of Php48.8 Million and related entries were subsequently reversed in the restated 2005 Audited Financial Statements. No further reversals were necessary because the PhP48.8 Million was the only portion of the EKF Premium capitalized in the Northwind's accounts.

The advances from project contractor were likewise restated to reflect the amount of the subordinated loan from Vestas in the amount of PhP138.7 Million.

Further, prior to receipt of the aforementioned letter, the Commission gathered information on the donated capital. The Commission determines that the same is not included in the PPE based on the following findings:

a. NORTHWIND 2005 Audited Financial Statement (AFS)

In the 2005 AFS of NORTHWIND by its external auditor KPMG, the Commission noted the following:

1. Per Balance Sheet, the PPE amounted to PhP1,960,031,322.00 as of 31 December 2005;

2. The Donated Capital per Statement of Changes in Stockholders' Equity amounted to PhP48,481,800.00 as of 31 December 2005. The same amount was stated as donated capital under the Statement of Cash Flow;

3. Note 5 of the AFS contained the schedule of the PPE showing the same amount as stated in the Balance Sheet. It also disclosed that:

> Total borrowing costs capitalized to wind turbines amounted to P159,602,856, the equivalent of about US$2.85 million (see Notes 6 and 10);

4. Note 6 further stated the following:

> xxx
>
> In 2005, as provided for in the loan agreement, Danida paid a total of US$2,850,051 in favor of the Company in consideration of the extension to the Lenders of the EKF Guarantee representing the export credit guarantee policy to be issued by EKF to the Lenders in connection with the loan covering 95% of the political risk and 95% of the commercial risk undertaken by the lenders in connection with the extension of the loan (see note 10).
>
> xxx

5. Relevant to the US$2.85 Million, Note 10 stated the following:

> xxx
>
> Further, the Company received a total of about US$2.85 million assistance from Danida which was used in payment of the insurance premium required under the loan agreement with Nordea Bank Danmark A/S and ABN Amro Bank N.V. specifically obtained to finance construction (see note 6). This was capitalized by the Company as part of wind turbines under property and equipment.
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b. NORTHWIND 2006 Audited Financial Statement (AFS)

In 2006, NORTHWIND changed its external auditor to SGV and Company (SGV). The AFS issued by SGV showed that it restated the 2005 balances, to wit:

1. Restated PPE per Balance Sheet as of 31 December 2005 amounts to PhP1,912,410,567.00;

2. Statement of Changes in Equity showed that the Donated Capital of PhP48,841,800.00 was reversed;

3. Note 3 Changes in Accounting Policies of the AFS under the section Restatements in Prior Years' Financial Statements explained the reversal made to the PPE and Donated Capital. It stated therein that a portion of the Danish Export Credit fund (EKF) premiums amounting to PhP48,841,800 had been capitalized as PPE and correspondingly recognized a Donated Capital for the same amount. Amortization expense was then recognized on the capitalized EKF premium. It further stated that such EKF premium is not a cost directly attributable to bringing the assets to its intended location and condition as intended by management and neither a capital transaction, hence the prior recognition was reversed and the 2005 balances were restated accordingly;

4. Under the same note and section, it also disclosed that DANIDA also subsidized the interests on the ABN Amro and Nordea Bank which aggregated to US$7,189,000.00 or PhP381,664,010.00. Hence, the loan became interest free, however, it should have been recognized using its fair value (fair value of financial liabilities that carry no interest is the present value of all future cash payments discounted using the prevailing market rate of interest for similar instrument). The related adjustments have been determined retrospectively. It should be noted that such adjustment did not affect the PPE, but only affected/adjusted the Retained Earnings and Net Loss for 2005;

5. Note 9 contained the schedule of the PPE balance. Said schedule shows the reversal made to restate the balance of the PPE as of 31 December 2005 to PhP1,912,410,567.00. It also disclosed that there are no borrowing costs capitalized as part of PPE as borrowings used to finance the construction of PPE are interest free;

6. Note 12 Long Term Debt also made mention that DANIDA agreed to pay in behalf of NORTHWIND the EKF premium in relation to export guarantee policy issued by EKF to the Lenders. It further noted that a total of US$2,850,051 was paid by DANIDA representing such premiums.

c. SGV Letter dated 26 January 2017 to NORTHWIND

In the Letter dated 26 January 2017[12] by SGV to NORTHWIND, SGV confirmed the treatment of the subsidies provided by DANIDA to the Bangui Wind Farm Project to consist of the following:

1. Payment of the premium on the required EKF insurance for the project, in the amount of US$2.85 Million (the "EKF" Premium); and

2. Payment of the interest on the commercial loan of NorthWind from ABN-Amro and Nordea Bank (the "Interest Subsidy).

SGV further stated therein that it was first engaged as the external auditor of NORTHWIND for the calendar year ended 31 December 2006. In the conduct of audit, SGV noted the following as regard the 2005 AFS of NORTHWIND:

a. There is a disclosure in the 2005 AFS that the EKF Premium, with a Peso equivalent of PhP159,602,856.00 are "total borrowing costs" capitalized into Property and Equipment;

b. Contrary to said disclosure, however, only the amount of PhP48.8 million was capitalized as part of Property and Equipment and booked as Donated Capital. A corresponding entry was made in the equity balances of the Company;

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[12] Re: Confirmation of Treatment of DANIDA Subsidy in NorthWind's Audited Financial Statement

c. The balance of the EKF premium of PhP110,761,056 was not booked in Property and Equipment or any other account of the Company; and

d. Due to the Interest Subsidy paid by DANIDA directly to ABN-Amro and Nordea Bank, the commercial loans of the Company are considered interest-free. Since the loans are interest-free, there was no Interest Subsidy that was capitalized as Property and Equipment during the construction period.

On the other hand, with respect to the 2006 AFS, SGV confirmed the following:

1. The PhP48.8 Million of Donated Capital from Property and Equipment and from the equity balances of the Company was reversed, as the transaction did not qualify as a government grant which can be properly booked in the Company's accounts, due to the following reasons:

   a. There is no explicit present and future obligation/cash flows of the Company to DANIDA in relation the grant;

   b. It will not qualify as forgivable loans nor immediate financial support to the Company since the DANIDA subsidy has no certain prescribe conditions attaching to it; and

   c. DANIDA directly paid the EKF Premium and interest payable to EKF and Lenders, respectively.

2. With the reversal of the PhP48.8 Million EKF Premium, the said portion of the EKF premium which has been capitalized was completely removed from the Property and Equipment and related accounts of the Company;

3. As a result of the said reversal, the erroneous disclosure in the 2005 AFS, that the EKF premium had been capitalized as Property and Equipment, was no longer carried over into the 2006 AFS; and

4. No part of the Interest Subsidy was capitalized as part of Property and Equipment because DANIDA directly paid the interest to the lenders.

Based on the statement of SGV in the 2006 AFS, the donated capital to the extent of PhP48.8 million has already been reversed. Thus, the same no longer formed part of the PPE. Accordingly, the restated PPE balance is now free of any donated/subsidized capital.

Accordingly, the Commission, using the foregoing additional input parameter, recalculated the specific FIT rate for NORTHWIND and derived at a rate for year 2009 equivalent to PhP5.96/kWh.

WHEREFORE, the foregoing premises considered, the *Motion for Reconsideration* filed by Northwind Power Development Corporation (NORTHWIND) is **PARTIALLY GRANTED.**

ACCORDINGLY, the Feed-In-Tariff (FIT) rate under the Decision dated 30 June 2014 is hereby **MODIFIED** as follows:

1. The applicable FIT rate for NORTHWIND using the base year 2009 shall be equivalent to PhP5.96/kWh; and

2. The above FIT rate shall be subject to adjustment formula as provided in the FIT Rules.

SO ORDERED.

Pasig City, 07 November 2017.

ALFREDO J. NON
OIC, Chairman and CEO

GLORIA VICTORIA C. YAP-TARUC
Commissioner

(*on leave*)
JOSEFINA PATRICIA A. MAGPALE-ASIRIT
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GERONIMO D. STA. ANA
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