

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



**IN THE MATTER OF THE  
APPLICATION FOR  
APPROVAL OF THE POWER  
SUPPLY AGREEMENT (PSA)  
BETWEEN LANA DEL  
NORTE ELECTRIC  
COOPERATIVE, INC.  
(LANECO) AND TOTAL  
POWER INC., (TPI) WITH  
PRAYER FOR PROVISIONAL  
AUTHORITY,**

**ERC CASE NO. 2016-062 RC**

**LANAO DEL NORTE  
ELECTRIC COOPERATIVE,  
INC. (LANECO) AND TOTAL  
POWER INC., (TPI),  
Applicants.**

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**D O C K E T E D**  
Date: FEB. 2. 8. 2018  
By: [Signature]

**ORDER**

On 28 April 2016, Lanao Del Norte Electric Cooperative, Inc. (LANECO) and Total Power Inc. (TPI) filed their *Joint Application* for approval of their Power Purchase Agreement (PSA), with prayer for the issuance of provisional authority.

On 11 July 2016, pursuant to Commission's power to provisionally approve the PSA between LANECO and TPI, as provided under Section 4 (e), Rule 3 of the Implementing Rules and Regulations of Republic Act No. 9136, or the Electric Power Industry Reform Act of 2001 (EPIRA-IRR), the Commission issued an Order granting Applicants provisional authority to implement their PPSA, the dispositive portion of which reads:

**IN VIEW OF THE FOREGOING**, Applicants Lanao Del Norte Electric Cooperative, Inc. (LANECO) and Total Power Inc. (TPI) are hereby **GRANTED PROVISIONAL AUTHORITY** to implement their Power Supply Agreement (PSA), subject to the following conditions:

1. Applicable Rate:

PARTICULARS	RATES
Capital Recovery Fee	PhP493.72/kW/month
Fixed O&M Fee	PhP147.17/kW/month
Variable O&M Fee	PhP0.4956/kWh
Fuel Fee	Pass-through Cost subject to efficiency cap

2. The above Fixed O&M Fee and Energy Fee shall be subject to adjustments based on economic indices provided in the PSA;
3. Fuel Charge and Lube Oil Charge shall be the actual price at which the suppliers shall sell and TPI shall purchase plus the actual Freight Cost in order to be consistent with the Commission's policy that fuel cost and lube oil cost are pass-through costs. However, the fuel cost and lube oil cost to be passed-on to end-users shall be subject to the Fuel Oil Consumption Rate (FCR) and Lube Oil Consumption Rate (LOCR) in liter/kWh, respectively under the PSA or actual, whichever is lower.
4. The rates for energy secured by LANECO in excess of the Contract Energy shall be the same as the recommended rates until the final evaluation of the Commission.
5. The final generation cost that can be recovered shall be determined by the Commission in its Decision in the instant application; and
6. In the event that the final rate is higher than that provisionally granted, the resulting additional charges shall be collected by TPI from LANECO. On the other hand, if the final rate is lower than that provisionally granted, the amount corresponding to the reduction shall be refunded by TPI to LANECO;
7. The approval of the PSA is without prejudice to any findings by the Commission in its evaluation of proponent's application for Certificate of Compliance (COC);

Relative to the foregoing, TPI and LANECO are hereby **DIRECTED** to submit to the Commission the following documents to facilitate the final evaluation of the subject case:

- Derivation of the Inflation Factors  $IF_f$  and  $IF_v$  to be used in the computation of the Fixed O&M Fee and Energy Fee, respectively.

**SO ORDERED.**

In interpreting the power of the Commission to grant provisional authority, the Supreme Court in the case of *Freedom from*

*Debt Coalition vs. Energy Regulatory Commission*<sup>1</sup> explained that a provisional authority is effective for only twelve (12) months.

Inasmuch as the Commission has initiated the evaluation of the *Application* taking into consideration all submissions made by the parties, prudence dictates that a meticulous review of Applicants' PSA be made pursuant to the Commission's mandate under Section 23 of the EPIRA to ensure that distribution utilities supply electricity in the least cost manner to its captive market.

**ACCORDINGLY**, in order to aid the Commission in the final evaluation of this case, Applicants LANECO and TPI are hereby directed to submit within **ten (10) days from receipt hereof**, the following:

1. Derivation and rationale of additional Energy Capacity Rate (AECFR) of PhP1.85/kWh;
2. Derivation and rationale of additional Energy Fixed Operation and Maintenance Rate (AEFOMR) of PhPo.6672/kWh; and
3. Derivation and rationale of additional Energy Insurance Premium Rate (AEINSR) of PhPo.40/kWh.
4. Matrix with justification showing the difference of the initial and the revised financial model;
5. TPI's policy on terminal value/salvage value;
6. TPI's 2015 and 2016 Audited Financial Statement (AFS);
7. All details on the procurement process of fuel including requests, proposals received, tender offers, etc.;
8. Sworn Statement detailing how the fuel was competitively procured, contract terms, unbundled price components (product cost, transshipment, delivery container, etc.);
9. Definition/nature and justification of Project Development, and rationale of sudden increase of this component from original proposed of PhP7.5 Million to PhP10.5 Million;

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<sup>1</sup> G.R. No. 161113, 15 June 2014.

10. Definition/nature and justification of each line item of O&M Cost, as follows:
  - Manpower Complement
  - Maintenance Materials, Routine
  - Outside Services (Legal, Technical)
  - Consultancy/Technical Service
  - Environmental Monitoring and Compliance
  - Administrative Expense
11. Justification of the proposed 22% capacity factor; and
12. LANECO's Historical and Forecasted Demand Supply (in Capacity and Energy) Portfolio from 2013 until the expiration of the subject PSA. Include details regarding the Suppliers, Capacity provided, type of load (base load, intermediate and peaking) contract term and off-take provisions (Take or pay, MEOT etc.), and issues/problems encountered especially on the enforcement of the provisions of their respective contracts (if any).

*(This space is intentionally left blank.)*

**WHEREFORE**, premises considered, the provisional authority granted to Applicants LANECO and TPI in the Order dated 11 July 2016 is **EXTENDED** until revoked or made permanent by the Commission.

**SO ORDERED.**

Pasig City, 06 July 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: KRP/LSP/APV

TWG-C: JBB/ALC/CTA/ECE

**Copy furnished:**

1. Atty. Mary Ann Castro Diccion and Atty. Ann Tricia Paradero Evangelista  
*Counsels for Applicants LANECO and TPI*  
Diccion Law Firm  
Unit 1912 Jollibee Plaza Building, F. Ortigas Jr. Road,  
Ortigas Center, Pasig City 1605
2. Lanao del Norte Electric Cooperative, Inc. (LANECO)  
Sagadan, Poblacion, Tubod, Lanao del Norte 9209

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\*The Chairman was placed on preventive suspension as per Order of the Office of the President (OP-DC Case No. 17-D- 094) dated 02 May 2017 and received on 04 May 2017.

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3. Total Power Inc. (TPI)  
201 Alabang Business Tower,  
1216 Acacia Ave., Alabang, Muntinlupa City 1780
4. Office of the Solicitor General  
134 Amorsolo Street, Legaspi Village  
Makati City, Metro Manila 1229
5. Commission on Audit  
Commonwealth Avenue  
Quezon City, Metro Manila 1121
6. Senate Committee on Energy  
GSIS Building, Roxas Boulevard  
Pasay City, Metro Manila 1308
7. House Committee on Energy  
Batasan Hills Quezon City, Metro Manila 1126
8. Office of the President of PCCI  
Philippine Chamber of Commerce and Industry (PCCI)  
3<sup>rd</sup> Floor, Chamber and Industry Plaza (CIP),  
1030 Campus Avenue corner Park Avenue,  
McKinley Town Center, Fort Bonifacio, Taguig City 1634
9. Office of the Municipal Mayor  
Municipality of Tubod, Lanao de Norte 9209
10. Office of the LGU Legislative Body  
Municipality of Tubod, Lanao de Norte 9209
11. Office of the Municipal Mayor  
Municipality of Bacolod, Lanao de Norte 9205
12. Office of the LGU Legislative Body  
Municipality of Bacolod, Lanao de Norte 9205
13. Office of the Municipal Mayor  
Municipality of Baroy, Lanao de Norte 9210
14. Office of the LGU Legislative Body  
Municipality of Baroy, Lanao de Norte 9210
15. Office of the Municipal Mayor  
Municipality of Balo-i, Lanao de Norte 9217
16. Office of the LGU Legislative Body  
Municipality of Balo-i, Lanao de Norte 9217
17. Office of the Municipal Mayor  
Municipality of Sultan Naga Dimaporo, Lanao de Norte 9215
18. Office of the LGU Legislative Body  
Municipality of Sultan Naga Dimaporo, Lanao de Norte 9215
19. Office of the Municipal Mayor  
Municipality of Kauswagan, Lanao de Norte 9202
20. Office of the LGU Legislative Body  
Municipality of Kauswagan, Lanao de Norte 9202
21. Office of the Municipal Mayor  
Municipality of Kapatagan, Lanao de Norte 9214
22. Office of the LGU Legislative Body  
Municipality of Kapatagan, Lanao de Norte 9214
23. Office of the Municipal Mayor  
Municipality of Kolambugan, Lanao de Norte 9207
24. Office of the LGU Legislative Body  
Municipality of Kolambugan, Lanao de Norte 9207
25. Office of the Municipal Mayor  
Municipality of Lala, Lanao de Norte 9211

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26. Office of the LGU Legislative Body  
Municipality of Lala, Lanao de Norte 9211
27. Office of the Municipal Mayor  
Municipality of Linamon, Lanao de Norte 9201
28. Office of the LGU Legislative Body  
Municipality of Linamon, Lanao de Norte 9201
29. Office of the Municipal Mayor  
Municipality of Magsaysay, Lanao de Norte 9221
30. Office of the LGU Legislative Body  
Municipality of Magsaysay, Lanao de Norte 9221
31. Office of the Municipal Mayor  
Municipality of Maigo, Lanao de Norte 9206
32. Office of the LGU Legislative Body  
Municipality of Maigo, Lanao de Norte 9206
33. Office of the Municipal Mayor  
Municipality of Matungao, Lanao de Norte 9203
34. Office of the LGU Legislative Body  
Municipality of Matungao, Lanao de Norte 9203
35. Office of the Municipal Mayor  
Municipality of Munai, Lanao de Norte 9219
36. Office of the LGU Legislative Body  
Municipality of Munai, Lanao de Norte 9219
37. Office of the Municipal Mayor  
Municipality of Poona Piagapo, Lanao de Norte 9204
38. Office of the LGU Legislative Body  
Municipality of Poona Piagapo, Lanao de Norte 9204
39. Office of the Municipal Mayor  
Municipality of Salvador, Lanao de Norte 9212
40. Office of the LGU Legislative Body  
Municipality of Salvador, Lanao de Norte 9212
41. Office of the Municipal Mayor  
Municipality of Sapad, Lanao de Norte 9213
42. Office of the LGU Legislative Body  
Municipality of Sapad, Lanao de Norte 9213
43. Office of the Municipal Mayor  
Municipality of Tangkal, Lanao de Norte 9220
44. Office of the LGU Legislative Body  
Municipality of Tangkal, Lanao de Norte 9220
45. Office of the Municipal Mayor  
Municipality of Tubod, Lanao de Norte 9209
46. Office of the LGU Legislative Body  
Municipality of Tubod, Lanao de Norte 9209
47. Office of the Provincial Governor  
Province of Lanao del Norte 9209
48. Office of the LGU Legislative Body  
Province of Lanao del Norte 9209
49. Office of the City Mayor  
City of Muntinlupa, Metro Manila 1770
50. Office of the LGU Legislative Body  
City of Muntinlupa, Metro Manila 1770