ENERGY REGULATORY COMMISSION
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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 BATANGAS I ELECTRIC COOPERATIVE, INC. AND GNPOWER DINGININ LTD. CO. WITH MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION AND ISSUANCE OF PROVISIONAL AUTHORITY

ERC CASE NO. 2017-065 RC

BATANGAS I ELECTRIC COOPERATIVE, INC. (BATELEC I) AND GNPOWER DINGININ LTD. CO. (GNPD),
Applicants.
x-----------------------------------x

DOCKETED
Date: FEB 28 2018
By: mw

ORDER

For the Commission's consideration is the prayer for issuance of provisional authority included in the *Application* dated 04 May 2017 for approval of the Power Purchase and Sale Agreement (PPSA) between Applicants Batangas I Electric Cooperative, Inc. (BATELEC I) and GNPower Dinginin Ltd. Co. (GNPD) which was filed on 30 June 2017.

THE FACTS

Relative to their prayer for issuance of provisional authority, applicants BATELEC I and GNPD alleged the following:

1. Applicant BATELEC I is a non-stock, non-profit electric cooperative duly organized and existing under Philippine laws, with principal office at Km. 116, National Highway, Calaca,

Batangas. It is duly authorized to distribute electricity in Municipalities of Agoncillo, Balayan, Calaca, Calatagan, Lemery, Lian, Nasugbu, San Luis, San Nicolas, Sta. Teresita, Taal and Tuy, all in the province of Batangas (collectively, the "**Franchise Area**").

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3. Meanwhile, Applicant GNPD is a duly registered limited partnership organized and existing under Philippine laws, and is engaged in the business of developing, constructing, operating and owning power generation facilities. Its principal office is at the 28th Floor, The Orient Square, Don Francisco Ortigas Jr. Road, Ortigas Center, Pasig City. xxx

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24. All the foregoing allegations are re-pleaded by reference in support of this *Prayer* for provisional authority.

25. The basis by which Applicants BATELEC I and GNPD pray for the issuance of a Provisional Authority or interim relief prior to final decision is *Rule 14* of the *ERC Rules of Practice and Procedure*:

    "Section 3. Action on the Motion. – Motions for provisional authority or interim relief may be acted upon with or without hearing. The Commission shall act on the motion on the basis of the allegations of the application or petition and supporting documents *and other evidences that applicant or petitioner has submitted and the comments or opposition filed by any interested person, if there be any."* [Emphasis Supplied]

26. Based on the Department of Energy's (DOE) 2016-2040 Luzon and Visayas Grids Supply-Demand Outlook, Luzon's peak demand in 2016 is 9,726MW with an Annual Average Growth Rate (AAGR) from 2000 to 2016 of 3.8% while Visayas' Peak Demand is 1,893MW with AAGR from 2000 to 2016 of 6.1%. Therefore, Luzon's peak demand is expected to increase to 11,451MW in 2020, and to 18,432MW by the year 2030 and for Visayas, 2,465MW in 2020 and 4,765MW in 2030.

27. This electricity demand growth has led to DOE's call for planning and investments in the power sector. It is therefore essential that there be continuous addition of power supply to address such increasing demand and lower the cost of power at the WESM, which ultimately shall benefit the end-user. GNPD and BATELEC I's PPSA aim to address this increasing electricity demand growth.

28. In the same vein, contributing to the Luzon's Grid's demand growth is BATELEC I's load demand increases at a rate of 5.4% per year. By Contract Year 2020, it is projected that BATELEC I's existing power suppliers will not be able to meet the power needs of its member-consumers, which is expected to increase to 78.46MW.

29. Thus, the PPSA with GNPD, is crucial for BATELEC I to guarantee that its forward power needs are satisfied, without compromising the reasonableness of the generation rate to be passed on to its member-consumers.

30. While actual delivery of power under the terms and conditions of the PPSA is expected to commence only in the Contract Year 2020, Applicants shall nonetheless begin its compliance with all financial and regulatory requirements and processes leading up to the timely operations of GNPD's facility.

31. It is worthy to note that part of the funds needed to construct GNPD's facility will be sourced from loans coming from banks/financial institutions. The Honorable Commission's provisional approval of the instant *Application* is a vital requirement for the continuous release of the loan proceeds. In fact, as shown in **Annex "S"** attached hereto, in consideration for making the aforesaid construction and term loans/ facilities, among the approvals required by the lenders of GNPD is the Honorable Commission's provisional approval of the PPSAs. Hence, the continuous loan drawdown ensures stable source of funds and consequently, a timely construction of the generation facility and implementation of the PPSA, as amended, as contemplated by the Applicants.

32. With continuous financing, the timely implementation of the GNPD project shall be assured, to the full benefit of BATELEC I. Otherwise, any delay in the implementation of the project shall expose BATELEC I to supply risk and unstable market prices in the future.

33. To emphasize the necessity of the provisional approval of this *Application,* a copy of the Judicial Affidavit of Mr. Arnel Bilaoen in support of the Motion for Provisional Authority is attached hereto as **Annex "KK".**

34. In view thereof and in recognition of the fact that a substantial amount of time is customarily needed to evaluate the documents submitted to support the approval of this *Application,* Applicants BATELEC I and GNPD respectfully seek the kind consideration of the Honorable Commission to approve the instant *Application* immediately, albeit, provisionally.

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THE ISSUE

The issue for the Commission's resolution is whether or not BATELEC I and GNPD have satisfied the requirements provided by law for the grant of provisional authority.

THE COMMISSION'S RULING

The Commission grants provisional authority to Applicants.

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

Section 4(e), Rule 3 of *the Implementing Rules and Regulations of Republic Act No. 9136,* otherwise known as the *Electric Power Industry Reform Act of 2001* (EPIRA IRR) 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 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 landmark case of *Freedom from Debt Coalition (FDC) vs. Energy Regulatory Commission (ERC)*[1] (FDC Case). The Court, speaking

[1] G.R. No. 161113, 15 June 2004.

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.**
>
> [Emphasis supplied.]

The instant *Application* seeks the Commission's approval of the PPSA entered into between BATELEC I and GNPD on 12 August 2016. The PPSA prescribes fees which will eventually form part of BATELEC I's generation cost. The generation cost in turn forms part of BATELEC I's retail rate that will be chargeable to its consumers. 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.

In the case of *National Association of Electricity Consumers for Reforms vs. Energy Regulatory Commission*[2] (NASECORE Case), the Supreme Court outlined the procedural requisites before the Commission may grant provisional authority under Section 4(e), Rule 3, EPIRA IRR, *to wit*:

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(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.

(6) Thereafter, the ERC must conduct a full-blown hearing on the application/petition not later than 30 days from the date of issuance of the provisional order. Effectively, this provision limits the lifetime of the provisional order to only 12 months.

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[2] G.R. No. 163935, 02 February 2006.

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BATELEC I and GNPD attached the following documents to their *Application*:

a) Verification and Certification of Non-Forum Shopping executed by Arnel O. Bilaoen, authorized representative of GNPD;

b) Verification and Certification of Non-Forum Shopping executed by Alvin O. Velasco, General Manager of BATELEC I;

c) Certification acknowledging receipt of the *Application* and its annexes to the legislative body of the Province of Batangas;

d) Certification acknowledging receipt of the *Application* and its annexes to the legislative body of the Municipality of Calaca, Batangas;

e) Certification acknowledging receipt of the *Application* and its annexes to the legislative body of the City of Pasig;

f) Notarized Affidavit of Publication issued by the Malaya Business Insight attesting to the publication of the *Application* on the 14 June 2017 issue of the newspaper; and

g) Complete newspaper issue where the *Application* was published and the relevant pages thereof where the *Application* appears.

No Comment was received by the Commission within the thirty (30) day period within which the same may be filed. Thus, the prayer for provisional authority is being resolved on the basis of the documents submitted by Applicants.

In light of these circumstances, the Commission has determined that the procedural requirements for the issuance of a provisional authority as outlined by the Supreme Court in the NASECORE Case have been complied with.

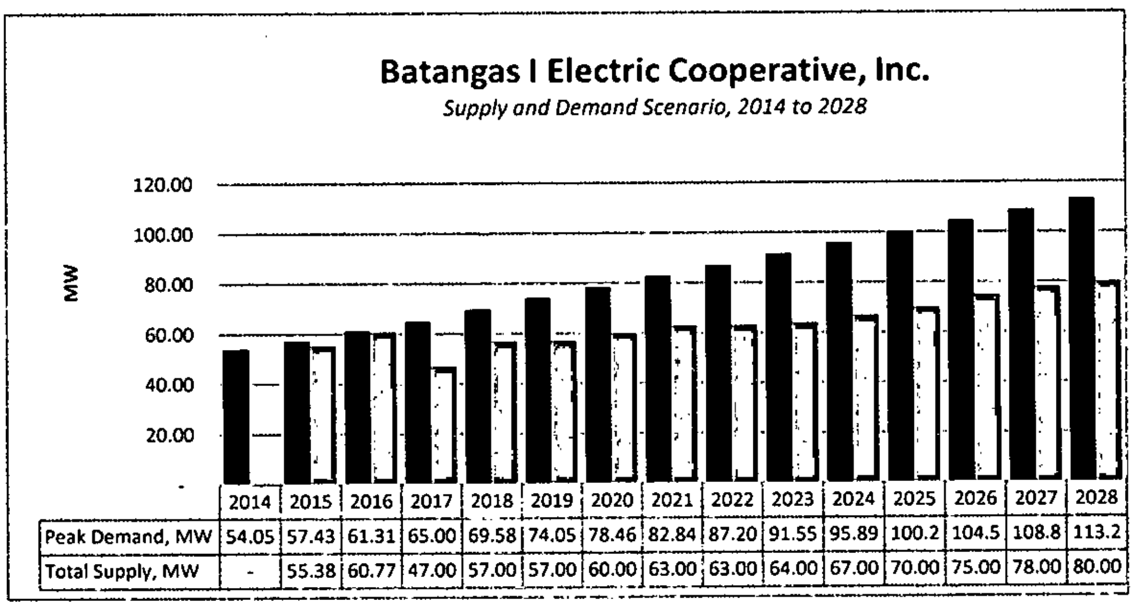
III. THE APPLICANTS HAVE SATISFIED THE SUBSTANTIAL REQUIREMENTS FOR THE GRANT OF PROVISIONAL AUTHORITY.

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

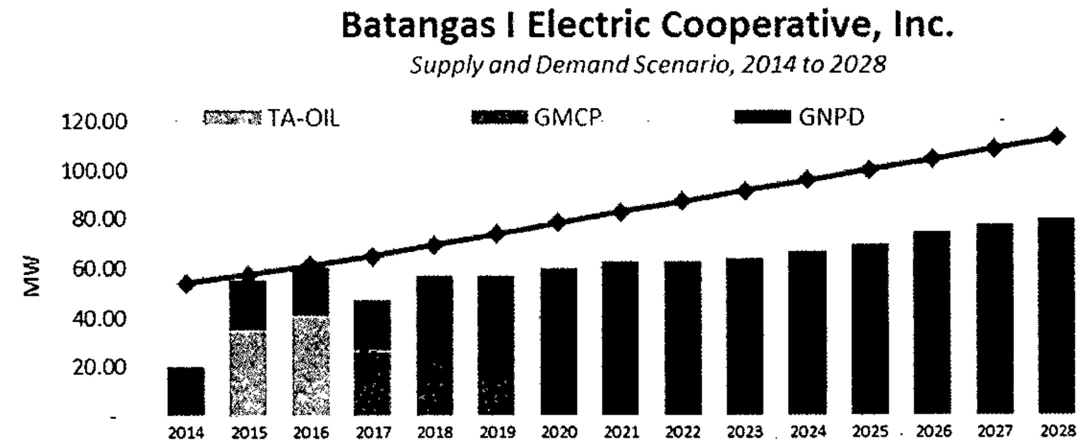
1. Demand-Supply Scenario of BATELEC I

The table below shows BATELEC I's peak demand and supply deficit from 2014 to 2028. Historically, in the years 2015 to 2017, it already experienced a deficit in supply. Such power deficit is a clear indication that there is necessity for additional generation capacity to address BATELEC I's current shortage of power requirements in order to improve reliability and quality of electric power to its customers.

	Historical		Forecasted												
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028
Peak Demand, MW	54.05	57.43	61.31	65.00	69.58	74.05	78.46	82.84	87.20	91.55	95.89	100.23	104.56	108.89	113.22
Supplier/s															
SEM-CALACA	20.00	20.00	20.00	20.00	-	-	-	-	-	-	-	-	-	-	-
TA-OIL	-	35.38	40.77	-	-	-	-	-	-	-	-	-	-	-	-
GMCP	-	-	-	27.00	27.00	27.00									
GNPD							30.00	33.00	33.00	34.00	37.00	40.00	45.00	48.00	50.00
New Supplier	-	-	-	-	30.00	30.00	30.00	30.00	30.00	30.00	30.00	30.00	30.00	30.00	30.00
Total Supply, MW	-	55.38	60.77	47.00	57.00	57.00	60.00	63.00	63.00	64.00	67.00	70.00	75.00	78.00	80.00
Surplus/(Deficit), MW	-	(2.06)	(0.55)	(18.00)	(12.58)	(17.05)	(18.46)	(19.84)	(24.20)	(27.55)	(28.89)	(30.23)	(29.56)	(30.89)	(33.22)



Currently, GNPower Mariveles Coal Plant Ltd. Co. (GMCP)[3] is the only power supplier of BATELEC I, and BATELEC I shall procure its power requirements from GNPD starting Year 2020. The table below shows BATELEC I's Supply and Demand Scenario for the period 2014 to 2028:



	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028
SEM-CALACA	20.00	20.00	20.00	20.00	-	-	-	-	-	-	-	-	-	-	-
New Supplier	-	-	-	-	30.00	30.00	30.00	30.00	30.00	30.00	30.00	30.00	30.00	30.00	30.00
GNPD							30.00	33.00	33.00	34.00	37.00	40.00	45.00	48.00	50.00
GMCP	-	-	-	27.00	27.00	27.00									
TA-OIL	-	35.38	40.77	-	-	-	-	-	-	-	-	-	-	-	-
Peak Demand, MW	54.05	57.43	61.31	65.00	69.58	74.05	78.46	82.84	87.20	91.55	95.89	100.23	104.56	108.89	113.22

As alleged in paragraphs 11 and 12 of the *Application*, in order to address its power deficit, BATELEC I solicited offers from various suppliers and after much negotiation, it found GNPD's credentials most eligible to be its peak demand power provider under the given premises, to wit:

> 11. The additional supply from GNPD will help alleviate and sustain the future power supply needs of the Luzon Grid including the Franchise Area of BATELEC I to prevent any likelihood of brownouts and power shortages.
>
> 12. Among alternative suppliers capable of providing additional energy to BATELEC I, GNPD's rate proved to be more reasonable and competitive. It is worthy to note that the Capacity Utilization Factor Pricing under the PPSA provides flexibility to BATELEC I in its utilization of the Contracted Capacity.

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

[3] The Commission granted provisional approval of the PPSA between QUEZELCO II and GMCP on 13 December 2016 under ERC Case No. 2016-185 RC entitled In the Matter o the Application for Approval of the Power Purchase and Sale Agreement (PPSA) Between Batangas I Electric Cooperative, Inc. (BATELEC I) and GNPower Mariveles Coal Plant Ltd. Co. (GMCP), with Motion for Confidential Treatment of Information and Issuance of Provisional Authority.

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

In view of the increasing demand for power in BATELEC I's franchise area, it conducted a Competitive Selection Process (CSP), the details of which are as follows[4]:

8.1 On 13 and 14 April 2016, BATELEC I published the Invitation to Bid for its Power Supply Requirements for its Franchise Area of 20MW Base Load (Demand Contract) for March 26, 2018 to March 25, 2028 and Load Following (Energy Supply Contract) for December 26, 2016 to December 25, 2028 on Philippine Daily Inquirer. Further, BATELEC I sent individual invitations to potential suppliers through electronic mail.

8.2 GNPower Ltd. Co. ("GNPower"), along with other prospective suppliers, expressed its intent to join the CSP and was provided with a copy of the Instructions to Bidders. Thereafter, bidding conferences were held to clarify and discuss the selection process, requirements, rules, and evaluation method.

8.3 On 10 May 2016, BATELEC I issued a Supplemental Bid Bulletin increasing the power supply requirements from 20MW to 30MW Base Load (Demand Contract) for March 26, 2018 to March 25, 2028 and Load Following (Energy Supply Contract) for December 26, 2016 to December 25, 2028.

8.4 The applications for accreditation of BAC-MAN Geothermal, Inc., GNPower, SEM-CALACA Power Corp., 1590 Energy Corp. (1590 Energy), AES Philippines, Trans-asia Power Generation Corp., South Luzon Thermal Energy Corp. (SLTEC), and San Miguel Energy Corporation were approved per BAC Resolution No. 29-16 dated 27 April 2016.

8.5 Only GNPower, SLTEC, and 1590 Energy submitted bids for BATELEC I's Load Following power supply requirements.

8.6 Upon submission and completion of the pre-qualification requirements, GNPower, SLTEC, and 1590 Energy were declared as qualified bidders for BATELEC I's Load Following (Energy Supply Contract) for December 26, 2016 to December 25, 2028.

8.7 On 17 May 2016, the bids of the qualified bidders were opened. All the three (3) bidders complied with the eligibility requirements. Likewise, the qualified bidders

[4] Paragraphs 8 and 9 of the *Application*.

complied with the financial and technical requirements of the bidding documents.

8.8 Each qualified bidder made a presentation of its offer to BATELEC I's Technical Working Group (TWG), Bids and Awards Committee (BAC), and Board of Directors. GNPower confirmed during its presentation that the source of supply to BATELEC I shall be from (i) GMCP's 2x316 (net) MW clean coal-fired power plant in Mariveles, Bataan for Contract Years 2017 to 2019 and (ii) GNPD's supercritical coal-fired power plant in Mariveles, Bataan, which is currently under construction, for Contract Years 2020 to 2028.

8.9 After such presentation and post-qualification evaluation conducted, the TWG and BAC of BATELEC I confirmed that GNPower submitted the Lowest Calculated and Responsive Bid/Quotation for Load Following (Energy Supply Contract) for December 26, 2016 to December 25, 2028 based on GNPower's bid price offer as the projected levelized price considering the parameters of the offer and BATELEC I's evaluation methodology.

8.10 Accordingly, the TWG and the BAC recommended the awarding of the contract to GNPower for the Power Supply Requirements of BATELEC I franchise area for Load Following (Energy Supply Contract) for December 26, 2016 to December 25, 2028 pursuant to BAC Resolution No. 40-16.

8.11 The BAC recommendation to award the contract to GNPower was approved by the Board of Directors of BATELEC I pursuant to Board Resolution No. 90-16 issued on 13 June 2016.

8.12 Also, the Board of Directors of BATELEC I issued Board Resolution No. 121-16 authorizing the approval and signing of PPSAs with both GNPD and GMCP including its supplement agreements and amendments and other related documents.

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9. Consequently, on 12 August 2016, Applicant BATELEC I executed a power purchase and sale agreement with GMCP for BATELEC I's power requirements for the period of 26 December 2016 to 25 December 2019. On the same day, Applicants BATELEC I and GNPD also executed the subject PPSA to assure the adequate, reliable, and continuous supply of power to BATELEC I's Franchise Area after the expiration of GMCP's power purchase and sale agreement.

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3. Salient Features of the PPSA

a) Name of Plant	GNPower Dinginin Power Plant
b) Type of Plant	Supercritical Coal-Fired Plant
c) Type of Operation	Base Load Power Plant
d) Proposed Installed Capacity	2 x 668 MW (net)
e) Location	Barangay Alasanin, Mariveles, Bataan
f) Term	One Hundred Eight (108) months from the date of execution.

g) Contracted Capacity

BATELEC I is contractually entitled to receive from GNPD, at any hour, subject to GNPD's Available Capacity for such hour, the Contracted Capacity, as follows:

Year	Contracted Capacity (kW)
1	30,000
2	33,000
3	33,000
4	34,000
5	37,000
6	40,000
7	45,000
8	48,000
9	50,000

BATELEC I shall utilize and pay for the capacity delivered by GNPD at 65% to 100% Capacity Utilization Factor (CUF).

h) Option to Increase Contracted Capacity

Section 3.7 of the PPSA provides that upon written notice to GNPD, BATELEC I may, upon approval by GNPD, increase its Contracted Capacity. Such increase shall be subjected to the same terms and conditions contained in the PPSA. In considering whether or not to approve the 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 in Contracted Capacity shall be effective on the date GNPD gives its written approval.

i) Contract Price

The Contract Price shall be composed of the Capacity Price and the Energy Price. The Capacity Price 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. The Energy Price shall be computed as the product of the Energy Fee for a Billing Period multiplied by the quantity of Product delivered at the Delivery Point.

The *Capacity Fee* is the component of the Contract Price allocated to pay for the cost, as well as, the operations and maintenance of the power plant and is designated as the Capacity Fee in Schedule 1, as such may be adjusted from time to time based on the Capacity Factor.

The corresponding Capacity Fee for a given Capacity Factor is set forth in the table below:

Capacity Utilization Factor (%)	Capacity Fee (USD per kWh)
100%	0.0496
99%	0.0500
98%	0.0504
97%	0.0507
96%	0.0511
95%	0.0515
94%	0.0519
93%	0.0523
92%	0.0527
91%	0.0531
90%	0.0536
89%	0.0540
88%	0.0545
87%	0.0549
86%	0.0554
85%	0.0559
84%	0.0564
83%	0.0569
82%	0.0574

81%	0.0580
80%	0.0585
79%	0.0591
78%	0.0596
77%	0.0602
76%	0.0608
75%	0.0615
74%	0.0622
73%	0.0629
72%	0.0636
71%	0.0643
70%	0.0651
69%	0.0659
68%	0.0667
67%	0.0675
66%	0.0684
65%	0.0692

The Capacity Utilization Factor (CUF) shall be computed as follows:

$$\textbf{Capacity Factor (CUF)} = \frac{\mathbf{Q}}{\mathbf{CC \times (H_T - EH_{TO})}}$$

Where:

CUF = is the Capacity Utilization Factor between 65% and 100%, provided that if the actual CUF is below 65% (the "Minimum Capacity Factor"), the Capacity Price shall be calculated based on the Capacity Fee and quantity associated with the Minimum Capacity Factor.
Q = Quantity of kWh
CC = Contracted Capacity, in kW, as set forth in Schedule 1 of the subject PPSA
HT = Total number of hours in such Billing Period
EH_{TO} = The sum of the duration, in Equivalent Hours, of Scheduled Outages and Unscheduled Outages in such Billing Period

The *Energy Fee* is the component of the Contract Price allocated to pay for the coal, including Government Charges, designated as the Energy Fee in *Schedule 1* of the PPSA as adjusted from time to time due to changes in the delivered price of the coal.

The Energy Fee shall be computed in accordance with the following formula:

$$\textbf{Energy Fee} = \textbf{IEF} \times \frac{\textbf{CIF}_n}{\textbf{CIF}_o}$$

Where:

IEF = Initial Energy Fee equal to \$0.0370/kWh
$\textbf{CIF}_n$ = CIF Cost OF Fuel for Billing Period n
$\textbf{CIF}_o$ = Base CIF Cost of Fuel equal to \$11.5573/million kcal

j) Prompt Payment Discount

The PPSA provides that if BATELEC I pays the invoice amount in full within ten (10) days of receipt from GNPD, BATELEC I shall receive a discount equal to \$0.0012/kWh 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.

k) Capacity Utilization Discount

Section 5.3 (d) of the PPSA provides that if BATELEC I 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 BATELEC I's CUF is greater than or equal to 65%, BATELEC I shall receive a credit on the next subsequent bill equal to 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.

l) Scheduled and Unscheduled Outages

GNPD is allowed Scheduled Outage not to exceed five hundred forty (540) Equivalent Hours for each Contract Year, during which times reduced or no deliveries will be available to BATELEC I. Likewise, GNPD is allowed Unscheduled Outage of five hundred forty (540) Equivalent Hours for each Contract Year during which times reduced or no deliveries will be available to the Buyer.

4. Commission's Initial Evaluation of the PPSA

The Commission considered the following major considerations in determining the reasonableness of the proposed rates, to wit:

1) The Commission has already given Provisional Authority (PA) on certain cases involving the same plant (GNPower Dinginin Supercritical Coal-Fired Plant), to wit:

No.	ERC Case No.	DU	Contracted Capacity (MW)	Date of PA
1	2016-036 RC	PENELCO	25-95 (increased by 5 MW every year for 15 years)	6/17/2016
2	2016-037 RC	NEECO I	26-43 (gradually increasing for 20 years)	6/17/2016
3	2016-039 RC	AURELCO	5 (starting year 7)	6/17/2016
4	2016-046 RC	LEYECO II	8	7/5/2016
5	2016-047 RC	SAMELCO II	15	7/5/2016
6	2016-049 RC	NORSAMELCO	16	7/5/2016
7	2016-050 RC	SAMELCO I	12	7/5/2016
8	2016-051 RC	DORELCO	12	7/5/2016
9	2016-053 RC	LEYECO III	3	7/5/2016
10	2016-054 RC	SOLECO	12	7/5/2016
11	2016-055 RC	LEYECO IV	16	7/5/2016
12	2016-057 RC	LEYECO V	31	7/5/2016
13	2016-058 RC	ESAMELCO	15	7/5/2016

Shown below are the provisional rates granted and the proposed bid rate of GNPD with BATELEC I based on the capacity fee (using the capacity utilization factor), as well as the Energy Fee:

Capacity Utilization Factor (%)	Capacity Fee (USD per kWh)		
	R8	CLECA & PENELCO	BATELEC I
100%	0.0456	0.0466	0.0496
99%	0.0460	0.0470	0.0500
98%	0.0464	0.0474	0.0504
97%	0.4670	0.0477	0.0507
96%	0.0471	0.0481	0.0511
95%	0.0475	0.0485	0.0515
94%	0.0479	0.0489	0.0519
93%	0.0483	0.0493	0.0523
92%	0.0487	0.0497	0.0527
91%	0.0491	0.0502	0.0531

90%	0.0496	0.0506	0.0536
89%	0.0500	0.0510	0.0540
88%	0.0505	0.0515	0.0545
87%	0.0509	0.0519	0.0549
86%	0.0514	0.0524	0.0554
85%	0.0519	0.0529	0.0559
84%	0.0524	0.0534	0.0564
83%	0.0529	0.0539	0.0569
82%	0.0534	0.0544	0.0574
81%	0.0540	0.0549	0.0580
80%	0.0545	0.0555	0.0585
79%	0.0551	0.0561	0.0591
78%	0.0556	0.0567	0.0596
77%	0.5620	0.0573	0.0602
76%	0.0568	0.0579	0.0608
75%	0.0575	0.0585	0.0615
74%	0.0582	0.0592	0.0622
73%	0.0589	0.0599	0.0629
72%	0.0596	0.0606	0.0636
71%	0.0603	0.0613	0.0643
70%	0.0611	0.0621	0.0651
69%	0.0618	0.0629	0.0659
68%	0.0626	0.0637	0.0667
67%	0.0634	0.0645	0.0675
66%	0.0643	0.0653	0.0684
65%	0.0651	0.0662	0.0692

	R8	CLECA & PENELCO	BATELEC I
Energy Fee	IEF = $0.0328/kWh Base CIF = $10.2541 per million kcal (September 2014 prices)	IEF = $0.0370/kWh Base CIF = $11.5573 per million kcal (March 2014 prices)	IEF = $0.0328/kWh Base CIF = $10.2541 per million kcal (September 2014 prices)

As can be seen from the above table, GNPD's pricing for BATELEC I is the highest among the other rates.

GNPD pricing was done through bidding. According to GNPD, it strategized its submission vis-à-vis the bid requirements by providing a competitive proposal despite the price or proposal discovery by its competitors from the various bidding or selection processes.

2) However, it is worthy to note that the difference in price structure is a result of the terms and conditions agreed by the parties during the finalization of their PPSA.

For instance, Region 8 (R8)[5] pricing was net of Prompt Payment Discount (PPD) as requested by the R8 group. However, during the discussion, GNPD has agreed to this on the condition of Region 8's plan to set-up a fund in order to mitigate the risk of possible delayed payment. While for the Central Luzon Electric Cooperative Association (CLECA)[6] and PENELCO, the pricing were gross or inclusive of PPD[7].

3) Thus, for purposes of the issuance of provisional authority, the Commission authorizes Applicants to implement the same rates granted to R8 ECs, such as in the ERC Case No. 2016-047 RC[8], where the rates are net of the PPD. This is in consonance with the Commission's thrust in determining the reasonable basic rates to be passed on to consumers, which must be exclusive of other components that are construed as penalty or discounts given to Distribution Utilities (DUs) by the generation companies after individual assessment of the circumstances of the contracting DUs. Moreover, the proposed rates herein are the ones consistent with the most recent approvals of the Commission involving the same plant.

Consequently, the Commission partly adopts the approved rates and conditions in the *Order* dated 05 July 2016 under ERC Case No. 2016-047 RC[9], to wit:

Evaluation of Contract Prices

In evaluating contract prices, one recommendation of Castalia's Final Report on PSA Approvals is to streamline cost-based assessment. Where possible, contract prices can be evaluated against:

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

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5 Pertains to Region 8 Electric Cooperatives which include LEYECO II, SAMELCO II, NORSAMELCO, SAMELCO I, DORELCO, LEYECO III, SOLECO, LEYECO IV, LEYECO V, and ESAMELCO
6 NEECO I and AURELCO
7 $0.0012/kWh
8 Entitled In the Matter of the Application for Approval of the Power Purchase and Sale Agreement (PPSA) between Samar II Electric Cooperative, Inc. and GNPower Dinginin Ltd. Co. with Prayer for Confidential Treatment of Information and the Issuance of Provisional Authority.
9 Supra note 8.

WESM Prices – 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

Benchmarking Pricing – within the range of prices from interim benchmark model, for provisional approval only.

For the purpose of resolving the prayer of Applicants to issue a provisional authority in this case, the Commission undertook two (2) ways to evaluate the contract prices: (a) Existing Precedents; and (b) Benchmarking.

a) Existing Precedents

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

Capacity Utilization Factor (%)	GMCP[10] (With Final Approval)	GNPD	Difference
100%	0.0468	0.0456	0.0012
99%	0.0472	0.0460	0.0012
98%	0.0476	0.0464	0.0012
97%	0.0479	0.0467	0.0012
96%	0.0483	0.0471	0.0012
95%	0.0487	0.0475	0.0012
94%	0.0491	0.0479	0.0012
93%	0.0495	0.0483	0.0012
92%	0.0499	0.0487	0.0012
91%	0.0503	0.0491	0.0012
90%	0.0508	0.0496	0.0012
89%	0.0512	0.0500	0.0012
88%	0.0517	0.0505	0.0012
87%	0.0521	0.0509	0.0012
86%	0.0526	0.0514	0.0012
85%	0.0531	0.0519	0.0012
84%	0.0536	0.0524	0.0012
83%	0.0541	0.0529	0.0012
82%	0.0546	0.0534	0.0012
81%	0.0552	0.0540	0.0012
80%	0.0557	0.0545	0.0012
79%	0.0563	0.0551	0.0012
78%	0.0568	0.0556	0.0012
77%	0.0574	0.0562	0.0012
76%	0.058	0.0568	0.0012
75%	0.0587	0.0575	0.0012

[10] GMCP has two (2) sets of Capacity Factor Pricing Table. The data shown above are for distribution utilities that have signed for long-term contract such as TARELCO I, ISECO, LUELCO, PANELCO III, BATELEC II, LEYECO V, etc.

74%	0.0594	0.0582	0.0012
73%	0.0601	0.0589	0.0012
72%	0.0608	0.0596	0.0012
71%	0.0615	0.0603	0.0012
70%	0.0623	0.0611	0.0012
69%	0.0630	0.0618	0.0012
68%	0.0638	0.0626	0.0012
67%	0.0646	0.0634	0.0012
66%	0.0655	0.0643	0.0012
65%	0.0663	0.0651	0.0012

The difference in the proposed rates under GNPD is US$0.0012 lower than that of the approved rates for GMCP.

b) Benchmarking

The proposed rates were also compared with the approved rates of independent power plants (IPPs) operating a coal power plant,[11] as shown below:

PhP/kWh	CEDC	PEDC	SEC	TSI	PCPC	GNPD (Dinginin Plant)
CRF and O&M	3.3	4.231	3.59	3.991	3.314	3.013
Interconnection			0.15			
Fuel Rate	Pass-through cost					
Total	**3.3**	**4.231**	**3.74**	**3.991**	**3.314**	**3.013**

The proposed GNPD rate of PhP3.013/kWh[12] is one of the lowest among the approved rates for coal power plants in the Philippines. Furthermore, the proposed Capacity Fee which already includes O&M is fixed for the entire term of the PPSA of 20 years.

Thus, based on the range of prices previously approved for coal power plants, the proposed rates in the Application appear to be reasonable for purposes of the provisional authority.

Analysis of the Applicants' proposed rates in the PPSA

Taking into consideration the salient provisions of the PPSA as alleged in the Application, the Commission conducted its analysis of the Applicants' proposed rates.

The proposed rate is composed of the Capacity Fee and the Energy Fee which can be paid in USD or PhP. The Capacity Fee is dependent on the utilization of the total capacity allocated to SAMELCO II, which means that **the higher the Capacity Factor, the lower the capacity fee.** On the other hand, Energy Fee is the amount to be paid for the power plant's fuel which is coal and any corresponding Governmental Charges. The Commission's current

[11] Comparison was lifted from PA Memo of ERC Case No. 2014-011 RC dated April 21, 2014.
[12] Based on 65% CUF and PhP 46.2845/1USD (average exchange rate for April 2016).

policy in evaluating the reasonableness of proposed generation rates is to look into the specific cost of the power plant.

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IN VIEW OF THE FOREGOING, Applicants Samar II Electric Cooperative, Inc. (SAMELCO II) and GNPower Dinginin Ltd. Co. (GNPD) are hereby **GRANTED PROVISIONAL AUTHORITY** to implement their Power Purchase and Sales Agreement (PPSA), subject to the following conditions:

1) Applicable rates:

a. Capacity Fee

Capacity Utilization Factor (%)	Capacity Fee ($/kWh)
100%	0.0456
99%	0.0460
98%	0.0464
97%	0.4670
96%	0.0471
95%	0.0475
94%	0.0479
93%	0.0483
92%	0.0487
91%	0.0491
90%	0.0496
89%	0.0500
88%	0.0505
87%	0.0509
86%	0.0514
85%	0.0519
84%	0.0524
83%	0.0529
82%	0.0534
81%	0.0540
80%	0.0545
79%	0.0551
78%	0.0556
77%	0.5620
76%	0.0568
75%	0.0575
74%	0.0582
73%	0.0589
72%	0.0596
71%	0.0603
70%	0.0611
69%	0.0618
68%	0.0626
67%	0.0634
66%	0.0643
65%	0.0651

b. Energy Fee

Initial Energy Fee = $0.0328/kWh

2) The final generation cost that can be recovered shall be determined by the Commission in its Decision in the instant application; and

3) In the event that the final rate is higher than that provisionally granted, the resulting additional charges shall be collected by GNPD from SAMELCO II. On the other hand, if the final rate is lower than that provisionally granted, the amount corresponding to the reduction shall be refunded by GNPD to SAMELCO II."

5. Rate Impact

BATELEC I simulated a generation rate impact which ultimately resulted in a **reduction of PhP 0.1578/kWh** with the execution of the PPSA with GNPD, to wit:

Simulation of Generation Mix Rate with GNPD for the Year 2020

Power Supplier	Forecasted Energy (kWh)	Amount (Php)	Percent Share (%)	Average Rate (Php/kWh)	Weighted Average Rate (Php/kWh)
MPPCL	262,880,309.69	812,142,428.75	54.48%	3.0894	3.4670
GNPD	206,596,044.49	796,859,312.08	42.82%	3.8571	
WESM	13,029,848.20	63,829,558.52	2.70%	4.8987	
TOTAL	482,506,202.37	1,672,831,299.34	100%		

Simulation of Generation Mix Rate without GNPD for the Year 2020

Power Supplier	Forecasted Energy (kWh)	Amount (Php)	Percent Share (%)	Average Rate (Php/kWh)	Weighted Average Rate (Php/kWh)
MPPCL	262,880,309.69	812,142,428.75	54.48%	3.0894	3.6248
GNPD	-	-	0.0%	0.0000	
WESM	219,625,892.68	936,840,216.04	45.5%	4.2656	
TOTAL	482,506,202.37	1,748,982,644.79	100%		

* *Without VAT*

Rate Impact, PhP/kWh **(0.1578)**

Note:

i. Analysis and simulations are based on BATELEC I forecasted energy for the year 2020
ii. GNPower rate was based on Capacity fee at resulting Capacity Utilization Factor of 79% and Effective Energy Fee
iii. WESM average rate was simulated using 2020 forecasted market prices
iv. Prices do not include discounts, reductions, etc.

After due consideration of the foregoing and deliberation by the Commission, it resolves to allow the provisional implementation of the PPSA.

The EPIRA mandates the Commission to protect the interest of electricity consumers. Section 25 of the EPIRA requires that the retail rates charged by distribution utilities for the supply of electricity shall be subject to the Commission's regulation based on the principle of full recovery of prudent and reasonable economic costs. Section 4(e), Rule 5 of the EPIRA IRR, on the other hand, requires that the prices charged by a generation company for the supply of electricity shall be subject to the Commission's regulation.

The Commission's initial evaluation of the instant *Application* disclosed that the PPSA entered into by BATELEC I and GNPD will redound to the benefit of BATELEC I's end-consumers in so far as it will ensure the quality, reliability, security, and affordability of the supply of electric power[13].

IN VIEW OF THE FOREGOING, Applicants Batangas I Electric Cooperative, Inc. (BATELEC I) and GNPower Dinginin Ltd. Co. (GNPD) are hereby **GRANTED PROVISIONAL AUTHORITY** to implement their Power Purchase and Sale Agreement (PPSA), subject to the following conditions:

(This space is intentionally left blank.)

[13] As prescribed under Section 2 of the EPIRA.

1. Applicable Rates[14].

a. Capacity Fee

Capacity Utilization Factor (%)	Capacity Fee ($/kWh)
100%	0.0456
99%	0.0460
98%	0.0464
97%	0.0467
96%	0.0471
95%	0.0475
94%	0.0479
93%	0.0483
92%	0.0487
91%	0.0491
90%	0.0496
89%	0.0500
88%	0.0505
87%	0.0509
86%	0.0514
85%	0.0519
84%	0.0524
83%	0.0529
82%	0.0534
81%	0.0540
80%	0.0545
79%	0.0551
78%	0.0556
77%	0.0562
76%	0.0568
75%	0.0575
74%	0.0582
73%	0.0589
72%	0.0596
71%	0.0603
70%	0.0611
69%	0.0618
68%	0.0626
67%	0.0634
66%	0.0643
65%	0.0651

b. Energy Fee

Initial Energy Fee	=	$0.0328/kWh
Base CIF	=	$11.5573 per million kcal

[14] The rates and conditions provisionally authorized is the same as the precedent case involving the same power plant under ERC Case No. 2016-047 RC entitled "In the Matter of the Application for Approval of the Power Purchase and Sale Agreement (PPSA) between Samar II Electric Cooperative, Inc. and GNPower Dinginin Ltd. Co. with Prayer for Confidential Treatment of Information and the Issuance of Provisional Authority".

2. In the event that Applicants intend to extend or renew the subject PPSA, said renewal or extension should be in accordance with the Commission's Resolution No. 13, Series of 2015 and Resolution No. 01, Series of 2016;

3. The final generation cost that can be recovered shall be determined by the Commission in its Decision in the instant application; and

4. In the event that the final rate is higher than that provisionally granted, the resulting additional charges shall be collected by GNPD from BATELEC I. On the other hand, if the final rate is lower than that provisionally granted, the amount corresponding to the reduction shall be refunded by GNPD to BATELEC I.

SO ORDERED.

Pasig City, 13 September 2017.

JOSE VICENTE B. SALAZAR*
Chairman and CEO

ALFREDO J. NON
Commissioner

GLORIA VICTORIA C. YAP-TARUC
Commissioner

JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner

GERONIMO D. STA. ANA
Commissioner

LS: MCC/ARG/GLS/APV

TWG: WMS/LOC/FGBD

*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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