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 SUPPLY AGREEMENT BETWEEN AKLAN ELECTRIC COOPERATIVE, INCORPORATED AND GREEN CORE GEOTHERMAL, INCORPORATED, WITH PRAYER FOR THE ISSUANCE OF PROVISIONAL AUTHORITY,

ERC CASE NO. 2011-025 RC

AKLAN ELECTRIC COOPERATIVE, INCORPORATED (AKELCO), Applicant.

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DOCKETED
Date: APR 03 2018
By:

DECISION

Before the Commission for resolution is the *Application* dated 04 February 2011 (Application)) filed on 28 February 2011 by Aklan Electric Cooperative, Inc. (AKELCO) for approval of its Power Supply Agreement with Green Core Geothermal Incorporated (GCGI).

In its *Application*, AKELCO alleged the following:

1. AKELCO is a non-stock, non-profit electric cooperative, organized and existing under and by virtue of Presidential Decree 269, as amended, with principal office at Barangay Poblacion, Lezo, Aklan where it may be served with summons and other legal processes. It is the holder of an exclusive franchise issued by the National Electrification Administration (NEA) to operate the electric power distribution system in the Municipalities of Altavas, Banga, Balete, Batan, Buruanga, Ibajay, Kalibo, Lezo, Libacao, Makato, Malay (including the Island of Boracay), Malinao, Nabas, New Washington, Numancia, Tangalan, and

Madalag, all in the Province of Aklan, and the Municipalities of Libertad and Pandan, both in the Province of Antique (Franchise Area).

2. By and pursuant to Rule 20 (B) of the ERC Rules of Practice and Procedure, and other pertinent rules and regulations, this application is submitted to the Commission for its due consideration of the PSA executed by and between AKELCO and GCGI.

Statement of Facts

3. GCGI is a corporation duly organized and existing under Philippine laws to engage in the general business of generating electric power, with principal office address at the Energy Center, Merritt Road, Global City, Taguig City.

4. On October 23, 2009, GCGI took over the control and possession of the 192.5 MW Palinpinon Geothermal Power Plant (PGPP) and the 112.5 MW Tongonan Geothermal Power Plant (TGPP) through an open and competitive public bidding process which was managed by the Power Sector Assets and Liabilities Management Corporation (PSALM) in connection with the privatization of National Power Corporation (NPC) assets.

5. When PGPP and TGPP were awarded to GCGI, various Contracts for the Supply of Electric Energy (CSEE) between NPC and several distribution utilities were, likewise, attached to be served by GCGI. The CSEE between NPC and AKELCO expired on December 25, 2008. It was extended under a Transition Supply Contract (TSC) from December 26, 2008 to June 25, 2009 and further extended to December 25, 2009.

6. With the imminent expiration of the CSEE/TSC on December 25, 2009, AKELCO requested NPC for an extension of up to December 26, 2010. NPC referred the said request to PSALM. PSALM then wrote to AKELCO declining the request for an extension, since it could "no longer economically supply the electric power requirements of its existing customers, more so with requests for renewal, extension, and increases in contracted energy".

7. Consequently, it negotiated with GCGI to supply its power requirements, pursuant to the Commission's Resolution No. 21, Series of 2006 (A Resolution Suspending the Effectivity and Implementation of Certain Rules Issued by the Energy Regulatory Commission) which suspended in the meantime bidding as a method of selecting a power supplier;

8. Thus, on April 28, 2010, AKELCO and GCGI executed a PSA providing for the terms and conditions of the supply of electric energy applicable from March 26, 2010.

Abstract of the PSA and Other Related Information

9. The following are the salient features of the PSA;

9.1 **Term.** The PSA shall be in force for a period of ten (10) years commencing on the effective date of March 26, 2010 until December 25, 2020, unless earlier terminated in accordance with the provisions of the PSA.

However, pursuant to paragraph 4.12 of the PSA, GCGI shall be allowed to supply electric energy to AKELCO during the Extension Period which refers to the period commencing on December 26, 2009 and ending on March 25, 2010.

9.2 **Contract Energy.**

9.2.1 **Supply of Energy for the Period December 26, 2009 to March 25, 2010.** The electric energy supplied by GCGI to AKELCO from December 26, 2009 to March 25, 2010 shall be subject to the provisions of the CSEE, except that: a) the Contract Energy (as such term is defined in the CSEE) for each billing month during such period shall be equivalent to sixty-five percent (65%) of the Contract Energy for the same billing month of the immediately preceding year; and b) any electric energy consumed in excess of five percent (5%) of the applicable Contract Energy (as such term is defined in the CSEE) for any billing month during such period shall be subject to payment of a premium of ten percent (10%) of the applicable basic energy charge under the CSEE;

9.2.2 Supply of Energy for the Period March 26, 2010 to December 25, 2020. It shall buy from GCGI the monthly energy quantities specified in Annex D of the PSA, as shown below:

Billing Month	March 26, 2010 to December 25, 2010 (in kWh)	December 26, 2010 to December 25, 2020 (in kWh)
January	6,817,751	7,440,000
February	6,615,448	7,440,000
March	6,243,927	6,720,000*
April	11,904,000	7,440,000
May	11,520,000	7,200,000
June	11,904,000	7,440,000
July	11,520,000	7,200,000

August	11,904,000	7,440,000
September	11,904,000	7,440,000
October	11,520,000	7,200,000
November	11,904,000	7,440,000
December	11,520,000	7,200,000

Note:*6,970,000 kWh if contract month falls in a leap year

9.3 **Maximum Demand.** In any hour, GCGI has no obligation to supply energy to AKELCO over and above the applicable Maximum Demand, as specified in Annex B of the PSA.

Particular	**March 26, 2010 to December 25, 2010 (in kW)**	**December 26, 2010 to December 25, 2020 (in kW)**
Maximum Demand	18,000	10,000

Should its actual consumption of electric energy in any one (1) hour period exceed the equivalent energy of the Maximum Demand, such excess electric energy shall be paid by it at: a) the higher of the Basic Energy Charge for such hour or the Wholesale Electricity Spot Market (WESM) price at its node for such hour, in the event that GCGI provides such excess electric energy; or b) the actual cost of such excess electric energy (including any other charges or penalties that GCGI may incur due to such excess electric energy consumption of AKELCO) in the event that GCGI procured such excess electric energy from other suppliers or the WESM. Its payment to GCGI for excess consumption over and above the Maximum Demand is illustrated in Annex H of the PSA.

9.4 **Basic Energy Charge.** The schedule of Basic Energy Charge (as such term is defined in the PSA) is shown below:

Particulars	**March 26, 2010 to December 25, 2010 (in PhP/kWh)**	**December 26, 2010 to December 25, 2020 (in PhP/kWh)**
Basic Energy Charge	**5.3000**	**4.8500**
Base Philippine Consumer Price Index (CPI)	December 2009	December 2009
Point of Delivery	AKELCO's Substation	High voltage side of the step-up transformers at the plants' sites

The details of the PSA, such as executive summary thereof, relevant information on GCGI and its power plants capacities, as well as salient provisions of the said PSA are attached to the application.

Adjustment to the Basic Energy Charge

10. The Basic Energy Charge shall be escalated or de-escalated annually by the Philippine CPI published by the National Statistical Coordination Board (NSCB). The base Philippine CPI shall be December 2009.

11. **Re-Pricing.** They shall agree upon new provisions on Basic Energy Charge, and adjustments to the Basic Energy Charge and Minimum Charge, which shall take effect at the beginning of the sixth (6th) Year.

Advantages of GCGI's Market-Based Rate and Adjustment Formula

12. The foregoing Basic Energy Charge is a fixed market-based rate.

13. A market competition provides the strongest incentives to generators to offer the best service to customers in terms of price and quality of service, and to bring them to the delivery points more reliably and efficiently than their competitors.

14. Certainly, a competition is the best form of economic regulation of electricity markets. It is in cognizance of this that the provisions of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 or the EPIRA, called for the privatization of the power generation assets of NPC in order to promote competition in the power sector.

15. Thus, in a competitive electricity market, a distribution utility which selects a power supplier with clearly-defined benefits and distinct commercial advantages over competitors in terms of price and quality of service is already assured that its consumers are getting the best price and most efficient power supply in the market.

16. Meanwhile, the Adjustment Formula for the Basic Energy Charge is advantageous to its consumers given that it is simple, predictable, stable and minimal.

    a. Under Section 6.2 of the PSA, the Basic Energy Charge shall be escalated or de-escalated annually only by the Philippine CPI published by the NSCB. The base Philippine CPI shall be December 2009.

    b. GCGI will be fully absorbing the risk of any upward movement of the geothermal steam cost, which is indexed to global coal prices and foreign exchange rates, and foreign exchange risk related to spare parts and equipment. For this reason, the full Basic Energy Charge shall be subject to the adjustment formula to help GCGI partly cover the risk of potential increases of the geothermal steam cost, and foreign exchange (forex)-denominated spare parts and equipment.

c. Using the historical indices in the last six (6) years, an analysis was made to compare the projected generation rates of GCGI in the next five (5) years using Philippine CPI only in its adjustment formula, and the projected generation rates of the coal-fired base load power plants, which are adjusted using global coal prices, foreign exchange rate, United States (US) CPI and Philippine CPI. As shown in the table below, the average increase of global coal prices reached 18.67% per year, while only 5.53% per year for Philippine CPI:

	2004	2005	2006	2007	2008	2009	2010
RP CPI	120.59	129.82	137.94	141.77	154.95	160.03	166.31
ANNUAL CHANGE		7.65%	6.25%	2.78%	9.30%	3.28%	3.92%
AVERAGE							5.53%
COAL PRICES	53.58	48.11	48.82	64.87	128.08	72.07	96.68
ANNUAL CHANGE		-10.21%	1.48%	32.88%	97.44%	-43.73%	34.15%
AVERAGE							18.67%

17. The generation rates of GCGI are expected to remain the lowest in the Visayas area due to the minimal increase and stable movement of the Philippine CPI.

18. Evidently, entering into the PSA with GCGI would significantly reduce its exposure to price volatilities in the WESM once the spot market starts commercial operation in the Visayas.

Commercial Advantages of GCGI's Generation Rate and Impact on AKELCO's Overall Rates

19. The continued increase in the demand for power by its consumers within its franchise area, not to mention the gloomy power situation in the Visayas, have motivated it to look for additional power suppliers to provide a safe, secure and reliable power for its consumers.

20. Moreover, it cannot rely on NPC to continue supplying its power requirements after the expiration of the CSEE. With the expiration of the said CSEE on December 25, 2009 and its consequent inability to supply electricity to distribution utilities, it had to enter into a PSA with a power generator.

21. Pursuant to the State policy declared in the EPIRA, to enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors and consistent with the terms of its franchise, it has sought a generation company, GCGI.

22. The market-based generation rate of GCGI is the lowest compared to other generation companies with available capacity to supply its base load requirement. A new power supply contract with GCGI would be in the best interest of its consumers. Its price advantage over AKELCO's alternative power suppliers ensures a more competitive and efficient supply for the latter's member-consumers.

    a. GCGI's Basic Energy Charge of an ex-plant price of PhP4.8500/kWh is the lowest electricity rate compared to the other base load power plants in the Visayas grid.

    b. Its current blended generation rate is PhP4.3939/kWh. This will increase by PhP1.4647/kWh assuming that the proposed generation rates under the PSA with GCGI and the Electric Power Purchase Agreement (EPPA) with Panay Energy Development Corporation (PEDC) will be approved by the Commission.

23. On another note, considering the incentives given to renewable energy resources such as geothermal, purchasing electric power from GCGI's geothermal power plants is more advantageous for its consumers, thus:

    a. The sale of electric power generated from renewable sources of energy shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code of 1997, as amended by Republic Act No. 9337.

    b. Buying power from GCGI's geothermal power plants will also support the government's policy to encourage the development and utilization of renewable energy resources to effectively prevent or reduce harmful emissions and thereby balance the goals of economic growth and development with the protection of health and the environment.

24. Under the PSA, it is further entitled to a Prompt Payment Discount (PPD) by and pursuant to the Commission's Resolution No. 12, Series of 2005, approving a new policy on the treatment of PPD. It shall be entitled to the PPD should it meet the criteria set forth under Section 9 of the PSA. . Member-consumers will enjoy fifty percent (50%) of the PPD which it is entitled to avail of under the said PSA.

25. In view of the foregoing, with the purchase of electricity from GCGI, its member-consumers are assured of adequate and reliable power service, as they are in fact currently enjoying the benefits of convenience having a constant supply of energy.

26. In support of the instant application for approval of said rate structure in the PSA, it attached the following documents:

a. AKELCO's Board Resolution No. 021, Series of 2010-03-05 authorizing its Board President, Mr. Wayne Malilay to sign in behalf of AKELCO, the subject PSA with GCGI.

b. GCGI's Board Resolution No. 5, Series of 2009 designating Messrs. Richard B. Tantoco and Ernesto B. Pantangco as its duly authorized signatories.

c. AKELCO's Board Resolution No. 069, Series of 2010-09-08 authorizing its General Manager, Mr. Chito Peralta to file the instant application with the Commission and to sign documents relative thereto.

d. General Plant Description, showing all relevant technical characteristics of PGPP.

e. General Plant Description, showing all relevant technical characteristics of TGPP.

f. Copy of the Transmission Service Agreement between AKELCO and the National Transmission Company (TRANSCO).

g. Details on the load forecast projections in accordance with the latest Distribution Development Plan (DDP) for 2011.

h. Alternative Demand Side Management (DSM) Program that it could implement.

i. Latest and Complete Set GCGI's Audited Financial Statements (AFS) for the period June 22, 2009 to December 31, 2009.

j. Details of the computation of GCGI's Generation Cost.

Compliance with Pre-Filing Requirements

27. It manifests compliance with the pre-filing requirements mandated under Rule 3, Section 4(e) of the Implementing Rules and Regulations of the EPIRA and Rule 6 of the 2006 ERC Rules of Practice and Procedure, to wit:

27.1 Copies of the Certificate acknowledging receipt of the instant Application with annexes and accompanying documents issued by the Legislative Bodies of the Province of Aklan and the Municipality of Lezo, where it principally operates.

27.2 Notarized Affidavit of Publication stating that the instant application had been published in a newspaper of general circulation within its the Franchise Area.

27.3 A copy of the newspaper issue where the application as published appeared.

Issuance of Provisional Authority

28. All the foregoing allegations are re-pleaded by reference in support of the prayer for the issuance of provisional authority.

29. Considering the ongoing privatization of their generating assets in the Visayas Grid, NPC/PSALM cannot commit to supply its electric power requirements as it would not be feasible for NPC/PSALM to serve their customers from their remaining generation assets.

30. With the expiration of the CSEE/TSC with NPC/PSALM on December 25, 2009, it had to enter into a PSA with a power generator to ensure continuous and uninterrupted supply of quality power to its Franchise Area.

31. Considering that supply of energy by GCGI makes up thirty-seven percent (37%) of its energy demand, pending hearing of the instant application and in the absence of a provisional authority, AKELCO and its member-consumers will be at a very vulnerable state as they cannot be assured of continuous supply of energy absent an authority to implement an agreement where the obligation to supply and purchase energy may be enforced.

32. More so, pending approval of the instant application, and without a provisional authority granted, it will be unable to avail of the commercial advantages granted to it under the PSA, to the detriment and prejudice of its member-consumers.

33. Furthermore, it is necessary for it to avail of the much needed electric power from GCGI, without any delay, and help alleviate the current power shortage in its Franchise Area.

34. Rule 14, Section 3 of the Commission's Rules of Practice and Procedure, clearly mandates the issuance of provisional authority pending approval of the application, thus:

> ***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)*

35. Evidently, there is a sufficient basis for the issuance of the provisional authority pending final approval of the instant application, thus issuance of provisional authority is clearly imperative.

Prayer

36. Thus, it prays that pending hearing, a provisional authority be issued authorizing it to immediately implement the rate structure in PSA with GCGI and that after due notice and hearing, the instant application be duly approved.

Having found AKELCO's *Application* to be sufficient in substance, with the required fees having been paid, the Commission issued an Order and a Notice of Public Hearing, both dated 07 March 2011, setting the case for initial hearing on 01 April 2011.

On 25 March 2011, AKELCO filed its *Pre-trial Brief* attaching therein the Judicial Affidavits of Mr. Lorenzo S. Laserna, Consultant of AKELCO (Mr. Laserna) and Mr. Ramon B. Diaz de Rivera (Mr. Diaz de Rivera), Energy Development Corporation's Manager for Electricity and Steam Sales, who was assigned to GCGI.

During the hearing on 01 April 2011, AKELCO appeared through its counsels Attys. Apollo Sangalang and Danny Gapasin. On the other hand, Attys. Romeo P. Inocencio and Brian M. Calizo appeared as intervenors. Thereafter, AKELCO presented its proof of compliance with the notice and publication requirements, which were duly marked as Exhibits "U" to "DDD". Finding the said submissions substantially compliant with the Order dated 07 March 2011, the Commission declared that it acquired jurisdiction over the instant case.

During the expository presentation, AKELCO presented Mr. Laserna, who delivered the first part of the expository presentation. For the second part, GCGI presented its witness Mr. Diaz de Rivera, who delivered the same under oath. At the termination thereof, the public including the intervenors were given the opportunity to ask questions relative to the presentation. Thereafter, the expository presentation was terminated and the Pre-trial Conference commenced.

In the course of the Pre-trial Conference, AKELCO presented the stipulation of facts and the issues as stated in its *Pre-trial Brief*. Thereafter the Commission asked AKELCO if the intervenors were furnished of its Pre-trial Brief, which the counsel affirmed the same.

After which, the Pre-trial Conference was concluded and the presentation of evidence commenced.

During the presentation of evidence, AKELCO presented its Consultant, Mr. Laserna, who testified in support of the instant *Application*. Likewise, GCGI presented again its witness Mr. Diaz de Rivera. In the course of their respective testimony, Mr. Laserna and Mr. Diaz de Rivera were made to identify several documents, which were duly marked as exhibits. Thereafter, the cross examinations of the said witnesses were conducted by the intervenors.

Upon the termination of the presentation of evidence, the Commission directed AKELCO to submit its Formal Offer of Evidence, as well as additional documents to aid the Commission in the evaluation of the instant case. Intervenors, on the other hand, manifested that they would no longer submit their comment on AKELCO's formal offer of evidence and that they will not present any witness.

On 25 April 2011, AKELCO filed its *Formal Offer of Evidence*.

On 16 May 2011, the Commission issued an order provisionally approving the PSA of AKELCO and GCGI, the dispositive portion of which reads:

> **WHEREFORE,** the foregoing premises considered, the Commission hereby **PROVISIONALLY APPROVES** the Power Supply Agreement (PSA) of Aklan Electric Cooperative, Incorporated (AKELCO) with Green Core Geothermal, Incorporated (GCGI) at a Basic Energy Charge of **PhP4.85/kWh (at 100% Load Factor and exclusive of system loss),** 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;
>
> b. In the event that the rates provisionally approved are found to be higher than the final rates, the amount corresponding to the excess shall be refunded by AKELCO to its member-consumers by crediting the same in their electric bills over a period to be determined by the Commission; and
>
> c. The Basic Energy Charge (excluding the Capital Cost Recovery Fee and the component in the O&M pertaining to E.R. 1-94) shall be escalated or de-escalated annually using the Philippine Consumer Price Index as published by the National Statistical Coordination Board, provided that no escalation or

de-escalation shall be made within one (1) year from the Effective Date of the PSA.

On 15 June 2011, the Commission received thru registered mail the *Opposition/Comment* filed by Intervenor, Atty. Inocencio.

On 01 August 2011, intervenor Atty. Inocencio filed a *Motion for Clarification* dated 29 July 2011.

On 30 April 2012, the Commission issued an Order extending the provisional authority granted to AKELCO pursuant to its Order dated 16 May 2011.

On 07 February 2017, the Commission issued an Order admitting the exhibits contained in the *Formal Offer of Evidence* for being relevant and material in the final resolution of this case.

ISSUE

The issue to be resolved by the Commission is whether the Power Supply Agreement (PSA) entered into by AKELCO with Green Core Geothermal Incorporated (GCGI) should be approved.

THE COMMISSION'S RULING

On 21 February 2017, the Commission deliberated and decided to approve the instant *Application*. However, due to supervening events[1], the Decision could no longer be promulgated without undergoing reconfirmation by the Commission *En Banc*. Thus, the Commission resolved to reconfirm the Decision on 15 June 2017.

The Commission evaluated the propriety and necessity of the PSA entered into by AKELCO with GCGI. Below are the discussions of the Commission leading to its approval of the PSA:

I. GCGI's PROPOSED RATES

The table below shows the different rates that GCGI offered to its customers:

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[1] The Chairman was placed on preventive suspension as per Order of the Office of the President (OP-DC Case No. 17-D-094) dated 2 May 2017 and received on 04 May 2017.

Rate (PhP/kWh)	Description
4.7000	The base rate [at one hundred percent (100%) load factor and exclusive of system loss] offered by GCGI to customers, which cannot avail of Prompt Payment Discount (PPD). This is based on December 2009 Philippine Consumer Price Index (CPI).
4.8554	The base rate [at one hundred percent (100%) load factor and exclusive of system loss] offered by GCGI to customers, which were able to avail of PPD. This is based on December 2009 Philippine Consumer Price Index (CPI).
5.0336	4.8554 plus 3.67% system loss
5.3000	4.8554 plus 9.16% system loss
4.8800	4.7000 plus 3.67% system loss
5.1000	The base rate (at 100% load factor and exclusive of system loss) offered by GCGI to customers which cannot avail of PPD. This is based on June 2011 Philippine CPI.

II. COMPUTATION OF GCGI's TRUE COST OF GENERATION

GCGI averred that its proposed Basic Energy Charges (BECs) are "market-based". As such, the cost assumptions and methodologies relative to the computation of debt-equity ratio, project cost and return on investment, which are benchmarks in determining actual or true cost of generation, were not applied.

Although GCGI's proposed rate is "market-based", the Commission deems it prudent to establish GCGI's rate on a "cost-based" methodology, consistent with the Commission's existing policies.

In determining the reasonableness of GCGI's proposed rates and establishing the true cost of generation, the Commission considered only the full recovery and pass-through of prudent and economic costs in acquiring and operating GCGI's power plants with a fair return on assets.

The Commission recognizes that GCGI's proposed rate is a fixed bundled rate. However, it is necessary that the proposed generation rate of PhP4.8500/kWh[2] be unbundled to compute for the recoverable generation rate. Thus, the Commission considered the following true cost components:

a. **Capital Recovery Fee (CRF)** which is a capital-related component that will allow GCGI to recover its investment including a reasonable rate of return;

b. **Operation and Maintenance Fee (OMF)** which is a component to recover the recurring operating and maintenance (O&M) costs. The O&M cost is usually composed of local and foreign components, which changes proportionately with the changes of the predetermined economic factor such as CPI and foreign exchange rate; and

c. **Fuel Fee (Geothermal Steam)** which is a component to recover fuel costs incurred in generating electricity.

Shown below is GCGI's computed true cost of generation based on its 2010 and 2011 Audited Financial Statement (AFS):

Component	2010 AFS (PhP/kWh)	2011 AFS (PhP/kWh)
Capital Recovery Fee	1.8544	1.4113
Operations and Maintenance	0.5632	0.5165
Fuel Fee	3.3302	3.3500
Total Generation Rate/ Basic Energy Charge	**5.7478**	**5.2778**

Each of the components is discussed extensively below:

1. **Capital Recovery Fee (CRF)**

The CRF is intended for non-volatile and stable capital cost and should not be elastic or moving, thus, not subject to CPI.

[2] At one hundred percent (100%) load factor and exclusive of system loss.

The Commission computed GCGI's total capital cost at Eleven Billion Eight Hundred Fifty Nine Million Six Hundred Four Thousand and Two Hundred Thirty Five Pesos (PhP11,859,604,235.00) by taking into account the asset value based on the costs of acquisition and rehabilitations of the plants, as validated in its 2010, 2011, and 2012 AFS.

1.1. Acquisition Cost of the Power Plants

On 02 September 2009, GCGI acquired the 192.5 MW Palinpinon Geothermal Power Plant ("PGPP") located in Negros Oriental, and the 112.5 MW Tongonan Geothermal Power Plant ("TGPP") located in Leyte through the auction conducted by Power Sector Assets and Liabilities Management (PSALM). Subsequently, on 23 October 2009, both power plants were turned over to GCGI.

The actual cash outflow for the acquisition of the foregoing power plants amounted to Ten Billion One Hundred Sixty Five Million Three Hundred Thirty Seven Thousand and Six Hundred Fifty Seven Pesos (PhP10,165,337,657.00).

1.2. Rehabilitation Cost of the Power Plants

GCGI is undertaking rehabilitation activities primarily to improve the reliability and availability of the power plants considering their condition and age. The rehabilitation activities are expected to increase the total net dependable capacity of the power plants from 230 MW to 245 MW.

Based on its submissions, GCGI indicated a total budget of PhP2.51 Billion for the rehabilitation of the power plants. However, it subsequently submitted a budget of PhP2.98 Billion.

According to GCGI, the latest budget estimate for the rehabilitation had increased to PhP2.98 Billion due to higher projected costs for turbine/generator repairs, cooling water system, and electrical systems. Likewise, it alleged that it spent a total of PhP1.70 Billion as of the end of 2011, while its committed expenditures based on its existing purchase orders, work orders, and contracts with suppliers account for the balance of the GCGI's updated total budget of PhP2.98 Billion.

The Commission believes that the cost incurred for rehabilitating the power plants is an eligible cost to be recovered and therefore should be included as part of GCGI's CRF. The PhP2.98 Billion rehabilitation cost being proposed consists of incurred and committed capital expenditures, thus, part of which is forecasted expenditure, which may or may not materialize.

It must be emphasized, however, that GCGI failed to substantiate its proposed rehabilitation cost of PhP2.98 Billion, particularly, the projected amount. Hence, the Commission took reference from GCGI's 2010, 2011, and 2012 AFS and adopted the total additional amount of One Billion Six Hundred Ninety Four Million Two Hundred Sixty Six Thousand and Five Hundred Seventy Eight Pesos (PhP1,694,266,578.00) as rehabilitation costs incurred. The GCGI's AFS had been verified and audited by an independent accounting firm, thus, the Commission relied on the figures contained therein.

Accordingly, the Commission calculated the total capital cost of GCGI in the amount of Eleven Billion Eight Hundred Fifty Nine Million Six Hundred Four Thousand and Two Hundred Thirty Five Pesos (PhP11,859,604,235.00) consisting of the acquisition cost of Ten Billion One Hundred Sixty Five Million Three Hundred Thirty Seven Thousand and Six Hundred Fifty Seven Pesos (PhP10,165,337,657.00), and rehabilitation costs of One Billion Six Hundred Ninety Four Million Two Hundred Sixty Six Thousand and Five Hundred Seventy Eight Pesos (PhP1,694,266,578.00).

1.3. Power Plants' Economic Life

In its initial submission, GCGI indicated an economic life of twenty-two (22) years for the power plants. This corresponds to the remaining years of Energy Development Corporation's (EDC) Geothermal Resources Sales Contract (GRSC) with the National Power Corporation-PSALM (NPC-PSALM) which will expire in

2031. The GRSC gives an assurance of steam supply for the PGPP and TGPP.

However, during the hearing, GCGI averred that it would be more appropriate to reflect the actual economic life used in its financial statements, as this was subjected to third-party assessment and audit. It further alleged that in its AFS, the weighted average economic life of the power plants is twelve (12) years.

Parenthetically, in the Certificate of Compliance (COC) issued by the Commission in 2010, the economic life of PGPP and TGPP were at twenty-five (25) years.

Therefore, the Commission determines that the plant assets should be recovered and spread over the period within which said assets are expected to be available for use.

While the AFS provided the power plants' economic life at twelve (12) years, the Commission deems it necessary to adopt the twenty-five (25) years economic life. This is consistent with what has been indicated in the COC as declared by GCGI based on the condition of the said power plants.

1.4. Return on Equity/Weighted Average Cost of Capital

The project is funded by one hundred percent (100%) equity. All capital contributions were provided by EDC. GCGI's required return on equity (ROE) is twenty-two percent (22%).

The Commission benchmarked the cost of equity with approved PSAs by the Commission in ERC Case Nos. 2011-030 RC[3] and 2011-138 RC[4], as well as the rate in setting the Feed-in-Tariff (FIT).

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[3] In the Matter of the Application for Approval of the Electricity Supply Agreement (ESA) Between First Catanduanes Electric Cooperative, Inc. (FICELCO) and Catanduanes Power Generation, Inc. (CPGI), with Prayer for the Issuance of Provisional Authority.

[4] In the Matter of the Application for Approval of the Power Sales Agreement as Amended Among South Cotabato II Electric Cooperative, Inc., Conal Holdings Corporation and Sarangani Energy Corporation

The approved cost of equity is 16.44%, computed as follows:

Market Risk Premium	10.13%
Multiply by Re-levered Beta	1.03
Plus Risk Free Rate	6.01%
Cost of Equity	16.44%

The ROE of 16.44% is an after-tax cost of equity which, when the effect of thirty percent (30%) income tax is added back, this would result to a twenty-three percent (23%) pre-tax cost of equity. Since it is higher than GCGI's required ROE, the Commission adopted the twenty-two percent (22%) return on equity in computing the capital recovery.

1.5. Billing Determinant/Saleable Generation

The PGPP, which is located in Valencia, Negros Oriental Province, consists of two power stations, namely: PGPP I and II. It has a combined installed capacity of 192.5 MW. PGPP I was commissioned in 1983 and comprises of three (3) units, each with an installed capacity of 37.5 MW. On the other hand, PGPP II was commissioned in 1992 and comprises of (4) units with combined installed capacity of 80 MW.

TGPP, which is located in Kananga, Leyte, was commissioned in 1983 and has a total installed capacity of 112.5 MW (3 x 37.5 MW).

GCGI in the computation of its 2010 true cost, proposed a billing determinant of 1,716,960,000 kWh based on the net dependable capacity of both the PGPP and TGPP of 245,000kW and eighty percent (80%) plant capacity factor.

However, GCGI alleged that based on the present condition of its power plants, the estimated plant capacity factor has increased to eighty-six percent (86%). GCGI further alleged that based on this eighty-six percent (86%) plant capacity factor, the plant is estimated to generate an average annual energy of 1,845,732,000 kWh.

On the other hand, the Commission used a billing determinant based on the average kWh sold of 1,908,085,397, as disclosed in GCGI's 2010 and 2011 Generation Company Management Reports (GCMR).

1.6. Computation of CRF

The table below summarizes the difference between GCGI's calculation of CRF and the Commission's recomputed CRF:

Particulars	GCGI's Computation	Commission's Computation
Acquisition Cost (PhP)	10,165,382,657.00*	10,165,337,657.00
Rehabilitation Cost (PhP)	2,975,901,676.00	1,694,266,578.00
Total Capital Cost (PhP)	13,141,284,333.00	11,859,604,235.00
Plant Economic Life (Years)	12	25
Cost of Equity (Pre-Tax)	22%	22%
Annuity (PhP)	3,183,933,045.00	2,627,331,705.00
Billing Determinant	1,716,960,000	1,908,085,397
Capital Recovery Fee (PhP/kWh)	**1.8544**	**1.3769**

* GCGI included 2009 Additions amounting to PhP45,000.00

2. Operations and Maintenance Fee (OMF)

Based on the documents submitted, GCGI proposed an OMF of PhP0.5632/kWh using the actual O&M cost of PhP966,970,503.00, as reflected in its 2010 AFS. Subsequently, it proposed an OMF of PhP0.5165/kWh to reflect its actual O&M cost of PhP953,278,897.00 for the year 2011, as reflected in its 2011 AFS.

The Commission believes that using a two (2)-year cycle is more reflective of the O&M of the power plants than using a single year. Thus, the Commission adopts the average OMF using the total actual O&M cost of PhP2,123,841,102.00, as reflected in GCGI's 2010 and 2011 AFS.

In computing the total O&M cost of PhP2,123,841,102.00, the Commission excluded the Replacement Power Cost, Depreciation, and Provisions for Probable Losses, Impairment of Parts and Supplies Inventories and Doubtful Accounts.

2.1. Computation of OMF

The table below summarizes the Commission's recomputed OMF:

Particulars	Commission's Computation
Operations and Maintenance (PhP)	1,061,920,551.00[1]
Billing Determinant (kWh)	1,908,085397[2]
O&M Fee (PhP/kWh)	0.5565

Note: [1] Average O&M cost for 2010 and 2011.
[2] Average kWh generation for 2010 and 2011.

3. Fuel Fee (Geothermal Steam)

Based on the documents submitted, GCGI proposed a Fuel Fee of PhP3.3302/kWh. This is the effective geothermal steam cost billed by EDC to GCGI for the June 2011 billing period. However, in its updated computation, GCGI proposed a Fuel Fee of PhP3.35/kWh based on the actual cost, as reflected in its 2011 AFS.

In determining the appropriate fuel fee that GCGI should charge to AKELCO, the Commission determined that the appropriate index that Applicant must use is the Philippine CPI. The same index has been historically used in determining geothermal prices.

The CPI is a generally accepted and established index that provides for a more stable price. It lessens the risk of exposing the Applicants and, ultimately, the consumers to the volatility of price levels based in economic changes.

The use of Philippine CPI would also allow GCGI and other parties to predict the movement of its steam price. Consequently, it would aid the concerned parties in developing their strategies to manage the possible risks that such price movement may entail.

Upon evaluation, the Commission has determined that the Fuel Fee or Steam Fee is composed of a Fixed Component in the amount of PhP0.1741/kWh and a Variable Component in the amount of PhP2.5925/kWh.

The fixed component is not subject to indexation. On the other hand, the variable component is subject to escalation/de-escalation using the Philippine CPI, and should be computed in accordance with the formula provided under Annex "F" of the PSA.

III. EVALUATION OF THE NON-RATE PROVISIONS OF THE PSA

A thorough evaluation of the PSA entered into by GCGI with AKELCO revealed that the non-rate provisions thereof are reasonable and in accordance with the accepted industry practice, except the following provisions:

a. Section 16.21, which states:

> Buyer shall solely bear all risks should ERC disallow Buyer from recovering through its retail rates the payments for the energy taken in accordance with the terms and conditions herein. (Emphasis Ours).

b. Section 16.22, which states:

> Should the ERC or any other relevant governmental instrumentality order or decide that any provision relating to generation costs, charges, adjustments or energy off-take under this Agreement is disapproved or is approved subject to modifications (Conditional Approval), the Parties agree to negotiate in good faith with a view to amending this Agreement in order to comply with the terms of such order or decision of the ERC or such other relevant governmental instrumentality. Any amendments to this Agreement agreed by the Parties shall be effective upon the approval of such amendments by the ERC or such other relevant governmental instrumentality, as the case maybe. Until such amendments have been agreed to by the Parties and approved by the ERC, each Party shall continue to strictly perform their respective obligations under the terms and conditions of this Agreement, except that the Contracted Energy shall be charged at the higher of: (a) the rate approved by the ERC, or (b) the prevailing time-of-use generation rates plus other charges and adjustments applicable to the Visayas grid which are

> approved by the ERC. In the event that the Parties fail to reach any agreement on such amendments, Seller shall have the right (but not the obligation) to terminate this Agreement on at least thirty (30) Day's prior notice, and the provisions of the second paragraph of Section 13.2 shall apply. In case of Conditional Approval, Seller and Buyer may continue implementing this Agreement with the modified provisions. <u>In any event, Buyer shall not be entitled to a return or to refuse payment of such generation costs, charges, adjustments or energy off-take under the disapproved or provisionally approved provisions already billed by or paid to Seller. Any consequent refund to Buyer's customers ordered by the ERC shall be for the sole account of Buyer</u>. (Emphasis Ours).

The Commission believes that this Decision should bind both contracting parties and that their PSA shall not be rendered ineffective or nugatory by any termination or "walk-away" clause in the PSA by reason of this Decision. Thus, the Commission deems it prudent to disallow the foregoing provisions.

The Commission has a mandate to protect the interest of the electricity consumers insofar as they are affected by the rates, by ensuring that the tariffs imposed are consistent with the principle of full recovery of prudent and reasonable costs.

After a thorough evaluation of the documents submitted and the testimonies of the witnesses presented, the Commission finds that the approval and implementation of the PSA will be beneficial to AKELCO's member-consumers by way of reliable, continuous and efficient supply of power within its franchise area at reasonable costs as mandated by the EPIRA [Section 2. Declaration of Policy - (b) "to ensure the quality, reliability, security and affordability of the supply of electric power"].

WHEREFORE, the foregoing premises considered, the *Application* filed by Aklan Electric Cooperative, Incorporated (AKELCO) for the approval of its Power Supply Agreement (PSA) with Green Core Geothermal Incorporated (GCGI) is hereby **APPROVED WITH MODIFICATION** and subject to the following conditions:

1. The applicable Basic Energy Charge (BEC) shall be as follows:

COMPONENT	PhP/kWh
Plant Capital Recovery Fee (P-CRF)	1.3769
Steam-Fixed Component (S-FC)	0.1741
Plant Operations and Maintenance (P-O&M)	0.5565
Steam-Variable Component (S-VC)	2.5925
TOTAL BEC	**4.7000**

2. The P-CRF and S-FC shall not be subject to any indexation. On the other hand, the P-O&M and S-VC shall be indexed to Philippine CPI. The indexation to Philippine CPI shall be in accordance with the Escalation/De-escalation Formula provided under Annex "F" of the Power Supply Agreement (PSA). The base Philippine CPI shall be December 2011.

3. A rebasing shall be made every ten (10) years beginning 2015.

4. GCGI's actual cost of operation, including the actual rehabilitation cost, shall be audited by an Independent Third Party in accordance with the rules to be promulgated by the Commission and the approved rates herein shall be adjusted, if warranted. The test of reasonability shall NOT be the actual cost incurred but *"whether or not such cost is incurred based on a good utility practice and comparable or within the level of the power plants similarly situated to that of GCGI"*. Further, the cost of audit shall be shouldered by GCGI.

The Commission further **RESOLVES** to:

a. **DISALLOW** all termination or "walk-away" clauses incorporated in the PSA; and

b. **DIRECT** AKELCO to **INCLUDE** in the monthly calculation of its generation rate in accordance with the Automatic Generation Rate Adjustment (AGRA) Rules, the indices and references thereof used by GCGI in the O&M and Fuel Fees calculation;

c. **DIRECT** GCGI to **SUBMIT** its latest Audited Financial Statements (AFS), as soon as it becomes available; and

d. **DIRECT** AKELCO and GCGI to **SUBMIT,** within **fifteen (15) days** from receipt hereof, their proposed refund or recovery scheme, as the case may be, for the difference between the final approved rates and the provisionally implemented rates.

SO ORDERED.

Pasig City, 15 June 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: CRC/LSP/APV // PSA TWG-C: ALC/JBB/TAC/ECE

*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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