

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



**IN THE MATTER OF THE
JOINT APPLICATION FOR
THE APPROVAL OF THE
POWER SUPPLY
AGREEMENT (PSA)
BETWEEN PAMPANGA II
ELECTRIC COOPERATIVE,
INC. (PELCO II) AND
FIRST GEN HYDRO POWER
CORPORATION (FGHPC),
WITH PRAYER FOR
PROVISIONAL AUTHORITY,**

ERC CASE NO. 2017 -071 RC

**PAMPANGA II ELECTRIC
COOPERATIVE, INC. (PELCO
II) AND FIRST GEN HYDRO
POWER CORPORATION
(FGHPC),**

Applicants.

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D O C K E T E D
Date: APR 06 2018
By: W

ORDER

On 03 August 2017, Pampanga II Electric Cooperative Inc. (PELCO II), and First Gen Hydro Power Corporation (FGHPC) filed a *Joint Application* dated 24 July 2017 (Application) for approval of the Power Supply Agreement (PSA), with prayer for the issuance provisional authority.

In support of their prayer for the issuance of a provisional authority, PELCO II and FGHPC alleged the following:

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15. PELCO II's present power supply requirements is serve by its two (2) suppliers, SGC SMEC and IPP BGI. SGC SMEC will undergo a scheduled undergo maintenance outage on August 5 - September 3, 2017. With the expected increase in the volatility of WESM prices during SMEC's outage and the critical status of power reserves, the current generation

charge (GC) of PELCO II will consequently be adversely affected to the prejudice of its end-users. Therefore, the implementation of the PSA with FGHPC will temper the impact of WESM price volatility that will afford the end-users a stable supply and affordable rates.

16. Thus, in view of the urgency above-mentioned, PELCO II respectfully moves for the issuance of a provisional authority (PA) in this instant case in order to immediately proceed in implementing the PSA, and for the lower rate and benefits derived therein can immediately be enjoyed by the customers of PELCO II. A copy of the affidavit in support of the prayer for issuance of provisional authority is attached hereto as Annex "EE".
 17. PELCO II understands that whatever rate that may be fixed and approved by the Honorable Commission under the PA shall be without prejudice to whatever rights and legal remedies which FGHPC may have under the law and the PSA, and the implementation of the PA shall be conditioned upon the acceptance by the Parties of the terms thereof.
 18. Finally, PELCO II would like to emphasize that should a PA be issued and accepted by the Parties, and the PSA is provisionally implemented, Section 3 of the PSA will accordingly be amended to the effect that the PSA becomes effective already between the Parties. Consequently, the Terms of the PSA will be deemed amended to the effect that the thirty (30) days term shall start from the first day of delivery of power by FGHPC to PELCO II under the PA.
- [11.] In Compliance with the ERC Rules of Practice and Procedure, Applicants have furnished the legislative bodies of the municipality and province wherein the principal place of business of PELCO II is located, a copy of the present Joint Application with all its annexes and accompanying documents. Copies of the certifications of receipt from the Presiding Officer or Secretary of the legislative bodies of the municipality of Guagua, Pampanga and the Province of Pampanga, or from their duly authorized representatives, attesting to the fact of service are attached hereto as Annexes "Z" and "Z - 1", respectively.
- [12.] Likewise, a copy of the present Joint Application with all its annexes and accompanying documents was furnished to the City of Pasig where FGHPC's principal place of business is located. Copy of the certification of receipt from the Presiding Officer or Secretary of the legislative body of the City of Pasig, or from their duly authorized representatives attesting to the fact of service are attached hereto as Annex "Z - 2".
- [13.] Applicants have also caused the publication of the present Joint Application in a newspaper of general circulation

within the Franchise Area of PELCO II. Copies of the corresponding duly notarized Affidavit of Publication and the newspaper publication are attached hereto as Annexes "AA" and "AA - 1", respectively.

ISSUE

The issue for the Commission's resolution is whether Applicants have satisfied the requirements provided by law for the grant of provisional authority

THE COMMISSION'S RULING

The Commission grants provisional authority to Applicants PELCO II and FGHPC.

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

The authority of the Commission to issue provisional authority is pursuant to 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 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. (Citations omitted.)

¹ G.R. No. 161113, 15 June 2004.

The instant *Application* seeks the Commission's approval of the PSA entered into between PELCO II and FGHPC with prayer for the issuance of a provisional authority. The Commission is empowered to grant provisional approval in the instant *Application*.

Moreover, Sections 2 and 43 of the EPIRA mandates the Commission to uphold and protect consumer interest in the performance of its functions. Considering the foregoing, it becomes apparent that the exercise of the Commission's power to grant provisional authority prayed for the Applicants is proper and necessary.

**II. THE COMMISSION
FINDS MERIT IN
GRANTING
PROVISIONAL
AUTHORITY IN FAVOR
OF APPLICANTS PELCO
II AND FGHPC.**

**A. Procedural Requirements for the Issuance of
Provisional Authority**

As discussed in the *National Association for Consumers for Reforms vs. ERC*² ("NASECORE Case"), the following are the procedural requisites for the grant of provisional authority under Section 4(e), Rule 3 of the IRR of EPIRA:

(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

² G.R. No. 163935, 02 February 2006

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.

Applicants have complied with the requirements of filing a verified Application. Moreover, Applicants indicated and provided proof in said Application that the legislative bodies of the Local Government Units (LGU) namely the Municipality of Guagua and Province of Pampanga and City of Pasig have been furnished with copies of the *Application*. As proof thereof, Applicants attached in the instant *Application* certifications issued by Municipality of Guagua and Province of Pampanga and City of Pasig as Annexes "Z" and "Z-2", respectively.

Applicants further provided proof of publication of the Application in a newspaper of general circulation within the franchise area of PELCO II. Copies of the corresponding duly notarized Affidavit of Publication, and the issue of newspaper where the application was published are attached hereto as Annexes "AA" and "AA - 1", respectively.

On the basis of the documents the Applicants submitted, the Commission resolved the prayer for provisional authority of the 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.

B. Compliance with Substantial Requirements for the Grant of the Provisional Authority

The Commission has looked into the alleged necessity in the issuance of the provisional authority to implement Applicants' PSA, as prayed for in their *Application*. After initial review thereof, the

Commission has determined the need therefor based on the following considerations:

1. PELCO's Power Requirement

Applicant PELCO II is in need of a 30 MW baseload power supply for the period from 05 August 2017 to 03 September 2017. The primary source of PELCO II's electricity requirements is the 1,200 MW coal-fired thermal power plant, located in Sual, Pangasinan, whose contracted capacity is being administered by San Miguel Electric Corporation (the "Sual Power Plant"). On the aforesaid period, Sual Power Plant will be unable to supply PELCO II with power due to the scheduled maintenance outage of Unit 2 of the Sual Power Plant.

2. Procurement Process

To maintain an uninterrupted and reliable power supply of its existing demand during the affected period, PELCO II decided to source the needed power at affordable and cheaper generation rates through the Competitive Selection Process (CSP).

Pursuant to the Commission's Resolution Nos. 13, Series of 2015³, No. 1, Series of 2016⁴, the recent issuances of NEA Memoranda Nos. 2017-003⁵ and 2017-005⁶. Applicant PELCO II had conducted a public bidding to solicit the most competitive offer/s for the replacement power of 30 MW baseload requirement. After careful evaluation and review of the terms of the bid offers, Applicant PELCO II deemed that the proposal of Applicant FGHPC is the most advantageous and beneficial for its end consumers. Therefore, Applicants executed the subject Power Supply Agreement (PSA) on 11 July 2017.

³ A Resolution Directing All Distribution Utilities (DU's) to Conduct a Competitive Selection Process (CSP) in the Procurement of their Power Supply to the Captive Market.

⁴ A Resolution Clarifying the Effectivity of ERC Resolution No. 13, Series of 2015.

⁵ Policy in the Conduct of Competitive Selection Process (CSP) of the ECS' Power Supply Agreement (PSA).

⁶ Publication to the NEA Website of the Notice of Invitation To Bid of Procurements or Contracts.

3. Salient Features of the PSA

The subject PSA has the following salient features:

- | | | |
|-----------------------------------|---|-------|
| a) Type of Plant | Pantabangan-Masiway
Electric Power Plant | Hydro |
| b) Location | Nueva Ecija | |
| c) Term | One (1) month or thirty (30)
consecutive days (5 August, 2017 –
September 3, 2017). | |
| d) Installed
Capacity | 132.8 MW | |
| e) Contracted
Capacity | 30 MW | |

f) **Availability of Energy**

Seller FGHPC shall supply Buyer PELCO II the Contracted Capacity from the Plant (Section 1.1.28 of the PSA), and in lieu thereof, the Wholesale Electricity Spot Market (WESM) or third party source subject to prudent utility practice and applicable laws and regulations in accordance to Section 5 of the PSA.

g) **Sale and Purchase of Contract Capacity and Associated Energy**

At the start of the subject contract on the Effective Date, Seller FGHPC shall supply to Buyer PELCO II the Contract Capacity⁷ specified therein at the agreed variable and fixed rates in terms of capacity and energy fees based on the agreed formula and sample computations⁸. Buyer PELCO II shall comply with the protocol for the nomination and declaration to the WESM of the bilateral contract quantities, and the coordination procedures and activities between the Parties with respect to WESM transactions in accordance with Section 4 of the PSA.

⁷ Annex "B" of the PSA

⁸ Annexes "C" [2 of 3] & [3 of 3] of the PSA

h) Adjustment in Contract Capacity

Buyer PELCO II and Seller FGHPC may enter into another agreement through good faith negotiations for an increase in Contract Capacity in accordance with Section 4.8 of the PSA. Buyer PELCO II, in no less than or at least seven (7) days prior to the intended implementation of the increase in Contract Capacity may be allowed as such, subject to the following constraints; a) the Plant's technical limits, relating to transmission lines, substations and other facilities, b) the capacity constraints of the Plant, and c) the availability of energy and/or capacity from other Suppliers or other third party sources that may be utilized to serve the increase in the Maximum Demand and Contracted Capacity, and d) such other terms and conditions as the Parties may agree upon.

As conditions precedent of the increase in Contract Capacity (Section 4.9 of the PSA), Buyer PELCO II shall seek the written approval and certification from the National Grid Corporation of the Philippines (NGCP) confirming that there is/are no transmission constraint/s, which written approval is required before implementation of the increase. Buyer PELCO II shall make a written application to Seller FGHPC. Seller FGHPC shall duly evaluate and inform Buyer PELCO II of its decision on the application in accordance with Section 4 of the PSA.

Seller FGHPC may unilaterally waive the requirement of Sections 4.8 and 4.9 of the PSA, in whole or in part.

i) Charges and Adjustments

Upon the start of Supply Effective Date, Buyer PELCO II, under Annex "A" of the PSA, shall pay Seller FGHPC of the sum of the Monthly Total Fixed Charges and Variable Charges of the Contract Capacity and in excess, the charges shall be in accordance with Sections 6.1, 6.2 and 4.3 of the PSA, respectively. No adjustment shall be made to the Fixed and Variable Charges during the Term of the Agreement.

j) Capacity and Energy Fees

The provision for Capacity and Energy Fees is covered under Section 6 of the PSA. Annexes "C - 1, 2, and 3" of the PSA provide the formulae for the computation of the Basic Energy Charge and

adjustments to fixed Operation & Maintenance (O & M) and variable charges, respectively, to wit:

ANNEX A of the PSA
Schedule of Basic Energy Charge

	Fees	Unit of Measure
1. Fixed Charge	2,725.	Php/kW/month
2. Variable Charge	1.0397	Php/kWh

The Basic Energy Charge is composed of the Fixed Charge and the Variable Charge on a peso per kilowatt-hour basis.

The complete schedule of Basic Energy Charge is attached as Annex "A" of the PSA.

k) Capacity Utilization Discounts.

PELCO II may avail of a Capacity Utilization Discount (CUD) equivalent to a fixed amount of Php 0.6751 for every kilowatt hour (kWh) (Section 4.4 of the PSA) consumed by PELCO II from FGHPC, provided, if the Basic Energy Charge approved by the Commission less than the Basic Energy Charge as agreed upon by the Parties, the CUD may be reduced or may not be extended to Buyer. Prior to the Effective Date, PELCO II shall identify the minimum load factor which should not be lower than sixty percent (60%) based on the formula in Annex "D" of the PSA.

4. Rate Impact

The charges on Fixed and Variable Fees (Annex "A" and Section 6 of the PSA) and Capacity Utilization Discounts (Annex "D" and Section 4.4 of the PSA) will result to lower generation cost charges of PELCO II. Below is an analysis of the rate impact:

RATE IMPACT ANALYSIS

Billing Month	Scenario 1	Scenario 2	Scenario 3	Scenario 4	Scenario 5
	Replacement Power is at NPC-TOU Rate	Replacement Power is at Php 6.00/kWh Flat Rate	Replacement Power is at Php 5.90/kWh Flat Rate	Replacement Power is at Average WESM Rate	Replacement Power is at Proposed FGHPC Rate
August 2017	5.0012	5.7589	5.7007	5.1494	4.4960
September 2017	4.4834	5.4836	5.4264	3.8738	4.1940
Average	4.7423	5.6212	5.5635	4.5116	4.3450

Billing Month	Rate Increase / (Reduction)			
	Scenario 1 vs Scenario 5	Scenario 2 vs Scenario 5	Scenario 3 vs Scenario 5	Scenario 4 vs Scenario 5
August 2017	(0.5052)	(1.2629)	(1.2047)	(0.6536)
September 2017	(0.2894)	(1.2896)	(1.2324)	0.3204
Average	(0.3973)	(1.2763)	(1.2185)	(0.1666)

The analysis of the rate impact reveals that the resultant generation charge (GC) is lower and, thus, offers the best competitive and affordable price. Lower GC translates to the same passed-on charges to the benefit and interest of Applicant PELCO II's end consumers. Therefore, the approval for the implementation of the PSA is imperative and essential because of the lower GC that will redound to the cooperative's stakeholders.

III. COMMISSION'S EVALUATION OF THE PROPOSED GENERATION RATES

On 7 October 2013, the Commission issued an order in ERC Case No. 2013-159⁹ provisionally approving the PSA between Nueva Ecija II – Area 1 Electric Cooperative, Incorporated (NEECO II- Area 1) and First Gen Hydro Power Corporation (FGHPC).

⁹ Entitled "In the Matter of the Application of the Power Supply Agreement (PSA) between Nueva Ecija II – Area 1 Electric Cooperative, Incorporated (NEECO II- Area 1) and First Gen Hydro Power Corporation (FGHPC), with Prayer for the Issuance of Provisional Authority.

Considering that the instant case involves the same plant of FGHPC, the Commission adopts its ruling in the provisionally approved PSA of FGHPC in ERC Case No. 2013-159¹⁰, to wit:

Evaluation of the Proposed Rates

The proposed Basic Energy Charge (BEC)(TOU Rates) was determined by FGHPC to be the most competitive among the bidders that would enable it to secure a PSA with NEECO II- Area 1. The said BEC is lower than its submitted true cost of generation of PhP5.8582/kWh.

To ensure that the base electricity fees would be for the recovery of reasonable economic costs incurred the Commission computed FGHPC's true cost of generation at PhP4.9191/kWh, broken down as follows:

Particulars	PhP/kWh
Capital Cost Recovery Fee (CCRF)	3.9650
Operating Cost Recovery Fee (OCRF)	0.9541
Total Cost Recovery Fee	4.9191

a) Capital Recovery Fee(CRF)

The CRF is the cost associated with the return on, and return of capital investment. The return of capital is the cost component of the CRF associated with the recovery of project cost; whereas the return on capital represents the reasonable return on the capital investment or the project cost equal to the firm's cost of capital or weighted average cost of capital (WACC).

FGHPC's computed CCRF is based on a total capital cost of PhP9,233,225,000 [Asset Purchase Price of PhP6,448,194,000 and all Additions which include Land/Building, Machinery, Equipment, transportation, Construction in Progress/Rehabilitation and Embedded Derivatives due to the Pantabangan Rehabilitation and Upgrading Program (PRUP) contract from 2006 to 2011 amounting to PhP2,785,031,000] using a twenty (20)-year recovery period, and WACC of 14.06%. Its computation of the WACC is based on the proportionate share of debt, equity and its applicable cost.

On 7 May 2010, it executed an Omnibus Loan and Security Agreement for a PhP5 billion loan facility with Philippine National Bank, Allied Banking Corporation, PNB Capital and Investment Corporation, Allied Banking Corporation – Trust and Investment division, and PNB Trust Banking Group. The tenor of the loan is ten (10) years with an interest rate of 9.025% for the first five (5) years, subject to re-pricing after five (5) years.

¹⁰ Ibid.

The Commission evaluated FGHPC's total recoverable capital cost by taking into account its Net Book Value and the Refurbishment validated in its Audited Financial Statements (AFS). The Commission derived the total recoverable capital cost, as follows:

Particulars	Amount
Asset Purchase Price	6,448,194,000
PRUP	2,785,031,000
Total Capital Cost	9,233,225,000

As regards FGHPC's WACC, the Commission recalculated the same based on 9.025% Interest Rate and 16.44% cost of equity. Instead of using a twenty percent (20%) cost of equity, Commission benchmarked the cost of equity to 16.44% based on the approved WACC under the Feed-in-Tariff (FIT), as well as its recent approval on PSA application. The 54:46 gearing ratio used is, likewise, based on FGHPC's AFS. Shown below is a comparison between FGHPC's proposed WACC and the Commission's computation:

Particulars	Gearing Ratio	Cost of Debt	Cost of Debt	Post-Tax WACC	Pre-Tax WACC
FGHPC's Application	49:51	9.025%	20.00%	14.06%	20.09%
Commission's Computation	54:46	9.025%	16.44%	11.48%	16.40%

With the completion of the rehabilitation and upgrade in 2010, 2011 marked the first year of the Pantabangan HEPP operations with higher Net Dependable Capacity. As such, FGHPC alleged that its actual 2011 gross generation of FGHPC, equivalent to 296,213,570 kWh, is the most reflective of the maximum generation of the plant after rehabilitation. Thus, it is used as the basis for the Saleable Generation.

It bears stressing that the billing determinant used by Commission is 352,817,438.50kWh and not FGHPC's 2011 actual generation of 296,213,570 kWh. The Commission calculated the billing determinant based on the five (5)-year average as reflected in the FGHPC's Generation Company Management Report (GCMR). Shown below is the comparison between the Commission's computed billing determinant vis-à-vis FGHPC's estimates based on the submitted financial model and how the said figures were derived¹¹:

Particulars	FGHPC's Proposed Billing Determinant	Commission's Computation
Saleable Generation	296,213,570*	352,817,438.50
Plant Capacity Factor	25.62%	33.56%
CCRF	4.7218	3.9650

*Note: *Based on actual kWh sales for Calendar Year 2011.*

¹¹ The Commission's computed Saleable Generation is compared with that of FGHPC's reported actual generation for 2011 only.

From the computed asset base amounting to PhP9,233,225,000, the Commission was able to derive the required annual recovery of the total capital cost including a periodic rate of return on the capital cost and the twenty (20) years asset life as the recovery period.

FGHPC proposed that the hourly BEC shall be escalated or de-escalated annually by the Consumer Price Index (CPI) published by the National Statistical Coordination Board (NSCB), provided that no escalation or de-escalation shall be made within one (1) year from the execution of the PSA.

However, the Commission believes that the CCRF of the base rate, which accounts for the recovery of the capital cost should not be subjected to any adjustment. Owing to its nature and having been an incurred cost, inflation should not necessarily affect the capital recovery. Though the additional expenditure, which accounts for the PRUP is being incurred during the contract period, such has been considered based on its actual value as per FGHPC's AFS.

Thus, using the annual required CRF of PhP1,398,913,226.90 and a billing determinant of 352,817,438.50 kWh, the Commission computed the CCRF at **PhP3.9650/kWh** which shall be fixed throughout the duration of the PSA.

b) Operating Cost Recovery Fee (OCRF)

Based on its 2011 AFS, FGHPC operating cost amounted to PhP 336,626,000 broken down as follows:

2011 Audited Operating Cost	
Plant O&M, Variable	PhP88,184,000
Plant O&M, Fixed	6,018,000
Insurances	23,343,000
Staff Cost	80,738,000
Professional Fees	9,983,000
Taxes and Licenses	64,026,000
Other Administrative Cost	64,334,000
Total Operating Cost	PhP336,626,000

From the foregoing, the Commission computed OCRF of **PhPo.9541/kWh** by dividing the amount PhP336 million by the annual billing determinant of 352,817,438.50kWh.

The Commission recognizes that the cost of operating and maintaining the plant increases over time due to economic factors, which are beyond the control of the parties, such as inflation. These Operating Costs usually increase at the same rate as the CPI. Thus, to account for these fluctuations and variations in the value and purchasing power of the peso throughout the contract period, the OCRF will be subject to adjustment tied with the movement of the

CPI for all income households in the Philippines as reported by the National Statistics Office (NSO).

c) Comparison of Rates Between the Commission's Computed True Cost of Generation Rate (TCGR) and FGHPC's Computed Total Cost Recovery Fee (TCRF)

In substantiating its proposed BEC to NEECO II-Area 1, FGHPC computed its TCRF and arrived at a higher rate than what was agreed in the PSA. However, the Commission validated the same and arrived at recovery fees lower than what was computed by FGHPC. As shown in the table below, the Commission's computed TCRF is lower by PhP0.9391/kWh than FGHPC's computed TCRF of PhP5.8582/kWh for the year 2011.

Cost Component	FGHPC's 2011 Actual (PhP/kWh)	Commission's Computation (PhP/kWh)	Difference (PhP/kWh)
CCR Fee	4.7218	3.9650	0.7568
OCR Fee	1.1364	0.9541	0.1823
TCRF	5.8582	4.9191	0.9391

For purposed of determining the reasonableness of the proposed TCRF, the Commission compared the same with computed TCGR, as shown below:

Cost Component	FGHPC's 2011 Actual (PhP/kWh)	Commission's Computation (PhP/kWh)	Difference (PhP/kWh)
CCR Fee	-	3.9650	
OCR Fee	-	0.9541	
TCRF	4.7030	4.9191	0.2161

It can be gleaned that the Commission's computed TCGR of PhP4.9191/kWh is higher by PhP0.2161kWh than the proposed TCGR of PhP4.7030/kWh. Inasmuch the Commission cannot grant any amount higher than what is prayed for, it is constrained to provisionally approve the rate of PhP4.7030/kWh.

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 gull recovery of prudent and reasonable costs.

An initial evaluation of the instant application disclosed that the PSA entered into by and between NEECO II – Area 1 and FGHPC will redound top the benefit of NEECO II – Area 1's member-consumers in terms of continuous, reliable, efficient and affordable power supply as mandated by Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 or 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 Commission hereby **PROVISIONALLY APPROVES** the Power Supply Agreement (PSA) between Nueva Ecija II – Area 1 Electric Cooperative, Incorporated (NEECO II – Area 1) and First Gen Hydro Power Corporation (FGHPC), subject to the following conditions:

- a. The generation rate shall be at a rate of **PhP4.703/kWh**;
- b. Only the Operating and Maintenance (O&M) Fee of PhP0.9176/kWh shall be escalated or de-escalated annually using the Philippine Consumer Price Index (CPI), as published by the National Statistical Coordination Board (NSCB);
- c. The final generation rate that can be recovered shall be determined by the Commission in its Decision in the instant application; and
- d. In the event that the final rate is higher than that provisionally granted, the resulting additional charges shall be collected by FGHPC from NEECO II – Area 1. On the other hand, if the final rate is lower than the provisionally granted, the amount corresponding to the reduction shall be refunded by FGHPC to NEECO II - Area 1.

ACCORDINGLY, the foregoing premises considered, Applicants Pampanga II Electric Cooperative Inc. (PELCO II), and First Gen Hydro Power Corporation (FGHPC) are hereby **GRANTED PROVISIONAL AUTHORITY** to implement their Power Supply Agreement (PSA), subject to the following conditions:

- a) The generation rate shall be at a rate of **PhP4.703/kWh**;
- b) Only the Operating and Maintenance (O&M) Fee of PhP0.9176/kWh shall be escalated or de-escalated annually using the Philippine Consumer Price Index (CPI), as published by the National Statistical Coordination Board (NSCB);
- c) In the event that Applicants intend to extend or renew the subject PSA, said renewal or extension should be in accordance with the Commission's Resolution No. 13, Series of 2015¹² and Resolution No. 01, Series of 2016¹³;

¹² A Resolution Directing All Distribution Utilities (DUs) to Conduct a Competitive Selection Process (CSP) in the Procurement of their Supply to the Captive Market.

¹³ A Resolution Restating the Effectivity of ERC Resolution No. 13, Series of 2015.

- d) The final generation cost that can be recovered shall be determined by the Commission in its Decision in the instant *Application*; and
- e) In the event that the final rate is higher than that provisionally granted, the resulting additional charges shall be collected by FGHPC from PELCO 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 FGHPC to PELCO II.

SO ORDERED.

Pasig City, 24 October 2017.


ALFREDO J. NON
OIC, Chairman and CEO


GLORIA VICTORIA C. YAP-TARUC
Commissioner


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner

(On-Leave)
GERONIMO D. STA. ANA
Commissioner

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