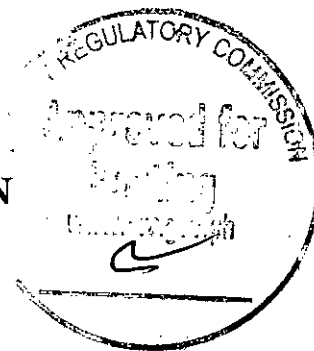


Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Ave., Pasig City



IN THE MATTER OF THE APPLICATION FOR APPROVAL OF THE POWER PURCHASE AND SALE AGREEMENT (PPSA), AS AMENDED, BETWEEN TARLAC II ELECTRIC COOPERATIVE, INC. AND GNPOWER LTD. CO. WITH PRAYER FOR CONFIDENTIAL TREATMENT OF INFORMATION AND THE ISSUANCE OF PROVISIONAL AUTHORITY,

ERC Case No. 2016-031 RC

TARLAC II ELECTRIC COOPERATIVE, INC. (TARELCO II) AND GNPOWER LTD. CO. (GNPOWER)

Applicants.

X-----X

DOCKETED
Date: JUN 17 2018
By: *[Signature]*

ORDER

On 16 March 2016, Tarlac II Electric Cooperative, Inc. (TARELCO II) and GNPower Ltd. Co. (GNPower) filed their joint Application for approval of their Power Purchase and Sale Agreement (PPSA), with prayer for confidential treatment of information and issuance of provisional authority.

In support of said Application, TARELCO II and GNPower alleged, among others, the following:

1. Applicant TARELCO II is a non-stock, non-profit electric cooperative organized under Philippine

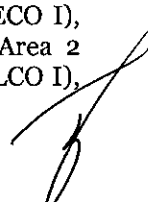
laws, with principal office address at San Nicolas, Concepcion, Tarlac. It is authorized to distribute and provide electricity services to its member consumers in the Municipalities of Bamban, Capas, Concepcion, and La Paz, all in the Province of Tarlac, and the Municipality of Zaragoza in the Province of Nueva Ecija (hereinafter, "Franchise Area"). A copy of TARELCO II's Certificate of Franchise is attached to the Application as **Annex "A"** and forms an integral part thereof;

2. Applicant GNPOWER is a duly registered limited partnership existing under Philippine laws. It is engaged in the business of developing, constructing, operating, and owning power generation facilities. Its principal office is at 28th Floor, Orient Square Building, Don Francisco Ortigas Jr. Road, Ortigas Center, Pasig City. Copies of its Certification of Registration issued by the Securities and Exchange Commission (SEC) and Amended Articles of Partnership are attached as **Annexes "B"** and **"B-1"**, respectively, of the Application;
3. Applicants may be served with orders, notices, and other legal processes of the Commission through its counsels of record;
4. Pursuant to *Sections 25, 43 (u) and 45 (b) of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA) and its Implementing Rules and Regulations*, this Application is submitted to the Commission for its due consideration and approval of the Power Purchase and Sale Agreement (PPSA), as amended, executed by and between Applicants TARELCO II and GNPOWER;

STATEMENT OF FACTS

5. TARELCO II, along with eleven other electric cooperatives¹ in the Central Luzon region, created

¹ Aurora Electric Cooperative (AURELCO), Nueva Ecija I Electric Cooperative, Inc. (NEECO I), Nueva Ecija II Area 1 Electric Cooperative, Inc. (NEECO II-Area1), Nueva Ecija II Area 2 Electric Cooperative, Inc. (NEECO II-Area2), Pampanga Electric Cooperative, Inc. (PELCO I),

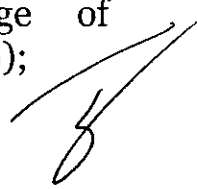


Central Luzon Electric Cooperative Association – First Luzon Aggregation Group, Inc. (CLECAFLAG), a corporation duly registered with the SEC, as evidenced by the attached copy of its Certificate of Registration, as **Annex “C”** of the Application;

6. CLECAFLAG, owned and controlled by twelve (12) member-Electric Cooperatives (“ECs”), was formed to coordinate and manage the administration of power supply process including joint planning and selection process, contracting of power of the member-ECs to ensure sustainable power supply and reduced electricity rates in the region;
7. Accordingly, in 2013, CLECAFLAG conducted a competitive selection process to bid out the forward power needs of its member-ECs, particularly, for the supply of 300 MW of aggregated base load power from new generating capacity/ies for twenty (20) years starting late 2018, subject to the Commission’s approval process and the signing by all the member-ECs of the PPSA, as per the award notice and a Memorandum of Agreement (MOA), to meet the growing demand of the member-ECs;
8. In the selection of a new power provider, CLECAFLAG employed extensive evaluation parameters and procedures, and with all twelve member-ECs further represented through their own Technical Working Groups. The selection process was conducted in two stages, including a Swiss Challenge, as follows:
 - a. The first stage is the selection of a Generation Company (“GenCo”) that will submit a Firm Proposal (the “Firm Proponent”) for the aggregated base load to be contracted by the member-ECs. The GenCo shall be selected based on the committed price cap, among other key contract terms. CLECAFLAG’s proposed price cap was Php4.09/kWh or

PhP4.5808/kWh, inclusive of VAT. Nonetheless, the evaluation of the price cap shall be based on expected levelized price for the duration of the contract; and

- b. The second stage is the announcement of the Firm Proposal, or that offer of the GenCo which submitted the lowest proposed committed price cap. The Firm Proposal shall then be subjected to "Swiss Challenge" by other GenCos who were declared qualified during the first stage. The Original Firm Proponent has the right to match the proposal of the Challenger;
9. On the first stage of the selection process, three GenCos participated by submitting their respective bids, namely: GNPOWER, AES Philippines (AES), and San Miguel Energy Corporation (SMEC);
 10. Based on the ranking determined through CLECAFLAG's evaluation using a specified set of bid parameters and references in the transaction documents, GNPOWER was declared as the Firm Proponent, while AES, submitting a bid that was PhPo.23/kWh greater than that of GNPOWER, was the Challenger who had an opportunity to counter GNPOWER's proposal through Swiss Challenge. Meanwhile, SMEC was disqualified for submitting a price offer that is higher than CLECAFLAG's proposed price cap of PhP4.09/kWh;
 11. On 8 November 2013, CLECAFLAG and GNPOWER entered into a Memorandum of Agreement (MOA), **Annex "D"** of the Application, with the individual member-ECs as witnesses, to define each of CLECAFLAG and GNPOWER's (as the Firm Proponent) rights and obligations under transaction, such as the following, among others:
 - a. CLECAFLAG shall allow only AES to participate in the Swiss Challenge of GNPOWER's Firm Proposal (Section 4.6);



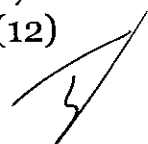
- b. CLECAFLAG shall immediately award the PPSA with finality to GNPOWER in any of the following circumstances xxx (a) AES' failure to submit Letter of Intent to Challenge (Section 4.7); and
- c. After awarding the PPSA with finality to GNPOWER, CLECAFLAG shall enter into a PPSA with GNPOWER and/or cause its member-ECs to enter into a PPSA.

AES failed to submit a counter-proposal to match GNPOWER's Firm Proposal.

- 12. On 10 March 2014, CLECAFLAG declared GNPOWER as the winning proponent, evidenced by the attached copy of CLECAFLAG's letter of the same date as **Annex "E"** of the Application. GNPOWER shall, then, execute individual power supply agreements with the twelve member-ECs;
- 13. Copies of relevant documents used in the competitive selection process conducted by CLECAFLAG to bid out the forward power needs of its member-ECs, particularly, for the supply of 300 MW of aggregated base load power, are attached to the Application as follows:

ANNEX	DOCUMENT
"F"	Invitation to participate in the power supply aggregation and contracting of CLECAFLAG
"F-1"	Notice of Eligibility to participate in the bidding sent to GNPOWER
"F-2"	Transaction Information Memorandum
"F-3"	Supplemental Transaction Information Memorandum detailing the Evaluation Framework (i.e., terms of reference)
"F-4"	Evaluation Result

- 14. During the negotiations conducted between GNPOWER and each of the twelve (12) member-ECs for the finalization of a PPSA and the final review of the latter's projected base load electricity demand, it had come to their attention that the twelve (12)



member-ECs would not be able to procure 300 MW of aggregated base load power in the first Contract Year, as committed in the transaction;

15. As a result, GNPOWER and the member-ECs negotiated to have an interim supply period, which is estimated to commence on December 2018 subject to the ERC's approval process;
16. On 10 June 2014, GNPOWER executed with each of TARELCO II and nine (9) other member-ECs. The PPSA between GNPOWER and TARELCO II is attached as **Annex "G"**² of the Application;
17. GNPOWER agreed to extend the negotiations with CLECAFLAG and its two member-ECs that have not yet signed their respective PPSAs to allow CLECAFLAG to significantly fulfill its obligation under the MOA;
18. GNPOWER offered to assist CLECAFLAG and its member-ECs in fulfilling their obligation to cause the signing of an aggregated 300 MW PPSA as a requirement for GNPOWER's project milestones, and on 18 September 2015, GNPOWER, in its appreciation to TARELCO II and other member-ECs for being early supporters of the GNPOWER project, executed an amendment³ to the PPSA reducing the rate indicated in the PPSA in favor of TARELCO II.

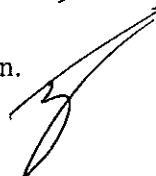
**ABSTRACT OF THE PPSA, AS AMENDED,
AND OTHER RELATED INFORMATION**

19. The following are the salient features of the subject PPSA, as amended:

A. Term of Agreement. The PPSA, as amended, shall be effective at the date of its execution, and shall terminate after 240 months from the date specified in the Commencement Date

² Each of the PPSA entered into with the other 9 individual MECs are also made an integral part hereto as Annexes G-1 to G-9.

³ Attached as **Annex "H"** of the Application.



Notice⁴ defined as the written notice that indicates the commencement of the first delivery of electric capacity at full commercial operation of the first unit of GNPOWER's facility⁵.

B. Source of Supply. GNPOWER shall make available, sell, and deliver or cause to be delivered to TARELCO II the Product⁶ at the Delivery Point, whether sourced from GNPOWER's facility or from other electricity generators, including the Wholesale Electricity Spot Market (WESM).

GNPOWER's facility shall be constructed and operated in Mariveles, Bataan. The Technical Details of the Project is attached to the Application as **Annex "I"**;

C. Contracted Capacity. TARELCO II is contractually entitled to receive from GNPOWER, at any hour, subject to GNPOWER's Available Capacity (as defined in the PPSA, as amended) for such hour, the Contracted Capacity (as defined in the PPSA, as amended), as follows:

Year	Contracted Capacity
1	19,000
2	21,000
3	22,000
4	22,000
5	22,000
6	22,000
7	23,000
8	24,000
9	25,000
10	38,000
11	38,000
12	38,000

⁴ Section 1.3, Schedule 1. Contracted Capacity, Contract Price and Terms of Agreement, PPSA, page 31

⁵ Section 1.1, Article 1. Definitions and Interpretations, PPSA, page 4

⁶ Refers to Electric Capacity, contracted on a variable Capacity Utilization Factor basis, together with energy, as specified in Schedule 1 of the PPSA, as the context requires, or as otherwise agreed by the Parties. (Section 1.1, Article 1. Definitions and Interpretations, PPSA, page 8)

13	38,000
14	38,000
15	38,000
16	38,000
17	38,000
18	38,000
19	38,000
20	38,000

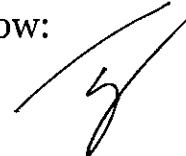
C.1. Option to Increase Contracted Capacity.

Section 2.7 of the PPSA, as amended, provides that upon written notice to GNPOWER, TARELCO II may, upon approval by GNPOWER, increase its Contracted Capacity which increase shall be subjected to the same terms and conditions contained in the PPSA, as amended. In considering whether or not to approve the request for increase in Contracted Capacity, GNPOWER 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 GNPOWER gives its written approval.

D. Contract Price. The Contract Price shall be composed of Capacity Price and Energy Price.

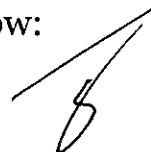
D.1 The *Capacity Fee* is the component of the Contract Price allocated to pay for the cost, as well as the operations and maintenance of the power plant and is designated as the Capacity Fee in *Schedule 1* of the PPSA, as amended, as such may be adjusted from time to time based on GNPOWER's Capacity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

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



Capacity Utilization Factor (%)	Capacity Fee (\$/kWh)
100%	0.0466
99%	0.0470
98%	0.0474
97%	0.0477
96%	0.0481
95%	0.0485
94%	0.0489
93%	0.0493
92%	0.0497
91%	0.0502
90%	0.0506
89%	0.0510
88%	0.0515
87%	0.0519
86%	0.0524
85%	0.0529
84%	0.0534
83%	0.0539
82%	0.0544
81%	0.0549
80%	0.0555
79%	0.0561
78%	0.0567
77%	0.0573
76%	0.0579
75%	0.0585
74%	0.0592
73%	0.0599
72%	0.0606
71%	0.0613
70%	0.0621
69%	0.0629
68%	0.0637
67%	0.0645
66%	0.0653
65%	0.0662

In case the Capacity Utilization Factor is not a whole number, the Capacity Fee shall be computed using the formula below:



$$\text{Capacity Fee} = - 0.10773 \times (\text{CUF})^3 + 0.33975 \times (\text{CUF})^2 - 0.3932 \times (\text{CUF}) + 0.2078$$

Where:

Capacity Fee = is the Capacity Fee in \$/kWh

CUF = is the Capacity Utilization Factor between 65% and 100%, provided that if the actual CUF is below 65% (the "Minimum Capacity Utilization Factor"), the Capacity Price shall be calculated based on the Capacity Fee and quantity associated with the Minimum Capacity Utilization Factor.

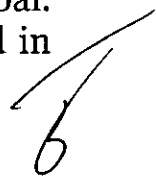
The Capacity Utilization Factor (CUF) shall be computed as follows:

$$\text{Capacity Utilization Factor (CUF)} = \frac{Q}{CC \times (H_T - EH_{To})}$$

Where:

Q = Quantity of kWh
CC = Contracted Capacity, in kW, as set forth in Schedule 1
H_T = 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

D.2 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 amended, as adjusted from time to time due to changes in the delivered price of coal. The Energy Fee shall be computed in



accordance with the following formula:

$$\text{Energy Fee} = \text{IEF} \times \left(\frac{\text{CIF}_n}{\text{CIF}_o} \right)$$

Where:

IEF = Initial Energy Fee equal to \$0.0370/kWh

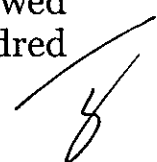
CIF_n = CIF Cost of Fuel for Billing Period *n*

CIF_o = Base CIF Cost of Fuel equal to \$11.5573/million kCal

E. Prompt Payment Discount. Section 4.3 (c) of the PPSA, as amended, provides that if TARELCO II pays the invoice in full within ten (10) days of receipt from GNPOWER, TARELCO II shall receive a credit on the next subsequent bill 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.

F. Capacity Utilization Discount. Section 4.3 (d) of the PPSA, as amended, provides that if TARELCO II pays the invoice amount in full in accordance with GNPOWER's invoice instruction on or before the twenty-fifth (25th) day of the succeeding calendar month from the relevant Billing Period and TARELCO II's CUF is greater than or equal to 65%, aside from the Prompt Payment Discount, TARELCO II 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.

G. Scheduled and Unscheduled Outage. Pursuant to Section 2.2, GNPOWER 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 TARELCO II. Likewise, GNPOWER 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;

COMMERCIAL ADVANTAGES OF THE PROPOSED CONTRACT PRICE AND IMPACT ON TARELCO II'S OVERALL RATES

20. The PPSA, as amended, was executed between TARELCO II and GNPOWER to respond to the growing power demand of TARELCO II's member consumers, which its current providers may not be able to meet and supply;
21. Currently, TARELCO II receives a total of 37 MW from its existing suppliers, out of its requirement of 45 MW. With an annual average growth of 5%, TARELCO II's peak demand is forecasted to increase to 54 MW by 2020. Copies of TARELCO II's Supply-Demand from 2013 to 2022, Historical and Forecasted Data, and Average Daily Load Curve, are attached to the Application and made an integral parts thereof as **Annexes "J" to "J-2"**;
22. The additional supply from GNPOWER assures the member-consumers of TARELCO II of adequate and reliable power service, thus, less likelihood of power outages and brownouts;
23. TARELCO II conducted a rate impact analysis which resulted in a lower effective rate of PhP4.0836/kWh with supply coming from GNPOWER, compared to a rate of PhP7.1227/kWh without GNPOWER, as follows:
 - a. Allocation of energy requirements and the combined generation rate from TARELCO II's current power suppliers:



NAME OF SUPPLIER	KW	LOAD FACTOR, %	BCQ/WESM PURCHASED, KWH	ENERGY COST, Php	EFFECTIVE RATE, Php/KWH
GMCP	22,000	100%	16,060,000	65,910,240.00	4.1040
SCPC	15,000	100%	10,950,000	50,314,155.00	4.5949
WESM	19,000	100%	13,870,000	174,949,870.85	12.6135
TOTAL	56,000	100%	40,880,000	291,174,265.85	7.1227

b. Allocation of energy requirements and the combined generation rate from TARELCO II's current power suppliers with GNPOWER:

NAME OF SUPPLIER	KW	LOAD FACTOR, %	BCQ/WESM PURCHASED, KWH	ENERGY COST, Php	EFFECTIVE RATE, Php/KWH
GMCP	22,000	100%	16,060,000	65,910,240.00	4.1040
SCPC	15,000	100%	10,950,000	50,314,155.00	4.5949
GNPOWER	19,000	100%	13,870,000	50,711,494.00	3.6562
TOTAL	56,000	100%	40,880,000	166,935,889.00	4.0836

24. Aside from the lower generation cost of the power supply from GNPOWER, TARELCO II is also entitled to Prompt Payment Discount and Capacity Utilization Discount, if conditions are met, which makes even more competitive the proposed rate contained in the subject PPSA, as amended;

25. In support of the instant *Application* for the approval of the PPSA, as amended, Applicants further attach the following documents to form integral parts hereof, to wit:

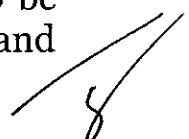
ANNEX	DOCUMENTS
"K"	Details of the PPSA, as amended
"L"	GNPOWER's Financial Assumptions including Project Cost, Sources of Financing, Debt-Equity Ratio, WACC computation, and Projected Equity IRR
"M"	Breakdown of Costs including Engineering, Procurement and Construction (EPC) Costs, Operations and Maintenance (O&M) Costs, and Projected Fuel Costs
"N"	Projected Balance Sheet, Income Statement, Revenue and Cash Flow
"O"	Details of Fuel Procurement

ANNEX	DOCUMENTS
"P"	Rate Impact Analysis
"Q"	GNPOWER's 2014 Audited Financial Statement
"R"	GNPOWER's Transmission Plan for the Dinginin Project
"S"	Certificate of Endorsement from DOE that the Project is included in the DOE's Power Development Plan
"T"	TARELCO II's Distribution Development Plan
"U"	TARELCO II's Contracted Demand for 25 years
"V"	GNPOWER's General Partners' Certificate on, among others, the authority to execute, ratify, accede, perform and deliver the PPSA with TARELCO II, and the designation of duly authorized representatives for said purpose
"W"	TARELCO II's Board Resolution with Secretary's Certificate authorizing the approval and signing of the PPSA, designating representatives thereto and authorizing the filing of an Application with the ERC

26. Applicants TARELCO II and GNPOWER reserve the right to submit other documents, either in the course of the hearing or as may be required by the Commission.

COMPLIANCE WITH PRE-FILING REQUIREMENTS

27. Applicants manifest compliance with the pre-filing requirements mandated under the *Implementing Rules and Regulations of the EPIRA* and *Rule 6 of the ERC Rules of Practice and Procedure*, to be established by the following:
- a. Certifications acknowledging receipt of the *Application* with annexes issued by the Legislative Bodies of the Province of Tarlac, the Municipality of Concepcion, and the City of Pasig, to be appended as **Annexes "X", "Y", and "Z"**, respectively, of the Application;
 - b. Affidavit of Publication stating that the *Application* was published in a newspaper of general circulation within Applicants' Franchise Area and/or area of its principal operation, to be appended as **Annex "AA"** of the Application; and



- c. Complete newspaper issue where the *Application* was published, to be appended to the Application as Annex “AA-1”, and the relevant page thereof where the *Application* appeared, as Annex “AA-2”;

**MOTION FOR CONFIDENTIAL TREATMENT
OF ANNEXES “F-4”, “L”, “M”, “N”, and “O”**

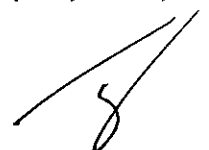
28. Under *Rule 4 of the ERC Rules of Practice and Procedure*, a party to any proceeding before the Commission may request that certain information not be disclosed and be treated as confidential, by describing with particularity the information to be treated as confidential, specifying the ground for the claim of confidential treatment of the information and, if applicable, specifying the period during which the information must not be disclosed;
29. TARELCO II requests for the confidential treatment of Annex “F-4” of the Application, consisting of the Evaluation Result. This annex shows the individual offers of the bidders which participated in the competitive selection process (CSP). The members of CLECAFLAG, TARELCO II included, are bound by their undertaking to secure and keep in confidence the offers and the proposed terms of supply, so as not to prejudice or pre-empt any future CSPs in which these bidders will participate. Otherwise, TARELCO II and the rest of the members of CLECAFLAG may be held liable for damages for breach of confidentiality, and eventually, risk their good relations with the suppliers concerned;
30. GNPOWER moves for the confidential treatment of Annexes “L”⁷, “M”⁸, “N”⁹, and “O”¹⁰ of the Application. These annexes, exclusively owned by GNPOWER, contain documents which are considered part of its business and trade secrets. As

⁷ GNPOWER’s Financial Assumptions including Project Cost, Sources of Financing, Debt-Equity Ratio, WACC computation, and Projected Equity IRR

⁸ Breakdown of Costs including Engineering, Procurement and Construction (EPC) Costs, Operations and Maintenance (O&M) Costs, and Projected Fuel Costs

⁹ Projected Balance Sheet, Income Statement, Revenue and Cash Flow

¹⁰ Details of Fuel Procurement



such, GNPOWER has the sole proprietary interest and will be unduly prejudiced should they be disclosed to the public;

31. These annexes contain numbers, data, formula, methodology, and calculations involving valuable and sensitive commercial, financial and technological information reflecting GNPOWER's business operations and financial trade secrets. Therefore, the disclosure of GNPOWER's confidential, proprietary, and private information included in the aforesaid annexes should be protected from public dissemination. Otherwise, such information can be illegally and unfairly utilized by business competitors who may use the same for their own private gain and to the irreparable prejudice of GNPOWER. Negotiations with prospective customers may also be affected;

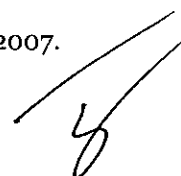
32. The information contained in **Annexes "L", "M", "N", and "O"**, constitute "trade secrets", for which GNPOWER has actual and valuable proprietary interest. As explained by the Supreme Court, a trade secret may consist of any formula, pattern, device, or compilation of information that is used in one's business and gives the employer an opportunity to obtain an advantage over competitors who do not possess the information¹¹. It is indubitable that trade secrets constitute proprietary rights and jurisprudence has consistently acknowledged the private character of trade secrets¹². Further, as ruled in *Garcia vs. Board of Investments*¹³, trade secrets and confidential, commercial and financial information are exempt from public scrutiny;

33. It submit that the aforementioned Annexes must be accorded confidential treatment. As such, they are to be used *exclusively* by the Commission and for the *sole* purpose of evaluating this *Application*, thereby protecting these data from unnecessary public disclosure;

¹¹ *Air Philippines Corporation vs. Pennswell Inc.*, G.R. No. 172835, December 13, 2007.

¹² *Ibid.*,

¹³ 177 SCRA 374 (1989).



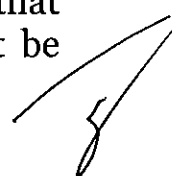
34. In accordance with *Section 1(b), Rule 4 of the ERC Rules of Practice and Procedure*, Applicants hereby submit one (1) copy each of **Annexes “F-4, “L”, “M”, “N”, and “O”** in a sealed envelope, with the envelope and each page of the documents stamped with the word “*Confidential*”.

ISSUANCE OF PROVISIONAL AUTHORITY

35. All the foregoing allegations are re-pleaded by reference in support of the instant *Prayer* for provisional authority;
36. The basis of TARELCO II and GNPOWER for prayer 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*:

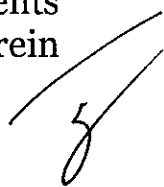
“Section 3. Action on the Motion. – Motions for provisional authority or interim relief may be acted upon with or without hearing. The Commission shall act on the motion on the basis of the allegations of the application or petition and supporting documents and other evidences that applicant or petitioner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

37. Based on the Department of Energy’s (DOE) 2015-2030 Luzon and Visayas Grids Supply-Demand Outlook, Luzon’s peak demand in 2015 is 8,974MW with an Annual Average Growth Rate (AAGR) of 4.25% while Visayas’ Peak Demand is 1,847MW with AAGR of 3.4%. Therefore, Luzon’s peak demand is expected to increase to 10,884MW in 2020, and to 16,165MW by the year 2030 and for Visayas, 2,042MW in 2020 and 3,025MW in 2030. This electricity demand growth has led to DOE’s call for planning and investments in the power sector;
38. Contributing to the Luzon Grid’s demand growth is TARELCO II’s peak load demand which increases at a rate of 5.0% per year. By 2020, it is projected that TARELCO II’s existing power suppliers will not be



able to meet the power needs of its member consumers, which is expected to have increased to 28.6%;

39. Thus, the PPSA, as amended, with GNPOWER is crucial for TARELCO II 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;
40. While actual delivery of power at full capacity under the terms and conditions of the PPSA, as amended, is expected to commence only in 2020, Applicants, nonetheless, shall begin at the earliest opportune time their compliance with all financial and regulatory requirements and processes leading up to the timely completion of GNPOWER's facility;
41. Part of the funds needed to construct GNPOWER's facility will be sourced from loans coming from banks/financial institutions. The Commission's provisional approval of the instant *Application* is a vital requirement for the release of the loan proceeds. Hence, a timely financial close ensures stable source of funds and timely construction of the generation facility, and the implementation of the PPSA, as amended, as contemplated by the Applicants;
42. With continuous financing, the timely implementation of the project shall be assured, to the full benefit of TARELCO II and the Luzon and Visayas' Grids. Otherwise, any delay in the implementation of the project shall expose TARELCO II to supply risk and unstable market prices in the future;
43. A copy of the Judicial Affidavit to support the prayer for provisional authority will be attached to the Application as **Annex "BB"**;
44. In recognition of the fact that a substantial amount of time is needed to evaluate the documents submitted to support the approval of herein



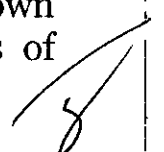
Application, Applicants seek the consideration of the Commission to approve the instant *Application*, immediately, albeit, provisionally, at the soonest opportune time.

PRAYER

1. Applicants TARELCO II and GNPower pray before the Commission that:
 - i. All information attached as Annexes "F-4" "L", "M", "N", and "O" to the Application be treated as confidential;
 - ii. Pending hearing on the merits, a PA be issued authorizing the immediate implementation of the subject PPSA, as amended, including the rate structure therein, as applied;
 - iii. After due notice and hearing, the instant Application, the PPSA, as amended, and the rate structure contained therein be duly approved; and
 - iv. In the event that a Final Authority shall be issued after GNPOWER starts actual delivery of power to TARELCO II under the terms of the subject PSA, said Final Authority be retroactively applied to the date of such actual delivery.

Finding the said Application to be sufficient in form and in substance with the required fees having been paid, the same is hereby set for hearing for the determination of compliance with jurisdictional requirements, expository presentation, pre-trial conference, and presentation of evidence on **05 July 2016 (Tuesday) at eight o'clock in the morning (8:00 A.M.) at TARELCO II's Main Office, San Nicolas, Concepcion, Tarlac.**

TARELCO II and GNPower are hereby directed to cause the publication of the attached Notice of Public Hearing in two (2) newspapers of general circulation in the Philippines at their own expense, twice (2x) within two (2) successive weeks, the dates of



publication not being less than seven (7) days apart, with the date of last publication made not later than ten (10) days before the date of the scheduled initial hearing. TARELCO II is also directed to inform its customers within its franchise area, by any other means available and appropriate, of the filing of the Application, the reasons therefor, and of the scheduled hearing thereon.

Let copies of the Application, this Order, and the attached Notice of Public Hearing be furnished the Office of the Solicitor General (OSG), the Commission on Audit (COA) and the Committees on Energy of both Houses of Congress. They are hereby requested, if they so desire, to send their duly authorized representatives at the scheduled hearing.

Likewise, let copies of this Order and the attached Notice of Public Hearing be furnished the Offices of Governors of the Province of Tarlac and Nueva Ecija, as well as the Mayors and Local Government Legislative Bodies within TARELCO II's franchise area for the appropriate posting thereof on their respective bulletin boards.

TARELCO II and GNPower are hereby directed to furnish all those making requests therefor with copies of the Application and its attachments, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing and pre-trial conference, TARELCO II and GNPower must submit to the Commission their written Compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidence of the actual posting and publication of the Notice of Public Hearing consisting of certifications issued to that effect, signed by the aforementioned Governors, Mayors, and Local Government Legislative Bodies, or their duly authorized representatives, bearing the seals of their offices, and the affidavits of the Editors or Business Managers of the newspapers where said Notice of Public Hearing were published, together with the complete issues of the said newspapers, and such other proofs of compliance with the requirements of the Commission.

TARELCO II and GNPower, and all interested parties are directed to submit, at least five (5) days before the date of initial hearing and pre-trial conference, their respective Pre-trial Briefs containing, among others:



- (a) A summary of admitted facts and proposed stipulation of facts;
- (b) The issues to be tried or resolved;
- (c) The documents or exhibits to be presented, stating the purposes thereof and proposed markings therefore; and
- (d) The number and names of the witnesses, with their written testimonies in an individual affidavit form, to be attached to the Pre-trial Brief.

Failure of TARELCO II and GNPower to submit the required Pre-trial Brief and Judicial Affidavits of their witnesses within the prescribed period shall be a ground for cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from said date of cancellation.

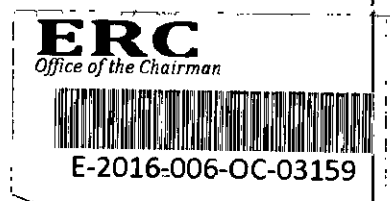
As part of the pre-trial conference, TARELCO II and GNPower must also be prepared to make an expository presentation of their Application, aided by whatever communication medium that they may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties, what the Application is all about and the reasons and justifications being cited in support thereof.

SO ORDERED.

Pasig City, 18 May 2016.

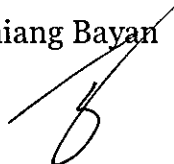
FOR AND BY AUTHORITY
OF THE COMMISSION:

Jose Vicente B. Salazar
For: **JOSE VICENTE B. SALAZAR**
Chairman and CEO



Copy furnished:

1. Atty. Ana Charissa Diaz
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2. Atty. Lourdy Torres
Counsel for GNPower
28/F, The Orient Square Bldg.,
Don Francisco Ortigas, Jr., Rd.,
Ortigas, Pasig City
3. Office of the Solicitor General
134 Amorsolo St., Legaspi Village, Makati City
4. Commission on Audit
Commonwealth Ave., Quezon City
5. The Senate Committee on Energy
GSIS Building, Roxas Boulevard, Pasay City
6. The Committee on Energy
House of Representatives
Batasan Hills, Quezon City
7. Office of the Municipal Mayor
Bamban, Tarlac
8. Office of the Sangguniang Bayan
Bamban, Tarlac
9. Office of the Municipal Mayor
Capas, Tarlac
10. Office of the Sangguniang Bayan
Capas, Tarlac
11. Office of the Municipal Mayor
Concepcion, Tarlac
12. Office of the Sangguniang Bayan
Concepcion, Tarlac
13. Office of the Municipal Mayor
La Paz, Tarlac
14. Office of the Sangguniang Bayan
La Paz, Tarlac
15. Office of the Municipal Mayor
Zaragoza, Tarlac
16. Office of the Sangguniang Bayan
Zaragoza, Tarlac



17. Office of the City Mayor
Tarlac City, Tarlac
18. Office of the Sangguniang Panglunsod
Tarlac City, Tarlac
19. Office of the Provincial Governor
Province of Tarlac
20. Office of the Sangguniang Panlalawigan
Province of Tarlac
21. Office of the Provincial Governor
Province of Nueva Ecija
22. Office of the Sangguniang Panlalawigan
Province of Nueva Ecija
23. National Grid Corporation of the Philippines (NGCP)
Quezon Avenue corner BIR Road, Diliman, Quezon City

