

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City



IN THE MATTER OF THE APPLICATION FOR APPROVAL OF THE POWER SUPPLY AGREEMENT AND THE TOTAL COST OF GENERATION RATE (TCGR) BETWEEN BANTAYAN ISLAND ELECTRIC COOPERATIVE, INC. (BANELCO) AND ISLA NORTE ENERGY CORPORATION (INEC), WITH MOTION FOR PROVISIONAL AUTHORITY

ERC CASE NO. 2020-032 RC

**BANTAYAN ISLAND ELECTRIC COOPERATIVE, INC. (BANELCO) AND ISLA NORTE ENERGY CORPORATION (INEC),
*Applicants.***

Promulgated:
November 20, 2020

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NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 12 October 2020, the Bantayan Island Electric Cooperative, Inc. (BANELCO) and Isla Norte Energy Corporation (INEC) filed a *Joint Application* dated 22 April 2020, seeking the Commission's approval of their Power Supply Agreement (PSA) and the total cost of generation rate (TCGR), with motion for provisional authority.

The pertinent portions of the said *Joint Application* are hereunder quoted as follows:

1. Co-Applicant BANELCO is a non-stock, non-profit electric cooperative duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at Barangay Bantigue, Bantayan, Bantayan

Island, Cebu, Philippines. It holds an exclusive franchise that operates an electric power distribution system and supplies the member-consumers within Bantayan Island and covering the municipalities of Bantayan, Sta. Fe, and Madridejos (the “Franchise Area”).

- 1.1. BANELCO has been authorized by its Board of Directors to file the Joint Application, as evidenced by the Board Resolution No. 27-2020 attached as **Annex “A”** and made an integral part hereof.

2. Co-applicant INEC is a domestic corporation duly organized and existing pursuant to the laws of the Republic of the Philippines. Its principal office address is at 9th Floor, Oakridge IT Center 3, Oakridge Business Park, A.S. Fortuna Street, Banilad, Mandaue City, Cebu, Philippines. It may be served with pleadings and processes of this Honorable Commission through its counsel **J. P. Garcia & Associates** at Unit 9-902 9th Floor, Oakridge IT Center 2, Oakridge Business Park, A.S. Fortuna Street, Banilad, Mandaue City, Cebu, Philippines.
 - 2.1. INEC has been authorized by its Board of Directors to file the Joint Application, as evidenced by a Secretary’s Certificate dated April 22, 2020, which is attached as **Annex “B”** and made an integral part hereof.

3. Pursuant to Rule 20 (B) of the ERC Rules of Practice and Procedure, and other pertinent rules and regulations, this Joint Application is filed with the Honorable Commission for the approval of the Power Supply Agreement (“PSA”) between BANELCO and INEC.

I. Statement of Facts Leading to the Joint Application

4. INEC is primarily engaged in the business of exploring, developing and utilizing renewable energy resources, and establishing, acquiring, maintaining, commissioning, owning and operating geothermal, thermal, hydroelectric, solar, wind, coal, diesel plants and such other sources that may be a viable source of electric light, heat and power system, and selling and/or trading electricity for light, heat and power purposes within cities, municipalities and provinces of the Philippines.
 - 4.1. Copies of pertinent documents evidencing INEC’s registration with the Securities and Exchange Corporation and permit to operate as a generation company are attached as follows and made integral parts hereof:

DOCUMENT	ANNEX
SEC Certificate of Registration of the Articles of Incorporation	“C”

DOCUMENT	ANNEX
Latest Amended Articles of Incorporation and By- Laws	“D”
Generation Information Sheet for 2019	“E”
Application for Environmental Compliance Certificate issued by the Department of Environment and Natural Resources	“F”

5. On July 19 and July 26, 2019, BANELCO published an “Invitation for Expression of Interest” in the *Manila Bulletin*, a newspaper with nationwide circulation. The invitation was for interested parties to participate in a competitive selection process (“CSP”) to supply BANELCO with 15 megawatts (“MW”) of contracted capacity, plus cold reserve and N-1 contingency, for a term of fifteen (15) years, with Commercial Operations Date (“COD”) starting March 1, 2021. As a result of the invitation, two (2) interested bidders submitted their letters of interest.
6. After the pre-qualification stage, only two (2) bidders were eligible to submit their technical and financial bid components. Eventually, INEC was declared as the winning bidder and the “Notice of Award” was issued by BANELCO on October 30, 2019.
7. On January 29, 2020, the National Electrification Administration (“NEA”) authorized BANELCO to sign the PSA. A copy of the NEA letter is attached as **Annex “G”** and made an integral part hereof. The Secretary’s Certificate of INEC authorizing the signing of the PSA is attached as **Annex “H”**, and the Board Resolution of BANELCO authorizing the signing of the PSA is attached as **Annex “I”**, which are made integral parts of this Joint Application.

II. Salient Features of the PSA

8. Term and Effectivity. The PSA shall have a term commencing on the date when this Agreement is executed and delivered by the Parties hereto and expiring on the last day of the fifteenth (15th) year from the COD, unless extended or earlier terminated in accordance therewith. The effectivity of the PSA shall be subject to the fulfillment of the following conditions:
 - 8.1. The execution of a “Phase In-Phase Out Arrangement” between and among BANELCO, INEC and the existing power supplier of BANELCO.
 - 8.2. The execution of a Subsidy Agreement between and among BANELCO, INEC and the National Power Corporation-Small Power Utilities Group (“NPC-SPUG”).
 - 8.3. The posting of a Construction Bond and Performance Bond by INEC in favor of BANELCO to guarantee the

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completion of the power plant and the satisfactory performance of INEC's obligations under the PSA;

- 8.4. The approval by the Honorable Commission, whether provisional or final.
9. Guaranteed Dispatchable Capacity. Provided that the Island Grid Peak Demand has not exceeded 15,000 kW, INEC shall make available for dispatch by BANELCO as Guaranteed Dependable Capacity of the Power Station (after INEC has availed of Allowable Downtime):
- a) For Active Power Requirement to meet the initial Island Grid Peak Demand 15,000 kW; and
 - b) The Cold Reserve shall be of the same rated capacity as the largest generating unit. The largest generating unit should be capable of supplying BANELCO's baseload during off-peak.
- 9.1. Starting from the Billing Month immediately after the initial Island Grid Peak Demand has exceeded 15,000 kW until the end of Term or Termination Date, INEC shall ensure that there shall be available for the dispatch by the BANELCO a Guaranteed Dependable Capacity (after INEC has availed of Allowable Downtime) of not less than 15,000 kW.
10. Allowance for Downtime. INEC shall be entitled to sixty (60) hours of Unscheduled Outage Allowance and sixty (60) hours of Scheduled Outage Allowance for the Power Station (collectively, the "Allowable Downtime"). By not later than thirty (30) days prior to the COD and at the first day of each Contract Year thereafter, the Parties shall agree on the schedule of Allowable Downtime applicable to such Contract Year.
- 10.1. For outages of the power plant in excess of Total Downtime Allowance, BANELCO is entitled to draw against the Performance Bond of INEC in an amount equivalent to the ERC-approved Distribution, Supply and Metering (DSM) charges of the prior Billing Month with an additional ten percent (10%) penalty, and multiplied by the kWh-shortfall computed on an hourly basis.
11. Computation of Total Fee. The Total Fee for each billing month shall be calculated using the formula below:

$$TF_t = (CRF_t + FOMF_t + VOMF_t + FF_t)$$

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Where:

t = Billing Month t

TF_t = Total Fee during each Billing Month t expressed in PhP

CRF_t = Capital Recovery Fee during each Billing Month t calculated using Formula 1.1 and expressed in PhP

$FOMF_t$ = Fixed Operation and Maintenance Fee during each Billing Month t calculated using Formula 1.2 and expressed in PhP

$VOMF_t$ = Variable Operation and Maintenance Fee during each Billing Month t calculated using Formula 1.3 and expressed in PhP

FF_t = Fuel Fee during each Billing Month t calculated using Formula 1.4 and expressed in PhP

12. Computation of Total Cost of Generation Rate (“TCGR”). The TCGR for each billing month shall be calculated using the formula below:

$$TCGR_t = \frac{TF_t}{ED_t} \quad [Formula 2.0]$$

Where:

t = Billing Month t

$TCGR_t$ = True Cost Generation Rate for Billing Month t expressed in PhP/kWh

TF_t = Total Fee for the Billing Month t expressed in PhP

ED_t = Energy delivered to BANELCO as indicated in the Billing Meters during each Billing Month t expressed in kWh

13. In support of this Joint Application, Applicants attach the following documents to form integral parts hereof:

DOCUMENTS	ANNEX
Power Supply Agreement	“J”
Details of the PSA:	“K”
a. Executive Summary;	
b. Sources of Funds/Financial Plans;	
*Debt/Equity Ratio	
*Project Cost; and	
*Computation of Return of Investment/WACC	
*Certification from the Bank/Lending Institution specifying	“K-1”

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DOCUMENTS	ANNEX
the principal amortization, term and interest during the cooperation period of the loan agreement.	
c. TCGR: *Breakdown of the base prices of Operation and Maintenance; Capacity Fee; Fixed Operation Fee; and Energy Fee; if applicable; *Sample Computation of Power Rates with the supporting documents on the assumptions taken. *Statement of its impact on the overall rates of the applicant-utility once the contract is approved. *If applicable, basis/rationale of indexation and level of indexation	“K-2”
d. Cash Flow specifying the following: *Initial Costs; *Breakdown of Operating and Maintenance Expenses.	“K-3”
All details on the procurement process of fuel including requests, proposal received, tender offers, etc.	“L”
Copy of Related Agreements (i.e. Transmission Wheeling Contract, Fuel Supply Agreements, etc.)	“M”
Certificate of Compliance (COC) issued by the Energy Regulatory Commission pursuant to the Guidelines for the issuance of COC for Generation Companies/Facilities	“N”
Acknowledgment receipt by the Local Government Unit (LGU) Legislative Body of the City or Municipality where applicant DU principally operates, a copy of the application/petition (with all annexes and accompanying documents), together with the certification of the Notice of Publication thereof in a newspaper of general circulation in the same city or locality	“O”
Certification by NPC whether Transitory Supply Contract (TSC) capacity and energy is expected to be available during the contractual period. Includes relevant supporting documentation, data and analysis supporting each statement.	“P”
All relevant technical and economic characteristics of the generation capacity; Installed Capacity, Mode of Operation, Dependable Capacity	“Q”
All costs analysis related to the generation in support of the proposed pricing provisions of the contract	“R”
Details on the procurement process used by the Distribution Utility leading to the selection of the Generation Company including request(s) for proposals, proposals received by the Distribution Utility, tender offers, etc.	“S”
Details regarding transmission projects or grid connection projects necessary to complement the proposed generation capacity; identification of the parties that will develop and/or own such facilities; any cost related to such project; and specification of the parties responsible for recovery of any cost related to such projects;	“T”
Certification that states the consistencies and inconsistencies between the proposed generation capacity and the Department of Energy's (DOE) Philippine Development Plan (PDP). Any inconsistencies shall be supported by relevant analysis including but not limited to, forecasts and assessment of available generation capacity and technology mix	“U”

DOCUMENTS	ANNEX
Details regarding the load forecast projection in accordance with the latest Distribution Development Plan of the Distribution Utility and the variability of those projections over the proposed contractual period. An estimation of the potential for a reduction in load supplied by the Distribution Utility due to retail competition. Any inconsistencies shall be supported by relevant analysis	“V”
Latest and Complete Set of Audited Financial Statement of INEC (Balance Sheet, Income Statement and Statement of Cash Flows)	“W”
Bank Certification of Long-term Loans, including: 1. Schedule of Original Loan (Principal amount, interest payable, term of the loan) 2. Updated Balances (Principal amount, interest payable, penalties (if any), remaining term of the loan)	“X”
Operating Expenses for the following: 1. Power Plant 2. General and Administrative Expenses *To submit both in absolute peso amounts & Php/kWh indicate kWh used to derive the Php/kWh; and segregate each type of discount given to the DU in absolute amounts in Php/kWh, the conditions governing the giving of the discount/s	“Y”
Sworn Statement detailing how the fuel was competitively procured, contract terms, unbundled price components (product cost, transshipment, delivery, container, etc.) if applicable.	“Z”
Certification (from the engine manufacturer or IPP) of the net heat rate (initial and every after major maintenance schedule) in liters per kWh, if applicable	“AA”
Simulation of the number of operating units necessary to meet the Guaranteed Dispatchable Capacity	“BB”

III. Financial Impact on BANELCO’s Rates

14. In the event that the PSA is approved, there will be no effect on the Subsidized-Approved Generation Rate (“SAGR”); which means that the consumers of BANELCO will not incur any increase in the peso-per-kilowatt hour rate.

IV. Allegations in Support of the Motion for Provisional Authority

15. BANELCO’s consumers are being exposed to power supply interruptions due to the current deficiency in its power supply. For this reason, BANELCO and INEC respectfully move that the Honorable Commission issue a provisional authority to implement the PSA, even prior to the initial hearing of the Joint Application.
16. Rule 14, Section 3 of the Honorable Commission’s Rules of Practice and Procedure allows the issuance of Provisional Authority, even prior to the conduct of a hearing on an 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.”

17. Applicants further attach an Affidavit executed by its General Manager, Engr. Lee Rivera, in support of their motion for a provisional authority, which is attached as “**Annex CC**” and made an integral hereof.

V. Compliance with Pre-Filing Requirements

18. Applicants jointly manifest that they have complied with the pre-filing requirements under Rule 6 of the ERC Rules of Practice and Procedure, as evidenced by the following documents:
- a) Proof of service to the *Sangguniang Bayan* of the Municipality of Bantayan, attached as **Annex “DD”**;
 - b) Notarized *Affidavit of Publication* certifying the publication of this Application in a newspaper of general circulation within the Philippines, attached as **Annex “EE”**; and
 - c) A copy of the newspaper issue where the *Application* was published, attached as **Annex “FF”**.

PRAYER

WHEREFORE, in view of the foregoing, it is most respectfully prayed from this Honorable Commission:

- 1. To issue a Provisional Authority to authorize the parties to implement the PSA, including but not limited to the Total Cost of Generation Rate, without prejudice to the Final Authority.
- 2. To set the Joint Application for public hearing;
- 3. After due notice and hearing, issue a Final Authority approving the Power Supply Agreement, including but not limited to the Total Cost of Generation Rate.

Other reliefs as may be just and equitable under the premises are likewise prayed for.

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On 11 November 2020, the Commission issued an *Order* and a *Notice of Virtual Hearing*, both dated 30 October 2020, setting the instant *Joint Application* for determination of compliance with the jurisdictional requirements and expository presentation on 03 December 2020, Pre-trial Conference and presentation of evidence on 22 January 2021, through virtual hearings.

However, on 17 November 2020, INEC sent through electronic mail an *Urgent Motion for Postponement of the December 3, 2020 Public Hearing* of even date, alleging that the Applicants encountered difficulty in booking appropriate spaces in two (2) newspapers of nationwide circulation due to the consecutive typhoons “Rolly” and “Ulysses.” Thus, INEC prayed that the Commission postpone the virtual public hearing scheduled on 03 December 2020 to 11 December 2020.

IN VIEW OF THE FOREGOING, the Commission has set anew the instant *Joint Application* for determination of compliance with the jurisdictional requirements, expository presentation, pre-trial conference and presentation of evidence on the following dates and online platform for the conduct thereof, pursuant to Resolution No. 07, Series of 2020 dated 23 July 2020:

Date	Platform	Activity
11 December 2020 (Friday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Teams Application	Determination of compliance with jurisdictional requirements and Expository Presentation
22 January 2021 (Friday) at two o'clock in the afternoon (2:00 P.M.)		Pre-trial Conference and Presentation of Evidence

RELATIVE THERETO, BANELCO and INEC are directed to host the virtual hearing at **BANELCO’s Principal Office in Barangay Bantigue, Bantayan, Bantayan Island, Cebu**, as the designated venue, and ensure that the same is open to the public and the community quarantine guidelines are observed at all times. Moreover, the Applicants shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

Any interested stakeholder may submit its comments and/or clarifications at least one (1) calendar day prior to the scheduled virtual hearing, via electronic mail (e-mail) at docket@erc.ph,

records@erc.gov.ph, and records.erc.gov.ph@gmail.com, copy furnish the Legal Service through legal@erc.ph and legal.erc.gov.ph@gmail.com. The Commission shall give priority to the stakeholders who have duly submitted their respective comments and/or clarifications, to discuss the same and propound questions during the course of the expository presentation.

Moreover, all persons who have an interest in the subject matter of the instant case may become a party by filing with the Commission via e-mail at docket@erc.ph, records@erc.gov.ph, and records.erc.gov.ph@gmail.com, copy furnish the Legal Service through legal@erc.ph and legal.erc.gov.ph@gmail.com, a verified Petition to Intervene at least five (5) calendar days prior to the date of the initial virtual hearing and subject to the requirements under Rule 9 of the 2006 ERC Rules of Practice and Procedure, indicating therein the docket number and title of the case and stating the following:

- 1) The petitioner's name, mailing address and e-mail address;
- 2) The nature of petitioner's interest in the subject matter of the proceeding and the way and manner in which such interest is affected by the issues involved in the proceeding; and
- 3) A statement of the relief desired.

Likewise, all other persons who may want their views known to the Commission with respect to the subject matter of the case may file through e-mail at docket@erc.ph, records@erc.gov.ph, and records.erc.gov.ph@gmail.com, copy furnish the Legal Service through legal@erc.ph and legal.erc.gov.ph@gmail.com, their Opposition or Comment thereon at least five (5) calendar days prior to the initial virtual hearing and subject to the requirements under Rule 9 of the 2006 ERC Rules of Practice and Procedure. No particular form of Opposition or Comment is required, but the document, letter, or writing should contain the following:

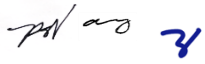
- 1) The name, mailing address and e-mail address of such person;
- 2) A concise statement of the Opposition or Comment; and
- 3) The grounds relied upon.

All such persons who wish to have a copy of the *Joint Application* may request from the Applicants that they be furnished with the same prior to the date of the initial hearing. The Applicants are hereby directed to furnish all those making such request with copies of the *Joint Application* and its attachments, through any of the available modes of service, upon their agreement, subject to the reimbursement of reasonable photocopying costs. Any such person may likewise examine the *Joint Application* and other pertinent records filed with the Commission during the standard office hours. In the alternative, those persons who wish to have an electronic copy of the *Joint Application* may request the Commission for the e-mail address of the Applicants by sending an e-mail to docket@erc.ph, records@erc.gov.ph, and records.erc.gov.ph@gmail.com, copy furnish the Legal Service through legal@erc.ph and legal.erc.gov.ph@gmail.com. Nonetheless, any person may also access the *Joint Application* as posted by the Commission in its official website at www.erc.gov.ph.

Finally, all interested persons may be allowed to join the scheduled initial virtual hearing by providing the Commission, thru legal.virtualhearings.erc.gov.ph@gmail.com and legal.virtualhearings@erc.ph, with their respective e-mail addresses and indicating therein the case number of the instant *Joint Application*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearing.

WITNESS, the Honorable Commissioners **ALEXIS M. LUMBATAN**, **CATHERINE P. MACEDA**, **FLORESINDA G. BALDO-DIGAL** and **MARKO ROMEO L. FUENTES**, Energy Regulatory Commission, this 18th day of November 2020 in Pasig City.


AGNES VST DEVANADERA
Chairperson and CEO


LS: RSPV/ARG/MCCG