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

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

ERC CASE NO. 2016-058 RC

EASTERN SAMAR ELECTRIC COOPERATIVE, INC. (ESAMELCO) AND GNPOWER DINGININ LTD. CO. (GNPD),
Applicants.

DOCKETED
Date: SEP 02 2016
By:

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NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 27 April 2016, the Eastern Samar Electric Cooperative, Inc. (ESAMELCO) and GNPower Dinginin Ltd. Co. (GNPD) filed an Application for approval of the power purchase and sale agreement (PPSA) between them, with prayer for confidential treatment of information and the issuance of provisional authority.

In the said Application, ESAMELCO and GNPD alleged the following:

1. Applicant ESAMELCO is a non-stock, non-profit electric cooperative, duly organized and existing under and by virtue of the laws of the Philippines, with principal office address

Cabong, Borongan, Eastern Samar. It is authorized to distribute and provide electricity services to its member-consumers in the Municipalities of Jipapad, Arteche, San Policarpo, Oras, Dolores, Maslog, Can-avid, Taft, Sulat, San Julian, Maydolong Balangkayan, Llorente, Hernani, General MacArthur, Quinapondan, Giporlos, Balangiga, Lawaan, Salcedo, Mercedes, and Guiuan, all in the Province of Eastern Samar (collectively, the "Franchise Area");

2. Copies of ESAMELCO's Articles of Incorporation, By-Laws, Certificate of Registration and Certificate of Franchise are attached as follows:

Annex	Document
"A"	ESAMELCO's Articles of Incorporation
"B"	ESAMELCO's By-laws
"C"	Certificate of Registration with the National Electrification Administration (NEA)
"D"	Certificate of Franchise

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

4. Applicant GNPD's owners and development team, at the time of the privatization of NPC/PSALM's assets, focused on the development and construction of the first large-scale power plant in the Philippines, the 2x300MW coal-fired power plant of GNPower Mariveles Coal Plant Ltd. Co., after the enactment of EPIRA to support the government's call for additional capacity to meet the growing power demand. It also encouraged other IPPs to build and add new capacity that led to our current state of a stable supply in Luzon;

5. Applicant GNPD's pertinent documents evidencing its due registration as a limited partnership are appended hereto as follows:

Annex	Document
"E"	Certificate of Registration issued by the Securities and Exchange Commission (SEC)
"F"	GNPD's Articles of Partnership

6. Applicants may be served with orders, notices and other legal processes of this Honorable Commission through the address of the undersigned counsels;

7. By and pursuant to *Sections 23, 25, 43 (u),* and *45 (b)* of *Republic Act No. 9136,* otherwise known as the *Electric Power Industry Reform Act of 2001* (EPIRA), its *Implementing Rules and Regulations,* and other pertinent rules and regulations, the instant *Application* for the consideration and approval of the Power Purchase and Sale Agreement (PPSA) executed by and between Applicants ESAMELCO and GNPD on 16 December 2015 is herein respectfully filed. A copy of the PPSA is hereto attached as **Annex "G"** and forms an integral part hereof;

I. STATEMENT OF FACTS

ESAMELCO's Power Supply and Demand Situation

8. ESAMELCO, together with other Region 8 ECs, needs to address the insufficiency of its power supply due to the increasing demand within its franchise area;

9. ESAMELCO currently receives a total of 11MW from its existing suppliers out of its peak requirement of 15.82MW. With an annual average growth rate of 3.51%, ESAMELCO forecasts that its peak demand for the years 2017 to 2023 will be 21.90MW;

10. The eleven (11) electric cooperatives (ECs) of Region 8, namely:

(i) Biliran Electric Cooperative, Inc. (BILECO)
(ii) Don Orestes Romualdez Electric Cooperative, Inc. (DORELCO)
(iii) Eastern Samar Electric Cooperative, Inc. (ESAMELCO)
(iv) Leyte II Electric Cooperative, Inc. (LEYECO II)
(v) Leyte III Electric Cooperative, Inc. (LEYECO III)
(vi) Leyte IV Electric Cooperative, Inc. (LEYECO IV)
(vii) Leyte V Electric Cooperative, Inc. (LEYECO V)
(viii) Northern Samar Electric Cooperative, Inc. (NORSAMELCO)
(ix) Samar I Electric Cooperative, Inc. (SAMELCO I)
(x) Samar II Electric Cooperative, Inc. (SAMELCO II) and
(xi) Southern Leyte Electric Cooperative, Inc. (SOLECO),

collectively, the "Region 8 ECs", have just concluded the competitive selection process with FDC Utilities, Inc. (FDC), Trans Asia Oil and Energy Development Corporation (Trans Asia), GNPower Ltd. Co. (GNPower), and San Miguel Energy Corporation (SMEC) for their short-term power supply requirements, covering the period 2015-2018 for demands ranging from 65MW in 2015 to 93MW in 2018;

11. Subsequently, the foregoing Region 8 ECs received two (2) unsolicited proposals for the supply of their aggregated long-term baseload demand of 150MW from December 26, 2018 to December 25, 2038, or for a twenty (20) year period;

The Competitive Selection Process

12. Guided by a declared and agreed policy and guidelines as described in Region 8 ECs Rules and Procedures for Unsolicited Proposal, which is Annex A of the Instructions to Proponents (subsequently, the Final Instructions to Proponents), the Region 8 ECs created the Joint Competitive Power Supply Procurement (JCPSP) Board, the R8 JCPSP Bids and Awards Committee (JBAC) and the Core Technical Working Group (CTWG)[1] to conduct the initial evaluation of the unsolicited proposals in order to determine which will be more advantageous for the Region 8 ECs;

13. The CTWG found the proposal of GNPower better and consistent with the criteria set forth in the aforementioned policy and guidelines;

14. GNPower submitted a Firm and Final Proposal, containing the Legal, Technical and Financial Documents; the Technical Proposal; and the Financial Proposal, as required by the JBAC. GNPower, through the submitted bidding documents, manifested to R8 JBAC that a special purpose company was established for the Dinginin Project, which is GNPower Dinginin Ltd. Co. (GNPD), and GNPower is the lead developer of the said project;

15. After a more detailed evaluation, the JBAC endorsed the GNPower proposal to the R8 JCPSP Board, which granted GNPower the *Original Proponent* status in the Competitive Selection Process through Comparative Proposals for the procurement of the long-term baseload power supply of Region 8 ECs;

16. Generating companies (GENCOs) were invited to submit Comparative Proposals to challenge GNPower's offer through publications in newspapers of general and national circulation for two (2) consecutive weeks and through written invitations to the GENCOs listed in the DOE website;

[1] The Region 8 JCPSP Board is composed of all Board Presidents and General Managers of the 11 Electric Cooperatives in the islands of Leyte, Biliran and Samar. The R8 JCPSP BAC (or JBAC) is composed of representatives of the BAC of each EC. The JTWG is composed of technical, finance and market trading personnel from the ECs. Select members of the JTWG which is called Core Technical Working Group or CTWG was tasked to provide direct technical support to the JBAC.

17. Participating GENCOs submitted letters of intent (LOIs) and afterwards, they were provided with a copy the Instructions to Proponents (ITP) (subsequently, Final Instructions to Proponents) and due diligence data. Thereafter, transaction conferences were held to clarify and discuss the transaction process, requirements, rules and evaluation methodology;

18. During the submission and opening of bids, only San Miguel Energy Corporation ("SMEC") submitted a comparative proposal. However, upon evaluation, SMEC's evaluated long-term levelized price was found to be higher than GNPower's;

19. On 13 November 2015, the R8 JBAC issued a Notice of Award to GNPower and the same was accepted by GNPower on 14 November 2015;

20. Afterwards, the Region 8 ECs, GNPower and GNPD negotiated the final terms and conditions of the Power Purchase and Sale Agreement (PPSA) based on the Key Contract Terms provided in the Final Instructions to Proponents. Separate/individual but identical PPSAs were signed by and between each of the 11 Region ECs and GNPD;

21. Accordingly, on December 16, 2015, ESAMELCO and GNPD executed the subject PPSA, providing the terms and conditions for the supply of 15MW baseload power to ESAMELCO to assure the adequate and reliable supply of power to ESAMELCO's franchise area;

22. In support of the above competitive selection process, Applicants ESAMELCO and GNPD hereby attach the following documents to form integral parts hereof:

ANNEX	DOCUMENT
"H"	Instructions to Proponents (ITP)
"H-1"	Final Instructions to Proponents (FITP)
"H-2"	Information Memorandum
"I"	Comments to the Unsolicited Proposal of GNPower
"J"	GNPower Unsolicited Proposal Evaluation Report
"K"	Invitation to Submit Comparative Proposals as published in the Philippine Daily Inquirer on 07 August 2015
"K-1"	Affidavit of Publication dated 15 April 2016
"K-2"	Invitation to Submit Comparative Proposals as published in the Manila Bulletin on 14 August 2015
"K-3"	Affidavit of Publication dated 15 April 2016

"L"	AES Philippines' Letter of Intent to Participate in Region 8 Joint Competitive Power Supply Procurement dated 02 September 2015
"L-1"	FDC Utilities, Inc.'s Letter of Intent dated 01 September 2015
"L-2"	SMC Global Power's Letter of Intent to Participate dated 26 August 2015
"M"	Limay Premiere Power Corp.'s letter dated 28 October 2015
"N"	R8 JCPSP Assessment of SMC Global Power Financial Model
"O"	Notice of Award to GNPower dated 13 November 2015

II. ABSTRACT OF THE PPSA AND OTHER RELATED INFORMATION

23. The following are the salient features of the PPSA:

A. Term of Agreement. The PPSA shall be effective at the date of its execution, and shall terminate after 240 months from the date specified in the Commencement Date Notice[2] defined as the written notice that indicates the commencement of the first delivery of the Product after GNPD begins commercial operations in the market, which shall not be later than the first day of the Billing Period immediately after the lapse of thirty-six (36) months from the ERC's final approval of the PPSA;[3]

B. Source of Supply[4]. GNPD shall make available, sell, and deliver or cause to be delivered to ESAMELCO the Product[5] at the Delivery Point, whether sourced from GNPD's facility or from other electricity generators, including the Wholesale Electricity Spot Market (WESM);

GNPD's facility shall be constructed and operated in Mariveles, Bataan. The Technical Details of the Project is herewith attached to form an integral part hereof as **Annex "P"**;

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

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[2] Section 1.3, Schedule 1. Contracted Capacity, Contract Price and Terms of Agreement, PPSA, page 30
[3] Section 1.1, Article 1. Definitions and Interpretations, PPSA, page 4
[4] Section 3.1, Article 3. Obligations and Deliveries, PPSA, page 11
[5] 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)

Year	Contracted Capacity (kW)
1	15,000
2	15,000
3	15,000
4	15,000
5	15,000
6	15,000
7	15,000
8	15,000
9	15,000
10	15,000
11	15,000
12	15,000
13	15,000
14	15,000
15	15,000
16	15,000
17	15,000
18	15,000
19	15,000
20	15,000

ESAMELCO shall utilize and pay for the capacity delivered by GNPD at 65% to 100% Capacity Utilization Factor (CUF). GNPD may increase the capacity up to 83% CUF and lower the same to not less than 65% CUF.

C.1. Option to Increase Contracted Capacity

Section 3.7 of the PPSA, provides that upon written notice to GNPD, ESAMELCO may, upon approval by GNPD, increase its Contracted Capacity which increase shall be subjected to the same terms and conditions contained in the PPSA. In considering whether or not to approve the request for increase in Contracted Capacity, GNPD may take into consideration the capacity available for such increase from its facility in its sole opinion, and/or the willingness of any other buyer to assign its Contracted Capacity. Such increase in Contracted Capacity shall be effective on the date GNPD gives its written approval.

D. Contract Price

The Contract Price shall be composed of Capacity Price and Energy Price. The Capacity Price shall be computed as the product of the Capacity Fee for a Billing Period multiplied by the quantity of Product delivered at the Delivery Point. The Energy Price shall be computed as the product of the Energy Fee for a Billing Period multiplied by the quantity of Product delivered at the Delivery Point, and shall be inclusive of the existing Government Charges under Energy Regulations No. 1-94 as of Effective Date.

D.1. Capacity Fee

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 such may be adjusted from time to time based on GNPD's Capacity Factor.

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

Capacity Fees for Specific Capacity Utilization Factors

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

71%	0.0603
70%	0.0611
69%	0.0618
68%	0.0626
67%	0.0634
66%	0.0643
65%	0.0651

For the resulting Capacity Utilization Factor which is not a whole number, the corresponding Capacity Fee shall be computed using the formula as set forth below:

$$Capacity\ Fee = -0.10971 \text{ x } (\text{CUF})^3 + 0.344263 \text{ x } (\text{CUF})^2 - 0.39644 \text{ x CUF} + 0.2075$$

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:

$$CUF = \frac{Q}{CC * [H_T - EH_{TO}]}$$

Where:

Q = *Quantity as defined in Section 1.1 of the Agreement*
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*

For example,

Q = 18,648,000 kWh
CC = 37,000 kW
H_T = 720 hours
EH_{TO} = 101 hours

$$CUF = \frac{18,648,000\ kWh}{37,000\ kW * [720\ hours - 101\ hours]}$$

$$= \frac{18,648,000\ kWh}{22,903,000\ kWh}$$

$$= 81.42\%$$

<u>*D.2.* Energy Fee</u>

$$Energy\ Fee = IEF\ x\ \left[\frac{CIF_n}{CIF_0}\right]$$

Where:

IEF – *Initial Energy Fee equal to $0.0328 / kWh*
CIF_n – *CIF Cost of Fuel for Billing Period n*
CIF_o – *Base CIF Cost of Fuel equal to $10.2514 / million kcal*

E. <u>Capacity Utilization Discount</u>. Section 5.3 (c) of the PPSA provides that if ESAMELCO pays the invoice amount in full in accordance with GNPD's invoice instruction on or before the twenty-fifth (25th) day of the succeeding calendar month from the relevant Billing Period and ESAMELCO's CUF is greater than or equal to 65%, ESAMELCO 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.

F. <u>Scheduled and Unscheduled Outages.</u> Pursuant to Section 3.2, GNPD is allowed Scheduled Outages not to exceed five hundred forty (540) Equivalent Hours for each Contract Year during which times reduced or no deliveries will be available to ESAMELCO. GNPD is likewise allowed Unscheduled Outages of five hundred forty (540) Equivalent Hours for each Contract Year during which times reduced or no deliveries will be available to the Buyer.

III. <u>COMMERCIAL ADVANTAGE OF THE GENERATION RATE AND IMPACT ON ESAMELCO'S RETAIL RATES</u>

24. ESAMELCO, together with the other Region 8 ECs, needs to address the insufficiency of its power supply due to the increasing demand within its franchise area;

25. The additional supply from GNPD will significantly augment the supply deficiency of ESAMELCO and will

decrease the adverse effects thereof by providing a stable and adequate source of electricity;

26. Aside from the lower generation cost of the power supply from GNPD, ESAMELCO is also entitled to Capacity Utilization Discount, if conditions are met, which makes even more competitive the proposed rate contained in the subject PPSA. Also, it is worthy to note that the GNPD rate was further reduced during the finalization of the PPSA with Region 8 ECs where it was requested that the conditions to avail Prompt Payment Discount (PPD) and the posting of a security deposit be waived. As a result, the Contract Price is already net of PPD;

27. Among alternative suppliers capable of providing additional energy to ESAMELCO and the rest of the Region 8 ECs, GNPD's rates proved to be more reasonable and competitive. While GNPD's offer is primarily intended for its base load requirements, the Capacity Factor Pricing under the PPSA provides flexibility in the Region 8 ECs' utilization of the Contracted Capacity;

28. ESAMELCO simulated a rate impact analysis which ultimately resulted in PhP0.1230/kWh rate reduction with the execution of the PPSA with GNPD, to wit:

ESAMELCO RATE IMPACT ANALYSIS

with GNPD

	Forecasted 2019* Average Quantity (kWh)	Amount (PhP)	Percent Share (%)	Resulting Capacity Utilization Factor (%)	2019 Average Rate (PhP/kWh)	Weighted Average Rate (PhP/kWh)
GNPD	103,567,464.65	378,601,223.77	96.83%	79%	3.6556	3.6889
WESM	3,386,836.34	15,946,887.61	3.17%		4.7085	
TOTAL	106,954,300.99	394,548,111.39	100%			

without GNPD

	Forecasted 2019* Average Quantity (kWh)	Amount (PhP)	Percent Share (%)	Resulting Capacity Utilization Factor (%)	2019 Average Rate (PhP/kWh)	Weighted Average Rate (PhP/kWh)
GNPD	0.00	0.00	0.00%	0%	0.0000	3.8119
WESM	106,954,300.99	407,695,383.27	100.00%		3.8119	
TOTAL	106,954,300.99	407,695,383.27	100%			
				GENERATION RATE IMPACT, PhP/kWh		(0.1230)

Notes:

Analysis and simulations is based on ESAMELCO's forecasted 2019 hourly load profile

GNPD rate is based on applicable (i) Capacity Fee at Resulting Capacity Factor; (ii) March 2015 to February 2016, FOREX (iii) Energy Fee based on projected 2019 prices subject to rate escalation by 2019 based on 2019 Inflation Factors from World Bank Commodities Price Forecast (Nominal USD), July 15, 2015; WESM Prices is based on 2015 prices of Nodal Points of ESAMELCO and escalated to 3% per year up to 2019

** GNPD under Interim/Partial Delivery*

29. In compliance with Rule 20 of ERC Rules of Practice and *Procedure* relative to the submission of supporting documents and information for the approval of the PPSA and the rate structure embodied therein, Applicants ESAMELCO and GNPD attach the following documents to form integral parts hereof:

ANNEX	DOCUMENT
"Q"	Executive Summary of the PPSA
"Q-1"	Breakdown of the Contract Price and Sample Calculation
"R"	Rate Impact Simulation
"S"	GNPD's Financial Assumptions including Project Cost, Sources of Financing, Debt-Equity Ratio, WACC computation, and Projected Equity IRR
"T"	Breakdown of Costs including Engineering, Procurement and Construction (EPC) Costs, Operations and Maintenance (O&M) Costs, and Projected Fuel Costs
"U"	Projected Balance Sheet, Income Statement, Revenue and Cash Flow
"U-1"	Compact Disc containing a soft copy of Annexes "S" to "U"
"V"	Details of Fuel Procurement
"V-1"	Sworn Statement – Coal Procurement Process
"W"	GNPD's Audited Financial Statement for 2014
"X"	GNPD's Transmission Plan for the Project
"Y"	Certificate of Endorsement from DOE that the Project is included in the DOE's Power Development Plan
"Y-1"	Environmental Certificate of Compliance from DENR
"Z"	ESAMELCO's Distribution Development Plan (DDP)
"AA"	ESAMELCO's Actual and Forecasted Energy and Demand
"BB"	ESAMELCO's Average Daily Load Curve
"CC"	ESAMELCO's Board Resolution authorizing the Board President and the General Manager to sign the Power Purchase and Sale Agreement (PPSA), to file with the ERC the Application for the approval of the said PPSA, and for other purposes sign the PPSA on behalf of ESAMELCO, to engage Atty. Ma. Concepcion Ojeda as legal counsel and to designate competent persons as witness

"DD"	GNPD's General Partner's Certificate attesting to the resolution of the General Partners to execute the subject PPSA with ESAMELCO and designating signatories thereto
"DD-1"	GNPD's General Partner's Certificate attesting to the resolution of the General Partners to file an application for the approval of the subject PPSA with ERC and designating its authorized representatives and legal counsels

30. Applicants ESAMELCO and GNPD are reserving their right to submit other documents, either in the course of the hearing or as may be required by this Honorable Commission.

IV. COMPLIANCE WITH PRE-FILING REQUIREMENTS

31. 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 to be issued by the Legislative Bodies of Pasig City, City of Borongan, and the Province of Eastern Samar, to be appended as **Annexes "EE", "FF"** and **"GG"**, respectively;

b. Notarized Affidavit of Publication stating that the *Application* was published in a newspaper of general circulation within ESAMELCO's Franchise Area, to be appended herein as **Annex "HH"**; and

c. Complete newspaper issue where the *Application* was published, to be appended herein as **Annex "HH-1"**, and the relevant page thereof where the *Application* appears, as **Annex "HH-2"**;

V. MOTION FOR CONFIDENTIAL TREATMENT OF ANNEXES "H" to "J" and "S" to "V"

32. Under *Rule 4 of the ERC Rules of Practice and Procedure*, a party to any proceeding before the Honorable 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;

33. Applicant ESAMELCO humbly requests for the confidential treatment of **Annexes "H" to "J"** hereof, consisting of the tender documents. These annexes show the individual offers of the bidders which participated in the R8 JCPSP, as well as the results of the evaluation. The Region 8 ECs, ESAMELCO 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, ESAMELCO and the rest of the Region 8 ECs may be held liable for damages for breach of confidentiality, and eventually, risk their good relations with the suppliers concerned;

34. Similarly, Applicant GNPD respectfully moves for the confidential treatment of **Annexes "S" to "V"** hereof. These annexes, exclusively owned by Applicant GNPD, contain information which are considered part of its business and trade secrets. As such, GNPD has the sole proprietary interest and will be unduly prejudiced should they be disclosed to the public;

35. These annexes contain numbers, data, formula, methodology, and calculations involving valuable and sensitive commercial, financial information reflecting GNPD's business operations and financial trade secrets. Therefore, GNPD'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 GNPD. Negotiations with prospective customers may also be affected;

36. The information contained in **Annexes "S" to "V"**, constitute "trade secrets", for which GNPD 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 information[6]. It is indubitable that trade secrets constitute proprietary rights and jurisprudence has consistently acknowledged the private character of trade secrets[7]. Further, as ruled in *Garcia vs. Board of Investments*[8], trade secrets and confidential, commercial and financial information are *exempt* from public scrutiny;

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[6] *Air Philippines Corporation vs. Pennswell Inc.*, G.R. No. 172835, December 13, 2007.
[7] *Ibid.*,
[8] 177 SCRA 374 (1989).

37. Accordingly, it is respectfully submitted that **Annexes "H" to "J" and "S" to "V"** must be accorded confidential treatment. As such, they are to be used *exclusively* by the Honorable Commission and for the *sole* purpose of evaluating this *Application,* thereby protecting these data from unnecessary public disclosure;

38. In accordance with *Section 1(b), Rule 4 of the ERC Rules of Practice and Procedure,* Applicants ESAMELCO and GNPD submit one (1) copy each of **Annexes "H" to "J" and "S" to "V"** in a sealed envelope, with the envelope and each page of the documents stamped with the word *"Confidential"*;

VI. PRAYER FOR PROVISIONAL AUTHORITY

39. All the foregoing allegations are re-pleaded by reference in support of herein *Prayer* for the issuance of Provisional Authority to implement the subject PPSA;

40. ESAMELCO and GNPD pray for the issuance of a Provisional Authority or interim relief prior to final decision pursuant to *Rule 14* of the *ERC Rules of Practice and Procedure,* to wit:

> *"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."*

41. Worthy of note is that 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 4.85% while Visayas' Peak Demand is 1,847MW with AAGR of 3.4%. Therefore, Luzon's peak demand is expected to increase to 11,347MW in 2020, and to 18,264MW 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;

42. The continuous addition of supply shall help keep stable power supply for the increasing demand and low and stable cost of power available at the WESM and for the end-users;

43. Contributing to the Luzon and Visayas Grid's demand growth is ESAMELCO's peak load demand which increases at a rate of 3.51% per year. By 2019, it is projected that ESAMELCO's existing power suppliers will not be able to meet the power needs of its member consumers, which is expected to have increased to 16.3%;

44. Thus, the PPSA with GNPD is crucial for ESAMELCO 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;

45. While target delivery of power under the terms and conditions of the PPSA is expected to commence not later than thirty-six (36) months after the final approval of the Honorable Commission, the Parties, however, intend to commence delivery whether on an interim or full capacity basis on December 26, 2018. 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 GNPD's facility;

46. It is also worthy to note that part of the funds needed to construct GNPD's facility will be sourced from loans coming from banks/financial institutions. The Honorable Commission's provisional approval of the instant *Application* is a vital requirement for the release of the loan proceeds. Hence, a timely compliance with the requirements of the financial agreements ensures stable source of funds and timely construction of the generation facility, and the implementation of the PPSA as contemplated by the Applicants;

47. With continuous financing, the timely implementation of the project shall be assured, to the full benefit of ESAMELCO and the Luzon and Visayas' Grids. Otherwise, any delay in the implementation of the project shall expose ESAMELCO to supply risk and unstable market prices in the future;

48. To emphasize the necessity of a provisional approval of herein *Application,* a Judicial Affidavit to support the prayer for provisional authority will be attached herewith to form an integral part hereof as **Annex "II";**

49. In recognition of the fact that a substantial amount of time is customarily needed to evaluate the documents submitted to support the approval of herein *Application,* Applicants ESAMELCO and GNPD seek the kind consideration of the Honorable Commission to approve the instant *Application,* immediately, albeit, provisionally;

PRAYER

WHEREFORE, premises considered, it is most respectfully prayed of the Honorable Commission that (i) all information set forth in **Annexes "H" to "J" and "S" to "V"** to the instant *Application* be treated as confidential; (ii) pending hearing on the merits, a Provisional Authority be **DULY ISSUED** authorizing the immediate implementation of the subject Power Purchase and Sale Agreement (PPSA) between Applicants ESAMELCO and GNPD, including the rate structure therein, as applied; and (iii) that after due notice and hearing, the instant *Application*, the *Power Purchase and Sale Agreement* and the rate structure contained therein be DULY APPROVED.

Further, in the event that a Final Authority shall be issued after GNPD starts actual delivery of power to ESAMELCO under the terms of the subject PPSA, said Final Authority be retroactively applied to the date of such actual delivery.

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

The Commission has set the Application for determination of compliance with the jurisdictional requirements, Expository Presentation, Pre-trial Conference, and presentation of evidence on **19 October 2016 (Wednesday) at nine o'clock in the morning (09:00 A.M.) at ESAMELCO's principal office at Cabong, Borongan, Eastern Samar.**

All persons who have an interest in the subject matter of the proceeding may become a party by filing, at least five (5) days prior to the initial hearing and subject to the requirements in the *ERC's Rules of Practice and Procedure*, a verified petition with the Commission giving the docket number and title of the proceeding and stating: (1) the petitioner's name and 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.

All other persons who may want their views known to the Commission with respect to the subject matter of the proceeding may file their opposition to the Application or comment thereon at any stage of the proceeding before the applicant concludes the presentation of its evidence. No particular form of opposition or comment is required, but the document, letter or writing should contain the name and address of such person and a concise statement of the opposition or comment and the grounds relied upon.

All such persons who wish to have a copy of the Application may request from the applicant that they be furnished with the same, prior to the date of the initial hearing. The applicant is hereby directed to furnish all those making such request with copies of the Application and its attachments, subject to the reimbursement of reasonable photocopying costs. Any such person may likewise examine the Application and other pertinent records filed with the Commission during standard office hours.

WITNESS, the Honorable Chairman **JOSE VICENTE B. SALAZAR,** and the Honorable Commissioners **ALFREDO J. NON, GLORIA VICTORIA C. YAP-TARUC, JOSEFINA PATRICIA A. MAGPALE-ASIRIT,** and **GERONIMO D. STA. ANA,** Energy Regulatory Commission, this 20th day of July 2016 in Pasig City.

ATTY. NATHAN J. MARASIGAN
Chief of Staff
Office of the Chairman and CEO

LS: ARG/GLS/APV