

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



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

**ERC CASE NO. 2016-060 RC**

**BOHOL II ELECTRIC COOPERATIVE, INC. (BOHECO II) AND GNPOWER DINGININ LTS. CO. (GNPD), Applicants.**

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**D O C K E T E D**  
Date: OCT 06 2016  
By: [Signature]

**NOTICE OF PUBLIC HEARING**

**TO ALL INTERESTED PARTIES:**

Notice is hereby given that on 28 April 2016, Bohol II Electric Cooperative, Inc. (BOHECO II) and GNPower Dinginin Ltd Co. (GNPD) filed an Application for approval of the Power Purchase and Sale Agreement (PPSA) with prayer for confidential treatment of information and the issuance of provisional authority.

In the said Application, BOHECO II and GNPD alleged the following:

1. Applicant BOHECO II 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 at Cantagay, Jagna, Bohol. It is authorized to distribute and provide electricity services to its member-consumers in the

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Municipalities of Alicia, Anda, Bien Unido, Buenavista, Candijay, Dagohoy, Danao, Duero, Garcia, Guindulman, Jagna, Getafe, Mabini, Pilar, Carlos P. Garcia, San Miguel, Sierra Bullones, Talibon, Trinidad, Ubay, Valencia, , all in the Province of Bohol (collectively, the “Franchise Area”).

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

Annex	Document
“A”	BOHECO II’s Articles of Incorporation
“B”	BOHECO II’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 28<sup>th</sup> 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 independent power producers (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 Law), 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 BOHECO II and GNPD on 4 April 2016 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**

**BOHECO II's Power Supply and Demand Situation**

8. BOHECO II, together with BOHECO I, needs to address the insufficiency of its power supply due to the increasing demand within its franchise area.
9. BOHECO II currently receives a total of 10 MW from its existing suppliers out of its peak requirement of 19.43 MW. With an annual average growth rate of 7%, BOHECO II forecasts that its peak demand for the years 2019 to 2023 will significantly increase as presented below:

<b>FORECASTED DEMAND</b>					
<b>YEAR</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>
<b>Peak Demand (MW)</b>	22.32	23.36	24.41	25.45	26.49

10. BOHECO I and Bohol II Electric Cooperative, Inc. (BOHECO II), collectively, the "1BP ECs", received an unsolicited proposal from GNPower Ltd. Co. for the supply of their aggregated short-term baseload demand for the period December 26, 2018 to December 25, 2019 and medium-term baseload demand for the period December 26, 2018 to December 25, 2023.

**The Competitive Selection Process**

11. Guided by a declared and agreed policy and guidelines as described in the 1BP ECs Rules and Procedures for Unsolicited Proposal, which is Annex A of the Instructions to Proponents, the 1BP ECs created the Joint Competitive Power Supply Procurement (JCPS) Board, the 1BP JCPS Bids and Awards Committee (JBAC) and the 1BP Joint Technical Working Group (JTWG)<sup>1</sup> to conduct the initial evaluation of the unsolicited proposal in order to determine its compliance with 1BP ECs' policy and guidelines. A copy of the Instructions to Proponents is attached hereto as **Annex "H"**.
12. The JTWG found the proposal of GNPower consistent with the criteria set forth in the aforementioned policy and guidelines. A copy of the results of the evaluation is attached hereto as **Annex "I"**.

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<sup>1</sup> The 1BP JCPS Board is composed of all Board Presidents and General Managers of the Bohol I and Bohol II. The 1BP JCPS 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 tasked to provide direct technical support to the JBAC.

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13. GNPow<sup>er</sup> 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. GNPow<sup>er</sup>, through the submitted bidding documents, manifested to the JBAC that a special purpose company was established for the Dinginin Project, which is GNPow<sup>er</sup> Dinginin Ltd. Co. ("GNPD"), and GNPow<sup>er</sup> is the lead developer of the said project.
14. After a more detailed evaluation, the JBAC endorsed the GNPow<sup>er</sup> proposal to the 1BP JCPSP Board, which granted GNPow<sup>er</sup> the *Original Proponent* status in the Competitive Selection Process through Comparative Proposals for the procurement of the short-term and medium-term baseload power supply of 1BP ECs. A copy of the results of the detailed evaluation is attached hereto as **Annex "J"**.
15. Generating companies (GENCOs) were invited to submit Comparative Proposals to challenge GNPow<sup>er</sup>'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. Copies of the invitation as published twice in the Philippine Daily Inquirer and the Affidavit of Publication are attached hereto as **Annexes "K" to "K-1"**.
16. Participating GENCOs submitted letters of intent (LOIs), copies of which are attached hereto as **Annexes "L" to "L-3"**, and were provided with a copy the Instructions to Proponents (ITP) and due diligence data. Thereafter, transaction conferences were held to clarify and discuss the transaction process, requirements, rules and evaluation methodology.
17. On 15 June 2016, during the submission and opening of bids, Trans Asia Oil and Energy Development Corporation (TAOEDC) and Unified Leyte Geothermal Energy Inc. (ULGEI) submitted comparative proposals. Upon evaluation, the evaluated long-term levelized price of GNPow<sup>er</sup> for the medium-term and of ULGEI for the short-term were the lowest. The results of the evaluation are shown in **Annex "M"**.
18. On 22 January 2016, the JBAC issued a Notice of Award to GNPow<sup>er</sup> and the same was accepted by GNPow<sup>er</sup> on 27 January 2016, a copy of which is attached hereto as **Annex "N"**.
19. Afterwards, the 1BP ECs, GNPow<sup>er</sup> and GNPD finalized the terms and conditions of the Power Purchase and Sale Agreement (PPSA) based on the Key Contract Terms provided in the ITP. Separate/individual but identical PPSAs were signed by and between each of BOHECO I and BOHECO II and GNPD.

20. Accordingly, on 4 April 2016, BOHECO II and GNPD executed the subject PPSA, providing the terms and conditions for the supply of 12 MW baseload power to BOHECO II to assure the adequate and reliable supply of power to BOHECO II's franchise area.

**II. ABSTRACT OF THE PPSA AND OTHER RELATED INFORMATION**

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

- A. **Term of Agreement.** Subject to the terms and conditions of the PPSA, the PPSA shall be effective on the date of its execution, with commencement date on 26 December 2018, and shall terminate on 25 December 2023.
- B. **Source of Supply.**<sup>2</sup> GNPD shall make available, sell, and deliver or cause to be delivered to BOHECO II the Product<sup>3</sup> at the Delivery Point subject to the terms of the PPSA.

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 "O"**;

- C. **Contracted Capacity.** BOHECO II 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:

Year	Contracted Capacity (kW)
1	12,000
2	12,000
3	12,000
4	12,000
5	12,000

BOHECO II shall utilize and pay for the capacity delivered by GNPD at 70% to 100% Capacity Utilization Factor (CUF). GNPD may increase the capacity up to 83% CUF and lower the same to not less than 70% CUF.

**C.1. Option to Increase Contracted Capacity**

Section 3.7 of the PPSA, provides that upon written notice to GNPD, BOHECO II may, upon approval by GNPD, increase its Contracted

<sup>2</sup> Section 3.1, Article 3. Obligations and Deliveries, PPSA, page 11

<sup>3</sup> 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)

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:

<b>Capacity Utilization Factor (%)</b>	<b>Capacity Fee (\$ /kWh)</b>
100%	0.0466
99%	0.0470
98%	0.0475
97%	0.0480
96%	0.0485
95%	0.0489
94%	0.0494
93%	0.0499
92%	0.0505
91%	0.0510
90%	0.0515
89%	0.0521
88%	0.0527
87%	0.0532
86%	0.0538
85%	0.0544

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84%	0.0551
83%	0.0557
82%	0.0563
81%	0.0570
80%	0.0577
79%	0.0584
78%	0.0591
77%	0.0599
76%	0.0606
75%	0.0614
74%	0.0622
73%	0.0630
72%	0.0639
71%	0.0647
70%	0.0656

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:

$$\begin{aligned}
 \text{Capacity Fee} &= - 0.08667 \times (\text{CUF})^3 \\
 &+ 0.29510 \times (\text{CUF})^2 \\
 &- 0.37526 \times \text{CUF} + 0.21342
 \end{aligned}$$

Where:

**Capacity Fee** – is the Capacity Fee in \$/kWh  
**CUF** – is the Capacity Utilization Factor between 70% and 100%, provided that if the actual CUF is below 70% (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:

$$\text{CUF} = \max \left\{ 70\%, \frac{Q}{CC * [H_T - EH_0]} \right\}$$

Where:

**Q** = Quantity as defined in Section 1.1 of the Agreement  
**CC** = Contracted Capacity, in kW, as set forth in Schedule 1  
**H<sub>T</sub>** = Total number of hours in such Billing Period

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$EH_{To}$  = the sum of the duration, in Equivalent Hours, of Scheduled Outages and Unscheduled Outages in such Billing Period

For example,

Q = 7,140,000 kWh  
CC = 12,000 kW  
 $H_T$  = 720 hours  
 $EH_{To}$  = 20 hours

$$CUF = \frac{7,140,000 \text{ kWh}}{12,000 \text{ kW} * [720 \text{ hours} - 20 \text{ hours}]}$$
$$= \frac{7,140,000 \text{ kWh}}{8,400,000 \text{ kWh}}$$
$$= 85.00\%$$

D.2 Energy Fee

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

Where,

$IEF$  – Initial Energy Fee equal to \$0.0278 / kWh

$CIF_n$  – CIF Cost of Fuel for Billing Period n

$CIF_0$  – Base CIF Cost of Fuel equal to \$8.6955 / million kcal

- E. **Capacity Utilization Discount.** Section 5.3 (c) of the PPSA provides that if BOHECO II pays the invoice amount in full in accordance with GNPD's invoice instruction on or before the twenty-fifth (25<sup>th</sup>) day of the succeeding calendar month from the relevant Billing Period and BOHECO II's CUF is greater than or equal to 70%, BOHECO 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.
- F. **Scheduled and Unscheduled Outages.** 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 BOHECO II. 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. COMMERCIAL ADVANTAGE OF THE GENERATION RATE AND IMPACT ON BOHECO II'S RETAIL RATES**

22. BOHECO II needs to address the insufficiency of its power supply due to the increasing demand within its franchise area.
23. The additional capacity and supply from GNPD will significantly augment the supply deficiency of BOHECO II and will decrease the adverse effects thereof by providing a stable and adequate source of electricity.
24. Aside from the lower generation cost of the power supply from GNPD, BOHECO II is also entitled to Capacity Utilization Discount, if conditions are met, which makes even more competitive the proposed rate contained in the subject PPSA.
25. Among alternative suppliers capable of providing additional energy to BOHECO II 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 1BP ECs' utilization of the Contracted Capacity.
26. BOHECO II simulated a rate impact analysis which ultimately resulted in PhP 0.4102/kWh rate reduction with the execution of the PPSA with GNPD, to wit:

**Simulation of Generation Mix Rate with GNPD for the Year 2019**

<b>Power Supplier</b>	<b>Forecasted Quantity (kWh)</b>	<b>Amount (PhP)</b>	<b>Percent Share (%)</b>	<b>Resulting Capacity Utilization Factor (%)</b>	<b>Average Rate (P/kWh)</b>	<b>Weighted Average Rate (kWh)</b>
Greencore	72,708,000.00	413,259,147.52	61.99%	83%	5.6838	5.3589
GNPD	36,792,000.00	164,350,161.57	31.37%	35%	4.4670	
WESM	7,798,208.79	50,977,558.44	6.65%	100%	6.5371	
<b>TOTAL</b>	<b>117,298,208.79</b>	<b>628,586,867.53</b>				

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**Simulation of Generation Mix Rate without GNPD for the Year 2019**

<b>Power Supplier</b>	<b>Forecasted Quantity (kWh)</b>	<b>Amount (PhP)</b>	<b>Percent Share (%)</b>	<b>Resulting Capacity Utilization Factor (%)</b>	<b>Average Rate (P/kWh)</b>	<b>Weighted Average Rate (kWh)</b>
Greencore	72,708,000.00	413,259,147.52	61.99%	83%	5.6838	5.7691
GNPD	0.00	0.00	0.00	0.00	0.00	
WESM	44,590,208.79	263,447,370.76	38.01%	100%	5.9082	
<b>TOTAL</b>	<b>117,298,208.79</b>	<b>676,706,518.27</b>				

<b>Generation Rate Impact, (PhP/kWh)</b>	<b>-0.4102</b>
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*Notes:*

- Forecast- BOHECO-II forecasting methodology considers all the available data as forecasting inputs. From the data that we have the 7 years historical energy purchased, the most suitable method is the trend analysis. Through trend analysis, the historical data is represented with mathematical models closely fitted to its curve characteristic while the peak demand forecast is derived from the forecasted system energy by dividing the forecasted energy by the product of the Load Factor and the total number of hours in a year (8,760 hours).*
- Price Assumption*

<b>Year 2019</b>	<b>Capacity Fee (\$ /kWh)</b>	<b>Energy Fee (\$ /kWh)</b>	<b>Price</b>
<b>GREENCORE 2019 (inflated)</b>			<b>5.6838 Php/kWh</b>
<b>GNPD @Inflated</b>	0.0656	0.0300	<b>0.0956 \$/kWh</b>
<b>WESMAverage</b>			<b>5.1693 Php/kWh</b>

*\*Greencore Price equal to 5.05Php/kWh at year 2015 inflated by 3% yearly*

*\*GNPD rate is based on the corresponding (i) Capacity Fee at 70% CUF from the GNPD evaluated bid price. (ii) Submitted fuel cost in peso was converted to dollar using the reference forex rate and was inflated using Fuel Inflation Factor from World Bank Commodities Price Forecast (Nominal USD), July 20, 2015 and World Bank Commodity Price Data released December 1, 2015*

- FOREX (Foreign Exchange Rate used during evaluation of bid proposals)  
FOREX- 46.7422 PHP/USD*

The complete Rate Impact Analysis is attached as ANNEX "P".

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27. 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 BOHECO II and GNPD attach the following documents to form integral parts hereof:

<b>ANNEX</b>	<b>DOCUMENT</b>
<b>"Q"</b>	Executive Summary of the PPSA
<b>"R"</b>	Breakdown of the Contract Price and Sample Calculation
<b>"S"</b>	GNPD's Financial Assumptions including Project Cost, Sources of Financing, Debt-Equity Ratio, WACC computation, and Projected Equity IRR
<b>"T"</b>	Breakdown of Costs including Engineering, Procurement and Construction (EPC) Costs, Operations and Maintenance (O&M) Costs, and Projected Fuel Costs
<b>"U"</b>	Projected Balance Sheet, Income Statement, Revenue and Cash Flow
<b>"U-1"</b>	Compact Disc containing a soft copy of Annexes "S" to "U"
<b>"V"</b>	Details of Fuel Procurement
<b>"V-1"</b>	Sworn Statement – Coal Procurement Process
<b>"W"</b>	GNPD's Audited Financial Statement for 2014
<b>"X"</b>	GNPD's Transmission Plan for the Project
<b>"Y"</b>	Certificate of Endorsement from DOE that the Project is included in the DOE's Power Development Plan
<b>"Y-1"</b>	Environmental Certificate of Compliance from DENR
<b>"Z"</b>	BOHECO II's Distribution Development Plan (DDP)
<b>"AA"</b>	BOHECO II's Actual and Forecasted Energy and Demand
<b>"BB"</b>	BOHECO II's Average Daily Load Curve
<b>"CC"</b>	BOHECO II's Board Resolution authorizing the approval and signing of the PPSA, authorizing its Board President, Virginia Itim and General Manager, Eugenio R. Tan, to sign the PPSA on behalf of BOHECO II, and the filing of the Application with the ERC for the approval of the PPSA
<b>"DD"</b>	BOHECO II's Secretary's Certificate attesting to the resolution of its Board of Directors authorizing its General Manager, Eugenio R. Tan, to jointly file with the ERC the Application for the approval of the PPSA between BOHECO II and GNPD, and designating Engr. Vicente T. Ocmeja Jr. as witness
<b>"EE"</b>	GNPD's General Partner's Certificate attesting to the resolution of the Partners to execute the subject PPSA with BOHECO II and designating signatories thereto
<b>"EE-1"</b>	GNPD's General Partner's Certificate attesting to the resolution of the Partners to file an application for the approval of the subject PPSA with the ERC and designating its authorized representatives and counsels

28. Applicants BOHECO II 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**

29. 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, Municipality of Jagna, and the Province of Bohol, to be appended as **Annexes "FF", "GG" and "HH"**, respectively;
  - b. Notarized Affidavit of Publication stating that the *Application* was published in a newspaper of general circulation within BOHECO II's Franchise Area, to be appended herein as **Annex "II"**; and
  - c. Complete newspaper issue where the *Application* was published, to be appended herein as **Annex "II-1"**, and the relevant page thereof where the *Application* appears, as **Annex "II-2"**.

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

30. 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.
31. Applicant BOHECO II 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 1BP JCPSP, as well as the results of the evaluation. The 1BP ECs, BOHECO 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, BOHECO II and the rest of the 1BP EC's may be held liable for damages for breach of confidentiality, and eventually, risk their good relations with the suppliers concerned.
32. 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.

33. 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.
34. 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<sup>4</sup>. It is indubitable that trade secrets constitute proprietary rights and jurisprudence has consistently acknowledged the private character of trade secrets<sup>5</sup>. Further, as ruled in *Garcia vs. Board of Investments*<sup>6</sup>, trade secrets and confidential, commercial and financial information are *exempt* from public scrutiny.
35. 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.
36. In accordance with *Section 1(b), Rule 4 of the ERC Rules of Practice and Procedure*, Applicants BOHECO II 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**

37. 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.
38. BOHECO II 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:

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<sup>4</sup> *Air Philippines Corporation vs. Pennswell Inc.*, G.R. No. 172835, December 13, 2007.

<sup>5</sup> *Ibid.*,

<sup>6</sup> 177 SCRA 374 (1989).

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*“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.”*

39. 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.
40. 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.
41. Contributing to the Luzon and Visayas Grid’s demand growth is BOHECO II’s peak load demand which increases at a rate of 7 % per year. By 2019, it is projected that BOHECO 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 22.317 MW.
42. Thus, the PPSA with GNPD is crucial for BOHECO 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.
43. While target delivery of power under the terms and conditions of the PPSA is still expected to commence by contract year 2019, 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.
44. 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.
45. With continuous financing, the timely implementation of the project shall be assured, to the full benefit of BOHECO II and

the Luzon and Visayas' Grids. Otherwise, any delay in the implementation of the project shall be detrimental to the grid as BOHECO II needs additional capacity for the growing demand and expose BOHECO II to supply risk and unstable market prices in the future.

46. 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 "JJ"**.
47. 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 BOHECO II 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 BOHECO II 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 BOHECO II 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 **03 November 2016 (Thursday) at ten o'clock in the morning (10:00 A.M.) at BOHECO II's Main Office in Cantagay, Jagna, Bohol.**


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 29<sup>th</sup> day of September 2016 in Pasig City.

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