

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



**IN THE MATTER OF THE
JOINT APPLICATION FOR
THE APPROVAL OF THE
POWER SUPPLY
AGREEMENT (PSA)
BETWEEN PAMPANGA II
ELECTRIC, INC. (PELCO II)
AND BACMAN
GEOTHERMAL, INC. (BGI),
WITH PRAYER FOR
PROVISIONAL
AUTHORITY**

ERC CASE NO. 2016 -175 RC

**PAMPANGA II ELECTRIC
COOPERATIVE, INC.
(PELCO II) AND BACMAN
GEOTHERMAL, INC. (BGI),
Applicants.**

DOCKETED
Date: **OCT 21 2016**
By: _____

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NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 22 September 2016, Pampanga II Electric Cooperative, Inc. (PELCO II) and Bac-Man Geothermal, Inc. (BGI) filed a *Joint Application (with Prayer for Provisional Authority) (Joint Application)* seeking the Commission's approval of the Power Supply Agreement (PSA) entered into by both parties on 19 July 2016.

PELCO II and BGI alleged the following in their *Joint Application*:

1. Applicant PELCO 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 main office at San Roque, Guagua, Pampanga 2003, where it may be served with summons and other legal processes, represented in this instance by its General Manager, AMADOR T. GUEVARRA, of legal age, Filipino, married and with office address also at PELCO II Main Office.

2. Applicant BGI is a corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at the 38th Floor, One Corporate Center, Julia Vargas corner Meralco Avenue, Ortigas Center, Pasig City 1605, where it may be served with summons and other legal processes, represented in this case by its Executive Vice President, ERNESTO B. PANTANGCO, of legal age, Filipino, married and also with office address at the 38th Floor, One Corporate Center, Julia Vargas corner Meralco Avenue, Ortigas Center, Pasig City. Copies of BGI's Articles of Incorporation, Certificate of Registration issued by the Securities and Exchange Commission (SEC), latest General Information Sheet (GIS) showing the list of shareholders and Board of Investments (BOI) Certificate of Registration are attached hereto as Annexes, "A", "B", "C" and "D", respectively;

- 2.1 BGI, as a generation company, falls within the ambit of Sections 6 and 29 of Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 ("EPIRA").
- 2.2 Pursuant to the Honorable Commission's Resolution No. 02, Series of 2015 requiring distribution utilities and generation companies to jointly file applications for the approval of power supply agreements, BGI has joined in this Application as a co-applicant.
- 2.3 While BGI is a co-applicant, it manifests that this joint Application shall neither modify, diminish, nor constitute as a waiver of BGI's rights nor expand its obligations and responsibilities as a generation company under the EPIRA.

3. Applicant PELCO II is the exclusive franchise holder of the Certificate of Franchise issued by the National Electrification Commission to operate an electric light and power services in the city and municipalities in the Province of Pampanga, namely: 1) Guagua, 2) Bacolor, 3) Porac, 4) Sasmuan, 5) Lubao, 6) Sta. Rita, and, 7) City of Mabalacat. A copy of PELCO II's Certificate of Franchise is attached as Annex "E";

4. Applicant BGI is a wholly-owned subsidiary of EDC Geothermal, Inc., which is in turn wholly-owned by Energy Development Corporation (EDC). BGI owns and operates the Bacon-Manito Geothermal Plant located in the provinces of Albay and Sorsogon, which was acquired via the privatization auction conducted by the Power Sector Assets and Liabilities Management Corporation (PSALM) as evidenced by the attached Joint Certificate of Turn-over dated 3 September 2010, duly marked as Annex "F". When BGI took over the facility, it embarked on a massive rehabilitation capital expenditure program and the ensuing repair works resulted to the dependable capacity being increased from 130 MW to 156 MW. Copies of the Environmental Compliance Certificate (ECC) issued by the Department of Environment and

Natural Resources (DENR) and ERC Certificate of Compliance (COC) issued to BGI are attached hereto as Annexes "G" and "H", respectively;

5. Applicant PELCO II is in need of additional 20 MW baseload power supply to cover its existing and forecast demand, hereto attached as Annex "I". Pursuant to ERC Resolutions No. 13, Series of 2015 and No. 1, Series of 2016, "*A Resolution Directing All Distribution Utilities (DU's) to Conduct a Competitive Selection Process (CSP) in the Procurement of their Power Supply to the Captive Market*" and "*A Resolution Clarifying the Effectivity of ERC Resolution No. 13, Series of 2015*", Applicant PELCO II had conducted a public bidding to solicit the most competitive offer/s for the additional 20 MW baseload requirement. After careful evaluation and review of the terms of the bid offers, Applicant PELCO II deemed that the proposal of Applicant BGI is the most advantageous and beneficial for its end consumers. Therefore, co-applicants executed this Power Supply Agreement (PSA) on July 19, 2016. The relevant documents on the details of the procurement process for the PSA are attached as Annexes "J" to "J-60".

6. Applicants PELCO II and BGI come now to this Honorable Commission for the approval of the PSA, in compliance with the implementing rules and regulations (IRR) of the Electric Power Industry Reform Act of 2001 otherwise known as EPIRA and the rules and guidelines issued by the Energy Regulatory Commission. A copy of the PSA is attached as Annex "K".

**ABSTRACT OF THE POWER SUPPLY AGREEMENT AND
RELATED INFORMATION**

7. Executive Summary. Under the PSA, Seller BGI shall supply power to Buyer PELCO II for a term of two and a half (2.5) years. The Contract Capacity is fixed on a monthly basis.

- 7.1 Term of Agreement. The PSA shall take effect on the Effective Date and shall continue and remain effective up to December 25, 2018, subject to the Conditions Precedent of Section 3.1 of the PSA;
- 7.2 Supply of Energy. Buyer PELCO II's Contract Capacity is twenty thousand kilowatts (20,000 kW) for the duration of the PSA, as specified in Annex "C" – Schedule of Contracted Capacity of the PSA;
- 7.3 Availability of Energy. Seller BGI shall supply Buyer PELCO II the Contracted Capacity from the Plant (Section 1.1.30 of the PSA), and in lieu thereof, the WESM or third party source subject to prudent utility practice and applicable laws and regulations in accordance to Section 5 of the PSA;

7.4 Sale and Purchase of Contract Capacity and Associated Energy. At the start of the subject contract on the Effective Date, Seller BGI shall supply to Buyer PELCO II the Contract Capacity (Annex "C" of the PSA) specified therein at the agreed variable and fixed rates in terms of capacity and energy fees subject to annual adjustments to be determined based on the agreed formula and sample computations (Annexes "A" & "B" of the PSA). Buyer PELCO II shall comply with the protocol for the nomination and declaration to the WESM of the bilateral contract quantities, and the coordination procedures and activities between the Parties with respect to WESM transactions in accordance with Section 4 of the PSA.

7.5 Adjustment in Contract Capacity. Buyer PELCO II and Seller BGI may enter into another agreement through good faith negotiations for an increase in Contract Capacity. Buyer PELCO II, in no less than or at least sixty (60) day prior to the intended implementation of the increase in Contract Capacity, subject to the Plant's technical limits, and the following constraints, namely, a) transmission line, b) substations other facilities, c) availability of energy and/or capacity and such other terms and conditions as the parties may agree upon, shall make a written application to Seller BGI. Seller BGI shall duly evaluate and inform Buyer PELCO II of its decision on the application in accordance with Section 4 of the PSA.

In the event of any reduction or buy-out in Contract Capacity by Buyer PELCO II, it is upon the written consent of Seller BGI subject to payment of buy-out fee at the rate formulae specified in Section 13 of the PSA.

7.6 Maintenance Allowance. SELLER BGI shall have the right to suspend or reduce the level of operation of the Plant for Planned Outages and Forced Outages for the Plant in for the Contract Period for such period not to exceed the number in gross kilowatt-hours calculated in accordance with the formula set out in the Section 5.5 of the Article 5 of the PSA.

7.7 Charges and Adjustments. Upon the start of Supply Effective Date, Buyer PELCO II, under Annex "A" of the PSA, shall pay Seller BGI of the sum of the Monthly Total Fixed Charges and Variable Charges of the Contract Capacity and in excess, the charges shall be in

accordance with Sections 6.1 and 4.4 of the PSA, respectively. Any adjustment/s in the Fixed and Variable Charge shall be translated on the formulae in Annex "B" of the PSA.

- 7.8 Capacity and Energy Fees. The provision for Capacity and Energy Fees is covered under Section 6 of the PSA. Annexes "A" & "B" of the PSA provide the formulae for the computation of the basic energy charge and adjustments to fixed O & M and variable charges, respectively, to wit:

ANNEX A of the PSA
 Schedule of Basic Energy Charge

	Fees	Units
Fixed Charge		
Capacity Charge	883.00	Php/kW/ month
Fixed Operation and Maintenance (FOM) Charge	917.00	Php/kW/ month
Total Fixed Charge	1,800.00	Php/kW/ month
Variable Charge	1.6000	Php/kWh

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

The Total Fixed Charge is equal to the sum of the Capacity Charge and Fixed O&M Charge

- 7.9 The complete schedule of Basic Energy Charge is attached as Annex "A".
- 7.10 Adjustment to the Fixed O&M Charge and Variable Charge. The provision for Adjustment of the Fixed O&M and Variable Charges are covered under the formulae in the said Annex B of the PSA, as follows:

ANNEX B of the PSA
 Schedule to the Adjustment to Fixed O&M
 Charge and Variable Charge

Fixed O&M Charge

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$$\text{Adjusted Fixed O\&M Charge}_n = \text{Fixed O\&M Charge}_{n-1} * I_n$$

Where:

$$I_n = \text{CPI}_{n-1} / \text{CPI}_{n-2}$$

Where:

CPI_{n-1} = average CPI of year n minus 1, as published by the Philippine Statistics Authority (PSA)

CPI_{n-2} = average CPI of year n minus 2, as published by the PSA

Sample Computation of the Adjusted Fixed O&M Charge:

Year <i>n</i>	2017
Previous Year Fixed O&M Charge, PhP/kW/Mo. (effective June 26, 2016 to December 25, 2016)	917.00
CPI_{n-1}	148.11
CPI_{n-2}	142.02
Increase	4.2881%
Adjusted Fixed O&M Charge, PhP/kW/Mo. (effective December 26, 2016 to December 25, 2017)	956.32

Variable Charge

$$\text{Adjusted Variable Charge}_n = \text{Variable Charge}_{n-1} * I_n$$

Where:

$$I_n = \text{CPI}_{n-1} / \text{CPI}_{n-2}$$

Where:

CPI_{n-1} = average CPI of year n minus 1, as published by the PSA

CPI_{n-2} = average CPI of year n minus 2, as published by the PSA

Sample Computation of the Adjusted Variable Charge:

Year <i>n</i>	2017
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Previous Year Variable Charge, PhP/kWh (effective June 26, 2016 to December 25, 2016)	1.60
CPIIn-1	148.11
CPIIn-2	142.02
Increase	4.2881%
Adjusted Variable Charge, PhP/kWh (effective December 26, 2016 to December 25, 2017)	1.67

7.11 Monthly Fees. The provision for charges of monthly fees is under Section 6.3 of the PSA, to wit:

- A. TOTAL FIXED CHARGE in Php is equal to the Contract Capacity in kilowatts multiplied by the sum of the Capacity Charge in Peso per kilowatt-month and Fixed O & M Charge in Peso per kilowatt per month.

$$\text{Total Fixed Charge, PhP} = \text{Contract Capacity, kW} \times (\text{Capacity Charge, PhP/kW/Mo.} + \text{Fixed O\&M Charge, PhP/kW/Mo.})$$

- B. TOTAL VARIABLE CHARGE in Php is equal to the Variable Charge in peso per kilowatt-hours multiplied by the actual kilowatt-hour energy consumed within the Contracted Capacity.

$$\text{Total Variable Charge, PhP} = \text{Variable Charge, PhP/kWh} \times \text{actual kWh energy consumed}$$

7.12 Capacity Utilization Discounts. PELCO II may avail

of a Capacity Utilization Discount (CUD) equivalent to a fixed amount of Php 0.10 for every kilowatt-hour

(kWh) consumed by the Buyer from the Seller, provided, if the Basic Energy Charge approved by the ERC is less than the Basic Energy Charge as agreed upon by the Parties, the CUD may be reduced or may not be extended to Buyer. Prior to the Effective Date, Buyer shall identify the minimum load factor which should not be lower than sixty percent (60%).

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8. The charges on Capacity and Energy Fees and capacity utilization discounts and adjustments under Annexes "A" & "B" and Section 6 of the PSA will result to lower generation cost charges of PELCO II. Below is an analysis of the rate impact:

RATE IMPACT ANALYSIS

Billing Month	Scenario 1	Scenario 2	Scenario 3	Rate Reduction	
	Current Set-up (BCQ with SMEC at NPC-TOU Rate + WESM)	BCQ with BGI (Baseload) + BCQ with SMEC (Mid) + WESM	BCQ with SMEC (Baseload) + BCQ with BGI (Mid) + WESM	Scenario 2 vs Scenario 1	Scenario 3 vs Scenario 1
February 2016	5.5822	5.1858	5.5125	(0.3963)	(0.0696)
March 2016	5.2075	4.9106	5.0505	(0.2969)	(0.1569)
April 2016	5.3273	4.7576	4.7987	(0.5697)	(0.5286)
Average	5.3723	4.9513	5.1206	(0.4210)	(0.2517)

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

The complete rate impact analysis and supporting computations is attached as Annex "L".

9. At present, Independent Power Producer Administrator (IPPA) and Successor Generation Company (SGC), San Miguel Energy Corporation is the power supplier of PELCO II and the supply is through an extension of the contract for the supply of electric energy (CSEE) by way of a Letter of Amendment (LOA) of the Transition Supply Contract (TSC) with erstwhile supplier, the National Power Corporation (NPC). In the same period, PELCO II has an approved power supply contract (PSC) with SMEC (ERC Case No. 2015-029 RC) for a 30 MW load capacity, which is under motion for reconsideration. PELCO II's total supply is up to 55 MW pegged at NPC-TOU rate on a best effort basis.

OTHER RELATED DOCUMENTS

10. In further support of the instant application, Applicants most respectfully submit to the Honorable Commission, the following documents in compliance with the Guidelines for the Recovery of Costs for the Generation Component of the Distribution Utilities' Rates (ERC Resolution No. 19 Series of 2009):

ANNEX	NATURE OF DOCUMENTS
A	Articles of Incorporation and By-Laws of BGI

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B	Securities and Exchange Commission (SEC) Certificate of Registration of BGI
C	Latest General Information Sheet of BGI
D	Board of Investment (BOI) Certificate of Registration
E	Certificate of Franchise of PELCO II
F	Joint Certificate of Turn-over dated 3 September 2010
G	Environmental Compliance Certificate (ECC) issued by the Department of Environment and Natural Resources (DENR)
H	ERC Certificate of Compliance (COC) of BGI
I	PELCO II Existing and Forecast Demand
J	Summary of PELCO II Competitive Selection Process (CSP) and Supporting Documents
K	Power Supply Agreement ("PSA") between PELCO II and BGI dated July 19, 2016
L	PELCO II Rate Impact Analysis
M	Executive Summary of the PSA
N	Description of Power Plant
O	Calendar Year 2015 Audited Financial Statement ("AFS") of BGI
P	Load forecast projections in accordance with the latest Distribution Development Plan (DDP) of PELCO II with DDP Summaries inclusive of the following: (a) DDP One-Page Summary_Grid, (b) DU Load Curve_Grid, (c) Monthly_Sup-Dem_Grid, (d) Annual Sup-Dem_Grid, and (e) DDP Data Summary_Grid
Q	Board Resolutions (BR) Applicant PELCO II a) BR No. 083-16 b) BR No. 084-16 c) BR No. 085-16 d) BR No. 086-16 Applicant BGI a) Resolution No. 7, Series of 2016 b) Resolution No. 20, Series of 2016
R	PELCO II Demand Side Management (DSM) Activities
S	Summary – Other Requirements
T	Certification of Receipt from Sangguniang Bayan of Guagua, Pampanga
U	Certification of Receipt from Sangguniang Panlalawigan of Pampanga
V	Certification of Receipt from Sangguniang Panlungsod of Pasig
W	Affidavit of Publication by Sunstar Pampanga
X	Complete Copy of Newspaper Publication
Y	Summary of Proposals (subject to a motion for confidential treatment)
Z	BGI Rate Calculations (subject to a motion for confidential treatment)

AA	Affidavit in support of the Provisional Authority
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COMPLIANCE WITH PRE-FILING REQUIREMENTS

11. In Compliance with the ERC Rules of Practice and Procedure, Applicants have furnished the legislative bodies of the municipality and province wherein the principal place of business of PELCO II is located, a copy of the present Joint Application with all its annexes and accompanying documents. Copies of the certifications of receipt from the Presiding Officer or Secretary of the legislative bodies of the municipality of Guagua, Pampanga and the Province of Pampanga, or from their duly authorized representatives, attesting to the fact of service are attached hereto as Annexes "T" and "U", respectively.

12. Likewise, a copy of the present Joint Application with all its annexes and accompanying documents was furnished to the City of Pasig where BGI's principal place of business is located. Copy of the certification of receipt from the Presiding Officer or Secretary of the legislative body of the City of Pasig, or from their duly authorized representatives attesting to the fact of service are attached hereto as Annex "V".

13. Applicants have also caused the publication of the present Joint Application in a newspaper of general circulation within the Franchise Area of PELCO II. Copies of the corresponding duly notarized Affidavit of Publication and the newspaper publication are attached hereto as Annexes "W" and "X", respectively.

REQUEST FOR CONFIDENTIAL TREATMENT OF INFORMATION

14. BGI and PELCO II respectfully request that the information in the documents, attached hereto in a sealed envelope, containing proposals of other generation companies (GENCOs) to PELCO II and BGI's rate calculations duly marked as Annexes "Y" and "Z", respectively, be treated as confidential in nature.

BGI and PELCO II treats other GENCO proposals and rate calculations as not generally available to the public on a non-confidential basis, as the same involve trade secrets reflecting BGI's investment and business calculations and the Parties are similarly bound to third parties to keep the information and documents confidential.

This request is likewise being made by virtue of Section 1 (b), Rule 4 of the ERC Rules of Practice and Procedure under which the Honorable Commission may, upon request of a party and determination of the existence of conditions which would warrant such remedy, treat certain information submitted to it as confidential.

MOTION FOR ISSUANCE OF PROVISIONAL AUTHORITY

15. Clearly and without iota of doubt, the contracted capacity as specified in the PSA, whether utilized as mid-load or baseload, with the resultant reduction of Php 0.2517 per kWh and Php 0.4210 per kWh, respectively, will generally benefit the end-users of PELCO II as it will reduce the GC significantly from the existing Php 5.3723 per kWh to Php 5.1206 per kWh or Php 4.9513 per kWh, as the case may be.

16. Further, based on the power situation outlook for 2016, the reserved capacity will remain critical and will be below the required contingency reserves due to scheduled maintenance shutdowns and forced outages of major base load coal- and gas-fired power plants in Luzon.

17. PELCO II relies for its remaining energy demand requirements in the WESM. With the expected increase in the volatility of WESM prices during the critical status of power reserves, the current generation charge (GC) of PELCO II will consequently be adversely affected to the prejudice of its end-users. The recent yellow and red alerts that affected the Luzon Grid makes it more imperative for PELCO II to protect the interest of its consumers in keeping with its mandate under the EPIRA. The implementation of the PSA with BGI will temper the impact of WESM price volatility that will afford the end-users a stable supply and affordable rates.

18. Thus, in view of the urgency above-mentioned, PELCO II respectfully moves for the issuance of a provisional authority (PA) in this instant case in order to immediately proceed in implementing the PSA, and for the lower rate and benefits derived therein can immediately be enjoyed by the customers of PELCO II. A copy of the affidavit in support of the prayer for issuance of provisional authority is attached hereto as Annex "AA".

19. PELCO II understands that whatever rate that may be fixed and approved by the Honorable Commission under the PA shall be without prejudice to whatever rights and legal remedies which BGI may have under the law and the PSA, and the implementation of the PA shall be conditioned upon the acceptance by the Parties of the terms thereof.

20. Finally, PELCO II would like to emphasize that should a PA be issued and accepted by the Parties, and the PSA is provisionally implemented, Section 3 of the PSA will accordingly be amended to the effect that the PSA becomes effective already between the Parties. Consequently, the Terms of the PSA will be deemed amended to the effect that the two and a half (2.5) year term shall start from the first day of delivery of power by BGI to PELCO II under the PA.

PRAYER

WHEREFORE, premises considered, applicants Pampanga II Electric Cooperative, Inc. (PELCO II) and Bac-Man Geothermal Inc. (BGI) respectfully pray of this Honorable Commission the following;

- a. Immediately issue a Provisional Authority (PA), authorizing BGI and PELCO II to implement the PSA, including the rates;
- b. Treat the documents duly marked as Annexes "Y" and "Z" as confidential; and
- c. After due notice and hearing and consideration, the Provisional Authority be made permanent.

Other reliefs, just and equitable, are likewise prayed for.

The Commission has set the *Joint Application* for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on **12 January 2017 at nine o'clock in the morning (9:00 A.M.), at PELCO II's principal office at Guagua, Pampanga.**


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 2006 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 *Joint Application* or comment thereon at any stage of the proceeding before Applicants conclude the presentation of their 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 *Joint Application* may request from Applicants that they be furnished with the same, prior to the date of the initial hearing. Applicants are hereby directed to furnish all those making such request with copies of the *Joint Application* and its attachments, 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.

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 17th day of October 2016 at Pasig City.


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


LS: ICE