

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 BATANGAS I ELECTRIC COOPERATIVE, INC. (BATELEC I) AND GNPOWER DINGININ LTD. CO. (GNPD) WITH MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION AND ISSUANCE OF PROVISIONAL AUTHORITY,

ERC CASE NO. 2017 -065 RC

BATANGAS I ELECTRIC COOPERATIVE, INC. (BATELEC I) AND GNPOWER DINGININ LTD. CO. (GNPD),

Applicants.

X-----X

D O C K E T E D
Date: SEP 04 2017
By: [Signature]

NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 30 June 2017, Batangas I Electric Cooperative, Inc. (BATELEC I) and GNPower Dinginin Ltd. Co. (GNPD) filed an *Application* dated 04 May 2017 (*Application*) seeking the Commission's approval of the Power Purchase and Sale Agreement (PPSA) between BATELEC I and GNPD executed on 12 August 2016, with motion for confidential treatment of information and issuance of provisional authority.

BATELEC I and GNPD alleged the following in their *Application*:

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1. Applicant BATELEC I is a non-stock, non-profit electric cooperative duly organized and existing under Philippine laws, with principal office at Km. 116, National Highway, Calaca, Batangas. It is duly authorized to distribute electricity in Municipalities of Agoncillo, Balayan, Calaca, Calatagan, Lemery, Lian, Nasugbu, San Luis, San Nicolas, Sta. Teresita, Taal and Tuy, all in the province of Batangas (collectively, the "Franchise Area").
2. Copies of BATELEC I's Certificate of Registration, Articles of Incorporation, By-Laws, Certificate of Franchise and Certification on the list of BATELEC I's Board of Directors are attached hereto as follows:

Annex	DOCUMENT
"A"	BATELEC I's Certificate of Registration issued by the National Electrification Administration (NEA)
"B"	BATELEC I's Articles of Incorporation
"C"	BATELEC I's By-laws, as amended
"D"	BATELEC I's Certificate of Franchise issued by the National Electrification Commission
"E"	Certification on the list of BATELEC I's Board of Directors

3. Meanwhile, Applicant GNPD is a duly registered limited partnership organized and existing under Philippine laws, and is engaged in the business of developing, constructing, operating and owning power generation facilities. Its principal office is at the 28th Floor, The Orient Square, Don Francisco Ortigas Jr. Road, Ortigas Center, Pasig City. Copies of its Certificate of Registration issued by the Securities and Exchange Commission (SEC), Amended Articles of Partnership, Certification on Partnership Agreement, and GNPow Project Companies Profile are attached hereto as follows:

Annex	DOCUMENT
"F"	GNPD's Certificate of Registration dated 21 May 2014 issued by the Securities and Exchange Commission (SEC)
"G"	GNPD's Amended Articles of Partnership
"H"	Certification on Partnership Agreement <i>(subject of the Motion for Confidential Treatment)</i>
"I"	GNPower Project Companies Profile

4. Applicants may be served with orders, notices and other legal processes of this Honorable Commission through the respective addresses of the undersigned counsels.
5. By and pursuant to *Sections 25, 43 (u) and 45 (b) of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), and its Implementing Rules and Regulations*, this Application is respectfully submitted to this Honorable Commission for its due

consideration and approval of the Power Purchase and Sale Agreement (“PPSA”) executed by and between Applicants BATELEC I and GNPD on 12 August 2016, a copy of which is attached hereto as **Annex “J”**.

I. STATEMENT OF FACTS

6. BATELEC I needs to address the insufficiency of its power supply due to the increasing demand within its Franchise Area.
7. Based on its supply-demand forecast, BATELEC I’s demand in 2020 is 78.46 MW, with an annual average growth rate of 5.4%. Therefore, its demand is expected to increase to 113.22 MW in 2028. Copies of the following documents are attached hereto:

ANNEX	DOCUMENT
“K”	BATELEC I’s Historical, Actual and Forecasted Supply-Demand Scenario from 2014-2028
“L”	BATELEC I’s Average Daily Load Curve (January to December 2016)
“L-1”	BATELEC I’s Forecasted Average Daily Load Curve for 2020
“L-2”	BATELEC I’s Average Daily Load Curve (March 2017 Billing Period)

8. In view of the increasing demand for power in its Franchise Area, BATELEC I conducted a Competitive Selection Process (CSP), the details of which are as follows:
 - 8.1 On 13 and 14 April 2016, BATELEC I published the Invitation to Bid for its Power Supply Requirements for its Franchise Area of 20MW Base Load (Demand Contract) for March 26, 2018 to March 25, 2028 and Load Following (Energy Supply Contract) for December 26, 2016 to December 25, 2028 on Philippine Daily Inquirer. Further, BATELEC I sent individual invitations to potential suppliers through electronic mail.
 - 8.2 GNPower Ltd. Co. (“GNPower”), along with other prospective suppliers, expressed its intent to join the CSP and was provided with a copy of the Instructions to Bidders. Thereafter, bidding conferences were held to clarify and discuss the selection process, requirements, rules, and evaluation method.
 - 8.3 On 10 May 2016, BATELEC I issued a Supplemental Bid Bulletin increasing the power supply requirements from 20MW to 30MW Base Load (Demand Contract) for March 26, 2018 to March 25, 2028 and Load Following (Energy Supply Contract) for December 26, 2016 to December 25, 2028.

- 8.4 The applications for accreditation of BAC-MAN Geothermal, Inc., GNPowder, SEM-CALACA Power Corp., 1590 Energy Corp. (1590 Energy), AES Philippines, Trans-asia Power Generation Corp., South Luzon Thermal Energy Corp. (SLTEC), and San Miguel Energy Corporation were approved per BAC Resolution No. 29-16 dated 27 April 2016.
- 8.5 Only GNPowder, SLTEC, and 1590 Energy submitted bids for BATELEC I's Load Following power supply requirements.
- 8.6 Upon submission and completion of the pre-qualification requirements, GNPowder, SLTEC, and 1590 Energy were declared as qualified bidders for BATELEC I's Load Following (Energy Supply Contract) for December 26, 2016 to December 25, 2028.
- 8.7 On 17 May 2016, the bids of the qualified bidders were opened. All the three (3) bidders complied with the eligibility requirements. Likewise, the qualified bidders complied with the financial and technical requirements of the bidding documents.
- 8.8 Each qualified bidder made a presentation of its offer to BATELEC I's Technical Working Group (TWG), Bids and Awards Committee (BAC), and Board of Directors. GNPowder confirmed during its presentation that the source of supply to BATELEC I shall be from (i) GMCP's 2x316 (net) MW clean coal-fired power plant in Mariveles, Bataan for Contract Years 2017 to 2019 and (ii) GNPowder's supercritical coal-fired power plant in Mariveles, Bataan, which is currently under construction, for Contract Years 2020 to 2028.
- 8.9 After such presentation and post-qualification evaluation conducted, the TWG and BAC of BATELEC I confirmed that GNPowder submitted the Lowest Calculated and Responsive Bid/Quotation for Load Following (Energy Supply Contract) for December 26, 2016 to December 25, 2028 based on GNPowder's bid price offer as the projected levelized price considering the parameters of the offer and BATELEC I's evaluation methodology.
- 8.10 Accordingly, the TWG and the BAC recommended the awarding of the contract to GNPowder for the Power Supply Requirements of BATELEC I franchise area for Load Following (Energy Supply Contract) for December 26, 2016 to December 25, 2028 pursuant to BAC Resolution No. 40-16.
- 8.11 The BAC recommendation to award the contract to GNPowder was approved by the Board of Directors of

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BATELEC I pursuant to Board Resolution No. 90-16 issued on 13 June 2016.

8.12 Also, the Board of Directors of BATELEC I issued Board Resolution No. 121-16 authorizing the approval and signing of PPSAs with both GNPD and GMCP including its supplement agreements and amendments and other related documents.

Copies of the documents relative to the CSP are hereto attached as follows:

ANNEX	CSP DOCUMENTS
"M"	Certification on the conduct of CSP dated 19 October 2016
"M-1"	Affidavit of Publication dated 21 September 2016 issued by the Classified Ads Assistant Vice President of the <i>Philippine Daily Inquirer</i>
"M-2"	Invitation to Bid as published on 13 April 2016 issue of the <i>Philippine Daily Inquirer</i>
"M-3"	Invitation to Bid as published on 14 April 2016 issue of the <i>Philippine Daily Inquirer</i>
"M-4"	Instruction to Bidders (<i>subject of the Motion for Confidential Treatment</i>)
"M-5"	Supplemental Bid Bulletin (<i>subject of the Motion for Confidential Treatment</i>)
"M-6"	BATELEC I BAC Resolution No. 29-16 dated April 27, 2016
"M-7"	Minutes of the Meeting of the BATELEC I BAC Meeting No. 25-16 dated 10 June 2016 (<i>subject of the Motion for Confidential Treatment</i>)
"M-8"	BATELEC I BAC Resolution No. 40-16 recommending the awarding of the Load Following (Energy Supply Contract) for December 26, 2016 to December 25, 2028 to GNPower (<i>subject of the Motion for Confidential Treatment</i>)
"M-9"	BATELEC I Board Resolution No. 90-16 approving the recommendation of the BAC to award the Load Following (Energy Supply Contract) for December 26, 2016 to December 25, 2028 to GNPower
"M-10"	Notice of Award dated 30 June 2016 issued by BATELEC I to GNPower for the Load Following (Energy Supply Contract) for December 26, 2016 to December 25, 2028
"M-11"	BATELEC I's Secretary's Certificate dated 11 August 2016 attesting to BATELEC I Board Resolution No. 121-16 authorizing the approval and signing of the PPSA between BATELEC I and GNPD; authorizing the Board President and General Manger to sign the PPSA; and authorizing BATELEC I to file the instant Application; and designating De Chavez & Evangelista Law Offices as its legal counsel

9. Consequently, on 12 August 2016, Applicant BATELEC I executed a power purchase and sale agreement with GMCP

for BATELEC I's power requirements for the period of 26 December 2016 to 25 December 2019. On the same day, Applicants BATELEC I and GNPD also executed the subject PPSA to assure the adequate, reliable, and continuous supply of power to BATELEC I's Franchise Area after the expiration of GMCP's power purchase and sale agreement.

II. ABSTRACT OF THE PPSA AND OTHER RELATED INFORMATION

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

- a. **TERM.** The PPSA shall be effective on the date of its execution and shall terminate after one hundred eight (108) months from the date to be specified in the Commencement Date Notice 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 date of ERC's final approval of the subject PPSA.
- b. **SOURCE OF SUPPLY.** GNPD shall make available, sell, and deliver or cause to be delivered to BATELEC I the Product 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 Sitio Dinginin, Brgy. Alasasin, Mariveles, Bataan and its target availability in the WESM for early commercial operations is on December 26, 2018 (Contract Year 2019).
- c. **CONTRACTED CAPACITY.** BATELEC I is contractually entitled to receive from GNPD, at any hour, subject to GNPD's Available Capacity for such hour, the Contracted Capacity, as follows:

Year	Contracted Capacity (MW)
1	30,000
2	33,000
3	33,000
4	34,000
5	37,000
6	40,000
7	45,000
8	48,000

¹ Capitalized terms used but not defined herein have the meaning as defined in the PPSA.

50,000

BATELEC I shall utilize and pay for the capacity delivered by GNPD at 65% to 100% Capacity Utilization Factor (CUF).

c.1. Option to Increase Contracted Capacity. Section 3.7 of the PPSA provides that upon written notice to GNPD, BATELEC I 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 the Capacity Price and the 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.

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

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

Capacity Utilization Factor (%)	Capacity Fee (USD per kWh)
100%	0.0496
99%	0.0500
98%	0.0504
97%	0.0507
96%	0.0511
95%	0.0515
94%	0.0519
93%	0.0523
92%	0.0527
91%	0.0531
90%	0.0536

89%	0.0540
88%	0.0545
87%	0.0549
86%	0.0554
85%	0.0559
84%	0.0564
83%	0.0569
82%	0.0574
81%	0.0580
80%	0.0585
79%	0.0591
78%	0.0596
77%	0.0602
76%	0.0608
75%	0.0615
74%	0.0622
73%	0.0629
72%	0.0636
71%	0.0643
70%	0.0651
69%	0.0659
68%	0.0667
67%	0.0675
66%	0.0684
65%	0.0692

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

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

Where:

- CUF** = is the Capacity Utilization Factor between 65% and 100%, provided that if the actual CUF is below 65% (the "Minimum Capacity Factor"), the Capacity Price shall be calculated based on the Capacity Fee and quantity associated with the Minimum Capacity Factor.
- Q** = Quantity of kWh
- CC** = Contracted Capacity, in kW, as set forth in Schedule 1 of the subject PPSA
- H_T** = Total number of hours in such Billing Period
- EH_{TO}** = Sum of the duration, in Equivalent Hours, of Scheduled Outages and Unscheduled Outages in such Billing Period

d.2. The *Energy Fee* is the component of the Contract Price allocated to pay for the coal, including Government Charges, designated as the Energy Fee in *Schedule 1* of the PPSA as adjusted from time to time due to changes in the delivered price of the coal. The Energy Fee shall

be computed in accordance with the following formula:

$$\text{Energy Fee} = \text{IEF} \times \frac{\text{CIF}_n}{\text{CIF}_o}$$

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. **PROMPT PAYMENT DISCOUNT (PPD).** Section 5.3(c) of the PPSA provides that if BATELEC I pays the invoice amount in full within ten (10) days of receipt from GNPD, BATELEC I shall receive a discount equal to \$0.0012/kWh multiplied by the actual quantity of the Product actually delivered set forth in such invoice for the Billing Period for which the credit was earned.

f. **CAPACITY UTILIZATION DISCOUNT.** Section 5.3 (d) of the PPSA provides that if BATELEC I pays the invoice amount in full in accordance with GNPD's invoice instructions on or before the twenty-fifth (25th) day of the succeeding calendar month from the relevant Billing Period and BATELEC I's CUF is greater than or equal to 65%, BATELEC I shall receive a credit on the next subsequent bill equal to 2.8% of the Energy Fee multiplied by the actual quantity of the Product actually delivered set forth in such invoice for the Billing Period for which the credit was earned.

g. **SCHEDULED OUTAGES AND UNSCHEDULED OUTAGES.** Pursuant to Section 3.2 of the PPSA, GNPD is allowed Scheduled Outage not to exceed five hundred forty (540) Equivalent Hours for each Contract Year, during which times reduced or no deliveries will be available to BATELEC I. Likewise, GNPD is allowed Unscheduled Outage of five hundred forty (540) Equivalent Hours for each Contract Year during which times reduced or no deliveries will be available to the Buyer.

III. ADVANTAGES OF GNPD'S SUPPLY OF POWER AND IMPACT ON BATELEC I'S OVERALL RATES

13. The additional supply from GNPD will help alleviate and sustain the future power supply needs of the Luzon Grid including the Franchise Area of BATELEC I to prevent any likelihood of brownouts and power shortages.
14. Among alternative suppliers capable of providing additional energy to BATELEC I, GNPD's rate proved to be more reasonable and competitive. It is worthy to note that the

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Capacity Utilization Factor Pricing under the PPSA provides flexibility to BATELEC I in its utilization of the Contracted Capacity.

15. BATELEC I simulated a generation rate impact which ultimately resulted in a **reduction of Php 0.1578 per kWh** with the execution of the PPSA with GNPD to wit:

Simulation of Generation Mix Rate with GNPD for the Year 2020

Power Supplier	Forecasted Energy (kWh)	Amount (Php)	Percent Share (%)	Average Rate (Php/kWh)	Weighted Average Rate (Php/kWh)
MPPCL	262,880,309.69	812,142,428.75	54.48%	3.0894	3.4670
GNPD	206,596,044.49	796,859,312.08	42.82%	3.8571	
WESM	13,029,848.20	63,829,558.52	2.70%	4.8987	
TOTAL	482,506,202.37	1,672,831,299.34	100%		

Simulation of Generation Mix Rate without GNPD for the Year 2020

Power Supplier	Forecasted Energy (kWh)	Amount (Php)	Percent Share (%)	Average Rate (Php/kWh)	Weighted Average Rate (Php/kWh)
MPPCL	262,880,309.69	812,142,428.75	54.48%	3.0894	3.6248
GNPD	-	-	0.0%	0.0000	
WESM	219,625,892.68	936,840,216.04	45.5%	4.2656	
TOTAL	482,506,202.37	1,748,982,644.79	100%		

* Without VAT

Rate Impact, Php/kWh (0.1578)

Assumptions:

- i. Analysis and simulations are based on BATELEC I forecasted energy for the year 2020
- ii. GNPower rate was based on Capacity fee at resulting Capacity Utilization Factor of 79% and Effective Energy Fee
- iii. WESM average rate was simulated using 2020 forecasted market prices
- iv. Prices do not include discounts, reductions, etc.

A copy of BATELEC I's generation rate impact analysis is attached hereto as **Annex "N"**.

16. In addition and in support of this *Application*, particularly the proposed rate structure, Applicants hereto attach copies of the following documents:

ANNEX	DOCUMENTS
"O"	Print-out copy of the GNPower Dinginin Power Project Description
"O-1"	Print-out copy of the Write-up on the Technical-related Requirements of the ERC
"P"	Print-out copy of the Details of the PPSA
"P-1"	Print-out copy of the Discussion of Rate Calculation and Sample Calculation of Rates
"Q"	Print-out copy of the Transmission Plan of GNPower Dinginin Project

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ANNEX	DOCUMENTS
"R"	Soft copy of GNPD's Financial Model as of 30 August 2016 contained in a compact disk <i>(subject of the Motion for Confidential Treatment)</i>
"R-1"	Print-out copy of the Notes on the Financial Model as of 30 August 2016 and its Assumptions <i>(subject of the Motion for Confidential Treatment)</i>
"R-2"	Print-out copy of the Write-up on the finance-related pre-filing requirements of the ERC <i>(subject of the Motion for Confidential Treatment)</i>
"S"	Certification dated May 27, 2016 issued by BDO Capital & Investment Corporation and RCBC Capital Corporation, GNPD's Onshore Mandated Lead Arrangers for the construction and term financing of its coal-fired power plant project
"S-1"	Certification on Financing Arrangements dated 22 July 2016 <i>(subject of the Motion for Confidential Treatment)</i>
"T"	Details of Fuel Procurement <i>(subject of the Motion for Confidential Treatment)</i>
"U"	Copy of the Sworn Statement on Coal Procurement Process
"V"	Copy of GNPD's 2016 Audited Financial Statements
"W"	Copy of the Certificate of Endorsement dated 22 May 2017 issued by the Department of Energy (DOE) confirming that the Dinginin Project is included as "Committed Power Project" in the DOE's List of Private Sector Initiated Power Projects
"X"	Copy of Environmental Compliance Certificate (ECC) from the Department of Environment and Natural Resources (DENR)
"X-1"	DENR's letter dated 26 July 2016 approving the transfer of the ECC to GNPD
"Y"	GNPD's Certificate of Registration No. 2017-052 issued by the Authority of the Freeport Area of Bataan (AFAB)
"Z"	Joint Certification issued by Shanghai Electric Power Construction Co. Ltd. and GNPower Dinginin Ltd. Co. confirming the EPC Cost for the first unit of the Facility
"AA"	Certification issued by PT Bayan Resources Tbk confirming the salient terms of the Coal Supply Agreement ²
"BB"	Copy of GNPD's Secretary's Certificate dated 01 September 2016 attesting to the Management Committee's resolutions authorizing the execution of the PPSA with BATELEC I; the designation of authorized representatives/signatories and legal counsels of GNPD; and the filing of an Application with the ERC for the approval of the PPSA with BATELEC I
"CC"	Copy of the Contract for the Supply of Electric Energy between the National Power Corporation (NPC) and BATELEC I dated 18 December 2006
"DD"	Copy of the Transmission Service Agreement between

² In lieu of the Fuel Supply Agreement required to be submitted pursuant to Section 2(j) of Rule 20(B) of the ERC Rules of Practice and Procedure

ANNEX	DOCUMENTS
	National Grid Corporation of the Philippines and BATELEC I
“EE”	Copy of BATELEC I’s Distribution Development Plan for 2016-2025
“FF”	Copy of BATELEC I’s Certification on the Demand Side Management

17. Applicants BATELEC I and GNPD reserve 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

18. Applicants manifest compliance with the pre-filing requirements mandated under *Rule 3, Section 4 (e)* of the *Implementing Rules and Regulations of the EPIRA* and *Rule 6 of the 2006 ERC Rules of Practice and Procedure* as evidenced by the following:

- a. Certification/Affidavit of Service confirming that copies of this *Application* with annexes were furnished the legislative bodies of the province and city/municipality where Applicants principally operate:

ANNEX	DOCUMENTS
“GG”	Certification/Affidavit of Service for Sangguniang Panlalawigan of Batangas
“HH”	Certification/Affidavit of Service for Sangguniang Bayan of Calaca
“II”	Certification/Affidavit of Service for Sangguniang Panlungsod of Pasig

- b. Affidavit of Publication stating that this *Application* (excluding Annexes) was published in a newspaper of general circulation within the Franchise Area and/or the Applicants’ area of principal operation (attached hereto as Annex “JJ”); and
- c. Complete newspaper issue where this *Application* (excluding Annexes) was published (attached hereto as Annex “JJ-1”) and the relevant page/s thereof where the *Application* appears (Annex “JJ-2”).

V. MOTION FOR CONFIDENTIAL TREATMENT OF ANNEXES “H”, “M-4”, “M-5”, “M-7”, “M-8”, “R”, “R-1”, “R-2”, “S-1” and “T”

19. Under *Rule 4 of the ERC Rules of Practice and Procedure*, a party to any proceeding before the Honorable Commission may request the same not to disclose certain information and treat such information 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.

20. Applicant BATELEC I most respectfully moves for the confidential treatment of Annexes “M-4”, “M-5”, “M-7” and “M-8” hereof. These annexes, exclusively owned by Applicant BATELEC I, contain information which are considered part of its business and trade secrets. As such, BATELEC I has the sole proprietary interest and will be unduly prejudiced should they be disclosed to the public.
21. Applicant GNPD most respectfully moves for the confidential treatment of Annexes “H”, “R”, “R-1”, “R-2”, “S-1” and “T” hereof. These annexes, exclusively owned by Applicant GNPD, contain documents 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.
22. These foregoing annexes contain numbers, data, formula, methodology, and calculations involving valuable and sensitive commercial, financial and technological information reflecting the Applicants’ business operations and financial trade secrets. Therefore, the disclosure of the Applicants’ 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 the Applicants. Negotiations with prospective customers may also be affected.
23. The information contained in Annexes “H”, “M-4”, “M-5”, “M-7”, “M-8”, “R”, “R-1”, “R-2”, “S-1” and “T” constitute “trade secrets”, for which the Applicants have 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 information³. It is indubitable that trade secrets constitute proprietary rights and jurisprudence has consistently acknowledged the private character of trade secrets⁴. Further, as ruled in *Garcia vs. Board of Investments*⁵, trade secrets and confidential, commercial, and financial information are *exempt* from public scrutiny.
24. It is respectfully submitted that the aforementioned Annexes must be accorded confidential treatment. As such, they are to

³ *Air Philippines Corporation vs. Pennswell Inc.*, G.R. No. 172835, December 13, 2007.

⁴ *Ibid.*,

⁵ 177 SCRA 374 (1989).

be used *exclusively* by the Honorable Commission and for the sole purpose of evaluating this *Application*, thereby protecting these data from unnecessary public disclosure.

25. In accordance with *Section 1(b), Rule 4 of the ERC Rules of Practice and Procedure*, Applicants hereby submit one (1) hard copy each of Annexes “H”, “M-4”, “M-5”, “M-7”, “M-8”, “R-1”, “R-2”, “S-1” and “T” in a sealed envelope, with the envelope and each page of the documents stamped with the word “Confidential” and Annex “R” contained in a compact disk (CD) enclosed in the same sealed envelope, with the face of the CD stamped with the word “Confidential”.

VI. MOTION FOR THE ISSUANCE OF PROVISIONAL AUTHORITY

26. All the foregoing allegations are re-pleaded by reference in support of this *Prayer* for provisional authority.
27. The basis by which Applicants BATELEC I and GNPD pray for the issuance of a Provisional Authority or interim relief prior to final decision is *Rule 14 of the ERC Rules of Practice and Procedure*:

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

28. Based on the Department of Energy’s (DOE) 2016-2040 Luzon and Visayas Grids Supply-Demand Outlook, Luzon’s peak demand in 2016 is 9,726MW with an Annual Average Growth Rate (AAGR) from 2000 to 2016 of 3.8% while Visayas’ Peak Demand is 1,893MW with AAGR from 2000 to 2016 of 6.1%. Therefore, Luzon’s peak demand is expected to increase to 11,451MW in 2020, and to 18,432MW by the year 2030 and for Visayas, 2,465MW in 2020 and 4,765MW in 2030.
29. This electricity demand growth has led to DOE’s call for planning and investments in the power sector. It is therefore essential that there be continuous addition of power supply to address such increasing demand and lower the cost of power at the WESM, which ultimately shall benefit the end-user. GNPD and BATELEC I’s PPSA aim to address this increasing electricity demand growth.
30. In the same vein, contributing to the Luzon’s Grid’s demand growth is BATELEC I’s load demand increases at a rate of 5.4% per year. By Contract Year 2020, it is projected that

BATELEC I's existing power suppliers will not be able to meet the power needs of its member-consumers, which is expected to increase to 78.46MW.

31. Thus, the PPSA with GNPD, is crucial for BATELEC I 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.
32. While actual delivery of power under the terms and conditions of the PPSA is expected to commence only in the Contract Year 2020, Applicants shall nonetheless begin its compliance with all financial and regulatory requirements and processes leading up to the timely operations of GNPD's facility.
33. It is 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 continuous release of the loan proceeds. In fact, as shown in Annex "S" attached hereto, in consideration for making the aforesaid construction and term loans/ facilities, among the approvals required by the lenders of GNPD is the Honorable Commission's provisional approval of the PPSAs. Hence, the continuous loan drawdown ensures stable source of funds and consequently, a timely construction of the generation facility and implementation of the PPSA, as amended, as contemplated by the Applicants.
34. With continuous financing, the timely implementation of the GNPD project shall be assured, to the full benefit of BATELEC I. Otherwise, any delay in the implementation of the project shall expose BATELEC I to supply risk and unstable market prices in the future.
35. To emphasize the necessity of the provisional approval of this *Application*, a copy of the Judicial Affidavit of Mr. Arnel Bilaoen in support of the Motion for Provisional Authority is attached hereto as Annex "KK".
36. In view thereof and in recognition of the fact that a substantial amount of time is customarily needed to evaluate the documents submitted to support the approval of this *Application*, Applicants BATELEC I and GNPD respectfully 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 this Honorable Commission that (i) all information set forth in Annexes "H", "M-4", "M-5", "M-7", "M-8", "R", "R-1", "R-2", "S-1" and "T" 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) including the rate structure therein, as applied; (iii) that after due notice and hearing, the instant *Application*, the PPSA, and the rate structure contained therein be **DULY APPROVED**.

Further, in the event that the Final Authority shall be issued after GNPD starts the actual delivery of power to BATELEC I under the terms of the subject PPSA, said Final Authority shall 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 2017 (Thursday) at ten o'clock in the morning (10:00 A.M.), at BATELEC I's principal office at Km. 116, National Highway, Calaca, Batangas.**

All persons who have an interest in the subject matter of the instant case may become a party by filing with the Commission a verified Petition to Intervene at least five (5) days prior to the initial hearing and subject to the requirements under Rule 9 of the 2006 Rules of Practice and Procedure, indicating therein the docket number and title of the case and stating the following:

- 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 case may file their Opposition or Comment thereon at any stage of the proceeding before Applicants conclude the presentation of their evidence, subject to the requirements under Rule 9 of the 2006 Rules of Practice and Procedure. No particular form of Opposition or Comment is required, but the document, letter, or writing should contain the following:

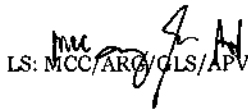
- 1) The name and address of such person;
- 2) A concise statement of the Opposition or Comment; and
- 3) The grounds relied upon.

All such persons who wish to have a copy of the *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 *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 the standard office hours.

WITNESS, the Honorable Officer-In-Charge of ERC **ALFREDO J. NON**, and the Honorable Commissioners **GLORIA VICTORIA C. YAP-TARUC** and **GERONIMO D. STA. ANA**, Energy Regulatory Commission, this 27th day of July 2017 in Pasig City.

FOR AND BY AUTHORITY
OF THE COMMISSION:


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Oversight Commissioner for Legal


LS: MCC/ARG/CLS/APV