

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, AS  
AMENDED, BETWEEN  
PAMPANGA III  
ELECTRIC  
COOPERATIVE, INC.  
AND GNPOWER  
DINGININ LTD. CO.  
WITH MOTIONS FOR  
CONFIDENTIAL  
TREATMENT OF  
INFORMATION AND THE  
ISSUANCE OF  
PROVISIONAL  
AUTHORITY**

**ERC CASE NO. 2018-061 RC**

**PAMPANGA III  
ELECTRIC  
COOPERATIVE, INC.  
(PELCO III) AND  
GNPOWER DINGININ  
LTD. CO. (GNPD),  
Applicants.**

**X-----X**

**D O C K E T E D**  
Date: JUL 31 2018  
By: [Signature]

**ORDER**

On 22 June 2018, Pampanga III Electric Cooperative Inc. (PELCO III) and GNPower Dinginin Ltd. Co. (GNPD) filed an *Application* dated 21 June 2018, seeking the approval of their Power Purchase and Sale Agreement (PPSA), as amended, with motions for confidential treatment of information and the issuance of a provisional authority.

PELCO III and GNPD alleged the following in their *Application*:

1. PELCO III is a non-stock, non-profit electric cooperative organized under Philippine laws, with principal office

address at Apalit, Pampanga. PELCO III currently distributes and provides electricity services to its member consumers in the Municipalities of Apalit, Macabebe, Masantol, Minalin, San Simon and Sto. Thomas, all in the Province of Pampanga, (the “**Franchise Area**”).

2. Copies of PELCO III’s Certificate of Registration, Articles of Incorporation, By-Laws, Certificate of Franchise and Certification on the list of PELCO III’s Board of Directors are attached hereto as follows:

<b>Annex</b>	<b>DOCUMENT</b>
“A”	PELCO III’s Certificate of Registration issued by the NEA
“B”	PELCO III’s Articles of Incorporation
“C”	PELCO III’s By-laws
“D”	PELCO III’s Certificate of Franchise issued by the NEA
“E”	Certification on the list of PELCO III’s Board of Directors

3. Meanwhile, GNPD is a duly registered limited partnership organized and existing under Philippine laws and is the project company established to engage in the business of developing, constructing, operating and owning a 2x668 MW (net) supercritical coal-fired power plant (the “**Dinginin Project**”) to be located in Sitio Dinginin, Barangay Alasasin, Municipality of Mariveles, Province of Bataan (the “**Project Site**”). Its principal office is at the 28th Floor, The Orient Square, Don Francisco Ortigas Jr. Road, Ortigas Center, Pasig City. Copies of GNPD’s Certificate of Registration, Amended Articles of Limited Partnership, Certification on Partnership Agreement, and GNPower Project Companies Profile are attached hereto as follows:

<b>Annex</b>	<b>DOCUMENT</b>
“F”	GNPD’s Certificate of Registration issued by the Securities and Exchange Commission (“ <b>SEC</b> ”)
“G”	GNPD’s Amended Articles of Limited Partnership registered with the SEC as of September 20, 2017
“H”	Certification on Partnership Agreement ( <i>subject of the Motion for Confidential Treatment</i> )
“I”	GNPower Project Companies Profile

4. The Applicants may be served with this Honorable Commission’s orders, notices, and other legal processes 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 the Honorable Commission for its due consideration and approval of the Power Purchase and Sale Agreement (the “**PPSA**”), as amended, executed by and between PELCO III and GNPD, a copy of which is attached hereto as **Annex “J”**.

**I. STATEMENT OF FACTS**

6. PELCO III, along with eleven other electric cooperatives<sup>1</sup> in the Central Luzon region, created Central Luzon Electric Cooperative Association – First Luzon Aggregation Group, Inc. (“**CLECAFLAG**”), a corporation duly registered with the SEC, as evidenced by its Certificate of Incorporation, Articles of Incorporation and By-Laws, the copies of which are attached hereto as **Annexes “K”, “K-1” and “K-2”**, respectively.
7. CLECAFLAG was formed to coordinate, manage and administer the joint planning, competitive selection process (“**CSP**”), and power supply contracting of its twelve (12) member-electric cooperatives (“**ECs**”) to ensure sustainable power supply within their respective franchise areas and to reduce electricity rates in the region.
8. Pursuant to its mandate, CLECAFLAG conducted a CSP in 2013 to bid out the forward power needs of its member-ECs. The bid focused on the supply of 300MW of aggregated baseload power from new generating capacities for twenty (20) years starting late 2018, subject to the Honorable Commission’s approval process and the signing of the PPSA by all the member-ECs, to meet the member-ECs growing demand.
9. CLECAFLAG applied extensive evaluation parameters and procedures during the selection of the new power provider of its member-ECs. To assist in the evaluation process, all twelve member-ECs have nominated their representatives in their respective Technical Working Groups. Consequently, the CSP was conducted in two (2) major stages, including a Swiss Challenge, as follows:
  - a. The first stage focused on the selection of a Generation Company (“**GenCo**”) that submitted a Firm Proposal (the “**Firm Proponent**”) for the aggregated base load to be contracted by the member-ECs. The selection of the Firm Proponent was based on the lowest price offer, which should be equal to or lower than the price cap, among other key contract terms. For easy reference, the proposed price cap of CLECAFLAG was PhP4.09/kWh (exclusive of VAT) or PhP4.5808/kWh (inclusive of VAT). Nonetheless, the evaluation of the price cap was based on an expected levelized price for the duration of the contract;

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<sup>1</sup> Aurora Electric Cooperative (AURELCO), Nueva Ecija I Electric Cooperative, Inc. (NEECO I), Nueva Ecija II Area 1 Electric Cooperative, Inc. (NEECO II-Area1), Nueva Ecija II Area 2 Electric Cooperative, Inc. (NEECO II-Area2), Pampanga Electric Cooperative, Inc. (PELCO I), Pampanga II Electric Cooperative, Inc. (PELCO II), Pampanga Rural Electric Service Cooperative, Inc. (PRESCO), Tarlac I Electric Cooperative, Inc. (TARELCO I), Tarlac II Electric, Cooperative, Inc. (TARELCO II), Zambales I Electric Cooperative, Inc. (ZAMECO I) and Zambales II Electric Cooperative, Inc. (ZAMECO II)

- b. For the second stage or the “Swiss Challenge”, only those GenCos other than the Firm Proponent that offered a price equal to or lower than the price cap during the first stage was qualified to challenge the Firm Proposal (the “**Challenger**”); and
  - c. After the Swiss Challenge, the Firm Proponent had the right to match the proposal of the Challenger.
10. Six (6) GenCos namely GNPower Ltd. Co. (“**GNPOWER**”), AES Philippines (“**AES**”), San Miguel Energy Corporation (“**SMEC**”), First Gen Corporation, FDC Utilities, Inc. and SEM- Calaca Power Corporation were pre-qualified to submit their respective proposals in the CSP. However, only GNPOWER, AES and SMEC participated and submitted their respective bids during the first stage of the CSP.
11. Based on the ranking determined during the evaluation process (through the use of a specified set of bid parameters and references provided in the transaction documents) of CLECAFLAG, GNPOWER was declared as the Firm Proponent. Meanwhile, AES, which submitted a bid higher by PhP0.23/kWh, was declared as the Challenger that was qualified to participate during the Swiss Challenge. Meanwhile, SMEC was disqualified for submitting an offer that was higher than the proposed price cap of CLECAFLAG.
12. On 08 November 2013, CLECAFLAG and GNPOWER entered into a Memorandum of Agreement (“**MOA**”), a copy of which is attached hereto as **Annex “L”**. The MOA, the signing of which was witnessed by the individual member-ECs, specified the rights and obligations of CLECAFLAG and GNPOWER with respect to the Swiss Challenge, which include the following:
  - a. CLECAFLAG shall allow only AES to participate in the Swiss Challenge of GNPOWER's Firm Proposal (Section 4.6 of the MOA);
  - b. CLECAFLAG shall immediately award the PPSA with finality to GNPOWER in case AES fails to submit a Letter of Intent to Challenge the Firm Proposal (Section 4.8(a) of the MOA); and
  - c. After awarding the PPSA with finality to GNPOWER, CLECAFLAG shall enter into a PPSA with GNPOWER and/ or cause its member-ECs to enter into a PPSA (Section 4.9 of the MOA).
13. Pursuant to the aforementioned terms of the MOA, CLECAFLAG informed AES, through its letter dated 20 February 2014, that it is eligible to challenge the Firm Proposal of GNPOWER.

14. However, AES informed CLECAFLAG that it had no intention of challenging the Firm Proposal of GNPOWER. Thus, on 10 March 2014, CLECAFLAG declared GNPOWER as the winning proponent, as evidenced by the letter of even date from CLECAFLAG, a copy of which is attached hereto as **Annex "M"**. As a matter of course, GNPOWER and the twelve member-ECs were then obligated to execute individual power supply agreements pursuant to the terms of the MOA.
15. Copies of the documents that were related to the CSP conducted by CLECAFLAG to bid out the forward power needs of its member-ECs are attached hereto as follows:

<b>ANNEX</b>	<b>DOCUMENT</b>
"N"	CLECAFLAG's Letter of Invitation to GNPOWER dated 19 August 2013
"N-1"	Transaction Information Memorandum dated 21 August 2013
"N-2"	Supplemental Transaction Information Memorandum No. 1 dated 20 September 2013
"N-3"	Notice of Eligibility to GNPOWER dated 20 September 2013
"N-4"	Letter to GNPower re Submission and Opening of Proposal for Price Cap dated 16 October 2013
"N-5"	Notice of Eligibility to AES dated 20 September 2013
"N-6"	Letter to AES re Submission and Opening of Proposal for Price Cap dated 16 October 2013
"N-7"	Notice of Eligibility to SMEC dated 20 September 2013
"N-8"	Letter to SMEC re Submission and Opening of Proposal for Price Cap dated 16 October 2013
"N-9"	Notice of Eligibility to First Gen dated 20 September 2013

"N-10"	Letter to First Gen re Submission and Opening of Proposal for Price Cap dated 16 October 2013
"N-11"	Notice of Eligibility to FDCUI dated 20 September 2013
"N-12"	Letter to FDCUI re Submission and Opening of Proposal for Price Cap dated 16 October 2013
"N-13"	Notice of Eligibility to Sem- Calaca dated 20 September 2013
"N-14"	Letter to Sem- Calaca re Submission and Opening of Proposal for Price Cap dated 16 October 2013
"N-15"	Evaluation Result <i>(subject of the Motion for Confidential Treatment of Information)</i>
"N-16"	CLECAFLAG's letter to GNPower dated 25 October 2013 re Awarding of Firm Proposal
"N-17"	Final Instructions to Firm Proponent and Challenger dated 16 December 2013 <i>(subject of the Motion for Confidential Treatment of Information)</i>
"N-18"	CLECAFLAG - Bids and Awards Committee's letter to CLECAFLAG Board President dated 13 February 2014 recommending the acceptance of the Firm Proposal
"N-19"	Notice of Acceptance of the Firm Proposal dated 20 February 2014
"N-20"	CLECAFLAG's letter to AES dated 20 February 2014 re: Intent to Challenge the Firm Proponent's Proposal

16. During the negotiations for the finalization of the PPSA and the final review of the projected base load electricity demand of the member-ECs, it had come to GNPOWER's attention that the twelve (12) member-ECs would not be able to procure 300 MW of aggregated base load power in the first Contract Year, as committed in the terms of CLECAFLAG's CSP and the MOA.
17. In order to address the foregoing circumstance, GNPOWER and the member-ECs negotiated to have an interim supply period prior to the commencement of GNPOWER's delivery of the electric capacity at full commercial operation of the first unit of the facility, subject to the Honorable Commission's approval process.
18. Consequently, on 10 June 2014, GNPOWER executed individual PPSAs with each of PELCO III and nine (9) other member-ECs. However, two (2) member-ECs refused to sign a PPSA with GNPOWER.
19. Notwithstanding the failure of two (2) member-ECs to sign PPSAs with GNPOWER, the latter nevertheless agreed to extend and continue the negotiations with CLECAFLAG and the two (2) member-ECs that have not yet signed their respective PPSAs with GNPOWER to allow CLECAFLAG the opportunity to significantly fulfill its obligations under the MOA.
20. Meanwhile, to show GNPOWER's appreciation to PELCO III and other member-ECs for being early supporters of the Dinginin Project, GNPOWER offered to reduce the rate indicated in the PPSA. After a series of negotiations among GNPOWER, CLECAFLAG and the member-ECs, PELCO III and GNPOWER signed the letter of agreement dated 18 September 2015 (the "**First Amendment to the PPSA**"), which provides for certain amendments to the PPSA including the reduction of the generation rate. A copy of the First Amendment to the PPSA is attached hereto as **Annex "O"**.
21. Sometime in June 2016, GNPOWER assigned all of its interests, rights and obligations under the PPSA with PELCO III to GNPD in accordance with Section 7.5(ii) of the subject PPSA.
22. Subsequently, some of the CLECAFLAG member-ECs, including PELCO III, approached GNPD to request for a reduction of the contracted capacity as set forth in Schedule 1 of the PPSA. After a series of negotiations, PELCO III and GNPD eventually agreed to the said reduction and signed the Amendment to the PPSA dated 29 March 2017 (the "**Second Amendment to the PPSA**"). A copy of the Second Amendment to the PPSA is attached hereto as **Annex "P"**.

II. ABSTRACT OF THE PPSA, AS AMENDED, AND OTHER RELATED INFORMATION

23. The following are the salient features of the subject PPSA, as amended:

A. **Term of Agreement.** The PPSA, as amended, shall be effective at the date of its execution, and shall terminate after two hundred forty (240) months from the date specified in the Commencement Date Notice<sup>2</sup> defined as the written notice that indicates the commencement of the first delivery of electric capacity at commercial operation of the first unit of GNPD's facility.<sup>3</sup>

B. **Source of Supply.** GNPD shall make available, sell, and deliver or cause to be delivered to PELCO III the Product<sup>4</sup> at the Delivery Point, whether sourced from GNPD's facility or from other electricity generators, including the Wholesale Electricity Spot Market ("WESM").

GNPD's target availability in the WESM for early commercial operations is in the first half of 2019.

C. **Contracted Capacity.** PELCO III 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 set forth in Schedule 1 of the PPSA), as follows:

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

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<sup>2</sup> Section 1.3, Schedule 1. Contracted Capacity, Contract Price and Terms of Agreement, PPSA, page 31

<sup>3</sup> Section 1.1, Article 1. Definitions and Interpretations, PPSA, page 4; Paragraph 3 of the First Amendment to the PPSA

<sup>4</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)

19	16,000
20	18,000

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

Section 2.7 of the PPSA, as amended, provides that upon written notice to GNPD, PELCO III may, upon approval by GNPD, increase its Contracted Capacity which increase shall be subject to the same terms and conditions contained in the PPSA, as amended. 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.

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* of the PPSA, as amended, as such may be adjusted from time to time based on the Capacity Utilization Factor (“CUF”).

In case the CUF is not a whole number, the Capacity Fee shall be computed using the formula provided in the First Amendment to the PPSA.

The CUF shall be computed as follows:

$$\text{CUF} = \frac{Q}{\text{CC} \times (\text{H}_T - \text{EH}_{\text{TO}})}$$

Where:

- Q** = Quantity of kWh
- CC** = Contracted Capacity, in kW, as set forth in Schedule 1
- H<sub>T</sub>** = Total number of hours in such Billing Period
- EH<sub>TO</sub>** = The 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 amended, as adjusted from time to time due to changes in the delivered price of coal. The



Energy Fee shall be computed in accordance with the following formula:

$$\text{Energy Fee} = \text{IEF} \times \left( \frac{\text{CIF}_n}{\text{CIF}_o} \right)$$

Where:

**IEF** = Initial Energy Fee  
**CIF<sub>n</sub>** = CIF Cost of Fuel for Billing Period *n*  
**CIF<sub>o</sub>** = Base CIF Cost of Fuel

- E. Discounts.** PELCO III is eligible for discounts as provided in Section 4.3 (c) of the PPSA, as amended by paragraph 6 of the First Amendment to the PPSA, and Section 4.3 (d) of the PPSA.; and
- F. Scheduled and Unscheduled Outage.** Pursuant to Section 2.2 of the PPSA as amended by paragraph 4 of the First Amendment to the PPSA, GNPD is allowed to have 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 PELCO III. Likewise, GNPD is allowed to have Unscheduled 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 PELCO III;

### **III. ADVANTAGES OF GNPD'S SUPPLY OF POWER AND IMPACT ON PELCO III'S OVERALL RATES**

24. The Applicants have signed the PPSA as a response to the growing power demand of PELCO III and its member consumers that its current providers may not be able to supply for the coming years.
25. Currently, PELCO III receives a total of 37.32 MW from its existing suppliers, out of its peak requirement of 39.09 MW. With an annual average growth of 4.90%, PELCO III's peak demand is forecasted to increase to 42.84 MW by 2020. Copies of PELCO III's (i) Historical, Actual and Forecasted Supply-Demand Scenario from 2016 to 2038, (ii) Average Daily Load Curve (January to December 2017), (iii) Average Daily Load Curve (April 2018 Billing Period) and (iv) Forecasted Average Daily Load Curve for January to December 2020 are attached hereto as **Annexes "Q" to "Q-3"**, respectively;
26. The additional supply from GNPD assures the adequate and reliable power service, as well as reduced likelihood of power outages and brownouts for the member-consumers of PELCO III.

27. PELCO III simulated a generation rate impact which ultimately resulted in a **reduction of PhPo.1069 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)
SMEC (existing supplier-IPP)	173,660,727.03	800,955,493.87	71.25%	4.6122	4.5072
GNPD	70,080,000.00	297,623,721.66	28.75%	4.2469	
WESM	0.00	0.00	0.00%	0.0000	
<b>TOTAL</b>	<b>243,740,727.03</b>	<b>1,098,579,215.53</b>	<b>100%</b>		

**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)
SMEC (existing supplier-IPP)	243,740,727.03	1,124,653,305.07	100.0%	4.6141	4.6141
GNPD	-	-	0.0%	0.0000	
WESM	-	-	0.0%	0.0000	
<b>TOTAL</b>	<b>243,740,727.03</b>	<b>1,124,653,305.07</b>	<b>100%</b>		

\* Without VAT

**Rate Impact, PhP/kWh (0.1069)**

**Note:**

- i. Analysis and simulations are based on PELCO III forecasted energy for the year 2020
  - ii. GNPD rate was based on the applicable (i) Capacity fee at resulting Capacity Utilization Factor; (ii) January to December 2017, FOREX and Energy Fee
  - iii. SMEC's rate is based on 2017 data. SMEC is PELCO III's existing IPP supplier.
  - iv. Prices do not include discounts, reductions, etc.
  - v. GNPD's rate is the lowest among the offers of the bidders which participated in the two-stage CSP conducted by CLECAFLAG.
- PELCO III's blended rate is effectively decreased due to the lower rate offered by GNPD.

A copy of PELCO III's generation rate impact analysis is attached hereto as **Annex "R"**.

28. Aside from the lower generation cost of the power supply from GNPD, PELCO III is also entitled to discounts as provided in the PPSA, subject to certain conditions. In line with this, the proposed rate in the subject PPSA, as amended, becomes even more competitive than other rates.
29. In support of the instant *Application* for the approval of the PPSA, as amended, the Applicants respectfully submit the following documents to the Honorable Commission:

ANNEX	DOCUMENTS
"S"	Print-out copy of the GNPower Dinginin Power Project Description
"S-1"	Print-out copy of the Write-up on the Technical-related Requirements of the ERC

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<b>ANNEX</b>	<b>DOCUMENTS</b>
"T"	Print-out copy of the Details of the PPSA
"U"	Print-out copy of the Discussion of Rate Calculation and Sample Calculation of Rates
"V"	Print-out copy of the Transmission Plan for the GNPower Dinginin Project
"W"	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>
"W-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>
"W-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>
"X"	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
"X-1"	Certification on Financing Arrangements dated 22 July 2016 <i>(subject of the Motion for Confidential Treatment)</i>
"Y"	Details of Fuel Procurement <i>(subject of the Motion for Confidential Treatment)</i>
"Z"	Copy of the Sworn Statement on Coal Procurement Process
"AA"	Copy of GNPD's 2017 Audited Financial Statements
"BB"	Copy of the Certificate of Endorsement dated 25 November 2013 issued by the Department of Energy ("DOE")
"BB-1"	Copy of the Certificate of Endorsement dated 22 May 2017 issued by the DOE confirming that the Dinginin Project is included as a "Committed Power Project" in the DOE's List of Private Sector Initiated Power Projects
"CC"	Copy of the Environmental Compliance Certificate ("ECC") from the Department of Environment and Natural Resources ("DENR")
"CC-1"	DENR's letter dated 26 July 2016 approving the transfer of the ECC to GNPD
"DD"	GNPD's Certificate of Registration No. 2018-047 issued by the Authority of the Freeport Area of Bataan
"EE"	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
"FF"	Letter issued by PT Bayan Resources Tbk confirming the salient terms of the Coal Supply Agreement <sup>5</sup>
"GG"	PELCO III's Board Resolution No. 14, Series of 2014 authorizing the Board President, Cesar L. Sigua, Jr. and the Officer-in-Charge, Melinda T. Javier to sign and execute, deliver and perform the PPSA between GNPOWER and PELCO III, its supplement agreements and other related documents
"GG-1"	PELCO III's Secretary's Certificate dated 16 March 2017 attesting to PELCO III Board Resolution No. 03 Series of 2017 authorizing the approval and signing of the amendments to the PPSA by and between GNPD and PELCO III including its supplement agreements and further amendments and other related documents; authorizing the duly elected President and/or duly appointed OIC- General Manger to sign such amendments to the PPSA; authorizing PELCO III to file the instant Application; and designating Atty. Ana Charissa D. Diaz as its legal counsel
"HH"	Copy of GNPower's General Partners' Certificate notarized on 08 April 2016 attesting to the resolutions of its general partner authorizing the execution of the PPSA with PELCO III and the designation of its authorized representatives/ signatories
"HH-1"	Copy of GNPD's Secretary's Certificate notarized on 02 June 2017 attesting to the Management Committee's resolutions authorizing the execution of the amendments to the PPSA with PELCO III; 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 PELCO III
"II"	Copy of the Contract for the Sale of Electricity between National Power Corporation and PELCO III
"JJ"	Copy of the Transmission Service Agreement between National Grid Corporation

<sup>5</sup> 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
	of the Philippines and PELCO III
“KK”	Copy of PELCO III’s Distribution Development Plan from 2012 to 2026
“LL”	Copy of PELCO III’s Certification on the Demand Side Management

30. Applicants PELCO III and GNPD reserve the right to submit other documents, either in the course of the hearing or as may be required by this Honorable Commission.

**IV. COMPLIANCE WITH PRE-FILING REQUIREMENTS**

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

ANNEX	DOCUMENT
“MM”	Affidavit of Service for Sangguniang Panlalawigan of Pampanga
“NN”	Affidavit of Service for Sangguniang Bayan of Apalit
“OO”	Affidavit of Service for Sangguniang Panlungsod of Pasig

- b. Affidavit of Publication stating that the *Application* was published in a newspaper of general circulation within the Franchise Area and/or area of its principal operation of the Applications, attached herewith as **Annex “PP”**; and
- c. Complete newspaper issue where the *Application* was published, attached herewith as **Annex “PP-1”**, and the relevant page thereof where the *Application* appeared, as **Annex “PP-2”**.

**V. MOTION FOR CONFIDENTIAL TREATMENT OF ANNEXES “H”, “N-15”, “N-17”, “W”, “W-1”, “W-2”, “X-1” and “Y”**

32. Under *Rule 4 of the ERC Rules of Practice and Procedure*, a party to any proceeding before the Honorable Commission may request that certain information should not be disclosed and be treated as confidential, by describing with particularity the information to be treated as confidential, specifying the ground for the claim of confidential treatment of the information and, if applicable, specifying the period during which the information must not be disclosed.
33. In connection with the foregoing, PELCO III respectfully requests for the confidential treatment of **Annexes “N-15” and “N-17”** hereof, consisting of the Evaluation Result and

Final Instructions to Firm Proponent and Challenger dated 16 December 2013, respectively. These annexes show the individual offers of the bidders which participated in the CSP. The members of CLECAFLAG, which includes PELCO III, 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, PELCO III, and the rest of the members of CLECAFLAG, may be held liable for damages for breach of confidentiality, and eventually, risk their good relations with the suppliers concerned.

34. Similarly, GNPD most respectfully moves for the confidential treatment of **Annexes “H”<sup>6</sup>, “W”<sup>7</sup>, “W-1”<sup>8</sup>, “W-2”<sup>9</sup>, “X-1”<sup>10</sup> and “Y”<sup>11</sup>** hereof. These annexes, which are exclusively owned by GNPD, contain documents that are considered part of its business and trade secrets. As such, GNPD has the sole proprietary interest and will be unduly prejudiced should they be disclosed to the public.
35. These annexes contain numbers, data, formula, methodology, and calculations involving valuable and sensitive commercial, financial and technological information reflecting GNPD’s business operations and financial trade secrets. Therefore, the disclosure of GNPD’s confidential, proprietary, and private information included in the aforesaid annexes should be protected from public dissemination. Otherwise, such information can be illegally and unfairly utilized by business competitors who may use the same for their own private gain and to the irreparable prejudice of GNPD. Negotiations with prospective customers may also be affected.
36. The information contained in **Annexes “H”, “W”, “W-1”, “W-2”, “X-1” and “Y”**, 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>12</sup> It is indubitable that trade secrets constitute proprietary rights and jurisprudence has consistently acknowledged the private character of trade secrets.<sup>13</sup> Further, as ruled in *Garcia vs. Board of Investments*,<sup>14</sup> trade secrets and confidential,

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<sup>6</sup> Certification on Partnership Agreement

<sup>7</sup> Soft copy of GNPD’s Financial Model as of 30 August 2016 contained in a compact disk

<sup>8</sup> Print-out copy of the Notes on the Financial Model as of 30 August 2016 and its Assumptions

<sup>9</sup> Print-out copy of the Write-up on the finance-related pre-filing requirements of the ERC

<sup>10</sup> Certification on Financing Arrangements dated 22 July 2016

<sup>11</sup> Details of Fuel Procurement

<sup>12</sup> *Air Philippines Corporation vs. Pennswell Inc.*, G.R. No. 172835, December 13, 2007.

<sup>13</sup> *Ibid.*

<sup>14</sup> 177 SCRA 374 (1989).

commercial and financial information are *exempt* from public scrutiny;

37. It is respectfully submitted that the aforementioned Annexes must be accorded confidential treatment. As such, they are to be used *exclusively* by the Honorable Commission and for the *sole* purpose of evaluating this *Application*, thereby protecting these data from unnecessary public disclosure;
38. In accordance with *Section 1(b), Rule 4 of the ERC Rules of Practice and Procedure*, Applicants hereby submit one (1) copy each of **Annexes “H”, “N-15”, “N-17”, “W-1”, “W-2”, “X-1” and “Y”** in a sealed envelope, with the envelope and each page of the documents stamped with the word “*Confidential*” and **Annex “W”** 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**

39. All the foregoing allegations are herein re-pleaded by reference in support of the instant *Motion* for the issuance of provisional authority;
40. Pursuant to *Section 3 Rule 14 of the ERC Rules of Practice Procedure (provided below)*, the Applicants PELCO III and GNPD move for the issuance of a Provisional Authority or interim relief pending the Honorable Commission’s final decision on this Application:

***“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 Ours]

41. Moreover, the Applicants would like to bring to the attention of the Honorable Commission that based on the DOE 2016-2040 Luzon and Visayas Grids Supply-Demand Outlook, Luzon’s peak demand in 2017 is 9,870MW with an Annual Average Growth Rate (“AAGR”) from 2016 to 2040 of 4.79% while Visayas’ Peak Demand is 1,997MW with AAGR from 2016 to 2040 of 6.87%. 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. This electricity demand growth has led to DOE’s call for planning and investments in the power sector.
42. The continuous addition of supply shall help stabilize the power supply for the increasing demand, as well as, lower

and stabilize the cost of available power at the WESM and for the end-user.

43. Notably, the base load demand of PELCO III, which increases at an average rate of 4.90%, contribute to the Luzon Grid's demand growth. By contract year 2020, it is projected that PELCO III's existing power suppliers will not be able to meet the power needs of its member consumers, which is expected to have increased to 42.84 MW.
44. Thus, the PPSA , as amended is crucial for PELCO III as it guarantees the satisfaction of its forward power needs, without compromising the reasonableness of the generation rate to be passed on to its member-consumers.
45. Meanwhile, GNPD is obligated to comply with its financing agreements despite the fact that actual delivery of power at full capacity under the terms and conditions of the PPSA, as amended, is expected to commence only in CY 2020. One of the requirements of the financing agreements related to this Honorable Commission's provisional approval of the instant *Application* to ensure the continuous release of the loan proceeds. For your reference, please see the attached **Annex "X"**. Essentially, the continuous loan drawdown ensures stable source of funds, which in turn, assures the timely construction of the generation facility and implementation of the PPSA, as amended. A delay in the implementation of the said project shall expose PELCO III to supply risk and unstable market prices in the future.
46. To emphasize the necessity of a provisional approval of this *Application*, a Judicial Affidavit of Mr. Arnel O. Bilaoen in support of the prayer for provisional authority is attached herewith to form an integral part hereof as **Annex "QQ"**.
47. 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 herein *Application*, Applicants PELCO III and GNPD respectfully seek the kind consideration of the Honorable Commission to approve the instant *Application*, immediately, albeit, provisionally, at the soonest opportune time.

#### **PRAYER**

**WHEREFORE**, premises considered, it is most respectfully prayed of the Honorable Commission that (i) all information set forth in **Annexes "H", "N-15", "N-17", "W", "W-1", "W-2", "X-1" and "Y"** 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 PPSA, as amended, between the Applicants, including the rate structure therein, as applied; and that after due notice and hearing, the instant *Application*, the PPSA, as amended,

and the rate structure contained therein be **DULY APPROVED.**

Further, in the event that a Final Authority shall be issued after GNPD starts the actual delivery of power to PELCO III under the terms of the subject PPSA, as amended, 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.

Finding the said *Application* to be sufficient in substance with the required fees having been paid, the same is hereby set for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on **23 August 2018 (Thursday) at two o'clock in the afternoon (2:00 PM) at PELCO III's Principal Office in Apalit, Pampanga.**

Accordingly, PELCO III and GNPD are hereby directed to:

- 1) Cause the publication of the attached Notice of Public Hearing in two (2) newspapers of nationwide circulation in the Philippines at their own expense, twice (2x) within two (2) successive weeks, the dates of publication not being less than seven (7) days apart, and the date of the last publication to be made not later than ten (10) days before the date of the scheduled initial hearing;
- 2) Furnish with copies of this Order and the attached Notice of Public Hearing the Offices of the Provincial Governors, the City/Municipal Mayors, and the Local Government Unit (LGU) legislative bodies, within the affected franchise area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within the affected franchise area of the filing of the *Application*, its reasons therefor, and of the scheduled hearing thereon, by any other means available and appropriate;
- 4) Furnish with copies of this Order and the attached Notice of Public Hearing the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress. They are hereby requested, if they so desire, to send their duly authorized representatives at the scheduled hearing; and



- 5) Furnish with copies of the *Application* and its attachments all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing, Applicants must submit to the Commission their written compliance with the aforementioned jurisdictional requirements attaching therewith, methodically arranged and duly marked the following:

- 1) The evidence of publication of the attached Notice of Public Hearing consisting of affidavits of the Editors or Business Managers of the newspapers where the said Notice of Public Hearing was published, and the complete issues of the said newspapers;
- 2) The evidence of actual posting of this Order and the attached Notice of Public Hearing consisting of certifications issued to that effect, signed by the aforementioned Governors, Mayors, LGU legislative bodies, or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by Applicants to inform the consumers within the affected franchise area of the filing of the *Application*, its reasons therefor, and of the scheduled hearing thereon;
- 4) The evidence of receipt of copies of this Order and the attached Notice of Public Hearing by the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress;
- 5) The evidence of receipt of copies of the *Application* and its attachments by all those making requests therefor, if any; and
- 6) Such other proof of compliance with the requirements of the Commission.

Applicants and all interested parties are also required to submit, at least five (5) days before the date of the initial hearing and Pre-trial Conference, their respective Pre-trial Briefs containing, among others:

- 1) A summary of admitted facts and proposed stipulation of facts;
- 2) The issues to be tried or resolved;
- 3) The documents or exhibits to be presented, stating the purposes and proposed markings therefore; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-trial Brief.

Failure of Applicants to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from the said date of cancellation.

PELCO III and GNPD must also be prepared to make an expository presentation of the instant *Application*, aided by whatever communication medium that they may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties, what the *Application* is all about and the reasons and justifications being cited in support thereof.

**SO ORDERED.**

Pasig City, 16 July 2018.

FOR AND BY AUTHORITY  
OF THE COMMISSION:

  
**AGNES VST DEVANADERA**  
*Chairperson & CEO*

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\*AVSTD-2018-7-510-0072\*

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Copy Furnished:

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6. Commission on Audit  
Commonwealth Avenue, Quezon City
7. Senate Committee on Energy  
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8. House Committee on Energy  
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9. Philippine Chamber of Commerce and Industry (PCCI)  
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Province of Pampanga
11. Office of the LGU legislative body  
Province of Pampanga
12. Office of the Mayor  
Apalit, Pampanga
13. Local Government Unit (LGU) legislative body  
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14. Office of the Mayor  
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