

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



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

ERC CASE NO. 2016-045 RC

**ZAMBOANGA CITY
ELECTRIC COOPERATIVE,
INC. (ZAMCELCO) AND
GNPOWER KAUSWAGAN
LTD. CO. (GNPK),
Applicants.**

D O C K E T E D
Date: OCT 06 2016
By: W

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ORDER

On 22 April 2016, Zamboanga City Electric Cooperative, Inc. (ZAMCELCO) and GNPower Kauswagan Ltd. Co. (GNPK), filed their Application dated 6 April 2016 (Application) for approval of their Power Purchase and Sale Agreement (PPSA) dated 15 December 2015, with prayer for confidential treatment of information and issuance of provisional authority.

In support of said Application, ZAMCELCO and GNPK alleged the following:

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

Highway, Putik, Zamboanga City. It is authorized to distribute and provide electricity services to its member-consumers in Zamboanga City (the Franchise Area);

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

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

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

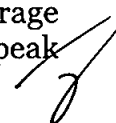
4. GNPk's pertinent documents evidencing its due registration as a limited partnership are appended to the Application, as follows:

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

5. Applicants may be served with orders, notices, and other legal processes of the Commission through its counsels of record;

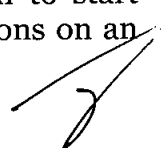
6. The Application is filed pursuant to *Sections 23, 25, 43 (u), and 45 (b) of Republic Act No. 9136*, otherwise known as the *Electric Power Industry Reform Act of 2001 (EPIRA Law)*, its *Implementing Rules and Regulations*, and other pertinent rules and regulations. A copy of the PPSA signed by Applicants on 15 December 2015 is attached as **Annex "G"** and forms an integral part of the Application;

STATEMENT OF FACTS

7. Based on the Department of Energy's (DOE) 2015- 2030 Mindanao Grid Supply-Demand Outlook, Mindanao's peak demand in 2016 is at 1,742 MW with an Annual Average Growth Rate (AAGR) of 5.9%. Therefore, Mindanao's peak
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demand is expected to increase to 2,008 MW in 2018, and to 3,693 MW by the year 2030;

8. The shortage in power, which Mindanao has been exposed to since 2010, has hugely affected its economy and resulted in the shutdown in both manufacturing and commercial industries, as well as critical infrastructures such as telecommunication networks, financial services, water supplies and hospitals. Economic losses increase as the situation worsens;
9. To ensure future reliable and low cost power supply for its member-consumers and considering ZAMCELCO's increasing demand vis-à-vis the decreasing supply trend of its lowest-priced source of generation, PSALM, ZAMCELCO, solicited proposals from the next cheaper and reliable source of generation which is coal;
10. ZAMCELCO received GNPk's proposal along with other generators to supply its future power requirements. ZAMCELCO, being aware of the sophisticated competitive procurement process that GNPk underwent through its Power Purchase and Sale Agreements with the twenty (20) electric cooperatives of Association of Mindanao Rural Electric Cooperatives Power Supply Aggregation Group Corporation (AMRECO PSAG CORP.), has employed its internal comparison and validation of the generation offers of all the coal-fired power plants (both existing and future) through the ERC-approved power supply agreements;
11. After careful evaluation of GNPk's offer, ZAMCELCO found GNPk's rate to be the most competitive among all the coal-fired power plants and consistent with its mandate to procure its power supply requirement on a least cost manner and on the terms most advantageous to ZAMCELCO. Thereafter, the contract for a portion of the supply of ZAMCELCO's power requirements was awarded to GNPk, as approved by ZAMCELCO's board of directors;
12. Consequently, on 15 December 2015, ZAMCELCO and GNPk executed the PPSA for the supply of baseload power equivalent to eighteen (18) MW for a period of two hundred forty (240) months from the date specified in the Commencement Date Notice (as defined in the subject PPSA);
13. GNPk agrees to provide the future power requirements of ZAMCELCO commencing in 2018 with the option to start delivery earlier than the target commercial operations on an interim basis;



14. GNPk will deliver environmentally clean electric power from clean pulverized coal-fired electric power generation facility initially at three (3) x 135 MW (net) with the 4th unit expected to come online months thereafter (Generation Facility) which will be built in Barangays Libertad and Tacub, Municipality of Kauswagan, Province of Lanao del Norte (Project);

ABSTRACT OF THE PPSA AND OTHER RELATED INFORMATION

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

A. TERM OF AGREEMENT. The PPSA shall be effective at the date of its execution, and shall terminate after 240 months from the date specified in the Commencement Date Notice¹ defined as the written notice that indicates the commencement of the first delivery of the Product².

B. SOURCE OF SUPPLY³. GNPOWER shall make available, sell, and deliver or cause to be delivered to ZAMCELCO the Product at the Delivery Point, whether sourced from GNPOWER's facility or from other electricity generators.

The technical details of the Project is attached as **Annex "H"** and forms an integral part of the Application;

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

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

¹ Section 1.3, Schedule 1. Contracted Capacity, Contract Price and Terms of Agreement, PPSA, page 25

² Section 1.1, Article 1. Definitions and Interpretations, PPSA, page 7

³ Section 2.1, Article 2. Obligations and Deliveries, page 10

Year	Contracted Capacity (kW)
14	18,000
15	18,000
16	18,000
17	18,000
18	18,000
19	18,000
20	18,000

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

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

Capacity Utilization Factor (%)	Capacity Fee (\$/kWh)
100%	0.0523
99%	0.0527
98%	0.0531
97%	0.0534
96%	0.0538
95%	0.0542
94%	0.0546
93%	0.0550
92%	0.0554
91%	0.0558
90%	0.0563
89%	0.0567
88%	0.0572
87%	0.0576
86%	0.0581
85%	0.0586
84%	0.0591
83%	0.0596
82%	0.0601
81%	0.0607
80%	0.0612
79%	0.0618
78%	0.0623
77%	0.0629
76%	0.0635
75%	0.0642

The Capacity Utilization Factor shall be computed as follows:

$$\text{Capacity Factor (CF)} = \frac{Q}{CC * (H_T - EH_{SO} - EH_{UO})}$$

Where:

- Q = As defined in Article I of the PPSA
 CC = Contracted Capacity, in kW, as set forth in Schedule 1 of the PPSA
 H_T = Total number of hours in such Billing Period
 EH_{SO} = the sum of the duration, in Equivalent Hours, of Scheduled Outages in such Billing Period
 EH_{UO} = the sum of the duration, in Equivalent Hours, of 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 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:

- Initial Energy Fee = \$0.0250/kWh
 Base CIF Cost of Fuel = \$7.1073/million kcal

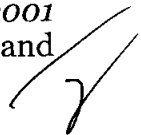
E. PROMPT PAYMENT DISCOUNT. Section 4.3 (c) of the PPSA provides that if ZAMCELCO pays the invoice amount in full within ten (10) days of receipt from GNPk, ZAMCELCO shall receive a credit on the next subsequent bill equal to (i) three percent (3.0%) of the Capacity Fee associated with one hundred percent (100%) Capacity Factor as set forth in Schedule 1 multiplied by (ii) the actual quantity of the Product actually delivered set forth in such invoice for the Billing Period for which the credit was earned.

F. SCHEDULED OUTAGES AND UNSCHEDULED OUTAGES. Pursuant to Section 2.2, GNPk is allowed Scheduled Outages not to exceed seven hundred twenty (720) Equivalent Hours for each Contract Year during which time reduced or no deliveries will be available to

ZAMCELCO. Likewise, GNPk is allowed Unscheduled Outage of five hundred four (504) Equivalent Hours for each Contract Year during which times reduced or no deliveries will be available to the Buyer;

COMMERCIAL ADVANTAGES OF THE PROPOSED CONTRACT PRICE AND IMPACT ON ZAMCELCO'S OVERALL RATES

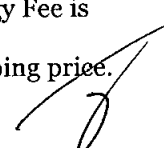
16. Mindanao has been experiencing under-generation since 2010 and there are no large baseload power plants built in the region since 2006. The existing capacity in the region is composed of more than fifty percent (50%) hydroelectric power plants which are dependent on the availability of water and are affected by weather conditions. While lower price from hydro source contributed in countering the effect of the diesel plants in the blended price of power for Mindanao, such lower price is only temporary and will ultimately increase due to the increasing demand and with limited capacity from hydro power plants, additional supply of electricity will be sourced from other more expensive power plants like any oil based power plants;
17. In addition, construction of large scale hydro projects is not feasible as of this time. A total of 2,300MW additional capacities are needed in the planning period to meet the electricity demand and the required reserve margin of the Mindanao grid. Therefore, there is an urgent need of an additional large-scale baseload source in Mindanao supply portfolio which will significantly reduce the overall power rate in the region and decrease its dependence on diesel plants;
18. ZAMCELCO projects a steady increase in consumer demand for power. However, this demand may not be satisfied due to the current insufficient supply of power within the Mindanao grid. It, therefore, was inevitable for ZAMCELCO to look for a reliable power supplier, with whom they can conclude a supply agreement, and would be capable of delivering electricity at the earliest opportunity and at a competitive rate;
19. Currently, ZAMCELCO receives 100% of its total demand of requirement of 105 MW from its existing supplier/s. With an annual average growth of 5%, ZAMCELCO's peak demand is forecasted to increase to 115 MW by 2018. Copies of ZAMCELCO's Supply-Demand Scenario from 2014 to 2025, Historical and Forecasted Data, and Average Daily Load Curve are attached as **Annexes "I" to "I-2"** and forms integral part of the Application;
20. Pursuant to the State Policy declared in the *Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA Law)* to enhance the inflow of private capital and



broaden the ownership base of the power generation, transmission and distribution sectors, and consistent with the terms and mandate of their franchises, ZAMCELCO negotiated with GNPk for the latter's supply of ZAMCELCO's baseload requirements;

21. The additional power from GNPk assures member-consumers of ZAMCELCO of adequate and reliable power service, hence, less likelihood of brownouts and power shortages;
22. ZAMCELCO conducted a rate impact analysis which resulted in a lower effective rate of PhP3.9202/kWh with supply coming from GNPk, compared to a rate of PhP3.9268 kWh without GNPk, or a reduction of PhP0.0066/kWh if with GNPk supply, as follows⁴:

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1. The Generation Rate is exclusive of 12% VAT.
 2. The 4.35% transmission loss is considered in the simulation.
 3. Supply from existing ERC-approved contracts as of February 2016 are assumed, except for the following:
 - a. TSI which is still awaiting provisional approval from ERC prior supplying the contracted capacity by the power supplier; and
 - b. DOE/NEA Modular Gensets which is yet to be applied with ERC
 4. TMI will expire on April 2018 & MPC Iligan will expire on second quarter of 2016.
 5. SRPI will commence supplying in 2019.
 6. WMPC will be supplying up to 2018, for three years and the power will be coarsed through the 138 kV lines.
 7. The extent of supply from PSALM from 2016 onwards is uncertain given the privatization of its plants. Supply from PSALM has been decreasing significantly over the past few years. For purposes of the simulation, supply from PSALM was assumed at 16.56 MW for 2018 and over the term of the contract with GNPk, in view of the expected privatization of certain plants.
 8. The contracted generation companies are assumed to be able to supply from their respective contracted capacities in full.
 9. The assumed tariffs for TMI and WMPC are based on ERC approved/provisionally approved rates subject to adjustments based on adjustment formula provided in its respective PSAs. The fuel costs are based on the average actual fuel cost from available billing from Dec 2015-Feb 2016 for TMI, Dec. 2015-Mar 2016 for MPC & WMPC. The assumed tariff for TSI is based on the applied tariff, PSALM is P 3.0367/kWh based on available February 2016 billing, and DOE/NEA Modular Gensets is based on computed tariff to be applied with ERC.
 10. The current figures for different indices (CPI, WPC, etc.) are lifted from the actual billing of individual power suppliers for current periods available. While that for TSI, the indices are lifted from February 2016 actual billing of other Coop already served by TSI with similar application with that of ZAMCELCO.
 11. The tariffs considered for GNPk is based on what was included in the power purchase and sale agreement with ZAMCELCO particularly the Capacity Fee and Energy Fee. The Energy Fee is subject to adjustment based on adjustment energy fee formula, as fuel is a pass-through component in the tariff. The Current CIF used is based on February 2016 Coal and shipping price.
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Simulation of Generation Mix Rate with GNPk for the year 2018

Power Supplier	Forecasted Energy Purchased	Amount (PhP)	Percent Share	Resulting Capacity Factor (%)	2018 Average Rate	Weighted Average Rate(kWh)
PSALM	120,918,942	367,194,551.32	18%	100%	3.0367	3.9202
TSI	43,800,000	226,814,691.05	7%	100%	5.4139	
TMI	44,309,803	179,847,221.94	7%	100%	4.2434	
WMPC	321,235,127	1,263,589,704.85	48%	86%	4.1124	
GNPK	135,648,000	503,227,432.20	20%	100%	3.7098	
Total	665,911,873	2,540,673,601.36	100%			

Simulation of Generation Mix Rate without GNPk for the year 2018

Power Supplier	Forecasted Energy Purchased	Amount (PhP)	Percent Share	Resulting Capacity Factor (%)	2018 Average Rate	Weighted Average Rate(kWh)
PSALM	120,918,942	367,194,551.32	21%	100%	3.0367	3.9268
TSI	43,800,000	226,814,691.05	8%	100%	5.4139	
TMI	44,309,803	179,847,221.94	8%	100%	4.2434	
WMPC	371,550,621	1,427,418,679.31	64%	100%	4.0165	
Total	580,579,366	2,201,275,143.62	100%			

Generation Rate Impact

(0.0066)

23. Aside from the lower generation cost of the power supply from GNPk, ZAMCELCO is also entitled to Prompt Payment Discount, if conditions are met, which makes even more competitive the proposed rate contained in the subject PPSA;
24. In support of the instant Application for the approval of the PPSA, Applicants further attach the following documents to the Application to form integral parts thereof, to wit:

ANNEX	DOCUMENTS
"J"	Details of the PPSA
"J-1"	Discussion of Rate Calculation and Sample Computation
"K"	GNPK's Financial Assumptions including Project Cost, Sources of Financing, Debt-Equity Ratio, WACC computation, and Projected Equity IRR
"K-1"	Certification - Financing Arrangements
"L"	Breakdown of Costs including Engineering, Procurement and Construction (EPC) Costs, Operations and Maintenance (O&M) Costs, and Projected Fuel Costs
"L-1"	Certification - Project Cost
"M"	Projected Balance Sheet, Income Statement, Revenue and Cash Flow
"N"	Coal Supply key Terms
"N-1"	Sworn Statement - Coal Procurement Process
"O"	Rate Impact Analysis
"P"	GNPK's 2014 Audited Financial Statement
"Q"	GNPK's Transmission Plan for the Kauswagan Project
"R"	Certificate of Endorsement from DOE that the Project is included in the DOE's Power Development Plan

"R-1"	Environmental Compliance Certificate from DENR
"R-2"	Certificate of Registration from Board of Investments
"R-3"	Terms and Conditions of the Registration with Board of Investments
"S"	ZAMCELCO's Distribution Development Plan
"T"	GNPK's General Partners' Certificate on, among others, the authority to execute, ratify, accede, perform and deliver the PPSA, with ZAMCELCO, and the designation of duly authorized representatives for said purpose and to file an Application with the ERC
"T-1"	GNPK's General Partner's Certificate appointing legal counsels to appear for and on behalf of the partnership
"U"	ZAMCELCO's Board Resolution with Secretary's Certificate authorizing the approval and signing of the PPSA designating representatives thereto and authorizing the filing of an Application with the ERC

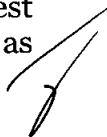
25. Applicants reserve the right to submit other documents, either in the course of the hearing or as may be required by the Commission;

COMPLIANCE WITH PRE-FILING REQUIREMENTS

26. Applicants manifest compliance with the pre-filing requirements mandated under *Rule 3, Section 4(e) the Implementing Rules and Regulations of the EPIRA* and *Rule 6 of the ERC Rules of Practice and Procedure*, to be established by the following:
- a. Certifications acknowledging receipt of the Application with annexes to be issued by the Legislative Bodies of the City of Zamboanga and the City of Pasig, to be appended as **Annexes "V", "W" and "X"**, respectively;
 - b. Notarized Affidavit of Publication stating that the Application was published in a newspaper of general circulation within ZAMCELCO's Franchise Area and/or area of its principal operation, to be appended to the Application as **Annex "Y"**; and
 - c. Complete newspaper issue where the Application was published, to be appended to the Application as **Annex "Y-1"**, and the relevant page thereof where the Application appears, as **Annex "Y-2"**;

MOTION FOR CONFIDENTIAL TREATMENT OF ANNEXES

"H-2" to "H-8", "K", and "K-1"

27. Under *Rule 4 of the ERC Rules of Practice and Procedure*, a party to any proceeding before the Commission may request that certain information not be disclosed and be treated as
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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;

28. GNPk requests for the confidential treatment of Annexes "K"⁵, "K-1"⁶, "L"⁷, "L-1"⁸, "M"⁹, "N"¹⁰ and "R-3"¹¹ of the Application. These annexes, exclusively owned by Applicant GNPk, contain documents which are considered part of its business and trade secrets. As such, GNPk has the sole proprietary interest and will be unduly prejudiced should they be disclosed to the public;
29. These annexes contain numbers, data, formula, methodology, and calculations involving valuable and sensitive commercial, financial and technological information reflecting GNPk's business operations and financial trade secrets. Therefore, the disclosure of GNPk'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 GNPk. Negotiations with prospective customers may also be affected;
30. The information contained in Annexes "K", "K-1", "L", "L-1", "M", "N" and "R-3", constitute "trade secrets", for which GNPk 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 information¹². It is indubitable that trade secrets constitute proprietary rights and jurisprudence has consistently acknowledged the private character of trade secrets¹³. Further, as ruled in *Garcia vs. Board of Investments*¹⁴, trade secrets and confidential, commercial and financial information are exempt from public scrutiny;

⁵ GNPk's Financial Assumptions including Project Cost, Sources of Financing, Debt-Equity Ratio, WACC computation, and Projected Equity IRR

⁶ Certification – Project Cost

⁷ Breakdown of Costs including Engineering, Procurement and Construction (EPC) Costs, Operations and Maintenance (O&M) Costs, and Projected Fuel Costs

⁸ Certification – Project Cost

⁹ Projected Balance Sheet, Income Statement, Revenue and Cash Flow

¹⁰ Details of Fuel Procurement

¹¹ Terms and Conditions of Registration with Board of Investments (BOI)

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

¹³ *Ibid.*,

¹⁴ 177 SCRA 374 (1989).

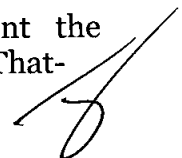
31. It is submitted that the aforementioned Annexes must be accorded confidential treatment. As such, they are to be used *exclusively* by the Commission and for the *sole* purpose of evaluating this *Application*, thereby protecting these data from unnecessary public disclosure;
32. In accordance with *Section 1(b), Rule 4 of the ERC Rules of Practice and Procedure*, Applicants submit one (1) copy each of Annexes "K", "K-1", "L", "L-1", "M", "N" and "R-3" in a sealed envelope, with the envelope and each page of the documents stamped with the word "*Confidential*";

PRAYER FOR PROVISIONAL AUTHORITY

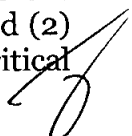
33. All the foregoing allegations are re-pleaded by reference in support of their prayer for the issuance of Provisional Authority (PA);
34. ZAMCELCO and GNPK pray for the issuance of a PA or interim relief prior to final decision pursuant to *Rule 14* of the *ERC Rules of Practice and Procedure*, to wit:

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

35. Based on the on the Department of Energy's (DOE) 2015-2030 Mindanao Grid Supply-Demand Outlook, Mindanao's peak demand in 2015 is 1,742 MW with an Annual Average Growth Rate (AAGR) of 5.9%. Therefore, Mindanao's peak demand is expected to increase to 2,008 MW in 2018 and to 3,693 MW by the year 2030. This electricity demand growth has led to DOE's call for planning and investments in the power sector;
36. Contributing to the Mindanao Grid's demand growth is ZAMCELCO's base load demand which increases at a rate of 5% per year. By December 2018, its demand is expected to have increased to 10% is much needed;
37. Pertinently, the surrounding circumstances warrant the provisional approval of the Application, considering: That-



- a. With the insufficiency of the current supply of power in Mindanao and to address any power shortfall in the future, ZAMCELCO had to negotiate with available energy suppliers for the continuous provision of stable and uninterrupted power supply within their respective franchise areas;
- b. Among existing suppliers available to provide additional energy to ZAMCELCO, GNPk rates proved to be more reasonable and competitive. Hence, ZAMCELCO and GNPk negotiated, and eventually, concluded a PPSA. It is necessary for ZAMCELCO to procure electric power from GNPk, at the proposed power rates, without any delay, to complement the baseload supply of ZAMCELCO for it to satisfy its growing total energy demand;
- c. Upon filing of the instant Application, in its commitment to provide stable uninterrupted and efficient power supply to its consumers, ZAMCELCO deemed it necessary to, likewise, pray that the Commission grant a provisional authority to implement the PPSA, including the rate structure therein, pending final approval of the instant Application;
- d. While actual delivery of power at full capacity under the terms and conditions of the PPSA is expected to commence only in 2018, Applicants, nonetheless, shall begin at the earliest opportune time their compliance with all financial and regulatory requirements and processes leading up to the timely completion of GNPk's facility;
- e. It is worthy to note that part of the funds needed to construct GNPk's facility will be sourced from loans coming from banks/financial institutions. The Commission's provisional approval of the instant Application is a vital requirement for the continuous release of the loan proceeds which will then ensure stability in flow of funds and timely construction of the generation facility, and the implementation of the PPSA as contemplated by the Applicants;
- f. With continuous financing, the timely implementation of the Project shall be assured, to the full benefit of ZAMCELCO and the Mindanao grid. Otherwise, any delay in the implementation of the project shall expose ZAMCELCO to supply risk and unstable market prices in the future; and
- g. At this point, the immediate issuance of a provisional authority would also be critical to (1) ZAMCELCO considering its supply risk and resultant market price expected in the event that GNPk fails to complete the regulatory requirements under the subject PPSA; and (2) GNPk since a provisional authority is one of the critical



requirements for the financing arrangements of the Project;

38. To emphasize the necessity of a provisional approval of the Application, a Judicial Affidavit to support the prayer for provisional authority is attached to the Application as Annex "Z", and form an integral part thereof;
39. 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 the Application, Applicants ZAMCELCO and GNPk respectfully seek the kind consideration of the Commission to approve the instant Application, immediately, albeit, provisionally, at the soonest opportune time;

PRAYER

40. Applicants ZAMCELCO and GNPk pray before the Commission that:
 - i. All information attached as "K", "K-1", "L", "L-1", "M", "N" and "R-3" to the Application be treated as confidential;
 - ii. Pending hearing on the merits, a PA be issued authorizing the immediate implementation of the subject PPSA including the rate structure therein, as applied;
 - iii. After due notice and hearing, the instant Application, the PPSA, and the rate structure contained therein be duly approved; and
 - iv. In the event that a Final Authority shall be issued after GNPk starts actual delivery of power to ZAMCELCO under the terms of the subject PPSA, said Final Authority be retroactively applied to the date of such actual delivery.

Finding the said Application to be sufficient in form and in substance with the required fees having been paid, the same is hereby set for hearing for the determination of compliance with jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on **26 October 2016 (Wednesday) at nine o'clock in the morning (9:00 A.M.) at ZAMCELCO's Main Office, MCLL Highway, Putik, Zamboanga City.**



ZAMCELCO and GNPk are hereby directed to cause the publication of the attached Notice of Public Hearing in two (2) newspapers of general 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, with the date of last publication made not later than ten (10) days before the date of the scheduled initial hearing. ZAMCELCO is also directed to inform its customers within its franchise area, by any other means available and appropriate, of the filing of the Application, the reasons therefor, and of the scheduled hearing thereon.

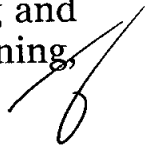
Let copies of the Application, this Order, and the attached Notice of Public Hearing be furnished the Office of the Solicitor General (OSG), the Commission on Audit (COA) and the Committees on Energy of both Houses of Congress. They are hereby requested, if they so desire, to send their duly authorized representatives at the scheduled hearing.

Likewise, let copies of this Order and the attached Notice of Public Hearing be furnished the Offices the City Mayor and the LGU Legislative Body within ZAMCELCO's franchise area for the appropriate posting thereof on their respective bulletin boards.

ZAMCELCO and GNPk are hereby directed to furnish all those making requests therefor with copies of the Application and its attachments, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing and Pre-trial Conference, ZAMCELCO and GNPk must submit to the Commission their written Compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidence of the actual posting and publication of the Notice of Public Hearing consisting of certifications issued to that effect, signed by the aforementioned Mayor and Local Government Legislative Body, or their duly authorized representatives, bearing the seals of their offices, and the affidavits of the Editors or Business Managers of the newspapers where said Notice of Public Hearing were published, together with the complete issues of the said newspapers, and such other proofs of compliance with the requirements of the Commission.

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



- (a) A summary of admitted facts and proposed stipulation of facts;
- (b) The issues to be tried or resolved;
- (c) The documents or exhibits to be presented, stating the purposes thereof and proposed markings therefore; and
- (d) The number and names of the witnesses, with their written testimonies in an individual affidavit form, to be attached to the Pre-trial Brief.

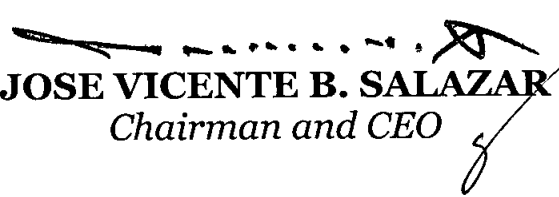
Failure of ZAMCELCO and GNPk to submit the required Pre-trial Brief and Judicial Affidavits of their witnesses within the prescribed period shall be a ground for cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from said date of cancellation.

As part of the pre-trial conference, ZAMCELCO and GNPk must also be prepared to make an expository presentation of their 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, 4 August 2016.

FOR AND BY AUTHORITY
OF THE COMMISSION:


JOSE VICENTE B. SALAZAR
Chairman and CEO

ERC
Office of the Chairman



J-2016-006¹OC-05065¹¹

Copy furnished:

1. **Atty. Norberto C. Manjares III**
Counsel for Applicant ZAMCELCO
Zamboanga City, Zamboanga

2. **Attys. Lourdy D. Torres and Franchesca T. Ovalles**
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Don Francisco Ortigas, Jr., Road
Ortigas Center, Pasig City

3. **Office of the Solicitor General**
134 Amorsolo Street, Legaspi Village, Makati City

4. **Commission on Audit**
Commonwealth Ave., Quezon City

5. **The Senate Committee on Energy**
GSIS Building, Roxas Boulevard, Pasay City

6. **The Committee on Energy**
House of Representatives
Batasan Hills, Quezon City

7. **Office of the Mayor**
Zamboanga City

8. **Office of the Local Government Unit (LGU) Legislative Body**
Zamboanga City

