

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City



IN THE MATTER OF THE APPLICATION FOR AUTHORITY TO DEVELOP, OWN AND/OR OPERATE DEDICATED POINT TO POINT LIMITED FACILITIES TO CONNECT THE 25MW BIOMASS POWER PLANT TO THE BACOLOD - SAN ENRIQUE 69 KV LINE THROUGH THE ISLASOL II 12 KILOMETER 69 KV LINE, WITH PRAYER FOR PROVISIONAL AUTHORITY

ERC CASE NO. 2019-012 MC

**SOUTH NEGROS
BIOPOWER INC. (SNBP),**
Applicant.

Promulgated:
July 19, 2021

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ORDER

Before the Commission for resolution is the *Motion for Partial Reconsideration [Re: Decision dated 17 December 2019]* (Motion) filed by South Negros Biopower, Inc. (SNBP) on 03 March 2020.

FACTUAL ANTECEDENTS

On 27 May 2019, SNBP filed an *Application* seeking the Commission's authority to develop, own and operate dedicated point-to-point limited facilities to connect its 25 MW Biomass Power Plant (BPP) to the Bacolod-San Enrique 69 kV line through the ISLASOL II twelve (12) kilometer 69 kV line, with prayer for provisional authority.

On 14 February 2020, the Commission issued a *Decision* dated 17 December 2019, approving the Application. The dispositive portion of the assailed *Decision* states, among others, *to wit*:

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WHEREFORE, the foregoing premises considered, the Application filed by South Negros Biopower, Inc. (SNBP) to develop and own a dedicated point-to-point limited facility to connect its twenty-five (25) MW Biomass Power Plant to the Visayas Grid via the Bacolod-San Enrique 69 kV transmission line of the NGCP through the ISLASOL II's 69 kV Line is hereby **RESOLVED** as follows:

1. SNBP is authorized to develop and own a dedicated point-to-point limited facility to connect its twenty-five (25) MW BPP to the Visayas Grid, subject to the following conditions:
 - 1.1 SNBP shall comply with the NGCP's requirements as stated in its System Impact Study (SIS) Final Report and Facility Study (FS) that the project **should come on-line only upon completion of the Cebu-Negros-Panay 230 kV Backbone Project of NGCP which is targeted to be completed by December 2020;**

xxx.

(Emphasis and underscoring supplied.)

Subsequently, on 03 March 2020, SNBP filed the instant *Motion*, praying that the *Decision* dated 17 December 2019 be partially reconsidered and SNBP be allowed to come on line immediately even before the completion of the Cebu-Negros-Panay (CNP Project)¹ of the National Grid Corporation of the Philippines (NGCP).

On 10 September 2020, the Commission issued an *Order* dated 27 August 2020 directing NGCP to file its comment on SNBP's *Motion*, and for SNBP to file its reply on the said comment.

On 14 October 2020, NGCP filed its *Compliance* pursuant to the *Order* dated 27 August 2020.

On 26 October 2020, SNBP filed its *Reply (To: Compliance dated 14 October 2020) with Motion to Reopen Proceedings* (Reply), wherein it reiterated its prayer for the Commission to partially reconsider the assailed *Decision* and allow its 25 MW BPP to come on-line. In relation thereto, SNBP further prayed for the reopening of the proceedings in the instant case for the Commission to admit additional evidence in relation to the instant *Motion*.

¹ ERC Case No. 2016-197 RC, Entitled, In the Matter of the Application for the Approval of the Implementation of Capital Expenditure Program for Calendar Years 2017-2020, with Prayer for the Issuance of Provisional Authority-NGCP, Applicant.

On 06 November 2020, NGCP filed its *Rejoinder with Opposition to Reopen the Case* (Rejoinder), wherein it alleged that the reopening of the instant case is not necessary, thus, it moved that the issue of SNBP's connection to the grid be resolved by the Commission.

Consequently, on 13 November 2020, SNBP filed its *Sur-Rejoinder [To: NGCP Rejoinder with Opposition to Reopen the Case dated 06 November 2020]* (Sur-rejoinder), wherein it reiterated its arguments as stated in the instant *Motion* and in its *Reply*.

ISSUE

The issue for the Commission's consideration is whether or not the instant *Motion* filed by SNBP should be granted.

THE COMMISSION'S RULING

After due deliberation and thorough evaluation of all the evidence submitted and all the information gathered pursuant to its regulatory powers, the Commission resolves to **GRANT** the instant *Motion*.

DISCUSSION

SNBP timely filed the instant Motion for Partial Reconsideration

Section 1, Rule 23 of the Commission's Rules of Practice and Procedure (RPP) provides that a party adversely affected by an order on the merits or decision of the Commission may, within fifteen (15) days from receipt of copy thereof, file a motion for reconsideration.

On 14 February 2020, the Commission promulgated the assailed *Decision* resolving the said *Application*. On 17 February 2020, SNBP received the copy of the said *Decision*. Pursuant to the aforementioned provision, SNBP has fifteen (15) days from receipt of the assailed *Decision* on 17 February 2020, or until 03 March 2020 within which to file its motion for reconsideration.

The Commission notes that SNBP filed the instant *Motion* on 03 March 2020.

In view thereof, the Commission finds the instant *Motion for Partial Reconsideration* of SNBP as timely filed pursuant to the Commission's RPP. Therefore, the Commission gives due course to the said *Motion*.

The Commission's Evaluation of SNBP's Motion

On 14 February 2020, the Commission issued the assailed *Decision* approving the Application, subject to the condition that the Biomass Power Plant project of SNBP shall only come on-line after the completion of the CNP Project of NGCP, *to wit*:

WHEREFORE, the foregoing premises considered, the *Application* filed by South Negros Biopower, Inc. (SNBP) to develop and own a dedicated point-to-point limited facility to connect its twenty-five (25) MW Biomass Power Plant to the Visayas Grid via the Bacolod-San Enrique 69 kV transmission line of the NGCP through the ISLASOL II's 69 kV Line is hereby **RESOLVED** as follows:

1. SNBP is authorized to develop and own a dedicated point-to-point limited facility to connect its twenty-five (25) MW BPP to the Visayas Grid, subject to the following conditions:
 - 1.1 SNBP shall comply with the NGCP's requirements as stated in its System Impact Study (SIS) Final Report and Facility Study (FS) that the project **should come on-line only upon completion of the Cebu-Negros-Panay 230 kV Backbone Project of NGCP** which is targeted to be completed by December 2020.

x x x

(Emphasis and underscoring supplied)

Subsequently, SNBP filed the instant *Motion*, wherein it sought the Commission's partial reconsideration of the condition in item 1.1. of the assailed *Decision* and prayed that it be allowed to come online even prior to the completion of the CNP Project. SNBP argued that the connection of its 25 MW BPP to the Visayas Grid has been found technically feasible. Accordingly, the same should not be subject to the completion of the CNP Project of NGCP.

However, in its *Compliance*, NGCP alleged that the entry of SNBP's 25 MW BPP and other Renewable Energy (RE) plants will add

to the over-supply of energy and the transmission congestion due to the incapacity of the transmission line to support the demand in Panay and Negros area. There is an existing generation curtailment of conventional power plants in Negros and Panay due to insufficient capacity of the transmission grid facilities therein. The increase in RE Plants in the said area and allowing them to operate prior to the completion of the CNP Project shall further increase the amount of generation output from conventional plants that will be curtailed, as shown in Table 1:

Table 1: Projected Generation Curtailment for Years 2020 to 2021

Particulars	CY2020	CY2021
Excess Power from Panay	136.3 MW	108.3 MW
Existing Grid Connected Conventional Power Plant P _{min}	142 MW	142 MW
Existing Grid Connected VRE Power Plant	288.5 MW	288.5 MW
Existing RE Power Plant (Grid Connected and Embedded)	72.8 MW	72.8 MW
Total Conventional Power Plant Remaining Capacity (beyond P _{min})	79.00 MW	79.00 MW
Committed RE Plant, including SNBP	179.58 MW	179.58 MW
Subtotal	898.18 MW	870.18 MW
Projected Demand in Negros ²	(397.00 MW)	(422.00 MW)
Potential Excess Capacity in Panay and Negros (RE, VRE, and Conventional)	501.18 MW	448.18 MW
Negros- Cebu 138 kV Interconnection Capacity	(180.00 MW)	(180.00 MW)
Total Projected Generation Curtailment	321.18 MW	268.18 MW

Based on Table 1, the potential excess capacity generated by RE, Variable Renewable Energy (VRE), and conventional plants in Panay and Negros is 501.18 MW and 448.18 MW, in years 2020 and 2021, respectively. Meanwhile, the existing Negros-Cebu Interconnection has a loading capacity of 180 MW only. In view thereof, the projected total generation curtailment of these power plants in Panay and Negros area would be at 321.18 MW and 268.18 MW, in years 2020 and 2021, respectively.

In SNBP's *Reply*, it countered that NGCP did not show the actual generation and demand in Negros and Panay, and instead presented the dependable capacity of the power plants currently connected and

² Based on the 2020 to 2040 Transmission Development Plant (TDP).

the projected demand to allege over supply. SNBP, further argued that the generation plants do not dispatch at its dependable capacity at all times and that there are different load requirements for different times of day. Relative thereto, SNBP submitted the actual load and generation based on Wholesale Electricity Spot Market (WESM) data. SNBP alleged that there is only potential overloading during specific period within the day (11:00 A.M. to 2:00 P.M.). This potential overloading can be addressed by dispatch limitations of SNBP and other generators.

The data used by NGCP in Table 1 are the dependable capacity of the existing and future power plants in the Negros and Panay area, and the forecasted demand based on the 2020 to 2040 Transmission Development Plan (TDP). These data of NGCP did not include the actual curtailed generation capacity of the existing power plants in Negros and Panay area.

SNBP likewise alleged that NGCP disregarded the Department of Energy (DOE) Department Circular No. DC2015-10-0015, specifically the removal of P_{\min} constraint in the Market Dispatch Optimization Model (MDOM).

SNBP also claimed that there is a noticeable increase in the demand in Negros even with the imposition of community quarantine, based on the submitted actual data. NGCP, however, stated that, the Market Operator reported in its Monthly Summary and Significant Variation Report as of September 2020, that with continuous imposition of General Community Quarantine, a relatively lower system demand over the period is still evident.

In its *Rejoinder*, NGCP countered that SNBP's submitted actual generation from the WESM data is misleading considering that the actual generation data is already restricted or curtailed taking into account the limitation of the transmission lines or submarine cables and the actual demand in the Panay and Negros area. According to NGCP, in order to accurately present the condition of the supply demand proportion in Panay and Negros, it is appropriate to consider the total dependable capacity of the power plants, and not the restricted, curtailed/regulated generation data.

As to the SNBP's allegation that NGCP disregarded the DOE Department Circular No. DC2015-10-0015, NGCP pointed out that the removal of P_{\min} constraints refers to pricing mechanism where generators may include its P_{\min} as part of the block to be offered with

corresponding price and does not have anything to do with the hierarchy of restricting dispatch targets.

In SNBP's *Sur-rejoinder*, it reiterated its arguments in the instant *Motion* and in its *Reply*.

Taking into consideration both the arguments raised by SNBP and NGCP in their respective pleadings, the Commission resolves to grant the instant *Motion* of SNBP, as discussed herein.

I. The 25 MW BPP of SNPB may come on-line pending the completion of the CNP Project of the NGCP, subject to conditions.

In the assailed *Decision*, the Commission declared that the connection of SNBP's 25 MW BPP to the Visayas Grid is technically feasible as determined by NGCP in the System Impact Study (SIS). To reiterate, while the SNBP's 25 MW BPP entry to the Visayas Grid is found to be technically feasible, the same requires the generation curtailment of SNBP's 25 MW BPP along with other generation power plants in Panay and/or Negros, and the imposition of dispatch limitation until the CNP Project of NGCP is already completed pursuant to the SIS, *to wit*:

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Prior to the entry of the power plant, the dispatch of several power plants in Panay and Negros are already curtailed to maintain the loading of the Cebu-Negros submarine cable within acceptable level. Upon entry of the power plant on year 2017, the results of system simulation show that the Cebu-Negros submarine cables will be overloaded even during normal condition and the Amlan-Pondol transmission line will also be overloaded during N-1 condition. **This will necessitate further curtailed generation of the power plants in Panay and/or Negros until the completion of CNP 230 kV Backbone Project (stage 3) which is expected to be completed in year 2020.** By year 2022, the results of the system simulation show that the thermal loading of the monitored transmission facilities are within acceptable limits. The results of the other technical assessments conducted are within the acceptable limits as set in the PGC.

The connection of the SNPB's 25 MW Biomass Power Plant to the grid is technically feasible with possible dispatch limitation. The maximum allowable

generation in Negros and Panay should not exceed 842 MW due to the limited transfer capacity of the existing Negros-Cebu Interconnection. To avoid the overloading of transmission lines and submarine cables, completion of the CNP 230 kV Backbone, the SNBP biomass power plant **may be included in the generation curtailment along with other generations in Panay and/or Negros.**

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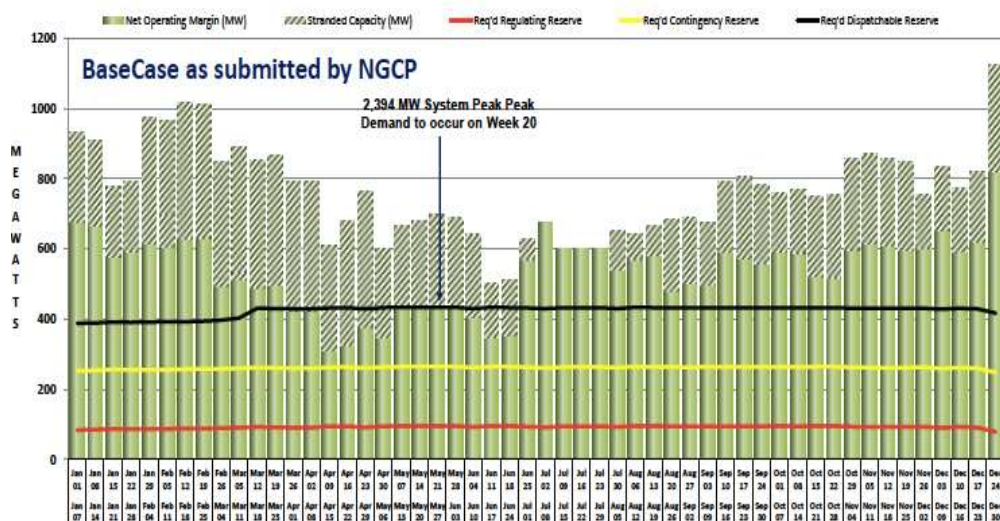
(Emphasis and underscoring supplied.)

According to NGCP, based on the above SIS, the connection of SNBP’s power plant would result in the overloading of the Cebu-Negros submarine cable. Thus, NGCP recommended that the entry of SNBP should only come after the completion of the CNP Project. The Commission considered the said recommendation of NGCP in resolving the Application of SNBP. Hence, the condition was imposed on SNBP in the assailed *Decision*.

Based on the latest Transmission Project Status Report submitted by NGCP, as of 28 February 2021, the overall accomplishment of NGCP for its CNP Project is 76.95% and the same is projected to be completed by 31 March 2022.

In the Coordination Meeting held on 17 February 2021, organized by the DOE and attended by power generators and other energy stakeholders, NGCP presented the updated power outlook of the Visayas Grid. The Power Supply Assessment for Calendar Year 2021 as presented by NGCP in the said meeting is shown in *Figure 1*:

Figure 1: Power Supply Assessment for Calendar Year 2021



Based on *Figure 1*, by April 2021, the net operating margin would not be enough to meet the required dispatchable reserve of the Visayas Grid. The forecasted System Peak Demand of 2,394 MW is based on the updated DOE forecast.

In view thereof, the power coming from SNBP's 25 MW BPP can help augment the requirements in the Visayas Grid to prevent shortages in supply.

The Commission considers the data submitted by both SNBP and NGCP with regard to the projected demand and supply scenario of Negros and Panay. Both of their data showed potential overloading which could be addressed by dispatch limitation and curtailment of generated power from SNBP's 25 MW BPP and other generators.

Section 7 of Republic Act No. 9513, otherwise known as the Renewable Energy Act of 2008 (RE Act), mandates the promulgation of the Feed-In-Tariff (FIT) System rules, which would include, among others, the priority connection to the grid for electricity generated from an emerging renewable energy resources such as wind, solar, ocean, run-of river hydropower, and biomass power plants within the Philippines.³ In relation thereto, on 20 March 2015, the DOE issued Department Circular No. DC2015-03-001⁴ which provides the framework for the integration in the WESM of must dispatch and priority dispatch (collectively referred to as Preferential Dispatch Generating Units).

Under the said DOE Circular, *Priority Dispatch* is defined as giving preference to biomass power plants under the FIT System in the dispatch schedule pursuant to Section 7 of the RE Act.

The Commission notes that SNBP's 25 MW BPP was developed under the FIT system. However, the BPP of SNBP has yet to secure the Certificate of Endorsement under a FIT System (COE-FIT) from the DOE which will include the BPP in the list of FIT-eligible plants.

³ Section 7, RE Act.

⁴ Entitled, Promulgating the Framework for the Implementation of Must Dispatch and Priority Dispatch of Renewable Energy Resources In the Wholesale Electricity Spot Market, 20 March 2015.

Relative to the foregoing, Section 10 of the aforesaid DOE Circular, provides for the hierarchy of the dispatch prioritization of generating units, *to wit*:

Section 10. Dispatch Prioritization. Jointly and in consultation with the WESM Members, the PEMC and the NGCP shall update the Dispatch Protocol established in the WESM Rules and its Market Manuals to consider the following hierarchy of dispatch schedule and implementation:

1. Minimum stable load or P_{\min} of all Conventional Generating Units;
2. Must-Dispatch Generating Units;
3. **Priority Dispatch Generating Units**; and
4. Schedules Generating Units.

Notwithstanding the aforementioned hierarchy, the NGCP shall always consider technical parameters and limitations of the transmission facilities giving priority to the reliability and security of the Grid during its dispatch implementation. **In case the Preferential Dispatch Generating Units are connected to a common constrained transmission facility, the following hierarchy of scheduling and dispatch shall be implemented:**

- (a) Preferential Dispatch Generating Units under commissioning and testing; and
- (b) **Pro-rated sharing based on available transmission capacity and Day-Ahead Generation Forecast of all Preferential Dispatch Generating Units.**

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(Emphasis and underscoring supplied.)

Based on the foregoing Section, the priority dispatch provisions of Department Circular No. DC2015-03-001 shall be implemented; but NGCP, nonetheless, shall consider the technical parameters and limitations of the transmission facilities, giving priority to the reliability and security of the Grid during its dispatch implementation.

In view thereof, considering the potential overloading of the Visayas Grid, particularly in Negros and Panay area, where various Preferential Dispatch Generating Units are connected, NGCP must implement the proper hierarchy of dispatch scheduling and implementation, taking into consideration the stability, reliability and security of the grid.

It must be noted that Section 10 of the aforesaid DOE Circular, while providing for the hierarchy of dispatch schedule and implementation, also provides exceptions to the said hierarchy, particularly in instances where preferential dispatch generating units are connected to a common constrained transmission facility. Under such circumstances, a different hierarchy of scheduling and dispatch shall be implemented, as cited above. In the case of SNBP's 25MW BPP, the imposition of this is underscored by the fact that the SIS reported that the connection of SNBP's 25 MW BPP will result in the overloading of the Cebu-Negros submarine line, thus, requiring generation curtailment until the completion of the CNP project, *to wit*:

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Upon entry of the power plant on year 2017, **the results of the system simulation show that the Cebu-Negros submarine cables will be overloaded even during normal condition** and the Amlan-Pondol Transmission line will be overloaded during N-1 condition. **This will necessitate further curtailed generation of the power plants in Panay and/or Negros** until the completion of CNP 230 kV Backbone Project (stage 3) xxx.

Consequently, due to the abovementioned projected overloading prior to the completion of the CNP project, the generated power of the SNBP's 25 MW BPP must be curtailed, and must be dispatched based on the hierarchy of scheduling and dispatch applicable to constrained transmission facility as provided in the aforesaid DOE Circular.

In view of the foregoing, the Commission hereby allows SNBP to operate and dispatch the generated power of its 25 MW BPP to the Visayas Grid, even prior to the completion of the CNP project, subject to curtailment and the appropriate dispatch prioritization as provided in the aforesaid DOE Circular to prevent the overloading of the transmission system of NGCP.

Relative to the foregoing, SNBP is hereby directed to secure a Certificate of Compliance (COC) from the Commission for its 25 MW BPP. The Commission's resolution of the instant case is without prejudice to whatever decision the Commission might have on the afore-stated COC application.

Further, NGCP is hereby directed to likewise observe the maximum penetration limit of intermittent RE-based power plants pursuant to Section 20⁵ of the RE Act.

II. The prayer of SNBP to reopen the proceedings as incorporated in its *Reply* is hereby denied.

In its *Reply*, SNBP prayed for the Commission to reopen the proceedings and admit in evidence the Judicial Affidavit of its intended witness, following Section 1, Rule 23 of the Commission's Revised Rules of Practice and Procedure (RRPP) in relation to Section 17, Rule 18 of the RPP.

Section 1, Rule 23 of the Commission's RRPP provides that a party filing a motion for reconsideration may include in the said motion a request for the reopening of the proceedings pursuant to Section 17, Rule 18 of the Commission's RPP, *to wit*:

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Section 17. Reopening of Proceedings. - Any party may file a motion for reopening of the proceedings for the purpose of taking additional evidence, at any time after the presentation of evidence has been completed but before the issuance of a decision or final order, if during that period there should occur or arise transactions, events or matters, whether factual or legal, resulting in a changed situation of the parties.

Such motion shall clearly set forth the facts claimed to constitute as grounds for reopening of the proceedings, including the material changes of fact or of law alleged to have occurred since the conclusion of the hearing. The motion shall

⁵SECTION 20. Intermittent RE Resources. — TRANSCO or its successors-in-interest, in consultation with stakeholders, shall determine the maximum penetration limit of the Intermittent RE-based power plants to the Grid, through technical and economic analysis. Qualified and registered RE generating units with intermittent RE resources shall be considered "must dispatch" based on available energy and shall enjoy the benefit of priority dispatch. All provisions under the WESM Rules, Distribution and Grid Codes which do not allow "must dispatch" status for intermittent RE resources shall be deemed amended or modified. The PEMC and TRANSCO or its successors-in-interest shall implement technical mitigation and improvements in the system in order to ensure safety and reliability of electricity transmission.

As used in this Act, RE generating unit with intermittent RE resources refers to a RE generating unit or group of units connected to a common connection point whose RE resource is location-specific, naturally difficult to precisely predict the availability of RE resource thereby making the energy generated variable, unpredictable and irregular and the availability of the resource inherently uncontrollable, which include plants utilizing wind, solar, run-of-river hydro or ocean energy.

be served upon all parties or their Counsels-of-record. Any other party may file its comment or objection on the said motion within ten (10) days upon receipt thereof, unless a different period is prescribed by the Commission.

The Commission may also *motu proprio* reopen the proceedings for reception of additional evidence at any time prior to the issuance of a decision or final order, after notice to the parties and opportunity to be heard.

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Based on the foregoing Section, there are two (2) requisites that must be satisfied for the Commission to reopen the proceedings, *to wit*:

1. The motion for reopening of the proceedings must be filed after the presentation of evidence but before promulgation of any decision, order or resolution; and
2. During that period there occurs or arise transactions, events or matters, whether factual or legal, resulting in a changed situation of the parties.

Considering that the prayer of SNBP to reopen the proceedings is in relation to the instant *Motion*, the same is allowed under Rule 23 of the Commission's RRPP. In view thereof, the first requisite is deemed satisfied.

On the second requisite, SNBP must be able to establish that there were transactions or events that transpired which resulted to changes in the situation of the parties. Succinctly, there must arise new matters which were not present during the proceedings and which were not addressed by the Commission.

Upon perusal of the submissions of SNBP, the Commission finds that there are no new transactions or events that have arisen after the promulgation of the assailed *Decision* which would warrant the reopening of the proceedings of the instant case. The main contention of SNBP that its 25 MW BPP has been found to be technically feasible has already been addressed in the assailed *Decision*. The allegations raised by SNBP in its submissions for the reopening of the proceedings are not likewise novel arguments that would warrant the reopening thereof.

In view thereof, the Commission hereby denies the prayer of SNBP to reopen the proceedings as incorporated in its *Reply*.

WHEREFORE, the foregoing premises considered, the *Motion for Partial Reconsideration [Re: Decision dated 17 December 2019]* filed by South Negros Biopower, Inc. (SNBP) is hereby **GRANTED**, subject to the following conditions:

1. The 25 MW Biomass Power Plant of SNBP is hereby allowed to come on-line even before the completion of the Cebu-Negros-Panay (CNP) Project Stage 3 of the NGCP, subject to generation curtailment, and appropriate dispatch prioritization as provided in the Department of Energy (DOE) Department Circular No. DC 2015-03-001;
2. SNBP is hereby **DIRECTED** to secure a Certificate of Compliance (COC) with the Commission for its 25 MW Biomass Power Plant prior to the operation thereof; and
3. NGCP is hereby **DIRECTED** to observe the maximum penetration limit of intermittent RE-based power pursuant to Section 20 of Republic Act No. 9513, otherwise known as Renewable Energy Act of 2008.

RELATIVE TO THE FOREGOING, the motion to reopen the instant proceedings as incorporated in SNBP's *Reply* is hereby **DENIED**.

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FINALLY, SNBP is hereby **DIRECTED** to comply with the other conditions as set forth in the *Decision* dated 17 December 2019. Further, the resolution of the instant *Motion* shall be without prejudice to SNBP's compliance with other government agencies' requirements, rules and regulations; and any administrative action that the Commission may undertake for any violation by SNBP.

SO ORDERED.

Pasig City, 28 April 2021.




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Chairperson and CEO


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Commissioner


CATHERINE P. MACEDA
Commissioner


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ERC Case No. 2019-012 MC
ORDER/28 APRIL 2021
PAGE 16 OF 16

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