

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



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

ERC CASE NO. 2016-039 RC

**AURORA ELECTRIC
COOPERATIVE, INC.
(AURELCO) AND GNPOWER
LTD. CO. (GNPOWER),
Applicants.**

D O C K E T E D
Date: JUN 01 2016
By: EA

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NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 06 April 2016, the Aurora Electric Cooperative, Inc. (AURELCO) and GNPower Ltd. Co. (GNPOWER) filed an Application for approval of the power purchase and sale agreement (PPSA), as amended, with prayer for confidential treatment of information and the issuance of provisional authority.

In the said Application, AURELCO and GNPOWER alleged the following:

1. Applicant AURELCO is a non-stock, non-profit electric cooperative organized under Philippine laws, with principal office address at Baler, Aurora. It is authorized to distribute

and provide electricity services to its member consumers in the Province of Aurora - Municipalities of Baler, Dipaculao, San Luis, Ma. Aurora, Dinalungan, Casiguran, Dilasag, and Dingalan; Province of Isabela - Municipality of Dinapigue; Province of Quezon - Municipality of General Nakar (hereinafter referred as the "Franchise Area"). A copy of AURELCO's Certificate of Franchise is herewith attached to form an integral part hereof as **Annex "A"**. A copy of its Articles of Incorporation and By-laws are also attached as **Annexes "A-1" and "A-2"** to form integral parts hereof;

2. Applicant GNPOWER is a duly registered limited partnership organized and existing by virtue of the laws of the Republic of the Philippines. It is engaged in the business of developing, constructing, operating, and owning power generation facilities. Its principal office is at 28th Floor, Orient Square Building, Don Francisco Ortigas Jr. Road, Ortigas Center, Pasig City. Copies of its Certification of Registration issued by the Securities and Exchange Commission (SEC) and Amended Articles of Partnership are herewith attached to form integral parts hereof as **Annexes "B" and "B-1"**, respectively;

3. Applicants may be served with orders, notices, and other legal processes of this Honorable Commission through the address of the undersigned counsels;

4. 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 (PPSA), as amended, executed by and between Applicants AURELCO and GNPOWER;

I. STATEMENT OF FACTS

5. AURELCO, along with eleven other electric cooperatives¹ 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 herewith attached copy of its Certificate of Registration, which is made an integral part hereof as **Annex "C"**;

¹ 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 III Electric Cooperative, Inc. (PELCO III), 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)

6. CLECAFLAG, owned and controlled by twelve member-Electric Cooperatives (“ECs”), was formed to coordinate and manage the administration of power supply process including joint planning and selection process, contracting of power of the member-ECs to ensure sustainable power supply and reduced electricity rates in the region;

7. Accordingly, in 2013, CLECAFLAG conducted a competitive selection process to bid out the forward power needs of its member-ECs, particularly, for the supply of 300 MW of aggregated base load power from new generating capacity/ies for twenty (20) years starting late 2018, subject to the Honorable Commission’s approval process and the signing by all the member-ECs of the PPSA, as per the award notice and a Memorandum of Agreement (MOA), to meet the growing demand of the member-ECs;

8. In the selection of a new power provider, CLECAFLAG employed extensive evaluation parameters and procedures, and with all twelve member-ECs further represented through their own Technical Working Groups. The selection process was conducted in two stages, including a Swiss Challenge, as follows:

- a. The first stage is the selection of a Generation Company (“GenCo”) that will submit a Firm Proposal (the “Firm Proponent”) for the aggregated base load to be contracted by the member-ECs. The GenCo shall be selected based on the committed price cap, among other key contract terms. CLECAFLAG’s proposed price cap was PhP4.09/kWh or PhP4.5808/kWh, inclusive of VAT. Nonetheless, the evaluation of the price cap shall be based on expected levelized price for the duration of the contract;
- b. The second stage is the announcement of the Firm Proposal, or that offer of the GenCo which submitted the lowest proposed committed price cap. The Firm Proposal shall then be subjected to “Swiss Challenge” by other GenCos who were declared qualified during the first stage. The Original Firm Proponent has the right to match the proposal of the Challenger;

9. On the first stage of the selection process, three GenCos participated by submitting their respective bids, namely: GNPOWER, AES Philippines (AES), and San Miguel Energy Corporation (SMEC);

10. Based on the ranking determined through CLECAFLAG’s evaluation using a specified set of bid

parameters and references in the transaction documents, GNPOWER was declared as the Firm Proponent, while AES, submitting a bid that was PhPo.23/kWh greater than that of GNPOWER, was the Challenger who had an opportunity to counter GNPOWER's proposal through Swiss Challenge. Meanwhile, SMEC was disqualified for submitting a price offer that is higher than CLECAFLAG's proposed price cap of PhP4.09/kWh;

11. On 8 November 2013, CLECAFLAG and GNPOWER entered into a Memorandum of Agreement (MOA), which is made an integral part hereof as **Annex "D"**, with the individual member-ECs as witnesses, to define each of CLECAFLAG and GNPOWER's (as the Firm Proponent) rights and obligations under transaction, such as the following, among others:

- a. CLECAFLAG shall allow only AES to participate in the Swiss Challenge of GNPOWER's Firm Proposal (Section 4.6);
- b. CLECAFLAG shall immediately award the PPSA with finality to GNPOWER in any of the following circumstances xxx (a) AES' failure to submit Letter of Intent to Challenge (Section 4.7);
- 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.

AES, however, failed to submit a counter-proposal to match GNPOWER's Firm Proposal.

12. On 10 March 2014, CLECAFLAG declared GNPOWER as the winning proponent, evidenced by herewith attached copy of CLECAFLAG's letter of the same date, which is made an integral part hereof as **Annex "E"**. GNPOWER shall, then, execute individual power supply agreements with the twelve member-ECs;

13. Copies of relevant documents used in the competitive selection process conducted by CLECAFLAG to bid out the forward power needs of its member-ECs, particularly, for the supply of 300 MW of aggregated base load power, are attached as follows:

ANNEX	DOCUMENT
"F"	Invitation to participate in the power supply aggregation and contracting of CLECAFLAG
"F-1"	Notice of Eligibility to participate in the

	bidding sent to GNPOWER
"F-2"	Transaction Information Memorandum
"F-3"	Supplemental Transaction Information Memorandum detailing the Evaluation Framework (i.e., terms of reference)
"F-4"	Evaluation Result

14. During the negotiations conducted between GNPOWER and each of the twelve (12) member-ECs for the finalization of a PPSA and the final review of the latter's projected base load electricity demand, it had come to their 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 transaction;

15. As a result, GNPOWER and the member-ECs negotiated to have an interim supply period, which is estimated to commence on December 2018 subject to the ERC's approval process;

16. On 10 June 2014, GNPOWER executed with each of AURELCO and nine (9) other member-ECs. The PPSA between GNPOWER and AURELCO is herewith attached and made an integral part hereof as **Annex "G"**²;

17. GNPOWER agreed to extend the negotiations with CLECAFLAG and its two member-ECs that have not yet signed their respective PPSAs to allow CLECAFLAG to significantly fulfill its obligation under the MOA;

18. Further, GNPOWER offered to assist CLECAFLAG and its member-ECs in fulfilling their obligation to cause the signing of an aggregated 300 MW PPSA as a requirement for GNPOWER's project milestones, and on 18 September 2015, GNPOWER, in its appreciation to AURELCO and other member-ECs for being early supporters of the GNPOWER project, executed an amendment to the PPSA reducing the rate indicated in the PPSA in favor of AURELCO. The amendment is attached hereto as **Annex "H"** and made an integral part hereof;

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

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

² Each of the PPSA entered into with the other 9 individual MECs are also made an integral part hereto as Annexes G-1 to G-9.

A. Term of Agreement. The PPSA, as amended, shall be effective at the date of its execution, and shall terminate after 240 months from the date specified in the Commencement Date Notice³ defined as the written notice that indicates the commencement of the first delivery of electric capacity at full commercial operation of the first unit of GNPOWER’s facility⁴.

B. Source of Supply. GNPOWER shall make available, sell, and deliver or cause to be delivered to AURELCO the Product⁵ at the Delivery Point, whether sourced from GNPOWER’s facility or from other electricity generators, including the Wholesale Electricity Spot Market (WESM).

GNPOWER’s facility shall be constructed and operated in Mariveles, Bataan. The Technical Details of the Project is herewith attached to form an integral part hereof as **Annex “I”**;

C. Contracted Capacity. AURELCO is contractually entitled to receive from GNPOWER, at any hour, subject to GNPOWER’s Available Capacity (as defined in the PPSA, as amended) for such hour, the Contracted Capacity (as defined in the PPSA, as amended), as follows:

Year	Contracted Capacity
1	0
2	0
3	0
4	0
5	0
6	0
7	5,000
8	5,000
9	5,000
10	5,000
11	5,000
12	5,000
13	5,000
14	5,000
15	5,000
16	5,000
17	5,000
18	5,000

³ Section 1.3, Schedule 1. Contracted Capacity, Contract Price and Terms of Agreement, PPSA, page 31

⁴ Section 1.1, Article 1. Definitions and Interpretations, PPSA, page 4

⁵ 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	5,000
20	5,000

C.1. Option to Increase Contracted Capacity. Section 2.7 of the PPSA, as amended, provides that upon written notice to GNPOWER, AURELCO may, upon approval by GNPOWER, increase its Contracted Capacity which increase shall be subjected 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, GNPOWER 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 GNPOWER 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 GNPOWER'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%	0.0466
99%	0.0470
98%	0.0474
97%	0.0477
96%	0.0481
95%	0.0485
94%	0.0489
93%	0.0493
92%	0.0497
91%	0.0502
90%	0.0506
89%	0.0510
88%	0.0515
87%	0.0519
86%	0.0524

85%	0.0529
84%	0.0534
83%	0.0539
82%	0.0544
81%	0.0549
80%	0.0555
79%	0.0561
78%	0.0567
77%	0.0573
76%	0.0579
75%	0.0585
74%	0.0592
73%	0.0599
72%	0.0606
71%	0.0613
70%	0.0621
69%	0.0629
68%	0.0637
67%	0.0645
66%	0.0653
65%	0.0662

In case the Capacity Utilization Factor is not a whole number, the Capacity Fee shall be computed using the formula below.

$$\text{Capacity Fee} = - 0.10773 \times (\text{CUF})^3 + 0.33975 \times (\text{CUF})^2 - 0.3932 \times (\text{CUF}) + 0.2078$$

Where:

Capacity Fee = is the Capacity Fee in \$/kWh

CUF = is the Capacity Utilization Factor between 65% and 100%, provided that if the actual CUF is below 65% (the "Minimum Capacity Utilization Factor"), the Capacity Price shall be calculated based on the Capacity Fee and quantity associated with the Minimum Capacity Utilization Factor.

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

$$\text{Capacity Utilization Factor (CUF)} = \frac{Q}{CC \times (H_T - E_{H_{T0}})}$$

Where:

Q = Quantity of kWh

- CC** = Contracted Capacity, in kW, as set forth in Schedule 1
- H_T** = Total number of hours in such Billing Period
- EH_{TO}** = 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 equal to \$0.0370/kWh

CIF_n = CIF Cost of Fuel for Billing Period *n*

CIF_o = Base CIF Cost of Fuel equal to \$11.5573/million kCal

E. Prompt Payment Discount. Section 4.3 (c) of the PPSA, as amended, provides that if AURELCO pays the invoice in full within ten (10) days of receipt from GNPOWER, AURELCO shall receive a credit on the next subsequent bill equal to \$0.0012/kWh multiplied by the actual quantity of the Product actually delivered set forth in such invoice for the Billing Period for which the credit was earned.

F. Capacity Utilization Discount. Section 4.3 (d) of the PPSA, as amended, provides that if AURELCO pays the invoice amount in full in accordance with GNPOWER's invoice instruction on or before the twenty-fifth (25th) day of the succeeding calendar month from the relevant Billing Period and AURELCO's CUF is greater than or equal to 65%, aside from the Prompt Payment Discount, AURELCO shall receive a credit on the next subsequent bill equal to 2.8% of the Energy Fee multiplied by the actual quantity of the Product actually delivered set forth in such invoice for the Billing Period for which the credit was earned.

G. Scheduled and Unscheduled Outage.

Pursuant to Section 2.2, GNPOWER is allowed Scheduled Outage not to exceed five hundred forty (540) Equivalent Hours for each Contract Year, during which times reduced or no deliveries will be available to AURELCO. Likewise, GNPOWER is allowed Unscheduled Outage of five hundred forty (540) Equivalent Hours for each Contract Year during which times reduced or no deliveries will be available to the Buyer;

III. COMMERCIAL ADVANTAGES OF THE PROPOSED CONTRACT PRICE AND IMPACT ON AURELCO'S OVERALL RATES

20. The PPSA, as amended, was executed between AURELCO and GNPOWER to respond to the growing power demand of AURELCO's member consumers, which its current providers may not be able to meet and supply;

21. Currently, AURELCO receives a total of 4.65MW from its existing suppliers, out of its requirement of 5.16MW with an annual average growth of 1.873%. AURELCO's peak demand is forecasted to increase to 6.217MW by 2025. Copies of AURELCO's Supply-Demand from 2014 to 2025, Historical and Forecasted Data, and Average Daily Load Curve, are herewith attached to form integral parts hereof as **Annexes "J" to "J-2"**;

22. The additional supply from GNPOWER assures the member-consumers of AURELCO of adequate and reliable power service, thus, less likelihood of power outages and brownouts;

23. AURELCO conducted a rate impact analysis which resulted in a lower effective rate of PhP3.5323/kWh with supply coming from GNPOWER, compared to a rate of PhP4.5029kWh without GNPOWER, or a reduction of PhP0.9706kWh if with GNPOWER supply, as follows:

Simulation of Generation Mix Rate with GNPOWER for the Year 2025

Power Supplier	Forecasted 2025 Quantity (kWh)	Amount (PhP)	Percent Share (%)	Resulting Capacity Factor (%)	2025 Average Rate (P/kWh)	Weighted Average Rate (PhP/kWh)
San Luis Hydro	2,872,307	12,751,606.93	9.23%	32%	4.4395	3.5323
GNPower	25,287,009	82,079,102.50	81.28%	100%	3.2459	
WESM	2,952,684	15,065,479.60	9.49%	0.00%	5.1023	
TOTAL	31,112,000	109,896,189.02	100%	1.32	3.5323	

Simulation of Generation Mix Rate without GNPOWER for the Year 2025

Power Supplier	Forecasted 2025 Quantity (kWh)	Amount (Php)	Percent Share (%)	Resulting Capacity Factor (%)	2025 Average Rate (P/kWh)	Weighted Average Rate (Php/kWh)
San Luis Hydro	2,872,307	12,751,606.93	9.23%	32%	4.4395	4.5029
GNPOWER	0	0.00	0.00%	0%	0.0000	
AES Masinloc ⁶	28,239,693	127,341,247.64	90.77%	100%	4.5093	
WESM	0	0.00	0.00%	0.00%	0.0000	
TOTAL	31,112,000	140,092,854.57	100%	1.32	4.5029	

Generation Rate Impact 0.9706

24. Aside from the lower generation cost of the power supply from GNPOWER, AURELCO is also entitled to Prompt Payment Discount and Capacity Utilization Discount, if conditions are met, which makes even more competitive the proposed rate contained in the subject PPSA, as amended;

25. In support of the instant *Application* for the approval of the PPSA, as amended, Applicants further attach the following documents to form integral parts hereof, to wit:

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

⁶ The power supply agreement between AURELCO and AES Masinloc will expire on December 25, 2024.

"S-1	Environmental Compliance Certificate from the DENR
"T"	AURELCO's Distribution Development Plan
"U"	AURELCO's Contracted Demand for 25 years
"V"	GNPOWER's General Partners' Certificate on, among others, the authority to execute, ratify, accede, perform and deliver the PPSA, as amended, with AURELCO, and the designation of duly authorized representatives for said purpose
"W"	AURELCO's Board Resolution authorizing the approval and signing of the PPSA, as amended, designating representatives thereto and authorizing the filing of an Application with the ERC

26. Applicants AURELCO and GNPOWER 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

27. Applicants 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. Certifications acknowledging receipt of the *Application* with annexes issued by the Legislative Bodies of the Province of Aurora, the Municipality of Baler, and the City of Pasig, to be appended as **Annexes "X", "Y", and "Z"**, respectively;
- b. Affidavit of Publication stating that the *Application* was published in a newspaper of general circulation within Applicants' Franchise Area and/or area of its principal operation, to be appended herein as **Annex "AA"**; and
- c. Complete newspaper issue where the *Application* was published, to be appended herein as **Annex "AA-1"**, and the relevant page thereof where the *Application* appeared, as **Annex "AA-2"**;

V. MOTION FOR CONFIDENTIAL TREATMENT OF ANNEXES "F-4", "L", "M", "N", and "O"

28. 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 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;

29. In connection to the foregoing, AURELCO humbly requests for the confidential treatment of **Annex “F-4”** hereof, consisting of the Evaluation Result. This annex shows the individual offers of the bidders which participated in the competitive selection process (CSP). The members of CLECAFLAG, AURELCO included, 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 preempt any future CSPs in which these bidders will participate. Otherwise, AURELCO 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;

30. Similarly, Applicant GNPOWER most respectfully moves for the confidential treatment of **Annexes “L”⁷, “M”⁸, “N”⁹, and “O”¹⁰** hereof. These annexes, exclusively owned by Applicant GNPOWER, contain documents which are considered part of its business and trade secrets. As such, GNPOWER has the sole proprietary interest and will be unduly prejudiced should they be disclosed to the public;

31. These annexes contain numbers, data, formula, methodology, and calculations involving valuable and sensitive commercial, financial and technological information reflecting GNPOWER’s business operations and financial trade secrets. Therefore, the disclosure of GNPOWER’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 GNPOWER. Negotiations with prospective customers may also be affected;

32. The information contained in **Annexes “L”, “M”, “N”, and “O”**, constitute “trade secrets”, for which GNPOWER 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

⁷ GNPOWER’s Financial Assumptions including Project Cost, Sources of Financing, Debt-Equity Ratio, WACC computation, and Projected Equity IRR

⁸ Breakdown of Costs including Engineering, Procurement and Construction (EPC) Costs, Operations and Maintenance (O&M) Costs, and Projected Fuel Costs

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

¹⁰ Details of Fuel Procurement

not possess the information¹¹. It is indubitable that trade secrets constitute proprietary rights and jurisprudence has consistently acknowledged the private character of trade secrets¹². Further, as ruled in *Garcia vs. Board of Investments*¹³, trade secrets and confidential, commercial and financial information are *exempt* from public scrutiny;

33. 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;

34. 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 “F-4, “L”, “M”, “N”, and “O”** in a sealed envelope, with the envelope and each page of the documents stamped with the word “*Confidential*”.

VI. ISSUANCE OF PROVISIONAL AUTHORITY

35. All the foregoing allegations are herein re-pleaded by reference in support of the instant *Prayer* for provisional authority;

36. The basis by which Applicants AURELCO and GNPOWER pray for the issuance of a Provisional Authority or interim relief prior to final decision is *Rule 14* of the *ERC Rules of Practice and Procedure*:

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

37. Worthy of note is that based on the Department of Energy’s (DOE) 2015-2030 Luzon and Visayas Grids Supply-Demand Outlook, Luzon’s peak demand in 2015 is 8,974MW with an Annual Average Growth Rate (AAGR) of 4.25% while Visayas’ Peak Demand is 1,847MW with AAGR of 3.4%. Therefore, Luzon’s peak demand is expected to increase to 10,884MW in 2020, and to 16,165MW by the year 2030 and

¹¹ *Air Philippines Corporation vs. Pennswell Inc.*, G.R. No. 172835, December 13, 2007.

¹² *Ibid.*,

¹³ 177 SCRA 374 (1989).

for Visayas, 2,042MW in 2020 and 3,025MW in 2030. This electricity demand growth has led to DOE's call for planning and investments in the power sector;

38. Contributing to the Luzon Grid's demand growth is AURELCO's peak load demand which increases at a rate of 1.873% per year. By 2025, it is projected that AURELCO's existing power suppliers will not be able to meet the power needs of its member consumers, which is expected to have increased to 20.53%;

39. Thus, the PPSA, as amended, with GNPOWER is crucial for AURELCO to guarantee that its forward power needs are satisfied, without compromising the reasonableness of the generation rate to be passed on to its member-consumers;

40. While actual delivery of power at full capacity under the terms and conditions of the PPSA, as amended, is expected to commence only in 2020, 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 GNPOWER's facility;

41. It is worthy to note that part of the funds needed to construct GNPOWER's facility will be sourced from loans coming from banks/financial institutions. The Honorable Commission's provisional approval of the instant *Application* is a vital requirement for the release of the loan proceeds. Hence, a timely financial close ensures stable source of funds and timely construction of the generation facility, and the implementation of the PPSA, as amended, as contemplated by the Applicants;

42. With continuous financing, the timely implementation of the project shall be assured, to the full benefit of AURELCO and the Luzon and Visayas' Grids. Otherwise, any delay in the implementation of the project shall expose AURELCO to supply risk and unstable market prices in the future;

43. To emphasize the necessity of a provisional approval of herein *Application*, a Judicial Affidavit to support the prayer for provisional authority will be attached herewith to form an integral part hereof as **Annex "BB"**;

44. 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 AURELCO and GNPOWER 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 "F-4, "L", "M", "N", and "O" to the instant *Application* be treated as confidential; (ii) pending hearing on the merits, a Provisional Authority be **DULY ISSUED** authorizing the immediate implementation of the subject Power Purchase and Sale Agreement (PPSA), as amended, between Applicants AURELCO and GNPOWER, including the rate structure therein, as applied; and (iii) 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 GNPOWER starts the actual delivery of power to AURELCO 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.

The Commission has set the Application for determination of compliance with the jurisdictional requirements, Expository Presentation, Pre-trial Conference, and presentation of evidence on **07 July 2016 (Thursday) at three o'clock in the afternoon (03:00 P.M.) at the AURELCO's Main Office in Barangay Reserva, Baler, Aurora.**

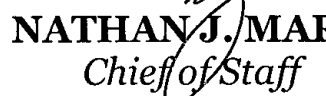
All persons who have an interest in the subject matter of the proceeding may become a party by filing, at least five (5) days prior to the initial hearing and subject to the requirements in the *ERC's Rules of Practice and Procedure*, a verified petition with the Commission giving the docket number and title of the proceeding and stating: (1) the petitioner's name and address; (2) the nature of petitioner's interest in the subject matter of the proceeding, and the way and manner in which such interest is affected by the issues involved in the proceeding; and (3) a statement of the relief desired.

All other persons who may want their views known to the Commission with respect to the subject matter of the proceeding may file their opposition to the Application or comment thereon at any stage of the proceeding before the applicant concludes the

presentation of its evidence. No particular form of opposition or comment is required, but the document, letter or writing should contain the name and address of such person and a concise statement of the opposition or comment and the grounds relied upon.

All such persons who wish to have a copy of the Application may request from the applicant that they be furnished with the same, prior to the date of the initial hearing. The applicant is hereby directed to furnish all those making such request with copies of the Application and its attachments, subject to the reimbursement of reasonable photocopying costs. Any such person may likewise examine the Application and other pertinent records filed with the Commission during standard office hours.

WITNESS, the Honorable Chairman **JOSE VICENTE B. SALAZAR**, and the Honorable Commissioners **ALFREDO J. NON**, **GLORIA VICTORIA C. YAP-TARUC**, **JOSEFINA PATRICIA A. MAGPALE-ASIRIT**, and **GERONIMO D. STA. ANA**, Energy Regulatory Commission, this 18th day of May 2016 at Pasig City.


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


LS: ARG/ICG/APV