

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



IN THE MATTER OF THE APPLICATION FOR APPROVAL OF THE POWER SUPPLY AGREEMENT (PSA), AS AMENDED, BETWEEN EASTERN SAMAR ELECTRIC COOPERATIVE INC. AND GNPOWER LTD. CO., WITH PRAYER FOR CONFIDENTIAL TREATMENT OF INFORMATION AND THE ISSUANCE OF PROVISIONAL AUTHORITY

ERC Case No. 2016-023 RC

EASTERN SAMAR ELECTRIC COOPERATIVE, INC. (ESAMELCO) AND GNPOWER LTD. CO. (GNPOWER),

Applicants.

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D O C K E T E D
Date: JUN 01 2016
By: [Signature]

NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PARTIES:

On 15 March 2016, Eastern Samar Electric Cooperative, Inc. (ESAMELCO) and GNPower Ltd. Co. (GNPower) filed their joint Application for approval of their Power Supply Agreement (PSA), with prayer for confidential treatment of information and issuance of provisional authority.

In support of said Application, ESAMELCO and GNPower alleged, among others, the following:

1. Applicant ESAMELCO is a non-stock, non-profit electric cooperative existing under the laws of the Philippines, with principal office address at Brgy.

Cabong, Borongan City, Eastern Samar. It is authorized to distribute and provide electricity services to its member-consumers in the City of Borongan and the Municipalities of Jipapad, Arteche, San Policarpo, Oras, Dolores, Maslog, Canavid, Taft, Sulat, San Julian, Maydolong Balangkayan, Llorente, Hernani, General MacArthur, Quinapondan, Giporlos, Balangiga, Lawaan, Salcedo, Mercedes, and Guiuan, all in the Province of Eastern Samar (collectively, the "Franchise Area");

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

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

3. Applicant GNPOWER is a duly registered limited partnership 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. GNPOWER'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"	GNPOWER'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 instant 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 PSA signed by Applicants on 18 September 2015, as amended by a letter of agreement dated 16 December 2015 (Amendment Letter), are attached as **Annex “G” and “G-1”**, respectively, and forms an integral part of the Application;

STATEMENT OF FACTS

7. The aggregated uncontracted baseload demand of Region 8 for years 2015 to 2018 is continually increasing as shown in the table below:

Contract Year	Contract Duration	Aggregated Baseload
2015	Dec. 26, 2014 – Dec. 25, 2015	65 MW
2016	Dec. 26, 2015 – Dec. 25, 2016	78 MW
2017	Dec. 26, 2016 – Dec. 25, 2017	83 MW
2018	Dec. 26, 2017 – Dec. 25, 2018	93 MW

8. The contracts of most of the Electric Cooperatives (ECs) in Region 8 with the National Power Corporation – Power Sector Assets and Liabilities Management Corporation (NPC-PSALM) expired on 25 December 2014;
9. On 07 November 2013, the eleven (11) ECs of Region 8 participated in the bidding for PSALM’s 200 strips of energy from the Unified Leyte Geothermal Power Plant, but lost;
10. Typhoon Yolanda hit the region on 08 November 2013 stalling any efforts to contract additional power supply and shifting the focus instead on the massive restoration efforts in the area;

11. Thus, the Region 8 ECs decided to bid out their power supply requirements for the period 2015 - 2018. In the middle of 2014, the Region 8 ECs conducted a Joint Power Supply Planning. Later, the Region 8 ECs decided, through a Memorandum of Agreement (MOA), to conduct a joint procurement of their short-term aggregated baseload requirement, specifically, their power supply needs beginning 26 December 2015 until 25 December 2016. From September to December 2014, the competitive bidding for the region's power requirements was held;

12. For such purpose, a Bids and Awards Committee was created to conduct the Region 8 Joint Competitive Power Supply Procurement ("R8 JCPSP") as follows:
 - 12.1. The Region 8 ECs initially prepared their respective least-cost power supply plans and subsequently their aggregated baseload demand for competitive bidding;

 - 12.2. The competitive tender was published and announced in the coverage areas of the Region 8 ECs. In addition, prospective bidders (Generation Companies, IPP Administrators and Wholesale Aggregators whose names are listed on the Department of Energy [DOE] website) were invited;

 - 12.3. The capacity offered by the winning bidder/s was allocated among the eleven (11) Region 8 ECs in proportion to their declared demand. A bidder was allowed to offer to supply capacity that is less than or equal to the aggregated baseload requirement in any or all of the contract years in increments of 1MW. In the event that some winning bidders offered less than 11 MW, the loads were optimally allocated in such a way that the blended price of generation resulting from the R8 JCPSP transaction is almost the same for all ECs. In the event multiple bidders who collectively satisfy the total baseload demand of R8 ECs are declared winners for any contract year, all winning bidders entered into individual PSAs with each of the 11 ECs;

- 12.4. Bidders who signified their intention to join by buying the bid documents, attended pre-bid conferences where they gave their comments and sought clarification on the bidding requirements and process. The BAC issued bid bulletins and the Final Instruction to Bidders;
- 12.5. The process followed the 2-envelope system – the legal requirements and proof of financial and technical capability in the first, and the commercial offer in the second. Bids were evaluated based on an Evaluation Framework and Evaluation Methodology released to the Bidders;
- 12.6. After evaluating the bids of each supplier, on 14 November 2014, the BAC declared Applicant GNPOWER as a winning bidder of a total of 43 MW for Contract Year 2016, with a Lowest Calculated Responsive Bid with a Base Price offer of PhP5.0481/kWh and an evaluated Effective Price of PhP6.6658/kWh;
- 12.7. On 14 September 2015, GNPOWER and the Region 8 ECs commenced the final negotiations for the other commercial and technical terms and conditions of the PSA and negotiated the further reduction of the Contract Price from PhP5.0481/kWh to PhP4.9653/kWh and for the increase in capacity to 52MW;

Attached to the Application are copies of the relevant documents issued relative to the Joint Competitive Selection Process undertaken by the Region 8 ECs for the supply of their aggregated base load demand:

Annex	Document
“H”	Invitation to Bid
“H-1”	Copy of the page of the newspaper where the Invitation was published
“H-1-a”	Affidavit of Publication of the Invitation to Bid
“H-2”	Memorandum of Agreement among Region 8 ECs
“H-3”	Emails confirming participation of interested suppliers in the bidding
“H-4”	Final Instruction to Bidders

"H-5"	Bid Forms
"H-6"	Bid Evaluation Slips
"H-7"	Comparison of Bids
"H-8"	Notice of Award

13. On 18 September 2015, ESAMELCO and GNPOWER executed the subject PSA, providing the terms and conditions for the supply of five (5) MW baseload power to ESAMELCO, to assure the adequate and reliable supply of power to ESAMELCO's franchise area;
14. Subsequently, through the Amendment Letter, ESAMELCO requested for a two (2) MW increase in Contracted Capacity, which GNPOWER accepted and conformed to on 14 January 2016;

ABSTRACT OF THE PSA AND OTHER RELATED INFORMATION

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

A. Term

The Agreement shall be effective from 18 September 2015, the date of the execution of the PSA.

For the delivery of the contracted capacity, it shall have a term of one (1) year, starting on 26 December 2015 (12:00 A.M.) to 25 December 2016 (12:00 M.N.)

B. Contracted Capacity

GNPOWER shall sell and deliver, or cause to deliver to ESAMELCO a contracted capacity of seven (7) MW at the delivery point of the facility.

Unutilized Capacity. The unutilized capacity of the Buyer may be made available for utilization of other Region 8 ECs or sold to the WESM.

Exchange of Contracted Capacities. To maximize capacity utilization, Region 8 ECs may exchange quantities of their Contracted Capacities. (Exchange in MW Capacity Protocol annexed to the PSA)

C. Contract Price

Under Schedule 1 of the PSA, the Total Monthly Charge, before taxes, for a Billing Period shall be computed according to the following:

Total Monthly Charge = Capacity Charge + Energy Charge

C. 1. Capacity Fee and Capacity Charge

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 Facility and is designated as the Capacity Fee in *Schedule 1* of the PSA, as amended, as such may be adjusted from time to time based on ESAMELCO's Capacity Utilization Factor.

$$\text{Capacity Charge} = \max \{ Q_{ACTUAL}, 0.7 * CC * [H_T - EH_{TO}] \} * CF_{CUF}$$

$$CF_{CUF} = LCR_{CUF} + LFOM_{CUF} * \frac{PHCPI_{n-1}}{PHCPI_0}$$

Where:

- Q_{ACTUAL}** = the actual energy delivered, in kWh, to the Buyer at the Delivery Point for the Billing Period.
- CC** = is the Contracted Capacity in kW.
- H_T** = is the total number of hours in the Billing Period.
- EH_{TO}** = the sum of the duration, in Equivalent Hours, of Scheduled Outages and Unscheduled Outages in such Billing Period
- CF_{CUF}** = the Capacity Fee in PhP/kWh for a given CUF in a Billing month.
- LCR_{CUF}** = the local component of the Capital Recovery Fee in PhP/kWh at the given CUF.

LFOM_{CUF} = the local component of the Fixed O&M fee in PhP/kWh at the given CUF.

PHCPI_{n-1} = Philippine Consumer Price Index of the calendar month prior to the month corresponding to the Billing Period, for All Income Households – All Items (2006=100), as published by the Philippine National Statistics Coordination Board (or its substitute or replacement agency, as the case may be).

PHCPI₀ = the base Philippine Consumer Price Index for the month of December 2014. PHCPI₀ = 140.5.

CUF = the Capacity Utilization Factor between 70% and 100%, provided that if the actual CUF is below 70% (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 corresponding Capacity Fee price component for a given Capacity Utilization Factor is set forth in the Table below:

Capacity Fees for Specific Capacity Utilization Factors

CAPACITY FEE LOCAL PRICE COMPONENTS (PHP/kWh)		
C.U.F.	Capital Recovery (LCR_{CUF})	Fixed O&M (LFOM_{CUF})
100%	2.2944	0.6204
99%	2.3176	0.6267
98%	2.3412	0.6331
97%	2.3654	0.6396

96%	2.3900	0.6463
95%	2.4152	0.6531
94%	2.4409	0.6600
93%	2.4671	0.6671
92%	2.4939	0.6743
91%	2.5213	0.6818
90%	2.5493	0.6893
89%	2.5780	0.6971
88%	2.6073	0.7050
87%	2.6372	0.7131
86%	2.6679	0.7214
85%	2.6993	0.7299
84%	2.7314	0.7386
83%	2.7643	0.7475
82%	2.7980	0.7566
81%	2.8326	0.7659
80%	2.8680	0.7755
79%	2.9043	0.7853
78%	2.9415	0.7954
77%	2.9797	0.8057
76%	3.0189	0.8163
75%	3.0592	0.8272
74%	3.1005	0.8384
73%	3.1430	0.8499
72%	3.1867	0.8617
71%	3.2315	0.8738
70%	3.2777	0.8863

For the resulting CUF which is not a whole number, the corresponding Capacity Fee Price Component shall be computed using the formula below:

$$LCR_{CUF} = \frac{LCR_{@100\%}}{CUF}$$

$$LFOM_{CUF} = \frac{LFOM_{@100\%}}{CUF}$$

Where:

LCR_{CUF} – is the local component of the Capital Recovery fee in PHP/kWh at the given CUF.

LCR_{@100%} – is the local component of the Capital Recovery fee in PHP/kWh at 100% CUF.

LFOM_{CUF} – is the local component of the Fixed O&M fee in PHP/kWh at the given CUF.

LFOM_{@100%} – is the local component of the Fixed O&M fee in PHP/kWh at 100% CUF.

CUF – is the Capacity Utilization Factor between 70% and 100%, provided that if the actual CUF is below 70% (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:

$$CUF = \max \left\{ 70\%, \frac{Q_{ACTUAL}}{CC \times [H_T - E_{HTO}]} \right\}$$

Where:

Q_{ACTUAL} = the actual quantity of energy, in kWh, delivered to ESAMELCO at the Delivery Point in the Billing Period

CC = the Contracted Capacity, in kWh, as set forth in Schedule 1

- H_T** = the 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

C. 2. Energy Fee and Energy Charge

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 PSA, as amended, as adjusted from time to time due to changes in the delivered price of coal and Governmental Charges. The Energy Fee shall be computed in accordance with the following formula:

$$\text{Energy Charge} = Q_{\text{ACTUAL}} \times \text{EF}$$

$$\text{EF} = 0.2874 \times \frac{\text{PHCPI}_{n-1}}{\text{PHCPI}_0} + 1.5256 \times \frac{\text{ICI}_{n-1}}{\text{ICI}_0} + 0.2375 \frac{\text{PHCPI}_{n-1}}{\text{PHCPI}_0}$$

Where:

- Q_{ACTUAL}** = Actual energy delivered by GNPOWER to ESAMELCO, in kWh, for the Billing Period
- EF** = Energy Fee in **PhP/kWh**
- PHCPI_{n-1}** = Philippine Consumer Price Index of the calendar month prior to the month corresponding to the Billing Period, for All Income Households – All Items (2006 = 100), as published by the Philippine National Statistics Coordination Board (or as substitute or replacement agency, as the case may be)
- PHCPI₀** = base Philippine Consumer Price Index for the month of **December 2014** for All Income Households – All Items (2006 = 100), as published by the Philippine National Statistics

Coordination Board (or its substitute or replacement agency, as the case may be)

ICI_{n-1} = Indonesian Coal Price Index of the calendar month prior to the month corresponding to the Billing Period, in US\$/Mton

ICI₀ = Base Indonesian Coal Price Index for the month of December 2014 = US\$67.28/Mton

D. Currency of Payment

The Contract Price shall be paid by ESAMELCO in Philippine Peso only.

E. Scheduled and Unscheduled Outages

Under the PSA, GNPOWER shall be allowed Scheduled and Unscheduled Outages not to exceed forty-five (45) days per Contract Year, during which time reduced or no delivery will be available to ESAMELCO.

Unutilized Equivalent Hours for Scheduled Outages and Unscheduled Outages in the Contract Year cannot be carried forward to subsequent Contract Year.

F. Replacement Power

During any Scheduled or Unscheduled Outages, GNPOWER and ESAMELCO shall cooperate to arrange for Replacement Power from, including but not limited to, other facilities of GNPOWER, third parties and the WESM. GNPOWER, at its own cost and in consultation with ESAMELCO, shall negotiate on behalf of ESAMELCO for the supply and delivery of capacity and energy from third parties for a price as close as possible to the Contract Price.

G. Prompt Payment Discount

Provided ESAMELCO has no arrears from previous billings, including the Security Deposit or any unpaid charges or penalties, if ESAMELCO pays the invoice amount in full within 10 days from its receipt of the invoice, ESAMELCO shall be credited on the next subsequent bill a PPD equivalent to eight centavos per kilowatt-hour (PhPo.o8/kWh).

H. Security Deposit

In the event of ESAMELCO's failure to pay on Due Date, GNPOWER shall draw, at its option, from the Security Deposit on the working day immediately following the Due Date. Within thirty (30) Business Days from the Start of Delivery Date, ESAMELCO shall establish the Security Deposit and submit to GNPOWER documentary proof sufficient to allow GNPOWER to draw therefrom. The Security Deposit shall be in the form of cash and or irrevocable letter of credit and shall be equivalent to ESAMELCO's projected maximum electricity bill, to be determined not later than sixty (60) calendar days prior to Start of Delivery.

**COMMERCIAL ADVANTAGE OF THE GENERATION RATE
AND IMPACT ON ESAMELCO'S RETAIL RATES**

16. ESAMELCO, together with the other Region 8 ECs, needs to address the insufficiency of its power supply due to the increasing demand within its franchise area and the expiration of its contract with NPC-PSALM;
17. Currently, ESAMELCO receives a total of 8MW from its existing suppliers, out of its peak requirement of 13MW. With an annual average growth rate of 7.73%, ESAMELCO forecasts that its peak demand from 26 December 2015 to 25 December 2016 will be 14MW;
18. The additional supply from GNPOWER will significantly augment the supply deficiency of ESAMELCO and will decrease the adverse effects

thereof by providing a stable and adequate source of electricity;

19. Among alternative suppliers capable of providing additional energy to ESAMELCO and the rest of the Region 8 ECs, GNPOWER's rates proved to be more reasonable and competitive. While GNPOWER's offer is primarily intended for its base load requirements, the Capacity Factor Pricing under the PSA, as amended, provides flexibility in the DUs' utilization of the Contracted Capacity;
20. ESAMELCO simulated a rate impact analysis which resulted in a Php0.2167/kWh decrease with the execution of the PSA, as amended, with GNPOWER, to wit:¹

Simulation of Generation Mix Rate with GNPower for the Year 2016						
Power Supplier	Forecasted 2016 Quantity (kWh)	Amount (PhP)	Percent Share (%)	Resulting Capacity Factor (%)	2015 Average Rate (P/kWh)	Weighted Average Rate (Php/kWh)
FDCUI	17,568,000.00	101,490,336.00	21.00%	100%	5.7770	5.7558
TRANS-ASIA	17,568,000.00	93,117,427.20	21.00%	100%	5.3004	
GNPOWER	45,493,600.00	272,479,367.84	54.37%	74%	5.9894	
WESM	3,044,532.94	14,527,566.46	3.64%		4.7717	
TOTAL	83,674,132.94	481,614,697.50	100%			
Simulation of Generation Mix Rate without GNPower for the Year 2016						
Power Supplier	Forecasted 2016 Quantity (kWh)	Amount (PhP)	Percent Share (%)	Resulting Capacity Factor (%)	2015 Average Rate (P/kWh)	Weighted Average Rate (Php/kWh)
FDCUI	17,568,000.00	101,490,336.00	21.00%	100%	5.7770	5.9725
TRANS-ASIA	17,568,000.00	93,117,427.20	21.00%	100%	5.3004	
GNPOWER	0.00	0.00	0.00%	0%	0.0000	
WESM	48,538,132.94	305,139,799.01	58.01%		6.2866	
TOTAL	83,674,132.94	499,747,562.21	100%			

¹

Assumption:
 Analysis and simulations is based on ESAMELCOs forecasted 2016 hourly load profile
 TRANS-ASIA's contract to ESAMELCO 100% Load Factor – 2MW
 FDCUI's contract to ESAMELCO 100% Load Factor- 2MW
 GNPOWER's proposal to ESAMELCO, with 100%-70% CUF- 7MW
 WESM Prices is based on 2013, 2014 and 2015 prices of Nodal Points of ESAMELCO

21. In addition to the lower generation cost of the power supply from GNPOWER, ESAMELCO is also entitled to a Prompt Payment Discount (PPD), if conditions are met, equivalent to PhPo.08/kWh;
22. In compliance with *Rule 20 of ERC Rules of Practice and Procedure* relative to the submission of supporting documents and information for the approval of the PSA, as amended, and the rate structure embodied therein, Applicants attached to the Application the following documents to form integral parts thereof:

ANNEX	DOCUMENT
"I"	Executive Summary of the PSA, as amended
"J"	Rate Impact Simulation
"K"	Sources of Funds/Financial Plans with Cost Assumptions
"K-1"	Compact Disc containing a soft copy of Annex "K"
"L"	Breakdown of the Contract Price
"M"	Sample Computation of Power Rates
"N"	GNPOWER's Audited Financial Statement for 2014
"O"	GNPOWER's Certificate of Registration No. WA-13-01-001 valid until January 2018
"P"	ESAMELCO's Distribution Development Plan (DDP)
"Q"	ESAMELCO's Actual and Forecasted Energy and Demand
"R"	ESAMELCO's Average Daily Load Curve
"S"	ESAMELCO's Board Resolution No. 90 Series of 2015 authorizing the filing of an application with the ERC for the approval of the PSA, as amended, and designating its General Manager as representative therefor
"T"	GNPOWER's General Partner's Certificate attesting to the resolution of the Board to execute the subject PSA with ESAMELCO, as amended, designating signatories thereto

23. Applicants reserve their 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

24. 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:
 - 23.1. Certifications acknowledging receipt of the Application with annexes to be issued by the Legislative Bodies of Pasig City, Borongan City, and the Province of Eastern Samar, to be appended as **Annexes “V”, “W” and “X”**, respectively;
 - 23.2. Notarized Affidavit of Publication stating that the Application was published in a newspaper of general circulation within ESAMELCO's Franchise Area, to be appended to the Application as **Annex “Y”**; and
 - 23.3. 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”

25. 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 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;
26. ESAMELCO requests for the confidential treatment of **Annexes “H-2” to “H-8”** of the Application, consisting of the MOA among Region 8 ECs, e-mails confirming participation of interested suppliers in the bidding, Final Instructions to Bidders, Bid

Forms, Bid Evaluation Slips, Comparison of Bids, and Notice of Award, respectively. These annexes show the individual offers of the bidders which participated in the R8 JCPSP. The Region 8 ECs, ESAMELCO 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 pre-empt any future CSPs in which these bidders will participate. Otherwise, ESAMELCO and the rest of the Region 8 ECs may be held liable for damages for breach of confidentiality, and eventually, risk their good relations with the suppliers concerned;

27. Similarly, GNPOWER respectfully moves for the confidential treatment of **Annexes “K” and “K-1”** hereof, consisting of GNPOWER’s Sources of Funds and Financial Plans with Cost Assumptions. These annexes, exclusively owned by GNPOWER, contain information 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;
28. These annexes contain numbers, data, formula, methodology, and calculations involving valuable and sensitive commercial, financial information reflecting GNPOWER’s business operations and financial trade secrets. Therefore, 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.
29. The information contained in **Annexes “K” and “K-1”**, 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 not

possess the information². It is indubitable that trade secrets constitute proprietary rights and jurisprudence has consistently acknowledged the private character of trade secrets³. Further, as ruled in *Garcia vs. Board of Investments*⁴, trade secrets and confidential, commercial and financial information are *exempt* from public scrutiny;

30. Accordingly, **Annexes “H-2” to “H-8”, “K” and “K-1”** 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;
31. In accordance with *Section 1(b), Rule 4 of the ERC Rules of Practice and Procedure*, Applicants submit one (1) copy each of **Annexes “H-2” to “H-8”, “K” and “K-1”** in a sealed envelope, with the envelope and each page of the documents stamped with the word “*Confidential*”;

PRAYER FOR PROVISIONAL AUTHORITY

32. All the foregoing allegations are re-pleaded by reference in support of their prayer for the issuance of Provisional Authority (PA) to implement the subject PSA;
33. ESAMELCO and GNPOWER 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*

² *Air Philippines Corporation vs. Pennswell Inc.*, G.R. No. 172835, December 13, 2007.

³ *Ibid.*,

⁴ 177 SCRA 374 (1989).

submitted and the comments or opposition filed by any interested person, if there be any.”

34. Considering that a substantial amount of time is needed to evaluate the documents submitted to support the approval of herein Application, Applicants seek consideration of the Commission to approve the instant Application, immediately, albeit, provisionally;
35. Owing to the short term of the contract, which is only for a period of one (1) year, a PA is all the more imperative to allow the timely delivery of energy by GNPOWER to ESAMELCO, which is set to start on 26 December 2015 at 12:00 A.M.;
36. The Region 8 EC's, including ESAMELCO, after careful evaluation if they will defer the commencement of the delivery due to delayed filing, decided and required GNPower to commence its delivery immediately after its previous power supply agreement expired last 25 December 2015, this being the reasonable plan to mitigate the risks of WESM exposure, specially with the assumption that the 2015 occurrence of El Nino has an adverse impact on the supply of electricity and the WESM price, particularly during the summer season. ESAMELCO, Moreover, it was projected, as shown in the table below,⁵ that the exposure to volatile market prices will cause significant increases in prudential guarantee payments which will constrain Region 8 ECs to avail of high interest-bearing loans in order to comply with PEMC requirement;

No.	EC Name	PEMC Prudential Guarantee (Php)			Capacity Contracted w/ GNPower (kW)	Additional Equivalent Rate ⁵ (Php/kWh)
		With GNPower	Without GNPower	Difference		
1	DORELCO	1,198,267.26	2,396,534.52	1,198,267.26	5,000	0.04
2	LEYECO II	15,600,000.00	15,600,000.00	-	1,000	0.00
3	LEYECO III	4,249,015.39	7,954,113.07	3,705,097.68	1,000	0.55
4	LEYECO IV	1,110,915.20	1,827,653.63	716,738.43	1,000	0.11
5	LEYECO V	12,500,000.00	52,000,000.00	39,500,000.00	14,000	0.42
6	SOLECO	5,376,255.00	16,257,945.00	10,881,690.00	5,000	0.33
7	BILECO	(1,999,261.22)	(1,082,258.63)	917,002.59	1,000	0.14
8	SAMELCO I	2,400,000.00	27,271,478.40	24,871,478.40	6,000	0.62
9	SAMELCO II	6,000,000.00	14,800,000.00	8,800,000.00	4,000	0.33
10	ESAMELCO	4,750,000.00	30,966,724.80	26,216,724.80	7,000	0.56
11	NORSAMELCO	28,280,066.75	37,224,625.90	8,944,559.15	7,000	0.19
Weighted Average Additional Equivalent Rate (Php/kWh)						0.36

⁵ Additional equivalent rate due to additional Prudential Guarantee required by PEMC (for the undelivered contracted capacity from GNPower) with a conservative loan interest of 6% per annum and baseload load factor of 81%.

37. The additional power from GNPOWER is needed to curtail any power interruptions that may be experienced by ESAMELCO's member-consumers due to inadequate power supply in the region;
38. To further support the prayer for PA, an affidavit emphasizing the necessity thereof is attached to the Application as Annex "Z", and form an integral part thereof;

PRAYER

39. Applicants ESAMELCO and GNPower pray before the Commission that:
 - i. All information attached as Annexes "H-2" to "H-8", "K" and "K-1" to the Application be treated as confidential;
 - ii. Pending hearing on the merits, a PA be issued authorizing the immediate implementation of the subject PSA including the rate structure therein, as applied;
 - iii. After due notice and hearing, the instant Application, the PSA, and the rate structure contained therein be duly approved; and
 - iv. In the event that a Final Authority shall be issued after GNPOWER starts actual delivery of power to ESAMELCO under the terms of the subject PSA, said Final Authority be retroactively applied to the date of such actual delivery.

The Commission has set the Application for initial hearing, expository presentation, pre-trial conference, and presentation of evidence on **25 August 2016 (Thursday) at ten o'clock in the morning (10:00 A.M.) at ESAMELCO's Main Office, Brgy. Cabong, Borongan City, Eastern Samar.**

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 Applicants conclude 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 Applicants that they be furnished with the same, prior to the date of the initial hearing. Applicants are hereby directed to furnish all those making such request with copies of the Application and its attachments, subject to the reimbursement of reasonable photocopying costs. Any such person may likewise examine the Application and other pertinent records filed with the Commission during the standard office hours.

WITNESS, the Honorable 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 in Pasig City.


ATTY. NATHAN J. MARASIGAN

Chief of Staff

Office of the Chairman and CEO