

Republic of the Philippines  
**ENERGY REGULATORY COMMISSION**  
Pasig City

**IN THE MATTER OF THE  
APPLICATION FOR  
APPROVAL OF THE  
ANCILLIARY SERVICES  
PROCUREMENT  
AGREEMENT BETWEEN  
THE NATIONAL GRID  
CORPORATION OF THE  
PHILIPPINES AND BAC-  
MAN GEOTHERMAL, INC.  
WITH PRAYER FOR THE  
ISSUANCE OF  
PROVISIONAL AUTHORITY**

**ERC CASE NO. 2023-059 RC**

**NATIONAL GRID  
CORPORATION OF THE  
PHILIPPINES AND BAC-  
MAN GEOTHERMAL INC.,**  
*Applicants.*

**Promulgated:**  
June 19, 2023

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**NOTICE OF VIRTUAL HEARING**

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 08 June 2023, National Grid Corporation of the Philippines (NGCP) and Bac-Man Geothermal, Inc. (BGI) filed an *Application* dated 23 May 2023, seeking the Commission's approval of their Ancillary Services Procurement Agreement (ASPA), with prayer for the issuance of provisional authority.

The pertinent allegations of the *Application* are hereunder quoted as follows:

**NATURE OF THE CASE**

1. This Application is for the approval of the Ancillary Services Procurement Agreement ("ASPA" or "Agreement") dated 02

May 2023,<sup>1</sup> entered into by the NGCP and BGI, pursuant to Department of Energy (DOE) Department Circular No. DC 2021-10-0031 (the "AS-CSP Circular") prescribing the conduct of Ancillary Services Competitive Selection Process ("AS-CSP"), in relation to the Ancillary Services – Cost Recovery Mechanism ("AS-CRM") promulgated by the Energy Regulatory Commission in its Decision dated 03 October 2007 in ERC Case No. 2006-049RC.

#### THE PARTIES

2. Applicant NGCP is a corporation created and existing under the laws of the Philippines, with office address at NGCP Building, Quezon Avenue corner BIR Road, Diliman, Quezon City. It holds a congressional franchise granted under Republic Act No. 9511,<sup>2</sup> and is authorized to engage in the business of conveying or transmitting electricity through high-voltage back-bone systems of interconnected transmission lines, substations and related facilities, and for other purposes. The NGCP is authorized to conduct activities necessary to support the safe and reliable operation of the transmission system.
3. Applicant BGI is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal place of business at Rockwell Business Center Tower 3, Ortigas Avenue, Pasig City.
  - 3.1. BGI is the owner and operator of the Bac-Man Geothermal Power Plant Complex located in the provinces of Albay and Sorsogon, which includes the Bacman I Geothermal Power Plant Unit 2, with a rated capacity of 55 MW continuous output at 60Hz, including required ancillaries and spare parts (the "Generation Facility"), that was certified and accredited by the NGCP as capable of providing Black Start Service.
4. NGCP and BGI may be served with orders, notices, pleadings and other legal processes through their respective counsels at the addresses indicated below.

#### ANTECEDENT FACTS

5. Republic Act No. 9136, also known as the Electric Power Industry Reform Act ("EPIRA"), provides that it is the responsibility of NGCP to ensure and maintain the reliability, adequacy, security, stability and integrity of the nationwide electrical grid in accordance with the performance standards for its operations and maintenance, as set forth in the

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<sup>1</sup> A copy of the Ancillary Services Procurement Agreement (ASPA) dated 02 May 2023 is attached as Annex "A" of the *Application*.

<sup>2</sup> An Act Granting the National Grid Corporation of the Philippines a Franchise to Engage in the Business of Conveying or Transmitting Electricity Through High Voltage Back-Bone System of Interconnected Transmission Lines, Substations and Related Facilities, and for Other Purposes.



Philippine Grid Code ("PGC"),<sup>3</sup> adopted and promulgated by the Honorable Commission, and to adequately serve generation companies, distribution utilities and suppliers requiring transmission service and/or ancillary services ("AS" or "Ancillary Services")<sup>4</sup> through the transmission system.<sup>5</sup>

6. Similarly, the PGC provides that NGCP is responsible for determining, acquiring, and dispatching the capacity needed to supply the required Grid AS and for developing and proposing Wheeling Charges and AS tariffs of the ERC.<sup>6</sup>
7. Ancillary Services is defined in Section 4(b) of the EPIRA as referring "*to those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the transmission system in accordance with good utility practice and the Grid Code to be adopted in accordance with this Act*". These services are essential in ensuring reliability in the operation of the transmission system and consequently, in the reliability of the electricity supply in the Luzon, Visayas and Mindanao grids.
8. In order to implement and regulate the procurement of AS, the Honorable Commission approved the Ancillary Services Procurement Plan ("ASPP") through its Order dated 09 March 2006 in ERC Case No. 2002-253 and the AS-CRM through its Decision dated 03 October 2007 in ERC Case No. 2006-049RC.
9. The NGCP certified that the Generation Facility has met and complied with the Standard Ancillary Services Technical Requirements of the ASPP as capable of providing Black Start Service. A copy of NGCP Accreditation Certificate No. 2023-L001 in favor of Bac-Man Geothermal Inc., valid from 16 January 2023 to 15 January 2025, is attached to this Application.<sup>7</sup>

#### Competitive Selection Process

10. On 04 October 2021, the DOE issued the AS-CSP Circular providing the policy for the conduct of the Competitive Selection Process ("CSP") for the procurement of Ancillary Services by the System Operator (NGCP). Among the policies set by the AS-CSP Circular was the creation of an independent Third Party Bids and Awards Committee ("TPBAC") to spearhead and manage the CSP.

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<sup>3</sup> ERC Resolution No. 22, series of 2016, entitled "A Resolution Approving the Publication of the Approved Philippine Grid Code 2016 Edition". *See also* Section 9(c), EPIRA.

<sup>4</sup> Section 4(b), EPIRA. "Ancillary Services" refer to those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the transmission system in accordance with good utility practice and the Grid code to be adopted in accordance with this Act.

<sup>5</sup> Section 9(d), EPIRA.

<sup>6</sup> Chapter 6, Grid Operations ("GO"), GO Section 6.3.1.2, PGC.

<sup>7</sup> Copy of NGCP Accreditation Certificate No. 2023-L001 with corresponding test report/s, is attached as Annex "B" of the Application.



11. In its Letter dated 22 November 2022,<sup>8</sup> the DOE approved the Terms of Reference (“TOR”)<sup>9</sup> and Instruction to Bidders,<sup>10</sup> and instructed NGCP to proceed with the publication and posting of the same pursuant to Sections 7.4 and 7.5 of the AS-CSP Circular.
12. On 26 January 2023, the TPBAC approved its Notice of Invitation to Bid<sup>11</sup> informing the public of the pending AS-CSP for Regulating Reserve (RR), Contingency Reserve (CR), Dispatchable Reserve (DR), Reactive Power Support (RPS), and Black Start Service (BSS), and inviting all interested grid-connected merchant plants and Independent Power Producers to apply for eligibility and participate in the competitive bidding for the procurement of AS. The Notice of Invitation to Bid likewise provided any interested grid-connected merchant plants a copy of the DOE-approved TOR and Instruction to Bidders.
13. Subsequently, the Notice of Invitation to Bid was published on 31 January 2023 with the *Malaya Business Insight*<sup>12</sup> and the *Philippine Star*.<sup>13</sup> The same Notice was also published on 07 February 2023 with the *Business Mirror*<sup>14</sup> and the *Manila Bulletin*.<sup>15</sup>
14. BGI was declared by the TPBAC as eligible to participate in the AS-CSP and submit its bid for the provision of Black Start Service to be provided by the Generation Facility.
15. Under Bid Bulletin 2023-02 issued by the TPBAC, eligible bidders may submit their bids on or before 13 March 2023 at 5:00 PM.
16. Thereafter, pursuant to Bid Bulletin 2023-02, the TPBAC conducted the opening of bids timely submitted by all the eligible bidders whereby BGI’s bid/offer<sup>16</sup> for the provision of

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<sup>8</sup> DOE Letter dated 22 November 2022 approving the Terms of Reference and Instruction to Bidders is attached as Annex “C” of the *Application*.

<sup>9</sup> DOE Approved Terms of Reference is attached as Annex “C-1” of the *Application*.

<sup>10</sup> DOE Approved Instruction to Bidders is attached as Annex “C-2” of the *Application*.

<sup>11</sup> Notice of Invitation to Bid is attached as Annex “C-3” of the *Application*.

<sup>12</sup> The 31 January 2023 edition of the *Malaya Business Insight* and the page on which the Notice of Invitation to Bid appears are attached as Annexes “D” and “D-1” of the *Application*, respectively. The Affidavit of Publication issued by the *Malaya Business Insight* is likewise attached as Annex “D-2” of the *Application*.

<sup>13</sup> The 31 January 2023 edition of the *Philippine Star* and the page on which the Notice of Invitation to Bid appears are attached as Annexes “E” and “E-1” of the *Application*, respectively. The Affidavit of Publication issued by the *Philippine Star* is likewise attached as Annex “E-2” of the *Application*.

<sup>14</sup> The 07 February 2023 edition of the *Business Mirror* and the page on which the Notice of Invitation to Bid appears are attached as Annexes “F” and “F-1” of the *Application*, respectively. The Affidavit of Publication issued by the *Business Mirror* is likewise attached as Annex “F-2” of the *Application*.

<sup>15</sup> The 07 February 2023 edition of the *Manila Bulletin* and the page on which the Notice of Invitation to Bid appears are attached as Annexes “G” and “G-1” of the *Application*, respectively. The Affidavit of Publication issued by the *Manila Bulletin* is likewise attached as Annex “G-2” of the *Application*.

<sup>16</sup> A copy of BGI’s bid/ offer is attached as Annex “H” of the *Application*.



Black Start Service by its Generation Facility was considered for award after sufficiently complying with the post-qualification requirements.

17. On 12 April 2023, the TPBAC issued and submitted to the NGCP's Board of Directors its Resolution and Evaluation Report on the conduct of the CSP<sup>17</sup> indicating BGI as one of the winning bidders. The TPBAC's Evaluation Report was thereafter confirmed by the NGCP's Board of Directors through a resolution dated 18 April 2023.<sup>18</sup>
18. On 18 April 2023, the TPBAC issued a Notice of Award in favor of BGI<sup>19</sup> informing the latter that it is to be awarded with a contract for the Provision of Ancillary Services in the Luzon Grid. The details of the award are as follows:

Type of AS to be provided	Unit	Rate (P/kWh)	Duration
Black Start Services	03BACMAN_U02	9.6060616	Five (5) years

19. On 02 May 2023, NGCP and BGI executed the ASPA pursuant to the AS-CSP Circular.

CONTRACTED CAPACITY RATES  
AND IMPACT SIMULATION

20. Section 3 of the ASPA states that BGI shall provide the AS in accordance with Schedule 1 of the ASPA, as follows:

Contracted Capacities:

22. Black Start Service: 60 MW

Note that the capacities in the hourly profile are the maximum ancillary service capacities that can be provided by each unit. However, declaration and schedule shall be based on the latest AS Accreditation Certificate, which shall not exceed the Firm capacities in the hourly profile.

21. Schedule 3 of the ASPA provides for the formula for the computation of the Ancillary Service Payment, and the applicable rates for Capacity Payment:

22. Ancillary Service Payment

1. For Black Start Service, Ancillary Service Payment is the total kWh generated for BSS,

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<sup>17</sup> The TPBAC Resolution and Evaluation Report dated 12 April 2023 indicating BGI's bid/offer for its Generation Facility as one of the winning bids is attached as Annex "I" of the *Application*.

<sup>18</sup> NGCP Secretary's Certificate certifying the BOD's Resolution confirming the TPBAC's Evaluation Report is attached as Annex "J" of the *Application*.

<sup>19</sup> Notice of Award in favor of BGI is attached as Annex "K" of the *Application*.

multiplied by the Per Occurrence Applicable Rate for BSS.

B. Per Occurrence Applicable Rates:

22. Black Start Service (BSS): PhP9.6061/kWh of providing BSS

22. In compliance with the Honorable Commission’s document checklist, NGCP submits the following:

Document	Annex
AS Rates Offered by the AS Provider during the AS-CSP	“L”
Actual AS Data on Required, Scheduled, and Dispatched (MW) for the Grid for the previous year	“M”
Implementing Guidelines of the ASPA	“N”
Locational Map of BGI	“O”
Certification from NGCP as required under item D of the ERC Checklist	“P”

23. BGI submits that the rates represent a reasonable recovery of its opportunity cost in making available generation capacity to provide the procured AS. A copy of the Rate Impact Simulation for BGI is attached to this Application.<sup>20</sup>
24. Consistent with the AS-CRM, all the related and incidental expenses which NGCP will incur as a result of the procurement and operation of the ancillary services shall be recovered from all the load customers in the Luzon Grid.
25. As provided under Section 2.1 of the ASPA, the same shall become effective upon the approval by the ERC, either through a Provisional Authority (PA), or Interim Relief (IR), or final Decision, whichever comes first, unless if a different effective date is provided by the ERC in its Order or Decision, and shall remain effective for a period of five (5) years, subject to Section 13 (Termination) of the ASPA.
26. BGI, as a generation company, falls within the ambit of Section 6 of the EPIRA. Attached are copies of relevant documents proving BGI’s due registration as a generation company, relevant permits to operate the Generation Facility and audited financial statements, as well as other documents required by the Honorable Commission:

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<sup>20</sup> Rate Impact Simulation is attached as Annex “Q” of the *Application*.



Document	Annex
Certificate of Incorporation with Articles of Incorporation and By-laws	“R”
Latest Amended Articles of Incorporation	“R-1”
Latest SEC GIS/Proof of Business Registration	“S”
Certificate of Compliance issued by ERC including Annexes A & B	“T”
Latest Audited Financial Statements	“U”
Certificate of WESM Registration	“V”
Computation of True Cost of Generation (PhP/kW & PhP/kWh)*	“W”
Summary of computed Consumer Price Index (CPI) indexation and Start-Up and Shut-Down Costs (SSC) as part of the monthly Variable Operation and Maintenance (O&M) Cost, including their computations.*	“X”
Single-Line Diagram Connection*	“Y”

\* *subject to Motion for Confidential Treatment of Information*

27. While BGI is a co-applicant, it manifests that the instant Application shall neither modify, diminish nor constitute a waiver of its rights nor expand its obligations and responsibilities as a generation company under the EPIRA.

ALLEGATIONS IN SUPPORT OF THE PRAYER FOR  
CONFIDENTIAL TREATMENT OF INFORMATION

28. Under Rule 4 of the ERC Rules of Practice and Procedure, the Honorable Commission may, upon request of a party and determination of existence of conditions that would warrant such remedy, treat certain information submitted to it as confidential.
29. Documents attached to this Application (particularly Annexes “W”, “X”, and “Y”) contain commercially valuable and sensitive information and data that reflect BGI’s investments, business operations, calculations, and other trade secrets, which may reflect investment computations and determine competitive rates.
30. In the case of *Air Philippines Corporation vs. Pennswell, Inc.*,<sup>21</sup> the Supreme Court defined “trade secrets” and explained that:

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<sup>21</sup> 564 Phil. 774 (2007), G.R. No. 172835.

**“A trade secret is defined as a plan or process, tool, mechanism, or compound known only to its owner and those of his employees to whom it is necessary to confide it. The definition also extends to a secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade having a commercial value. A trade secret may consist of any formula, pattern, device, or compilation of information that: (1) is used in one's business; and (2) gives the employer an opportunity to obtain an advantage over competitors who do not possess the information. Generally, a trade secret is a process or device intended for continuous use in the operation of the business, for example, a machine or formula, but can be a price list or catalogue or specialized customer list. It is indubitable that trade secrets constitute proprietary rights.”** (*Emphasis supplied.*)

31. Moreover, this Honorable Commission categorically acknowledged in its Decision in ERC Case No. 2015-111 RC<sup>22</sup> that formulas and pricing structures of a generation company must be accorded confidential protection, to wit:

**“In the case of PNOC RC, the documents sought to be protected from disclosure contain formula and pricing structures used in arriving at their proposed tariff. In fact, all three (3) documents were used by the Commission in evaluating the reasonableness of the proposed rate. In the electric power industry w(h)ere prices is[sic] a major consideration in selecting one's supplier, it is apparent that the assumptions used in arriving at one's proposed tariff is considered a competitive leverage by one player against its competitors.**

**Thus, the Commission resolves to treat the said documents confidential and may not be publicly disclosed.”** (*Emphasis supplied.*)

32. BGI thus respectfully moves that these documents not be disclosed and that these be treated as confidential documents in accordance with Section 1, Rule 4 of the Honorable Commission's Revised Rules of Practice and Procedure. Accordingly, BGI submits one (1) copy of said documents in a

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<sup>22</sup> Decision, ERC Case No. 2015-111 RC dated 30 May 2017 entitled *“In the Matter of the Application for Approval of the Power Supply Agreement Between Nueva Ecija II Electric Cooperative, Inc.- Area 2 (NEECO II – Area 2) and PNOC Renewables Corporation (PNOC RC).”*



sealed envelope, with the envelope and each page of the document stamped with the word "Confidential".

**ALLEGATIONS IN SUPPORT OF THE PRAYER FOR  
PROVISIONAL AUTHORITY**

33. It is a declared policy of the State to ensure the quality, reliability, security and affordability of the supply of electric power.<sup>23</sup> To this end, there is a need to comply with the system requirements for AS to ensure grid system security and reliability. As mentioned above, NGCP has the mandate to procure the required AS. However, the Honorable Commission must first approve the contract before the same can be implemented.
34. As the demand for power in Luzon increases, the requirements of the system likewise increases. Ensuring the integrity of the system is essential to protect the interests of the public. The absence of system reliability and stability will certainly discourage investments and growth.
35. Applicants respectfully submit that the immediate approval of the ASPA by this Honorable Commission is a necessity to maintain the present reliability and security of the Grid. In support of these allegations, NGCP submits a copy of the Judicial Affidavit of Ms. Lisaflor B. Kater,<sup>24</sup> which is attached to this Application.

**PRAYER**

WHEREFORE, premises considered, Applicants respectfully pray that the Honorable Commission:

1. Immediately ISSUE a provisional authority to implement the subject ASPA executed on 02 May 2023; and
2. APPROVE, after notice and hearing, the subject ASPA.
3. ISSUE an Order treating the documents and information therein, duly marked as Annexes "W", "X", and "Y", as confidential information pursuant to Section 1, Rule 4 of the ERC Rules of Practice and Procedure and prescribing the guidelines for the protection thereof.

Other just and equitable reliefs are likewise prayed for.

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<sup>23</sup> Section 2(b), EPIRA.

<sup>24</sup> Judicial Affidavit of Ms. Lisaflor B. Kater is attached as Annex "Z" of the *Application*.



The Commission hereby sets the instant *Application* for determination of compliance with the jurisdictional requirements, expository presentation, Pre-Trial Conference and presentation of evidence on the following dates and online platform for the conduct thereof, pursuant to Resolution No. 09, Series of 2020<sup>25</sup> and Resolution No. 01, Series of 2021<sup>26</sup> (ERC Revised Rules of Practice and Procedure):

Date and Time	Platform	Activity
<b>20 July 2023</b> (Thursday) at nine o'clock in the morning (9:00 A.M.)	<b>Microsoft Teams or Zoom Application</b>	Determination of compliance with jurisdictional requirements and Expository presentation
<b>27 July 2023</b> (Thursday) at nine o'clock in the morning (9:00 A.M.)		Pre-trial Conference and presentation of evidence

Any interested stakeholder may submit its comments and/or clarifications **at least one (1) calendar day** prior to the scheduled initial virtual hearing, via electronic mail (e-mail) at [doCKET@erc.ph](mailto:doCKET@erc.ph), and copy furnish the Legal Service through [legal@erc.ph](mailto:legal@erc.ph). The Commission shall give priority to the stakeholders who have duly submitted their respective comments and/or clarifications, to discuss the same and propound questions during the course of the expository presentation.

Moreover, any person who has an interest in the subject matter of the instant case may become a party by filing with the Commission via e-mail at [doCKET@erc.ph](mailto:doCKET@erc.ph), and copy furnishing the Legal Service through [legal@erc.ph](mailto:legal@erc.ph), a verified Petition to Intervene **at least five (5) calendar days** prior to the date of the initial virtual hearing. The verified Petition to Intervene must follow the requirements under Rule 9 of the ERC Revised Rules of Practice and Procedure, indicate therein the docket number and title of the case, and state the following:

- 1) The petitioner's name, mailing address, and e-mail address;

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<sup>25</sup> A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.  
<sup>26</sup> A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.



- 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.

Likewise, all other persons who may want their views known to the Commission with respect to the subject matter of the case may file through e-mail at [docket@erc.ph](mailto:docket@erc.ph), and copy furnish the Legal Service through [legal@erc.ph](mailto:legal@erc.ph), their Opposition or Comment **at least five (5) calendar days** prior to the initial virtual hearing. Rule 9 of the ERC Revised Rules of Practice and Procedure shall govern. No particular form of Opposition or Comment is required, but the document, letter, or writing should contain the following:

- 1) The name, mailing address, and e-mail address of such person;
- 2) A concise statement of the Opposition or Comment; and
- 3) The grounds relied upon.


All interested parties filing their Petition to Intervene, Opposition or Comment are required to submit the hard copies thereof through personal service, registered mail, or ordinary mail/private courier, **within five (5) working days** from the date that the same were electronically submitted, as reflected in the acknowledgment receipt e-mail sent by the Commission.

Any of the persons mentioned in the preceding paragraphs may access the copy of the *Application* on the Commission's official website at [www.erc.gov.ph](http://www.erc.gov.ph).

Finally, all interested persons may be allowed to join the scheduled initial virtual hearings by providing the Commission, thru [legal.virtualhearings@erc.ph](mailto:legal.virtualhearings@erc.ph), their respective e-mail addresses and indicating therein the case number of the instant *Application*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearings.



WITNESS, the Honorable Commissioners ALEXIS M. LUMBATAN, CATHERINE P. MACEDA, FLORESINDA G. BALDO-DIGAL, and MARKO ROMEO L. FUENTES, Energy Regulatory Commission, this 19<sup>th</sup> day of June 2023 in Pasig City.

  
MONALISA C. DIMALANTA  
Chairperson and CEO<sub>M</sub>



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