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

IN THE MATTER OF THE ADOPTION OF THE FEED-IN TARIFF (FIT) PURSUANT TO THE FEED-IN TARIFF RULES SPECIFIC TO THE EXISTING RENEWABLE ENERGY PLANTS

VIVANT-STA. CLARA NORTHERN RENEWABLES GENERATION CORPORATION (VSNRGC)
Applicant.
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ERC Case No. 2014-185 RC

Promulgated:
July 10, 2020

DECISION

Before the Commission for resolution is the *Application for the Adoption of the Feed-In Tariff (FIT) Pursuant to the Feed-In Tariff Rules Specific to the Existing Renewable Energy Plants* filed on 16 December 2014 by Vivant-Sta. Clara Northern Renewables Generation Corporation (VSNRGC).

In the said *Application*, VSNRGC alleged the following:

1. Applicant Vivant-Sta. Clara Northern Renewables Generation Corporation (VSNRGC) is a corporation duly organized and existing under the laws of the Republic of the Philippines with principal office address at Suite 907-908 Ayala Life-FGU Center, Cebu Business Park, Cebu City. Copies of VSNRGC's Certificate of Filing of Amended Articles of Incorporation, Fourth Amended Articles of Incorporation and 2013 General Information Sheet are attached as Annexes "A", "B" and "C", respectively.

2. Applicant is filing the instant *Application* for a specific FIT pursuant to the Feed-In-Tariff (FIT) Rules adopted by the Commission in Resolution No. 16, Series of 2010.

3. Under its previous name of Amlan Power Holdings Corporation (APHC), VSNRGC had been appointed as an Independent Power Producer Administrator (IPPA) in terms of the Electric Power Industry Reform Act of 2001 (R.A. No. 9136) over the Bakun Hydroelectric Power Plant (Bakun Plant).

4. The Bakun Plant is a 70 MW hydroelectric power plant located in Alilem, Ilocos Sur, which is currently the largest run-of-river hydropower plant in the Philippines. It is owned and operated by the Luzon Hydro Corporation (LHC) under a twenty five year

Build-Operate-Transfer (BOT) contract. A copy of the technical specifications is attached as Annex "D".

5. Pursuant to its agreement with the Power Sector Assets and Liabilities Management Corporation (PSALM), effective 23 February 2010, Applicant was given full authority to exercise the rights of the National Power Corporation (NPC) under the IPPA Agreement. A copy of NPC's letter to LHC is attached as Annex "E".

6. This *Application* is in accordance with the aforementioned FIT Rules, specifically Section 1.4 thereof, which provides that:

> xxx RE plants which have been in operation prior to the effectivity of R.A. No. 9513, may be granted lower FITs specific to them upon *Application* and hearing, and after a showing that:
>
> (a) Such FITs are indispensable for their continued operations;
>
> (b) There is no legal impediment for them to be allowed such FITs, such as the existence of a power supply agreement/power purchase agreement with any DU or End-User;
>
> (c) They have fulfilled such other requirements of the ERC.

A. THE SPECIFIC FIT SOUGHT IS INDISPENSABLE FOR THE CONTINUED OPERATIONS OF APPLICANT.

7. Applicant has been the IPPA of the Bakun Plant since 2010, an investment that was undertaken based on then prevailing market conditions. Certain developments have since put this investment at risk; the ongoing regulatory effort to control the WESM clearing price has been a double whammy to Applicant.

8. As a price-taker on the WESM, Applicant cannot dictate the rate since it cannot submit price bids. Previously, however, Applicant's average rate would be driven up due to the instances when it would dispatch energy at the maximum price of P62.00/kWh, mitigating the periods of low output. This is no longer the case with the reduction of the WESM Offer Price Cap from P62.00/kWh to P32.00/kWh and the introduction of a secondary cap.

9. Worse, the advent of the WESM price caps has made it even more difficult to secure bilateral contracts.

   a. Applicant had already been experiencing difficulty in entering into bilateral contracts because of the extreme variability in the output of the Bakun Plant; its capacity has ranged from 1 MW to 70MW. A copy of the available plant generation data is attached as Annex "F".

b. The situation has worsened because the need for bilateral contracts as a hedging device has decreased since market prices are already capped.

10. The bulk of the output of the Bakun plant is thus sold to WESM at rates that are insufficient to sustain operations. Based on its 2013 gross revenue, its average rate is only P3.91/kWh, which is much lower than both the March 2014 grid rate of P5.7395/kWh and the approved grid rate of P5.90/kWh.

11. This prevailing rate would make it impossible for Applicant to generate a cash flow that would cover the monthly payments it must pay to PSALM under its IPPA Agreement, let alone cover other operational expenses and allow any margin for investors.

12. Applicant has been incurring serious losses. Based on the audited financial statements of Applicant, it sustained a total net loss of P848,596,301 in 2013.

Total income (Loss)

2010	2011	2012	2013
P431,621,847	(P107,787,980)	P59,524,984	(P848,596,984)

13. In the past year, Applicant had to obtain financing to remain afloat. Its only hope of remaining financially viable is the adoption of the specific Feed-In-Tariff prayed for.

B. THERE IS NO LEGAL IMPEDIMENT FOR APPLICANT TO BE ALLOWED THE SPECIFIC FIT PRAYED FOR.

14. Applicant's sole bilateral contract is for only 15 MW of the 70MW capacity of the Bakun Plant. It contracted with the Trans-Asia Oil and Development Corp., a direct member of the Wholesale Electricity Spot Market (WESM) licensed by the Commission as a Wholesale Aggregator and as Retail Electricity Supplier.

15. The contract is however set to expire not later than 25 April 2015 and will not be renewed, as substantiated by the letter dated 11 November 2014 attached as Annex "G".

16. In view of the foregoing, there is no legal impediment to the issuance of the specific FIT prayed for, upon expiry of Applicant's bilateral contract.

C. APPLICANT HAS FULFILLED OTHER REQUIREMENTS OF THE ERC.

17. Applicant is the IPPA of the Bakun Plant, which is an eligible RE plant.

18. LHC, as the operator, was registered with the Department of Energy (DOE) "as a Renewable Energy (RE) Developer of 70 MW Bakun AC Hydroelectric Power Plant located in the Municipality

of Alilem, Ilocos Sur which is covered by Hydropower Service Contract (HSC) No. 2009-10-058," pursuant to R.A. 9513, the Renewable Energy Act of 2008. A copy of the Certificate of Registration is attached as Annex "H".

19. In compliance with Rule 6 of the ERC Rules of Practice and Procedure, Applicant has furnished the legislative body of Cebu City a copy of the present *Application* with all its annexes and accompanying documents. The proof of receipt is attached hereto as Annex "I".

20. Applicant has also caused the publication of the present *Application* in its entirety in a newspaper of general circulation within the Philippines. Copies of the newspaper and corresponding affidavit of publication are attached hereto as Annex "J" and its submarkings.

21. Applicant commits to comply with other requirements that may reasonably be required by the Commission in the course of the proceedings.

ALLEGATIONS IN SUPPORT OF THE SPECIFIC FIT SOUGHT

Applicant repleads the foregoing allegations and further states that:

22. Applicant proposes a specific FIT of P5.6715/kWh, which is lower than the approved FIT of P5.90/kWh.

23. The foregoing was computed in accordance with the consistent decisions of the Commission, including those in ERC Case No. 2012-035 RC[1] and ERC Case No. 2012-087 RC,[2] wherein the rate was computed to allow the IPPAs "to generate revenue sufficient to cover its monthly payments plus a margin equal to 16.44% post tax cost of equity."

24. This translates to a Weighted Average Cost of Capital (WACC) of 9.48%, using a debt-equity ratio of 70%-30% and assuming an interest rate of 6.5%, in line with recent borrowings of the Applicant.

25. The asset base was taken to be the monthly payments due pursuant to Schedule I of the IPPA Agreement. The working capital, on the other hand, was based on the 42 day requirement for the aforementioned monthly payments as well as the operational expenses (OPEX). Applying the WACC, Return on Capital and Return on Working Capital constitute the first two items in the derivation of the specific FIT.

26. The OPEX has two components.

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[1] In the Matter of the Application for Approval of the Power Supply Agreement (PSA) between Manila Electric Company (MERALCO) and Therma Luzon, Inc. (TLI) dated 17 December 2012;
[2] In the Matter of the Application for Approval of the Power Supply Agreement (PSA) between Manila Electric Company (MERALCO) and San Miguel Energy Corporation (SMEC) dated 17 December 2012;

a. The bulk of the OPEX is the Generation Payment Rate due on a monthly basis, pursuant to Schedule J of the IPPA Agreement.

b. Applicant also has its own administration expenses, denominated as OPEX Admin. An itemized list is herein attached as Annex "K".

27. A provision for depreciation as well as the aforementioned monthly payments were the last two items considered in the derivation of the specific FIT.

28. The financial model utilized a capacity factor of 43%, resulting in 264,289,200 kWh, which is slightly higher than the historical average output of the Bakun Plant, as indicated in Annex "F".

29. Applicant is also providing the applicable percentage of foreign capital (denominated in US dollars) vis-à-vis local capital for the purpose of annual adjustment for the entire period of applicability as provided in Section 2.10 of the FIT Rules.

ALLEGATIONS IN SUPPORT OF THE MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION

30. The first recital of Applicant's contract with the Trans-Asia Oil and Development Corp. provided for the term thereof. It however contains a confidentiality clause, and Applicant was allowed to disclose and submit the same only for the sole and limited purpose of the instant filing.

31. The IPPA Agreement likewise has a confidentiality clause embodied in Section 30 thereof. It was expressly provided therein that the "Parties agree that the provisions of this Agreement shall, subject to Clause 30.3 below, be treated as confidential and may not be disclosed to any third party without the other Party's consent."

32. The monthly payments due are embodied in specific Schedules that are part of the IPPA Agreement, and hence must also be kept confidential, although Applicant recognizes that these constitute integral parts of the financial basis for this *Application*.

33. Applicant thus submits to the Commission one copy of the following documents containing the information sought to be treated as confidential, placed in a sealed envelope:

ANNEX	DOCUMENT
"L"	Contract to Purchase Generated Energy
"M"	IPPA Agreement
"N"	Derivation of the proposed specific FIT
"O"	Percentage sharing between local and foreign capital

34. Applicant prays that these documents be treated as confidential, pursuant to Rule 4 of the ERC Rules.

PRAYER

WHEREFORE, premises considered, Applicant respectfully prays that, after hearing on the merits, a Decision be rendered PERMANENTLY APPROVING the implementation of the specific FIT of P5.6715/kWh and establishing the mechanism for the indexation of the said specific FIT, in accordance with the FIT Rules.

Other just and equitable reliefs are likewise prayed for.

The Commission, having found the said *Application* to be sufficient in form and substance with the required fees having been paid, issued an *Order* and a *Notice of Public Hearing*, both dated 09 February 2015, setting the case for the determination of compliance with the jurisdictional requirements, expository presentation, Pre-Trial Conference, and presentation of evidence on 21 April 2015.

However, on 15 April 2015, Applicant filed an *Urgent Motion to Reset Hearing* of even date, which was granted by the Commission in an *Order* dated 20 April 2015.

An *Order* with a *Notice of Public Hearing*, both dated 20 July 2015, was issued by the Commission setting the case anew for the determination of compliance with the jurisdictional requirements, expository presentation, Pre-Trial Conference, and presentation of evidence on 26 August 2015.

On 20 August 2015, Applicant filed its *Pre-trial Brief* with attached Judicial Affidavits.

During the 26 August 2015 hearing, only the Applicant appeared. No intervenor or oppositor appeared nor was there any petition for intervention or opposition that was filed.

At the start of the proceeding, in compliance with the Commission's directives contained in the *Order* dated 20 July 2015, Applicant presented proof of its compliance with the Commission's jurisdictional requirements, *to wit*:

1. *Affidavit of Publication*[3] executed by Teresita Z. Sorsogon, Advertising Supervisor of *The Daily Tribune,* attesting to the publication of the *Order* and the *Notice of Public Hearing* on the said newspaper;

2. Complete issue of *The Daily Tribune* newspaper dated 31 July 2015[4] wherein the *Notice of Public Hearing* was published thereof;

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[3] Exhibit "W";
[4] Exhibit "W-2";

3. Complete issue of *The Daily Tribune* newspaper dated 07 August 2015[5] wherein the *Notice of Public Hearing* was published thereof;

4. *Affidavit of Publication*[6] executed by Luzviminda T. Bugaoisan, Advertising Supervisor of *Malaya Business Insight,* attesting to the publication of the *Order* and the *Notice of Public Hearing* on the said newspaper;

5. Complete issue of *Malaya Business Insight* newspaper dated 31 July 2015[7] wherein the *Notice of Public Hearing* was published thereof;

6. Complete issue of *Malaya Business Insight* newspaper dated 07 August 2015[8] wherein the *Notice of Public Hearing* was published thereof;

7. *Certification*[9] issued by the Office of the Provincial Administrator, signed by Mark C. Tolentino, Provincial Administrator of Cebu;

8. *Certification*[10] issued by the Office of the Mayor of Cebu City, signed by Atty. Dominic A. Diño, Chief of Staff of the Mayor of Cebu;

9. *Affidavit of Service and Posting*[11] executed by Ariel B. Bautista, Senior Trading Specialist of VSNRGC dated 25 August 2015, attesting that the *Order* and *Notice of Public Hearing* were posted on the bulletin board of the Provincial Capitol of Ilocos Sur; and

10. *Affidavit of Service*[12] executed by Louie B. Del Mundo, Paralegal of the Cecilia R. Layug Law Office dated 25 August 2015, attesting that copies of the *Order* and *Notice of Public Hearing* were furnished with the Offices of the Solicitor General (OSG)[13], Commission on Audit (COA)[14], House Committee on Energy[15], and Senate Committee of Energy[16].

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[5] Exhibit "W-3";
[6] Exhibit "X";
[7] Exhibit "X-2";
[8] Exhibit "X-3";
[9] Exhibit "Y";
[10] Exhibit "Y-1";
[11] Exhibit "Z";
[12] Exhibit "AA";
[13] Exhibit "AA-1";
[14] Exhibit "AA-2";
[15] Exhibit "AA-3";
[16] Exhibit "AA-4";

The Clerk of the Commission verified that the submissions made by the Applicant complied with the Commission's publication and posting of notice requirements, in accordance with the *Order* dated 20 July 2015. Thus, the Commission declared that it acquired jurisdiction over the instant *Application*.

Thereafter, the Applicant conducted the expository presentation, discussing in detail the instant *Application*. The said presentation was conducted under oath and was made part of the testimony of the witness, Mr. Joseph A. Lua, Jr. (Mr. Lua), the Regulatory Manager of VSNRGC. Mr. Lua discussed the following: (1) the background of the *Application;* (2) the *Application;* (3) the legal bases; and (4) the justification for the *Application*.

At the end of the presentation, Applicant moved for a declaration of general default in light of the absence of any intervenor or oppositor. Likewise, Applicant moved to adopt the stipulation of facts and the issues stated in its *Pre-Trial Brief*. The Commission granted both motions and terminated the Pre-Trial Conference.

Applicant then proceeded with the presentation of evidence. Mr. Lua was presented by the Applicant as its first witnesses, who testified on the following matters: (1) the specific Feed-In Tariff (FIT) sought is indispensable for the continued operations of the Applicant; (2) the specific FIT was derived in accordance with the decisions of the Commission; (3) the proposed annual adjustment is justified; and (4) other matters material and relevant to the proceeding.

The foregoing testimony is contained in Mr. Lua's *Judicial Affidavit* which he identified together with his signature thereon and which were duly marked as Exhibits "Q" and "Q-1", respectively.

Applicant then presented its second witness, Mr. Theo C. Sunico (Mr. Sunico), General Manager of VSNRGC. Mr. Sunico testified on the following matters: (1) the lack of legal impediment for the Applicant to be granted the specific Feed-In Tariff sought; (2) the fulfillment by the Applicant of the requirements of the Commission; (3) the proposed FIT period is justified; and (4) other matters material and relevant to the proceeding.

The foregoing testimony is contained in Mr. Sunico's *Judicial Affidavit* which he identified together with his signature thereon and which were duly marked as Exhibits "P" and "P-1", respectively.

The direct examinations having been terminated, the Commission propounded clarificatory questions to the witnesses.

Following the end of the presentation of evidence, the Commission directed the Applicant to submit the following documents, together with

its Formal Offer of Evidence (FOE), within fifteen (15) days from the said hearing:

1. The Environmental Compliance Certificate (ECC);

2. The Certificate of Compliance (COC) issued by the Commission;

3. The audited financial report;

4. The detailed breakdown of project cost and operating expenses;

5. The True Cost of Generation Rate and Summary Billing for 2010 to 2014; and

6. The comparison with assumptions utilized under the Energy Regulatory Agency-Approved FIT.

In compliance with the said directive, Applicant VSNRGC filed on 10 September 2015 a *Compliance* dated 09 September 2015, wherein it submitted the following documents, *to wit:*

Exhibit	Documents
"CC"	Environmental Compliance Certificate (ECC)
"DD"	Certificate of Compliance (COC) No. 13-07-GXT 17-0017L
"EE"	Audited Financial Statements for the year ended 31 December 2010
"FF"	Audited Financial Statements for the year ended 31 December 2012
"GG"	Audited Financial Statements for the year ended 31 December 2013
"HH"	Non-Negotiable Promissory Note
"II"	CD
"JJ"	Parameters and Assumptions
"KK"	2010-2014 kWh Sold and Revenue
"LL"	2010 Actual Bills
"MM"	2011 Actual Bills
"NN"	2012 Actual Bills
"OO"	2013 Actual Bills
"PP"	2014 Actual Bills

On 30 September 2015, Applicant filed its *FOE*. In the said *FOE*, Applicant formally offered the following exhibits:

Exhibit	Documents	Purpose
		To prove that:
"A"[1]	Certificate of Filing of Amended Articles of Incorporation	Applicant Northern Renewables has the requisite juridical personality to pursue the instant *Application*.
"B"[1]	Fourth Amended Articles of Incorporation	Same as above.
"C"[1]	2013 General Information Sheet	Same as above.
"D"[1]	Power Plant (plant description)	The Bakun AC Hydro Electric Power Plan is a 70 MW "Run-Of-River hydroelectric plant with certain technical characteristics.
"E"[1]	*Letter* dated 18 January 2010, from the National Power Corporation	Effective 23 February 2010, Applicant was given full authority to exercise the rights of the National Power Corporation (NPC) over the Bakun Hydroelectric Power Plant Project.
"F"[1]	Bakun AC Historical Kwhr Generation	The utilized capacity factors of 43% is within historical levels, but is slightly higher than the adjusted average output of the Bakun Plant.
"G"[1]	*Letter* dated 11 November 2014 from Trans-Asia Oil & Energy Development	Applicant's sole bilateral contract expired on 25 April 2015.
"H"[1]	Certificate of Registration	The Luzon Hydro Corporation, as the operator, was registered with the Department of Energy (DOE) "as a Renewable Energy (RE) Developer of 70 MW Bakun AC Hydroelectric Power Plant located in the Municipality of Alilem, Ilocos Sur which is covered by Hydropower Service Contract (HSC) No. 2009-10-058," pursuant to R.A. 9513, the Renewable Energy Act of 2008.
"I"[1]	Affidavit of Service	Applicant furnished the legislative body of Cebu City a copy of the *Application* with all of its Annexes, in compliance with Rule 6 of the ERC Rules of Practice and Procedure.
"J"[1]	Affidavit of Publication	The entire *Application* was published on 29 November 2014 in *The Daily Tribune,* a newspaper of general circulation within the Philippines, in compliance with the pre-filing requirements of the Commission.
"J-1"	Clipping of the *Application*	Same as above.
"J-2"[1]	Copy of *The Daily Tribune* dated 29 November 2014	Same as above.

Exhibit	Documents	Purpose
"K"[1]	Account Reference	The annual administrative expenses utilized in the derivation of the proposed specific FIT, totaling P56,895,966.00, is more than justified.
"L"[2]	Contract to Purchase Generated Energy	Applicant's sole bilateral contract expired on 25 April 2015.
"M"[2]	IPPA Agreement	Northern Renewables is required to make monthly payments until 26 January 2026.
"N"[2]	Derivation of the proposed specific FIT	A specific FIT of P5.6715/kWh is justified.
"O"[2]	Percentage sharing between local and foreign capital	The proposed indexation covers only OPEX Admin and the amortization in US dollars.
"P"[1]	*Judicial Affidavit* of Theo C. Sunico	(1) There is no legal impediment for Applicant VSNRGC to be granted the specific Feed-In Tariff sought; and (2) Applicant VSNRGC has fulfilled the requirements of the Commission.
"Q"[1]	*Judicial Affidavit* of Joseph Lua	(1) The specific Feed-In Tariff (FIT) sought is indispensable for the continued operations of Applicant VSNRGC; (2) The specific FIT was derived in accordance with the decisions of the Commission; (3) The proposed annual adjustment is justified.
"R"[1]	Secretary's Certificate	The instant *Application* was duly authorized by VSNRGC, with the Corporation's President, Arlo Angelo G. Sarmiento, authorized to verify the *Application*.
"S"[1]	Verification	Arlo G. Sarmiento properly verified the *Application*.
"T"[1]	Northern Renewables Cash Flow	The adoption of a specific FIT is indispensable for the continued operations of the Bakun Plant.
"U"[1]	Audited Financial Statements for the year ended 31 December 2014	The Cash Flow is based on audited numbers.
"V"[1]	Audited Financial Statements for the year ended 31 December 2011	In 2010, Northern Renewables registered total energy revenues of P1,456,508,219 covering only ten months of trading.
"W"[3]	*Affidavit of Publication* executed by Teresita Z. Sorsogon, Advertising Supervisor of *The Daily Tribune*	The *Notice of Public Hearing* was published in *The Daily Tribune* on 31 July and 7 August 2015 in compliance with the *Order* of the Commission 20 July 2015 directing Vivant and Sta. Clara Northern Renewables Generation

Exhibit	Documents	Purpose
		Corporation "to cause the publication of the attached Notice of Public Hearing, at their own expense, twice (2x) for two successive weeks in two (2) newspapers of general circulation in the Philippines, with the date of last publication to be made not later than ten (10) days before the scheduled date of initial hearing".
"W-1"[3]	Clipping of Notice of Public Hearing in "*The Daily Tribune*"	Same as above.
"W-2"[3]	"*The Daily Tribune*" issue dated 31 July 2015 where the Notice of Public Hearing appears	Same as above.
"X"[3]	*Affidavit of Publication* executed by Luzviminda T. Bugaoisan, Advertising Supervisor "*Malayan Business Insight*"	The *Notice of Public Hearing* was published in *Malaya Business Insight* on 31 July and 7 August 2015 in compliance with the *Order* of the Commission 20 July 2015 directing Vivant and Sta. Clara Northern Renewables Generation Corporation "to cause the publication of the attached Notice of Public Hearing, at their own expense, twice (2x) for two successive weeks in two (2) newspapers of general circulation in the Philippines, with the date of last publication to be made not later than ten (10) days before the scheduled date of initial hearing."
"X-1"[3]	Clipping of Notice of Public Hearing in the *"Malaya Business Insight"*	Same as above.
"X-2"[3]	*"Malaya Business Insight"* issue dated 31 July 2015 where the Notice of Public Hearing appears	Same as above.
"X-3"[3]	*"Malayan Business Insight"* issue dated 7 August 2015 where the Notice of Public Hearing appears	Same as above.
"Y"[3]	*Certification* issued by Office of the Provincial Administrator, signed by Mark C. Tolentino, Provincial Administrator	The *Order* and *Notice of Public Hearing* was posted on the bulletin boards of the Cebu Provincial Capitol and Cebu City Hall.
"Y-1"[3]	*Certification* issued by Office of the Mayor of Cebu City, signed by Atty. Dominic A. Diño, Chief of Staff	Same as above.
"Z"[3]	*Affidavit of Service and Posting*	The *Order* and *Notice of Public Hearing* was posted on the bulletin board of the Provincial Capitol of Ilocos Sur.

Exhibit	Documents	Purpose
"AA"[3]	*Affidavit of Service*	Copies of the *Order* and the *Notice of Public Hearing* were furnished to the said offices.
"AA-1"[3]	Office of the Solicitor General (OSG) Registry Receipt	Same as above.
"AA-2"[3]	Commission on Audit (COA) Registry Receipt	Same as above.
"AA-3"[3]	House of Representatives Committee on Energy Registry Receipt	Same as above.
"AA-4"[3]	Senate Committee on Energy Registry Receipt	Same as above.
"BB"	Expository Presentation of Joseph Lua	The specific FIT sought is justified.
"CC"[4]	Environmental Compliance Certificate (ECC)	The Bakun Plant has been granted an ECC.
"DD"[4]	Certificate of Compliance (COC) No. 13-07-GXT 17-0017L	The Bakun Plant has an existing COC granted by the Commission, which is valid for a period of five (5) years from the date of issuance on 22 July 2013.
"EE"[4]	Audited Financial Statements for the year ended 31 December 2010	A specific FIT is indispensable for the continued operations of Applicant.
"FF"[4]	Audited Financial Statements for the year ended 31 December 2012	Same as above.
"GG"[4]	Audited Financial Statements for the year ended 31 December 2013	Same as above.
"HH"[4]	Non-Negotiable Promissory Note	The debt component of the proposed WACC is justified.
"II"[4]	CD	The specific FIT sought has factual and legal basis.
"JJ"[4]	Parameters and Assumptions	The specific FIT sought is justified considering that, whenever comparable, the parameters and assumptions utilized by Applicant favorably compare to that approved by the Commission in ERC Case No. 2011-006 RM.
"KK"[4]	2010-2014 kWh Sold and Revenue	The specific FIT sought has factual basis.
"LL"[4]	2010 Actual Bills	Same as above.
"MM"[4]	2011 Actual Bills	Same as above.
"NN"[4]	2012 Actual Bills	Same as above.
"OO"[4]	2013 Actual Bills	Same as above.
"PP"[4]	2014 Actual Bills	Same as above.

[1] On record, submitted as part of the Pre-Trial Brief filed on 20 August 2015.
[2] No copy is attached; previously submitted as part of the *Application* with prayer for confidential treatment of information.
[3] On record, submitted as part of the Compliance dated 26 August 2015.
[4] On record, submitted as part of the Compliance dated 15 September 2015.

** The allegations stated herein were directly lifted from the FOE of Applicant.*

On 07 May 2018, VSNRGC filed a *Legal Memorandum (with Leave of Court)* dated 04 May 2018.

On 27 February 2020 and 13 March 2020, respectively, VSNRGC filed a "*Manifestation*" and "*Ex-Parte Manifestation*" stating, among others, that PSALM has approved its Revised Payment Plan as stated in the letter of PSALM to VSNRGC dated 12 November 2019.

On 01 June 2020, the Applicant filed an *Ex-Parte Omnibus Motion* with even date. In the said motion, it prayed for the withdrawal of the motion for confidential treatment of certain annexes on the ground of being moot, and the immediate and early resolution of the *Application*.

On 05 June 2020, the Commission issued an *Order* dated 03 June 2020 granting the withdrawal of its motion for confidential treatment of information, and took note of the prayer for the immediate resolution of the instant *Application*.

The Commission, having found the exhibits contained in the Applicant's *FOE* and all its submissions relevant and material in the final resolution of this case, admitted the same and declared the case submitted for resolution.

COMMISSION'S RULING

After due deliberation and thorough evaluation of the documents submitted and information gathered by the Commission pursuant to its regulatory powers, the Commission resolves to **APPROVE** the instant application.

DISCUSSION

Despite the existence of the Mini-Hydro Law since September 1991[17] and the OSW Law since December 1997[18], as of December 31, 2009, there are in existence only 105MW of mini-hydro, 1MW of solar and 33 MW of wind power plants all over the country. These laws did not achieve their stated objectives to develop these RE resources, which have remained in their infancy.

The main reason for the growth and abundance in other countries of power plants using aforementioned RE Resources is the establishment of either a FIT system and/or a Renewable Portfolio Standard (RPS). To institutionalize the FIT System, the RPS, and to reduce the country's

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[17] Republic Act No. 7156, An Act Granting Incentives to Mini-Hydroelectric Power Developers and for Other Purposes

[18] Executive Order No. 462, as amended by E.O. 232, Enabling Private Sector Participation in the Exploration, Development, Utilization, and Commercialization of Ocean, Solar and Wind Energy Resources for Power Generation and Other Energy Uses

dependence on fossil fuels and increase the use of renewable energy, Republic Act No. 9513 (RA 9513), *An Act Promoting the Development, Utilization and Commercialization of Renewable Energy Resources and For Other Purposes* was enacted by Congress. Otherwise known as the "Renewable Energy Act of 2008", said law was approved on 16 December 2008.

The objectives which the law seeks to accomplish can be deduced from Section 2 thereof which enumerates the State's declared policies as follows:

> SEC. 2. Declaration of Policies. – It is hereby declared the policy of the State to:
>
> a. **Accelerate the exploration and development of renewable energy resources** such as, but not limited to, biomass, solar, wind, hydro, geothermal and ocean energy sources, including hybrid systems, to achieve energy self-reliance, through the adoption of sustainable development strategies to reduce the country's dependence on fossil fuels and thereby minimize the country's exposure to price fluctuations in the international markets, the effects of which spiral down to almost all sectors of the economy;
>
> b. **Increase the utilization of renewable energy** by institutionalizing the development of national and local capabilities in the use of renewable energy systems, and promoting its efficient and cost-effective commercial application **by providing fiscal and non-fiscal incentives**;
>
> c. **Encourage the development and utilization of renewable energy resources** as tools to effectively prevent or reduce harmful emissions and thereby balance the goals of economic growth and development with the protection of health and the environment; and
>
> d. Establish the necessary infrastructure and mechanism to carry out the mandates specified in this Act and other existing laws.

One of the mechanisms put in place to achieve the avowed policies of the state is the Feed-In Tariff (FIT) System.

Section 7 of RA 9513 reads:

> SEC. 7. Feed-in Tariff System. – To accelerate the development of **emerging renewable energy resources, a feed-in tariff system for electricity produced from wind, solar, ocean, run-of-river hydropower and biomass is hereby mandated**. Towards this end, the ERC in consultation with the National Renewable Energy Board (NREB) created under Section 27 of this Act shall formulate and

promulgate feed-in tariff system rules within one (1) year upon the effectivity of this Act which shall include, but not limited to, the following:

(a) Priority connections to the grid for electricity generated from **emerging renewable energy resources such as wind, solar, ocean, run-of-river hydropower and biomass power plants** within the territory of the Philippines;

(b) The priority purchase and transmission of, and payment for, such electricity by the grid system operators;

(c) Determine the fixed tariff to be paid to electricity produced from **each type of emerging renewable energy** and the mandated number of years for the application of these rates, which shall not be less than twelve (12) years;

(d) The feed-in tariff to be set shall be applied to the **emerging renewable energy** to be used in compliance with the renewable portfolio standard as provided for in this Act and in accordance with the RPS rules that will be established by the DOE. (Emphasis supplied.)

Feed-In Tariff (FIT) for Emerging RE Resources

In order to determine which type of technology will benefit from the FIT System provided under the law, it is necessary to define the term "emerging renewable energy resources".

The principle on statutory construction mandates that a word in a statute should not be taken out of context from the words that particular word is associated with in a provision, to wit:

"Moreover, under the maxim *noscitur a sociis*, where a particular word or phrase is ambiguous in itself or is equally susceptible of various meanings, its correct construction may be made clear and specific by considering the company of words in which it is founded or with which it is associated. ***This is because a word or phrase in a statute is always used in association with other words or phrases, and its meaning may, thus, be modified or restricted by the latter.*** The particular words, clauses and phrases should not be studied as detached and isolated expressions, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole. A statute must be so construed as to harmonize and give effect to all its provisions whenever possible. In short, every meaning to be given to each word or phrase must be ascertained from the context of the body of the statute since a word or phrase in a statute is always used in association with other words or phrases and its meaning may be modified or restricted by the latter." (*Chavez v. JBC ,et al GR No. 202242, July 17, 2012, citing Uy v. Sandiganbayan, 407 Phil. 154, 180 (2001).*

As can be gleaned from the aforecited Section 7 of RA 9513, the term emerging renewable energy resources are associated with the words *"such as wind, solar, ocean, run-of-river hydropower and biomass"*. It is likewise clear from the first sentence of Section 7 that feed-in tariff is mandated for electricity produced from wind, solar, ocean, run-of-river hydropower and biomass. Hence, emerging renewable energy resources refer to the following: wind, solar, ocean, run-of-river hydropower and biomass.

FIT Rules

It is well-settled in our jurisdiction that while the making of laws is a non-delegable power that pertains exclusively to Congress, nevertheless, the latter may constitutionally delegate the authority to promulgate rules and regulations to implement a given legislation and effectuate its policies, for the reason that the legislature finds it impracticable, if not impossible, to anticipate situations that may be met in carrying the law into effect.[19] In fact, with the proliferation of specialized activities and their attendant peculiar problems, the national legislature has found it more and more necessary to entrust to administrative agencies the authority to issue rules to carry out the general provisions of the statute. This is called the "power of subordinate legislation."[20] ***With this power, administrative bodies may implement the broad policies laid down in a statute by "filling in" the details which the Congress may not have the opportunity or competence to provide.***[21] (Emphasis supplied.)

RA 9513 mandated the ERC, in consultation with the NREB to formulate and promulgate the feed-in tariff rules. Consequently, on 12 July 2010, the Commission promulgated Resolution No. 16, Series of 2010, entitled Resolution Adopting the Feed-In Tariff Rules.

Section 1.4 of the FIT Rules provided for the scope of its applicability. It states:

> Subject to paragraph 3 hereof, the FITs to be established and approved pursuant to these Rules shall be specific for each emerging renewable energy technology and to be applied only to generation facilities which enter into commercial operation after effectivity of the FITs or to such parts of such existing facilities which have been substantially modified or expanded as described in Section 3. All Eligible RE Plants shall be entitled to the appropriate FITs as established and such FITs shall be paid by all On-Grid electricity consumers according to the FIT system established in these Rules.

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[19] Conference of Maritime Manning Agencies, Inc. v. Philippine Overseas Employment Administration, G.R. No. 114714, [April 21, 1995], 313 PHIL 592-611.
[20] Eastern Shipping Lines, Inc. v. Philippine Overseas Employment Administration, G.R. No. 76633, [October 18, 1988], 248 PHIL 762-776
[21] Quezon City PTCA Federation, Inc. v. Department of Education, G.R. No. 188720, [February 23, 2016], 781 PHIL 399-474

> RE plants that have been in commercial operation before the FITS are established by the ERC pursuant to the Rules are not qualified for such FITs: Provided, however, that RE plants, which have started commercial operations after the effectivity of the R.A. 9513 and are not bound under any contract to supply the energy they generate to any DU or consumer, may avail of FITs from the time they are certified by ERC as eligible through an amendment of the COC issued to them and for a period of twenty (20) year less the number of years they have been in operation. Provided, further, that RE Plants, which have been in operation prior to the effectivity of R.A. No. 9513, may be granted lower FITs specific to them upon application and hearing, and after a showing that:
>
> (a) Such FITs are indispensable for their continued operations;
>
> (b) There is no legal impediment for them to be allowed such FITs, such as the existence of a power supply agreement/power purchase agreement with any DU or End-user; and
>
> (c) They have fulfilled such other requirements of the ERC.

Based from foregoing, the FIT Rules has identified three situations wherein an emerging renewable energy resource may be eligible to the FIT:

> (1) those which have entered into commercial operations after the establishment of the FITs;
> (2) those which have entered into commercial operations after the effectivity of RA 9513 and before the establishment of the FITs; and
> (3) those which have been in commercial operations prior to the effectivity of RA 9513.

A perusal of RA 9513 would show that entitlement to FIT is allowed for emerging renewable energy resources; however, it does not explicitly provide that emerging energy resources which are in existence prior to the effectivity the Act are deemed excluded.

The Commission, in promulgating the FIT Rules, clarified and recognized that some emerging renewable energy resources which have been in existence prior to the effectivity of RA 9513 would be entitled to the FIT, albeit a lower one and specific to it, provided that it concurs with the conditions imposed by the Rules.

As a reiteration, Section 2(x) of the 2014 Revised COC Rules provides the following:

> x. A generation Company operating an RE Plant which started commercial operations prior to the effectivity of R.A. 9513 may be granted a lower FIT specific to it upon application and

hearing, and after a showing of its compliance with the requirements of Section 1.4 of the FIT Rules. Such Generation Company shall be entitled to the lower FIT for a specified period, upon amendment of the COC previously issued to it, in accordance with the decision of the Commission.

Under the above circumstances, no COE for FIT Eligibility shall be required from the DOE to the issuance by the ERC of a FIT Eligible COC.

Since the RE Law did not exclude existing RE Plants from its coverage, neither did the Commission's FIT Rules and COC Rules exclude them. In the exercise of its delegated authority to promulgate the FIT system rules in consultation with the NREB, what the Commission did was to prescribe conditions before they can be admitted into the FIT system. Accordingly, before these plants can qualify under the FIT system, there must be a showing that:

(a) Such FITs are indispensable for their continued operations;

(b) There is no legal impediment for them to be allowed such FITs, such as the existence of a power supply agreement/power purchase agreement with any DU or End-user; and

(c) They have fulfilled such other requirements of the ERC.

These conditions underscore the need for the Commission to first assess whether the plant's inclusion into the FIT system is absolutely necessary. Without the support that the FIT system shall provide, their viability to continue their operations, to continue their utilization of natural resources and provision of clean energy, will be compromised.

If, without the FIT system support, the existing plant is forced to shut down, its capacity then could no longer be utilized to generate renewable energy. This represents a reduction in the country's total installed RE capacity and generation, a step backward from the attainment of its set national targets. This is to the avowed policies and purposes of the FIT system, which aims to: *"xxxx (b) Increase the utilization of renewable energy by institutionalizing the development of national and local capabilities in the use of renewable energy systems, and promoting its efficient and cost-effective commercial application by providing fiscal and non-fiscal incentives; and (c) Encourage the development and utilization of renewable energy resources as tools to effectively prevent or reduce harmful emissions and thereby balance the goals of economic growth and development with the protection of health and the environment."* (*Section 2, RA 9513*)

Hence, for the country to maintain its level of renewable energy installed capacity and generation, and offset the lost generation of the

existing plant that is forced to shut down, it will need new capacities to be built. Since these new capacities will be built based on the fixed technology-FITs, which are higher than what the existing RE plants would have required to make them viable to continue operating, it becomes more expensive to support the policy objectives as cited above. Whether existing or new plants, they equally contribute to preventing or reducing harmful emissions and protecting health and the environment.

Pursuant to the above discussed relevant laws, rules and regulations, herein Applicant filed the instant Application to apply for a special FIT rate for the Bakun Hydroelectric Power Plant.

Overview of the Bakun Hydroeletric Power Plant (Bakun Plant)

The Bakun Plant is a 74.80 MW rated capacity hydroelectric power plant located in Alilem, Ilocos Sur. It is currently the largest run-of-river hydroelectric power plant in the Philippines. It is owned and operated by the Luzon Hydro Corporation (LHC) under the Power Purchase Agreement (PPA) with the National Power Corporation (NPC) entered on 24 November 1996 on a Build-Operate-Transfer (BOT) scheme (The PPA between LHC and NPC is herein referred to as the "*IPP contract*"). Under the PPA, LHC shall deliver to NPC all electricity generated by the Bakun Plant over a cooperation period of 25 years until 05 February 2026.

LHC started the commercial operation of the Bakun Plant on 01 September 2001. It was first issued a Certificate of Compliance (COC) by the Commission on 27 August 2003 under COC No. 03-08-GXT 17-0017 in the name of LHC, and the COC was renewed on 29 July 2008. The COC of the said plant was again renewed on 22 July 2013 and 20 June 2018 under COC No. 13-07-GXT 17-0017L and 18-06-M-00017L, respectively, with validity until 29 July 2018 to 29 July 2023.

On 23 October 2009, LHC was registered with the Department of Energy (DOE) as a Renewable Energy (RE) Developer pursuant to Republic Act No. 9153 (the Renewable Energy Act of 2008), and was issued Registration No. HSC 2009-10-058 dated 01 February 2010. Thus, the Bakun Plant, being a run-of-river hydroelectric power plant operating under the RE Law, was accorded a "must-dispatch" priority based on available energy.

VSNRGC as Independent Power Producer Administrator (IPPA)

Pursuant to Section 51 (c) of Republic Act No. 9136 (RA 9136), otherwise known as the Electric Power Industry Reform Act of 2001 or EPIRA, PSALM has the power to take title to and possession of the IPP Contracts and to appoint, after a competitive, transparent and public

bidding, qualified independent entities who shall act as the IPP Administrators (IPPA).

On 29 December 2009, the Power Sector Assets and Liabilities Management Corporation (PSALM) concluded an Administration Agreement with Amlan Power Holdings Corporation[22] (APHC, now VSNRGC) and appointed the same as the IPPA in respect of the capacity of the Bakun Plant, which was contracted to NPC (PSALM) pursuant to the PPA, dated 24 November 1996, between NPC and LHC.

On 18 January 2010, NPC informed LHC of the IPPA Agreement between PSALM and VSNRGC effective 23 February 2010, and instructed the same of the rights of APHC (VSNRGC) as administrator and representative of NPC.

In consideration of the foregoing, as stipulated under Annex 1 of Schedule I of the Administration Agreement, VSNRGC was bound to pay PSALM the Monthly Payments in US Dollar (USD) and Philippine Peso and monthly Generation Payment of PhPo.80/kWh under Schedule J, based on the actual generation (WESM Metered Quantity) measured during the month from the Power Station as recorded by the WESM Meter. Since VSNRGC is the IPPA over the Bakun Plant, it was duly registered with the Philippine Electricity Market Corporation (PEMC) as a Direct Member on 23 February 2010.

VSNRGC, as an IPP Administrator Of the Bakun Plant, is entitled to a Reasonable FIT

An IPP Administrator is defined as a "qualified independent entity appointed by PSALM who shall administer, conserve and manage the contracted energy output of the National Power Corporation Independent Power Producer ("IPP") contracts.[23]

Under Section 33 of the IPPA Agreement, VSNRGC has the obligation to "administer the IPP Agreement on behalf of the IPP Counterparty and shall have and accept full risk, responsibility and liability in respect of those activities (and its acts and omissions in relation to them) and shall indemnify PSALM and/or on request from PSALM, NPC accordingly." Thus, the risk of finding a market for the capacity of Bakun Plant – whether through bilateral contract, WESM or FIT System– is borne exclusively by VSNRGC.

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[22]PSALM was formally informed of the change in the corporate name of APHC to VSNRGC, with no substantial change in ownership or stockholdings ,through a letter dated 09 June 2011. The change of the corporate name was effected by amending its Articles of Incorporation with the Securities and Exchange Commission (SEC), as indicated in the Certificate of Filing of Amended Articles of Incorporation dated 08 April 2011.

[23] Section 4 (ff) of RA 9136

In the instant case, VSNRGC is the IPP Administrator having been appointed by PSALM, after competitive bidding, to administer and manage the 74.8 MW rated capacity of the Bakun Hydroelectric Power Plant (Bakun Plant) by virtue of the Independent Power Producer Administration Agreement (IPPAA).[24]

The IPPAA is a contract between an Administrator and PSALM that allows the Administrator to administer and manage the output from the Power Purchase Agreement (PPA) that NPC entered into with the Independent Power Producer (Luzon Hydro Corporation). It enables the Administrator to pay the monthly fees, both for the opportunity to trade the energy produced by the plant, and the payments for the physical assets, out of cash flow. Thus, no upfront financing is required.[25]

At the end of the term of the IPPAA, the physical asset is turned-over to the Administrator who then becomes the owner and possessor of the Power Station, in this case the Bakun Plant. Even as VSNRGC is not a builder, developer, or operator of the Bakun Plant but an Administrator thereof, the IPPAA has shifted to the Administrator a significant degree of risk that deserves a different look at the spirit and intention of RA 9513, and corollarily, the FIT Rules.

Under the IPPAA, VSNRGC exercises significant and powerful functions as an Administrator of the Bakun Power Plant. It assumed full authority to exercise the rights, obligations and responsibilities of NPC under the PPA with LHC, to wit:

a. The right and obligation to manage and control the Capacity for its own account and at its own cost and risk;

b. The right to trade, sell or otherwise deal with the Capacity (whether pursuant to the spot market, bilateral contracts with third parties or otherwise) and contract for or offer related ancillary services, in all cases for its own account and at its own risk and cost. Such rights shall carry the rights to receive revenues arising from such activities without obligation to account therefor to PSALM or any third party, save as expressly provided in the Administration Agreement or in the IPP Agreement;

c. The rights and remedies identified in Schedule B (Administration Rights and Obligations) of the Administration Agreement, including the right to

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[24] IPPA signed by VSNPRGC and PSALM on December 15, 2019
[25] https://www.psalm.gov.ph/ippaadministration

receive a transfer of the Power Station in accordance with paragraph 9 thereof on expiry of said Agreement;

d. The right to receive a transfer of the Power Station in accordance with Clause 23 (Transfer of Power Station and Rights to Land) pursuant to an election under Clause 19.4.3 of the Administration Agreement; and

e. Within PSALM's ability to grant, the rights which are reasonably necessary for or incidental to the Administrator's performance of its obligations under Clause 4.2 (Administrators Obligations) of the Administration Agreement.

Based on the foregoing, VSNRGC can sell or otherwise dispose of the capacity of the Bakun Plant that it manages and administers. All risk, responsibility, and liability in respect of all activities pertaining to the administered capacity is borne by VSNRGC.

It must be noted that at the end of the term of the IPPA (i.e. February 2026), VSNRGC becomes the owner and possessor of the Bakun Plant. At the Transfer Date, PSALM will sign a Deed of Sale with VSNRGC over the Bakun Plant. The Transfer Date is at the same time, the end of the term of the PPA between NPC and LHC. Hence, everything that VSNRGC performs and undertakes under the IPPAA is geared toward being the ultimate owner of the Bakun Plant at Transfer Date. The payments to PSALM that VSNRGC have been made were in the nature of installments for the purchase of the Bakun Plant.

To reiterate, the declaration of policies under RE Law refer *all* available RE resources, for purposes of achieving energy independence and protecting the environment, by providing fiscal and non-fiscal incentives. RE Law provides the clear spirit and intention of Congress to extend the benefit of the fiscal incentives not only to the RE generators but also to the Administrator of the capacity of RE facilities, after all, existing and new RE plants alike would contribute to the achievement of these objectives.

As for VSNRGC's standing to apply for inclusion in the FIT system and for a specific FIT for the Bakun Plant, the Commission recognizes that COCs issued in favor of IPPs are deemed issued also in favor of the respective IPPA. *Section 2(ii) of ERC Resolution No. 16, Series of 2014* provides that:

ii. The application for a COC shall be in the name of the person or entity owning the Generation Facilities used in the Generation of Electricity.

For purposes of this Section, the person or entity owning the Generation Facility is understood to be the person or entity

> having legal title to the same. In such case, the person or entity shall apply for, and the COC shall be issued in its name, Provided: That, in case the Generation Facility is operated by a person or entity other than the owner, to the extent that the former controls the output of the facility, enters into supply agreements with energy off-takers, or enters into such other similar arrangements, the ERC reserves the authority to determine in whose name application for the issuance of a COC should be made. **However, for Generation Facilities covered by the National Power Corporation Independent Power Producer Contracts (NPC-IPP Contracts), the ERC shall consider the COCs issued to the IPPs of the said Generation Facilities as deemed issued also in favor of the respective IPP Administrators (IPPAs), if any, for purposes of enforcement of, and compliance with, these Revised Rules. Thus, the IPPAs shall comply with the provisions of the PGC, PDC, WESM Rules and applicable rules and regulations of the ERC for the duration of the COC.**

This provision of the 2014 Revised COC Rules is consistent with VSNRGC's right (and corresponding obligation) to manage and control capacity for the Bakun Plant. In fact, the management and control of the capacity is at VSNRGC's own account, cost and risk (*Section 4.1.1, IPPA*). Thus, an IPPA should not be prevented from applying for a FIT-COC for its own name and account since it absorbs all risk in respect of the generated capacity of the Plant. Notably, there is nothing in the IPPA which prevents VSNRGC from availing of Section 1.4 of the Commission's FIT Rules.

All the Conditions Required under Section 1.4 of the FIT Rules for FIT Entitlement are present in the case of VSNRGC

Under the FIT Rules, the Commission is empowered to determine and certify the eligibility of RE Plants to a FIT, specific to each emerging RE technology, through the issuance of a FIT COC. The Commission may also grant lower FITs specific to existing RE Plants upon showing compliance with all the requirements under the FIT Rules. Such is the case of VSNRGC's Bakun Plant.

In order to be entitled to a FIT specific to existing RE Plants, three conditions must be met, namely: (1) Such FITs are indispensable for their continued operations; (2) There is no legal impediment for them to be allowed such FITs, such as the existence of a power supply agreement/power purchase agreement with any DU or End-user; and (3) They have fulfilled such other requirements of the ERC.

1. The FIT is indispensable for VSNRGC's continued operation.

In its Application, VSNRGC alleged that, currently, it has no existing Power Supply Agreement with any Distribution Utilities. Its only source of revenue for the capacity of the Bakun Plant is from the WESM. VSNRGC further alleged that if they cannot have this assurance of cost recovery through the FIT System and merely trade in the WESM, Bakun would, most likely, not be able to continue operations.

VSNRGC, likewise mentioned, that it has been incurring serious losses and has sustained a total net loss of P848,596,301 in 2013. Further, VSNRGC asserts that it was forced to obtain financing to remain afloat. Its only hope of remaining financially viable is the adoption of the specific Feed-In-Tariff prayed for.

In allowing a specific FIT for a particular RE Plant, the Commission is guided by the policies allowing investors to recover a reasonable return on their investment. Thus, the determination of specific FITs for these plants is based on cost recovery taking into account the reasonable costs incurred. This is not any different from allowing the generation company with a bilateral contract with a distribution utility (DU) to charge a price based on its costs plus a reasonable return.

Further, the policy of allowing an IPPA to recover reasonable costs, including its payment to PSALM, has been resolved by the Commission in approving the Power Supply Agreements (PSAs) entered into by these IPPAs and distribution utilities.

However, in the case of VSNRGC, it has no construction cost to recover for the Bakun Plant but has to pay scheduled monthly amortizations to PSALM for a period of fifteen (15) years, which is comparable to the cost of building a run-of-river hydro plant. The scheduled monthly amortizations to PSALM under Schedule I and Schedule J of the Application are the major consideration of the specific FIT prayed for by VSNRGC. Under its proposed specific FIT of PhP5.6715/kWh, the total monthly amortizations to PSALM is PhP4.9954/kWh which is equivalent to 88.08% of the proposed specific FIT of VSNRGC.

1.1. VSNRGC Payments to PSALM

As stipulated under Annex 1 of Schedule I of the Administration Agreement, VSNRGC was bound to pay PSALM the following Monthly Payments:

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Table 4. Schedule of Payments

	Monthly Payments	
Months	**USD Amount**	**Peso Amount**
1/26/2010	$90,000.00	PhP2,880,000.00
2/26/2010 - 5/26/2010	$450,000.00	PhP14,400,000.00
6/26/2010 - 10/26/2010	$600,000.00	PhP19,200,000.00
11/26/2010 - 12/26/2010	$450,000.00	PhP14,400,000.00
1/26/2011 - 10/26/2011	$1,044,000.00	PhP33,408,000.00
11/26/2011	$1,224,000.00	PhP39,168,000.00
12/26/2011	$1,263,000.00	PhP40,416,000.00
1/26/2012 - 12/26/2012	$1,200,000.00	PhP38,400,000.00
1/26/2013 - 12/26/2013	$1,200,000.00	PhP38,400,000.00
1/26/2014 - 12/26/2014	$1,200,000.00	PhP38,400,000.00
1/26/2015 - 12/26/2015	$1,200,000.00	PhP38,400,000.00
1/26/2016 - 12/26/2016	$1,200,000.00	PhP38,400,000.00
1/26/2017 - 12/26/2017	$1,200,000.00	PhP38,400,000.00
1/26/2018 - 12/26/2018	$1,200,000.00	PhP38,400,000.00
1/26/2019 - 12/26/2019	$1,200,000.00	PhP38,400,000.00
1/26/2020 - 12/26/2020	$1,200,000.00	PhP38,400,000.00
1/26/2021 - 12/26/2021	$1,200,000.60	PhP38,400,000.00
1/26/2022 - 12/26/2022	$1,200,000.00	PhP38,400,000.00
1/26/2023 - 12/26/2023	$3,000,000.00	PhP96,000,000.00
1/26/2024 - 12/26/2024	$3,000,000.00	PhP96,000,000.00
1/26/2025 - 12/26/2025	$3,000,000.00	PhP96,000,000.00
1/26/2026	$3,000,000.00	PhP96,000,000.00

In addition to the above Monthly Payments, VSNRGC likewise has to pay PSALM the monthly Generation Payment Rate of PhP0.80/kWh under Schedule J of the said IPPAA, based on the actual generation (WESM Metered Quantity) measured during the month from the Power Station as recorded by the WESM Meter.

In its "Manifestation" and "Ex-Parte Manifestation" filed on 27 February 2020 and 13 March 2020, respectively, VSNRGC manifested, among others, that PSALM has approved its Revised Payment Plan as stated in the letter of PSALM to VSNRGC dated 12 November 2019. The said Revised Payment Plan covers the new schedule of payments of VSNRGC to PSALM up to year 2026 with a total payable amount of PhP16.2 Billion, broken down as follows:

PSALM: PhP14.67 Billion
Bank Principal Payments: PhP570 Million
Administrative Expenses: PhP960 Million

According to VSNRGC, it has already paid PhP1.2 Billion to PSALM for the year 2019 and the first months of 2020 including the bank principal payments.

1.2. VSNRGC's Financial Condition

The prevailing WESM rate has made it hard for VSNRGC to generate a cash flow that would cover the monthly payments due to PSALM under the approved Rehabilitation Plan, including the bank principal payments and Administrative Expenses in operating Bakun Plant. VSNRGC has been incurring serious losses for the last six (6) years based on its financial statements as shown below:

Table 6. Total Income (Loss) in PhP as reflected in the AFS from year 2013-2018

Year	Income (Loss) PhP
2013	(848,596,984)
2014	(119,913,534)
2015	(803,709,314)
2016	(814,223,047)
2017	(535,571,730)
2018	(1,003,135,807)

In the past years, VSNRGC had to obtain financing to remain afloat. The shareholders of VSNRGC have committed to provide continuing financial support to enable the company to pay its expenses and discharge its liabilities. In 2014, capital calls were made on the shareholders to further strengthen the financial position of VSNRGC and reduce, if not eliminate, its capital deficiency. Thus, VSNRGC's only recourse to remain financially viable is the adoption of the specific FIT prayed for in this Application.

The Commission verified that if VSNRGC will not be allowed a specific FIT for the capacity of the Bakun Plant, their only option is to trade in the WESM. As a price-taker on the WESM, VSNRGC cannot dictate the rate in the WESM compared to a PSA.

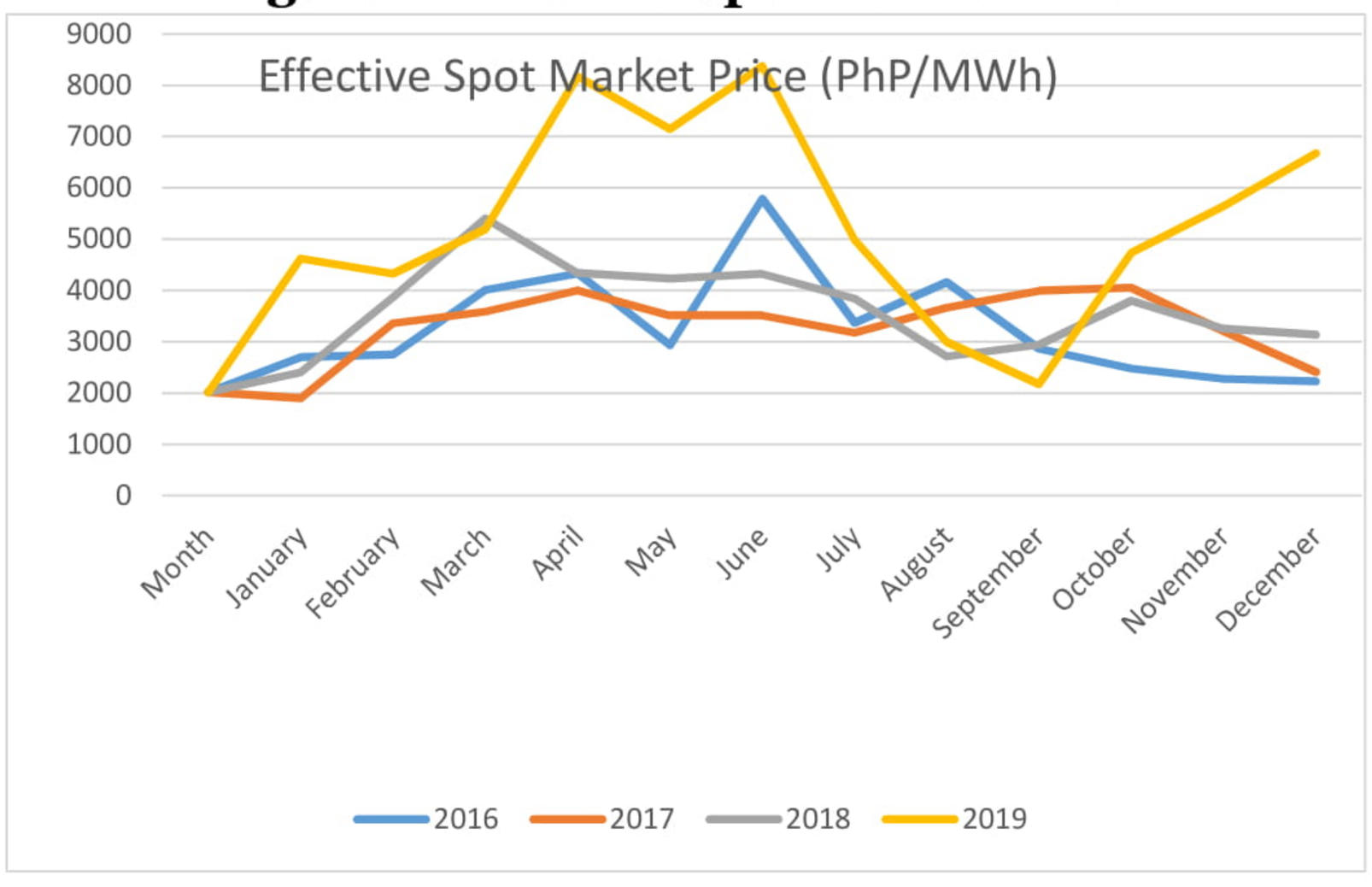
Based on the evaluation of Bakun Plant's operations for the past years when VSNRGC was trading only in the WESM, there was a finding that it has incurred net losses, and may not be able to sustain its operations as the Administrator of the Bakun Plant over the remainder of its IPPA contract. Shown below is VSNRGC's submitted average annual settlement price of WESM from years 2016 to 31 March 2020:

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Table 1. WESM Settlement Price of VSNRGC

MONTH	SETTLEMENT PRICE (PHP/KWH)				
	2016	2017	2018	2019	2020
January	1.26	1.85	2.15	3.54	2.77
February	2.14	3.25	3.36	3.84	3.25
March	3.39	3.40	5.36	3.01	2.74
April	2.87	3.76	4.23	7.53	
May	2.57	3.37	3.82	6.55	
June	4.26	3.10	3.55	7.71	
July	2.50	3.00	3.53	4.40	
August	3.60	3.55	2.52	2.80	
September	2.60	3.59	2.82	1.91	
October	2.40	3.67	3.51	3.53	
November	2.07	3.16	3.05	4.18	
December	2.11	2.31	3.01	6.09	
Average	**2.65**	**3.17**	**3.41**	**4.59**	**2.92**

Figure 1. Effective Spot Market Price



The above WESM prices severely affected the cash flow of VSNRGC considering that trading in the WESM is its only source of revenue. Moreover, the advent of the WESM price caps made it even more difficult to secure bilateral contracts. VSNRGC had already been experiencing difficulty in entering into bilateral contracts because of the extreme variability in the output of the Bakun Plant- its capacity has ranged from 1MW to 70MW.

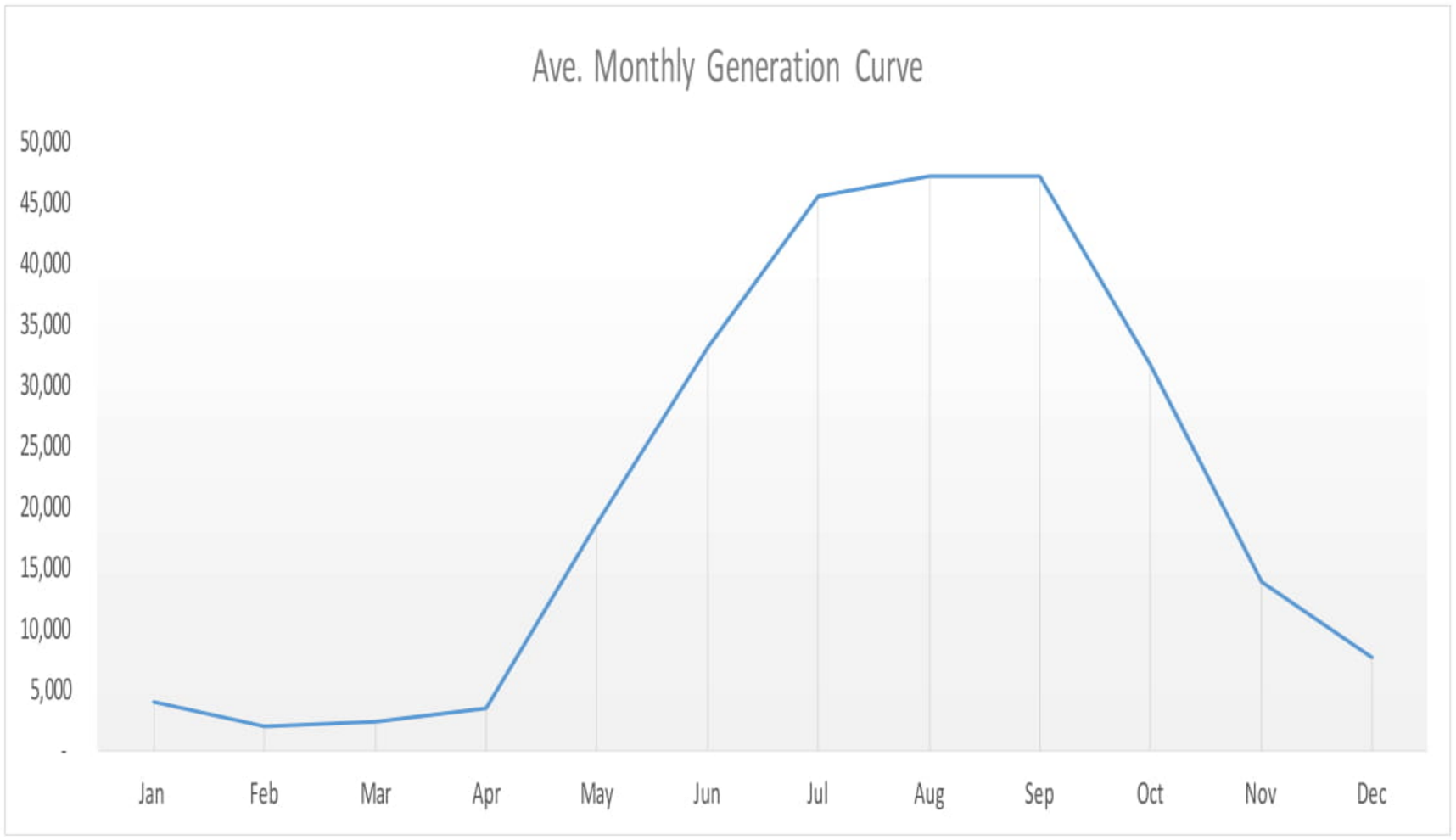
Shown below is the summary of the Bakun Plant's annual generation profile from years 2016 to 2019:

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Table 2. Bakun Plant Annual Generation

YEAR	QUANTITY (MWH)
2016	263,121.39
2017	240,054.37
2018	290,466.07
2019	237,069.35
Average	**257,677.80**

Figure 2. Bakun Plant Average Monthly Generation



Energy in '000 KWH	4,005	2,037	2,274	3,452	18,575	33,121	45,415	47,190	47,220	31,723	13,802	7,645

The above graph reflects the annual generation profile of the Bakun Plant showing that its operation was typically only for seven months during the rainy season, resulting to an average capacity utilization factor of only 42.39% for the years 2016 to 2019, to wit:

Table 3. Bakun Plant Annual Capacity Factor

YEAR	Annual Average Capacity Factor
2016	43.27%
2017	39.55%
2018	47.79%
2019	38.93%
AVERAGE	42.39%

The Bakun Plant, which is a run-of-river hydroelectric plant, has no storage capability unlike the big hydropower plants which has a dam to store the water and able to generate power throughout the year. Thus,

VSNRGC was not able to enter into long term bilateral contracts due to the intermittent generation of the Bakun Plant.

Since assuming the role of IPP Administrator over the Bakun Plant, VSNRGC has not been successful in selling the plant's output through long-term bilateral supply contracts. While it was able to close a few bilateral supply contracts, these were for very short durations only. This was due primarily to the nature of the Bakun Plant. It is highly intermittent and dependent on the flow and availability of water running through it, and does not have storage capabilities as mentioned above. For this reason, it could not secure long-term bilateral supply contracts, as potential off-takers would require certainty in terms of the volume that can be supplied by the Bakun Plant.

2. There is no legal impediment for VSNRGC to be allowed such FIT, such as the existence of a power supply agreement/power purchase agreement with any DU or End-user.

VSNRGC's sole bilateral contract was only for 15MW of the 70MW capacity of the Bakun Plant. It contracted with the Trans-Asia Oil and Development Corp. (TA Oil), a direct member of the WESM licensed by the Commission as a Wholesale Aggregator and as Retail Electricity Supplier.

However, the contract expired on 25 April 2015 and was not renewed. Said termination was substantiated through the TA Oil letter to VSNRGC dated 11 November 2014 informing the same that it will no longer renew the contract upon expiration.

As for VSNRGC's standing to apply for inclusion in the FIT system and for a FIT specific to the Bakun Plant, as mentioned, the Commission recognizes that the COC issued in favor of IPPs as deemed issued also in favor of the respective IPPAs.

This is consistent with VSNRGC's right (and corresponding obligation) to manage and control capacity for the Bakun Plant. In fact, the management and control of the capacity is at VSNRGC's own account, cost and risk (*Section 4.1.1, IPPA*). Thus, an IPPA should not be prevented from applying for a FIT-COC for its own name and account since it absorbs all risk in respect of the generated capacity of the Plant. Notably, there is nothing in the IPPA which prevents VSNRGC from availing of Section 1.4 of the Commission's FIT Rules.

Hence, it cannot be gainsaid, that there exists no legal impediment to the issuance of the specific FIT prayed for by VSNRGC.

3. VSNRGC has fulfilled the other requirements of the Commission.

VSNRGC is the IPPA of the Bakun Plant, which is an eligible RE plant. LHC, as the operator, was registered with the Department of Energy (DOE) "as a Renewable Energy (RE) Developer of 70MW Bakun AC Hydroelectric Power Plant located in the Municipality of Alilem, Ilocos Sur which is covered by Hydropower Service Contract (HSC) No. 2009-10-058," pursuant to R.A. 9513.

VSNRGC also submitted itself to the jurisdiction of the Commission for assessment if indeed it fulfills the preconditions set for it to be considered under the FIT system. It filed the instant Application and complied with all procedural and substantive requirements attendant to its filing.

Considering the foregoing discussions in relation to the pre-requisites for an entity to be entitled to a special FIT rates under the FIT Rules, the Commission determined that VSNRGC is entitled to a special FIT rate and evaluated VSNRGC proposed special FIT rate, as provided in the succeeding discussions.

VSNRGC's Proposed FIT

In its Application, VSNRGC proposed a FIT of **PhP5.6715/kWh** for the Bakun Plant, the computation of which is based on its original annual obligation to PSALM and its historical and projected operations and maintenance costs. The proposed FIT was derived by VSNRGC in consideration of the following components as shown in the table below:

Table 7. VSNRGC's Rate Calculation

	VSNRGC's Application	**Rate, PhP/kWh**
@ 43.1% Capacity Factor	**Cost, PhP**	
Component		
Return on Capital	105,136,416.00	0.3978
Return on Working Capital	15,025,553.28	0.0569
OPEX (Generation Payments)	211,431,360.00	0.8000
OPEX Admin	56,895,966.02	0.2153
Depreciation	1,624,674.00	0.0061
Total Amortization (PhP + US$)	1,108,800,000.00	4.1954
Required Revenue/Rate	**1,498,913,969.30**	**5.6715**
Assumptions:		
Asset Base	1,108,800,000.00	

Billing Determinant, kwh - Capacity Factor @ 43.1%	264,289,200.00	
WACC	9.48%	
Working Capital	156,690,912.00	
Cost of Equity (Post-tax)	16.44%	

a) Return on Capital. The Return on Capital was calculated based on the total Monthly Payment for the year 2014 required to be paid by VSNRGC to PSALM under the IPPA agreement; a margin equal to 9.48% WACC using a 70:30 Debt Equity Ratio where the Cost of Debt was assumed to be at 6.5% while Cost of equity was assumed to be at 16.44%. Average US dollar exchange rate at the time of its application was at Php45.00/US$1.

Equity IRR (nominal) or the industry-acceptable minimum return that is reflective of development risks, construction and operating risks, resource risks, regulatory risks, and political risks in the Philippines, VSNRGC used 16.44%. This Equity IRR translates to a market-based WACC of 9.48% given the foregoing assumptions of VSNRGC on the interest rates and debt-to-equity ratio.

b) Return on Working Capital. The margin on working capital was calculated based on 40-day collection period to pay its obligation to PSALM including its return on capital. It also assumed a WACC of 9.48% as applied to its total working capital.

c) OPEX (Generation Payments). Represents the charge that VSNRGC was required to pay to PSALM, which was set at PhP0.80/kWh of the actual generation measured during the month from the Power Station as recorded by the WESM meter, under Schedule J of their IPPA Agreement.

d) OPEX Admin. Represents the Administrative Operational Expenses of VSNRGC as IPPA of Bakun Plant. This was based on their average historical operating costs as reflected in the Audited Financial Statements (AFS) from 2010-2015.

e) Depreciation. The depreciation represents the purchase of office equipment such as computers, furniture and transportation at the time it took over as the IPPA in 2010. It uses straight line depreciation method as indicated in its AFS.

f) Total Amortization/Asset Base. Represents the Monthly Payments under Schedule I of the IPPA agreement. This was computed by VSNRGC using the total US dollar and peso monthly payment schedule for the year 2014 with a PhP45.00/US$1 conversion rate, as shown below:

Table 8. VSNRGC's Monthly Payments

Year 2014		
Period	**PhP**	**US$**
Jan-14	38,400,000	1,200,000
Feb-14	38,400,000	1,200,000
Mar-14	38,400,000	1,200,000
Apr-14	38,400,000	1,200,000
May-14	38,400,000	1,200,000
Jun-14	38,400,000	1,200,000
Jul-14	38,400,000	1,200,000
Aug-14	38,400,000	1,200,000
Sep-14	38,400,000	1,200,000
Oct-14	38,400,000	1,200,000
Nov-14	38,400,000	1,200,000
Dec-14	38,400,000	1,200,000
Total	**460,800,000**	**14,400,000**
@PhP45/US$1		**648,000,000**
Total PhP	**1,108,800,000**	

g) Working Capital. The working capital was calculated based on 40-day collection period to pay its obligation to PSALM which includes the Amortization/Annual payment rate, return on capital and return on working capital.

h) Billing Determinant. VSNRGC used the historical average capacity factor from years 2001 to 2014 in determining the billing determinant used to derive the rate for its FIT component. As indicated in the Exhibit "F" of its application, VSNRGC computed the adjusted average kWh generation of 264,289,200 as the more prudent and conservative data in deriving the rate base. This was also the number of kWh used in the bidding process for the IPPA.

VSNRGC manifested in its application that the derivation of the proposed FIT is consistent with the previous Decisions of the Commission, particularly those in ERC Case No. 2012-035 RC[26] and ERC

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[26] *In the Matter of the Application for Approval of the Power Supply Agreement (PSA) between Manila Electric Company (MERALCO) and Therma Luzon, Inc. (TLI*) dated 17 December 2012

Case No. 2012-087 RC[27], wherein the rate was computed to allow the IPPAs "to generate revenue sufficient to cover its monthly payments plus a margin equal to 16.44% post tax cost of equity."

The Asset Base was taken to be the monthly payments due, pursuant to Schedule I of the IPPA Agreement, which is also the amount for Amortization. The working capital was based on the 40-day requirement for the aforementioned monthly payments as well as the operational expenses (OPEX). The OPEX comprise of the Generation Payments due on a monthly basis pursuant to Schedule J of the IPPA Agreement and the administration expenses of VSNRGC denominated as OPEX Admin.

VSNRGC's proposed FIT of PhP5.6715/kWh is lower than the approved FIT for hydroelectric plant amounting to PhP5.90/kWh as established in the Commission's Decision under ERC Case No. 2011-006 RM[28].

Commission's FIT Derivation for VSNRGC

Section 7 (c) of RA 9513 provides that the FIT rate to be paid to electricity produced shall not be less than twelve (12) years. Relative thereto, Section 2 (x) of the 2014 Revised COC Rules provides the following:

> x. A generation Company operating an RE Plant which started commercial operations prior to the effectivity of R.A. 9513 may be granted a lower FIT specific to it upon application and hearing, and after a showing of its compliance with the requirements of Section 1.4 of the FIT Rules. Such Generation Company shall be entitled to the **lower FIT for a specified period**, upon amendment of the COC previously issued to it, in accordance with the decision of the Commission.
>
> Under the above circumstances, no COE for FIT Eligibility shall be required from the DOE to the issuance by the ERC of a FIT Eligible COC. (Emphasis supplied)

As discussed earlier, in order to harmonize the foregoing intent of the law to utilize existing as well as new RE plants to achieve the law's objectives, the Commission has imposed reasonable limits to the applicability of the FIT to existing RE Plants for their continued operations. In the exercise of its delegated authority to promulgate the

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[27] *In the Matter of the Application for Approval of the Power Supply Agreement (PSA) between Manila Electric Company (MERALCO) and San Miguel Energy Corporation. (SMEC*) dated 17 December 2012

[28] *In the Matter of the Petition to Initiate Rule-Making for the Adoption of the Feed-In Tariff for Electricity Generated from Biomass, Ocean, Run-Of-River Hydropower, Solar and Wind Energy Resources* dated 27 July 2012, National Renewable Energy Board, Petitioner,

FIT system rules, the Commission prescribed conditions before these plants can qualify under the FIT system, *to wit:*

(a) Such FITs are indispensable for their continued operations;

(b) There is no legal impediment for them to be allowed such FITs, such as the existence of a power supply agreement/power purchase agreement with any DU or End-user; and

(c) They have fulfilled such other requirements of the ERC.

The Commission has to rationalize the implementation of the FIT system to those existing RE Plants operating prior to the effectivity of RA 9513 to the extent that such plant has not fully paid its debt and recovered the invested equity, and taking into account the period that it has been in commercial operation.

The term of the IPPA between PSALM and VSNGRC will end in January 2026, i.e. the Transfer Date, whereby VSNGRC becomes the owner and possessor of the Bakun Plant. Coincidentally, the Transfer Date is also the end of the term of the PPA between NPC and LHC. VSNRGC did not incur construction cost that could be the basis for its recovery of the Bakun Plant; rather it has to pay scheduled amortizations to PSALM for a period of fifteen (15) years.

The Commission deemed that the appropriate specific FIT for VSNRGC is that level that would allow it to generate revenue to cover primarily, its original obligations with PSALM under the IPPA of the Bakun Plant, plus, reasonable margin to cover its expenses.

Thus, the Commission considered the following costs in deriving the specific FIT for VSNRGC:

a) <u>Return on Capital.</u> The Return on Capital was calculated using the calculated Asset Base of 1,978,900,000.00 multiply with the cost of equity of 12.23%. This rate of return, which VSNRGC is eligible for the year 2015, is used by the Commission in approving PSAs between generators and distribution utilities. The 12.23% was applied directly to the computed Asset Base to derive the Return on Capital of PhP242,019,470.00.

The Asset Base of PhP1.9789 Billion was derived from Schedule I of the IPPA Agreement (Table 4) calculated from January 2020 to January 2026.

b) Return on Working Capital. The margin on working capital is based on 40-day collection period to pay its obligation to PSALM including its return on capital. However, the cost of equity of 12.23% was used to the calculated annual working capital of PhP266,177,299.07 resulting to PhP32,553,483.68.

c) OPEX (Generation Payment). This was based on the PhP0.80/kWh fixed generation payment under Schedule J of the IPPA Agreement multiplied with the derived annual billing determinant based on 42.39% average capacity factor shown in Table 3 resulting to PhP207,948,384.00.

d) OPEX Admin. The amount of PhP56,895,966.02 was used based on VSNRGC's average historical operating costs as reflected in the Audited Financial Statements (AFS) from 2010-2015.

e) Amortization/Annual Payment. The annual Amortization of PhP1.9789 Billion was derived from the total Payment under Schedule I (Table 4), from January 2020 to January 2026, resulting to the amortization for the said period of PhP11,873,400,000.00.

f) Billing Determinant. Using the historical average capacity factor of 42.39%, the billing determinant was computed as shown below. In the ERC Case No. 2011-006 RM[29], the Commission finds the capacity factor of 47% reasonable considering that it is within the 40% to 50% range of capacity factors for hydropower plants based on the National Renewable Energy Laboratory (NREL) comparative data. Thus, considering that the historical average capacity factor of 42.39% of the Bakun Plant is within the NREL comparative data, the Commission adopted the same in determining the billing determinant of 259,935,480 kWh, to wit:

Billing Determinant = Dependable Capacity x Hours of Operation x CF

= 70 MW x (24h/Day*365Days*1000kW/MW) x 0.4239

= 259,935,480 kWh

[29] *In the Matter of the Petition to Initiate Rule-Making for the Adoption of the Feed-In Tariff for Electricity Generated from Biomass, Ocean, Run-Of-River Hydropower, Solar and Wind Energy Resources* dated 27 July 2012, National Renewable Energy Board (NREB), Petitioner,

Shown below is the comparison of the cost considerations:

Table 9. VSNRGC versus Commission Calculation

	VSNRGC's Application	**Commission's Evaluation**
Return on Capital	105,136,416.00	242,019,470.00
Return on Working Capital	15,025,553.28	32,553,483.68
OPEX (Generation Payments)	211,431,360.00	207,948,384.00
OPEX Admin	56,895,966.02	56,895,966.02
Depreciation	1,624,674.00	-
Total Amortization	1,108,800,000.00	1,978,900,000.00
Required Revenue	**1,498,913,969.30**	**2,518,317,303.70**
Assumptions:		
Asset Base	1,108,800,000.00	1,978,900,000.00
Billing Determinant, kWh - Capacity Factor @ 43.1%/42.39%	264,289,200.00	259,935,480.00
WACC	9.48%	12.23%
Working Capital	156,690,912.00	266,177,299.07
Cost of Equity	16.44%	12.23%

The Commission did not factor in any amount for the Depreciation since according to VSNRGC, it includes office equipment such as computers, furniture, and transportation which may already be part of the OPEX Admin Cost. Further, the Depreciation of the Bakun Plant and equipment were not included since the Bakun Plant was only transferred to VSNRGC on its Transfer Date.

Based on the above considerations, the proposed rate by VSNRGC of PhP5.6715/kWh was deemed to be reasonable by the Commission, thus, approved as VSNRGC's specific FIT.

Shown below is the comparison of the FIT rate approved for run-of-river technology and the approved FIT for VSNRGC:

	Original FIT for Run-of River Hydro	**Degressed FIT for Run-of River Hydro**	**Commission's Approved FIT for VSNRGC**
PhP/kWh	**5.90**	**5.8705**	**5.6715**

The Specific FIT of PhP5.6715/kWh and other fiscal incentives under RA 9513 and FIT Rules shall be used by VSNRGC in the settlement of the Feed-In-Tariff Allowance (FIT-ALL) with the National Transmission Corporation (TRANSCO).

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Period of Entitlement

Section 2 (x) of the 2014 Revised COC Rules provides:

> x. A generation Company operating an RE Plant which started commercial operations prior to the effectivity of R.A. 9513 may be granted a lower FIT specific to it upon application and hearing, and after a showing of its compliance with the requirements of Section 1.4 of the FIT Rules. ***Such Generation Company shall be entitled to the lower FIT for a specified period, upon amendment of the COC previously issued to it, in accordance with the decision of the Commission.***
>
> Under the above circumstances, no COE for FIT Eligibility shall be required from the DOE to the issuance by the ERC of a FIT Eligible COC.

In view of the determination by the Commission that VSNRGC is legally entitled and eligible to the FIT based on its submissions, and in order for VSNRGC to continuously operate, its FIT entitlement shall be reckoned from the time that this Decision is promulgated, without prejudice to the filing of the amendment of its COC. This specific FIT entitlement as computed, shall be until 26 January 2026, the date of its last payment to PSALM.

WHEREFORE, the foregoing premises considered, *Application for the Adoption of the Feed-In Tariff (FIT) Pursuant to the Feed-In Tariff Rules Specific to the Existing Renewable Energy Plants* filed by Vivant-Sta. Clara Northern Renewables Generation Corporation (VSNRGC) is hereby **APPROVED** to wit:

a. As an Independent Power Producer Administrator (IPPA) of the Bakun Hydroelectric Power Plant, the approved Feed-in-Tariff (FIT) for VSNRGC is equivalent to **PhP5.6715/kWh;**

b. The approved FIT rate of PhP5.6715/kWh shall be subject to the adjustments as provided for under the FIT Rules and the base year for the CPI and FOREX adjustments shall be for Calendar Year 2020;

c. The FIT Entitlement of VSNRGC shall be from the date of this Decision up to the its last payment to PSALM which is 26 January 2026; and

d. The approval of the FIT rate is without prejudice to the Commission's resolution on the amended Certificate of Compliance (COC) for FIT Eligibility to be filed by VSNRGC.

SO ORDERED.

Pasig City, 23 June 2020.

ERC
Office of the Chairperson
AVS TD-2020-07-520-0006

AGNES VST DEVANADERA
Chairperson and CEO

(on leave)
JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner

ALEXIS M. LUMBATAN
Commissioner

Dissent
CATHERINE P. MACEDA
Commissioner

PAUL CHRISTIAN M. CERVANTES
Commissioner

LS: GLO

ROS: NVP/AJMO/LLG

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