

Item No.: 12  
Date: 20 2024 AUG

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

IN THE MATTER OF THE  
APPLICATION FOR  
APPROVAL OF THE  
EMERGENCY POWER  
SUPPLY AGREEMENT  
BETWEEN LEYTE IV  
ELECTRIC COOPERATIVE,  
INC. AND GNPOWER  
DINGININ LTD. CO., WITH  
PRAYER FOR CONFIDENTIAL  
TREATMENT OF  
INFORMATION



**ERC CASE NO. 2024-046 RC**

**LEYTE IV ELECTRIC  
COOPERATIVE, INC. AND  
GNPOWER DINGININ LTD.  
CO.,**

*Applicants.*

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**Promulgated:**  
April 05, 2024

**ORDER**

On 25 March 2024, the Leyte IV Electric Cooperative, Inc. (LEYECO IV) and GNPower Dinginin Ltd. Co. (GNPD) filed their *Joint Application* dated 22 February 2024, seeking the Commission's approval of their Emergency Power Supply Agreement (EPSA), with prayer for confidential treatment of information.

The pertinent allegations in the *Joint Application* are hereunder quoted, as follows:

The Parties

1. LEYECO IV is a non-stock and non-profit electric cooperative duly organized and existing under and by virtue of the laws of the Philippines, with principal office in the Municipality of Hilongos, Province of Leyte. LEYECO IV operates an electric light and power distribution service, for which it was issued an exclusive franchise by the National Electrification Commission, in Baybay City and the municipalities of

8. Because of the deficit caused by the cessation of supply, LEYECO IV needed to source enough capacity to meet the demands of its captive market. Thus, LEYECO IV sent letter-invitations to various generation companies ("GenCos") soliciting offers for a contracted capacity of 16 MW Baseload. GNPD was one of the GenCos that submitted an offer to LEYECO IV.
9. After careful consideration of the offers received from GNPower Kauswagan Ltd. Co., Sual Power Inc., and GNPD, LEYECO IV found GNPD's offer as the most advantageous for its customer. A copy of the evaluation matrix is attached as Annex M. Thus, within transition period stated in the August 10 Advisory, the Applicants executed the Emergency Power Supply Agreement dated September 13, 2023 (the "EPSA"). A copy of the EPSA is attached as Annex A.
10. The Applicants filed this Joint Application to seek the approval of the EPSA.

Salient Features of the EPSA

11. The duly executed EPSA contains the following salient provisions:

(a) **TERM AND CONTRACTED CAPACITY.** The EPSA shall commence from the Operations Effective Date and shall expire twelve (12) months from the Operations Effective Date or effectivity of the EPSA based on this Honorable Commission's approval, unless terminated earlier in accordance with the terms of the EPSA which shall not exceed one (1) year. The contracted capacity under the EPSA is 16 MW.

(b) **CONTRACT PRICE.** The Contract Price shall be composed of Capacity Fee, Energy Fee, and Governmental Charges.

(c) **CAPACITY FEE.** The Capacity Fee is based on the Capacity Utilization Factor ("CUF"). The Capacity Fee corresponding to each CUF is listed in Schedule 1 of the EPSA.<sup>2</sup>

(d) **ENERGY FEE.** The Energy Fee is computed as follows:

$$\text{Energy Fee} = \text{IEF} \times \left[ \frac{\text{CIF}_n}{\text{CIF}_0} \right] \times \text{MAE}$$

Where:

IEF = Initial Energy Fee equal to \$0.0328 / kWh  
CIF<sub>n</sub> = CIF Cost of Fuel for Billing Period *n*

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<sup>2</sup> The CUF is defined as "the [CUF] between 70% and 100%, provided that if the actual CUF is below the MEOT provided in 1.1. of Schedule I, the Capacity Price shall be calculated based on the Capacity Fee and quantity associated with the MEOT."

Average Daily Load Curve	E-1
Performance Assessment of the System based on 5-year reliability history and 2023 reliability	F
An estimation of the potential for a reduction in load supplied by LEYECO IV due to retail competition	G
Letter-invitations to bid and evaluation guidelines issued by LEYECO IV along with GenCos' response	H and series
Proposals and term sheets submitted by GenCos to LEYECO IV	I
Secretary Certificate listing Board of Directors and Officers	J
Notice of Award	K
Board Resolution No. 2023-099 dated September 11, 2023 (Awarding EPSA to GNPD)	L
EPSA evaluation matrix	M
Articles of Partnership dated May 21, 2014	N
Amended Articles of Partnership dated February 18, 2022	N-1
Certificate dated February 1, 2023 (Certifying GNPD's information sheet)	O
GNPD Project Ownership Structure Chart dated August 31, 2023	P
Certificate of Registration No. 2022-058 issued by the Authority of the Freeport Area of Bataan	Q
Environmental Compliance Certificate No. ECC-CO-1406-0012 dated November 10, 2015	R
Certificate of Compliance No. 22-10-M-00203L dated October 11, 2022	S
Amended Certificate of Endorsement No. 2021-08-172 dated August 3, 2021	T
Write-up on the non-applicability of the following requirements to GNPD: <ul style="list-style-type: none"> <li>• Shareholders' agreement;</li> <li>• By-laws;</li> <li>• Renewable energy service/operating contract and Certificate of Registration or Certification of Commerciality from the Department of Energy;</li> <li>• Distribution wheeling service agreement;</li> <li>• Water permit from the National Water Resources Board;</li> </ul>	U

Simulation of Minimum Energy Off-take (MEOT)	HH
Wholesale Electricity Spot Market registration information	II
Single line diagram	JJ
Certification on Partnership Agreement dated February 6, 2023	KK
Metering Service Agreement covering the Plant	LL

ALLEGATIONS IN SUPPORT OF THE PRAYER FOR  
CONFIDENTIAL TREATMENT OF INFORMATION

15. Section 1, Rule 4 of the Revised Rules of Practice and Procedure of the Energy Regulatory Commission ("Revised ERC Rules") provides that a party to any proceeding before this Honorable Commission may request that documents and/or information in this Honorable Commission's possession be treated as confidential and not be disclosed.
16. In line with this, GNPD prays that Annexes AA and series, BB, CC and series, DD, GG, and Z (collectively, the "Confidential Documents") and the information contained therein be treated as confidential and not be disclosed to any persons other than the officers and staff of this Honorable Commission.
17. The foregoing documents contain information and data involving GNPD's power rate calculations and financial model, as well as how these are derived. They are not generally available to the public, are proprietary, privileged, and confidential in nature, and should be protected as trade secrets. In *Air Philippines Corporation vs. Pennswell, Inc.*,<sup>3</sup> the Supreme Court held that:

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. The inventor, discoverer, or possessor of a trade secret or similar innovation has rights therein which may be treated as property, and ordinarily an injunction will be granted to prevent the disclosure of the trade secret by one who obtained the information "in confidence" or through a "confidential relationship." American jurisprudence has utilized the following factors to determine if an information is a trade secret, to wit:

- (1) the extent to which the information is known outside of the employer's business;

<sup>3</sup> G.R. No. 172835, December 13, 2007.



21. Further, if the Confidential Documents and the information contained therein are leaked to GNPD's competitors, they will gain undue advantage and could use such information and documents in their operations. Furthermore, the negotiating power of GNPD with parties it plans to contract with or with whom it is currently doing business, will be impeded if it is compelled to disclose such information.
22. Accordingly, one (1) copy each of the Confidential Documents is placed in a sealed envelope, with the said envelope and each page of the documents stamped with the word "Confidential."

PRAYER

WHEREFORE, the Applicants respectfully pray that this Honorable Commission:

- a. GRANT the Applicants' Motion for Confidential Treatment of Information and DECLARE as confidential the information contained in the Confidential Documents (Annexes AA and series, BB, CC and series, DD, GG, and Z)
- b. ISSUE a Protective Order treating the Confidential Documents (Annexes AA and series, BB, CC and series, DD, GG, and Z) as confidential information in accordance with Rule 4 of the ERC Rules and prescribing guidelines for their protection;
- c. DIRECT that the interim rates to be charged under the EPSA shall be capped at the latest ERC-approved generation tariff specific for the plant technology; and
- d. ISSUE a Decision GRANTING the Joint Application and APPROVING the EPSA, including all the rates, fees, charges, and tariff adjustment mechanisms set out therein at the rates provided in the EPSA, and authorizing LEYECO IV to charge and collect the fees therein from its customers reckoned from the start of power supply by GNPD to LEYECO IV under the EPSA.

Other just and equitable reliefs are likewise, prayed for.

Finding the said *Joint Application* to be sufficient in form and with the required fees having been paid, the Commission hereby sets the same 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>6</sup>

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<sup>6</sup> A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

- 3) Inform the consumers within Applicant LEYECO IV's franchise area, by any other means available and appropriate, of the filing of the *Joint Application*, the reasons therefor, and of the scheduled virtual hearings thereon;
- 4) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing*, the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress. They are hereby requested, if they so desire, to send their duly authorized representatives and attend the scheduled hearings; and
- 5) Furnish with copies of the *Joint Application* and its attachments, except those subject of a motion for confidential treatment of information, all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

**Within five (5) calendar days** before the date of the initial virtual hearing, Applicants LEYECO IV and GNPD must submit to the Commission 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 scanned copies of their written compliance with the aforementioned jurisdictional requirements, attaching the following methodically arranged and duly marked documents:

- 1) The evidence of publication of the attached *Notice of Virtual Hearing* consisting of affidavits of the Editors or Business Managers of the newspapers where the said *Notice of Virtual Hearing* was published, and the complete issues of the said newspapers;
- 2) The evidence of actual posting of this *Order* and the attached *Notice of Virtual Hearing* consisting of certifications issued to that effect, signed by the aforementioned Governor, Mayors and LGU legislative bodies or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by Applicants LEYECO IV and GNPD to inform the consumers within Applicant LEYECO IV's franchise area of the filing of the *Joint Application*, the reasons therefor, and of the scheduled hearings thereon;

Failure of Applicants LEYECO IV and GNPD to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearings.

Applicants LEYECO IV and GNPD must also be prepared to make an expository presentation of the instant *Joint Application*, aided by whatever communication medium that they may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties, the nature of the *Joint Application*. Relevant information and pertinent details substantiating the reasons and justifications for the *Joint Application* must be cited in support thereof.

Applicants LEYECO IV and GNPD are hereby directed to file a copy of their Expository Presentation via e-mail at [doCKET@erc.ph](mailto:doCKET@erc.ph), and copy furnish the Legal Service through [legal@erc.ph](mailto:legal@erc.ph), at least **five (5) calendar days** prior to the scheduled virtual hearing. Applicants LEYECO IV and GNPD shall also be required, upon the request of any stakeholder, to provide an advance copy of their Expository Presentation, at least **five (5) calendar days** prior to the scheduled virtual hearing.

Applicants LEYECO IV and GNPD are further directed to submit, either through personal service, registered mail or ordinary mail/private courier, one (1) set of the original or certified true hard copies of their Jurisdictional Compliance, Expository Presentation, Pre-Trial Brief, and Judicial Affidavits of witnesses, **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.

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**ERC CASE NO. 2024-046 RC**  
**ORDER/ 05 April 2024**  
**PAGE 15 OF 16**

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Copy Furnished:

1. Leyte IV Electric Cooperative, Inc. (LEYECO IV)  
*Co-Applicant*  
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[nhoygula@yahoo.com](mailto:nhoygula@yahoo.com)
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*Co-Applicant*  
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4. Attys. Sophia P. Inoturan and Marco P. Nigro  
GATMAYTAN YAP PATACSIL GUTIERREZ & PROTACIO  
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5. Office of the Solicitor General (OSG)  
134 Amorsolo Street, Legaspi Village, Makati City  
[docket@osg.gov.ph](mailto:docket@osg.gov.ph)
6. Commission on Audit (COA)  
Commonwealth Avenue, Quezon City  
[citizensdesk@coa.gov.ph](mailto:citizensdesk@coa.gov.ph)
7. Senate Committee on Energy  
GSIS Building, Roxas Boulevard, Pasay City  
[senateenergycommittee@gmail.com](mailto:senateenergycommittee@gmail.com)
8. House Committee on Energy  
Batasan Hills, Quezon City  
[committee.energy@house.gov.ph](mailto:committee.energy@house.gov.ph)
9. Office of the Provincial Governor  
Province of Leyte
10. Office of the Local Government Unit (LGU) Legislative Body  
Province of Leyte
11. Office of the City Mayor  
Baybay City, Leyte
12. Office of the Local Government Unit (LGU) Legislative Body  
Baybay City, Leyte
13. Office of the Municipal Mayor  
Bato, Leyte
14. Office of the Local Government Unit (LGU) Legislative Body  
Bato, Leyte
15. Office of the Municipal Mayor  
Hindang, Leyte



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**LEYTE IV ELECTRIC  
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GNPOWER DINGININ LTD.  
CO.,**

*Applicants.*

X-----X

**Promulgated:**  
April 05, 2024

**NOTICE OF VIRTUAL HEARING**

**TO ALL INTERESTED PARTIES:**

Notice is hereby given that on 25 March 2024, the Leyte IV Electric Cooperative, Inc. (LEYECO IV) and GNPower Dinginin Ltd. Co. (GNPD) filed their *Joint Application* dated 22 February 2024, seeking the Commission's approval of their Emergency Power Supply Agreement (EPSA), with prayer for confidential treatment of information.

The pertinent allegations in the *Joint Application* are hereunder quoted, as follows:

The Parties

1. LEYECO IV is a non-stock and non-profit electric cooperative duly organized and existing under and by virtue of the laws of the Philippines, with principal office in the Municipality of Hilongos, Province of Leyte. LEYECO IV operates an electric

the order. In compliance with the Dismissal Order, the Applicants stopped implementing their PPSA on September 15, 2023, which resulted in a supply deficit.

8. Because of the deficit caused by the cessation of supply, LEYECO IV needed to source enough capacity to meet the demands of its captive market. Thus, LEYECO IV sent letter-invitations to various generation companies ("GenCos") soliciting offers for a contracted capacity of 16 MW Baseload. GNPD was one of the GenCos that submitted an offer to LEYECO IV.
9. After careful consideration of the offers received from GNP Power Kauswagan Ltd. Co., Sual Power Inc., and GNPD, LEYECO IV found GNPD's offer as the most advantageous for its customer. A copy of the evaluation matrix is attached as Annex M. Thus, within transition period stated in the August 10 Advisory, the Applicants executed the Emergency Power Supply Agreement dated September 13, 2023 (the "EPSA"). A copy of the EPSA is attached as Annex A.
10. The Applicants filed this Joint Application to seek the approval of the EPSA.

#### Salient Features of the EPSA

11. The duly executed EPSA contains the following salient provisions:
  - (a) **TERM AND CONTRACTED CAPACITY.** The EPSA shall commence from the Operations Effective Date and shall expire twelve (12) months from the Operations Effective Date or effectivity of the EPSA based on this Honorable Commission's approval, unless terminated earlier in accordance with the terms of the EPSA which shall not exceed one (1) year. The contracted capacity under the EPSA is 16 MW.
  - (b) **CONTRACT PRICE.** The Contract Price shall be composed of Capacity Fee, Energy Fee, and Governmental Charges.
  - (c) **CAPACITY FEE.** The Capacity Fee is based on the Capacity Utilization Factor ("CUF"). The Capacity Fee corresponding to each CUF is listed in Schedule 1 of the EPSA.<sup>2</sup>
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$$\text{Energy Fee} = \text{IEF} \times \left[ \frac{\text{CUF}_n}{\text{CUF}_0} \right] \times \text{MAE}$$

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<sup>2</sup> The CUF is defined as "the [CUF] between 70% and 100%, provided that if the actual CUF is below the MEOT provided in 1.1. of Schedule I, the Capacity Price shall be calculated based on the Capacity Fee and quantity associated with the MEOT."

**ERC CASE NO. 2024-046 RC**  
**NOTICE OF VIRTUAL HEARING/05 April 2024**  
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Distribution Development Plan for the years 2023-2032	D
Historical and Forecasted Supply-Demand Scenario for the years 2013 to 2030	E
Average Daily Load Curve	E-1
Performance Assessment of the System based on 5-year reliability history and 2023 reliability	F
An estimation of the potential for a reduction in load supplied by LEYECO IV due to retail competition	G
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Write-up on the non-applicability of the following requirements to GNPD: <ul style="list-style-type: none"> <li>• Shareholders' agreement;</li> <li>• By-laws;</li> <li>• Renewable energy service/operating contract and Certificate of Registration or Certification of Commerciality from the Department of Energy;</li> </ul>	U

Audited Financial Statements for the year 2022	FF
[Confidential] Executive Summary dated June 22, 2022 (Heat rate certification and test results)	GG
Simulation of Minimum Energy Off-take (MEOT)	HH
Wholesale Electricity Spot Market registration information	II
Single line diagram	JJ
Certification on Partnership Agreement dated February 6, 2023	KK
Metering Service Agreement covering the Plant	LL

**ALLEGATIONS IN SUPPORT OF THE PRAYER FOR  
CONFIDENTIAL TREATMENT OF INFORMATION**

15. Section 1, Rule 4 of the Revised Rules of Practice and Procedure of the Energy Regulatory Commission ("Revised ERC Rules") provides that a party to any proceeding before this Honorable Commission may request that documents and/or information in this Honorable Commission's possession be treated as confidential and not be disclosed.
16. In line with this, GNPD prays that Annexes AA and series, BB, CC and series, DD, GG, and Z (collectively, the "Confidential Documents") and the information contained therein be treated as confidential and not be disclosed to any persons other than the officers and staff of this Honorable Commission.
17. The foregoing documents contain information and data involving GNPD's power rate calculations and financial model, as well as how these are derived. They are not generally available to the public, are proprietary, privileged, and confidential in nature, and should be protected as trade secrets. In *Air Philippines Corporation vs. Pennswell, Inc.*,<sup>3</sup> the Supreme Court held that:

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. The inventor, discoverer, or possessor of a trade secret or similar innovation has rights therein which may be treated as property, and ordinarily an injunction will be granted to prevent the disclosure of the trade secret by one who obtained the information "in confidence" or

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<sup>3</sup> G.R. No. 172835, December 13, 2007.



contents of Confidential Documents. The reasonableness and transparency of the prices of electricity is to be assured by the Honorable Commission through its own review and verification of GNPD's operating costs and expenses.

21. Further, if the Confidential Documents and the information contained therein are leaked to GNPD's competitors, they will gain undue advantage and could use such information and documents in their operations. Furthermore, the negotiating power of GNPD with parties it plans to contract with or with whom it is currently doing business, will be impeded if it is compelled to disclose such information.
22. Accordingly, one (1) copy each of the Confidential Documents is placed in a sealed envelope, with the said envelope and each page of the documents stamped with the word "Confidential."

**PRAYER**

WHEREFORE, the Applicants respectfully pray that this Honorable Commission:

- a. GRANT the Applicants' Motion for Confidential Treatment of Information and DECLARE as confidential the information contained in the Confidential Documents (Annexes AA and series, BB, CC and series, DD, GG, and Z)
- b. ISSUE a Protective Order treating the Confidential Documents (Annexes AA and series, BB, CC and series, DD, GG, and Z) as confidential information in accordance with Rule 4 of the ERC Rules and prescribing guidelines for their protection;
- c. DIRECT that the interim rates to be charged under the EPSA shall be capped at the latest ERC-approved generation tariff specific for the plant technology; and
- d. ISSUE a Decision GRANTING the Joint Application and APPROVING the EPSA, including all the rates, fees, charges, and tariff adjustment mechanisms set out therein at the rates provided in the EPSA, and authorizing LEYECO IV to charge and collect the fees therein from its customers reckoned from the start of power supply by GNPD to LEYECO IV under the EPSA.

Other just and equitable reliefs are likewise, prayed for.

The Commission sets the instant *Joint 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

- 1) The petitioner's name, mailing address, and e-mail address;
- 2) The nature of petitioner's interest in the subject matter of the proceeding and the way and manner in which such interest is affected by the issues involved in the proceeding; and
- 3) A statement of the relief desired.

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