

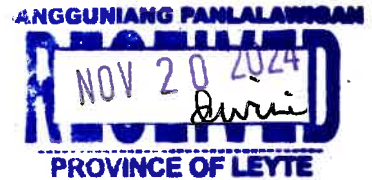


*"Lighting Houses
Lighting Homes
Lighting Hopes"*

Item No.: 09
LEYECO III
Date: 09 2024 DEC
LEYTE III ELECTRIC COOPERATIVE, INC.
Brgy. San Roque, Tunga, Leyte
Hotline Nos.: (Globe) 0917-3049794, (Smart) 0998-5487784
E-mail Address: leyteiii@yahoo.com

18 November 2024

OFFICE OF THE SANGGUNIANG
PANLALAWIGAN
Province of Leyte



Through : **HON. LEONARDO M. JAVIER JR.**
Vice Governor

Re : **Service of the Application**

Greetings!

In compliance with the Revised Rules of Practice and Procedure of the Energy Regulatory Commission, we are furnishing you a copy of the **LEYTE III ELECTRIC COOPERATIVE, INC. (LEYECO III)** and **SUAL POWER INC (SPI)**'s Joint Application entitled *"In the Matter of the Application for Approval of the Power Supply Agreement Between Leyte III Electric Cooperative, Inc. (LEYECO III) and Sual Power Inc. (SPI), With Motion for Confidential Treatment of Information and Prayer for Provisional Authority and/or Interim Relief,"* with annexes and attachments (except for annexes that are subject of a motion for confidential treatment of information) to be filed by LEYECO III to the Energy Regulatory Commission.


In this regard, we would like to request for a **Certification** from the Office, bearing the dry seal, confirming the receipt of the enclosed documents.

A template is likewise enclosed for your reference.

You may send an advance copy of the certification through my email address at leyteiii@yahoo.com.

Thank you and best regards.

Sincerely,


DR. ALLAN L. LANIBA, OFS
General Manager
LEYECO III

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City



IN THE MATTER OF THE APPLICATION FOR APPROVAL OF POWER SUPPLY AGREEMENT BETWEEN LEYTE III ELECTRIC COOPERATIVE, INC. (LEYECO III) AND SUAL POWER INC. (SPI) WITH MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION AND PRAYER FOR PROVISIONAL AUTHORITY AND/OR INTERIM RELIEF

ERC CASE NO. 2024-_____ RC

**LEYTE III ELECTRIC COOPERATIVE, INC. (LEYECO III) AND SUAL POWER INC. (SPI),
Applicants.**

X-----X

JOINT APPLICATION

(With Motion for Confidential Treatment of Information and Prayer for Provisional Authority and/or Interim Relief)

Joint Applicants **LEYTE III ELECTRIC COOPERATIVE, INC. ("LEYECO III")** and **SUAL POWER INC. ("SPI")**, through their respective undersigned counsel and unto the Honorable Commission, most respectfully state, that:

The Joint Applicants

1. Applicant **LEYTE III Electric Cooperative ("LEYECO III")** is an electric cooperative duly organized and existing under and by virtue of Presidential Decree No. 269 (PD 269), as amended, and other laws of the

A handwritten signature or mark in the bottom right corner of the page, consisting of a stylized, cursive-like scribble.

Republic of the Philippines, with principal office at National Highway, Brgy. San Roque, Tunga, Leyte herein represented by its Board President, Santiago F. Hamtig, Jr. and/or General Manager, Allan Laniba, MPA, MM, OFS, who were authorized to represent and file this Application, through the undersigned counsel, under the authority given by LEYECO III Board of Directors per Board Resolution No. 2024-08-013, a copy of which is hereto attached as "**Annex S**". Applicant LEYECO III has been granted an exclusive franchise by the National Electrification Administration (NEA) to operate electric light and power services to in the north-eastern part of Leyte covering nine (9) municipalities, namely: Carigara, Capoocan, Tunga, Barugo, San Miguel, Jaro, Alangalang, Sta. Fe and Pastrana. A copy of Applicant LEYECO III's Articles of Incorporation, By-Laws and Certificate of Franchise is hereto attached as "**Annex A and series**".

2. Applicant SPI is a corporation duly organized and existing under the laws of the Republic of the Philippines, represented in this instance by its General Manager, Elenita D. Go, of legal age with office address at 5th Floor C5 Office Building Complex, No. 100 E. Rodriguez Jr. Avenue, C5 Road, Bo. Ugong, Pasig City, Philippines, where Applicant SPI may be served with notices and other processes of this Honorable Commission through its Counsel at the address indicated herein.

3. SPI is the Administrator¹ of the IPP – Administration Agreement (the "**IPP-AA**") executed between SPI and Power Sector Assets and Liabilities Management Corporation ("**PSALM**") with the conformity of the National Power Corporation ("**NPC**") for the management and control of the 1000 MW Net Contracted Capacity of the Sual Coal-Fired Thermal Power Plant (the "**Plant**").

4. The Joint Applicants may be served with the orders, notices and other processes of the Honorable Commission through their respective undersigned counsels at the addresses indicated herein;

NATURE OF THE APPLICATION

5. The Joint Application for approval of the Power Supply Agreement ("**PSA**") entered into by and between LEYECO III and SPI, is being submitted to the Honorable Commission for its review and approval pursuant to Sections 25² and 45(b)³ of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (the "**EPIRA**"),

¹ At the time of the execution of the PSA and thereafter became the owner of the Plant on 25 October 2024

² SEC.25. Retail Rate. – The retail rates charged by distribution utilities for the supply of electricity in their captive market shall be subject to regulation by the ERC based on the principle of full recovery of prudent and reasonable economic costs incurred, or such other principles that will promote efficiency as may be determined by the ERC.

³ Distribution utilities may enter into bilateral power supply contracts subject to review by the ERC: xxx xxx xxx.

Rules 5, Section 4(e)³ and 11, Section 5⁴ of its Implementing Rules and Regulations (IRR), Rule 20(B) of its Rules of Practice and Procedure, and other pertinent rules and regulations and ;

STATEMENT OF FACTS

6. Section 23 of the Electric Power Industry Reform Act of 2001 (EPIRA) mandates that a distribution utility has the obligation to supply electricity in the least cost manner to its captive market, subject to collection of retail rate duly approved by this Honorable Commission. In relation to this, Section 45 (b) of the EPIRA expressly allows distribution utilities to enter into bilateral power supply contracts subject to the review of this Honorable Commission. The same are consistent with the State's policy to ensure the quality, reliability, security, and affordability of the supply of electric power.

BRIEF DISCUSSION OF THE COMPETITIVE SELECTION PROCESS

7. Through a Memorandum of Agreement (MOA), ten (10) Electric Cooperatives (EC) of Region 8 agreed to conduct a joint procurement for their baseload requirement for the period of 2024 to 2033. The joint procurement was referred to as the Region 8 Joint Competitive Power Supply Procurement (R8 JCPSP). LEYECO III is a member EC under R8 JCPSP.


8. Under the MOA, the Federation of Rural Electric Cooperatives in Region 8 Association, Inc. (FRECOR 8) was tasked to supervise and facilitate the transaction process, documentary requirements, and operational coordination among the member ECs of the R8 JCPSP.

9. A Joint Board of Directors (JBOD) was also created composed of General Managers and Board Presidents of the member ECs, which acts as the governing and policy-making body of the R8 JCPSP.

10. The JBOD passed Board Resolution No. 2023-11-002, Series of 2023 constituting the R8 Joint Bids and Awards Committee (JBAC) for the R8 JCPSP. A Joint Technical Working Group (JTWG) and a Joint Secretariat were also created.

³ Prior to the implementation of Open Access and Retail Competition, the prices charged by a Generation Company for the Supply of Electricity shall be subject to ERC regulation on the Retail Rates charged by Distribution Utilities and transition supply contracts (TSCs) as specified in Section 67 of the Act.

⁴ Limits on Bilateral Supply Contracts by a Distribution Utility.



11. The R8 JCPSP was for the procurement of an aggregate power supply of 190 MW, divided into two (2) lots: Lot 1 for 162 MW, which commences in 2024, and Lot 2 for 28 MW, which commences in 2027. The R8 JCPSP followed the policy and rules prescribed under the Department of Energy (DOE) Department Circular No. DC2023-06-0021, and Energy Regulatory Commission (ERC) Resolution No. 16, Series of 2023.

12. On 15 December 2023, R8 JCPSP Bidding Documents were submitted to NEA. NEA then issued a Certificate of Conformity No. NEA-RAO-COC-2024-02 dated 22 March 2024 when found the R8 JCPSP's Bidding Documents to be consistent with the latest posted 2023-2032 Power Supply Procurement Plan of the member ECs of the R8 JCPSP. NEA likewise allowed the member ECs of the R8 JCPSP to proceed with the CSP.

13. Thereafter on 6 and 13 April 2024, the Invitation to Bid and Terms of Reference were published in the Manila Bulletin newspaper.

14. There was likewise a local publication under the Leyte Samar Daily Express and the EV Mail. Invitations to power suppliers were also sent through electronic mail and postings were made in the DOE CSP Portal and respective EC websites.

15. On 12 April 2024, Invitations to CSP Observers were sent to attend the Pre-Bid Conference, including NEA, DOE, ERC, consumer representatives, community representatives, interested civil society organizations and consumers, and the Regional Development Council for Eastern Visayas.

16. On 23 April 2024, the JBAC conducted its Pre-bid Conference 1. During the Pre-bid Conference 1, the comments and questions submitted by the bidders were reviewed and discussed.

17. On 18 May 2024, Supplemental Bid Bulletin Nos. 03 to 05 were issued and were posted on the DOE CSP Portal. They referred to amendments to the Terms of Reference, amendments to instruction to bidders, and amendments to the draft power supply agreement based on the comments and clarifications from the bidders of Pre-Bid Conference 1.

18. On 22 May 2024, the JBAC conducted the Pre-Bid Conference 2 to provide another opportunity for the bidders to seek clarification on the Bidding Documents and revisions made therein. CSP Observers were invited again.

26

19. On 08 June 2024, the JBAC issued the Final Instructions to Bidders, Final Terms of Reference, Supplemental Bid Bulletin Nos. 06 and 07 and other documents as requested by bidders in preparation for the submission and opening of bids. Invitations to CSP Observers were sent to attend the submission and opening of bids on 25 to 26 June 2024.

20. On 25 June 2024, bidders submitted their respective bids for Lot 1 and Lot 2. The bids were opened on June 25, 2024 for Lot 1 and on June 26, 2024 for Lot 2 in the presence of JBAC, participating bidders, CSP Observers and an Independent Auditor.

21. On 1 to 3 July 2024, the JBAC conducted a post-qualification evaluation of the lowest calculated bids for Lot 1 and Lot 2.

22. On 3 July 2024, the JBAC issued Resolution No. 02, Series of 2024, recommending to the JBOD to award the power supply agreements to the following bidders for Lot 1 for the period of supply of 2024-2033:

Bidder	Capacity (Lot 1)
Therma Luzon Inc.	81 MW
Sual Power, Inc.	50 MW
KEPCO SPC Power Corp	31 W

23. Further, the JBAC issued Resolution No. 03, Series of 2024, recommending to the JBOD to award the capacity of 28 MW for Lot 2 for the period of supply of 2027-2033 to SPI as the bidder having the lowest calculated responsive bid.

24. Consequently, on 3 July 2024, JBOD approved JBAC's Recommendation to award the Power Supply Agreements to the bidders with the lowest calculated responsive bids for Lot 1 and Lot 2 through JBOD Resolution No. 2024-07-001 and 2024-007-002, respectively.

25. After its receipt of NEA's Notice to Issue Award dated 13 August 2024 last 14 August 2024, on 19 August 2024, the JBAC issued a Notice of Award to SPI for the 81 MW baseload demand under Lot 1 of the R8 JCPSP, which was acknowledged by SPI on 20 August 2024.

26. On 29 August 2024, FRECOR 8 timely submitted to NEA the finalized draft PSA together with the Board Resolution and the justifications

to the changes made in the PSA for the issuance of the Notice to Execute Agreement. Despite several follow ups made, it was only on 13 September 2024 when FRECOR 8 received NEA's Notice to Execute Agreement dated 12 September 2024.

27. Thus, on 13 September 2024, LEYECO III and SPI executed the Power Supply Agreement (PSA), commencing on the latter of the two dates: (i) September 15, 2024 or (ii) immediately after the issuance by the ERC of a Provisional Authority, or Interim Relief, or Final Authority, until 25 December 2033 with a contract capacity of 2 MW. Hence, this instant *Joint Application* for the approval of the PSA between LEYECO III and SPI.

Salient Features of the PSA.

(a) Sale and Purchase of Energy/Capacity

Subject to and in accordance with the terms of this Agreement, Seller shall make available and sell to Buyer, and Buyer shall purchase from the Seller for the consideration described in Section 6, the energy and capacity from and after the Delivery Date until the expiry of the Term.

(b) Contract Term

This Agreement shall take effect immediately from Effective Date, and from such date, shall remain in force and effect for until December 25, 2033, unless sooner terminated in accordance with this Agreement and upon approval by the ERC.

(c) Effectivity Date

The Parties' rights and obligations under this Agreement shall commence on Effective Date, which shall be the date upon which all of the following conditions are satisfied:

- c.1. **Corporate Approvals.** The receipt of the Seller of a certificate executed by the corporate or partnership, as applicable, or a resolution duly and validly issued by the board of directors of Buyer, attesting to the fact that the board of directors of Buyer has adopted resolutions (i) authorizing Buyer to execute and to enter into and deliver this Agreement and perform all its obligation hereunder, and (ii) designating the

person authorized to execute this Agreement on behalf of the Buyer; and

- c.2. **Government Authorizations.** All governmental authorizations (except ERC) which are required to have been obtained in connection with the execution, delivery, and commencement of performance of this Agreement, shall have been obtained and be in full force and effect.

Within five (5) Days after the satisfaction of the conditions referred to in this Section, each Party shall send a written notice to the other Party confirming satisfaction of such conditions. Within five (5) Days from receipt of written notice from the Seller, the Buyer shall then inform the Seller of the Effective Date, which date shall be confirmed by the Seller.

(d) ERC Approval

- d.1. The Parties shall jointly file the application for the approval of the Agreement ("ERC Application") with the ERC. Parties shall exert its best efforts to secure the ERC approval of the Agreement within a reasonable time.
- d.2. In the event that ERC issues any decision on the ERC Application which effectively modifies or amends any of the terms of the Agreement including provisions on amounts payable under the Agreement, and which requires an amendment thereof, the Seller may file a motion for reconsideration of such decision within fifteen (15) Days from receipt thereof, and before the decision attains finality.
- d.3. In the meantime, upon receipt of the ERC decision requiring amendments to the Agreement, the Parties shall cooperate in good faith to address the ERC modification of the Agreement and/or to negotiate amendments to the Agreement. In the event that the Parties agree to an amended Agreement, the Parties shall file the amended Agreement for approval by the ERC within thirty (30) Days from the execution of such amended Agreement.

(e) Reduction of Contract Capacity



From time to time upon and after the implementation of Retail Competition and Open Access (RCOA), Green Energy Option Program (GEOP), Renewable Portfolio Standards (RPS), Metering programs, and other similar government programs, Buyer shall deliver to Seller written notice within thirty (30) Days prior to the target effectivity specifying the name of the affected customer, capacity and when such reductions shall take place, provided that actual reduction of Contract Capacity shall take place upon the receipt of ERC approval. Any such reduction shall be implemented pursuant to Schedule 6 of this Agreement. All other terms and conditions of this Agreement shall remain in full force and effect

(f) Outages

Except in cases of Force Majeure events, the Seller shall guarantee continuous supply even during Scheduled and Unscheduled Outages of its Facility throughout the term of this Agreement.

(g) Replacement Power

In case of Force Majeure, the Seller may provide replacement power from its affiliate, subject to availability. The cost of which shall be for the account of the Buyer.

(h) Other Charges

Buyer shall bear all other costs and charges incurred after the Delivery Point, such as WESM charges including line rental, transmission line losses, any interconnection charges and site specific loss adjustments, among others, as applicable.

(i) Prompt Payment Discount ("PPD")

The Seller shall extend PPD equivalent to PhP0.9000/kWh of Associated Energy to the Buyer if full payment of the power bill invoice is made within ten (10) Days from receipt thereof. Provided further, that the Buyer has no outstanding payables to the Seller including any required posting/replenishment of Security Deposit under this Agreement.



The Buyer shall not automatically deduct the PPD from the payment of its current power bill invoice and any unilateral deduction shall be considered a breach of its obligations under this Agreement. The PPD for the current power bill invoice will be made available to the Buyer in the succeeding power bill invoice. The Buyer with an expiring Agreement who is qualified to avail the PPD under its power bill invoice, shall receive its discount upon final settlement and clearance of its Agreement with the Seller.

Schedule 2 of the PSA
Contract Capacity and Contract Energy

SCHEDULE 2

CONTRACT CAPACITY AND CONTRACT ENERGY

Billing Month	Hours	Contract Capacity (kW)	Maximum Contract Energy (kWh)	Minimum Contract Energy (kWh)
January	744	2000	1,488,000	967,200
February	744	2000	1,488,000	967,200
March*	672	2000	1,344,000	873,600
	696*	2000	1,392,000	904,800
April	744	2000	1,488,000	967,200
May	720	2000	1,440,000	936,000
June	744	2000	1,488,000	967,200
July	720	2000	1,440,000	936,000
August	744	2000	1,488,000	967,200
September	744	2000	1,488,000	967,200
October	720	2000	1,440,000	936,000
November	744	2000	1,488,000	967,200
December	720	2000	1,440,000	936,000

*Number of hours for March billing period during leap year.

The Buyer shall not be allowed to nominate at least 50% of the Contract Capacity per interval divided by twelve (12) on all 5-minute Trading Intervals, but at the end of the relevant billing period, the Buyer shall be obligated to pay for the Product at 65% monthly minimum CUF or actual energy purchased, whichever is higher. The Buyer will be billed based on Monthly CUF if, at the end of the billing period and after reconciliation, the

nomination falls below the Monthly CUF for reasons other than FM.

**Schedule 3 of the PSA
 Electricity Fees**

SCHEDULE 3

ELECTRICITY FEES

Capacity Utilization Factor ("CUF")	CAPACITY FEES, PHP/kWh)	
	Capital Recovery Fee	Fixed Operations & Maintenance Fee
100%	2.2933	0.2120
99%	2.3165	0.2141
98%	2.3401	0.2163
97%	2.3642	0.2186
96%	2.3889	0.2208
95%	2.4140	0.2232
94%	2.4397	0.2255
93%	2.4659	0.2280
92%	2.4927	0.2304
91%	2.5201	0.2330
90%	2.5481	0.2356
89%	2.5767	0.2382
88%	2.6060	0.2409
87%	2.6360	0.2437
86%	2.6666	0.2465
85%	2.6980	0.2494
84%	2.7301	0.2524
83%	2.7630	0.2554
82%	2.7967	0.2585
81%	2.8312	0.2617
80%	2.8668	0.2650
79%	2.9029	0.2684
78%	2.9401	0.2718
77%	2.9783	0.2753
76%	3.0175	0.2789
75%	3.0577	0.2827
74%	3.0991	0.2865
73%	3.1415	0.2904
72%	3.1851	0.2944
71%	3.2300	0.2986
70%	3.2761	0.3029
69%	3.3236	0.3072
68%	3.3725	0.3118
67%	3.4228	0.3164
66%	3.4747	0.3212
65%	3.5282	0.3262

Note: FOM shall be 100% indexed to PH CPI

CAPACITY UTILIZATION FACTOR FORMULA

The Capacity Utilization Factor shall be calculated in accordance with the formula below:

$$CUF = \frac{AE}{CC \times (BPD - FMDT) \times 24}$$

Where:

- CUF** = Capacity Utilization Factor.
- AE** = Associated Energy refers to the supplied energy in kiloWatt-hours ("kWh") for the relevant Billing Period.
- CC** = Contract Capacity in kilo-Watt ("kW").
- BPD** = Billing Period Days, the number of Days within the relevant Billing Period.
- FMDT** = Force Majeure Days Taken within the relevant Billing Period.

Note: Calculated CUF for each relevant Billing Period shall be rounded-off to the nearest whole percentage/number.

ENERGY FEES, Php/kWh	Percentage to be indexed	
Fuel Fee	3.6467	100%
Variable Operations & Maintenance Fee	0.1071	100%

28. Copies of the foregoing documents and/or information are attached to the Joint Application as annexes and made integral parts hereof:

Annex	Documents/Information
"A"	Certified True Copy of the (a) proof of Business Registration or a certified true copy of (b) Board Resolution or Secretary's Certificate that will indicate the list of the Board of Directors and Board Members of the EC.
"B"	Verified Certification of the EC showing list of Board of Directors and Board Members of the ultimate parent company, its subsidiaries, and all its affiliates.
"C"	Certified True Copy of the (a) Articles of Incorporation (AOI), (b) Bylaws, and (c)

	latest General Information Sheet (GIS) of SPI.
"D"	Verified Certification of SPI showing list of Board of Directors and Board Members of the ultimate parent company, its subsidiaries, and all its affiliates.
"E"	<p>SPI Certification invoking Section 22 of ERC Resolution 16 Series of 2023 on Documents Previous Submitted</p> <ul style="list-style-type: none"> - Write-up on the non-applicability of a Shareholders' Agreement of SPI - Write-up on the non-applicability of the BOI Registration of SPI - Environmental Compliance Certificate of SPI - Write-up on the non-applicability of the DOE-PDP - Write-up on the non-applicability of the requirements regarding a renewable energy plant - Write-up on the non-applicability of the requirement regarding an RE Service Contract - Write-up on the non-applicability of a water permit from the National Water Resources Board - Documents Related to Fuel (confidential) - Certification from the Independent Electricity Market Operator of the Philippines on the WESM Registration of SPI - WESM Registration of SPI - Relevant Technical and economic characteristics of the generation capacity, installed capacity, mode of operation, and dependable capacity - Transmission Service Agreement between the National Grid Corporation of the Philippines and SPI - Heat Rate Test Certificate of the SPI Plant
"F"	Certificate of Compliance (COC) or Provisional Authority to Operate (PAO) or any Certification coming from the ERC of

	the ongoing COC/PAO application or renewal, pursuant to the Guidelines for the issuance of COC for Generation Companies/Facilities including Annexes of the SPI Plant.
"G"	Write-up on the Demand Side Management Program of the EC
"H"	Write-up on the certification by National Power Corporation (NPC) whether Transition Supply Contract (TSC) capacity and energy are expected to be available during the contractual period.
"I"	Supply and Demand Scenario of the EC including the details of Existing Suppliers, Contract Utilization, Average Daily Load Curve, in accordance with Commission's templates.
"J"	Single-line Diagram Connection
"K"	Performance Assessment of the System: <ul style="list-style-type: none"> a. SAIDI and SAIFI. b. Historical [for the past five (5) years] c. Current Year
"L"	An estimation of the potential for a reduction in load supplied of the EC due to retail competition, GEOP, etc.
"M"	Power Supply Agreement of SPI and the EC
"N"	Transmission Service Agreement of SPI and/or the EC
"O"	Write-up on the Related Agreements such as: <ul style="list-style-type: none"> a. Transmission Wheeling Contract; b. IPPA Agreement; c. EPC Contract; d. O&M Contract; e. Project Feasibility Study; f. Wholesale Aggregator Agreement.
"P"	Executive Summary of the PSA between SPI and the EC
"Q"	Rate Generation Calculations and Derivations (confidential) Sample Bill Rate Impact Analysis
"R"	Write-up, certifications and documents:

	<ul style="list-style-type: none"> a. Certified True Copy of the Latest and Complete Set of Audited Financial Statements of the Generation Company (Balance Sheet, Income Statement, and Statement of Cash Flows). b. For conventional power plants utilizing fuel: Certification (from the engine manufacturer or IPP) of the net heat rate (initial and every after major maintenance schedule) in liters per kWh. c. Simulation of the number of operating units necessary to meet the MEOT d. Certified True Copy of the Distribution Wheeling Service (DWS) Agreement (for embedded generators), if applicable. e. Certified True Copy of the Wholesale Electricity Spot Market (WESM) Registration
"S"	Details and Documents on the Competitive Selections Process (CSP)
"T"	Affidavit in support of the Prayer for Provisional Authority/Interim Relief

29. The Joint Application is likewise consistent with Section 1 of the same Department Circular No. DC2021- 09-0030 which declares as State policy, that:

“All distribution utilities must henceforth take cognizance and assume full responsibility to forecast, assure and contract for the supply of electric power in the respective franchise areas to meet their obligations as a distribution utility.” (Underscoring supplied.)

30. By way of emphasis, Resolution No. 21, Series of 2005 of the Honorable Commission dated 19 October 2005 had directed all Distribution Utilities (DUs) “to enter into future bilateral power supply contract with power producers to be subjected to a review by the Commission.” (Underscoring supplied.)

31. The PSA with SPI was made to ensure the continuous supply of power to the EC and due to the former’s competitive pricing structure and

other favorable terms of its contract, which will redound to the benefit of the latter and its end-consumers in terms of reliable and affordable power supply;

32. An analysis was conducted to determine the impact of the implementation of the PSA on Applicant's generation rate while taking into account Applicant's projected energy, available contracted supply for the next 9 Years and 3 Months and WESM final price using the **7.1403 Average WESM** price from January 2023 to December 2023. Table below, shows the average with SPI at **PhP 6.4667/kWh**. It Also shows the average generation rate with-out SPI PSA at **PhP 6.7685/kWh**.

Annex "Q" is shown below:

LEYECO III ACTUAL RATE IMPACT ANALYSIS

With KEPCO SPC

	Forecasted 2025 Quantity (kWh)	Amount (PhP)	Percent Share (%)	Resulting Capacity Utilization Factor (%)	2019 Average Rate (PhP/kWh)	Weighted Average Rate (PhP/kWh)
GCGI	21,900,000.00	146,946,810.00	26.69%	100%	6.7099	6.4557
KEPCO SPC	8,760,000.00	52,018,632.00	10.67%	100%	5.9382	
SPI	17,490,083.04	88,658,979.92	21.31%	100%	5.0691	
WESM	33,912,645.96	242,167,027.93	41.33%		7.1403	
TOTAL	82,062,729.00	529,771,449.85	100.0%			

Without KEPCO SPC

	Forecasted 2025 Quantity (kWh)	Amount (PhP)	Percent Share (%)	Resulting Capacity Utilization Factor (%)	2019 Average Rate (PhP/kWh)	Weighted Average Rate (PhP/kWh)
GCGI	21,900,000.00	146,946,810.00	26.69%	100%	6.7099	6.7685
KEPCO SPC	8,760,000.00	52,018,632.00	10.67%	100%	5.9382	
SPI						
WESM	51,402,729.00	356,479,560.59	62.64%		6.9350	
TOTAL	82,062,729.00	555,445,002.59				

GENERATION RATE IMPACT With-Out TLI (Php/kWh)	0.3129
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As shown by the analysis, the procurement of supply from Applicant SPI under the PSA will result to a rate impact/decrease of about **PhP 0.3129/kWh**.

Prayer for Provisional Authority or Interim Relief

33. Under Rule 14 of the Honorable Commission's 2021 Revised Rules of Practice and Procedure (2021 RRPP)⁵, the Honorable Commission is authoprized to issue provisional authority or interim relief prior to a final decision, provided the facts and circumstances alleged warrant such remedy.

34. As shown in the LEYECO III's Supply and Demand Scenario, the peak demand ranges from 13MW to 15W and our existing contract capacity is 9.5MW which is a PSA with GCGI that expires on 2040 and . If no Provisional Authority (PA) or Interim Relief [IR) will be issued, the total

⁵ ERC Resolution No. 1, Series of 2021

demand of 12.5MW will be exposed to the market having erratic power rates, to the prejudice of the consumers. Thus, the issuance of the PA or IR is in the best interest of the electric consumers, especially the captive customers, as it ensures continuous and reliable electricity service, with stable rate, which is essential for public welfare, economic stability and growth.

35. Further, from the LEYECO III's rate impact simulation, it is clear that the implementation of the PSA with SPI would reduce LEYECO III's rate by Php 0.3129/kWh, as compared to if the same power requirements are purchased from the Wholesale Electricity Spot Market (WESM).

36. As such, the early implementation of this PSA with SPI would benefit LEYECO III's consumers, as it will ensure the provision of reliable, secure, and quality supply of electricity in the least cost manner.

37. To support the prayer for provisional authority or interim relief, the Judicial Affidavit of Engr. Richard A. Forsuelo, REE is attached hereto as ANNEX T of the Joint Application.

**Allegations in Support of the Confidential Treatment of
Annex "E" and Series and "Q"**

38. Rule 4 of the Honorable Commission's Rules of Practice and Procedure provides that the EC and SPI may request that information may not be disclosed;

39. SPI prays for the confidential treatment of the information contained in the Annexes "E" and "Q", and not disclosed except to the officers and staff of the Honorable Commission and its staff.

40. Annexes "E" and "Q" contains the details of SPI's fuel procurement processes, power rate calculations and financial model as well as the manner by which these were derived. This information is proprietary in nature and should be protected as trade secrets as contemplated by law and jurisprudence. In the case of *Air Philippines Corporation vs. Pennswell, Inc.*⁶, the Supreme Court defined a trade secret, as follows:

"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

⁶ G.R. No. 172835, December 13, 2007

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;
- (2) the extent to which the information is known by employees and others involved in the business;
- (3) the extent of measures taken by the employer to guard the secrecy of the information;
- (4) the value of the information to the employer and to competitors;
- (5) the amount of effort or money expended by the company in developing the information; and
- (6) the extent to which the information could be easily or readily obtained through an independent source."
(citations omitted, emphasis supplied)

41. The interest of the consuming public is sufficiently protected by the review and evaluation of the rates under the PSA by the Honorable Commission, without the need to disclose the contents of **Annexes "E" and "Q"**. The reasonableness and transparency of the prices of electricity is to be assured by the Honorable Commission through its own review and verification of SPI's operating costs and expenses;

42. More importantly, SPI's competitors, should they obtain the information in **Annexes "E" and "Q"**, will gain undue advantage thereon and have the opportunity to use the same in their operations. The negotiating power of SPI with parties it plans to contract with or who it is currently doing business with, will clearly be thwarted if it is compelled to disclose such information;



43. Accordingly, SPI submits one (1) copy of Annexes "E" and "Q", in a sealed envelope, with the said envelope and each page of the documents and/or information stamped with the word "Confidential".

44. Lastly and corollary to the foregoing, SPI would like to implore the discerning wisdom of the Honorable Commission to include in its issuance for this purpose the "**procedures for the handling or returning the confidential information, as appropriate, upon the close of the proceedings or at the end of the period for which the information is to be treated as confidential**".

45. This is guided by the fact that SPI will seek for the return of these sought to be declared confidential annexes after its utilization as evidence in this case and/or at the close of the proceedings hereof, so as to relieve the Honorable Commission of the burden of safekeeping the trade secrets of SPI enclosed in the subject annexes.

PRAYER

WHEREFORE, premises considered, Joint Applicants LEYECO III and SPI most respectfully pray that the Honorable Commission:

- i. Pending trial on the merits, **GRANT Provisional Authority or Interim Relief allowing the implementation of the PSA between LEYECO III and SPI** in entirety, reckoned from the start of the supply by SPI to LEYECO III under the PSA subject of this Joint Application
- ii. **ISSUE** an Order treating Annexes "E" and "Q" as confidential in perpetuity, directing its non-disclosure to persons other than the officers and staff of the Honorable Commission, perpetually protecting the said information from public disclosure by maintaining the same separate and apart from the records of the case, ensuring that these are not divulged to unauthorized persons, and that these confidential documents are returned to SPI after the termination of this case pursuant to Rule 4 of its Rules of Practice and Procedure;
- iii. After due notice and hearing, **ISSUE** a Decision approving the instant Joint Application *in toto* which will thereby allow/authorize LEYECO III to charge and collect the fees from its customers reckoned from the

⁷ Letter (d), Section 4, of the ERC Rules and Practice and Procedure.



commencement of the supply to the latter by SPI.

Other reliefs just and equitable under the premises are, likewise, prayed for.

Respectfully submitted.

Pasig City, 05 November 2024.

(Signature page of the counsels will follow)



SUAL POWER INC.

By:



JUPITER M. CABAGUIO

5th Floor, C5 Office Building Complex
#100 E. Rodriguez, Jr. Ave., C5 Road, Bo. Ugong,
Pasig City 1604, Metro Manila

Telephone No. (02) 5317 1000 / jcabaguio@smcgph.sanmiguel.com.ph

PTR No. 1650869 / 03 January 2024 / Pasig City

IBP No. 06372 / Lifetime / Makati City

MCLE Compliance No. VII – 0021509 / 17 June 2022

Roll No. 47112



AVELINO G. CEDO III

5th Floor, C5 Office Building Complex
#100 E. Rodriguez, Jr. Ave., C5 Road, Bo. Ugong,
Pasig City 1604, Metro Manila

Telephone No. (02) 5317 1000 / acedoiiii@smcgph.sanmiguel.com.ph

PTR No. 1650867 / 03 January 2024 / Pasig City

IBP No. 010380 / Lifetime / PPLM

MCLE Compliance No. VII - 0020279 / 02 June 2022

Roll No. 54500



JULIETA B. ESTAMO

5th Floor, C5 Office Building Complex,
#100 E. Rodriguez Jr. Ave., C5 Road, Bo. Ugong,
Pasig City 1604, Metro Manila

Telephone No. (02) 5317 1000 / jestamo@smcgph.sanmiguel.com.ph

PTR No. 5519509 / 08 March 2024 / Mandaluyong City

IBP SI No. 460997 / 19 August 2024 / Central Luzon Bulacan Chapter

MCLE Compliance No. VII-0027120 / 17 March 2023

Roll No. 39024

LEYTE III ELECTRIC COOPERATIVE, INC.

By:

ATTY. ROGELIO P. GULA

Legal Counsel of LEYECO III

Email Address: nhoygula@yahoo.com

Cellphone no.: 09177121967

Office Address: Gula Law & Notarial Office, Door 7, Cabigon Bldg.,
Del Pilar Street, (across Sacred Heart Church)

Brgy. 8, 6500 Tacloban City, Leyte

Roll No. 48025; Lifetime IBP No. 07688; PTR No. 8490302 dtd. 1/2/24

MCLE Compliance No. VII-0004938 valid until 4/14/2025

**VERIFICATION AND
CERTIFICATION OF NON-FORUM SHOPPING**

I, **ELENITA D. GO**, Filipino, of legal age, and with office address at the 5th Floor, 100 Eulogio Rodriguez Jr. Avenue C5 Road (North Bound) Pasig City, after having been duly sworn to in accordance with law, hereby depose and state, that:

1. I am the authorized representative of Sual Power Inc. ("SPI") a co-applicant in the Joint Application for Approval of the Power Supply Agreement between Leyte III Electric Cooperative, Inc. ("LEYECO III") and SPI;
2. I have caused the preparation and filing of the Joint Application and that I have read the contents thereof and aver that all the factual/legal allegations contained therein are true and correct based on my personal knowledge and/or on authentic documents/official records;
3. The Joint Application is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation and that the factual allegations therein have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery; and,
4. I hereby certify that SPI has not filed/commenced any action or proceeding arising from the same issues raised in the Joint Application before the Supreme Court, Court of Appeals, or any other courts or tribunals or quasi-judicial bodies/agencies and to the best of my knowledge, no such other similar action or claim is pending therein. If ever there is a case pending before the said courts or tribunals involving the same issues, I undertake to inform the Honorable Energy Regulatory Commission of such fact within five (5) calendar days from knowledge thereof.

I am executing this undertaking in support of the Joint Application and the veracity of the allegations therein as well as for any other legal purpose this may serve.

IN WITNESS WHEREOF, I have hereunto set my hand this NOV 06 2024 at Pasig City.


ELENITA D. GO
Affiant

SUBSCRIBED AND SWORN to before me this NOV 06 2024 in Pasig City. Affiant personally appeared and exhibited to me her Philippine Passport No. P1876103B issued on June 7, 2019 at the DFA NCR East as her competent proof of identity

Doc. No.: 134 ;
Page No.: 28 ;
Book No.: 157 ;
Series of 2024.

FERDINAND D. AYAHAO
Notary Public

Ferdinand D. Ayahao
Notary Public
Resident in Pasig City and the Municipality of Pateros
A.L. No. 10000 No. 20 (2019-2024), valid until 12/31/2025
M.A. No. 10000 No. 20 (2019-2024), valid until 12/31/2025
Roll No. 46277; IDP LRN 04-2019; OIL No. 2019; 04/21/2001
TIN 123-011-785; PTR 1624591A No. 01-03/24; Pasig City
Unit 5, West Tower PSE, Exchange Road,
Ortigas Center, Pasig City Tel: +632-86314090

**VERIFICATION AND
CERTIFICATION OF NON-FORUM SHOPPING**

I, **SANTIAGO HANTIG, JR.**, of legal age, Filipino, and with principal office address at the Main Office of Leyte III Electric Cooperative Inc. (LEYECO III), Brgy. San Roque, Tunga, Leyte, after having been duly sworn in accordance with law, hereby depose and state that:

1. I am the Board President of Leyte III Electric Cooperative Inc. (LEYECO III) and an authorized representative of LEYECO III, Co-Applicant in the above-captioned case, per attached LEYECO III Board of Directors per Resolution No. 2024-08-013;

2. I have caused the preparation and filing of this *Joint Application (with Prayer for Provisional Authority or Interim Relief and Motion for Confidential Treatment of Information)* ("Joint Application") and have read the contents thereof, and, based on our own personal knowledge, belief and on authentic records of LEYECO III, all the allegations contained therein on the part of LEYECO III are true and correct.

3. Furthermore, the *Joint Application* is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and the factual allegations therein have evidentiary support or, if specifically so identified, will have evidentiary support after a reasonable opportunity for discovery.

4. LEYECO III has not commenced any other action or proceeding involving the same issue/s in the Supreme Court, the Court of Appeals or any court, tribunal, or quasi-judicial agency and, to the best of my knowledge, no such other action or claim is pending therein; and


5. Should I hereinafter learn that the same or a similar action or claim has been filed or is pending in the Supreme Court, the Court of Appeals or any court, tribunal, or quasi-judicial agency, we shall report said fact within five (5) days from discovery thereof to this Honorable Commission.

IN WITNESS WHEREOF, I have hereunto set my name and signature this 6th day of November, 2024 in Tunga, Leyte.

SANTIAGO HANTIG, JR.
Board President, LEYECO III
Proof of identity: Driver's License
H09-05-000022

SUBSCRIBED AND SWORN to before me, a Notary Public for the Province of Leyte, this 7th day of November 2024, Tunga, Leyte, Philippines.

Doc. No. 232;
Page No. 48;
Book No. I;
Series of 2024.


ATTY. LERMA ESQUIBEL ADVINCULA
Notarial Commission No. R-SMT 2023-001NC
Valid until December 31, 2024
Roll of Attorneys No. 84380
IBP No. 409989/ 1-1-2024/ Leyte Chapter
PTR No. 7794799M-4-2024/ Tunga, Leyte
MCLE Compliance No. VIII-0008781, until 4-14-2028
Brgy. San Pedro, Tunga, Leyte