



LEYTE V ELECTRIC COOPERATIVE, INC.

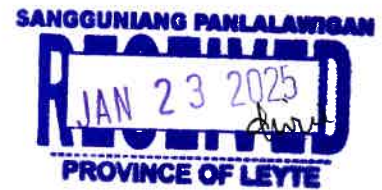
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Reference No. 2025-01-059

January 20, 2025



HON. LEONARDO M. JAVIER
Provincial Vice Governor of Leyte
Leyte Provincial Government Complex
West Bypass Road, Brgy. Guindapunan
6501 Palo, Leyte, Philippines

Subject: **Service of the Application**

Dear Honorable Vice-Governor Javier:

Greetings from LEYECO V!

Leyte V Electric Cooperative, Inc. ("**LEYECO V**") writes with reference to an Application for filing with GNPowder Kauswagan Ltd. Co. ("**GNPK**") before the Energy Regulatory Commission ("**ERC**"), with respect to the case/matter entitled "*In the Matter of the Application for Approval of the Emergency Power Purchase and Sale Agreement ("EPPSA") between Leyte V Electric Cooperative, Inc. and GNPowder Kauswagan Ltd. Co., with Motion for Confidential Treatment of Information*" (the "**Joint EPPSA Application**").

Pursuant to Section 2(a) of Rule 6 of the ERC's Revised Rules of Practice and Procedure which state that:

"Section 2. Rate Applications and Petitions Affecting the Consumers. – Before the Commission accepts rate applications and petitions affecting the consumers for filing, the applicant or petitioner must comply with the following requirements.

"(a) Furnish a copy of the application or petition, and not a mere notice of the filing thereof, with all its annexes and accompanying documents, except those subject of a motion for confidential treatment of information under Rule 4, the following:

1. Both the Office of the City or Municipal Mayor and the Sangguniang Panlungsod or Bayan of the city or municipality where the applicant or petitioner principally operates;
2. Both the Office of the Provincial Governor and the Sangguniang Panlalawigan, except if the city where the applicant or petitioner principally operates is not a component city of the province."

LEYECO V, as co-applicant of the Joint EPPSA Application, hereby submits the following documents:

1. One (1) copy of the Joint EPPSA Application; and,
2. One (1) set of annexes of the Joint EPPSA Application through a USB Flash drive.

Executive Secretary: 206 InfoTech & Comm. Services: 216-218, 509 Institutional Services Dept.: 401 Public Relations: 214 Clinic: 209 Membership Division Chief: 403 Membership: 404 Housewiring: 407 Customer Welfare Desk: 200-205 Motorpool: 406 ODM: 409 Human Resources: 402, 210 GSD Chief: 408 Warehouse: 405 Corporate Planning & Energy Trading Dept.: 219, 221, 223	Technical Services Dept.: 801,802 Engineering: 803 Line Construction: 804 Internal Audit Dept.: 701 Auditors: 702 Finance Services Dept.: 501 Cashiering: 502 Collection: 503-504 Accounting: 505 Consumer Accts: 506 Meter Reading & Billing: 507, 508 & 510
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As proof of compliance with the ERC's requirements, we would like to request your good office to acknowledge the receipt of the above documents and to provide us with a Certification with your official seal attesting to the fact (i) that the Office of the Sangguniang Panlalawigan, Province of Leyte was served a copy of the Joint EPPSA Application, with all its annexes and accompanying documents, including the date of such service and (ii) that said Joint EPPSA Application was posted on your official bulletin boards.

Thank you very much for your usual cooperation.

Very truly yours,

ATTY. JANNIE ANN J. DAYANDAYAN, CPA
General Manager

ap/jb/mtg

Executive Secretary: 206 InfoTech & Comm. Services: 216-218, 509 Institutional Services Dept.: 401 Public Relations: 214 Clinic: 209 Membership Division Chief: 403 Membership: 404 Housewiring: 407 Customer Welfare Desk: 200-205 Motorpool: 406 ODM: 409 Human Resources: 402, 210 GSD Chief: 408 Warehouse: 405 Corporate Planning & Energy Trading Dept.: 219, 221, 223	Technical Services Dept.: 801,802 Engineering: 803 Line Construction: 804 Internal Audit Dept.: 701 Auditors: 702 Finance Services Dept.: 501 Cashiering: 502 Collection: 503-504 Accounting: 505 Consumer Accts: 506 Meter Reading & Billing: 507, 508 & 510
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Republic of the Philippines
ENERGY REGULATORY COMMISSION
Exquadra Tower, 1 Jade Drive
Ortigas Center, Pasig City

IN THE MATTER OF THE
APPLICATION FOR APPROVAL
OF THE EMERGENCY POWER
PURCHASE AND SALE
AGREEMENT ("EPPSA")
BETWEEN LEYTE V ELECTRIC
COOPERATIVE, INC. AND
GNPOWER KAUSWAGAN LTD.
CO., WITH MOTION FOR
CONFIDENTIAL TREATMENT OF
INFORMATION.

ERC CASE NO. _____

LEYTE V ELECTRIC
COOPERATIVE, INC. and
GNPOWER KAUSWAGAN LTD.
CO.,

Applicants.

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JOINT APPLICATION

(with Motion for Confidential Treatment of Information)

Applicants, LEYTE V ELECTRIC COOPERATIVE, INC. ("LEYECO V"), and GNPOWER KAUSWAGAN LTD. CO. ("GNPK"), by and through their undersigned counsels, most respectfully aver and state that:

THE JOINT APPLICANTS

1. Applicant LEYTECO V is a non-stock electric cooperative duly organized and existing under and by virtue of the laws of the

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Republic of the Philippines, with principal office address at Brgy. San Pablo, Ormoc City. It was granted an exclusive franchise by the National Electrification Commission to own and operate an electric distribution system in the Municipalities of Isabel, Merida, Palompon, Tabango, Calubian, San Isidro, Leyte, Kananga, Matag-ob, Albuera and Villaba, and the city of Ormoc, all in the Province of Leyte (the "Franchise Area").

2. LEYECO V is represented herein by its Board President, Dir. Paulito A. Cotiangco, and its General Manager, Atty. Jannie Ann J. Dayandayan, CPA, who were authorized by its Board of Directors to initiate, prepare, file and pursue the instant Joint Application pursuant to its Board Resolution No. 126, Series of 2024 dated 29 October 2024, a copy of which is hereto attached and marked as **Annex "A"**.

3. Applicant GNPK is a duly registered limited partnership duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office address at Brgy. Libertad, Kauswagan, 9202, Lanao del Norte. GNPK is a project company engaged in the business of operating and owning a 4 x 138MW (net) coal-fired power plant.

4. GNPK is represented herein by its Vice President for Energy Sales and Trading, Engr. Arnel O. Bilaoen, and its Authorized Representatives, Ms. Mariflor M. Guba and Mr. Gino Lorenzo R. Ilagan, who have been authorized to initiate, prepare, file, and pursue the instant Joint Application, as evidenced by its Secretary's Certificate dated 31 October 2024, the copy of which are hereto attached and marked as **Annex "B"**.

NATURE AND TIMELINESS OF THE JOINT APPLICATION

5. This is an application for the approval of the Emergency Power Purchase and Sale Agreement ("**EPPSA**") entered into by and between LEYECO V and GNPK on 31 October 2024, a copy of which is hereto attached and marked as **Annex "C"**.

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6. Section 24 of Resolution No. 16, Series of 2023 entitled *“Implementing Guidelines for the Procurement, Execution and Evaluation of Power Supply Agreements Entered into by Distribution Utilities for the Supply of Electricity to Their Captive Market”* (**“2023 ERC CSP Rules”**) mandates that *“the application for approval of the EPSA shall be filed with the ERC within thirty (30) calendar days after the occurrence of the Force Majeure or Fortuitous Event.”*

7. Under the foregoing provisions pertaining to the exemption from conducting a Competitive Selection Process (**“CSP”**), LEYECO V respectfully asserts its legal authorization to procure electricity through negotiated procurement due to circumstances beyond its control. As elaborated hereunder, it is essential for the cooperative to pursue this approach to ensure the cost-effective provision of electricity to its consumers.

NARRATION OF FACTS

8. LEYECO V executed a Power Purchase and Sale Agreement (**“PPSA”**) with GNPowder Dinginin Ltd. Co. (**“GNPD”**) for 31 MW Baseload Power Supply, which was submitted to the Honorable Commission for approval under ERC Case No. 2016-057 RC.

9. On 03 May 2019, the Supreme Court rendered its Decision in the case of *Alyansa Para sa Bagong Pilipinas, Inc. vs. Energy Regulatory Commission, et al.*, G.R. No. 227670, 03 May 2019, (the **“Alyansa Ruling”**), requiring all applications for approval of power supply agreements filed before the Honorable Commission on or after 30 June 2015 to comply with the CSP requirement provided under the Department of Energy’s (**“DOE”**) Department Circular No. DC2018-02-003 (**“2018 DOE CSP Policy”**).

10. Consequently, in 22 August 2023, LEYECO V received the Honorable Commission’s *Order* in the which: (i) dismissed LEYECO V and GNPD’s Application for the approval of the *LEYECO V-GNPD PPSA*; and (ii) directed LEYECO V and GNPD to immediately stop

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implementing the *LEYECO V-GNPD PPSA* upon receipt of the said *Order*.

11. While LEYECO V intended to procure its deficit supply through a CSP, the process would take time and would entail continuous exposure to the volatile prices in the Wholesale Electricity Spot Market (“WESM”), thereby exposing itself (and its consumers) to the volatile prices in the market. All the developments compelled LEYECO V to enter into an Emergency Power Supply Agreement (“EPSA”) in September 2023 with FDC Misamis Power Corporation (“FDCMPC”) which was filed with the Honorable Commission as ERC Case No. xxx. The said EPSA provides that its term shall be for one (1) year from the commencement of the delivery, or from 22 September 2023 to 21 September 2024.

12. In consideration of the one -year duration of the LEYECO V-FDCMPC EPSA, as early as 2023, LEYECO V participated in the efforts to secure Aggregate Supply through the Federation of Rural Electric Cooperatives of Region VIII (“FRECOR 8”) Joint CSP for Long-Term Aggregate Baseload Demand of its member-electric cooperatives. With this aggregation, LEYECO V intends to procure a total baseload capacity of 45 MW which was divided into two lots, Lot 1 and Lot 2.

13. In the procurement process conducted by FRECOR 8 Joint CSP, the timeline of events unfolded as follows:

- a. LEYECO V (through FRECOR 8) began its preparations for the CSP as early as October 2023 which include the creation of working teams and the Long Term CSP Transaction Calendar Schedule. On 30 November 2023, FRECOR 8 Joint Competitive Selection Process Joint Board of Directors (“JCSP JBOD”) issued the Board Resolution No. 2023-11-003, Series of 2023 endorsing the submission of its Terms of Reference (“TOR”) to the National Electrification Administration (“NEA”) for its review and approval.
- b. Significantly, on 23 November 2023, NEA issued Memorandum No. 2023-57 or the NEA 2023 CSP

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Guidelines,¹ which became effective on 06 December 2023. The introduction of a new regulatory framework and CSP rules necessitated a complete revision of the prepared bidding documents to ensure compliance with the NEA 2023 CSP Rules and Guidelines and the Honorable Commission's *Implementing Guidelines for the Procurement, Execution, and Evaluation of Power Supply Agreements* ("ERC 2023 CSP Rules"), which was issued on 03 October 2023.

- c. FRECOR 8 submitted its documents to NEA on 15 December 2023 for the issuance of the Notice to Commence. After several submissions to address NEA's comments, on 20 March 2024, the NEA finally issued a Notice to Commence of even date, informing FRECOR 8 that it may proceed with the conduct of CSP. Pursuant thereto, on 06 April 2024 and 13 April 2024, LEYECO V published its Invitation to Bid and TOR for the FRECOR 8 CSP.
- d. On 03 July 2024, FRECOR 8 Joint Bid and Award Committee ("JBAC") issued the *JBAC Resolution No. 02, series of 2024 (for Lot 1)* and *JBAC Resolution No. 03, series of 2024 (for Lot 2)*, declaring the winners of the FRECOR 8 CSP. Subsequently, on 19 August 2024, FRECOR 8 issued the Notice of Award to the winning bidders.
- e. On 13 September 2024, the NEA issued Notices to Execute Agreement to FRECOR 8, which allowed FRECOR 8's member electric cooperatives (including LEYECO V) to execute their respective power supply agreements with the winning bidders. As such, LEYECO V is now currently in the process of securing the Honorable Commission's approval for its PSA arising from the successful conduct of the FRECOR 8 CSP.

¹ Entitled "*The National Electrification Administration Competitive Selection Process Guidelines Implementing the Department of Energy's department Circular No. DC2023-06-0021 and the Energy Regulatory Commission's Resolution No. 16, Series of 2023*"

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14. In the meantime, LEYECO V solely resorts to the Wholesale Electricity Spot Market (“WESM”) for any current imbalances which were intended to be addressed by the long-term power supply agreement filed with the ERC.

15. Currently, WESM holds the significant share of an average 28.89% in the generation mix of LEYECO V for the third quarter of 2024. LEYECO V’s consumers are exposed to the volatile WESM rates procured by LEYECO V for July, August, September 2024 billing periods, by as much as PhP10.4205/kWh, PhP 31.3531/kWh and PhP 7.0199/kWh (inclusive of VAT), respectively. Moreover, LEYECO V is burdened with the increase in the required prudential requirement that threatens LEYECO V’s financial operations as evident by the Notice dated 06 November 2024 issued by the Independent Market Operator of the Philippines (IEMOP) hereto attached as **Annex “D”**. This situation caused by factors beyond LEYECO V’s control compelled LEYECO V to seek measures to alleviate the adverse impact of the WESM by entering into an emergency supply agreement.

16. Section 3.8 of the DOE Department Circular DC 2023-06-0021 “Prescribing the Policy for the Mandatory Conduct of the Competitive Selection Process by the Distribution Utilities for the Procurement of Power Supply for their Captive Market” defines Force Majeure as “any extraordinary event not foreseeable or avoidable, or to an event that could not be foreseen, **or which, though foreseen, is inevitable and independent of human will or the DU’s participation,** whether by active intervention, neglect or failure to act.” Verily, the Supreme Court as early as the case of *Murillo vs. Mendoza*, G.R. No. L-46020, 08 December 1938, in resolving events which would constitute as force majeure, likened it to addressing the question of whether unforeseen acts arose wherein no fault or negligence from those involved intervened.

17. Applying the aforementioned rule and jurisprudence, the foregoing antecedents herein presented clearly constitute force majeure, justifying the execution of the subject EPPSA between LEYECO V and GNPK.

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18. The 2018 DOE CSP Policy 3, which mandates compliance with the CSP for power supply agreements, introduced legal and regulatory changes that were not within LEYECO V's control. Specifically, the Supreme Court's Alyansa Decision invalidated and rendered LEYECO V's existing agreements unenforceable, including the one with GNPD, resulting in a sudden need for alternative power arrangements. The mandated cancellation of its PSA with GNPD, without fault or negligence on LEYECO V's part, directly and materially affected its ability to secure a stable power supply, creating a scenario unforeseen at the time of entering into the original agreement.

19. LEYECO V's procurement of an EPSA with FDCMPC was a reasonable and prompt measure to mitigate the immediate effects of the power supply deficit caused by the invalidation of its existing contract. However, the expiration of the EPSA in September 2024, despite LEYECO V's efforts as early as October 2023 to initiate a long-term joint CSP through FRECOR 8, underscores the complexities and lengthy procedural requirements inherent to the CSP. This indicates that LEYECO V exercised due diligence but faced circumstances beyond its control.

20. Verily, under NEA 2023 CSP Rules and Guidelines, electric cooperatives are given at least two (2) years before the date indicated in their Power Supply Procurement Plans ("PSPPs") within which to conduct their CSP. However, in this case, LEYECO V, through FRECOR 8, only had, at most, one year within which to prepare and conduct the Joint CSP.

21. LEYECO V's sole reliance on the WESM for power supply, due to regulatory constraints and unavoidable delays in the CSP process, further demonstrates the presence of force majeure as exposure to high market prices is an adverse condition resulting from the interplay of regulatory and market forces, which was unforeseeable and unavoidable despite LEYECO V's preventive actions.

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22. Following its mandate to provide power in a least cost manner, LEYECO V informed the Honorable Commission of its significant exposure to the market and sought guidance on LEYECO V's intent to procure emergency supply to stabilize its generation rates through a letter dated 06 September 2024. On 18 September 2024, LEYECO V received a letter from the Honorable Commission acknowledging the updates provided by LEYECO V in the aforementioned letter and to adhere to the 2023 DOE CSP Policy and the 2023 ERC CSP Rules.

23. Consequently, LEYECO V solicited proposals from potential power suppliers for the supply of emergency power in accordance with the relevant CSP Rules.

24. After thorough evaluation LEYECO V issued Board Resolution No. 126, Series of 2024 dated 29 October 2024 that GNPk's proposal for LEYECO V's emergency power supply requirement has been selected.

25. Accordingly, LEYECO V and GNPk executed in counterparts the EPPSA, subject of this Joint Application.

26. Pursuant to the 2023 ERC CSP Rules, LEYECO V sent a Notice of Force Majeure Majeure/Fortuitous Event dated 6 September 2024 to this Honorable Commission, DOE, and NEA. Copies of the said Notices are hereto attached as **Annexes "E" to "E-3"**.

27. Consequently, GNPk commenced the delivery to LEYECO V under the terms of the EPPSA on 03 November 2024.

SALIENT FEATURES OF THE EPPSA

28. **Contracted Capacity (CC)**. 25,000 kW (Section 1.1 of Schedule 1 of the EPPSA)

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29. **Contract Price.** *Section 1.2 of the Schedule 1 of the EPPSA*

Contract Price = Capacity Price + Energy Price – Applicable Discounts + Other Charges

29.a. The Capacity Price is the component of the Contract Price allocated to pay for the cost, as well as the operations and maintenance of the power plant. Under *Section 1.2 of Schedule 1* of the EPPSA, the Capacity Price for the billing period shall be computed as follows:

$$\text{Capacity Price} = \text{Capacity Fee} * \text{CC} * \text{HT}_n * \text{FX}_n$$

Where:

Capacity Fee = amount in USD per kW-hr as set forth in *Schedule 1-A* of the EPPSA

CC = Contracted Capacity in kW, as set forth in *Section 1.1 of Schedule 1* of the EPPSA

HT_n = Total number of hours per Billing Period n less equivalent hours of Scheduled and Unscheduled outage and event of Force Majeure, if any

FX_n = The closing exchange rate of the PhP to the USD, as posted by the Bankers Association of the Philippines (BAP) for the calendar month within which the end of the current Billing Period occurs (currently at the 25th) or the next working day immediately after if the end of the current Billing Period falls on weekends or holidays and the information is not available

29.b. The Energy Price is the component of the Contract Price allocated to pay for the fuel, including Government Charges as adjusted from time to time due to changes in the

x ----- x

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delivered price of fuel in accordance with the formula as follows as provided in *Section 1.2 of Schedule 1* of the EPPSA:

$$\text{Energy Price} = \text{Energy Fee} * \text{Quantity}$$

Where:

i) **Energy Fee =**

$$\left[\text{Initial Energy Fee} * \left(\frac{\text{CIF}_n}{\text{CIF}_o} \right) + / - \text{EF Adjustments} * \text{FX}_n \right] + \text{Excise Tax}$$

where:

- Initial Energy Fee = fee per kWh as set forth in *Schedule 1-A* of the EPPSA
- CIF_n = Current CIF for Billing Period, in \$/million kcal
- CIF_o = Based CIF Cost of Fuel fixed in USD as set forth in *Schedule 1-A* of the EPPSA
- EF Adjustments = Upward or downward adjustments to the Energy Fee brought by the government impositions such as, but not limited to, import duty, as may be applicable, in \$/kWh
- FX_n = The closing exchange rate of the PhP to the USD, as posted by the Bankers Association of the Philippines (BAP) for the calendar month within which the end of the current Billing Period occurs (currently at the 25th) or the next working day immediately after if the end of the current Billing Period falls on weekends or holidays and the information is not available
- Excise Tax = Additional Excise Tax due to Train Law, PhP/kWh

ii) Quantity = the quantity of the Product which was delivered by the Seller and purchased by the Buyer at the Delivery

x-----x

Point based on the Buyer's Nomination, and Seller's deliveries or as evidenced by the Seller's declaration in the Wholesale Electricity Spot Market, when applicable, of the bilateral contract quantity, for the same Billing Period in accordance with the Dispatch and Utilization Protocol and the WESM Rules in kWh

30. **Term of Agreement.** *Section 1.3 of Schedule 1 of the EPPSA*

1.3.1 Effective Date: The date of execution of this Agreement

1.3.2 Commencement Date: The date specified in the Commencement Date Notice

1.3.3 Scheduled Termination Date: at least six (6) months but not later than twelve (12) months from the date indicated in the Commencement Date Notice.

31. **Scheduled Outages and Unscheduled Outages.** *–Section 2.2 of the EPPSA.*

2.2 Scheduled Outages and Unscheduled Outages. The Seller is allowed Scheduled and Unscheduled Outages not to exceed seven hundred twenty (720) Equivalent Hours for the Contract Year during which times reduced or no deliveries will be available to Buyer. The arrangement and conditions of supply during any outage are provided *under Section 2.2 of the EPPSA.*

RATE IMPACT

32. Hereinbelow provided is the Rate Impact on LEYECO V's over-all generation rate with and without the additional supply from GNPk with details shown in the attached Annex "J-2":

GENERATION RATE IMPACT OF EPPSA WITH GNPk	
With GNPk	PhP 6.2907/kWh

x ----- x

Without GNPK	PhP 6.4830/kWh
Rate Impact	-PhP 0.1923/ kWh

Note: Rate exclusive of VAT

COMPLIANCE WITH PRE-FILING REQUIREMENTS

33. In compliance with *Appendix "F" of Resolution No. 16, Series of 2023 ("Prefiling Checklist")* and in further support of the instant Joint Application, LEYECO V and GNPK herein submit the following:

ANNEX	DOCUMENT
"A"	LEYECO V Board Resolution No. 126, Series of 2024 dated 29 October 2024
"B"	GNPK Secretary's Certificate dated 31 October 2024 authorizing the signing of the EPPSA and the filing of the Application for the approval of the EPPSA by the Honorable Commission
"C"	Emergency Power Purchase and Sale Agreement dated 31 October 2024
"D"	Margin Call Notice to LEYECO V dated 6 November 2024 (<i>subject of the Motion for Confidential Treatment</i>)
"E"	LEYECO V Letter to the Honorable Commission dated 06 September 2024 regarding procurement of emergency supply
"E-1"	Letter Reply from the Honorable Commission to LEYECO V dated 16 September 2024
"E-2"	LEYECO V Letter to the National Electrification Administration (NEA) dated 06 September 2024 regarding procurement of emergency supply
"E-3"	LEYECO V Letter to the DOE dated 06 September 2024 regarding procurement of emergency supply
"F"	LEYECO V Supply-Demand Scenario in accordance with Annex "1" of the Prefiling Checklist
"F-1"	LEYECO V Load Curves in accordance with Annex "2" of the Prefiling Checklist

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"G"	FRECOR 8 Region 8 Joint Competitive Power Supply (R8 JCPSP) Memorandum of Agreement dated November 10, 2023
"G-1"	R8 JCPSP JBOD Board Resolution No. 2023-11-002, Series of 2023 (re: Creation of JBAC)
"G-2"	NEA Notice to Commence the Competitive Selection Process
"G-3"	Publication of the ITB and TOR on April 6 and 13, 2024
"G-4"	JBAC Resolution No. 02, Series of 2024 declaring the lowest calculated responsive bidders for Lot 1 and recommending to award the PSA to the winning bidders
"G-4(a)"	JBAC Resolution No. 03, Series of 2024 declaring the lowest calculated responsive bidders for Lot 2 and recommending to award the PSA to the winning bidders
"G-5"	Notice of Award to Therma Luzon, Inc. for 81MW of Lot 1
"G-5(a)"	Notice of Award to Sual Power, Inc. for 50MW of Lot 1
"G-5(b)"	Notice of Award to KEPCO SPC Power Corporation for 31 MW of Lot 1
"G-5(c)"	Notice of Award to Therma Luzon, Inc. for 28MW of Lot 2
"G-6"	NEA Notice to Execute Agreement with Therma Luzon Inc. (Lot 1)
"G-6(a)"	NEA Notice to Execute Agreement with Sual Power, Inc. (Lot 1)
"G-6(b)"	NEA Notice to Execute Agreement with KEPCO SPC Power Corporation (Lot 1)
"G-6(c)"	NEA Notice to Execute Agreement with Therma Luzon, Inc. (Lot 2)
"H"	GNPK Proposal for LEYECO V's Emergency Supply dated 13 August 2024 (<i>subject of the Motion for Confidential Treatment</i>)
"I"	LEYECO V Affidavit of Fortuitous Event
"I-1"	LEYECO V Write-up on the Non-Applicability of Certification on Occurrence of Fortuitous Event

"J"	Details of the EPPSA
"J-1"	Discussion and Calculation of Proposed Rate
"J-2"	Rate Impact Analysis
"K"	GNPK Generation Rate and Derivation with Write-up on Finance-related Prefiling Requirements (<i>subject of the Motion for Confidential Treatment</i>)
"K-1"	Supplemental Write-up on Finance-related Prefiling Requirements (<i>subject of the Motion for Confidential Treatment</i>)
"L"	GNPK Power Plant Technical Description
"M"	GNPK Certification attesting to the terms of the coal supply agreement
"M-1"	GNPK Sworn Statement attesting to the coal procurement process
"M-2"	GNPK Coal Supply Agreement dated 20 November 2014 (<i>subject of the Motion for Confidential Treatment</i>)
"M-3"	GNPK Amended and Restated Coal Supply Agreement dated 26 December 2017 (<i>subject of the Motion for Confidential Treatment</i>)
"M-4"	GNPK Amendment to the Coal Supply Agreement dated 01 January 2023 (<i>subject of the Motion for Confidential Treatment</i>)
"M-5"	GNPK Amendment to the Coal Supply Agreement dated 07 September 2023 (<i>subject of the Motion for Confidential Treatment</i>)
"N"	Affidavit of Service for the Offices of the Governor and Sangguniang Panlalawigan of Leyte
"N-1"	Affidavit of Service for the Offices of the Mayor and Sangguniang Bayan of Ormoc
"O"	Affidavit of Service for the Offices of the Governor and Sangguniang Panlalawigan of Lanao del Norte
"O-1"	Affidavit of Service for the Offices of the Mayor and Sangguniang Bayan of Kauswagan
"P"	Affidavit of Publication stating that the Application was published in a newspaper of general circulation within the Franchise Area and/or area of the principal operation of the Applicants

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"P-1"	Complete newspaper issue where the Application was published
"P-2"	Relevant page of the newspaper issue where the Application appeared

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

34. Under the Rules of Practice and Procedure of this Honorable Commission, a party to any proceeding before the Honorable Commission may request that certain information not be disclosed and be treated as confidential.²

35. Pursuant to this, Applicant LEYECO V prays for the confidential treatment of the information contained in the following annex for reason that document pertains to sensitive information that may be impaired by disclosure:

ANNEX	DOCUMENT
"D"	Margin Call Notice to LEYECO V dated 6 November 2024 (<i>subject of the Motion for Confidential Treatment</i>)

36. Applicant GNPk also prays for the confidential treatment of the information contained in the following annexes:

ANNEX	DOCUMENT
"H"	GNPK Proposal for LEYECO V's Emergency Supply dated 13 August 2024 (<i>subject of the Motion for Confidential Treatment</i>)
"K"	GNPK Generation Rate and Derivation with Write-up on Finance-related Prefiling Requirements (<i>subject of the Motion for Confidential Treatment</i>)

² Section 1, Rule 4, Rules of Practice and Procedure of the Energy Regulatory Commission.

x ----- x

"K-1"	Supplemental Write-up on Finance-related Prefiling Requirements (<i>subject of the Motion for Confidential Treatment</i>)
"M-2"	GNPK Coal Supply Agreement dated 20 November 2014 (<i>subject of the Motion for Confidential Treatment</i>)
"M-3"	GNPK Amended and Restated Coal Supply Agreement dated 26 December 2017 (<i>subject of the Motion for Confidential Treatment</i>)
"M-4"	GNPK Amendment to the Coal Supply Agreement dated 1 January 2023 (<i>subject of the Motion for Confidential Treatment</i>)
"M-5"	GNPK Amendment to the Coal Supply Agreement dated 7 September 2023 (<i>subject of the Motion for Confidential Treatment</i>)

37. Annexes "H", "K", "K-1", "M-2", "M-3", "M-4", and "M-5" contain the details of the power rate calculations and financial model of GNPK 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.*³, 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 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

³ G.R. No. 172835, December 13, 2007

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)*

38. The interest of the consuming public is sufficiently protected by the review and evaluation of the rates under the EPPSA by the Honorable Commission, without the need to disclose the contents of Annexes "H", "K", "K-1", "M-2", "M-3", "M-4", and "M-5". The reasonableness and transparency of the prices of electricity is to be assured by the Honorable Commission through its own review and verification of GNPK's generation costs.

39. More importantly, competitors of GNPK, should they obtain the information in Annexes "H", "K", "K-1", "M-2", "M-3", "M-4", and "M-5" may gain undue advantage to the prejudice of GNPK. The negotiating power of GNPK with parties it plans to contract with

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or who it is currently doing business with, will clearly be thwarted if it is compelled to disclose such information.

40. Accordingly, Joint Applicants hereby submit one (1) copy of the confidential documents in a sealed envelope, with the envelope and each page of the document stamped with the word "Confidential".⁴

PRAYER

WHEREFORE, in view of all the foregoing, LEYECO V and GNPk respectfully pray that:

1. an Order treating Annexes "D", "H", "K", "K-1", "M-2", "M-3", "M-4", and "M-5" and all the information contained therein as confidential in perpetuity, directing their non-disclosure to persons other than the officers and staff of this 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, from the time these annexes are received by the Honorable Commission up to the termination of the instant case; and
2. an Issuance concerning the procedures for handling the confidential information upon the close of the proceedings and its return/delivery to GNPk; and
3. after due notice and hearing, a Decision be immediately issued approving the Joint Application and the EPPSA between LEYECO V and GNPk, including the rates, fees, and charges therein, including the adjustment mechanism,

⁴ Soft copies of the same to be provided to this Honorable Commission are password protected.

x ----- x

and authorizing LEYECO V to charge and collect the fees therein from its customers reckoned from the start of supply by GNPK to LEYECO V under the EPPSA.

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

Pasig City for Pasig City. 14 January 2025.

[Signature page follows]

Counsels for Applicant LEYTE V ELECTRIC COOPERATIVE, INC.



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Valid until 14 April 2025

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MCLE Compliance No. VIII - 0011677/ 08 August 2024

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VERIFICATION AND CERTIFICATION
AGAINST FORUM SHOPPING
FOR GNPOWER KAUSWAGAN LTD. CO.

I, **GINO LORENZO, R. ILAGAN**, Filipino, of legal age, with office address at Unit 1905, The Orient Square, F. Ortigas, Jr. Road, Ortigas Center, Pasig City, after being sworn in accordance with law, hereby depose and state:

1. I am the authorized representative of GNPower Kauswagan Ltd. Co. ("GNPK"), one of the Applicants in the above-captioned *JOINT APPLICATION (with Prayer for Confidential Treatment of Information)* (the "*Joint Application*"), and I have been authorized to execute this *Verification and Certification Against Forum Shopping* on GNPK's behalf. A copy of my authorization is hereto attached.
2. GNPK, together with Leyte V Electric Cooperative, Inc., has caused the preparation and filing of the foregoing *Joint Application*. I have read and understood the *Joint Application* and attest that all the contents and allegations therein are true and correct based on my personal knowledge or authentic records.
3. The *Joint Application* is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation. Moreover, the factual allegations in the *Joint Application* have evidentiary support or, if specifically, so identified, will likewise have evidentiary support after a reasonable opportunity for discovery.
4. Neither I nor GNPK has commenced any action or filed any claim involving the same or similar issues in any court, tribunal or quasi-judicial agency, and, to the best of my knowledge, no such other action or claim is pending therein. If I or GNPK should hereafter learn that the same or a similar action or claim has been filed or is pending, I shall report such fact to this Honorable Commission within five (5) calendar days from notice.

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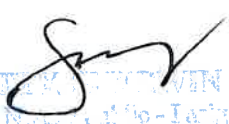
IN WITNESS WHEREOF, I have set my hand this 14 day of _____ 2025 in _____.


GINO LORENZO R. ILAGAN
Affiant

BEFORE ME, a Notary Public in and for PASIG CITY, personally appeared GINO LORENZO R. ILAGAN, exhibiting to me his Driver's License No. N02-03-003372 issued by the Land Transportation Office and valid until 30 October 2032, who was identified by me through competent evidence of identity to be the same person who presented the foregoing instrument and signed the instrument in my presence, and who took an oath before me as to such instrument.

Witness my hand and seal this 14 day of _____ 2025 in _____ CITY.

14 2025
Doc. No. 243;
Page No. 50 ;
Book No. V ;
Series of 2025.


ATTY. EDWIN O. AGBON
Notary Public - Leyte and Patros
UIO-1-B Electric Maricela Ortigas, Pasig City
Bar of Attorney's No. 76425
/ 2021-27 (2024-2025), until Dec 31, 2025
IFB No. 108 issued Jan. 06, 2025, Pasig City
PTB No. 143 issued Jan. 08, 2025, Pasig City
MCLE No. VIII-0003696. Until Dec. 15, 2023

VERIFICATION AND CERTIFICATION
AGAINST FORUM SHOPPING
FOR LEYTE V ELECTRIC COOPERATIVE, INC.

I, **ATTY. JANNIE ANN J. DAYANDAYAN**, Filipino, of legal age, with office address at LEYECO V Main Office, Brgy. San Pablo, Ormoc City, after being sworn in accordance with law, hereby depose and state:

1. I am the General Manager and authorized representative of Leyte V Electric Cooperative, Inc. ("*LEYECO V*"), one of the Applicants in the above-captioned *JOINT APPLICATION (with Prayer for Confidential Treatment of Information)* (the "*Joint Application*"), and I have been authorized to execute this *Verification and Certification Against Forum Shopping* on LEYECO V's behalf. A copy of my authorization is hereto attached.
2. LEYECO V, together with GNPower Kauswagan Ltd. Co., has caused the preparation and filing of the foregoing *Joint Application*. I have read and understood the *Joint Application* and attest that all the contents and allegations therein are true and correct based on my personal knowledge or authentic records.
3. The *Joint Application* is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation. Moreover, the factual allegations in the *Joint Application* have evidentiary support or, if specifically, so identified, will likewise have evidentiary support after a reasonable opportunity for discovery.
4. Neither I nor LEYECO V has commenced any action or filed any claim involving the same or similar issues in any court, tribunal or quasi-judicial agency, and, to the best of my knowledge, no such other action or claim is pending therein. If I or LEYECO V should hereafter learn that the same or a similar action or claim has been filed or is pending, I shall report such fact to this Honorable Commission within five (5) calendar days from notice.

x ----- x

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IN WITNESS WHEREOF, I have set my hand this JAN 15 2025 day of _____ 2025 in Ormoc City, Leyte.

ATTY. JANNIE ANN J. DAYANDAYAN

Affiant *[Signature]*

BEFORE ME, a Notary Public in and for ORMOC CITY, personally appeared ^{ATTY. JANNIE ANN J. DAYANDAYAN, CPA} _____, exhibiting to me his/her PAC ID: 0096842 issued by the PRC, valid until 04/20/2025, who was identified by me through said competent evidence of identity to be the same person who presented the foregoing instrument and signed the instrument in my presence, and who took an oath before me as to such instrument.

Witness my hand and seal this _____ day of JAN 15 2025 2025 in Ormoc City, Leyte.

Doc. No. 85 ;
Page No. 58 ;
Book No. 06 ;
Series of 2025.

Atty. ARI G. LARRAZABAL
Notary Public for Leyte
Until December 31, 2025
Notarial Commission No. 12345678901234567890
PTR No. 8347225
IBP No. E...
MCLE Compliance...
Ormoc City, Leyte, Philippines