



LEYTE V ELECTRIC COOPERATIVE, INC.

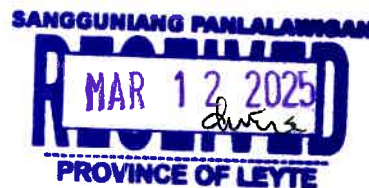
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Item No.: 24
2025 MAR

Reference No. 2025-03-272

March 06, 2025



HON. LEONARDO M. JAVIER

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

Subject: **ERC CASE NO. 2025-036 RC: "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"**

Dear Honorable Vice Governor Javier:

Greetings from LEYECO VI

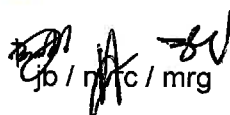
In compliance with the directives of the Energy Regulatory Commission (ERC) in connection with the above-entitled Joint Application, we are furnishing this Honorable Office the following:

1. ERC Order promulgated February 21, 2025
2. ERC Notice of Virtual Hearing promulgated February 21, 2025

In line with this, we are requesting that the said Order and Notice of Virtual Hearing be posted on the **Bulletin Board of the Sangguniang Panlalawigan** and thereafter, a **Certification** (Please see attached suggested format) bearing the **official Dry Seal** of your Office be issued as proof of posting.

Very truly yours,


ATTY. JANNIE ANN J. DAYANDAYAN, CPA
General Manager


jo / ntc / mrg

g

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

Republic of the Philippines
ENERGY REGULATORY COMMISSION
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. 2025-036 RC

**LEYTE V ELECTRIC
COOPERATIVE, INC. AND
GNPOWER KAUSWAGAN
LTD. CO.,**

Applicants.

X-----X

Promulgated:
February 21, 2025

ORDER

On 10 February 2025, the Leyte V Electric Cooperative, Inc. (LEYECO V) and GNPOWER Kauswagan Ltd. Co. (GNPK) filed their *Joint Application* dated 14 January 2025, seeking the Commission's approval of their Emergency Power Purchase and Sale Agreement (EPPSA), with motion for confidential treatment of information.

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

xxx

THE JOINT APPLICANTS

1. Applicant **LEYECO V** is a non-stock electric cooperative duly organized and existing under and by virtue of the laws of the 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, Albura 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"**.
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 GNPower 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 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 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.
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

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*"

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.
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, deGNPkte 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 deGNPKte LEYECO V's preventive actions.
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)
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 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 =**

$$\frac{[\text{Initial Energy Fee} * (\frac{\text{CIF}_n}{\text{CIF}_0}) + /- \text{EF Adjustments} * \text{FX}_n]}{+ \text{Excise Tax}}$$

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

CIF₀ = 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 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
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
"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
"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>)
"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:

² Section 1, Rule 4, Rules of Practice and Procedure of the Energy Regulatory Commission.
³ G.R. No. 172835, December 13, 2007

*“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;*
 - 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 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, 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.

xxx

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 2020⁵ and Resolution No. 01, Series of 2021⁶ (ERC Revised Rules of Practice and Procedure):

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

⁵ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

⁶ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

Date	Platform	Activity
22 April 2025 (Tuesday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Teams Application	Determination of compliance with the jurisdictional requirements and expository presentation
29 April 2025 (Tuesday) at nine o'clock in the morning (9:00 A.M.)		Pre-Trial Conference and presentation of evidence

Accordingly, LEYECO V and GNPK are hereby directed to host the virtual hearings at **LEYECO V's principal office located at Brgy. San Pablo, Ormoc City, Leyte**, as the designated venue for the conduct thereof, and ensure that the same is open to the public. Moreover, Applicants shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

RELATIVE THERETO, LEYECO V and GNPK are hereby directed to:

- 1) Cause the publication of the attached *Notice of Virtual Hearing* in two (2) newspapers of nationwide circulation in the Philippines at their own expense, twice (2x) within two (2) successive weeks, the dates of publication not being less than seven (7) days apart, and the date of the last publication to be made not later than ten (10) days before the date of the scheduled initial virtual hearing;
- 2) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing* the Offices of the Provincial Governor, the Mayors, and the Local Government Unit (LGU) legislative bodies within LEYECO V's franchise area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within LEYECO V'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, if any, subject to reimbursement of reasonable photocopying costs.

Within **five (5) calendar days** prior to the date of the initial virtual hearing, Applicants must submit to the Commission via electronic mail (e-mail) at docket@erc.ph, copy furnish the Legal Service through legal@erc.ph, the scanned copies of their written compliance with the aforementioned jurisdictional requirements attaching therewith, methodically arranged and duly marked, the following:

- 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 LEYECO V and GNPK to inform the consumers within LEYECO V's franchise area of the filing of the *Joint Application*, the reasons therefor, and of the scheduled hearings thereon;
- 4) The evidence of receipt of copies of this *Order* and the attached *Notice of Virtual Hearing* by the OSG, the COA, and the Committees on Energy of both Houses of Congress;
- 5) The evidence of receipt of copies of the *Joint Application* and its attachments, except those subject of a motion for confidential treatment of information, by all those making requests therefor, if any; and

- 6) Such other proof of compliance with the requirements of the Commission.

Moreover, LEYECO V and GNPK are hereby required to post on their bulletin boards, the scanned copies of the foregoing jurisdictional requirements, together with the newspaper publications and certifications issued by concerned Offices of the Governor, Mayors, and Local Legislative Bodies, and to submit proof of posting thereof.

LEYECO V and GNPK, and all interested parties, are also required to submit via e-mail at doCKET@erc.ph, and copy furnish the Legal Service through legal@erc.ph, **at least five (5) calendar days** before the date of the scheduled virtual hearing and Pre-Trial Conference, their respective Pre-Trial Briefs containing, among others:

- 1) A summary of admitted facts and proposed stipulation of facts;
- 2) The issues to be tried or resolved;
- 3) The documents or exhibits to be presented, stating the purposes and proposed markings therefor, which should also be attached to the Pre-Trial Brief; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-Trial Brief.

LEYECO V and GNPK must ensure that all the documents or exhibits proposed to be presented have already been duly submitted to the Commission **at least five (5) calendar days** before the date of the scheduled virtual hearing and Pre-Trial Conference, pursuant to the preceding paragraph.

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

LEYECO V and GNPK 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 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.

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

LEYECO V and GNPK 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.

Finally, LEYECO V and GNPK, including their authorized representatives and witnesses, are hereby directed to provide the Commission, through legal.virtualhearings@erc.ph, their respective e-mail addresses upon receipt of this *Order*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearings.

SO ORDERED.

Pasig City, 21 February 2025.

FOR AND BY AUTHORITY
OF THE COMMISSION:


KRISHA MARIE T. BUELA
Director III, Legal Service

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Copy Furnished:

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4. GNPowder Kauswagan Co. Ltd. (GNPK)
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City of Ormoc, Province of Leyte
13. Office of the Local Government Unit (LGU) Legislative Body
City of Ormoc, Province of Leyte
14. Office of the Municipal Mayor
Municipality of Isabel, Province of Leyte
15. Office of the LGU Legislative Body
Municipality of Isabel, Province of Leyte
16. Office of the Municipal Mayor
Municipality of Merida, Province of Leyte
17. Office of the LGU Legislative Body
Municipality of Merida, Province of Leyte
18. Office of the Municipal Mayor
Municipality of Palompon, Province of Leyte

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- 19. Office of the LGU Legislative Body
Municipality of Palompon, Province of Leyte
- 20. Office of the Municipal Mayor
Municipality of Tabango, Province of Leyte
- 21. Office of the LGU Legislative Body
Municipality of Tabango, Province of Leyte
- 22. Office of the Municipal Mayor
Municipality of Calubian, Province of Leyte
- 23. Office of the LGU Legislative Body
Municipality of Calubian, Province of Leyte
- 24. Office of the Municipal Mayor
Municipality of San Isidro, Province of Leyte
- 25. Office of the LGU Legislative Body
Municipality of San Isidro, Province of Leyte
- 26. Office of the Municipal Mayor
Municipality of Leyte, Province of Leyte
- 27. Office of the LGU Legislative Body
Municipality of Leyte, Province of Leyte
- 28. Office of the Municipal Mayor
Municipality of Kananga, Province of Leyte
- 29. Office of the LGU Legislative Body
Municipality of Kananga, Province of Leyte
- 30. Office of the Municipal Mayor
Municipality of Matag-ob, Province of Leyte
- 31. Office of the LGU Legislative Body
Municipality of Matag-ob, Province of Leyte
- 32. Office of the Municipal Mayor
Municipality of Albueria, Province of Leyte
- 33. Office of the LGU Legislative Body
Municipality of Albueria, Province of Leyte
- 34. Office of the Municipal Mayor
Municipality of Villaba, Province of Leyte
- 35. Office of the LGU Legislative Body
Municipality of Villaba, Province of Leyte
- 36. Office of the City Mayor
Kauswagan, Lanao del Norte
- 37. Office of the LGU Legislative Body
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- 38. Regulatory Operations Service
14th Floor, Exquadra Tower
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ros@erc.ph

Republic of the Philippines
ENERGY REGULATORY COMMISSION
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. 2025-036 RC

**LEYTE V ELECTRIC
COOPERATIVE, INC. AND
GNPOWER KAUSWAGAN
LTD. CO.,**

Applicants.

X-----X

Promulgated:
February 21, 2025

NOTICE OF VIRTUAL HEARING

Notice is hereby given that on 10 February 2025, the Leyte V Electric Cooperative, Inc. (LEYECO V) and GNPOWER Kauswagan Ltd. Co. (GNPK) filed their *Joint Application* dated 14 January 2025, seeking the Commission’s approval of their Emergency Power Purchase and Sale Agreement (EPPSA), with motion for confidential treatment of information.

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

xxx

THE JOINT APPLICANTS

1. Applicant **LEYECO V** is a non-stock electric cooperative duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at Brgy. San Pablo, Ormoc City. It was granted an exclusive franchise by

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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, Albura 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”**.
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.

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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 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

³ G.R. No. 172835, December 13, 2007

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of GNPK. The negotiating power of GNPK 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.

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, 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.

xxx

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

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

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 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

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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 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.
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

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*”

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 GNPB.
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 GNPB, resulting in a sudden need for alternative power arrangements. The mandated cancellation of its PSA with GNPB, 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.
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)
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

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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 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 =**

$$\begin{aligned} & \text{[Initial Energy Fee} * \\ & \left(\frac{\text{CIF}_n}{\text{CIF}_0} \right) + / - \text{EF Adjustments} * \text{FX}_n \text{]} \\ & + \text{Excise Tax} \end{aligned}$$

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

CIF₀ = 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 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 overall 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
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
“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

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"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
"P-1"	Complete newspaper issue where the Application was published

"P-2"	Relevant page of the newspaper issue where the Application appeared
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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 GNPBK also prays for the confidential treatment of the information contained in the following annexes:

ANNEX	DOCUMENT
"H"	GNPBK Proposal for LEYECO V's Emergency Supply dated 13 August 2024 <i>(subject of the Motion for Confidential Treatment)</i>
"K"	GNPBK 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>
"M-2"	GNPBK Coal Supply Agreement dated 20 November 2014 <i>(subject of the Motion for Confidential Treatment)</i>
"M-3"	GNPBK Amended and Restated Coal Supply Agreement dated 26 December 2017 <i>(subject of the Motion for Confidential Treatment)</i>
"M-4"	GNPBK Amendment to the Coal Supply Agreement dated 1 January 2023 <i>(subject of the Motion for Confidential Treatment)</i>
"M-5"	GNPBK 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 GNPBK 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

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

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thereof, pursuant to Resolution No. 09, Series of 2020⁵ and Resolution No. 01, Series of 2021⁶ (ERC Revised Rules of Practice and Procedure):

Date	Platform	Activity
22 April 2025 (Tuesday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Teams Application	Determination of compliance with the jurisdictional requirements and expository presentation
29 April 2025 (Tuesday) at nine o'clock in the morning (9:00 A.M.)		Pre-Trial Conference and presentation of evidence

Accordingly, LEYECO V and GNPK are hereby directed to host the virtual hearings at **LEYECO V's principal office located at Brgy. San Pablo, Ormoc City, Leyte**, as the designated venue for the conduct thereof, and ensure that the same is open to the public. Moreover, Applicants shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

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

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

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

⁵ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

⁶ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

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

Likewise, all other persons who may want their views known to the Commission with respect to the subject matter of the case may file through e-mail at docket@erc.ph, copy furnish the Legal Service through legal@erc.ph, their Opposition or Comment thereon 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* on the Commission's official website at 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, 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.

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WITNESS, the Honorable Chairperson and CEO **MONALISA C. DIMALANTA**, and Honorable Commissioners **ALEXIS M. LUMBATAN**, **CATHERINE P. MACEDA**, **FLORESINDA G. BALDO-DIGAL**, and **MARKO ROMEO L. FUENTES**, Energy Regulatory Commission, this 21st day of February 2025 in Pasig City.

FOR AND BY AUTHORITY
OF THE COMMISSION:


KRISHA MARIE T. BUELA
Director III, Legal Service


LS: CER/ARG