

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

**IN THE MATTER OF THE
APPLICATION FOR THE
APPROVAL OF THE POWER
SUPPLY AGREEMENT LOT 1
BETWEEN THERMA LUZON,
INC. (TLI) AND LEYTE V
ELECTRIC COOPERATIVE,
INC. (LEYECO V), WITH
PRAYER FOR PROVISIONAL
AUTHORITY OR INTERIM
RELIEF AND MOTION FOR
CONFIDENTIAL TREATMENT
OF INFORMATION**

ERC CASE NO. 2024-136 RC

**THERMA LUZON, INC. (TLI)
AND LEYTE V ELECTRIC
COOPERATIVE, INC.
(LEYECO V),**

Applicants.

X- ----- X

Promulgated:
November 04, 2024

ORDER

On 11 October 2024, Therma Luzon, Inc. (TLI) and Leyte V Electric Cooperative, Inc. (LEYECO V) filed a *Joint Application*, dated 26 September 2024, seeking the Commission's approval of their Power Supply Agreement (PSA), with a prayer for provisional authority or interim relief and motion for confidential treatment of information.

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

PARTIES

1. Applicant LEYECO V is a non-stock and non-profit electric cooperative duly organized and registered under Presidential Decree No. 269, with office address at Brgy. San Pablo, Ormoc City, Leyte herein represented by its Board President Paulito A. Cotiangco and General Manager Atty. Jannie Ann J.

Dayandayan, CPA evidenced by Board Resolution No. 96 Series of 2024¹.

2. Applicant TLI is a private corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at NAC Tower, 32nd Street, Bonifacio Global City, Taguig City. TLI is the Independent Power Producer Administrator (IPPA) for the 700 MW capacity from the Pagbilao Coal Fired Thermal Power Plant (Power Plant) pursuant to and in accordance with its IPPA Agreement with the Power Sector Assets and Liabilities Management Corporation (PSALM) with the conformity of the National Power Corporation (NPC). As such, TLI has the right to trade, sell, or deal with the 700 MW capacity of the said Power Plant.
3. Applicants may be served with notices, orders, and other processes of this Honorable Commission through their respective counsel at the addresses indicated below.

STATEMENT OF FACTS

4. LEYECO V [is a] duly franchised electric cooperative engaged in the distribution of electricity with its franchise areas in the City of Ormoc and Municipalities of Isabel, Merida, Palompon, Tabango, Calubian, San Isidro, Leyte, Kananga, Matag-ob, Albuera and Villaba, all in the Province of Leyte (the “Franchise Area”).
5. Section 23 of the Electric Power Industry Reform Act of 2001 (EPIRA) mandates that a distribution utility has the obligation to supply electricity in the least cost manner to its captive market, subject to collection of retail rate duly approved by this Honorable Commission. In relation to this, Section 45 (b) of the EPIRA expressly allows distribution utilities to enter into bilateral power supply contracts subject to the review of this Honorable Commission. The same are consistent with the State’s policy to ensure the quality, reliability, security, and affordability of the supply of electric power.

Brief Description of the CSP Conducted

6. Through a Memorandum of Agreement (MOA), ten (10) Electric Cooperatives (EC) of Region 8 agreed to conduct a joint procurement for their baseload requirement for the period of 2024 to 2033. The joint procurement was referred to as the Region 8 Joint Competitive Power Supply Procurement (R8 JCPSP). LEYECO V is a member EC under R8 JCPSP.
 - 6.1. Under the MOA, the Federation of Rural Electric Cooperatives in Region 8 Association, Inc. (FRECOR 8) was tasked to supervise and facilitate the transaction process, documentary requirements, and operational coordination among the member ECs of the R8 JCPSP.

¹ A copy of which is attached as Annex “JJJ” of the *Joint Application*.

- 6.2. A Joint Board of Directors (JBOD) was also created composed of General Managers and Board Presidents of the member ECs, which acts as the governing and policy-making body of the R8 JCPSP.
 - 6.3. The JBOD passed Board Resolution No. 2023-11-002, Series of 2023 constituting the R8 Joint Bids and Awards Committee (JBAC) for the R8 JCPSP. A Joint Technical Working Group (JTWG) and a Joint Secretariat was also created.
7. The R8 JCPSP was for the procurement of an aggregate power supply of 190 MW, divided into two (2) lots: Lot 1 for 162 MW, which commences in 2024, and Lot 2 for 28 MW, which commences in 2027. The R8 JCPSP followed the policy and rules prescribed under Department of Energy (DOE) Department Circular No. DC2023-06-0021,² and Energy Regulatory Commission (ERC) Resolution No. 16, Series of 2023.³
8. On 15 December 2023, R8 JCPSP Bidding Documents were submitted to NEA. NEA then issued a Certificate of Conformity No. NEA-RAO-COC-2024-02 dated 22 March 2024 when it found the R8 JCPSP's Bidding Documents to be consistent with the latest posted 2023-2032 Power Supply Procurement Plan of the member ECs of the R8 JCPSP. NEA likewise allowed the member ECs of the R8 JCPSP to proceed with the CSP.
9. Thereafter, on 6 and 13 April 2024, the Invitation to Bid and Terms of Reference were published in the Manila Bulletin newspaper.
10. There was likewise a local publication under the Leyte Samar Daily Express and the EV Mail. Invitations to power suppliers were also sent through electronic mail and postings were made in the DOE CSP Portal and respective EC websites.
11. On 12 April 2024, Invitations to CSP Observers were sent to attend the Pre-Bid Conference, including NEA, DOE, ERC, consumer representatives, community representatives, interested civil society organizations and consumers, and regional development council for Eastern Visayas.
12. On 23 April 2024, the JBAC conducted its Pre-bid Conference 1. During the Pre-bid Conference 1, the comments and questions submitted by the bidders were reviewed and discussed.

² 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.

³ 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 CSP Guidelines").

13. On 18 May 2024, Supplemental Bid Bulletin Nos. 03 to 05 were issued and were posted on the DOE CSP Portal. They referred to amendments to the Terms of Reference, amendments to instruction to bidders, and amendments to the draft power supply agreement based on the comments and clarifications from the bidders of Pre-Bid Conference 1.
14. On 22 May 2024, the JBAC conducted the Pre-Bid Conference 2 to provide another opportunity for the bidders to seek clarification on the Bidding Documents and revisions made therein. CSP Observers were invited again.
15. On 08 June 2024, the JBAC issued the Final Instructions to Bidders, Final Terms of Reference, Supplemental Bid Bulletin Nos. 06 and 07 and other documents as requested by bidders in preparation for the submission and opening of bids. Invitations to CSP Observers were sent to attend the submission and opening of bids on 25 to 26 June 2024.
16. On 25 June 2024, bidders submitted their respective bids for Lot 1 and Lot 2. The bids were opened on 25 June 2024 for Lot 1, and on 26 June 2024 for Lot 2 in the presence of JBAC, participating bidders, CSP Observers and an Independent Auditor.
17. On 1 to 3 July 2024, the JBAC conducted a post-qualification evaluation of the lowest calculated bids for Lot 1 and Lot 2.
18. On 3 July 2024, the JBAC issued Resolution No. 02, Series of 2024, recommending to the JBOD to award the power supply agreements to the following bidders for Lot 1 for the period of supply of 2024-2033:

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

19. Further, the JBAC issued Resolution No. 03, Series of 2024, recommending to the JBOD to award the capacity of 28 MW for Lot 2 for the period of supply of 2027-2033 to TLI as the bidder having the lowest calculated responsive bid.
20. Consequently, on 3 July 2024, JBOD approved JBAC's Recommendation to award the Power Supply Agreements to the bidders with the lowest calculated responsive bids for Lot 1 and Lot 2 through JBOD Resolution No. 2024-07-001 and 2024-007-002, respectively.
21. After its receipt of NEA's Notice to Issue Award dated 13 August 2024 last 14 August 2024, on 19 August 2024, the JBAC issued a Notice of Award to TLI for the 81 MW baseload demand under Lot 1 of the R8 JCPSP, which was acknowledged by TLI on 20 August 2024.

22. On 29 August 2024, FRECOR 8 timely submitted to NEA the finalized draft PSA together with the Board Resolution and the justifications to the changes made in the PSA, for the issuance of the Notice to Execute Agreement. However, on 13 September 2024 when FRECOR 8 received NEA's Notice to Execute Agreement dated 12 September 2024.
23. Thus, on 13 September 2024, LEYECO V and TLI executed the Power Supply Agreement (PSA), commencing on the latter of the two dates: (i) 22 September 2024 or (ii) immediately after the issuance by the ERC of a Provisional Authority, or Interim Relief, or Final Authority, until 25 December 2033 with a contract capacity of 20 MW.
24. Hence, this instant *Joint Application* for the approval of the PSA between LEYECO V and TLI.

SALIENT TERMS OF THE PSA

25. The PSA between LEYECO V and TLI, a copy of which is attached as ANNEX "A", contains the following salient features:
 - 25.1. Contract Term. This Agreement shall take effect immediately from Effective Date, and from such date, shall remain in force and effect until December 25, 2033, unless sooner terminated in accordance with this Agreement and upon approval by the ERC.
 - 25.2. Delivery Date. TLI shall commence delivery of Contract Capacity to LEYECO V on the later of the two dates: (i) 22 September 2024 or (ii) immediately after the issuance by the ERC of a Provisional Authority or Interim Relief, or Final Authority, or such other date as may be directed by the ERC under the relevant order, as applicable.
 - 25.3. Contract Capacity. The capacity, expressed in kW allocated to LEYECO V during the Billing Period. For the avoidance of doubt, this refers to the estimated capacity of electricity to be made available for Delivery to each LEYECO V Facility.

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CONTRACT CAPACITY AND/OR CONTRACT ENERGY

Billing Month	Hours	Contract Capacity (kW)	Maximum Contract Energy (kWh), if any	Minimum Contract Energy (kWh)
January	744	20,000	14,880,000	9,672,000
February	744	20,000	14,880,000	9,672,000
March	672	20,000	13,440,000	8,736,000
	696*	20,000	13,920,000	9,048,000
April	744	20,000	14,880,000	9,672,000
May	720	20,000	14,400,000	9,360,000
June	744	20,000	14,880,000	9,672,000
July	720	20,000	14,400,000	9,360,000
August	744	20,000	14,880,000	9,672,000
September	744	20,000	14,880,000	9,672,000
October	720	20,000	14,400,000	9,360,000
November	744	20,000	14,880,000	9,672,000
December	720	20,000	14,400,000	9,360,000

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

LEYECO V shall be allowed to nominate at least 50% of the Contract Capacity per interval divided by twelve (12) on all 5-minute Trading Intervals, but at the end of the relevant billing period, LEYECO V shall be obligated to pay for the Product at 65% monthly minimum Capacity Utilization Factor (CUF) or actual energy purchased, whichever is higher. LEYECO V will be billed based on Monthly CUF if, at the end of the billing period and after reconciliation, the nomination falls below the Monthly CUF for reasons other than FM.

25.4. Capacity Utilization Factor. The ratio of the amount of energy taken by LEYECO V from TLI during any Billing Period to the actual capacity made available by TLI.

LEYECO V shall purchase the Contracted Capacity and pay for the Contracted Capacity from sixty-five (65%) to one hundred percent (100%) Capacity Utilization Factor (CUF), computed per Billing Period, in accordance with Schedule 3.

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CAPACITY FEES

CAPACITY FEE C.U.F.	LOCAL (PHP/kWh)	
	Capital Recovery	Fixed O&M
100%	1.4304	0.2135
99%	1.4449	0.2157
98%	1.4596	0.2179
97%	1.4747	0.2202
96%	1.4900	0.2224
95%	1.5057	0.2248
94%	1.5218	0.2272
93%	1.5381	0.2296
92%	1.5548	0.2321
91%	1.5719	0.2347
90%	1.5894	0.2373
89%	1.6072	0.2399
88%	1.6255	0.2427
87%	1.6442	0.2455
86%	1.6633	0.2483
85%	1.6829	0.2512
84%	1.7029	0.2542
83%	1.7234	0.2573
82%	1.7444	0.2604
81%	1.7660	0.2636
80%	1.7880	0.2669
79%	1.8107	0.2703
78%	1.8339	0.2738
77%	1.8577	0.2773
76%	1.8822	0.2810
75%	1.9072	0.2847
74%	1.9330	0.2886
73%	1.9595	0.2925
72%	1.9867	0.2966
71%	2.0147	0.3008
70%	2.0435	0.3050
69%	2.0731	0.3095
68%	2.1036	0.3140
67%	2.1350	0.3187
66%	2.1673	0.3235
65%	2.2007	0.3285

25.5. Scheduled Outage. A planned partial or complete interruption of the Power Plant generating capability that (a) is not an Unscheduled Outage; (b) has been scheduled and allowed by LEYECO V in accordance with Section 4.6; and (c) is for inspection, testing, preventive maintenance, corrective maintenance or improvement.

TLI is allowed Scheduled Outages not to exceed Six-Hundred Sixty-Nine (669) Equivalent Hours within the Contract Year during which times reduced, or no deliveries will be available to LEYECO V. For clarity, Scheduled Outages for a particular Contract Year that does not cover a full period of twelve (12) months shall be reduced proportionately.

25.6. Unscheduled Outage. An interruption or reduction of a Unit's or the Power Plant's generating capability that is not a Scheduled Outage.

TLI is allowed unscheduled outages not to exceed Two-Hundred Forty-Three (243) equivalent hours for each Contract Year during

which times reduced or no deliveries will be available to LEYECO V, subject to ERC and regulations on Reliability Performance Indices. For clarity, Unscheduled Outages for a particular Contract Year that does not cover a full period of twelve (12) months shall be reduced proportionately.

- 25.7. Replacement Power. The energy from an alternative source responsible to be delivered by TLI to LEYECO V at a price not exceeding than the price set in the Agreement.

Within the Allowed Outage. TLI and LEYECO V shall cooperate to arrange for replacement energy from, including, but not limited to, any other facilities of TLI, third parties and the WESM. TLI, at its own cost and in consultation with LEYECO V, shall negotiate on behalf of LEYECO V for the supply and delivery of capacity and energy from third parties for a price as close as possible to the contract price. LEYECO V, however, has the right to accept or reject the replacement energy offered by TLI by confirming or rejecting the terms of the negotiated replacement energy by TLI before proceeding to deliver the negotiated replacement energy. If LEYECO V disagrees with the terms of any replacement energy being negotiated by TLI, LEYECO V shall source replacement energy at its own expense.

Beyond the Allowed Outage. The procurement of any Replacement Power for outages beyond the Allowed Outage, and for any delay in the commencement of delivery shall be the responsibility of TLI. The rates to be billed for the procurement of Replacement Power shall be the generation rate equivalent to the provisional or final approved generation rate, or the actual rate of the Replacement Power, whichever is lower.

- 25.8. Payment of Fees. On or before the 7th day of the following month from the close of every Billing Period, TLI shall deliver to LEYECO V the Billing Statement showing the Electricity Fee due for such Billing Period.

A Billing Statement shall be regarded as delivered to and received by LEYECO V upon sending of an electronic copy thereof to LEYECO V via registered email address at the date and time indicated in which transmission was made. However, TLI shall also provide the original copy of the bill to LEYECO V on a monthly basis.

Without necessity of demand, LEYECO V shall pay TLI the Electricity Fee as stated in such a billing statement, not later than the twenty-fifth (25th) of the calendar month following the close of a Billing Period ("Due Date"). If the Due Date falls on a non-working day, payment shall be due on the next working day. Should TLI deliver the bill beyond the allowable period, the Due Date shall also be extended equivalent to the number of days of the delay. Moreover, TLI shall issue the corresponding Official Receipt upon the receipt of the payment. LEYECO V shall pay the Amount Due to an account designated by TLI either by electronic fund transfer or by other mutually agreed alternative method.

- 25.9. Interest for Late Payment. If any amount payable by LEYECO V is not paid on Due Date:
- a. The amount unpaid shall bear a daily interest, at a rate of twelve percent (12%) per annum, computed on a 360-day basis, until payment by LEYECO V;
 - b. If any invoice from TLI is overdue for more than six (6) months, LEYECO V shall pay an additional penalty of one percent (1%) per month for every additional month of delay beyond six (6) months;
 - c. TLI has the right to immediately suspend the delivery of electricity and declare Basic Energy Charges for electricity supplied but not invoiced immediately due and payable, whereupon LEYECO V shall pay such Basic Energy Charges immediately upon delivery by TLI of the corresponding invoice to LEYECO V; and
 - d. For clarity, any payment made by LEYECO V under this Agreement shall be applied first against any interest or penalties imposed under this Agreement, and owing to TLI, before it is applied against the principal amount on which the interest or penalty was derived from.
- 25.10. Electricity Fees. Refers to the total amount of charges due from LEYECO V in respect of the Contract Capacity and all Energy supplied by TLI during a Billing Period, computed in accordance with Schedule 5 (Rate Schedule).

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RATE SCHEDULE

Tariff Structure

Electricity Fees = A + B + C + D + E

All computations on payments to TLI shall not be rounded off, except for the final PHP amount, which shall be rounded off to the nearest Philippine centavo.

Where:

A = CRF x TED

$$CRF = \frac{(CRF_2 - CRF_1) \times (CUF - CUF_1)}{(CUF_2 - CUF_1)} + CRF_1$$

$$CUF = \left(\frac{TED}{CC \times [(int \times n) - FM \text{ Int} - AO \text{ Int}]} \right) \times 100$$

= Capacity Utilization Factor (CUF), expressed in percentage, between 65% to 100%, provided that if actual CUF is below 65% (the "Minimum Capacity Utilization Factor"), the CRF and FOM Price shall be calculated based on the quantity associated with the Minimum Capacity Utilization Factor.

CC = the contracted capacity of 20,000 kW

Int = the number of Trading Intervals per day

n = the number of days for the current Billing Period

FM Int = the number of Trading Intervals affected by Force Majeure

AO Int = the number of Trading Intervals within the Allowable Downtime of Supplier

CUF₂ number = CUF rounded up to the nearest whole

CUF₁ whole number = CUF rounded down to the nearest whole number

CRF₂ = the corresponding CRF for CUF₂ is set forth under Schedule 3 - Capacity Fees

CRF₁ = the corresponding CRF for CUF₁ is set forth under Schedule 3 - Capacity Fees.

TED = the total energy delivered (in kWh) within CC per Trading Interval and within the Maximum Contract Energy per Billing Period during the current Billing Period.

B = FOM x TED

$$FOM = \text{Base FOM} \times \frac{RPCPI_m}{RPCPI_o}$$

$$\text{Base FOM} = \frac{(FOM_2 - FOM_1) \times (CUF - CUF_1)}{(CUF_2 - CUF_1)} + FOM_1$$

CUF = as previously defined

CUF₂ = as previously defined

CUF₁ = as previously defined

FOM₂ = the corresponding FOM for CUF₂ is set forth under Schedule 3 - Capacity Fees

FOM₁ = the corresponding FOM for CUF₁ is set forth under Schedule 3 - Capacity Fees

RPCPI_m = the Philippine Consumer Price Index for All Income Households in the Philippines – All Items (2018=100) published as the current billing month.

RPCPI_o = the Philippine Consumer Price Index for All Income Households in the Philippines – All Items (2018=100) of 125.30.

CUF = as previously defined

TED = as previously defined

C = VOM x TED

$$\text{VOM} = \text{Base VOM} \times \frac{\text{RPCPI}_m}{\text{RPCPI}_o}$$

Base VOM = 0.1995 Php/kWh

RPCPI_m = as previously defined

RPCPI_o = as previously defined

TED = as previously defined

Notes:

- a. If the CPI of the current billing month is not published and available, within the two days from the end of the Billing Period, the most recent available published index shall be used.
- b. If the source of any of the foregoing indices is no longer available or has not been published or available for a prolonged period, the replacement index shall be mutually agreed by the parties.
- c. If any of the foregoing indices are re-based during the duration of this Agreement, the Supplier has the option to apply a corresponding adjustment to the inflation formula to conform with the re-basis of the subject indices.

D = Fuel x TED

Fuel = actual fuel cost of the Power Plant for the Billing Period in Php/kWh

TED = as previously defined

If one unit of the Power Plant is on Scheduled or Unscheduled Outage, Fuel shall be computed using the actual fuel cost of the available unit. In the event that both units of the Power Plant are on Scheduled and/or Unscheduled Outages, the fuel cost for the affected interval shall be based on the last month's fuel cost.

E = all existing and future taxes, fees and imposts (including increases, or adjustments thereon and increases, or adjustments on existing taxes, fees and imposts), such as but not limited to real property taxes, excise taxes, and other future charges imposed on the Power Plant for the generation of electricity, in Philippine Pesos

26. LEYECO V simulated a rate impact analysis based on assumed quantities. The indicative rate impact on its overall generation rate with and without supply from TLI under the PSA are as follows:

LEYECO V's Generation Rate (Php/kWh)		
Without TLI PSA	With TLI PSA	Rate Impact
5.7786	5.3941	(0.3845)

27. As shown in the rate impact analysis, the implementation of the PSA between TLI and LEYECO V will benefit LEYECO V and its consumers with an estimated generation rate reduction of Php0.3845/kWh. Thus, the PSA subject of this *Joint Application* will ultimately provide LEYECO V's end-users with a continuous and reliable supply of electricity at affordable rates.
28. The Applicants submit the following documents for the evaluation of the *Joint Application*:

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Description of Document	Annex
Power Supply Agreement (PSA) between LEYECO V and TLI dated 13 September 2024.	“A”
R8 JCPSP’s Notice to Proceed	“A-1”
LEYECO V’s Articles of Incorporation, By-Laws, Certificate of Franchise and Registration	“B” and series
LEYECO V’s Verified Certification showing the list of Board of Directors and Board Members	“C”
R8 JCPSP CSP Report (re: Brief Description of the CSP Conducted)	“D”
R8 JCPSP’s JBAC Affidavit (re: Conduct of CSP)	“D-1”
R8 JCPSP JBOD Board Resolution No. 2023-11-002, Series of 2023 (re: Creation of JBAC)	“E”
R8 JCPSP List of Observers with their sworn undertakings	“F” and series
R8 JCPSP Invitation to Bid	“G”
Certificate of Conformity (NEA-RAO-COC-2024-02) issued by NEA on 22 March 2024	“H”
R8 JCPSP’s Proof of Publication of Invitation to Bid	“I” and series
R8 JCPSP’s Proof of Posting of Invitation to Bid, Supplemental Bid Bulletins, Abstract of Bids, and Notice of Award	“J” and series
R8 JCPSP’s Instruction to Bidders	“K” and series
R8 JCPSP’s Terms of Reference	“L” and series
R8 JCPSP’s Minutes of the two Pre-bid Conference (23 April 2024 and 22 May 2024)	“M” and series
R8 JCPSP’s Supplemental Bid Bulletins	“N” and series
TLI’s Eligibility Requirements to the R8 JCPSP	“O” and series
TLI’s Documents of Bid Submission to the R8 JCPSP	“P” and series
R8 JCPSP’s Documents Relating to the Evaluation of Bids	“Q” and series

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R8 JCPSP's JBAC Resolution No. 2, series of 2024, Recommending the Winners for Lot 1	"R"
R8 JCPSP's Abstract of Bids	"S"
R8 JCPSP's Bid Evaluation Report	"T"
R8 JCPSP's Bid Evaluation Slips	"U" and series
R8 JCPSP's Post-Qualification Evaluation Report	"V"
R8 JCPSP's Declaration of Bidders with Lowest Calculated Responsive Bid (LCRB)	"W"
NEA's Notice to Issue Award dated 13 August 2024	"X"
R8 JCPSP's Notice of Award to TLI dated 19 August 2024	"Y"
NEA Notice to Execute Agreement dated 12 September 2024	"Z" and series
LEYECO V's Certification on Non-Availability of Alternative Demand Side Management Program	"AA"
LEYECO V's Write-up on Non-Applicability of Certain Document/s: <ul style="list-style-type: none"> Transition Supply Contract with the National Power Corporation 	"BB"
LEYECO V's Supply and Demand Scenario and Average Daily Load Curve	"CC and series"
LEYECO V's Single-line Diagram Connection	"DD"
LEYECO V's Performance Assessment of the System	"EE"
LEYECO V's Estimated Potential Reduction in Load Supplied by the EC due to retail competition	"FF"
LEYECO V's Distribution Development Plan and Power Supply Procurement Plan	"GG" and "GG-1"
LEYECO V's Rate Impact Analysis	"HH"
Judicial Affidavit of Mr. Niño Cris V. Caparoso to support the prayer for Provisional Authority or Interim Relief and Affidavit of Merit of Atty. Janine Ann J. Dayandayan	"II" and series
TLI's Certificate of Incorporation, Amended Articles of Incorporation and By-Laws	"JJ" and series

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TLI's Verified Certification showing the list of Board of Directors and Board Members of the Ultimate Parent Company dated 9 August 2024	"KK"
TLI's Latest General Information Sheet ("GIS")	"LL"
TLI's Board of Investments ("BOI") Certificate of Registration No. 2010-052	"MM"
Environmental Compliance Certificate ("ECC") Ref. No. ECC-CO-1311-0037 for the Pagbilao 1 & 2 Coal Power Station	"NN"
Provisional Authority to Operate ("PAO") No. 24-06-28-M-PAO-E-0135L for the Pagbilao Coal Fired Thermal Power Plant	"OO"
TLI's Legal Opinion on DOE PDP and/or COE dated 24 February 2022	"PP"
TLI's Single-line Diagram Connection	"QQ"
TLI's Write-up on Inconsistency in Capacity	"RR"
TLI's Transmission Service Agreement, Connection Agreement, and Metering Service Agreement with National Grid Corporation of the Philippines ("NGCP")	"SS" and series
Executive Summary of the LEYECO V-TLI PSA	"TT"
TLI's Sources of Funds (<i>Confidential</i>)*	"UU*"
TLI's Generation Rate and Derivation (<i>Confidential</i>)*	"VV*"
TLI's Cash Flow (<i>Confidential</i>)*	"WW*"
TLI's Financial Model (<i>Confidential</i>)*	"XX*"
TLI's Sample Bill	"YY"
TLI's Write-up on Relevant Technical and Economic Characteristics of the Generation Capacity	"ZZ"
TLI's Latest Audited Financial Statements	"AAA"
TLI's Certification on Non-Applicability and Write-Up on the Non-Applicability of the following: <ul style="list-style-type: none"> • Shareholders' Agreement; • Renewable Energy Service Contract/ Operating Contract from the DOE • Certificate of Registration or Certification of Confirmation of Commerciality by an RE Developer 	"BBB"

<p>and after due confirmation by the DOE</p> <ul style="list-style-type: none"> • Water Permit from the National Water Resources Board • Copy of Related Agreements (such as Transmission Wheeling Contract, EPC Contract, O&M Contract, Wholesale Aggregator Agreement, Project Feasibility Study); • Certification from the Bank/Lending Institution for Loans • Equivalent Php/kWh with assumptions for foreign-denominated rates • Potential cost (absolute amounts and Php/kWh) of Ancillary Services as when the IPP or the DU is connected to the main grid • If different from previously filed PSA, updated costs • Distribution Wheeling Service Agreement (for embedded generators), if applicable 	
TLI’s Certification of the Net Heat Rate kCal per kWh (<i>Confidential</i>)*	“CCC*”
TLI’s Coal Supply Agreement (<i>Confidential</i>)*	“DDD*”
TLI’s Coal Procurement Plan (<i>Confidential</i>)*	“DDD-1*”
Sworn Statement Re: TLI’s Explanation on Coal Procurement Process (<i>Confidential</i>) *	“EEE*”
TLI’s IPPA Agreement with PSALM (<i>Confidential</i>)*	“FFF*”
TLI’s Additional Supporting Documents for Generation Rate and Derivation (<i>Confidential</i>)*	“GGG*”
TLI’s WESM Certification of Registration	“HHH”
LEYECO V’s WESM Registration	“III”

**Subject of the Motion for Confidential Treatment of Information*

PRAYER FOR PROVISIONAL AUTHORITY OR INTERIM RELIEF

29. Under Rule 14 of the Honorable Commission’s 2021 Revised Rules of Practice and Procedure (2021 RRPP)⁴, the Honorable Commission is authorized to issue provisional authority or

⁴ ERC Resolution No. 1, Series of 2021.

interim relief prior to a final decision, provided the facts and circumstances alleged warrant such remedy.

30. As shown in the LEYECO V's Supply and Demand Scenario, the peak demand ranges from 55.58 to 71.20 MW and our existing contract capacity is 40 MW which is an Emergency Power Supply Agreement (EPSA) with FDC Misamis Power Corporation which has expired on August 25, 2024; GN Power Dinginin Ltd. Co. which expired on September 21, 2024; and FDC Misamis Corporation which will expire on September 25, 2024. If no Provisional Authority will be issued, the total demand of 40 MW will be exposed to the market having erratic power rates, to the prejudice of the consumers. Thus, the issuance of the Provisional Authority is in the best interest of the electricity consumers, especially the captive customers, as it ensures continuous and reliable electricity service, with stable rate, which is essential for public welfare, economic stability and growth.
31. Furthermore, from LEYECO V's rate impact simulation, it is clear that the implementation of the PSA with TLI would reduce LEYECO V's rate by Php0.3845/kWh, as compared to if the same power requirements are purchased from the Wholesale Electricity Spot Market (WESM).
32. As such, the early implementation of the PSA with TLI would benefit LEYECO V and its end-users as it will ensure the provision of reliable, secure, and quality supply of electricity in the least cost manner.
33. To support the prayer for provisional authority or interim relief, the Judicial Affidavit of Mr. Nino Cris V. Caparoso is attached hereto as Annex "II" of the *Joint Application*.

MOTION FOR CONFIDENTIAL TREATMENT OF ANNEXES "UU", "VV", "WW", "XX", "CCC", "DDD", "DDD-1", "EEE", "FFF", and "GGG"

34. Under the 2021 RRPP, a party to any proceeding before the Honorable Commission may request that certain information not be disclosed and be treated as confidential.⁵ Pursuant to this, Applicants pray for the confidential treatment of the information contained in the following annexes:

Documents and/or Information	Annex
TLI's Sources of Funds (<i>Confidential</i>)*	"UU*"
TLI's Generation Rate and Derivation (<i>Confidential</i>)*	"VV*"
TLI's Cash Flow (<i>Confidential</i>)*	"WW*"
TLI's Financial Model (<i>Confidential</i>)*	"XX*"

⁵ Section 1, Rule 4, ERC Resolution No. 1, Series of 2021

TLI's Certification of the Net Heat Rate kCal per kWh (<i>Confidential</i>)*	"CCC*"
TLI's Coal Supply Agreement (<i>Confidential</i>)*	"DDD*"
TLI's Coal Procurement Plan (<i>Confidential</i>) *	"DDD-1*"
Sworn Statement Re: TLI's Explanation on Coal Procurement Process (<i>Confidential</i>) *	"EEE*"
TLI's IPPA Agreement with PSALM (<i>Confidential</i>)*	"FFF*"
TLI's Additional Supporting Documents for Generation Rate and Derivation (<i>Confidential</i>)*	"GGG*"

35. Annexes "UU", "VV", "WW", "XX", "CCC", "DDD", "DDD-1", "EEE", and "GGG" contain financial models, computation/calculation for rate determination and cost components. Hence, TLI has actual and valuable proprietary interest to protect such information and data, which fall within the bounds of "trade secrets" that are entitled to protection under the Constitution, statutes, and rules and regulations of this Honorable Commission.

35.1. The foregoing annexes contain non-public, proprietary information and data involving Applicants' investments, business operations, and financial calculations. Applicants determine, among others, their competitive rates through its power rate calculations, and its financial model through these information. Thus, the methodology thereof is privileged and confidential in nature. Furthermore, these information and data are not generally available to the public. Applicants' competitiveness will seriously be prejudiced if these information are unduly disclosed.

36. In the case of *Air Philippines Corporation vs. Pennswell, Inc.*,⁶ the Supreme Court defined "trade secrets" and explained that:

"A trade secret is defined as a plan or process, tool, mechanism or compound known only to its owner and those of his employees to whom it is necessary to confide it. The definition also extends to a secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade having a commercial value. A trade secret may consist of any formula, pattern, device, or compilation of information

⁶ 564 Phil. 774 (2007), G.R. No. 172835.

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.** (*Emphasis supplied.*)

- 36.1. Moreover, the Honorable Commission categorically acknowledged in its Decision in ERC Case No. 2015-111 RC⁷ that formulas and pricing structures of a generation company must be accorded confidential protection, to *wit*:

“In the case of PNOC RC, the documents sought to be protected from disclosure contain formula and pricing structures used in arriving at their proposed tariff. In fact, all three (3) documents were used by the Commission in evaluating the reasonableness of the proposed rate. **In the electric power industry w(h)ere prices is[sic] a major consideration in selecting one's supplier, it is apparent that the assumptions used in arriving at one's proposed tariff is considered a competitive leverage by one player against its competitors.**

Thus, the Commission resolves to treat the said documents confidential and may not be publicly disclosed. (*Emphasis supplied.*)

- 36.2. Clearly, the Honorable Commission recognizes the importance of treating pricing structures as confidential in order to ensure competitiveness of the generation sector. This information, which falls within the definition of a trade secret as defined by jurisprudence, merits the confidential treatment provided for under Rule 4 of the Honorable Commission's 2021 RRPP.

37. Further, the treatment of the information contained in Annexes “UU”, “VV”, “WW”, “XX”, “CCC”, “DDD”, “DDD-1”, “EEE”, and “GGG” as confidential information is consistent

⁷ Decision, ERC Case No. 2015-111 RC dated 30 May 2017 entitled “*In the Matter of the Application for Approval of the Power Supply Agreement Between Nueva Ecija II Electric Cooperative, Inc.-Area 2 (NEECO II – Area 2) and PNOC Renewables Corporation (PNOC RC).*”

with the Honorable Commission's *Matrix of Confidential and Non-Confidential Document and Information (as of 13 November 2023)* ("Matrix"). In the *Matrix*, financial models, computation/calculation for rate determination and cost components should be treated with confidentiality because they have proprietary value that constitute trade secrets. Therefore, as described above, since the information in the subject documents fall in these categories, Annexes "UU", "VV", "WW", "XX", "CCC", "DDD", "DDD-1", "EEE", and "GGG" should be treated with confidentiality.

38. As regards Annex "FFF", TLI submits that the IPPA Agreement with PSALM should likewise be treated as confidential. This IPPA Agreement with PSALM, a third person (i.e. PSALM) who is not a party to the instant Joint Application, includes confidentiality obligations of the parties. This is likewise consistent with the Honorable Commission's Matrix, which provides that contracts and agreements with third parties not privy to the case are treated as confidential.
39. In view of the foregoing and pursuant to Rule 4 of the Honorable Commission's 2021 RRPP, TLI respectfully requests that the attached Annexes "UU", "VV", "WW", "XX", "CCC", "DDD", "DDD-1", "EEE", "FFF", and "GGG" and the information contained therein be treated as confidential and privileged, and not be disclosed to persons other than the necessary officers and staff of this Honorable Commission.
40. TLI hereby submits Annexes "UU", "VV", "WW", "XX", "CCC", "DDD", "DDD-1", "EEE", "FFF", and "GGG" via: (i) password-protected electronic copies, and (ii) one (1) physical copy each of the respective confidential documents in a sealed envelope, with the envelope and each page of the documents stamped with the word "Confidential".

PRAYER

WHEREFORE, premises considered, Applicants THERMA LUZON INC. (TLI) and LEYTE V ELECTRIC COOPERATIVE, INC. (LEYECO V) respectfully pray that the Honorable Commission:

1. ISSUE an Order treating Annexes "UU", "VV", "WW", "XX", "CCC", "DDD", "DDD-1", "EEE", "FFF", and "GGG" as confidential in perpetuity, directing their non-disclosure to persons other than the officers and staff of the Honorable Commission, perpetually protecting the said information from public disclosure by maintaining the same separate and apart from the records of the case, and ensuring that these are not divulged to unauthorized persons, pursuant to Rule 4 of its Rules of Practice and Procedure;
2. Pending trial on the merits, GRANT provisional authority or interim relief allowing the implementation of the PSA between LEYECO V and TLI, including all the rates, fees, charges, and tariff adjustment

mechanisms set out therein at the rates provided in the PSA, and authorizing LEYECO V to charge and collect such rates, fees, charges, and tariff adjustment therein from its customers reckoned from the start of the supply by TLI to LEYECO V under the PSA subject of this *Joint Application*; and

3. After hearing on the merits, ISSUE a Decision APPROVING the *Joint Application* and PSA between LEYECO V and TLI, including all the rates, fees, charges, and tariff adjustment mechanisms set out therein at the rates provided in the PSA, and authorizing LEYECO V to charge and collect such rates, fees, charges, and tariff adjustments therein from its customers reckoned from the start of the supply by TLI to LEYECO V under the PSA.

Other relief just and reasonable are likewise prayed for.

Finding the said *Joint Application* to be sufficient in form and with the required fees having been paid, the Commission hereby sets the same for determination of compliance with the jurisdictional requirements, expository presentation, Pre-Trial Conference, and presentation of evidence on the following dates, and online platforms for the conduct thereof, pursuant to Resolution No. 09, Series of 2020⁸ and Resolution No. 01, Series of 2021⁹ (ERC Revised Rules of Practice and Procedure):

Date	Platform	Activity
27 January 2025 (Monday) at two o'clock in the afternoon (2:00 P.M.)	MS Teams Application	Determination of compliance with jurisdictional requirements and expository presentation
03 February 2025 (Monday) at two o'clock in the afternoon (2:00 P.M.)		Pre-Trial Conference and Presentation of Evidence

Accordingly, LEYECO V and TLI are hereby directed to host the virtual hearings at **LEYECO V's principal office located at Brgy. San Pablo, Ormoc City**, as the designated venue for the conduct thereof and ensure that the same is open to the public. Moreover,

⁸ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.
⁹ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

LEYECO V and TLI shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

RELATIVE THERETO, LEYECO V and TLI 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 Governor, the Mayors, and their respective 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*, its reasons therefor, and of the scheduled virtual hearings thereon;
- 4) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing*, the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress. They are hereby requested, if they so desire, to send their duly authorized representatives and attend the scheduled hearings; and
- 5) Furnish with copies of the *Joint Application* and its attachments, except those subject of a motion for confidential treatment of information, all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

Within five (5) calendar days prior to the date of the initial virtual hearing, LEYECO V and TLI must submit to the Commission via electronic mail (e-mail) at docket@erc.ph, and copy furnish the Legal Service through legal@erc.ph, the scanned copies of their written

compliance with the aforementioned jurisdictional requirements, attaching the following methodically arranged and duly marked documents:

- 1) The evidence of publication of the attached *Notice of Virtual Hearing* consisting of affidavits of the Editors or Business Managers of the newspaper 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 TLI to inform the consumers within LEYECO V's franchise area of the filing of the *Joint Application*, its 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, if any, by all those making requests therefor; and
- 6) Such other proof of compliance with the requirements of the Commission.

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

Joint Applicants LEYECO V and TLI, 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.

Joint Applicants LEYECO V and TLI 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 initial virtual hearing and Pre-Trial Conference, pursuant to the preceding paragraph.

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

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

Joint Applicants LEYECO V and TLI 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. Applicants shall also be required, upon the request of any stakeholder, to provide an advance copy of their expository presentation, **at least five (5) calendar days** prior to the scheduled virtual hearing.

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Joint Applicants LEYECO V and TLI are further directed to submit, 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 TLI, 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 hearing.

SO ORDERED.

Pasig City, 04 November 2024.

FOR AND BY AUTHORITY
OF THE COMMISSION:


KRISHA MARIE T. BUELA
Director III, Legal Service


LS: ECI/LSP

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Copy Furnished:

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9. Regulatory Operations Service
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10. Office of the Governor
Province of Leyte
11. Local Government Unit (LGU) Legislative Body
Province of Leyte
12. Office of the City Mayor
Ormoc City, Leyte
13. LGU Legislative Body
Ormoc City, Leyte
14. Office of the Municipal Mayor
Isabel, Leyte
15. LGU Legislative Body
Isabel, Leyte
16. Office of the Municipal Mayor
Merida, Leyte
17. LGU Legislative Body
Merida, Leyte
18. Office of the Municipal Mayor
Palompon, Leyte
19. LGU Legislative Body
Palompon, Leyte

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20. Office of the Municipal Mayor
Tabango, Leyte
21. LGU Legislative Body
Tabango, Leyte
22. Office of the Municipal Mayor
Calubian, Leyte
23. LGU Legislative Body
Calubian, Leyte
24. Office of the Municipal Mayor
San Isidro, Leyte
25. LGU Legislative Body
San Isidro, Leyte
26. Office of the Municipal Mayor
Leyte, Leyte
27. LGU Legislative Body
Leyte, Leyte
28. Office of the Municipal Mayor
Kananga, Leyte
29. LGU Legislative Body
Kananga, Leyte
30. Office of the Municipal Mayor
Matag-ob, Leyte
31. LGU Legislative Body
Matag-ob, Leyte
32. Office of the Municipal Mayor
Albuera, Leyte
33. LGU Legislative Body
Albuera, Leyte
34. Office of the Municipal Mayor
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35. LGU Legislative Body
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