

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 ILOILO III
ELECTRIC COOPERATIVE,
INC. AND GNPOWER
KAUSWAGAN LTD. CO.,
WITH MOTION FOR
CONFIDENTIAL TREATMENT
OF INFORMATION**

ERC CASE NO. 2024-066 RC

**ILOILO III ELECTRIC
COOPERATIVE, INC. (ILECO
III) AND GNPOWER
KAUSWAGAN LTD. CO.
(GNPK),**

Applicants.

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Promulgated:
October 16, 2024

ORDER

On 13 May 2024, Iloilo III Electric Cooperative, Inc. (“ILECO III”) and GNPower Kauswagan Ltd. Co. (“GNPK”) filed their *Joint Application (With Motion for Confidential Treatment of Information)* dated 19 April 2024, seeking the Commission’s approval of their Emergency Power Purchase and Sale Agreement (EPPSA).

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

1. Applicant ILECO III 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 Barangay Preciosa, Sara, Iloilo. It was granted an exclusive franchise by the National Electrification Commission to own and operate an electric distribution system in the Municipalities of Ajuy, Anilao, Balasan, Banate, Batad, Barotac Viejo, Cales,

Concepcion, Estancia, Lemery, San Dionisio, San Rafael, and Sara, all in the Province of Iloilo (the “**Franchise Area**”).

- 1.a. ILECO III is represented herein by its Board President, Engr. Vincent H. Belita, and its General Manager, Atty. James G. Balsomo II, who were authorized by its Board of Directors to initiate, prepare, file and pursue the instant Joint Application pursuant to its Board Resolution No. 30, Series of 2024, a copy of which is hereto attached and marked as **Annex “A”**.
2. 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 the project company established to engage in the business of developing, constructing, operating and owning a 4 x 138MW (net) coal-fired power plant.
 - 2.a. 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 Certificates dated 4 March 2024 and 12 March 2024, the copies of which are hereto attached and marked as **Annexes “B” and “B-1”**.

NATURE AND TIMELINESS OF THE JOINT APPLICATION

3. This is an application for the approval of the Emergency Power Purchase and Sale Agreement (“**EPPSA**”) entered into by and between ILECO III and GNPk on 4 March 2024. A copy of which is attached hereto as **Annex “C”**.
4. 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*” 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.*”
5. Under the foregoing provisions pertaining to the exemption from conducting a Competitive Selection Process (CSP), Applicant ILECO III 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

6. The demand for electricity within the franchise area of ILECO III has seen a notable yearly increase of 6% following the Covid-19

Pandemic. From 2020 to 2023, this consistent growth trend has been observed. Additionally, the number of billed consumers had surged from 99,096 in 2020 to 114,665 in 2023, with expectations of reaching 122,860 by 2024. Concurrently, the peak demand has risen from 24.614 MW in 2020 to 29.25 MW by December 31, 2023, and projections indicate a further increase to 32.33 MW by 2024.

7. Foreseeing the imminent increase in demand, as early as 2019, ILECO III was already a part of the efforts to secure Aggregate Supply through Panay - Guimaras Electric Cooperative Power Consortium, Inc. (PGEPCPI) for a capacity of 4MW.
8. In the procurement process for the Power Supply Requirement for Base Load – Firmed Open Technology conducted by PGEPCPI, ILECO III participated in Lot No. 1, the timeline of events transpired, as follows:
 - 8.1 The Invitation to Bid (ITB) was published twice, on 26 April 2022 and 03 May 2022;
 - 8.2 Bid documents became available on 12 May 2022, enabling interested parties to access the necessary paperwork;
 - 8.3 A pre-bid conference was held on 31 May 2022;
 - 8.4 Throughout the process, several Supplemental Bid Bulletins (SBB) were issued, namely:
 - a. SBB No. 01, issued on 14 May 2022, amended the schedule of CSP activities and addressed other concerns;
 - b. SBB No. 02, issued on 24 May 2022, specified the venue for the Pre-Bid Conference.
 - c. SBB No. 03, issued on 26 May 2022, outlined the submission requirements for proof of authorization during the Pre-Bid Conference.
 - d. SBB No. 04, issued on 01 July 2022, designated the venue for the Opening of Bids.
 - e. SBB No. 07, issued on 08 July 2022, addressed queries regarding the pass-on cost of fossil fuel.
 - 8.5 The submission and opening of Technical and Financial Bids took place on 19 July 2022. Ultimately, the Bids and Awards Committee (BAC) passed Resolution No. 01, Series of 2022, declaring the failure of the bidding process for the CSP on the specified Power Supply Requirement for Base Load – Firmed Open Technology
9. Thereafter, a second round of the CSP was conducted by PGEPCPI which transpired, as follows:
 - 9.1 The ITB was published twice, on 5 January 2023 and 12 January 2023.
 - 9.2 Bid documents became available on 24 January 2023, allowing interested parties to access the necessary paperwork

9.3 A pre-bid conference was held on 31 January 2023

9.4 Throughout the process, several SBB were issued:

- a. SBB No. 01, issued on 23 January 2023, amended the schedule of CSP activities
- b. SBB No. 02, issued on 27 January 2023, specified the submission requirements for proof of authorization during the Pre-Bid Conference
- c. SBB No. 03, issued on 03 February 2023, addressed matters discussed during the Pre-Bid Conference
- d. SBB No. 06, issued on 13 February 2023, provided replies to additional queries raised

9.5 The submission and opening of Technical and Financial Bids took place on 01 March 2023

9.6 Subsequently, on 01 March 2023, the BAC passed Resolution No. 03, Series of 2023, declaring the failure of the bidding process for Lot No. 1 for the specified Power Supply Requirement. Consequently, it was decided to proceed with direct negotiation

9.7 On 02 March 2023, the Head of Procuring Entity (HOPE) passed HOPE Resolution No. 02, Series of 2023, approving and adopting the BAC's resolution declaring the failure of bidding for Lot No. 1 in the second round of the CSP. This resolution also endorsed proceeding with direct negotiation

10. Thereafter, the direct negotiation for the procurement of Lot No. 1 was initiated by the PGECPCI in accordance with the CSP rules which transpired, as follows:

10.1 On 7 March 2023, the BAC issued the terms of reference (TOR) for the evaluation of proposals for negotiated procurement.

10.2 On 16 March 2023, a pre-negotiation conference was held followed by the opening of proposals on 30 March 2023.

10.3 On 28 July 2023, the BAC issued BAC Resolution No. 6 approving and adopting the amended TOR for the second round of direct negotiation.

10.4 The opening of proposals for second round of direct negotiation was held on 31 August 2023.

10.5 The said proposals were evaluated by the joint technical working group (JTWG) on 22 September 2023 followed by the submission of recommendation to the BAC. The JTWG suggested initiating another round of negotiated

procurement and extending invitations to all interested bidders and requested that bidders provide proof or billing records that outline the actual breakdown of rates, with a particular focus on fuel costs for June 2023. It was further suggested to specify the trading node of the plant to further enhance the evaluation process because, as stipulated in the terms of reference (TOR), the line rental charges were originally based on the average line rental for the historical year 2022. However, due to the recent interconnection of the Mindanao grid with the Luzon and Visayas systems, the use of 2022 data no longer accurately reflects the actual effective generation rate and fair evaluation for all bidders

- 10.6 After thorough consideration of the proposals, on 27 September 2023, BAC issued BAC Resolution No. 7, Series of 2023 approving and adopting the amended TOR and authorizing the conduct of the third round of the direct negotiation.
- 10.7 The opening of the proposals for the third round of direct negotiation was held on 27 October 2023 which were evaluated by the JTWG on 9 November 2023 and followed by the conduct of the post qualification with the power supplier of the lowest calculated offer on 17 November 2023.
- 10.8 With the recommendation of the JTWG, the BAC issued Resolution No. 10, Series of 2023 determining the offer of Panay Energy Development Corp. (PEDC) as the Lowest Calculated Responsive Bid (LCRB) for the procurement of the power supply requirement for the Baseload-Firmed/Open Technology of five (5) Electric Cooperatives in Panay and Guimaras - Lot No. 1 and recommending to award the same to PEDC.
- 10.9 However, on 28 November 2023, the HOPE Resolution No. 6, Series of 2023 was issued, instructing the PGECPCI BAC to conduct an open negotiation with the top three (3) lowest bidders as the final round for the direct negotiation for the procurement of Lot No. 1.
- 10.10 As such, on 21 December 2023, the opening of the proposals was held which were evaluated on even date. The post qualification with the power supplier of lowest calculated bid was held on 15 January 2024.
- 10.11 With the evaluation of the JTWG, the BAC issued Resolution No. 01, Series 2024 on 17 January 2024 determining the offer of Sual Power Inc. (SPI), a subsidiary of San Miguel Global Power, as the Lowest Calculated Responsive Bid (LCRB) for the procurement of the power supply requirement for the Baseload-Firmed/Open Technology of Five (5) Electric Cooperatives in Panay and Guimaras – Lot No. 1 and recommending to Award the same to SPI.

- 10.12 Consequently, on 19 January 2024, HOPE Resolution No. 01, Series of 2024 was issued adopting and approving the recommendation of the PGECPCI BAC and JTWG to award Lot No. 1 to SPI.
- 10.13 On 5 February 2024, PGECPCI issued the Notice of Award to SPI.
11. Relative to the foregoing, it was only in January 2024 that the negotiation was concluded. However, despite the lengthy process that was undertaken, the approval process by the National Electrification Administration (NEA) and the Department of Energy (DOE) is still ongoing, and may take a considerable amount of time until the results of the negotiations are finally concluded. Furthermore, it will take some time before the corresponding power supply agreement between ILECO III and SPI are subsequently submitted for the approval of the Honorable Commission, and Provisional Authority thereon is granted.
12. In the meantime, ILECO III resorts to the Wholesale Electricity Spot Market (WESM) for any current imbalances which could have been immediately addressed by the power supply agreement as a result of the procurement process concluded in January 2024. Currently, WESM holds the highest share of 38% in the generation mix of ILECO III for the years 2023 and 2024. The consumers of ILECO III are exposed to the volatile prices of the market, which have increased significantly. This increase in prices has led to a dramatic rise in the rates charged by ILECO III for February 2024, by more than PhP1.8829 per kWh (inclusive of VAT) for residential consumers. which compelled ILECO III to seek measures to alleviate the adverse impact of the WESM. Moreover, ILECO III is burdened with the increase in the required prudential requirement that threatens ILECO III's financial operations. This worsening situation caused by factors beyond ILECO III's control compelled ILECO III to seek measures to alleviate the adverse impact of the WESM, aggravated by the El Nino phenomenon, by entering into an emergency supply agreement.
13. Following its mandate to provide power in a least cost manner, ILECO III informed the Honorable Commission, through a meeting with Chairperson Monalisa C. Dimalanta in Iloilo City together with Region 6 electric cooperatives on 2 February 2024, of its worsening condition and increasing blended generation rates and sought her guidance on ILECO III's intent to procure emergency supply to mitigate the impact of WESM prices. The Administrator of the National Electrification Administration (NEA), Mr. Antonio Mariano C. Almeda, was likewise informed of the situation. Both agencies have been supportive of the proposed action to address the urgent matter at hand. Moreover, through the letter dated 15 February 2024, ILECO III formally informed the Honorable Commission, the NEA and the Department of Energy (DOE) of its intent to conduct negotiated procurement of emergency power supply.

14. Consequently, ILECO III solicited proposals from potential providers for emergency power supply in accordance with the CSP Rules. After the thorough evaluation, GNPk's proposal for ILECO III's emergency power supply requirement has been selected.
15. Accordingly, ILECO III and GNPk executed in counterparts the EPPSA dated 4 March 2024, subject of this Joint Application.
16. Consequently, GNPk commenced delivery to ILECO III under the terms of the EPPSA on 6 March 2024.

SALIENT FEATURES OF THE EPPSA

17. **Contracted Capacity (CC).** *3,000 kW (Section 1.1 of Schedule 1 of the EPPSA)*
18. **Contract Price.** *Section 1.2 of the Schedule 1 of the EPPSA*

Contract Price = Capacity Price + Energy Price – Applicable Discounts + Adjustments

- 18.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 PhP per kWh-hr as set forth in <i>Section 1.2 of Schedule 1</i> of the EPPSA |
| CC | = Contracted Capacity in kW, as set forth in <i>Section 1.1 of Schedule 1</i> 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 |

- 18.b. The Energy Price is the component of the Contract Price allocated to pay for the coal, including Government Charges as adjusted from time to time due to changes in the delivered price of coal 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 = [Initial Energy Fee * ($\frac{CIF_n}{CIF_o}$) * FX_n] + Excise Tax**

where:

Initial Energy Fee = fee per kWh as set forth in *Section 1.2 of Section 1* of the EPPSA
CIF_n = Current CIF for Billing Period, in PhP/million kcal
CIF_o = Based CIF Cost of Fuel as set forth in *Section 1.2 of Schedule 1* of the EPPSA
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 Settlements, Dispatch and Utilization Protocol and the WESM Rules in kWh

19. 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: twelve (12) months from the date indicated in the Commencement Date Notice

20. 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

21. Hereinbelow provided is the Rate Impact on ILECO III’s over-all generation rate with and without the additional supply from GNPk:

GENERATION RATE IMPACT OF EPPSA WITH GNPk	
With GNPk*	PhP6.8506KWh
Without GNPk	PhP7.0657KWh
Rate Impact	PhP-0.2151KWh

**Exclusive of other applicable charges such as excise tax, etc.*

COMPLIANCE WITH PRE-FILING REQUIREMENTS

22. In compliance with *Appendix “F” of Resolution No. 16, Series of 2023 (“Prefiling Checklist”)* and in further support of the instant Joint Application, ILECO III and GNPk herein submit the following:

ANNEX	DOCUMENT
“A”	ILECO III Board Resolution No. 30, Series of 2024
“B”	GNPK Secretary’s Certificates dated 4 March 2024 authorizing the signing of the EPPSA
“B-1”	GNPK Secretary’s Certificates dated 12 March 2024 authorizing the filing of the Application for the approval of the EPPSA by the Honorable Commission
“C”	Emergency Power Purchase and Sale Agreement dated 4 March 2024
“D”	ILECO III Supply-Demand Scenario in accordance with Annex “1” of the Prefiling Checklist
“D-1”	ILECO III Load Curves in accordance with Annex “2” of the Prefiling Checklist
“E”	Invitation to Bid published on 26 April 2022 and 3 May 2022
“E-1”	Supplemental Bid Bulletin (SBB) No. 01 issued on 14 May 2022
“E-2”	SBB No. 02 issued on 24 May 2022
“E-3”	SBB No. 03 issued on 26 May 2022
“E-4”	SBB No. 04 issued on 01 July 2022
“E-5”	SBB No. 07 issued on 08 July 2022
“E-6”	Bids and Awards Committee (BAC) Resolution No. 1, Series of 2022
“E-7”	Invitation to Bid published on 5 January 2023 and 12 January 2023
“E-8”	SBB No. 01 issued on 23 January 2023
“E-9”	SBB No. 02 issued on 27 January 2023
“E-10”	SBB No. 03 issued on 03 February 2023
“E-11”	SBB No. 06 issued on 13 February 2023
“E-12”	BAC Resolution No. 03, Series of 2023 issued on 01 March 2023
“E-13”	Head of Procuring Entity (HOPE) Resolution No. 02, Series of 2023 issued on 02 March 2023
“E-14”	Terms of Reference issued on 07 March 2023
“E-15”	BAC Resolution No. 6, Series of 2023 issued on 28 July 2023
“E-16”	BAC Resolution No. 7, Series of 2023 issued on 27 September 2023
“E-17”	BAC Resolution No. 10, Series of 2023

"E-18"	HOPE Resolution No. 6, Series of 2023 issued on 28 November 2023
"E-19"	BAC Resolution No. 01, Series 2024 issued on 17 January 2024
"E-20"	HOPE Resolution No. 01, Series of 2024 issued on 19 January 2024
"E-21"	Notice of Award issued on 5 February 2024
"F"	ILECO III Letter to GNPK dated 8 February 2024 requesting for proposal for emergency supply
"F-1"	ILECO III Letter to the Honorable Commission dated 15 February 2024 regarding the intent to procure emergency supply
"F-2"	ILECO III Letter to the NEA dated 15 February 2024 regarding the intent to procure emergency supply
"F-3"	ILECO III Letter to the DOE dated 15 February 2024 regarding the intent to procure emergency supply
"F-4"	ILECO III Affidavit supporting the procurement of the emergency supply
"G"	Details of the EPPSA
"H"	Discussion and Calculation of Proposed Rate
"I"	GNPK Generation Rate and Derivation with Write-up on Finance-related Prefiling Requirements (<i>subject of the Motion for Confidential Treatment</i>)
"I-1"	Supplemental Write-up on Finance-related Prefiling Requirements (<i>subject of the Motion for Confidential Treatment</i>)
"J"	GNPK Power Plant Technical Description
"K"	GNPK Certification attesting to the terms of the coal supply agreement
"K-1"	GNPK Sworn Statement attesting to the coal procurement process
"K-2"	GNPK Coal Supply Agreement dated 20 November 2014 (<i>subject of the Motion for Confidential Treatment</i>)
"K-3"	GNPK Amended and Restated Coal Supply Agreement dated 26 December 2017 (<i>subject of the Motion for Confidential Treatment</i>)
"K-4"	GNPK Amendment to the Coal Supply Agreement dated 1 January 2023 (<i>subject of the Motion for Confidential Treatment</i>)
"K-5"	GNPK Amendment to the Coal Supply Agreement dated 7 September 2023 (<i>subject of the Motion for Confidential Treatment</i>)
"L"	Affidavit of Service for the Offices of the Governor and Sangguniang Panlalawigan of Iloilo
"L-1"	Affidavit of Service for the Offices of the Mayor and Sangguniang Bayan of Sara
"M"	Affidavit of Service for the Offices of the Governor and Sangguniang Panlalawigan of Lanao del Norte
"M-1"	Affidavit of Service for the Offices of the Mayor and Sangguniang Bayan of Kauswagan
"N"	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
"N-1"	Complete newspaper issue where the Application was published
"N-2"	Relevant page of the newspaper issue where the Application appeared

23. 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.¹ Pursuant to this, Applicant GNPK prays for the confidential treatment of the information contained in the following annexes:

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

24. **Annexes “I”, “I-1”, “K-2”, “K-3”, “K-4” and “K-5”** contain the details of the power rate calculations and financial model of GNPK as well as the manner by which these were derived. These information are 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.*², 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 Section 1, Rule 4, Rules of Practice and Procedure of the Energy Regulatory Commission.

² G.R. No. 172835, December 13, 2007.

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)*
25. 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 “I”, “I-1”, “K-2”, “K-3”, “K-4” and “K-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.
26. More importantly, competitors of GNPk, should they obtain the information in **Annexes “I”, “I-1”, “K-2”, “K-3”, “K-4” and “K-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.
27. 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”.³

PRAYER

WHEREFORE, in view of all the foregoing, ILECO III and GNPk respectfully pray of this Honorable Commission, that:

1. an Order be issued treating **Annexes “I”, “I-1”, “K-2”, “K-3”, “K-4” and “K-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

³ Soft copies of the same to be provided to this Honorable Commission are password protected.

received by the Honorable Commission up to the termination of the instant case;

2. an Issuance be passed 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 instant Joint Application and the EPPSA between ILECO III and GNPk, including the rates, fees, and charges therein, as well as the adjustment mechanism, and authorizing ILECO III to charge and collect the fees therein from its customers reckoned from the start of supply by GNPk to ILECO III under the EPPSA.

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

Finding the said *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 2020⁴ and Resolution No. 01, Series of 2021⁵ (ERC Revised Rules of Practice and Procedure):

Date	Platform	Activity
27 November 2024 (Wednesday) at two o'clock in the afternoon (2:00 PM)	Microsoft Teams Application	Determination of compliance with the jurisdictional requirements and expository presentation
04 December 2024 (Wednesday) at two o'clock in the afternoon (2:00 PM)		Pre-Trial Conference and presentation of evidence

Accordingly, ILECO III is hereby directed to host the virtual hearings at **Barangay Preciosa, Sara, Iloilo, Philippines**, as the designated venue for the conduct thereof, and ensure that the same is open to the public. Moreover, ILECO III shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

⁴ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

⁵ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

RELATIVE THERETO, GNPk and ILECO III 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 Governors, the Mayors and the Local Government Unit (LGU) legislative bodies, where GNPk ILECO III principally operate;
- 3) Inform the consumers within the affected area, by any other means available and appropriate, of the filing of the *Application*, their 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 *Application* and its attachments, except those subject of a motion for confidential treatment of information, all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

Within five (5) calendar days before the date of the initial virtual hearing, Applicants 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 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 Governors, Mayors and LGU legislative bodies or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by GNPk and ILECO III to inform the consumers affected by the filing of the *Application*, their 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 *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, GNPk and ILECO III 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 Governors, Mayors, and Local Legislative Bodies, and to submit proof of posting thereof.

GNPk, ILECO III, 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.

GNPK and ILECO III 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 GNPK and ILECO III to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearings, and the resetting of which shall be six (6) months from the said date of cancellation.

Joint applicants GNPK and ILECO III must also be prepared to make an expository presentation of the instant *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 *Application*. Relevant information and pertinent details substantiating the reasons and justifications for the *Application* must be cited in support thereof.

Joint applicants GNPK and ILECO III 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. Joint 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.

Joint applicants GNPK and ILECO III are 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 the same were electronically submitted, as reflected in the acknowledgment receipt e-mail sent by the Commission.

Finally, GNPK and ILECO III, 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, 16 October 2024.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ATTY. KRISHA MARIE T. BUELA
Director III, Legal Service

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ORDER/ 16 October 2024
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Copy Furnished:

1. GNPower Kauswagan Ltd. Co. (GNPK)
Applicant
Barangay Libertad, Kauswagan, 9202
Lanao del Norte
Email addresses: gnpk.trading1@gnpk.com.ph; gnpk.trading1@gmail.com;
annav@gnpower.com; rebekahf@gnpower.com; frederickm@gnpower.com
2. Iloilo III Electric Cooperative, Inc. (ILECO III)
Applicant
Barangay Preciosa
Sara, Iloilo
Email address: ileco3@gmail.com; ileco3.ogm@gmail.com; ileco3.tsd@gmail.com;
ileco3.fsd@gmail.com; ileco3.isd@gmail.com
3. The Law Firm of Manjares & Manjares
Counsel for Applicant GNPK
No. 6 St. Anne Provident Villages, Marikina City
Email address: mandmlaw.phil@gmail.com; jcmanjaresiii@gmail.com;
justin.manjares@obf.ateneo.edu
4. Dechavez Lerios-Amboy and Evangelista Law Offices
Counsels for Applicant ILECO III
Unit 2008, Tycoon Centre
Pearl Drive, Ortigas Center, Pasig City 1605
Email address: powerlawfirm@gmail.com; jdfrancisco115@gmail.com
5. Office of the Solicitor General
134 Amorsolo Street, Legaspi Village, Makati City
Email address: docket@osg.gov.ph
6. Commission on Audit
Commonwealth Avenue, Quezon City
Email: citizensdesk@coa.gov.ph
7. Senate Committee on Energy
GSIS Bldg. Roxas Blvd., Pasay City
Email: senateenergycommittee@gmail.com
8. House Committee on Energy
Batasan Hills, Quezon City
Email: committee.energy@house.gov.ph
9. Office of the Provincial Governor
Province of Lanao del Norte
10. Office of the LGU Legislative Body
Province of Lanao del Norte
11. Office of the Municipal Mayor
Municipality of Kauswagan
12. Office of the LGU Legislative Body
Municipality of Kauswagan
13. Office of the Governor
Province of Iloilo
14. Office of the LGU Legislative Body
Province of Iloilo
15. Office of the Municipal Mayor
Municipality of Ajuy, Iloilo
16. Office of the LGU Legislative Body
Municipality of Ajuy, Iloilo

17. Office of the Municipal Mayor
Municipality of Anilao, Iloilo
18. Office of the LGU Legislative Body
Municipality of Anilao, Iloilo
19. Office of the Municipal Mayor
Municipality of Balasan, Iloilo
20. Office of the LGU Legislative Body
Municipality of Balasan, Iloilo
21. Office of the Municipal Mayor
Municipality of Banate, Iloilo
22. Office of the LGU Legislative Body
Municipality of Banate, Iloilo
23. Office of the Municipal Mayor
Municipality of Barotac Viejo, Iloilo
24. Office of the LGU Legislative Body
Municipality of Barotac Viejo, Iloilo
25. Office of the Municipal Mayor
Municipality of Batad, Iloilo
26. Office of the LGU Legislative Body
Municipality of Batad, Iloilo
27. Office of the Municipal Mayor
Municipality of Carles, Iloilo
28. Office of the LGU Legislative Body
Municipality of Carles, Iloilo
29. Office of the Municipal Mayor
Municipality of Concepcion, Iloilo
30. Office of the LGU Legislative Body
Municipality of Concepcion, Iloilo
31. Office of the Municipal Mayor
Municipality of Estancia, Iloilo
32. Office of the LGU Legislative Body
Municipality of Estancia, Iloilo
33. Office of the Municipal Mayor
Municipality of Lemery, Iloilo
34. Office of the LGU Legislative Body
Municipality of Lemery, Iloilo
35. Office of the Municipal Mayor
Municipality of San Dionisio, Iloilo
36. Office of the LGU Legislative Body
Municipality of San Dionisio, Iloilo
37. Office of the Municipal Mayor
Municipality of San Rafael, Iloilo
38. Office of the LGU Legislative Body
Municipality of San Rafael, Iloilo

39. Office of the Municipal Mayor
Municipality of Sara, Iloilo
40. Office of the LGU Legislative Body
Municipality of Sara, Iloilo
41. Regulatory and Operations Service (ROS)
Energy Regulatory Commission
14th Floor, Exquadra Tower, 1 Jade Drive
Ortigas Center, Pasig City