Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

IN THE MATTER OF THE APPLICATION FOR THE APPROVAL OF EMERGENCY POWER SUPPY AGREEMENT BETWEEN ISABELLA II ELECTRIC COOPERATIVE AND GNPOWER DINGININ LTD. CO. WITH PRAYER FOR CONFIDENTIAL TREATMENT OF INFORMATION,

ERC CASE NO. 2025-050 RC

ISABELLA II ELECTRIC COOPERATIVE (ISELCO II) AND GNPOWER DINGININ LTD. CO. (GNPD)
Applicants.
x---------------------------------------x

Promulgated:
April 28, 2025

NOTICE OF VIRTUAL HEARING

Notice is hereby given that on 24 February 2025, Isabella II Electric Cooperative (ISELCO II) and GNPower Dinginin LTD. Co. (GNPD) filed a *Joint Application,* dated February 17, 2025, seeking the Commission's approval of their Emergency Power Supply Agreement (EPSA), with prayer for confidential treatment of information.

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

The Nature of the Application

1. This Application is submitted to this Honorable Commission for the due consideration and approval of the *Emergency Power Supply Agreement* dated January 24, 2025 executed by and between Applicants ISELCO II and GNPD, (the "*Subject EPSA*").[1] Copies of the Subject EPSA and its executive summary are attached as Annex A and Annex A-1, respectively, to form integral parts hereof.

[1] Emergency Power Supply Agreement shall be generically referred to as "***EPSA***".

The Parties

2. ISELCO II is a non-stock and non-profit electric cooperative duly organized and existing under and by virtue of the laws of the Philippines, with principal office at Government Center, Barangay Alibagu, City of Ilagan, Province of Isabela. ISELCO II operates an electric light and power distribution service, for which it was issued an exclusive franchise by the National Electrification Administration ("*NEA*"), in the City of Ilagan and certain municipalities in the Province of Isabela, namely: Cabagan, San Pablo, Sta. Maria, Naguilian, Gamu, Roxas, Aurora, Mallig, Sto. Tomas, Delfin Albano, Tamauini, Quezon, Quirino, San Manuel, Burgos, Benito Soliven, San Mariano, and Palanan.

3. GNPD is a duly registered limited partnership organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at GNPower Energy Complex, Sitio Dinginin, Barangay Alas-asin, Municipality of Mariveles, Province of Bataan. GNPD owns and operates a 1,336-megawatt (*"MW"*) coal-fired power plant (the "*Plant*"). The Applicants may be served with notices, orders, and other legal processes of this Honorable Commission through their respective counsels at the addresses indicated below.

Statement of the Facts

4. The Honorable Commission issued the *Order* dated March 1, 2023 directing ISELCO II and its supplier to stop implementing their Power Supply Agreement ("*PSA*") which had been affected by the Supreme Court's ruling in *Alyansa Para Sa Bagong Pilipinas, Inc. v. Energy Regulatory Commission* ("*ABP Ruling*"),[2] leaving ISELCO II with a supply deficit of 18 MW.

5. In line with this, the Honorable Commission also issued an advisory on August 10, 2023, allowing Distribution Utilities affected by the ABP Ruling during the transition period, to source their power supply requirements through an EPSA pending the Competitive Selection Process and execution of a long-term Power Supply Agreement.

6. From October 26, 2023 to October 25, 2024, GNPD supplied electricity to ISELCO II under an EPSA dated October 25, 2023, which was the subject of an Application docketed as ERC Case No. 2023-142 RC (the "*2023 EPSA*").

7. To secure long-term power supply to meet the needs of its captive market and in anticipation of the then-expiration of the 2023 EPSA, ISELCO II joined the Joint Competitive Selection Process for the Aggregated Baseload Supply for Luzon On-Grid Electric Cooperative ("*Joint CSP-LECA*")

[2] G.R. No. 227670, May 3, 2019.

spearheaded by NEA to address the displaced capacities affected by the ERC Order dated March 1, 2023.

8. On August 17 and 24, 2024, the NEA's Special Bids Awards Committee ("*NEA-SBAC*") published the *Invitation to Bid* ("*ITB*") for the Joint CSP-LECA. Under the ITB, the execution of PSAs was initially scheduled to take place between <u>November 27 and 30, 2024</u>. A copy of the ITB is attached as Annex H.

9. On September 4, 2024, the NEA-SBAC issued *Bid Bulletin No. 1*, which pushed back the execution of the LECA CSP PSAs to the period from <u>December 16 to 20, 2024</u>. A copy of Bid Bulletin No. 1 is attached as Annex I.

10. On October 14, 2024, the NEA-SBAC issued *Bid Bulletin No. 2*, pushing the execution of the LECA CSP PSAs further back to the period between <u>January 31 and February 2, 2025</u>. A copy of Bid Bulletin No. 2 is attached as Annex J.

11. On November 6, 2024, NEA-SBAC issued *Bid Bulletin No. 4*, which reiterated that the execution of LECA CSP PSAs would take place from January 31 to February 2, 2025. A copy of Bid Bulletin 4 is attached as Annex K.

12. ISELCO II was expecting delivery of power from the winning bidders of the Joint CSP-LECA by 26 January 2025. However, as the execution of the LECA CSP PSAs had been pushed back and considering these PSAs must also be submitted for ERC approval, which circumstances are beyond and independent of ISELCO II's sole control, ISELCO II expects a deficiency of 18 MW beginning 26 January 2025, thus, declares such as a force majeure event.

13. In order to address the 18 MW supply deficiency, ISELCO II exerted efforts to ensure the provision of least-cost emergency power by soliciting proposals from generation companies. A copy of ISELCO II's Resolution No. 012, Series of 2025 approving the procurement of an EPSA is attached hereto as Annex L.

14. Among the power generators invited by ISELCO II, only GNPD submitted a proposal to readily supply 18 MW beginning January 26, 2025.

15. After evaluating the legal, commercial, and technical merits of GNPD's proposal, ISELCO II found GNPD's offer the most advantageous for its captive market. ISELCO II then accepted the terms thereof and resolved to execute the Subject EPSA through Board Resolution No. 13, Series of 2025, a copy of which is attached hereto as Annex M.

16. After negotiations between Applicants ISELCO II and GNPD, the Subject EPSA was signed and executed on January 24, 2025 and the power supply commenced on January 26, 2025.

The Salient Features of the Subject EPSA

17. The Subject EPSA contains the following salient provisions:

a. *Term and contracted capacity.* Under the Subject EPSA, GNPD will supply 18 MW of emergency power to ISELCO II from January 26, 2025 to July 25, 2025, unless it is terminated earlier in accordance with its terms.[3]

Billing Period	Contract Capacity (kW)	Monthly Minimum Energy Off-Take (kWh)	Monthly Maximum Energy Off-Take (kWh)
January 26, 2025 to February 25, 2025	18,000	8,704,800	13,392,000
February 26, 2025 to March 25, 2025	18,000	7,862,400	13,392,000
March 26, 2025 to April 25, 2025	18,000	8,704,800	12,960,000
April 26, 2025 to May 25, 2025	18,000	8,424,000	13,392,000
May 26, 2025 to June 25, 2025	18,000	8,704,800	12,960,000
June 26, 2025 to July 25, 2025	18,000	8,424,000	13,392,000

b. *Contract price.* The Contract Price shall be composed of the Capacity Fee, Energy Fee, and Governmental Charges, computed as follows:[4]

Electricity Fees = A + B + C

Where:

A. Capacity Fee

A = CUF x MAE

The Capacity Utilization Factor ("*CUF*") shall be computed as follows:

$$CUF = \frac{MAE}{CC * [H_{BPH} - H_O]}$$

Where:

CUF = is the Capacity Utilization Factor between 65% and 100%, as provided in Schedule 3, that if the actual CUF is below 65% (the "Minimum Capacity Utilization

[3] *See* Subject EPSA (**Annex A**), Article 2.1.
[4] *See* Subject EPSA (**Annex A**), Schedule 2.

Factor"), the Capacity Price shall be calculated based on the Capacity Fee and quantity associated with the Minimum Capacity Utilization Factor.

For the resulting Capacity Utilization Factor which is not a whole number, the corresponding Capacity Fee shall be computed using the formula as set forth below:

Capacity Fee = - 0.10971 x (CUF)^3 *+ 0.344263 x (CUF)*^{2} *- 0.39644 x CUF + 0.2075*

MAE = monthly actual energy, in kWh, or max (MEOT, AE)

Where:

MEOT = 65% * Contracted Capacity * 24 * Billing Period in Days * Adj, in kWh

Where:

Adj = Adjustment due to Force Majeure, Scheduled Outages and Unscheduled Outages computed as:

$$Adj = \sum_{j=1}^{n} \sum_{i=1}^{int} \frac{ACC_{ji}}{CC * Int * n}$$

Where:

ACC_{ij} = Contracted Capacity less affected capacity due to Force Majeure, Scheduled Outages, and Unscheduled Outages for interval i and day j within the Billing Period n.

Int = The number of Trading Intervals per day.

n = The number of days for the current Billing Period.

AE = actual energy delivered, in kWh

H_{BPH} = Total number of hours in such Billing Period

H_O = the sum of the duration, in equivalent hours, of Scheduled and Unscheduled Outages within Outage Allowance, and Force Majeure in such Billing Period

CUF (%)	Capacity Fee (USD per kWh)
100%	0.0456
99%	0.0460
98%	0.0464
97%	0.0467
96%	0.0471
95%	0.0475
94%	0.0479
93%	0.0483
92%	0.0487
91%	0.0491
90%	0.0496
89%	0.0500
88%	0.0505
87%	0.0509
86%	0.0514
85%	0.0519
84%	0.0524
83%	0.0529
82%	0.0534
81%	0.0540
80%	0.0545
79%	0.0551
78%	0.0556
77%	0.0562
76%	0.0568
75%	0.0575
74%	0.0582
73%	0.0589
72%	0.0596

CUF (%)	Capacity Fee (USD per kWh)
71%	0.0603
70%	0.0611
69%	0.0618
68%	0.0626
67%	0.0634
66%	0.0643
65%	0.0651

B. Energy Fee = means the component of the Contract Price allocated to pay for the fuel for the quantity sold from the Facility, including Governmental Charges, designated as the Energy Fee in Schedule 2 as adjusted from time to time due to changes in the delivered price of fuel and Governmental Charges.

$$Energy\ Fee = IEF\ x\ \left[\frac{CIF_n}{CIF_0}\right] x\ MAE$$

Where:

IEF	=	Initial Energy Fee equal to $0.0328 / kWh
CIF_n	=	CIF Cost of Fuel for Billing Period *n*
CIF_o	=	Base CIF Cost of Fuel equal to $10.2514 / million kcal
MAE	=	As previously defined

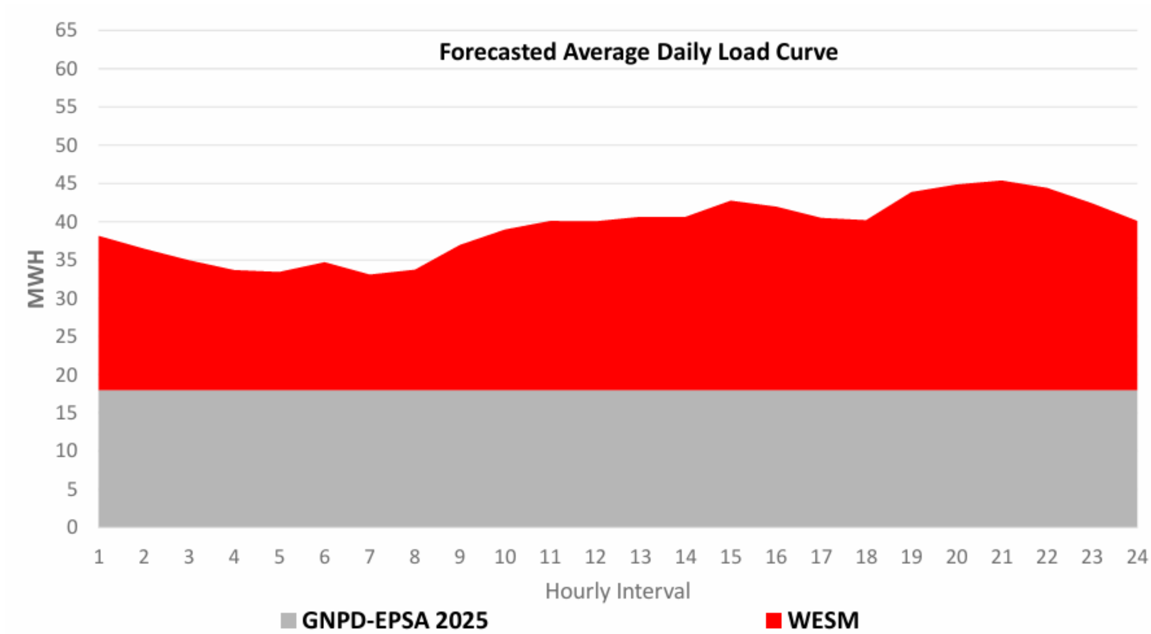
C. All existing and future taxes, fees and imposts (including increases, or adjustments thereon and increases, or adjustments on existing taxes, fees and imposts), such as but not limited to real property taxes, excise taxes, and other future charges imposed on the Power Plant for the generation of electricity,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

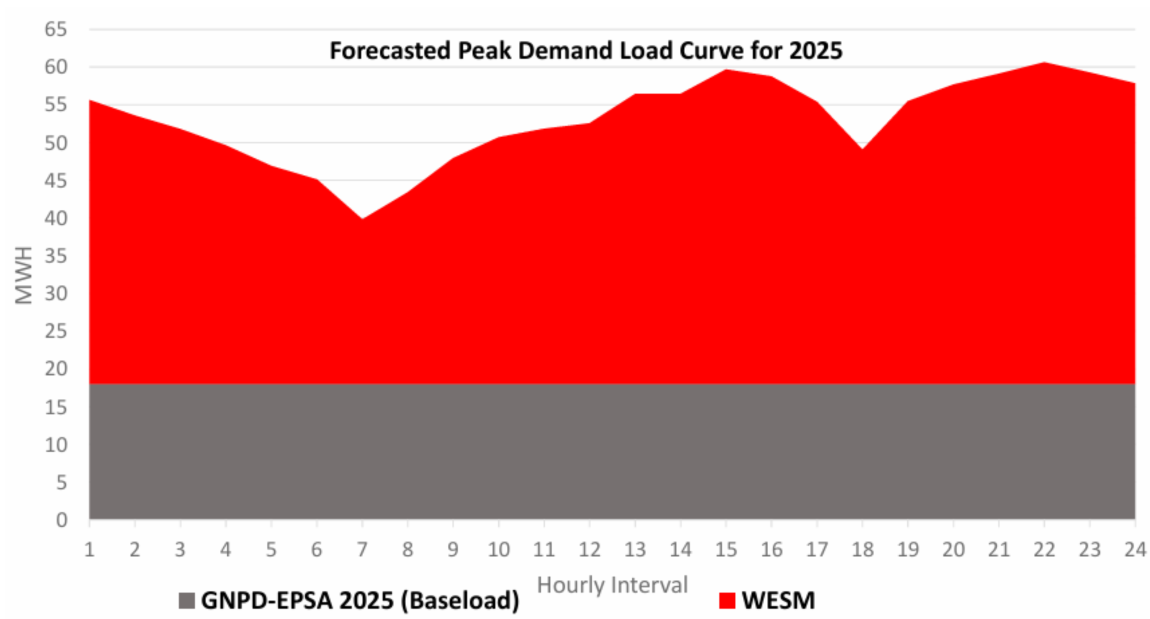
<u>ISELCO II's Supply-Demand Scenario and Rate Impact Analysis</u>

18. ISELCO II's forecasted supply-demand scenario for February to July 2025 shows that it may experience a deficit of up to 58.006 MW if the Subject EPSA is not implemented. In fact, even if the Subject EPSA is implemented and GNPD supplies ISELCO II with 18 MW of emergency power, ISELCO II still expects to experience a deficit of up to 40.006 MW within the

Subject EPSA's term. Hence, there is an urgent need for ISELCO II to procure emergency power. A copy of ISELCO II's supply-demand scenario is attached as **Annex B**.

19. ISELCO II's forecasted average and peak daily load curve for the Cooperation Period of the Subject EPSA are as follows:





20. Based on its rate impact analysis, ISELCO II expects to charge its customers ₱5.40 per kilowatt-hour ("*kWh*") under the Subject EPSA. However, if the Subject EPSA is not implemented, ISELCO II forecasts that it will have to charge its customers ₱5.69/kWh. Hence the implementation of the Subject EPSA will reduce the rate to be charged by ISELCO II to its consumers by ₱0.2937/kWh. A copy of ISELCO II's rate impact analysis is attached as Annex C.

21. In support of this Joint Application, copies of the following documents are attached as annexes:

Description of Document	Annex
The Subject EPSA between ISELCO II and GNPD	**A**
An executive summary of the Subject EPSA	**A-1**
ISELCO II's supply-demand scenario	**B**
ISELCO II's rate impact analysis	**C**
The relevant technical and economic characteristics of the Plant	**D**
GNPD's Financial model*	**E**
GNPD's Generation Rate and Derivation*	**F**
GNPD's *Sworn Statement* dated November 23, 2023 (on its fuel procurement process)*	**G**
The ITB	**H**
NEA-SBAC's Bid Bulletin No. 1	**I**
NEA-SBAC's Bid Bulletin No. 2	**J**
NEA-SBAC's Bid Bulletin No. 4	**K**
ISELCO II Board Resolution No. 12, Series of 2025	**L**
ISELCO II Board Resolution No. 13, Series of 2025	**M**

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

ALLEGATIONS IN SUPPORT OF THE PRAYER FOR CONFIDENTIAL TREATMENT OF INFORMATION

22. Section 1, Rule 4 of the *Revised Rules of Practice and Procedure of the Energy Regulatory Commission* ("*ERC Rules*") provides that a party to any proceeding before this Honorable Commission may request that documents and/or information in this Honorable Commission's possession be treated as confidential and not be disclosed.

23. In line with this, GNPD prays that Annexes E, F, and G (collectively, the "*Confidential Documents*") and the information contained therein be treated as confidential and not be disclosed to any persons other than the officers and staff of this Honorable Commission.

24. The Confidential Documents contain information and data involving GNPD's power rate calculations and financial model, as well as how these were derived. They are not generally available to the public, are proprietary, privileged, and confidential in nature, and should be protected as trade secrets. In *Air Philippines Corporation vs. Pennswell, Inc.*,[5] the Supreme Court held that:

> 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

[5] G.R. No. 172835, December 13, 2007.

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.

Emphasis and underscoring supplied.

25. In the *Decision* in ERC Case No. 2015-111 RC dated May 30, 2017 entitled *In the Matter of the Application for Approval of the Power Supply Agreement Between Nueva Ecija II Electric Cooperative, Inc.-Area 2 (ISELCO II) and PNOC Renewables Corporation (PNOC RC)*, this Honorable Commission categorically stated that formulas and pricing structures of a generation company must be treated as confidential and may not be publicly disclosed:

In the case of PNOC RC, the documents sought to be protected from disclosure contains 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.

26. Thus, this Honorable Commission has recognized the importance of maintaining pricing structures as confidential to ensure the competitiveness of the generation sector. Such information, which falls within the definition of a trade secret as defined by jurisprudence, is clearly information that merits the confidential treatment provided for under Rule 4 of the ERC Rules.

27. The interest of the consuming public is sufficiently protected by the review and evaluation of the rates of the Subject EPSA by this Honorable Commission, without the need to disclose the contents of Confidential Documents. The reasonableness and transparency of the prices of electricity is to be assured by this Honorable Commission through its own review and verification of GNPD's operating costs and expenses.

28. Further, if the Confidential Documents and the information contained therein are leaked to GNPD's competitors, they will gain undue advantage and could use such information and documents in their operations. Furthermore, the negotiating power of GNPD with parties it plans to contract with or with whom it is currently doing business, will be impeded if it is compelled to disclose such information.

29. Accordingly, one (1) copy each of the Confidential Documents is placed in a sealed envelope, with the said envelope and each page of the documents stamped with the word "*Confidential.*"

PRAYER

WHEREFORE, the foregoing premises considered, the Applicants respectfully pray that this Honorable Commission:

(a) ISSUE an Order –

(i) GRANTING the Motion for Confidential Treatment of Information and DECLARING as confidential the information contained in the Confidential Documents (Annexes E, F, and G);

(ii) DIRECTING the NON-DISCLOSURE of the Confidential Documents to persons other than the officers and staff of this Honorable Commission;

(iii) continuously PROTECTING the information contained in the Confidential Documents from public disclosure by maintaining the same separate and apart from the records of the case; and

(iv) ensuring that these are NOT DIVULGED to unauthorized persons, pursuant to Rule 4 of the ERC Rules; and

(b) ISSUE a Decision GRANTING the *Joint Application* and APPROVING the Subject EPSA, including all the rates, fees, charges, and tariff adjustment mechanisms set out therein at

the rates provided in the Subject EPSA, and authorizing ISELCO II to charge and collect the fees therein from its customers reckoned from the start of power supply by GNPD to ISELCO II under the Subject EPSA.

The Applicants also pray for such other reliefs just and equitable under the circumstances.

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 2020[6] and Resolution No. 01, Series of 2021[7] (ERC Revised Rules of Practice and Procedure):

Date	Platform	Activity
11 July 2025 (Friday) at nine o'clock in the morning (9:00 A.M.)	**Microsoft Teams Application**	Determination of compliance with jurisdictional requirements and Expository Presentation
18 July 2025 (Friday) at nine o'clock in the morning (9:00 A.M.)		Pre-Trial Conference and Presentation of Evidence

Accordingly, ISELCO II is hereby directed to mirror the virtual hearings that will be hosted by the Commission at **ISELCO II's Principal Office located at Government Center, Barangay Alibagu, Ilagan City, Isabela** as designated venue for the conduct thereof and ensure that the same is open to the public. Moreover, ISELCO II and GNPD 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 electronic mail (e-mail) at docket@erc.ph, and 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

[6] A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.
[7] A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

the same and propound questions during the course of the expository presentation.

Moreover, all persons who have 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, and copy furnishing 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;

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, and 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.

WITNESS, the Honorable Chairperson and CEO **MONALISA C. DIMALANTA**, and the Honorable Commissioners **ALEXIS M. LUMBATAN, CATHERINE P. MACEDA, FLORESINDA G. BALDO-DIGAL,** and **MARKO ROMEO L. FUENTES,** Energy Regulatory Commission, this 28rd day of April 2025 in Pasig City.

FOR AND BY AUTHORITY
OF THE COMMISSION:

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

LS: CAB/JGGW