

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

ERC CASE NO. 2024-081 RC

**ANTIQUE ELECTRIC
COOPERATIVE, INC. AND
GNPOWER KAUSWAGAN
LTD. CO.,**

Applicants.

X-----X

Promulgated:
July 04, 2024

NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 26 June 2024, Antique Electric Cooperative, Inc. (ANTECO) and GNPower Kauswagan Ltd. Co. (GNPK) filed a *Joint Application*, dated 29 May 2024, seeking the Commission’s approval of their Emergency Power Purchase and Sale Agreement (EPPSA), with prayer for confidential treatment of information.

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

THE JOINT APPLICANTS

1. Applicant ANTECO 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

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Barangay Funda, San Jose de Buenavista, Antique. It was granted an exclusive franchise by the National Electrification Commission to own and operate an electric distribution system in the Municipalities of Anini-y, TA Fornier, Hamtic, San Jose, Sibalom, San Remigio, Belison, Bugasong, Valderrama, Laua-an, Barbaza, Tibiao, Culasi, Sebaste and Island of Caluya, all in the Province of Panay (*sic*) (the "Franchise Area")

2. ANTECO is represented herein by its Board President, Gil O. Alian Jr., and its General Manager, Neal Peter C. Venegas who were authorized by its Board of Directors to initiate, prepare, file and pursue the instant Joint Application pursuant to its Board Resolution No. 46- 24, Series of 2024, Series of 2024 (*sic*), a copy of which is hereto attached and marked as Annex "A".
3. Applicant GNPk is a duly registered limited partnership duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office address at Brgy. Libertad, Kauswagan, 9202, Lanao del Norte. GNPk is the project company established to engage in the business of developing, constructing, operating and owning a 4 x 138MW (net) coal-fired power plant.
4. GNPk is represented herein by its Vice President for Energy Sales and Trading, Engr. Arnel O. Bilaoen, and its Authorized Representatives, Ms. Mariflor M. Guba and Mr. Gino Lorenzo R. Ilagan, who have been authorized to initiate, prepare, file, and pursue the instant Joint Application, as evidenced by its Secretary's Certificate dated 13 April 2024, the copy of which is hereto attached and marked as Annex "B".

**NATURE AND TIMELINESS OF THE JOINT
APPLICATION**

5. This is an application for the approval of the Emergency Power Purchase and Sale Agreement ("EPPSA") entered into by and between ANTECO and GNPk on 15 April 2024, a copy of which is hereto attached and marked as Annex "C".
6. Section 24 of Resolution No. 16, Series of 2023 entitled "*Implementing Guidelines for the Procurement, Execution and Evaluation of Power Supply Agreements Entered into by Distribution Utilities for the Supply of Electricity to Their Captive Market*" ("2023 CSP Rules") mandates that "*the application for approval of the EPSA shall be filed with the ERC within thirty (30) calendar days after the occurrence of the Force Majeure or Fortuitous Event.*"
7. Under the foregoing provisions pertaining to the exemption from conducting a Competitive Selection Process ("CSP"), Applicant ANTECO respectfully asserts its legal authorization to procure electricity through negotiated procurement due to circumstances beyond its control. As elaborated hereunder, it is essential for the cooperative to pursue this approach to

ensure the cost-effective provision of electricity to its consumers.

NARRATION OF FACTS

8. In accordance with the mandate under the existing procurement guidelines, ANTECO, through the Panay-Guimaras EC Power Consortium Inc. ("PGEPCCI"), initiated a competitive selection process ("CSP") as early as 2021 to address its need for additional supply given the growth as well as the unprecedented surge in franchise demand after the pandemic which also delayed the formal start of bidding by 2022.
9. The procurement process for the Power Supply Requirement for Base Load - Firmed Open Technology consisted of Lot No. 1 (baseload), Lot No. 2 (intermediate) and Lot No. 3 (baseload - renewable). With this CSP, ANTECO intended to procure a total baseload capacity of 3 MW as part of Lot No. 3 in compliance with the Renewable Portfolio Standards ("RPS").
10. Notwithstanding this CSP efforts, particularly, under Lot No. 3, it was unfortunate that ANTECO failed to secure a long term power supply agreement. The total failure of bidding for Lot No. 3 led ANTECO to resort to the Wholesale Electricity Spot Market ("WESM") to address the current insufficiency in supply which is supposedly to be addressed by the long-term PSA that it entered as a result of a prior CSP[.]
11. Currently, WESM holds a significant share of 27.41% in the generation mix of ANTECO for the year 2024. ANTECO's consumers are exposed to the volatile WESM rates procured by ANTECO for January to March billing periods, by as much as PhP10.69/kWh, PhP9.06/kWh and PhP14.60/kWh (inclusive of VAT), respectively. Moreover, ANTECO is burdened with the increase in the required prudential requirement that threatens ANTECO's financial operations. This worsening situation caused by factors beyond ANTECO's control compelled ANTECO to seek measures to alleviate the adverse impact of the WESM by entering into an emergency supply agreement.
12. Further, based on ANTECO's market price monitoring last 12 April 2024, WESM prices spiked to PhP32,000.00/MWh during peak hours (from 1PM to 11PM) while based on the March 2024 market price monitoring, the price reached PhP64,185.50/MWh. ANTECO was burdened of the impact of such exposure to the volatile prices in the WESM which worsened towards the peaking months period as further aggravated by the El Nino phenomenon expected to persist until end of 2024.
13. Following its mandate to provide power in a least cost manner, ANTECO informed ERC Chairperson Monalisa C.

Dimalanta, through a meeting in Iloilo City with Region 6 electric cooperatives on 2 February 2024, of its worsening condition and increasing blended generation rates and sought her guidance on ANTECO '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 foregoing through a meeting on 16 February 2024. Both agencies have been supportive of the proposed action to address the urgent matter at hand.

14. Relative to this, ANTECO, through the PGECPCI, proceeded with the request for emergency supply proposals from power suppliers in accordance with the 2023 CSP Rules wherein only GNPowder Kauswagan Ltd. Co. ("GNPK") responded with the generation rate offer favorable to ANTECO.
15. After thorough evaluation, the PGECPCI HOPE issued Board Resolution No. 04, Series of 2024 that the GNPK's proposal for ANTECO for emergency power supply requirement has been selected.
16. Accordingly, ANTECO and GNPK executed in counterparts the EPPSA, subject of this Joint Application.
17. Consequently, GNPK commenced delivery to ANTECO under the terms of the EPPSA on 1 May 2024.
18. Pursuant to the 2023 CSP Rules, on 15 April 2024, ANTECO sent a Notice of Force Majeure Majeure/Fortuitous Event of even date to the Honorable Commission, DOE, and NEA. Copies of the said Notices are hereto attached as Annexes "D" to "D-2".

SALIENT FEATURES OF THE EPPSA

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

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

- 20.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:

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Capacity Fee = amount in PhP per kWh-hr as set forth in *Section 1.2 of Schedule 1* of the EPPSA

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

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

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

20.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) $\text{Energy Fee} = [\text{Initial Energy Fee} * (\frac{\text{CIF}_n}{\text{CIF}_0}) * \text{FX}_n] + \text{Excise Tax}$

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

CIF₀ = 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

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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

21. 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.

22. 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

23. Hereinbelow provided is the Rate Impact on ANTECO over-all generation rate with and without the additional supply from GNPk:

GENERATION RATE IMPACT OF EPPSA WITH GNPk	
With GNPk	PhP7.6758/kWh
Without GNPk	PhP7.9435/kWh
Rate Impact	PhP-0.2678/kWh

Note: Rate Exclusive of VAT

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COMPLIANCE WITH PRE-FILING REQUIREMENTS

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

ANNEX	DOCUMENT
"A"	ANTECO Board Resolution No. 46-24, Series of 2024, Series of 2024 (<i>sic</i>)
"B"	GNPK Secretary's Certificate dated 13 April 2024 authorizing the signing of the EPPSA
"C"	Emergency Power Purchase and Sale Agreement dated 15 April 2024
"D"	ANTECO Notice of Force Majeure/Fortuitous Event to the Honorable Commission dated 15 April 2024
"D-1"	ANTECO Notice of Force Majeure/Fortuitous Event to the NEA dated 15 April 2024
"D-2"	ANTECO Notice of Force Majeure/Fortuitous Event to the DOE dated 15 April 2024
"E"	ANTECO Supply-Demand Scenario in accordance with Annex "1" of the Prefiling Checklist
"E-1"	ANTECO Load Curves in accordance with Annex "2" of the Prefiling Checklist
"F"	Invitation to Bid published on 26 April 2022 and 3 May 2022
"F-1"	PGECPCI Board Resolution No. 8 Series of 2023
"F-2"	PGECPCI Board Resolution No. 3 Series of 2024
"G"	Average Market Price (26 February 2024 to 25 March 2024)
"H"	PGECPCI Letter to GNPk dated 16 February 2024 requesting for proposal for emergency supply
"H-1"	PGECPCI Letter to Palm Concepcion Power Corporation dated 16 February 2024 requesting for proposal for emergency supply
"H-2"	PGECPCI Letter to Panay Energy Development Corp[.] dated 16 February 2024 requesting for proposal for emergency supply
"I"	Affidavit of Fortuitous Event
"J"	Details of the EPPSA
"J-1"	Discussion and Calculation of Proposed Rate
"K"	GNPK Generation Rate and Derivation with Write-up on Finance-related Prefiling Requirements (<i>subject of the Motion for Confidential Treatment</i>)
"K-1"	Supplemental Write-up on Finance-related Prefiling Requirements (<i>subject of the Motion for Confidential Treatment</i>)
"L"	GNPK Power Plant Technical Description

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"M"	GNPK Certification attesting to the terms of the coal supply agreement
"M-1"	GNPK Sworn Statement procurement process
"M-2"	GNPK Coal Supply Agreement dated 20 November 2014 (<i>subject of the Motion for Confidential Treatment</i>)
"M-3"	GNPK Amended and Restated Coal Supply Agreement dated 26 December 2017 (<i>subject of the Motion for Confidential Treatment</i>)
"M-4"	GNPK Amendment to the Coal Supply Agreement dated 1 January 2023 (<i>subject of the Motion for Confidential Treatment</i>)
"M-5"	GNPK Amendment to the Coal Supply Agreement dated 7 September 2023 (<i>subject of the Motion for Confidential Treatment</i>)
"N"	Affidavit of Service for the Offices of the Governor and Sangguniang Panlalawigan of Antique
"N-1"	Affidavit of Service for the Offices of the Mayor and Sangguniang Bayan of xxx
"O"	Affidavit of Service for the Offices of the Governor and Sangguniang Panlalawigan of Lanao del Norte
"O-1"	Affidavit of Service for the Offices of the Mayor and Sangguniang Bayan of Kauswagan
"P"	Affidavit of Publication stating that the Application was published in a newspaper of general circulation within the Franchise Area and/or area of the principal operation of the Applicants
"P-1"	Complete newspaper issue where the Application was published
"P-2"	Relevant page of the newspaper issue where the Application appeared

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

25. 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
"K"	GNPK Generation Rate and Derivation with Write-up on Finance-related Prefiling Requirements (<i>subject of the Motion for Confidential Treatment</i>)

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

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

26. Annexes "K", "K-1", "M-2", "M-3", "M-4", and "M-5" contain the details of the power rate calculations and financial model of GNPK as well as the manner by which these were derived. 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:

"(sic) A trade secret may consist of any formula, pattern, device, or compilation of information that: (1) is used in one's business; and (2) gives the employer an opportunity to obtain an advantage over competitors who do not possess the information. Generally, a trade secret is a process or device intended for continuous use in the operation of the business, for example, a machine or formula, but can be a price list or catalogue or specialized customer list. It is indubitable that trade secrets constitute proprietary rights. The inventor, discoverer, or possessor of a trade secret or similar innovation has rights therein which may be treated as property, and ordinarily an injunction will be granted to prevent the disclosure of the trade secret by one who obtained the information "in confidence" or through a "confidential relationship". American jurisprudence has utilized the following factors to determine if an information is a trade secret, to wit:

1. *the extent to which the information is known outside of the employer's business;*

² G.R. No. 172835, December 13, 2007

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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)*
27. 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 "K", "K-1", "M-2", "M-3", "M-4", and "M-5". The reasonableness and transparency of the prices of electricity is to be assured by the Honorable Commission through its own review and verification of GNPk's generation costs.
28. More importantly, competitors of GNPk, should they obtain the information in Annexes "K", "K-1", "M-2", "M-3", "M-4", and "M-5" may gain undue advantage to the prejudice of GNPk. The negotiating power of GNPk with parties it plans to contract with or who it is currently doing business with, will clearly be thwarted if it is compelled to disclose such information.
29. 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, ANTECO and GNPk respectfully pray that:

1. an Order treating Annexes "K", "K-1", "M-2", "M-3", "M-4", and "M-5" and all the information contained therein as confidential in perpetuity, directing their non-disclosure to

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

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persons other than the officers and staff of this Honorable Commission, perpetually protecting the said information from public disclosure by maintaining the same separate and apart from the records of the case, ensuring that these are not divulged to unauthorized persons, from the time these annexes are received by the Honorable Commission up to the termination of the instant case; and

2. an Issuance concerning the procedures for handling the confidential information upon the close of the proceedings and its return/ delivery to GNPk; and
3. after due notice and hearing, a Decision be immediately issued approving the Joint Application and the EPPSA between ANTECO and GNPk, including the rates, fees, and charges therein, including the adjustment mechanism, and authorizing ANTECO to charge and collect the fees therein from its customers reckoned from the start of supply by GNPk to ANTECO under the EPPSA.

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

The Commission hereby sets the instant *Joint Application* for hearing 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
06 August 2024 (Tuesday) at two o'clock in the afternoon (2:00 P.M.)	Microsoft Teams Application	Determination of compliance with jurisdictional requirements and expository presentation
13 August 2024 (Tuesday) at two o'clock in the afternoon (2:00 P.M.)		Pre-Trial Conference and Presentation of Evidence

Accordingly, Joint Applicants ANTECO and GNPk are hereby directed to host the virtual hearings at **ANTECO's Principal Office located at Barangay Funda, San Jose de Buenavista, Antique**, as the designated venue for the conduct thereof, and ensure that the

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.

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same is open to the public. Moreover, Joint Applicants ANTECO and GNPK 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 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;

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- 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 initial virtual hearings by providing the Commission, thru 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 Commissioners **ALEXIS M. LUMBATAN, CATHERINE P. MACEDA, FLORESINDA G. BALDO-DIGAL**, and **MARKO ROMEO L. FUENTES**, Energy Regulatory Commission, this 4th day of July 2024 in Pasig City.


MONALISA C. DIMALANTA
Chairperson and CEO jms


LS: JSC/LSP/KTB

ERC
Office of the Chairperson and CEO



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