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Item No.: 20

Date: 12 SEP 2023

August 29, 2023



HON. LEONARDO JAVIER, JR.
Provincial Vice-Governor / Presiding Officer Sangguniang Panlalawigan
4th Floor, Leyte Provincial Government Complex,
West By-pass Road, Brgy. Guindapunan,
Palo, Leyte

Subject: "In the Matter of the Application for the Approval of the Power Supply Agreement (PSA) Between Energy Development Corporation and Bohol II Electric Cooperative, Inc. (BOHECO II), with Motion for Confidential Treatment of Information and Motion for Provisional Authority"

Dear Hon. Javier:

In compliance with Rule 6, Section 2 of the Energy Regulatory Commission (ERC) Resolution No. 1, Series of 2021 or the Revised Rules of Practice and Procedure, we respectfully furnish this Office a printed copy of the Joint Application and an electronic copy (via cd/usb) of its supporting documents.

As proof of receipt of the said documents, we respectfully request for:

- (1) A certification with the official seal of this Office attesting to the fact that this Office was served a copy of the application, with all its annexes and documents including the date of such service;
- (2) A certification bearing the seal of your good office that the said documents were duly posted on your official bulletin board for the viewing of the general public and all interested parties; and
- (3) Signed acknowledgement on our receiving copy.

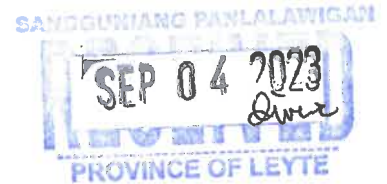
Thank you.

Very truly yours,

For and on behalf of
ENERGY DEVELOPMENT CORPORATION

ENGR. ANDY T. DUROG
Leyte Area Facilities Head

Republic of the Philippines
ENERGY REGULATORY COMMISSION
1 Jade Drive, Ortigas Center, Pasig City



**IN THE MATTER OF THE
APPLICATION FOR THE
APPROVAL OF THE POWER
SUPPLY AGREEMENT (PSA)
BETWEEN ENERGY
DEVELOPMENT CORPORATION
AND BOHOL I ELECTRIC
COOPERATIVE, INC. (BOHECO I),
WITH MOTION FOR
CONFIDENTIAL TREATMENT OF
INFORMATION AND MOTION
FOR PROVISIONAL AUTHORITY,**

ERC CASE NO. _____ - RC

**ENERGY DEVELOPMENT
CORPORATION AND BOHOL I
ELECTRIC COOPERATIVE, INC.
(BOHECO I),**

Applicants.

X-----X

**JOINT APPLICATION
[with (a) MOTION FOR CONFIDENTIAL TREATMENT OF
INFORMATION; and (b) MOTION FOR PROVISIONAL
AUTHORITY]**

Applicants **Energy Development Corporation (“EDC”)** and **Bohol I Electric Cooperative, Inc. (“BOHECO I”)**, through the undersigned counsel, respectfully state:

1. Applicant EDC is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at the 9th floor Rockwell Business Center Tower 3, Ortigas Avenue, Pasig City, Philippines. It may be served with notices and other processes of this Honorable Commission through its counsel at the address indicated below.

1.1 EDC is represented by its Vice President, Marvin Kenneth S. Bailon and has been authorized by its Board of Directors to file the

Joint Application, as evidenced by the Secretary's Certificate dated July 28, 2023. A copy of EDC's Secretary's Certificate dated July 28, 2023 is attached as **Annex "A"**.

2. Applicant BOHECO I is an electric cooperative duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at Cabulijan, Tubigon, Bohol 6329, Philippines.

2.1 It may be served with notices and other processes of this Honorable Commission through its counsel at the address indicated below.

2.2 BOHECO I is represented by its General Manager, Engr. Dino Nicolas T. Roxas, through BOHECO I's Board Resolution No. 101-2023 dated August 7, 2023. A copy of BOHECO I's BOHECO I's Board Resolution No. 101-2023 dated August 7, 2023 is attached as **Annex "B"**.

3. Pursuant to Rule 20(B) of the 2020 Revised ERC Rules of Practice and Procedure ("**ERC Rules**"), and other pertinent rules and regulations, this Joint Application is being submitted to this Honorable Commission to approve the Power Supply Agreement dated November 6, 2021 ("**PSA**") between EDC and BOHECO I.

4. EDC owns, operates, manages, and maintains the Unified Leyte Geothermal Power Plants ("**ULGPP**")¹ located in Leyte, Philippines with a dependable capacity of 591.31 MW and has control over the generated capacity of the Diesel Fired Power Plant to be constructed in Brgy. Imelda, Ubay, Bohol with a dependable capacity of 85.12MW ("**In-Island Baseload Plant**") (the Outside Bohol Baseload Plant² and In-Island Baseload Plant shall be collectively the "**Power Plant**").

5. BOHECO I provides and distributes electricity to its customers in the following municipalities in the Province of Bohol: Alburquerque, Antequera, Baclayon, Balilihan, Batuan, Bilar, Calape, Carmen, Catigban, Clarin, Corella, Cortes, Dausi, Dimiao, Inabanga, Lila, Loay, Loboc, Loon, Maribojoc, Panglao, Sagbayan, San Isidro, Sevilla, Sikatuna, and Tubigon (the "**Franchise Area**").

¹ ULGPP consists of the following plants: (1) Mahanagdong Geothermal Power Plant (COC No. 17-03-M-13348V), (2) Malitbog Geothermal Power Plant (COC No. 17-03-M-13347V), (3) Upper Mahiao Geothermal Power Plant (COC No. 17-03-M-13346V), (4) Tongonan 1 Topping Cycle Power Plant (COC No. 18-04-M-00152V), (5) Mahanagdong Topping Cycle Power Plant – Site A (COC No. 18-04-M00151V), (6) Malitbog Bottoming Cycle Power Plant (COC No. 18-04-M-00153V).

² Outside Bohol Baseload Plant refers to the ULGPP located in Leyte, Philippines.

6. Based on BOHECO I's supply-demand forecast, it foresees a deficit in its power supply due to the increasing demand of its Franchise Area. In order to ensure continuous and reliable electricity for BOHECO I's customers, BOHECO I needs to source additional base and peak capacity through bilateral power supply contracts.

7. Under Section 45(b) of Republic Act No. 9136, or the Electric Power Industry Reform Act of 2001 ("EPIRA"), it is provided that "[d]istribution facilities may enter into bilateral power supply contracts subject to the review by the ERC xxx".

8. Accordingly, following the conduct of a joint competitive selection process ("**Joint CSP**") involving the One Bohol Power Distribution Utilities (the "**1BP DU**"), EDC executed a PSA with BOHECO I dated November 6, 2021, for the purchase of up to 50MW of electricity.

8.1 In 2017, BOHECO I, Bohol II Electric Cooperative, Inc. ("**BOHECO II**"), and Bohol Light Company, Inc. ("**BLCI**") formed the One Bohol Power Distribution Utilities (the "**1BP DU**") and conducted a joint CSP for their base and peak load requirements, pursuant to Energy Regulatory Commission ("**ERC**") Resolution No. 13, Series of 2015 and the Department of Energy ("**DOE**") Department Circular No. DC2018-02-0003 "Adopting and Prescribing the Policy for Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreement for the Captive Market" (the "**CSP Rules**").

8.2 The 1BP DU constituted the 1BP Third-Party Bids and Awards Committee ("**TPBAC**") based on the least cost power supply plan. The basic terms of reference ("**TOR**") and conditions of the proposal of the 1BP DU ("**1BP CSP**") are as follows:

Type of Contract	Firm – Base Load
Plant Dependable Capacity	One Hundred Percent (100%) of the Contracted Capacity
Contract Duration	The PSA shall take effect for a period of TEN (10) years commencing on the Commercial Operations Date of December 26, 2023 to December 25, 2033, unless earlier terminated in accordance with the provisions of the PSA.
Commercial Operation Date	December 26, 2023
Scheduled Date of Delivery	December 26, 2023 (Provided the later shall not exceed thirty-six (36)

	months after ERC's Final Approval of PSA)
Plant Outage Allowance	Zero- outage power supply of the committed aggregated capacity of 1BP. ³
Source of Power	Open Technology provided that its is compliant with Provincial Ordinance No. 2018-005 "Declaring the official policy of the Provincial Government of Bohol disallowing the building or establishment of any coal-fired power plant in the Province of Bohol"
Plant Capacity	The minimum generating capacity of the Bidder shall be no less than the contracted capacity of 1BP DUs after considering the applicable credit factors.
Technical Specification	The Bidder shall submit a technical proposal for each power plant offered in accordance with the set requirements prescribed in the Instruction to Bidders.
Take- off Structure	These generating capacities may come from any type, size, and number of power plants or generating units that are or will be connected to the Luzon, Visayas Grid or directly embedded to 1BP DUs' Distribution Network considering the respective limitations of its Substation and Distribution Lines.
Experience	The Bidder must exhibit control over generating capacity of power plant(s). Certificate of good performance/track record with other customers shall be required.
Eligibility Requirements	Company profile highlighting experiences and expertise of the company and/or key officers in power plant operation.

³ ITB-4.2 of Final Instructions to Bidders state that "The Bidding is designed to trigger an installation of an in-island baseload plant or a combination of in-island plant and outside Bohol baseload plant."

Unless specifically defined in this Joint Application, capitalized terms appearing here shall be given the meaning ascribed to them in the PSA.

8.3 On August 30, 2020 and September 6, 2020, the 1BP DU caused the publication of an Invitation to Bid for Power Supply Agreement, which contained the basic TOR and conditions of the proposal of the 1BP CSP, as well as a summary of the process and timelines of the bidding process, while inviting power generation companies to submit their bids on or before the timelines set out in the said invitation.

8.4 On May 17, 2021, the 1BP JCSP TPBAC successfully conducted its series of "Post-Qualification and Detailed Evaluation of Bids." After finding that the proposal of EDC substantially complied with all the requirements provided in the bidding documents, the 1BP DU declared that the proposal of EDC is the Lowest Calculated Responsive Bid.⁴

8.5 On May 25, 2021, the 1BP JCSP TPBAC issued a resolution "that the EDC be issued a "Notice of Award" after having been found COMPLIANT to all the requirements set by the 1BP JCSP TPBAC."

8.6 On June 3, 2021, the 1BP DU issued a Notice of Award in favor of EDC.

9. Accordingly, EDC and BOHECO I executed the PSA, subject of this application. The PSA between EDC and BOHECO I contains the following salient features:

Section 3: EFFECTIVITY AND TERM OF AGREEMENT

3.1 The Agreement shall take effect immediately from Effective Date and shall remain in force and effect until December 25, 2033, subject to extension of the term as may be agreed upon by the Parties and if so allowed by Applicable Laws and the ERC. In the event the BUYER intends to extend the Agreement, in those circumstances allowed by the Applicable Laws, it shall send a written notice to the SELLER no later than June 25, 2033.

⁴ 1BP's TPBAC Resolution 08-2021.

- 3.2 The obligation of the SELLER to sell and deliver the Contracted Capacity and its Associated Energy and the obligation of the BUYER to accept and pay for the same shall commence upon receipt by the Parties of the ERC Approval, whether provisional or final, of this Agreement (Delivery Date).
- 3.3 Notwithstanding the immediately preceding section, the SELLER shall be obligated to provide, at its own expense, Replacement Power to ensure a zero-outage power supply during power interruptions throughout the term of the Agreement or any allowed extension thereof, subject to Section 5.2, and including but not limited to the following cases:
- a. from December 26, 2023, 00:01 A.M., which is the scheduled supply delivery date, upon receipt by the Parties of the ERC Approval, whether provisional or final; or
 - b. when the Outside-Bohol Baseload Plant is on Planned Outage or Forced Outage.

SECTION 4: SUPPLY OF CONTRACTED CAPACITY AND ASSOCIATED ENERGY

Subject to the terms and conditions of this Agreement, the SELLER shall, during the entire term of this Agreement, make available, sell and deliver, or cause to be delivered to the BUYER the Contracted Capacity and Associated Energy in accordance with "Schedule 1" at the Point of Delivery, whether sourced from the Plant or, in case of Replacement Power, from other electricity generators including the WESM.

X X X

SECTION 5: AVAILABILITY OF CAPACITY

In General

- 5.1 The SELLER shall supply the Contracted Capacity and its Associated Energy, in whole or in part, from (a) the Outside-Bohol Baseload Plant or, during Islanding, the In-Island Baseload Plant or (b) in so far as provision of Replacement Power is concerned, the

SELLER's Suppliers or third-party Suppliers or other sources, or the WESM, consistent with the technical proposal submitted by the SELLER in the CSP and in accordance with prudent utility practice and in compliance with Applicable Laws.

- 5.2 Supply of Contracted Capacity shall be available at all times except for interruption and/or reduction due to: (a) any Event of Force Majeure involving the In-Island Baseload Plant during Islanding, or (b) other causes, including safety, authorized by law, rule, regulation or order of a competent authority. For the avoidance of doubt, the SELLER shall supply Contracted Capacity during Planned Outage and/or Forced Outage of the Plant.

xxx

Service Interruption Adjustment

- 5.6 In the event that the supply of electricity is interrupted or curtailed to a level resulting in a Capacity Utilization Factor (CUF) of less than seventy percent (70%) due to scheduled maintenance of the BUYER's facilities, the CUF shall be adjusted according to the formula in "SCHEDULE 3: " to determine the Applicable Capacity Utilization Factor (ACUF), for all hours when service was actually curtailed or interrupted ("Service Interruption Adjustment").

x x x

SECTION 6. CHARGES AND ADJUSTMENTS

Beginning Delivery Date and subject to the terms and conditions of this Agreement, the Parties shall pay the following:

- 6.1. The BUYER shall pay the Basic Energy Charge and the Adjustment to the Basic Energy Charge shall be as provided in "SCHEDULE 1 " for the supply of energy by the SELLER to the BUYER.

x x x

**SCHEDULE 1: CONTRACTED CAPACITY,
CONTRACT PRICE AND TERMS OF AGREEMENT**

1.1 CONTRACTED CAPACITY

Contract Year (CY)	Duration	Contracted Capacity
2024	December 26, 2023 to December 25, 2024	26 MW
2025	December 26, 2024 to December 25, 2025	28 MW
2026	December 26, 2025 to December 25, 2026	44 MW
2027	December 26, 2026 to December 25, 2027	46 MW
2028	December 26, 2027 to December 25, 2028	48 MW
2029	December 26, 2028 to December 25, 2029	50 MW
2030	December 26, 2029 to December 25, 2030	50 MW
2031	December 26, 2030 to December 25, 2031	50 MW
2032	December 26, 2031 to December 25, 2032	50 MW
2033	December 26, 2032 to December 25, 2033	50 MW
Subject to the Terms and Conditions of the PSA		

1.2 BASIC ENERGY CHARGE

The Basic Energy Charge (BEC) shall be equal to:

$$BEC = CRF_{ALF} + FOMF_{ALF} + VOMF$$

Where:

- a) CRF_{ALF} is the Capital Recovery Fee and $FOMF_{ALF}$ is the Fixed Operation and Maintenance Fee with values for different Capacity Utilization Factors (CUF) or Applicable Load Factors (ALF), effective until December 25, 2033.
- b) The Capital Recovery Fees tabulated below shall be fixed throughout the term of the Agreement. However, the Fixed

Operation and Maintenance Fee is subject to escalation as illustrated in the equation for FOMF below.

X XX

$$CRF_{ALF} = CRF_{ALF}$$

$$FOMF_{ALF} = FOMF_{ALF} \times \frac{PHCPI_n}{PHCPI_o}$$

Where:

CRF_{ALF} - is the Capital Recovery Fee in PHP/kWh

$FOMF_{ALF}$ - is the Fixed Operation and Maintenance Fee in PHP/kWh

$PHCPI_n$ - Philippine Consumer Price Index of the calendar month within which the start of the current Billing Period occurs (Source: Philippine Statistics Authority)

$PHCPI_o$ - Base Philippine Consumer Price Index, equivalent to 120.6 (September 2019; 2012=100)

ALF - is the Applicable Load Factor or Applicable Capacity Utilization Factor between 70% and 100%, provided that if the actual CUF is below 70% (the "Minimum Capacity Utilization Factor"), the Capacity Price shall be calculated based on the Capacity Fee and quantity associated with the Minimum Capacity Utilization Factor.

The Applicable Load Factor (ALF) shall be computed as follows:

$$ALF = \left\{ 70\%, \frac{BCQ}{CC \times [H_T - EH_{T0}]} \right\}$$

Where:

BCQ – Bilateral Contract Quantity as defined in Section 1.1.5 of the Agreement, in kWh

CC – Contracted Capacity, in kW, as set forth in Schedule 1

H_T – Total number of hours in such Billing Period

EH_{T0} – the sum of the duration, in Equivalent Hours, of Force Majeure in such Billing Period

1.3 DERIVATION OF EQUIVALENT ENERGY AT THE MINIMUM CAPACITY UTILIZATION FACTOR

$$EE = CC \times 70\% \times H_T$$

Where:

EE = Equivalent energy, in kWh

10. Based on the rate computation and analysis, the PSA will have a rate reduction ranging from Php2.8852/kWh - Php7.5171/kWh as shown below:

A. Generation Rate Impact Simulation for Year 2024

Simulation of Generation Mix Rate without EDC

Power Supplier	Forecasted Energy (kWh)	Percent Share (%)	Average Rate (Php/kWh)	Capacity Utilization Load Factor	Combined Rate (P/kWh)
EDC	-	-	-	-	11.9186
CEDC	122,640,000	43.91%	11.2912	100.00%	
BSHMP	-	-	-	-	
JMHEPP	14,957,700	1.85%	3.9007	34.15%	
SPUG	527,946	0.13%	7.2181	21.80%	
WESM	134,245,411	54.11%	12.7131		
TOTAL	272,416,057	100.00%			

Simulation of Generation Mix Rate with EDC

Power Supplier	Forecasted Energy (kWh)	Percent Share (%)	Average Rate (Php/kWh)	Capacity Utilization Load Factor	Combined Rate (P/kWh)
EDC	163,779,332	39.36%	4.7605	77.90%	9.0333
CEDC	90,274,608	55.66%	12.2132	73.61%	
BSHMP	-	-	-	-	
JMHEPP	14,957,700	2.95%	3.9007	34.15%	
SPUG	527,946	0.21%	7.2181	21.80%	
WESM	2,831,471	1.82%	12.7131		
TOTAL	272,416,057	100.00%			
				Generation Rate Impact	-2.8852

Assumption

1. Analysis and simulations is based on BOHECO I's forecasted 2024 hourly load profile
2. WESM hourly prices are average price on September 2022 Billing
3. JMHEPP rate is based on GRR application
4. EDC hourly prices as offered, May 2019 reference price

B. Generation Rate Impact Simulation for Year 2026

Simulation of Generation Mix Rate without EDC

Power Supplier	Forecasted Energy (kWh)	Percent Share (%)	Average Rate (Php/kWh)	Capacity Utilization Load Factor	Combined Rate (P/kWh)
EDC	-	-	-	-	12.5518
CEDC	-	-	-	-	
BSHMP	-	-	-	-	
JMHEPP	14,957,700	1.85%	3.9007	34.15%	
SPUG	527,946	0.13%	7.2181	21.80%	
WESM	256,885,411	98.12%	12.7131		
TOTAL	272,416,057	100.00%			

Simulation of Generation Mix Rate with EDC

Power Supplier	Forecasted Energy (kWh)	Percent Share (%)	Average Rate (Php/kWh)	Capacity Utilization Load Factor	Combined Rate (P/kWh)
EDC	299,602,821	95.19%	5.0046	77.73%	5.0346
CEDC	-	-	-	-	
BSHMP	-	-	-	-	
JMHEPP	14,957,700	2.95%	3.9007	34.15%	
SPUG	527,946	0.21%	7.2181	21.80%	
WESM	1,046,660	0.84%	12.7131		
TOTAL	272,416,057	100.00%			
				Generation Rate Impact	-7.5171

Assumption

1. Analysis and simulations is based on BOHECO I's forecasted 2026 hourly load profile
2. WESM hourly prices are average price on September 2022 Billing
3. JMHEPP rate is based on GRR application
4. EDC hourly prices as offered, May 2019 reference price

11. It bears emphasis that, as previously mentioned, based on BOHECO I's high demand in its Franchise Area, there is an urgent need for the final approval of the PSA considering a significant peaking capacity deficit, as well as possible occurrences of scheduled maintenance shutdowns and forced outage of power plants of other suppliers of BOHECO I.

12. Likewise, in support of the instant Joint Application, the Applicants provide the following documents, which underwent the pre-filing conference and pre-filing marking of annexes with this Honorable Commission:

Description of the Document	Annex
EDC's Secretary Certificate dated July 28, 2023	A
BOHECO I's Board Resolution No. 101-2023 dated August 7, 2023	B
BOHECO I's Articles of Incorporation and By-Laws	C
BOHECO I's Amended Articles of Incorporation	C-1
BOHECO I's Company Profile	C-2
BOHECO I's Certification of Board of Directors	C-3
BOHECO I's Write-Up of Non-Applicability of GIS	C-4
EDC's Securities and Exchange Commission Certificate of Registration, Articles of Incorporation and By Laws	D
EDC's Certificate of Incorporation	D-1

EDC's Certificate of Filing of By-Laws and By-Laws	D-2
EDC's Certificate of Amendment of and Amended Articles of Incorporation	D-3
EDC's Amended By-laws	D-4
EDC's Secretary's Certification on the Authorization to Join the JCSP	D-5
EDC's General Information Sheet	D-6
EDC's Updated Ownership Structure	E
EDC's BOI Certificate of Registration for the Unified Leyte Power Plant	F
EDC's DENR Environmental Compliance Certificates	G, G-1
ERC Certificates of Compliance and Provisional Authorities to Operate for ULGPP	H, H-1, H-2, H-3, H-4, H-5, H-6, H-7, H-8, H-9
EDC's DOE Certificate of Endorsement	I, I-1, I-2, I-3
EDC's DOE Geothermal RE Contract (<i>Confidential</i>)	J, J-1
EDC's DOE Certificate of Registration	K
EDC's NWRB Conditional Water Permit	L
BOHECO I's Demand Side Management	M
BOHECO I Certification on No Expected Transition Supply Contract (TSC) during Contractual Period	N
BOHECO I Distribution Development Plan and Power Supply Procurement Plan	O, O-1, O-2
BOHECO I's Supply & Demand Scenario	P, P-1, P-2, P-3, P-4, P-5
BOHECO I's Single Line Diagram	Q
BOHECO I's Reliability Report on Interruption Reports	R
BOHECO I's Potential Reduction in Load	S
1BP JCSP's Invitation to Bidders posted in the Philippine Daily Inquirer (Aug 30, 2020)	T
1BP JCSP's Invitation to Bidders posted in the Philippine Daily Inquirer (Sept 06, 2020)	T-1
DOE Website Publication	T-2
1BP JCSP's Approved TOR	T-3
Competitive Selection Process Documents (<i>Confidential</i>)	U and series; V and series; W and series;

Power Supply Agreement between BOHECO I and EDC	X
EDC's Transmission Service Agreement (NGCP-PSALM) <i>(Confidential)</i>	Y
Details of PSA between EDC and BOHECO I <i>(Confidential)</i>	Z
EDC's True Cost of Generation Computation and Writeup <i>(Confidential)</i>	AA, AA-1
BOHECO I's Generation Rate Impact	BB
Certification of Loan from different banks <i>(Confidential)</i>	CC and series
EDC's Audited Financial Statements	DD
Heat Rate Computation of the Plant <i>(Confidential)</i>	EE, EE-1, EE-2
EDC's Simulation of the Number of Units to meet the MEOT and/or additional energy/demand requirements	FF
EDC's WESM Registration	GG
BOHECO I's WESM Membership Certificate (Certified True Copy)	HH
Affidavit of Service to/Certification Receipt from the Office of the Mayor of Pasig	II ⁵
Affidavit of Service to/Certification Receipt from the Office of the Sangguniang Panglungsod of Pasig	II-1
Affidavit of Service to/Certification Receipt from the Office of the Governor of Bohol	II-2
Affidavit of Service to/Certification Receipt from the Office of the Sanggunian of Bohol	II-3
Affidavit of Service to/Certification Receipt from the Office of the Mayor of Tubigon	II-4
Affidavit of Service to/Certification Receipt from the Sangguniang Bayan of Tubigon	II-5
Affidavit of Service to/Certification Receipt from the Office of the Mayor of Ormoc	II-6
Affidavit of Service to/Certification Receipt from the Sangguniang Bayan of Ormoc	II-7
Affidavit of Service to/Certification Receipt from the Office of the Mayor of Kananga	II-8
Affidavit of Service to/Certification Receipt from the Sangguniang Bayan of Kananga	II-9
Affidavit of Service to/Certification Receipt from the Office of the Mayor of Leyte	II-10
Affidavit of Service to/Certification Receipt from the Sangguniang Bayan of Leyte	II-11

⁵ Annexes "II and series" and "JJ and series" are reserved for the Affidavits of Service/Certification Receipt from the Local Government Offices, Affidavit of Publication, and complete issue of the newspaper where the Joint Application will be published.

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

13. The allegations in the preceding paragraphs are reproduced and incorporated herein by reference where applicable.

14. Under Rule 4 of the ERC Rules, the Honorable Commission may, upon request of a party and determination of the existence of conditions which would warrant such remedy, treat certain information submitted to it as confidential. Pursuant to such Rule, the Applicants respectfully pray for the issuance of a protective order declaring Annexes "J", "J-1", "U" and series, "V" and series, "W" and series, "Y", "Z", "AA", "AA-1", "CC" and series, "EE", "EE-1", and "EE-2" as confidential information, since Applicants intend to present them as evidence in the Joint Application.

15. With respect to these documents marked and attached as Annexes "J", "J-1", "U" and series, "V" and series, "W" and series, "Y", "Z", "AA", "AA-1", "CC" and series, "EE", "EE-1", and "EE-2", the Applicants respectfully move that it be treated as confidential information and not be disclosed to any party for the reason that it contains information which are of commercially sensitive nature and may affect price offers that such information falls within the bounds of valuable proprietary interest under "trade secrets" which are entitled to protection under the Constitution, statutes, and rules and regulations.

16. Moreover, some of these documents contain numbers, methodology, and calculations which provide valuable information and insight into how EDC arrived at its power generation rate and would accordingly reflect EDC's bidding strategy for distribution utilities undertaking CSPs for their power suppliers, and EDC's trading in WESM. It also contains information regarding the debt or equity ratio, capital costs, weighted average cost of capital, and fuel cost, among other information

17. Information which are within the definition of a trade secret, as defined by jurisprudence, is clearly information which merits the confidential treatment provided for under Rule 4 of the ERC Rules. The case of Air Philippines Corp. v. Pennswell, Inc.,⁶

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. 16 The definition also extends to a secret formula or process not

⁶ G.R. No. 172835, 13 December 2007.

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

- (1) the extent to which the information is known outside of the employer's business;
- (2) the extent to which the information is known by employees and others involved in the business;
- (3) the extent of measures taken by the employer to guard the secrecy of the information;
- (4) the value of the information to the employer and to competitors;
- (5) the amount of effort or money expended by the company in developing the information; and
- (6) the extent to which the information could be easily or readily obtained through an independent source.

18. Considering the foregoing, Annexes "J", "J-1", "U" and series, "V" and series, "W" and series, "Y", "Z", "AA", "AA-1", "CC" and series, "EE", "EE-1", and "EE-2" are therefore entitled to the protection of confidential information provided under Rule 4 of the ERC Rules.

19. Applicants hereby submit one (1) copy of each of the foregoing confidential documents in a sealed envelope, with the envelope and each page of the document stamped with the word "Confidential".

ALLEGATIONS IN SUPPORT OF MOTION FOR PROVISIONAL AUTHORITY

20. The allegations in the preceding paragraphs are reproduced and incorporated herein by reference where applicable.

21. Under Rule 14 of the ERC Rules, and as affirmed by jurisprudence⁷, this Honorable Commission may exercise its discretion to grant provisional authority prior to a final decision should the facts and circumstances justify it.

22. In this case, the facts and circumstances warrant the issuance of a provisional authority. BOHECO I's members' consumers are exposed to power supply interruptions due to current deficiency in its power supply. For this reason, Applicants respectfully move that the Honorable Commission issue a provisional authority upon filing of the Joint Application, or immediately soon thereafter, for the implementation of the PSA pending hearing of the Joint Application and until the Honorable Commission approves the PSA and grants the final authority.

PRAYER

WHEREAS, premises considered, it is most respectfully prayed that this Honorable Commission:

- (i) **ISSUE** an Order treating Annexes "J", "J-1", "U" and series, "V" and series, "W" and series, "Y", "Z", "AA", "AA-1", "CC" and series, "EE", "EE-1", and "EE-2" as confidential information pursuant to Rule 4, Section 1 of the ERC Rules of Practice and Procedure and prescribing the guidelines for the protection thereof;
- (ii) **ISSUE** a Provisional Authority pursuant to Rule 14, Section 1 of the ERC Rules of Practice and Procedure, and permitting the parties to implement the Power Supply Agreement during the pendency of the hearing and until the Honorable Commission grants the final authority; and
- (iii) After hearing on the merits, render a Decision **APPROVING** the Power Supply Agreement notarized on 6 November 2021.

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

Mandaluyong City, August 11, 2023.

⁷ Alyansa para sa Bagong Pilipinas, Inc. v. Energy Regulatory Commission, G.R. No. 227670, May 3, 2019.

PUNO AND PUNO

Counsel for Energy Development Corporation
33rd Floor, The Podium West Tower
12 ADB Avenue, Ortigas Center
Mandaluyong City 1550
Telephone Nos. 631-1261 to 64
Fax No. 631-2517

By:



JOSEPH VINCENT B. ALVAERA

Roll of Attorneys No. 55831

PTR No. 3123904/01.04.2023/Mandaluyong City

IBP No. 260782/01.05.2023/Makati

MCLE Compliance No. VII-0028000; until 04.14.2025

E-mail address: jbalvaera@punolaw.com



SELINA ALESSANDRA M. MIRANDA

Roll of Attorneys No. 83210

PTR No. 3123938/01.04.2023/Mandaluyong City

IBP No. 230554/06.08.2022/Quezon City

Admitted to the Bar in 2022

E-mail address: smmiranda@punolaw.com



ALIYAH MARIE L. ROJO

Roll of Attorneys No. 87212

PTR No. 5248395/05.05.2023/Mandaluyong City

IBP No. 339472/05.07.2023/Quezon City

Admitted to the Bar in 2023

E-mail address: alrojo@punolaw.com



NICHOLAS WILLIAM G. DI

Roll of Attorneys No. 85436

PTR No. 5248389/05.05.2023/Mandaluyong City

IBP No. 342802/05.09.2023/Quezon City

Admitted to the Bar in 2023

E-mail address: ngdi@punolaw.com

-and-

VILLAS LAGANG & TUMANDA LAW OFFICES
Counsel for Bohol I Electric Cooperative, Inc.
2/F Lim-Magtajas Bldg., CPG Avenue,
Tagbilaran City, Bohol 6300
Telephone Nos. 63 (038) 411 4681

By:

TEODORO M. LAGANG
Roll of Attorneys No. 48814, 5-03-04
PTR NO. 4673764 for CY 2023
IBP Lifetime No. 013951
MCLE No. VI-0006675, issued on February 23, 2018
MCLE Compliance No. VII-0008854, 2-11-2022
E-mail address: ted_lagang@yahoo.com

REPUBLIC OF THE PHILIPPINES)
CITY OF MANDALUYONG) S.S.

**VERIFICATION AND
CERTIFICATION AGAINST NON-FORUM SHOPPING**

I, MARVIN KENNETH S. BAILON, Filipino, of legal age, with office address at 9/F, Rockwell Business Center Tower 3, Ortigas Avenue, Pasig City, after being sworn in accordance with law, hereby depose and say that:

1. I am a Vice President of Co-Applicant Energy Development Corporation (the "Corporation"), a Co-Applicant in this case, and its duly authorized representative as shown by the attached Secretary's Certificate;
2. I have caused the preparation and filing of the foregoing Joint Application on behalf of the Corporation;
3. I have read and understood its contents and factual allegations which are true and correct to the best of my personal knowledge and/or based on existing authentic documents;
4. The Joint Application is not filed to harass, cause unnecessary delay or needlessly increase the costs of litigation;
5. The factual allegations of the Joint Application have evidentiary support or will likewise have evidentiary support after a reasonable opportunity for discovery;
6. The Corporation has not commenced any other action or proceeding involving the same issues before the Supreme Court, the Court of Appeals, or different divisions thereof, or the Regional Trial Court or any tribunal or agency, and that to the best of my knowledge, no such action or proceeding is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or this Court or any other tribunal or agency. I understand though that the following case/s is/are pending with the Energy Regulatory Commission:
 - a. In the Matter of Petition for Dispute Resolution Arising from the One Bohol Power Distribution Utilities ("1BP DU") Joint Competitive Selection Process ("JCSP") through an Open Bidding for the Long-Term (2024-2033) Supply of the Baseload Power Requirements of 1BP DU, with prayer for Status quo ante order, by way of interim relief, SMC Global Power Holdings Corp., Petitioner, versus 1BP DU JCSP Committee, ERC Case No. 2021-0004-DR.
7. Should I thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals or different divisions thereof, or the Regional Trial Court or any tribunal or agency, I hereby undertake to report that fact within five (5) calendar days therefrom.


IN WITNESS WHEREOF, I have hereunto affixed my signature on
AUG 11 2023 in MANDALUYONG CITY.


MARVIN KENNETH S. BAILON
Affiant

SUBSCRIBED AND SWORN to before me this
AUG 11 2023, by affiant who exhibited to me his Philippine
Passport No. P7523214B issued on 04 September 2021 at DFA Manila, bearing his
photograph and signature.

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ATTY. NATHALIE ELLOISE C. UY
Notary Public for Mandaluyong City
Appointment No. 0656-23 (until December 2024)
Roll of Attorneys No. 80212
3rd Floor, The Podium West Tower, 12 ADB Avenue
Ortigas Center, Mandaluyong City 1550
PTR No. 3123954/01.04.2023/Mandaluyong City
IBP No. 260783/01.05.2023/Rizal (RSM)

REPUBLIC OF THE PHILIPPINES)
CITY OF Tubigan, Bohol) S.S.

**VERIFICATION AND
CERTIFICATION OF NON-FORUM SHOPPING**

I, Engr. Dino Nicolas T. Roxas, General Manager of Applicant Bohol I Electric Cooperative Inc. (the "Corporation") Filipino, of legal age, with office address at Cabulijan, Tubigon, Bohol, Philippines, after being sworn in accordance with law, hereby depose and say that:

1. I am the representative of the Corporation in this case, as shown in the attached Board Resolution No. 101-2023 as Annex "B";
2. I have caused the preparation of the foregoing Joint Application, the factual allegations of which are true and correct to the best of my knowledge and belief and based on existing authentic documents made available to me;
3. The Joint Application is not filed to harass, cause unnecessary delay or needlessly increase the costs of litigation;
4. The factual allegations of the Joint Application have evidentiary support or will likewise have evidentiary support after a reasonable opportunity for discovery;
5. My signature serves as certification of the truthfulness of the allegations in the Joint Application;
6. The Corporation has not commenced any other action or proceeding involving the same issues before the Supreme Court, the Court of Appeals, or different divisions thereof, or the Regional Trial Court or any tribunal or agency, and that to the best of my knowledge, no such action or proceeding is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or this Court or any other tribunal or agency; and
7. Should I thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals or different divisions thereof, or the Regional Trial Court or any tribunal or agency, I hereby undertake to promptly inform the aforementioned courts and this Honorable Commission within five (5) calendar days from knowledge thereof.

IN WITNESS WHEREOF, I have hereunto affixed my signature on
AUG 15 2023 in Tubigan, Bohol


ENGR. DINO NICOLAS T. ROXAS
Affiant

SUBSCRIBED AND SWORN to before me this AUG 15 2023
affiant having exhibited to me his TIN bearing his 129-704-739
valid until _____.

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ELMER SALUS B. POZON, R.E.E.
NCS 2022-25
Notary Public for Tagbilaran City, Bohol
Until December 31, 2023
315 Jose Dual St., Poon Cr., Tubigon, Bohol
Roll of Atty. No. 48671-05-03-2004
PTR No. 4613361-12-28-2022 (for 2023); Bohol
IBP No. 014646-Lifetime; Bohol
TIN 232-373-597-000



REPUBLIC OF THE PHILIPPINES)
MANDALUYONG CITY) S. S.

SECRETARY'S CERTIFICATE

I, **BERNADETTE ANN V. POLICARPIO**, Filipino, of legal age, with office address at the 10th Floor, Rockwell Business Center Tower 3, Ortigas Avenue, Pasig City, being the duly elected Corporate Secretary of **ENERGY DEVELOPMENT CORPORATION** (the "Company"), a corporation organized and existing under Philippine laws with principal office at Rockwell Business Center Tower 3, Ortigas Avenue, Pasig City, hereby certify that:

1. During the regular meeting of the Board of Directors (the "Board") held on 19 May 2022, the Board approved the following resolution:

Resolution No. 21, Series of 2022

"RESOLVED, amending Resolution No. 30, Series of 2021 and all previous resolutions to the contrary, that the following officers of Energy Development Corporation (the "Company"), acting singly: the **President and Chief Operating Officer, Senior Vice-President/Chief Financial Officer and Treasurer, and any of its Senior Vice Presidents or Vice-Presidents**, be as they are hereby authorized and empowered to represent the Company in any and all actions, suits, or cases to be filed for or against the Company, including appellate and/or special proceedings, whether civil, criminal, or administrative, with authority to prepare (or cause the preparation of), sign, and file (or cause the filing of) all pleadings, motions, and other legal documents related to such actions, suits, or cases, including verifications and certifications of non-forum shopping, and to appear in all hearings, pre-trials, mediation conferences, and all other conferences set in connection with the same, with full power and authority to consider and do the following:

1. The possibility of entering into an amicable settlement and/or submitting to alternative modes of dispute resolution;
2. The simplification of the issues;
3. The necessity or desirability of obtaining stipulations or amendments to the pleadings;
4. The possibility of obtaining, and entering into, stipulations or admissions of facts and documents to avoid unnecessary proof;
5. The limitation of the number and identification of witnesses and the setting of trial dates;
6. The advisability of a preliminary reference of issues to a commissioner;
7. The propriety of rendering judgment on the pleadings or summary judgment or of dismissing the action should a valid ground therefor be found to exist;



8. The marking of evidence if not yet marked in the judicial affidavits of witnesses;
9. The examination and comparison of evidence *vis-à-vis* the copies to be marked;
10. The manifestation for the record of stipulations regarding the faithfulness of the reproductions and the genuineness and due execution of evidence;
11. The reservation of testimonial and documentary evidence;
12. The advisability or necessity of suspending the proceedings; and
13. Such other matters as may aid in the prompt disposition of the action.

"RESOLVED FURTHER that the foregoing officers of the Company be authorized to appoint or designate the Company's attorney-in-fact and/or legal counsel, through a Special Power of Attorney, granting such attorney-in-fact and/or legal counsel, acting singly or jointly as may be specified in the appointment or designation, the authorities given to the foregoing officers of the Company by virtue of this resolution;

"RESOLVED FURTHER, that the Company authorizes, as it hereby authorizes, the **President and Chief Operating Officer, Senior Vice-President/Chief Financial Officer and Treasurer, and any of its Senior Vice Presidents or Vice-Presidents**, or such other person as they may designate in writing, acting singly, to act for or on behalf of the Company, to meet and negotiate with all parties in any such action, suit, case, or proceeding with a view to seeking the termination or amicable settlement of the same, and if necessary, to enter into compromise or resort to such other legal proceedings that they may deem necessary to protect the Company's interests, in accordance with Company policies and guidelines."

2. Pursuant to the foregoing Board Resolution, **MR. MARVIN KENNETH S. BAILON, Vice President**, is authorized to represent the Company in the proceedings in the case entitled "In the Matter of the Application for Approval of the Power Supply Agreement (PSA) between Energy Development Corporation and Bohol I Electric Cooperative, Inc. with Prayer for Provisional Authority," with the powers and authorities set out in Resolution No. 21, Series of 2022.

3. The foregoing is in accordance with the record of the Company and is in full force and effect.



IN WITNESS WHEREOF, I have hereunto signed this Secretary's Certificate this JUL 28 2023 at Mandaluyong City.


BERNADETTE ANN V. POLICARPIO
Corporate Secretary

SUBSCRIBED AND SWORN TO before me this JUL 28 2023 at Mandaluyong City by Bernadette Ann V. Policarpio, with Passport No. P7343464A, expiring on 25 May 2028, issued by DFA NCR East, who is personally known to me, and who is the same person who personally signed before me the foregoing Secretary's Certificate and acknowledged that she executed the same.

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Page No. 87;
Book No. I;
Series of 2023.




ATTY. SELINA ALESSANDRA M. MIRANDA
Notary Public for Mandaluyong City
Appointment No. 0638-23 (until December 2024)
33rd Floor, The Podium West Tower
12 ADB Avenue, Ortigas Center, Mandaluyong City 1550
Roll of Attorneys No. 83210
PTR No 3123938/01.04.2023/Mandaluyong City
IBP No. 230554/06 08 2022/Quezon City

SPECIAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

I, **MARVIN KENNETH S. BAILON**, of legal age, Filipino, and with office address at 9/F, Rockwell Business Center Tower 3, Ortigas Avenue, Pasig City, under and by virtue of the authority granted to me in my capacity as Vice President of Energy Development Corporation (the "Corporation") under Resolution No. 21, Series of 2022, do hereby name, constitute, and appoint the law firm of **PUNO & PUNO LAW OFFICE**, or any of its lawyers, with office address at 33rd Floor, The Podium West Tower, 12 ADB Avenue, Ortigas Center, Mandaluyong City, to be the Corporation's true and lawful attorney-in-fact and representative, and for that end to do and perform for and in its name the following

- 1) To prepare, sign and file all pleadings, motions and other legal documents, including the verification and certification of non-forum shopping and such other related documents in connection with the Joint Application for the Approval of the Power Supply Agreement between the Corporation and Bohol I Electric Cooperative, Inc. ("**BOHECO I**") before the Energy Regulatory Commission ("**ERC**"), and all relevant submissions and participation in all related proceedings;
- 2) To represent me during the mediation conference, judicial dispute resolution, mandatory conference, pre-trial and trial of the aforementioned case and/or other similar and related proceedings, with full and special power and authority to do, perform and consider the following:
 - (a) The possibility of entering into an amicable settlement and/or submitting to alternative modes of dispute resolution;
 - (b) The simplification of the issues;
 - (c) The necessity or desirability of obtaining stipulations or amendments to the pleadings;
 - (d) The possibility of obtaining, and entering into, stipulations or admissions of facts and documents to avoid unnecessary proof;
 - (e) The limitation of the number and identification of witnesses and the setting of trial dates;
 - (f) The advisability of a preliminary reference of issues to a commissioner;
 - (g) The propriety of rendering judgment on the pleadings or summary judgment or of dismissing the action should a valid ground therefor be found to exist;
 - (h) The marking of evidence if not yet marked in the judicial affidavits of witnesses;
 - (i) The examination and comparison of evidence *vis-à-vis* the copies to be marked;
 - (j) The manifestation for the record of stipulations regarding the faithfulness of the reproductions and the genuineness and due executive of evidence;
 - (k) The reservation of testimonial and documentary evidence;
 - (l) The advisability or necessity of suspending the proceedings; and
 - (m) Such other matters as may aid in the prompt disposition of the action.
- 3) To carry into effect the deliberations at the pre-trial conference.
- 4) To prosecute, defend, arbitrate, stipulate, sign compromise agreements and settle the case or to do any and all lawful things necessary or desirable.


HEREBY GIVING AND GRANTING unto said attorney-in-fact full power and authority to do and perform all and every act requisite or necessary to carry into effect the foregoing authority, as fully to all intents and purposes as I might or could lawfully do if present, with full power of substitution and revocation, and hereby ratifying and confirming all that said attorney-in-fact or its substitute shall lawfully do or cause to be done under and by virtue of these presents.

IN WITNESS WHEREOF, I have hereunto set my hand this JUL 3 11 00AM in
CITY OF MAKATI


MARVIN KENNETH S. BAILON

BEFORE ME, a Notary Public for and in the above jurisdiction, personally appeared Marvin Kenneth S. Bailon on JUL 3 11 00AM, exhibiting his Philippine Passport with No. P7523214B and he acknowledged under oath to me under penalty of law, that the whole contents of the foregoing document are true and that the same is his free and voluntary act and deed.

Doc. No. 204;
Page No. 42;
Book No. 102;
Series of 2023.


ATTY. JOSHUA P. LAFUZ
Notary Public for Makati City
Appointment #M-019/Until 12-31-23
Roll No. 45790/TBP Lifetime #04897/07-03-03
PTR No. 9563523/01-03-2023/Makati City
MCLE No. VII-0016370/04-26-2022
G/F Fedman Suites 199, Salcedo Street
Legaspi Village, Makati City