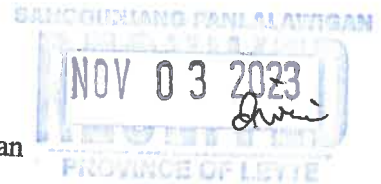




Item No.: **18**
Date: **14 2023 NOV**

October 31, 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



Re: 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, ERC Case No. 2023-113 RC

Dear Hon. Javier:

We, Energy Development Corporation (“EDC”), the co-applicant for an Application for the Approval of the Power Supply Agreement (PSA) between EDC and Bohol II Electric Cooperative, Inc. (“BOHECO II”) dated 5 November 2021 with Motion for Confidential Treatment of Information and Motion for Provisional Authority (the “Joint Application”). The Joint Application was filed on 11 August 2023 before the Energy Regulatory Commission (“ERC”) pursuant to Rule 20(B) of the 2020 Revised ERC Rules of Practice and Procedure.

On 10 October 2023, the ERC issued an Order requiring EDC to furnish your good office with the copies of the following for the appropriate posting on your bulletin board:


- (a) Order; and
- (b) Notice of Virtual Hearing (attached herein as Annexes “A” and “B”, respectively).

As proof of actual posting of the Order and Notice of Virtual Hearing, we respectfully request for a Certification with the official seal of your good office attesting to the fact that the Order and Notice of Virtual Hearing were posted on your bulletin board.

Thank you.

Very truly yours,

For and on behalf of
ENERGY DEVELOPMENT CORPORATION


ANDY T. BUROG
Leyte Site Head



NOTICE

Sirs/Mesdames:

Please take notice that on **10 October 2023**, the Commission issued an **Order** and a **Notice of Virtual Hearing** in the following case, the original documents were received by this Office on 16 October 2023:

ERC CASE NO. 2023-113 RC, IN THE MATTER OF THE APPLICATION FOR THE APPROVAL OF THE POWER SUPPLY AGREEMENT (PSA) BETWEEN BOHOL II ELECTRIC COOPERATIVE, INC. (BOHECO II) AND ENERGY DEVELOPMENT CORPORATION (EDC), WITH MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION AND MOTION FOR PROVISIONAL AUTHORITY – BOHOL II ELECTRIC COOPERATIVE, INC. (BOHECO II) AND ENERGY DEVELOPMENT CORPORATION (EDC) Applicants.


Attached are electronic copies.

Please be reminded of the Commission's existing rules on electronic service of orders and decisions provided under **Rule VI of Resolution No. 9, Series of 2020¹**, which became effective on 17 November 2020.

Thank you.

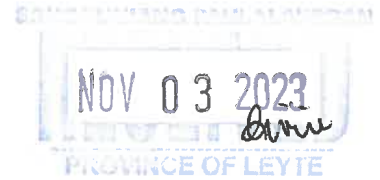
Very truly yours,

EVELYN O. REYES
Administrative Officer IV
OGCS-Central Records Division

 /jdc

¹ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City



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

ERC CASE NO. 2023-113 RC

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

Applicants.

X-----X

Promulgated:
October 10, 2023

ORDER

On 04 October 2023, Bohol II Electric Cooperative, Inc. (BOHECO II) and Energy Development Corporation (EDC) filed a *Joint Application* dated 11 August 2023, seeking the Commission's approval of the Power Supply Agreement (PSA) between BOHECO II and EDC, with motion for confidential treatment of information and issuance of provisional authority.

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

THE JOINT APPLICANTS

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 II is a distribution utility duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at Cantagay, Jagna, Bohol, 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 II is represented by its General Manager, Eugenio R. Tan, who is authorized by its Board of Directors to file the Joint Application, as evidenced by the Secretary's Certificate dated August 7, 2023. A copy of BOHECO II's Secretary's Certificate dated August 7, 2023, 2023 is attached as **Annex "B"**.
3. Pursuant to Rule 20(B) of the 2020 Revised Energy Regulatory Commission ("**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 5, 2021 ("**PSA**") between EDC and BOHECO II.
4. EDC owns, operates, manages, and maintains the Unified Leyte Geothermal Power Plants ("**ULGPP**")¹ located in Leyte, Philippines with a dependable capacity of 591.32 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 II provides and distributes electricity to its customers in the following municipalities in the Province of Bohol: Alicia, Anda, Bien Unido, Buenavista, Candijay, Dagohoy, Danao, Duero, Garcia Hernandez, Guindulman,

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), and (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.

Jagna, Getafe, Mabini, Pilar, Carlos P. Garcia, San Miguel, Sierra Bullones, Talibon, Trinidad, Ubay, and Valencia (the "Franchise Area").

6. Based on BOHECO II'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 II's customers, BOHECO II 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" or "JCSP"), involving the One Bohol Power Distribution Utilities ("1BP"), EDC executed a PSA with BOHECO II on November 5, 2021, for the purchase of up to 18 MW of electricity.
 - 8.1 In 2017, BOHECO II, Bohol I Electric Cooperative, Inc. ("BOHECO I"), and Bohol Light Company, Inc. ("BLCI") formed the 1BP and conducted a Joint CSP for their base and peak load requirements, pursuant to 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 1BP 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 1BP ("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 it 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 after considering the applicable credit factors.
Technical Specifications	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’s Distribution Network considering the respective limitations of its Substation and Distribution Lines.
Experience	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.

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, 1BP caused the publication of an Invitation to Bid for Power Supply Agreement, which contained the basic TOR and conditions 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.

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.”

- 8.4 On May 17, 2023, 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, 1BP declared that the proposal of EDC is the Lowest Calculated Responsive Bid.⁴
- 8.5 On May 25, 2021, 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, 1BP issued a Notice of Award in favor of EDC.
9. Accordingly, EDC and BOHECO II executed the PSA subject of this application. The PSA between EDC and BOHECO II 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.
- 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

⁴ 1BP's TPBAC Resolution 08-2021.

- 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.

xxx

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"**).

xxx

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.

xxx

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	12 MW
2025	December 26, 2024 to December 25, 2025	14 MW
2026	December 26, 2025 to December 25, 2026	16 MW
2027	December 26, 2026 to December 25, 2027	17 MW
2028	December 26, 2027 to December 25, 2028	18 MW
2029	December 26, 2028 to December 25, 2029	18 MW
2030	December 26, 2029 to December 25, 2030	18 MW
2031	December 26, 2030 to December 25, 2031	18 MW
2032	December 26, 2031 to December 25, 2032	18 MW
2033	December 26, 2032 to December 25, 2033	18 MW
Subject to the Terms and Conditions of the PSA		

1.2 BASIC ENERGY CHARGE

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

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

Where:

- a) CRF_{ALF} is the Capital Recovery Fee and FOM_{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.

XXX

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

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

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

XXX

1.3 DERIVATION OF EQUIVALENT ENERGY AT THE MINIMUM CAPACITY UTILIZATION FACTOR

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

Where:

EE = Equivalent energy, in kWh

xxx

10. Based on the rate computation and analysis, the PSA will have a rate reduction of Php2.1928/kWh as shown below:

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	-	-	-		7.7725
GCGI	87,600,000	32.26%	5.8798	100%	
WESM	95,226,587	67.74%	9.5137		
TOTAL	182,826,487	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	81,993,600	38.71%	4.6243	78%	5.5798
GCGI	87,600,000	32.26%	5.8798	100%	
WESM	13,232,887	29.03%	9.5137		
TOTAL	182,826,487	100.00%			
				Generation Rate Impact	-2.1928

Assumption

1. GCGI Rate is based on actual applied rate for the year 2022
2. WESM Rate is based on 2022 Average Rate
3. EDC Rate is based on the Base Rate proposal on the successful CSP

11. It bears reiterating that BOHECO II anticipates a deficit in its power supply due to the increasing demand in its Franchise Area. Thus, there is an urgent need for the approval of the PSA considering a significant baseload capacity deficit, as well as possible occurrences of scheduled maintenance shutdowns and forced outage of power plants of other suppliers of BOHECO II.

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

Description of the Document	Annex
EDC's Secretary Certificate dated July 28, 2023	A
BOHECO II's Secretary's Certificate dated August 7, 2023	B
BOHECO II's Articles of Incorporation	C
BOHECO II's By-laws	C-1
BOHECO II's General Information Sheet	C-2

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BOHECO II's Secretary's Certificate on the List of Board of Directors	C-3
EDC's Articles of Incorporation	D
EDC's Certificate of Filing of and By-laws	D-1
EDC's Certificate of Amendment of and Amended Articles of Incorporation	D-2
EDC's Certificate of Amendment of and Amended By-Laws	D-3
EDC's Secretary's Certification on the Authorization to Join the JCSP	D-4
EDC's Securities and Exchange Commission Certificate of Registration	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
EDC's DOE Certificate of Endorsement	H-7
EDC's DOE Geothermal RE Contract (<i>Confidential</i>)	I, I-1
EDC's DOE Certificate of Registration	J
EDC's NWRB Conditional Water Permit	K
BOHECO II's Demand Side Management Certification	L
BOHECO II's Certification of No Transition Supply Contract	M
BOHECO II's Distribution Development Plan and Power Supply Procurement Plan	N, N-1
BOHECO II's Supply & Demand Scenario	O, O-1, O-2
BOHECO II's Single Line Diagram	P
BOHECO II's Performance Assessment of the System	Q
1BP JCPS's Invitation to Bidders published in the Philippine Daily Inquirer (Aug 30, 2020)	R
1BP JCPS's Invitation to Bidders published in the Philippine Daily Inquirer (September 6, 2020)	R-1
DOE Website Publication	R-2
1BP JCSP's Approved TOR	R-3
DOE Approval of 1BP JCSP's Selection Process	R-4
Competitive Selection Process Documents (<i>Confidential</i>)	S and series; T and series; U and series
Power Supply Agreement between EDC and BOHECO II	V
EDC's Transmission Service Agreement between NGCP and PSALM (<i>Confidential</i>)	W
Details of PSA between EDC and BOHECO II Write-Up (<i>Confidential</i>)	X

EDC's True Cost of Generation Computation and Write-Up (Confidential)	Y
BOHECO II's Generation Rate Impact Simulation	Y-1
Certification of Loan from different banks (Confidential)	Z and series
EDC's Audited Financial Statements	AA, AA-1
Heat Rate Computation of the Plant (Confidential)	BB, BB-1, BB-2
EDC's Simulation of the Number of Units to meet the MEOT and/or additional energy/demand requirements	CC
EDC's WESM Registration	DD
BOHECO II's WESM Membership Certificate	EE
Affidavit of Service to/Certification Receipt from the Office of the Mayor of Pasig	FF ⁵
Affidavit of Service to/Certification Receipt from the Office of the Sangguniang Panglungsod of Pasig	FF-1
Affidavit of Service to/Certification Receipt from the Office of the Governor of Bohol	FF-2
Affidavit of Service to/Certification Receipt from the Office of the Sanggunian of Bohol	FF-3
Affidavit of Service to/Certification Receipt from the Office of the Mayor of Jagna	FF-4
Affidavit of Service to/Certification Receipt from the Sangguniang Bayan of Jagna	FF-5
Affidavit of Service to/Certification Receipt from the Office of the Mayor of Ormoc	FF-6
Affidavit of Service to/Certification Receipt from the Office of the Sangguniang Panglungsod of Ormoc	FF-7
Affidavit of Service to/Certification Receipt from the Office of the Mayor of Kananga	FF-8
Affidavit of Service to/Certification Receipt from the Office of the Sangguniang Bayan of Kananga	FF-9
Affidavit of Service to/Certification Receipt from the Office of the Governor of Leyte	FF-10
Affidavit of Service to/Certification Receipt from the Office of the Sangguniang Panlalawigan of Leyte	FF-11
Affidavit of Publication and complete issue of the newspaper where the Joint Application was published.	GG and series

**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 "I", "I-1",

⁵ Annexes "FF and series" and "GG 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.

“S and series”, “T and series”, “U and series”, “W”, “X”, “Y”, “Z and series”, “BB”, “BB-1”, “BB-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 “I”, “I-1”, “S and series”, “T and series”, “U and series”, “W”, “X”, “Y”, “Z and series”, “BB”, “BB-1”, “BB-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 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

⁶ G.R. No. 172835, 13 December 2007.

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 "I", "I-1", "S and series", "T and series", "U and series", "W", "X", "Y", "Z and series", "BB", "BB-1", "BB-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 jurisprudence,⁷ this Honorable Commission may exercise its discretion to grant provisional authority prior to a final decision should the facts and circumstances justify it.

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

22. In this case, the facts and circumstances warrant the issuance of a provisional authority. BOHECO II's members' consumers are exposed to power supply interruptions due to current deficiency in its power supply. Moreover, as discussed above, BOHECO II's supply-demand forecast showed that there is a foreseeable deficit in its power supply due to the increasing demand of its Franchise Area. In all, unless the PSA is granted interim approval, the current deficit and anticipated surge in demand could adversely affect the supply, to the prejudice of BOHECO II's customers. 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 "I", "I-1", "S and series", "T and series", "U and series", "W", "X", "Y", "Z and series", "BB", "BB-1", "BB-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 November 5, 2021.

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

Finding the said *Joint Application* to be sufficient in form and with the required fees having been paid, the Commission hereby sets the same for hearing for determination of compliance with the jurisdictional requirements, expository presentation, Pre-Trial Conference and presentation of evidence on the following dates and online platform for the conduct thereof, pursuant to Resolution No. 09,

Series of 2020⁸ and Resolution No. 01, Series of 2021⁹ (ERC Revised Rules of Practice and Procedure):

Date	Platform	Activity
24 November 2023 (Friday) at two o'clock in the afternoon (2:00 PM)	Microsoft Teams	Determination of compliance with jurisdictional requirements and expository presentation
01 December 2023 (Friday) at two o'clock in the afternoon (2:00 PM)		Pre-Trial Conference and Presentation of Evidence

Accordingly, BOHECO II and EDC are hereby directed to host the virtual hearings at **BOHECO II's Principal Office located at Cantagay, Jagna, Bohol**, as the designated venue for the conduct thereof, and ensure that the same is open to the public and the community quarantine guidelines are observed at all times. Moreover, Applicants shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

RELATIVE THERETO, BOHECO II and EDC are hereby directed to:

- 1) Cause the publication of the attached *Notice of Virtual Hearing* in two (2) newspapers of nationwide circulation in the Philippines at its own expense, twice (2x) within two (2) successive weeks, the dates of publication not being less than seven (7) days apart, and the date of the last publication to be made not later than ten (10) days before the date of the scheduled initial virtual hearing;
- 2) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing* the Offices of the Provincial Governors, the City and Municipal Mayors, and their respective Local Government Unit (LGU) legislative bodies within BOHECO II's franchise area for the appropriate posting thereof on their respective bulletin boards;

⁸ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

⁹ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

- 3) Inform the consumers within BOHECO II's franchise area, by any other means available and appropriate, of the filing of the *Joint Application*, its reasons therefor, and of the scheduled virtual hearings thereon;
- 4) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing*, the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress. They are hereby requested, if they so desire, to send their duly authorized representatives at the scheduled hearing; and
- 5) Furnish with copies of the *Joint Application* and its attachments, except those subject of a motion for confidential treatment of information, all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

Within five (5) calendar days prior to the date of the initial virtual hearing, BOHECO II and EDC must submit to the Commission via electronic mail (e-mail) at docket@erc.ph, and copy furnish the Legal Service through legal@erc.ph, the scanned copies of their written compliance with the aforementioned jurisdictional requirements, attaching the following methodically arranged and duly marked documents:

- 1) The evidence of publication of the attached *Notice of Virtual Hearing* consisting of affidavits of the Editors or Business Managers of the newspaper where the said *Notice of Virtual Hearing* was published, and the complete issues of the said newspapers;
- 2) The evidence of actual posting of this *Order* and the attached *Notice of Virtual Hearing* consisting of certifications issued to that effect, signed by the aforementioned Governor, Mayors and LGU legislative bodies or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by BOHECO II and EDC to inform the consumers within BOHECO II's franchise area of the filing of the *Joint Application*, its reasons therefor, and of the scheduled hearings thereon;

- 4) The evidence of receipt of copies of this *Order* and the attached *Notice of Virtual Hearing* by the OSG, the COA, and the Committees on Energy of both Houses of Congress;
- 5) The evidence of receipt of copies of the *Joint Application* and its attachments, except those subject of a motion for confidential treatment of information, if any, by all those making requests therefor; and
- 6) Such other proof of compliance with the requirements of the Commission.

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

BOHECO II, EDC, and all interested parties are also required to submit via e-mail at docket@erc.ph, and copy furnish the Legal Service through legal@erc.ph, at least five (5) calendar days before the date of the scheduled virtual hearing and Pre-trial Conference, their respective Pre-Trial Briefs containing, among others:

- 1) A summary of admitted facts and proposed stipulation of facts;
- 2) The issues to be tried or resolved;
- 3) The documents or exhibits to be presented, stating the purposes and proposed markings therefor, which should also be attached to the Pre-trial Brief; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-trial Brief.

BOHECO II and EDC must ensure that all the documents or exhibits proposed to be presented have already been duly submitted to the Commission at least five (5) calendar days before the date of the scheduled initial virtual hearing and Pre-trial Conference pursuant to the preceding paragraph.

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

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

BOHECO II and EDC are hereby directed to file a copy of their Expository Presentation via e-mail at doCKET@erc.ph, copy furnish the Legal Service through legal@erc.ph, at least five (5) calendar days prior to the scheduled virtual hearing. Joint applicants shall also be required, upon the request of any stakeholder, to provide an advance copy of their expository presentation, at least five (5) calendar days prior to the scheduled virtual hearing.

Any interested stakeholder may submit its comments and/or clarifications at least one (1) calendar day prior to the scheduled virtual hearing, via 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.

BOHECO II and EDC are hereby directed to submit, through personal service, registered mail or ordinary mail/private courier, one (1) set of the original or certified true hard copies of their Jurisdictional Compliance, Expository Presentation, Pre-trial Brief, and Judicial Affidavits of witnesses, **within five (5) working days** from the date that the same were electronically submitted, as reflected in the acknowledgment receipt e-mail sent by the Commission. Similarly, all interested parties who filed their Petition for Intervention or Opposition are required to submit the hard copy thereof within the same period through any of the available modes of service.


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Finally, BOHECO II and EDC, including their authorized representatives and witnesses, are hereby directed to provide the Commission, through legal.virtualhearings@erc.ph, their respective e-mail addresses upon receipt of this *Order*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearing.

SO ORDERED.

Pasig City, 10 October 2023.

FOR AND BY AUTHORITY
OF THE COMMISSION:


MONALISA C. DIMALANTA
Chairperson and CEO

ERC

Office of the Chairperson and CEO



MCD2023-009964


LS: EDR/EJVG/MCCG

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Copy Furnished:

1. **Bohol II Electric Cooperative, Inc (BOHECO II)**
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Email: corplanboheco2@gmail.com
2. **Energy Development Corporation (EDC)**
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3. **Puno and Puno Law**
Counsel for EDC
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4. **Villas Lagang & Tumanda Law Offices**
Counsel for BOHECO II
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Email: ted_lagang@yahoo.com
5. **Office of the Mayor**
City of Pasig
6. **Office of the Local Government Unit (LGU) Legislative Body**
City of Pasig
7. **Office of the Governor**
Province of Bohol
8. **Office of the Local Government Unit (LGU) Legislative Body**
Province of Bohol
9. **Office of the Municipal Mayor**
Municipality of Alicia
10. **Office of the Local Government Unit (LGU) Legislative Body**
Municipality of Alicia
11. **Office of the Municipal Mayor**
Municipality of Anda
12. **Office of the Local Government Unit (LGU) Legislative Body**
Municipality of Anda
13. **Office of the Municipal Mayor**
Municipality of Bien Unido
14. **Office of the Local Government Unit (LGU) Legislative Body**
Municipality of Bien Unido
15. **Office of the Municipal Mayor**
Municipality of Buenavista
16. **Office of the Local Government Unit (LGU) Legislative Body**
Municipality of Buenavista
17. **Office of the Municipal Mayor**
Municipality of Candijay
18. **Office of the Local Government Unit (LGU) Legislative Body**

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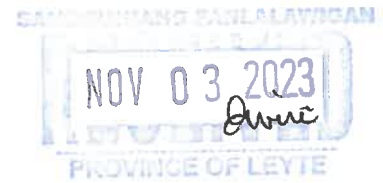
- Municipality of Candijay
19. Office of the Municipal Mayor
Municipality of Dagohoy
 20. Office of the Local Government Unit (LGU) Legislative Body
Municipality of Dagohoy
 21. Office of the Municipal Mayor
Municipality of Danao
 22. Office of the Local Government Unit (LGU) Legislative Body
Municipality of Danao
 23. Office of the Municipal Mayor
Municipality of Duero
 24. Office of the Local Government Unit (LGU) Legislative Body
Municipality of Duero
 25. Office of the Municipal Mayor
Municipality of Garcia Hernandez
 26. Office of the Local Government Unit (LGU) Legislative Body
Municipality of Garcia Hernandez
 27. Office of the Municipal Mayor
Municipality of Guindulman
 28. Office of the Local Government Unit (LGU) Legislative Body
Municipality of Guindulman
 29. Office of the Municipal Mayor
Municipality of Jagna
 30. Office of the Local Government Unit (LGU) Legislative Body
Municipality of Jagna
 31. Office of the Municipal Mayor
Municipality of Getafe
 32. Office of the Local Government Unit (LGU) Legislative Body
Municipality of Getafe
 33. Office of the Municipal Mayor
Municipality of Mabini
 34. Office of the Local Government Unit (LGU) Legislative Body
Municipality of Mabini
 35. Office of the Municipal Mayor
Municipality of Pilar
 36. Office of the Local Government Unit (LGU) Legislative Body
Municipality of Pilar
 37. Office of the Municipal Mayor
Municipality of Carlos P. Garcia
 38. Office of the Local Government Unit (LGU) Legislative Body
Municipality of Carlos P. Garcia
 39. Office of the Municipal Mayor
Municipality of San Miguel
 40. Office of the Local Government Unit (LGU) Legislative Body
Municipality of San Miguel

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41. Office of the Municipal Mayor
Municipality of Sierra Bullones
42. Office of the Local Government Unit (LGU) Legislative Body
Municipality of Sierra Bullones
43. Office of the Municipal Mayor
Municipality of Talibon
44. Office of the Local Government Unit (LGU) Legislative Body
Municipality of Talibon
45. Office of the Municipal Mayor
Municipality of Trinidad
46. Office of the Local Government Unit (LGU) Legislative Body
Municipality of Trinidad
47. Office of the Municipal Mayor
Municipality of Ubay
48. Office of the Local Government Unit (LGU) Legislative Body
Municipality of Ubay
49. Office of the Municipal Mayor
Municipality of Valencia
50. Office of the Local Government Unit (LGU) Legislative Body
Municipality of Valencia
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134 Amorsolo Street, Legaspi Village, Makati City
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52. Commission on Audit
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53. Senate Committee on Energy
GSIS Bldg. Roxas Blvd., Pasay City
Email: senateenergycommittee@gmail.com
54. House Committee on Energy
Batasan Hills, Quezon City
Email: committees@house.gov.ph
55. Regulatory Operations Service (ROS)
Energy Regulatory Commission
14th Floor Exquadra Building, Jade Drive, Pasig City
Email: ros@erc.ph

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

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



ERC CASE NO. 2023-113 RC

**BOHOL II ELECTRIC
COOPERATIVE, INC.
(BOHECO II) AND ENERGY
DEVELOPMENT
CORPORATION (EDC),
*Applicants.***

Promulgated:
October 10, 2023

X- - - - - X

NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES

Notice is hereby given that on 04 October 2023, Bohol II Electric Cooperative, Inc. (BOHECO II) and Energy Development Corporation (EDC) filed a *Joint Application* dated 11 August 2023, seeking the Commission's approval of the Power Supply Agreement (PSA) between BOHECO II and EDC, with motion for confidential treatment of information and issuance of provisional authority.

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

THE JOINT APPLICANTS

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 II is a distribution utility duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at Cantagay, Jagna, Bohol, 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 II is represented by its General Manager, Eugenio R. Tan, who is authorized by its Board of Directors to file the Joint Application, as evidenced by the Secretary's Certificate dated August 7, 2023. A copy of BOHECO II's Secretary's Certificate dated August 7, 2023, 2023 is attached as **Annex "B"**.
3. Pursuant to Rule 20(B) of the 2020 Revised Energy Regulatory Commission ("**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 5, 2021 ("**PSA**") between EDC and BOHECO II.
4. EDC owns, operates, manages, and maintains the Unified Leyte Geothermal Power Plants ("**ULGPP**")¹ located in Leyte, Philippines with a dependable capacity of 591.32 MW and has control over the generated capacity of the Diesel Fired Power

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), and (6) Malitbog Bottoming Cycle Power Plant (COC No. 18-04-M-00153V).

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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 II provides and distributes electricity to its customers in the following municipalities in the Province of Bohol: Allicia, Anda, Bien Unido, Buenavista, Candijay, Dagohoy, Danao, Duero, Garcia Hernandez, Guindulman, Jagna, Getafe, Mabini, Pilar, Carlos P. Garcia, San Miguel, Sierra Bullones, Talibon, Trinidad, Ubay, and Valencia (the **"Franchise Area"**).
6. Based on BOHECO II'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 II's customers, BOHECO II 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"** or **"JCSP"**), involving the One Bohol Power Distribution Utilities (**"1BP"**), EDC executed a PSA with BOHECO II on November 5, 2021, for the purchase of up to 18 MW of electricity.
 - 8.1 In 2017, BOHECO II, Bohol I Electric Cooperative, Inc. (**"BOHECO I"**), and Bohol Light Company, Inc. (**"BLCI"**) formed the 1BP and conducted a Joint CSP for their base and peak load requirements, pursuant to 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 1BP 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 1BP (**"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

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

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	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 it 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 after considering the applicable credit factors.
Technical Specifications	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's Distribution Network considering the respective limitations of its Substation and Distribution Lines.
Experience	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.

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

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."

- 8.3 On August 30, 2020 and September 6, 2020, 1BP caused the publication of an Invitation to Bid for Power Supply Agreement, which contained the basic TOR and conditions 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, 2023, 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, 1BP declared that the proposal of EDC is the Lowest Calculated Responsive Bid.⁴
- 8.5 On May 25, 2021, 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, 1BP issued a Notice of Award in favor of EDC.
9. Accordingly, EDC and BOHECO II executed the PSA subject of this application. The PSA between EDC and BOHECO II 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.
- 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

⁴ 1BP's TPBAC Resolution 08-2021.

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.

XXX

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**).

xxx

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.

xxx

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	12 MW
2025	December 26, 2024 to December 25, 2025	14 MW
2026	December 26, 2025 to December 25, 2026	16 MW
2027	December 26, 2026 to December 25, 2027	17 MW
2028	December 26, 2027 to December 25, 2028	18 MW
2029	December 26, 2028 to December 25, 2029	18 MW
2030	December 26, 2029 to December 25, 2030	18 MW
2031	December 26, 2030 to December 25, 2031	18 MW
2032	December 26, 2031 to December 25, 2032	18 MW
2033	December 26, 2032 to December 25, 2033	18 MW
Subject to the Terms and Conditions of the PSA		

BASIC ENERGY CHARGE

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

1.2

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

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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.

xxx

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

$$FOMF_{ALF} = FOMF_{ALF} \times \frac{PHCPI_n}{PHCPI_0}$$

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)

$PHCPI_0$ - 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

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

xxx

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

xxx

10. Based on the rate computation and analysis, the PSA will have a rate reduction of Php2.1928/kWh as shown below:

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	-	-	-		7.7725
GCGI	87,600,000	32.26%	5.8798	100%	
WESM	95,226,587	67.74%	9.5137		
TOTAL	182,826,487	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	81,993,600	38.71%	4.6243	78%	5.5798
GCGI	87,600,000	32.26%	5.8798	100%	
WESM	13,232,887	29.03%	9.5137		
TOTAL	182,826,487	100.00%			
				Generation Rate Impact	-2.1928

Assumption

1. GCGI Rate is based on actual applied rate for the year 2022
2. WESM Rate is based on 2022 Average Rate
3. EDC Rate is based on the Base Rate proposal on the successful CSP

11. It bears reiterating that BOHECO II anticipates a deficit in its power supply due to the increasing demand in its Franchise Area. Thus, there is an urgent need for the approval of the PSA considering a significant baseload capacity deficit, as well as possible occurrences of scheduled maintenance shutdowns and forced outage of power plants of other suppliers of BOHECO II.

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

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Description of the Document	Annex
EDC's Secretary Certificate dated July 28, 2023	A
BOHECO II's Secretary's Certificate dated August 7, 2023	B
BOHECO II's Articles of Incorporation	C
BOHECO II's By-laws	C-1
BOHECO II's General Information Sheet	C-2
BOHECO II's Secretary's Certificate on the List of Board of Directors	C-3
EDC's Articles of Incorporation	D
EDC's Certificate of Filing of and By-laws	D-1
EDC's Certificate of Amendment of and Amended Articles of Incorporation	D-2
EDC's Certificate of Amendment of and Amended By-Laws	D-3
EDC's Secretary's Certification on the Authorization to Join the JCSP	D-4
EDC's Securities and Exchange Commission Certificate of Registration	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
EDC's DOE Certificate of Endorsement	H-7
EDC's DOE Geothermal RE Contract (<i>Confidential</i>)	I, I-1
EDC's DOE Certificate of Registration	J
EDC's NWRB Conditional Water Permit	K
BOHECO II's Demand Side Management Certification	L
BOHECO II's Certification of No Transition Supply Contract	M
BOHECO II's Distribution Development Plan and Power Supply Procurement Plan	N, N-1
BOHECO II's Supply & Demand Scenario	O, O-1, O-2
BOHECO II's Single Line Diagram	P
BOHECO II's Performance Assessment of the System	Q
1BP JCPS's Invitation to Bidders published in the Philippine Daily Inquirer (Aug 30, 2020)	R
1BP JCPS's Invitation to Bidders published in the Philippine Daily Inquirer (September 6, 2020)	R-1
DOE Website Publication	R-2
1BP JCSP's Approved TOR	R-3
DOE Approval of 1BP JCSP's Selection Process	R-4
Competitive Selection Process Documents (<i>Confidential</i>)	S and series; T and series; U and series
Power Supply Agreement between EDC and BOHECO II	V

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

**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,

⁵ Annexes "FF and series" and "GG 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.

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 "I", "I-1", "S and series", "T and series", "U and series", "W", "X", "Y", "Z and series", "BB", "BB-1", "BB-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 "I", "I-1", "S and series", "T and series", "U and series", "W", "X", "Y", "Z and series", "BB", "BB-1", "BB-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 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

⁶ G.R. No. 172835, 13 December 2007.

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 "I", "I-1", "S and series", "T and series", "U and series", "W", "X", "Y", "Z and series", "BB", "BB-1", "BB-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 jurisprudence,⁷ this Honorable Commission may exercise its

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

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 II's members' consumers are exposed to power supply interruptions due to current deficiency in its power supply. Moreover, as discussed above, BOHECO II's supply-demand forecast showed that there is a foreseeable deficit in its power supply due to the increasing demand of its Franchise Area. In all, unless the PSA is granted interim approval, the current deficit and anticipated surge in demand could adversely affect the supply, to the prejudice of BOHECO II's customers. 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 "I", "I-1", "S and series", "T and series", "U and series", "W", "X", "Y", "Z and series", "BB", "BB-1", "BB-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 November 5, 2021.

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 platform for the conduct thereof, pursuant to Resolution No. 09, Series of 2020⁸

⁸ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

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and Resolution No. 01, Series of 2021⁹ (ERC Revised Rules of Practice and Procedure):

Date	Platform	Activity
24 November 2023 (Friday) At two o'clock in the afternoon (2:00 PM)	Microsoft Teams	Determination of compliance with jurisdictional requirements and expository presentation
01 December 2023 (Friday) at two o'clock in the afternoon (2:00 PM)		Pre-Trial Conference and Presentation of Evidence

Applicants BOHECO II and EDC is directed to host the virtual hearings at **BOHECO II's Principal Office located at Cantagay, Jagna, Bohol**, as the designated venue for the conduct thereof, and ensure that the same is open to the public and the community quarantine guidelines are observed at all times. Applicants shall also 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 furnish 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 and 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;

⁹ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

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.

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Finally, all interested persons may be allowed to join the scheduled initial 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 Commissioners **ALEXIS M. LUMBATAN**, **CATHERINE P. MACEDA**, **FLORESINDA G. BALDO-DIGAL**, and **MARKO ROMEO L. FUENTES**, Energy Regulatory Commission, this 10th day of October 2023 in Pasig City.


MONALISA C. DIMALANTA
Chairperson and CEO


LS: EDR/BJVG/MCCG

ERC
Office of the Chairperson and CEO



MCD2023-009964