



LEYECO II
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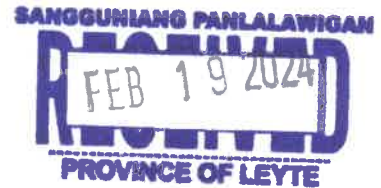
Item No.: 18

Date: 27 2024 FEB

18

February 15, 2024

Hon. LEONARDO M. JAVIER, JR.
Vice Governor
Province of Leyte



Dear Vice Governor Javier,

Re: IN THE MATTER OF THE JOINT APPLICATION FOR APPROVAL THE EMERGENCY POWER SUPPLY AGREEMENT ENTERED INTO BY AND BETWEEN LEYTE II ELECTRIC COOPERATIVE INC. AND FDC MISAMIS POWER CORPORATION, WITH PRAYER FOR PROVISIONAL AUTHORITY AND CONFIDENTIAL TREATMENT OF INFORMATION
ERC CASE NO. 2023-135 RC

Sir:

In compliance with the Revised Rules of Practice and Procedure of the Energy Regulatory Commission ("ERC") and the Order dated January 29, 2024 of the ERC, we are furnishing this Honorable Office with the said Order and Notice of Virtual Hearing both dated January 29, 2024.

In line with this, we are requesting that the said Order and Notice of Virtual Hearing be posted on the municipal bulletin board of this Honorable Office, in compliance with the said Order and the Revised Rules of Practice and Procedure of the ERC.

Consequently, we are also requesting for a Certification of Posting from this Honorable Office stating that a copy of the Order and Notice of Virtual Hearing both dated January 29, 2024 of the above-captioned case was served to, duly received and duly posted by this Honorable Office.

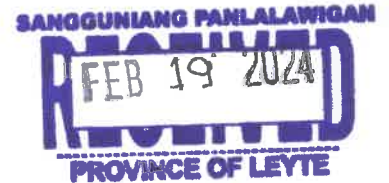
Very truly yours,


ENGR. FERNAN PAUL R. TAN

General Manager

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

IN THE MATTER OF THE
JOINT APPLICATION FOR
APPROVAL OF THE
EMERGENCY POWER
SUPPLY AGREEMENT
ENTERED INTO BY AND
BETWEEN LEYTE II
ELECTRIC COOPERATIVE,
INC. AND FDC MISAMIS
POWER CORPORATION,
WITH PRAYER FOR
PROVISIONAL AUTHORITY
AND CONFIDENTIAL
TREATMENT OF
INFORMATION



ERC CASE NO. 2023-135 RC

LEYTE II ELECTRIC
COOPERATIVE, INC. AND
FDC MISAMIS POWER
CORPORATION,

Applicants.

X-----X

Promulgated:

January 29, 2024

ORDER

On 29 November 2023, Leyte II Electric Cooperative, Inc. (LEYECO II) and FDC Misamis Power Corporation (FDCMPC) filed their *Joint Application (With Prayer for Provisional Authority and Confidential Treatment of Information)* dated 19 October 2023, seeking the Commission's approval of their Emergency Power Supply Agreement (EPSA), with prayer for provisional authority and confidential treatment of information.

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

1. LEYECO II is a non-stock, non-profit electric cooperative, duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at Real St., Sagkahan Dist., Tacloban City, Leyte. It is authorized to distribute and provide electricity services to its member-consumers in the

Municipalities of Palo and Babatngon, both in the Province of Leyte, and the City of Tacloban (collectively, the “Franchise Area”). For purposes of this instant Application, LEYECO II is represented herein by its Board President, MS. IMELDA F. LAGUTAN, and General Manager, ENGR. FERNAN PAUL R. TAN, duly authorized by virtue of Resolution No. 135-08-2023.¹

2. FDCMPC is a corporation duly organized and existing under and by the laws of the Republic of the Philippines, with principal office address at the PHIVIDEC Industrial Estate, Villanueva, Misamis Oriental 9002. For purposes of this Application, FDCMPC is represented by its President and Chief Executive Officer (“CEO”), MR. JUAN EUGENIO L. ROXAS, duly authorized for the purpose by virtue of a Secretary Certificate No. 202308-03.²
3. The Joint Applicants may be served with the orders, notices, and other processes of the Honorable Commission through their respective undersigned counsels at the addresses indicated herein.

NATURE OF THE APPLICATION

4. The instant Joint Application for approval of the Emergency Power Supply Agreement (“EPSA”) entered into by and between LEYECO II and FDCMPC dated 11 August 2023 (the “*LEYECO II-FDCMPC EPSA*”) is being submitted to the Honorable Commission for its review and approval pursuant to Sections 25³ and 45(b)⁴ of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (the “EPIRA”), Rule 20(B) of the Honorable Commission’s Resolution No. 01, Series of 2021⁵ (the “ERC Revised Rules of Practice and Procedure”), and Department of Energy (“DOE”) Department Circular No. 2023-06-0021 (the “DC2023-06-0021”).⁶
5. In compliance with Section 2, Rule 6 of the ERC Revised Rules of Practice and Procedure, a copy of the instant Application (with all its annexes and accompanying documents, except those subject of a motion for confidential treatment of information) was furnished to the following offices:⁷
 - a. Office of the Mayor of the Municipality of Villanueva;
 - b. Office of the Presiding Officer of the *Sangguniang Bayan* of the Municipality of Villanueva;

¹ See Annex “DD” of the Joint Application.

² See Annex “EE” of the Joint Application.

³ SEC.25. Retail Rate. – The retail rates charged by distribution utilities for the supply of electricity in their captive market shall be subject to regulation by the ERC based on the principle of full recovery of prudent and reasonable economic costs incurred, or such other principles that will promote efficiency as may be determined by the ERC.

⁴ Distribution utilities may enter into bilateral power supply contracts subject to review by the ERC:
xxx xxx xxx.

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

⁶ Entitled, “*Prescribing the policy for the mandatory conduct of the Competitive Selection Process by the Distribution Utilities for the procurement of power supply for their captive market*”

⁷ See Annex “FF” and series of the Joint Application.

- c. Office of the Governor of the Province of Misamis Oriental;
 - d. Office of the Presiding Officer of the *Sangguniang Panlalawigan* of the Province of Misamis Oriental;
 - e. Office of the Mayor of the City of Tacloban;
 - f. Office of the Presiding Officer of the *Sangguniang Panlungsod* of the City of Tacloban;
 - g. Office of the Governor of the Province of Leyte; and
 - h. Office of the Presiding Officer of the *Sangguniang Panlalawigan* of the Province of Leyte.
6. Further, the Joint Application was also published in a newspaper of general circulation.⁸

STATEMENT OF FACTS

7. Necessity for Power Supply: LEYECO II executed a Power Purchase and Sale Agreement (“PPSA”) with GNP Power Dinginin Ltd. Co. (“GNPD”) for 20 MW Baseload Power Supply, which was submitted to the Honorable Commission for approval under ERC Case No. 2016-046 RC.
8. However, as will be discussed below, the Honorable Commission ultimately directed LEYECO II to stop implementing the PPSA; thus, LEYECO II was constrained to look for alternative power suppliers and eventually executed the LEYECO II-FDCMPC EPSA subject of this Joint Application.
- 8.1. On 23 September 2016, the Honorable Commission issued an Order dated 05 July 2016 granting provisional authority to LEYECO II and GNPD to implement the PPSA.
- 8.2. On 03 May 2019, the Supreme Court rendered its Decision in the case of *Alyansa Para sa Bagong Pilipinas, Inc. v. Energy Regulatory Commission, et al.* (the “*Alyansa Decision*”),⁹ requiring all applications for approval of power supply agreements filed before the Honorable Commission on or after 30 June 2015 to comply with the Competitive Selection Process (“CSP”) requirement provided under the DOE Department Circular No. DC2018-02-003.
- 8.3. In an Order dated 19 April 2023 for ERC Case No. 2016-046 RC, the Honorable Commission issued an Order: (i) dismissing the application filed by LEYECO II and GNPD for the approval of the PPSA; (ii) terminating the provisional authority granted to LEYECO II and GNPD to implement the PPSA; and (iii) directing LEYECO II and GNPD to stop implementing their PPSA immediately upon receipt of the Order.
9. Pursuant to the 19 April 2023 Order, *which was received by LEYECO II on 18 July 2023*, GNPD stopped supplying power to

⁸ See Annex “GG” and series of the Joint Application.

⁹ G.R. No. 227670, 03 May 2019.

LEYECO II on 17 July 2023. On 20 July 2023, LEYECO II filed a *Partial Motion for Reconsideration* with a prayer for a 30-day grace period for LEYECO II to secure an emergency power supply agreement to supplement its demand requirements.

10. Without the power from GNPD, LEYECO II is not able to cover its total demand requirements and is forced to purchase power from the Wholesale Electricity Spot Market (“WESM”), thereby exposing itself (and its consumers) to the volatile prices in the market.
11. LEYECO II intends to account for the deficit supply in its upcoming Power Supply Procurement Plan and conduct the necessary CSP to secure its energy needs. However, the CSP process will take time thereby subjecting LEYECO II to prevailing WESM market prices in the interim period.
12. All these conditions resulted into an emergency situation which prompted LEYECO II to immediately procure emergency supply of energy.
13. On 10 August 2023, the Honorable Commission issued an Advisory approving a “Transition Period” to allow distribution utilities affected by the *Alyansa Decision*, like LEYECO II, an opportunity to negotiate an emergency power sales agreement for their respective power requirements.¹⁰
14. LEYECO II then solicited offers from various generation companies¹¹ for their emergency power requirements, and FDCMPC’s offer was the most advantageous given the circumstance. Accordingly, LEYECO II entered into negotiations with FDCMPC for emergency power supply, and eventually executed the LEYECO II-FDCMPC EPSA subject of the instant Joint Application.

ABSTRACT OF THE EMERGENCY POWER SALES AGREEMENT
AND RELATED INFORMATION

15. LEYECO II Power Situation. LEYECO II’s peak demand for its Franchise Area is 59 MW for 2023 to 2024 as provided in its Supply - Demand Scenario.¹²
16. Generation Facility. The power to be provided to LEYECO II will be sourced from FDCMPC’s 3 x 135 MW circulating fluidized bed coal fired thermal power plant in the PHIVIDEC Industrial Estate, in Villanueva, Misamis Oriental, with a rated capacity of 405 MW and net dependable capacity of 369 MW (the “Power Plant”). FDCMPC shall supply power to LEYECO II under the terms stipulated in the LEYECO II-FDCMPC EPSA.
17. Salient Features of the EPSA.

¹⁰ See Annex “HH” and series of the Joint Application.

¹¹ See Annex “Q” and series of the Joint Application.

¹² See Annex “M” of the Joint Application.

- 17.1. Term: The Term of the EPSA shall be one (1) year from the delivery date, or 12 August 2023 to 11 August 2024.
- 17.2. Date of Commencement of Supply: The EPSA shall take effect immediately on Effective Date, where the Effective Date is the date of signing of the EPSA.
- 17.3. Contract Type: Firm and Non-Firm
- 17.4. Installed Capacity of the Power Plant: 405MW
- 17.5. Net Dependable Capacity of the Power Plant: 369MW
- 17.6. Contract Demand and Contract Energy: Contract Demand of 14 MW Baseload and up to additional 6 MW Load Following. The Applicants agreed to the following service specifications:

	Firm	Non-Firm	Total
Contracted Demand	14,000 kW	6,000 kW	20,000 kW
Contracted Energy (Annual)	122,640,000 kWh	Actual Up to 52,560,000 kWh	
Customer Load Factor Per Interval	70% (Baseload)	Actual (Load Following)	
Customer's Minimum Demand	At least 70% of Customer's Total Contracted Demand		
Delivery Point	Plant Gate FDC Misamis Power Corporation's Power Plant		
Voltage at the Plant Gate	138 kV		

- 17.7. Outage Allowance: FDCMPC is allowed an Outage Allowance of 20 days or 480 hours.

LEYECO II shall be responsible for the procurement of Replacement Power during the Outage Allowance. While FDCMPC shall exert best efforts to procure Replacement Power beyond the Outage Allowance.

- 17.8. Billing and Settlement: FDCMPC shall provide a monthly Power Bill to LEYECO II that shall contain the volume of energy, and the amount of money (in Philippine Peso) due and payable by LEYECO II every Billing Period both reckoned from the Delivery Point.

The Billing and Settlement between the Parties shall be in accordance with Schedule 3 of the LEYECO II-FDCMPC EPSA.

17.9. **Termination:** Either party may terminate the LEYECO II-FDCMPC EPSA with immediate effect by serving written notice to the other party in the event that the other party breaches any provision of the EPSA and fails to cure such breach within a period of thirty (30) days from receipt of notice of such breach.

17.10. **Prompt Payment Discount:** FDCMPC may grant a Prompt Payment Discount, provided that:

- (i) Payment is made on or before 11:00 am of the tenth (10th) day of the Payment Month; and
- (ii) LEYECO II has not incurred any delay in the payment of its bills for the past six (6) Payment Months.

The Prompt Payment Discount shall be applied in the immediately succeeding billing.

17.11. **Generation Charge:**

BASELOAD (FIRM):	RATE IN PHP/KW/M ONTH	RATE IN PHP/KWH	BILLING DETERMINANT(BD)
Capital Recovery Fee (CRF), Php/kW/month	912.50	1.2500	Contract Demand in kW
Fixed O&M (FOM), Php/kW/month	452.09	0.6193	Contract Demand in kW
Variable O&M (VOM), Php/kWh		0.1907	Actual energy consumed or 70% of Contract Energy in kWh, whichever is higher
Fuel Cost (FC), Php/kWh		pass-through	Actual energy consumed in kWh

BASELOAD (FIRM)

Generation Charge = [CRF + FOM + VOM + FC] Charges

- CRF Charge = (912.50Php/kW/month)* BD
- FOM Charge = [(452.09Php/kW/month)* (PH CPI_{CURRENT}/PH CPI_{BASE})] * BD
- VOM Charge = [(0.1907Php/kWh)* (PH CPI_{CURRENT}/PH CPI_{BASE})] * BD
- Fuel Cost = [(DCP * ACR or MCR, whichever is lower)/1000] * BD

Where:

BD	= Billing Determinant	kW or kWh
DCP	= Delivered Coal Price	PhP/MT
	= Total Coal Cost (PhP)/ Total Coal Consumption (MT)	
ACR	= Actual Fuel Consumption Rate	kg/kWh
	= Total Coal Consumption (MT)/ Total Metered Quantity of the Plant (kWh)	
MCR _{CAP}	= Maximum Consumption Rate equal to 0.75, escalated at a rate of 1.5% annually	kg/kWh

Indexation: PH CPI_{BASE} = 121.4 (January 2023)

Other Pass-Through Charges: Market Charges and Line Rental Charges

18. **Estimated Rate Impact.** The indicative rate impact on LEYECO II's overall generation rate with and without the additional supply from FDCMPC is as follows:¹³

Generation Rate Impact of EPSA	
Without FDCMPC	Php6.9182/kWh
With FDCMPC	Php5.5316/kWh
Rate Impact	Php1.3866/kWh

19. **Environmental Compliance Certificate.** The Department of Environment and Natural Resources – Environmental Management Bureau (“DENR-EMB”) issued the Environmental Compliance Certificate No. ECC-CO-1304-0012 covering the Power Plant.¹⁴
20. **Board of Investments (“BOI”) Certificate.** The Power Plant is registered with the BOI. A Certificate of Registration No. 213-177 was issued by the BOI to this effect.¹⁵
21. **Fuel Supply.** In order to ensure the supply of fuel for the operations of the Power Plant, FDCMPC solicited offers from reputable suppliers, and has contracted with the supplier that offered the best terms.¹⁶
22. **DOE Certification.** The DOE has certified that the Power Plant is consistent with the Power Development Plan. A Certificate of Endorsement No. 2015-03-010 was issued by the DOE to this effect.¹⁷
23. **Provisional Authority to Operate (“PAO”).** The Honorable Commission has issued a Certificate of Compliance No. 17-05-M-00108M (“COC”) for the Power Plant, which expired. On 28

¹³ See Annex “KK” of the Joint Application.

¹⁴ See Annex “I” of the Joint Application.

¹⁵ See Annex “H” of the Joint Application.

¹⁶ See Annexes “X” and “Y” of the Joint Application.

¹⁷ See Annex “K” of the Joint Application.

October 2021, the Honorable Commission issued a PAO for the Power Plant for a period of one (1) year until 16 October 2022. Finally, on 15 June 2023, the Honorable Commission issued a Certification that the PAO for the Power Plant is currently being evaluated. This Certification is valid for six (6) months from 15 June 2023 or until the resolution of its COC renewal application.¹⁸

24. Point-to-Point Application. In an application docketed as ERC Case No. 2015-054 MC, FDCMPC secured the authority from this Honorable Commission to develop, own, and operate dedicated point-to-point limited transmission facilities connecting the Power Plant to the Mindanao grid through the National Grid Corporation of the Philippines' Villanueva Substation.
25. Copies of the following documents and/or information are attached to the Joint Application as annexes and made as integral parts hereof:

Annex	Documents/Information
"A"	LEYECO II-FDCMPC EPSA
"B"	LEYECO II Amended Articles of Incorporation,
"B-1"	LEYECO II Amended By-Laws
"C"	LEYECO II Certificate of Franchise
"D"	LEYECO II NEA Certificate of Registration of Amended Articles of Incorporation
"E"	LEYECO II List of Board of Directors
"F"	FDCMPC Amended Articles of Incorporation,
"F-1"	FDCMPC Amended By-Laws,
"F-2"	FDCMPC Amended General Information Sheet for 2023, and
"F-3"	FDCMPC Verified Certification on Parent, Subsidiaries, and Affiliates Board of Directors
"G" and series	FDCMPC SEC Certificate of Registration with Amendments and Shareholders' Agreement
"H"	FDCMPC BOI Certificate of Registration with attached Terms and Conditions
"I"	FDCMPC DENR-EMB ECC
"J"	FDCMPC ERC COC No. 17-05-M-00108M
"J-1"	FDCMPC PAO valid until 16 October 2022
"J-2"	FDCMPC PAO Certificate of Filing dated 15 June 2023
"K"	FDCMPC DOE Certificate of Endorsement
"L"	LEYECO II Power Supply Procurement Plan and
"L-1"	LEYECO II Distribution Development Plan
"M"	LEYECO II Supply and Demand Scenario, Details of Existing Suppliers, and Contract Utilization and LEYECO II Average Daily Load Curve
"M-1"	
"N"	LEYECO II Single-line Diagram Connection
"O"	LEYECO II Performance Assessment
"P"	LEYECO II Potential for Load Reduction Due to Retail Competition

¹⁸ See Annexes "J" to "J-2" of the Joint Application.

"Q" and series	LEYECO II Solicitation Letters to Generation Companies
"R"	FDCMPC Samuel R. Lamorena Verified Certification
"S" and series	Transmission Service Agreement and Metering Services Agreement of LEYECO II and FDCMPC, respectively
"T"	LEYECO II-FDCMPC EPSA Executive Summary
"U"	FDCMPC Sources of Funds and Financial Plans
"U-1"	and FDCMPC Bank Certifications
"V" and "V-1" "V-2"	FDCMPC Generation Rate and Derivation, FDCMPC Basis of Other Charges, FDCMPC Financial Model, Project Costs, and Breakdown of Costs
"W"	FDCMPC Cash Flow
"X"	FDCMPC Fuel Supply Procurement Process
"X-1"	FDCMPC Certification on Spot Fuel Agreement
"Y"	FDCMPC Sworn Statement on Fuel Concerns
"Z"	FDCMPC Relevant Technical and Economic Characteristics of the Generation Capacity, FDCMPC Engineering, Procurement, and Construction Contract Certification, and FDCMPC Simulation of Operating Units to Meet Minimum Energy Off-Take
"Z-1"	
"Z-2"	
"AA"	FDCMPC 2022 Audited Financial Statements
"BB"	FDCMPC WESM Registration
"CC"	FDCMPC Affidavit in Support of Prayer for Provisional Authority and LEYECO II Affidavit in Support of Prayer for Provisional Authority
"CC-1"	
"JJ"	Explanation for Non-Applicability of Documents

The conduct of a CSP is not required and the LEYECO II-FDCMPC EPSA is immediately implementable

26. LEYECO II need not undergo a CSP prior to execution of the LEYECO II-FDCMPC EPSA. Moreover, the LEYECO II-FDCMPC EPSA is immediately implementable upon its execution consistent with prevailing regulations of the Honorable Commission and the DOE.
27. As mentioned above, the Honorable Commission granted distribution utilities affected by the *Alyansa* Decision, like LEYECO II, an opportunity to negotiate an emergency power sales agreement for their respective power requirements.
28. Under Sections 2.3 and 2.3.5 of the DOE's DC2023-06-0021, the conduct of a CSP is not required for the negotiated procurement of emergency power supply, and the filing of an emergency power supply agreement with the Honorable Commission does not need any prior clearance or certification from the DOE.

29. Moreover, in an *Advisory* dated 07 June 2023 as amended by another *Advisory* dated 23 June 2023,¹⁹ the Honorable Commission stated that an emergency power supply agreement shall be immediately implementable upon its execution, and the rates to be charged shall be capped at the latest ERC-approved generation tariff for the same technology in comparable areas.

**ALLEGATIONS RELATIVE TO THE PRAYER FOR
CONFIDENTIAL TREATMENT OF INFORMATION**

30. Section 1, Rule 4 of the ERC Revised Rules of Practice and Procedure provides that a party to a proceeding before the Honorable Commission may move for information to be treated as confidential.
31. Pursuant thereto, FDCMPC prays that the information contained in the documents enumerated below be treated as *CONFIDENTIAL* and that the same be continuously protected from public disclosure, except to the officers and staff of the Honorable Commission (collectively referred to as “Confidential Documents”):

Annex	Documents/Information
“U”	FDCMPC Sources of Funds and Financial Plans
“U-1”	FDCMPC Bank Certifications
“V”	FDCMPC Generation Rate and Derivation
“V-1”	FDCMPC Basis of Other Charges
“V-2”	FDCMPC Financial Model, Project Costs, and Breakdown of Costs
“W”	FDCMPC Cash Flow
“X”	FDCMPC Fuel Supply Procurement Process
“X-1”	FDCMPC Certification on Spot Fuel Agreement
“Z”	FDCMPC Relevant Technical and Economic Characteristics of the Generation Capacity
“Z-1”	FDCMPC Engineering, Procurement, and Construction Contract Certification

32. The Confidential Documents contain certain non-public information, data, and calculations involving business operations and financial trade secrets reflecting FDCMPC’s investment and business calculations. As such, the foregoing information, data, and calculations fall within the bounds of “trade secrets” that are entitled to protection under the law.

33. In the case *Air Philippines Corporation vs. Pennswell Inc.*,²⁰ the Supreme Court defined “trade secret” as follows:

“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. The definition also extends to a secret formula or process not patented, but known only to certain individuals using it in compounding some

¹⁹ See Annexes “II” and “II-2” of the Joint Application.

²⁰ G. R. No. 172835, 13 December 2007.

article of trade having 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 advantage over competitors who do not possess the information. Generally, a trade secret is a process or device intended for continuous 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."

34. Also, the Confidential Documents were prepared and developed for the exclusive use of FDCMPC, and is designed for the specific use of the company in its power generation business. Consequently, should the same be disclosed to the public, they could easily be copied or used by FDCMPC's competitors or other entities engaged in the power business for their own benefit, and to the prejudice of FDCMPC.
35. The interest of LEYECO II's consumers is sufficiently protected by the review and evaluation of the rates under the EPSA by the Honorable Commission, without the need to disclose the contents of the Confidential Documents.
36. Given the foregoing, the Confidential Documents **qualifies as "confidential information"** and FDCMPC respectfully moves for the issuance of a Protective Order to this effect.

ALLEGATIONS IN SUPPORT FOR THE ISSUANCE OF
PROVISIONAL AUTHORITY

37. The Joint Applicants recognize the importance of the **continued** operation of LEYECO II and its ability to continuously supply electricity to the consumers within its franchise area. While LEYECO II intends to account for the deficit supply, this process will take time and LEYECO II's consumers will need the assurance of seamless, stable and reliable power while it **prepares** for the CSP.
38. Consequently, LEYECO II was compelled to enter into the LEYECO II-FDCMPC EPSA to ensure an adequate power supply at a rate advantageous to its consumers. In order to ensure the sustainability of their operations, LEYECO II should be permitted to collect the rates, fees, and charges provided in the LEYECO II-FDCMPC EPSA from its customers, as accordingly charged by FDCMPC against LEYECO II pursuant to the same agreement. Any rate lower than the one specified in the LEYECO II-FDCMPC EPSA is not economically feasible and goes against the regulatory principle of enabling generation companies to recover fair and reasonable costs along with a reasonable return.
39. The provisional approval of the EPSA will enable both LEYECO II and FDCMPC to fulfill their obligations without compromising the viability of their operations.

40. The Affidavits of Juan Eugenio L. Roxas, President and CEO of FDCMPC, and Fernan Paul R. Tan, General Manager of LEYECO II, attesting to the truth of the above matters and in support of the prayer for provisional authority are attached as Annexes "CC" and "CC-1".
41. Pursuant to the ERC Rules of Practice and Procedure, the Honorable Commission may exercise its discretion by granting a provisional authority or an Interim Relief prior to a final decision. It is understood that the provisional authority or Interim Relief sought by the Joint Applicants shall be subject to adjustments and other conditions that the Honorable Commission may impose.

PRAYER

WHEREFORE, premises considered, Joint Applicants LEYECO II and FDCMPC most respectfully pray that the Honorable Commission:

1. ISSUE AN ORDER declaring the Confidential Documents attached hereto as Annexes "U", "U-1", "V", "V-1", "V-2", "W", "X", "X-1", "Z", and "Z-1" as confidential information as well as directing that the same be treated with confidentiality and be protected from public disclosure;
2. ISSUE the corresponding PROTECTIVE ORDER in accordance with Section 2, Rule 4 of the ERC Revised Rules of Practice and Procedure;
3. Pending trial on the merits, GRANT PROVISIONAL AUTHORITY to implement the LEYECO II-FDCMPC EPSA and allow LEYECO II to collect such rates, fees, and charges as provided in the EPSA from its customers reckoned from the start of the supply by FDCMPC to LEYECO II; and
4. After due notice and hearing, ISSUE A DECISION (i) approving the instant Joint Application *in toto* which will thereby allow/authorize LEYECO II to charge and collect the fees from its consumers reckoned from the commencement of the supply to the latter by FDCMPC; and (ii) directing that the rates, terms, and conditions of the LEYECO II-FDCMPC EPSA be retroactively applied for the entire term of the EPSA.

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 determination of compliance with the jurisdictional requirements, expository presentation, Pre-Trial Conference, and presentation of evidence on the following dates and online platforms for the conduct thereof, pursuant to Resolution No. 09, Series of

2020²¹ and Resolution No. 01, Series of 2021²² (ERC Revised Rules of Practice and Procedure):

Date	Platform	Activity
08 March 2024 (Friday) at two o'clock in the afternoon (2:00 PM)	Microsoft Teams Application	Determination of compliance with the jurisdictional requirements and expository presentation
15 March 2024 (Friday) at two o'clock in the afternoon (2:00 PM)		Pre-Trial Conference and presentation of evidence

Accordingly, LEYECO II and FDCMPC are hereby directed to host the virtual hearings at LEYECO II's principal office at **Real St., Sagkahan Dist., Tacloban City, Leyte, Philippines**, 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, LEYECO II and FDCMPC shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

RELATIVE THERETO, LEYECO II and FDCMPC are hereby directed to:

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

²¹ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

²² A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

appropriate posting thereof on their respective bulletin boards;

- 3) Inform the consumers within the LEYECO II's franchise area, by any other means available and appropriate, of the filing of the *Joint Application*, their reasons therefor, and of the scheduled virtual hearings thereon;
- 4) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing*, the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress. They are hereby requested, if they so desire, to send their duly authorized representatives and attend the scheduled hearings; and
- 5) Furnish with copies of the *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 before the date of the initial virtual hearing, Applicants LEYECO II and FDCMPC must submit to the Commission via electronic mail (e-mail) at doCKET@erc.ph, copy furnish the Legal Service through legal@erc.ph, the scanned copies of their written compliance with the aforementioned jurisdictional requirements, attaching therewith, methodically arranged and duly marked, the following:

- 1) The evidence of publication of the attached *Notice of Virtual Hearing* consisting of affidavits of the Editors or Business Managers of the newspapers where the said *Notice of Virtual Hearing* was published, and the complete issues of the said newspapers;
- 2) The evidence of actual posting of this *Order* and the attached *Notice of Virtual Hearing* consisting of certifications issued to that effect, signed by the aforementioned Governors, Mayors and LGU legislative bodies or their duly authorized representatives, bearing the seals of their offices;

- 3) The evidence of other means employed by LEYECO II and FDCMPC to inform the consumers within the LEYECO II's franchise area of the filing of the *Joint Application*, their reasons therefor, and of the scheduled hearings thereon;
- 4) The evidence of receipt of copies of this *Order* and the attached *Notice of Virtual Hearing* by the OSG, the COA, and the Committees on Energy of both Houses of Congress;
- 5) The evidence of receipt of copies of the *Joint Application* and its attachments, except those subject of a motion for confidential treatment of information, by all those making requests therefor, if any; and
- 6) Such other proof of compliance with the requirements of the Commission.

Moreover, Applicants LEYECO II and FDCMPC are hereby required to post on their respective bulletin boards, the scanned copies of the foregoing jurisdictional requirements, together with the newspaper publications and certifications issued by concerned Offices of the Governors, Mayors, and Local Legislative Bodies, and to submit proof of posting thereof.

Applicants LEYECO II and FDCMPC, 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; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-Trial Brief.

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

Failure of Applicants LEYECO II and FDCMPC 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.

Applicants LEYECO II and FDCMPC 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.

Applicants LEYECO II and FDCMPC are hereby directed to file a copy of their Expository Presentation via e-mail at docket@erc.ph, and copy furnish the Legal Service through legal@erc.ph, **at least five (5) calendar days** prior to the scheduled virtual hearing. 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.

Applicants LEYECO II and FDCMPC are further directed to submit, either 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.


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

SO ORDERED.

Pasig City, 29 January 2024.

FOR AND BY AUTHORITY
OF THE COMMISSION:


MONALISA C. DIMALANTA
Chairperson and CEO

ERC

Office of the Chairperson and CEO



MCD2024-013930


LS: JPM/MCC/LSP

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PAGE 18 OF 18**

Copy Furnished:

1. Leyte II Electric Cooperative, Inc. (LEYECO II)
Applicant
Real Street, Sagkahan District, Tacloban City, Leyte
Email addresses: leyeco2@yahoo.com, leyecotwo2@gmail.com
2. FDC Misamis Power Corporation (FDCMPC)
Applicant
PHIVIDEC Industrial Estate, Villanueva, Misamis Oriental
Email address: fdcmpr.regulatory@fdcutilities.com, renato.vehemente@fdcutilities.com
3. Atty. Edson G. Piczon
Counsel for Applicant LEYECO II
LEYECO II Main Office, Real St., Sagkahan District
Tacloban City, Leyte
Email address: attypiczon@gmail.com
4. Atty. Mary Felicci Ongchuan
Counsel for Applicant FDCMPC
Ongchuan Javelosa Law Offices
Corporation 3 Hilltop St., Horseshoe, QC
Email address: fbongchuan@ojlawoffices.com, info@ojlawoffices.com
5. Office of the Solicitor General
134 Amorsolo Street, Legaspi Village, Makati City
Email address: docket@osg.gov.ph
6. Commission on Audit
Commonwealth Avenue, Quezon City
Email: citizensdesk@coa.gov.ph
7. Senate Committee on Energy
GSIS Bldg. Roxas Blvd., Pasay City
Email: senateenergycommittee@gmail.com
8. House Committee on Energy
Batasan Hills, Quezon City
Email: committee.energy@house.gov.ph
9. Office of the Governor
Province of Leyte
10. Office of the Sangguniang Panlalawigan
Province of Leyte
11. Office of the City Mayor
Tacloban City
12. Office of the Sangguniang Panlungsod
Tacloban City
13. Office of the Mayor
Palo, Leyte
14. Office of the Sangguniang Bayan
Palo, Leyte
15. Office of the Mayor
Babatngon, Leyte
16. Office of the Sangguniang Bayan
Babatngon, Leyte
17. Regulatory and Operations Service (ROS)
Energy Regulatory Commission
14th Floor, Exquadra Tower, 1 Jade Drive
Ortigas Center, Pasig City

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

IN THE MATTER OF THE
JOINT APPLICATION FOR
APPROVAL OF THE
EMERGENCY POWER
SUPPLY AGREEMENT
ENTERED INTO BY AND
BETWEEN LEYTE II
ELECTRIC COOPERATIVE,
INC. AND FDC MISAMIS
POWER CORPORATION,
WITH PRAYER FOR
PROVISIONAL AUTHORITY
AND CONFIDENTIAL
TREATMENT OF
INFORMATION

ERC CASE NO. 2023-135 RC

LEYTE II ELECTRIC
COOPERATIVE, INC. AND
FDC MISAMIS POWER
CORPORATION,

Applicants.

Promulgated:
January 29, 2024

X-----X

NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 29 November 2023, Leyte II Electric Cooperative, Inc. (LEYECO II) and FDC Misamis Power Corporation (FDCMPC) filed their *Joint Application (With Prayer for Provisional Authority and Confidential Treatment of Information)* dated 19 October 2023, seeking the Commission's approval of their Emergency Power Supply Agreement (EPSA), with prayer for provisional authority and confidential treatment of information.

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

1. LEYECO II is a non-stock, non-profit electric cooperative, duly organized and existing under and by virtue of the laws of the

Philippines, with principal office address at Real St., Sagkahan Dist., Tacloban City, Leyte. It is authorized to distribute and provide electricity services to its member-consumers in the Municipalities of Palo and Babatngon, both in the Province of Leyte, and the City of Tacloban (collectively, the "Franchise Area"). For purposes of this instant Application, LEYECO II is represented herein by its Board President, MS. IMELDA F. LAGUTAN, and General Manager, ENGR. FERNAN PAUL R. TAN, duly authorized by virtue of Resolution No. 135-08-2023.¹

2. FDCMPC is a corporation duly organized and existing under and by the laws of the Republic of the Philippines, with principal office address at the PHIVIDEC Industrial Estate, Villanueva, Misamis Oriental 9002. For purposes of this Application, FDCMPC is represented by its President and Chief Executive Officer ("CEO"), MR. JUAN EUGENIO L. ROXAS, duly authorized for the purpose by virtue of a Secretary Certificate No. 202308-03.²
3. The Joint Applicants may be served with the orders, notices, and other processes of the Honorable Commission through their respective undersigned counsels at the addresses indicated herein.

NATURE OF THE APPLICATION

4. The instant Joint Application for approval of the Emergency Power Supply Agreement ("EPSA") entered into by and between LEYECO II and FDCMPC dated 11 August 2023 (the "*LEYECO II-FDCMPC EPSA*") is being submitted to the Honorable Commission for its review and approval pursuant to Sections 25³ and 45(b)⁴ of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (the "EPIRA"), Rule 20(B) of the Honorable Commission's Resolution No. 01, Series of 2021⁵ (the "ERC Revised Rules of Practice and Procedure"), and Department of Energy ("DOE") Department Circular No. 2023-06-0021 (the "DC2023-06-0021").⁶
5. In compliance with Section 2, Rule 6 of the ERC Revised Rules of Practice and Procedure, a copy of the instant Application (with all its annexes and accompanying documents, except those subject of a motion for confidential treatment of information) was furnished to the following offices:⁷

¹ See Annex "DD" of the Joint Application.

² See Annex "EE" of the Joint Application.

³ SEC.25. Retail Rate. – The retail rates charged by distribution utilities for the supply of electricity in their captive market shall be subject to regulation by the ERC based on the principle of full recovery of prudent and reasonable economic costs incurred, or such other principles that will promote efficiency as may be determined by the ERC.

⁴ Distribution utilities may enter into bilateral power supply contracts subject to review by the ERC:
xxx xxx xxx.

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

⁶ Entitled, "*Prescribing the policy for the mandatory conduct of the Competitive Selection Process by the Distribution Utilities for the procurement of power supply for their captive market*"

⁷ See Annex "FF" and series of the Joint Application.

- a. Office of the Mayor of the Municipality of Villanueva;
 - b. Office of the Presiding Officer of the *Sangguniang Bayan* of the Municipality of Villanueva;
 - c. Office of the Governor of the Province of Misamis Oriental;
 - d. Office of the Presiding Officer of the *Sangguniang Panlalawigan* of the Province of Misamis Oriental;
 - e. Office of the Mayor of the City of Tacloban;
 - f. Office of the Presiding Officer of the *Sangguniang Panlungsod* of the City of Tacloban;
 - g. Office of the Governor of the Province of Leyte; and
 - h. Office of the Presiding Officer of the *Sangguniang Panlalawigan* of the Province of Leyte.
6. Further, the Joint Application was also published in a newspaper of general circulation.⁸

STATEMENT OF FACTS

7. Necessity for Power Supply: LEYECO II executed a Power Purchase and Sale Agreement (“PPSA”) with GNPowr Dinginin Ltd. Co. (“GNPD”) for 20 MW Baseload Power Supply, which was submitted to the Honorable Commission for approval under ERC Case No. 2016-046 RC.
8. However, as will be discussed below, the Honorable Commission ultimately directed LEYECO II to stop implementing the PPSA; thus, LEYECO II was constrained to look for alternative power suppliers and eventually executed the LEYECO II-FDCMPC EPSA subject of this Joint Application.
- 8.1. On 23 September 2016, the Honorable Commission issued an Order dated 05 July 2016 granting provisional authority to LEYECO II and GNPD to implement the PPSA.
- 8.2. On 03 May 2019, the Supreme Court rendered its Decision in the case of *Alyansa Para sa Bagong Pilipinas, Inc. v. Energy Regulatory Commission, et al.* (the “*Alyansa Decision*”),⁹ requiring all applications for approval of power supply agreements filed before the Honorable Commission on or after 30 June 2015 to comply with the Competitive Selection Process (“CSP”) requirement provided under the DOE Department Circular No. DC2018-02-003.
- 8.3. In an Order dated 19 April 2023 for ERC Case No. 2016-046 RC, the Honorable Commission issued an Order: (i) dismissing the application filed by LEYECO II and GNPD for the approval of the PPSA; (ii) terminating the provisional authority granted to LEYECO II and GNPD to implement the PPSA; and (iii) directing LEYECO II and GNPD to stop implementing their PPSA immediately upon receipt of the Order.

⁸ See Annex “GG” and series of the Joint Application.

⁹ G.R. No. 227670, 03 May 2019.

9. Pursuant to the 19 April 2023 Order, *which was received by LEYECO II on 18 July 2023*, GNPD stopped supplying power to LEYECO II on 17 July 2023. On 20 July 2023, LEYECO II filed a *Partial Motion for Reconsideration* with a prayer for a 30-day grace period for LEYECO II to secure an emergency power supply agreement to supplement its demand requirements.
10. Without the power from GNPD, LEYECO II is not able to cover its total demand requirements and is forced to purchase power from the Wholesale Electricity Spot Market (“WESM”), thereby exposing itself (and its consumers) to the volatile prices in the market.
11. LEYECO II intends to account for the deficit supply in its upcoming Power Supply Procurement Plan and conduct the necessary CSP to secure its energy needs. However, the CSP process will take time thereby subjecting LEYECO II to prevailing WESM market prices in the interim period.
12. All these conditions resulted into an emergency situation which prompted LEYECO II to immediately procure emergency supply of energy.
13. On 10 August 2023, the Honorable Commission issued an Advisory approving a “Transition Period” to allow distribution utilities affected by the *Alyansa Decision*, like LEYECO II, an opportunity to negotiate an emergency power sales agreement for their respective power requirements.¹⁰
14. LEYECO II then solicited offers from various generation companies¹¹ for their emergency power requirements, and FDCMPC’s offer was the most advantageous given the circumstance. Accordingly, LEYECO II entered into negotiations with FDCMPC for emergency power supply, and eventually executed the LEYECO II-FDCMPC EPSA subject of the instant Joint Application.

**ABSTRACT OF THE EMERGENCY POWER SALES AGREEMENT
AND RELATED INFORMATION**

15. LEYECO II Power Situation. LEYECO II’s peak demand for its Franchise Area is 59 MW for 2023 to 2024 as provided in its Supply - Demand Scenario.¹²
16. Generation Facility. The power to be provided to LEYECO II will be sourced from FDCMPC’s 3 x 135 MW circulating fluidized bed coal fired thermal power plant in the PHIVIDEC Industrial Estate, in Villanueva, Misamis Oriental, with a rated capacity of 405 MW and net dependable capacity of 369 MW (the “Power Plant”). FDCMPC shall supply power to LEYECO II under the terms stipulated in the LEYECO II-FDCMPC EPSA.

¹⁰ See Annex “HH” and series of the Joint Application.

¹¹ See Annex “Q” and series of the Joint Application.

¹² See Annex “M” of the Joint Application.

17. Salient Features of the EPSA.

17.1. Term: The Term of the EPSA shall be one (1) year from the delivery date, or 12 August 2023 to 11 August 2024.

17.2. Date of Commencement of Supply: The EPSA shall take effect immediately on Effective Date, where the Effective Date is the date of signing of the EPSA.

17.3. Contract Type: Firm and Non-Firm

17.4. Installed Capacity of the Power Plant: 405MW

17.5. Net Dependable Capacity of the Power Plant: 369MW

17.6. Contract Demand and Contract Energy: Contract Demand of 14 MW Baseload and up to additional 6 MW Load Following. The Applicants agreed to the following service specifications:

	Firm	Non-Firm	Total
Contracted Demand	14,000 kW	6,000 kW	20,000 kW
Contracted Energy (Annual)	122,640,000 kWh	Actual Up to 52,560,000 kWh	
Customer Load Factor Per Interval	70% (Baseload)	Actual (Load Following)	
Customer's Minimum Demand	At least 70% of Customer's Total Contracted Demand		
Delivery Point	Plant Gate FDC Misamis Power Corporation's Power Plant		
Voltage at the Plant Gate	138 kV		

17.7. Outage Allowance: FDCMPC is allowed an Outage Allowance of 20 days or 480 hours.

LEYECO II shall be responsible for the procurement of Replacement Power during the Outage Allowance. While FDCMPC shall exert best efforts to procure Replacement Power beyond the Outage Allowance.

17.8. Billing and Settlement: FDCMPC shall provide a monthly Power Bill to LEYECO II that shall contain the volume of energy, and the amount of money (in Philippine Peso) due and payable by LEYECO II every Billing Period both reckoned from the Delivery Point.

The Billing and Settlement between the Parties shall be in accordance with Schedule 3 of the LEYECO II-FDCMPC EPSA.

17.9. **Termination:** Either party may terminate the LEYECO II-FDCMPC EPSA with immediate effect by serving written notice to the other party in the event that the other party breaches any provision of the EPSA and fails to cure such breach within a period of thirty (30) days from receipt of notice of such breach.

17.10. **Prompt Payment Discount:** FDCMPC may grant a Prompt Payment Discount, provided that:

- (i) Payment is made on or before 11:00 am of the tenth (10th) day of the Payment Month; and
- (ii) LEYECO II has not incurred any delay in the payment of its bills for the past six (6) Payment Months.

The Prompt Payment Discount shall be applied in the immediately succeeding billing.

17.11. **Generation Charge:**

BASELOAD (FIRM):	RATE IN PHP/KW/M ONTH	RATE IN PHP/KWH	BILLING DETERMINANT(BD)
Capital Recovery Fee (CRF), Php/kW/month	912.50	1.2500	Contract Demand in kW
Fixed O&M (FOM), Php/kW/month	452.09	0.6193	Contract Demand in kW
Variable O&M (VOM), Php/kWh		0.1907	Actual energy consumed or 70% of Contract Energy in kWh, whichever is higher
Fuel Cost (FC), Php/kWh		pass-through	Actual energy consumed in kWh

BASELOAD (FIRM)

Generation Charge = [CRF + FOM + VOM + FC] Charges

- CRF Charge = (912.50Php/kW/month)* BD
- FOM Charge = [(452.09Php/kW/month) * (PH CPI_{CURRENT}/PH CPI_{BASE})] * BD
- VOM Charge = [(0.1907Php/kWh) * (PH CPI_{CURRENT}/PH CPI_{BASE})] * BD
- Fuel Cost = [(DCP * ACR or MCR, whichever is lower)/1000] * BD

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Where:

BD = Billing Determinant kW or kWh
 DCP = Delivered Coal Price PhP/MT
 = Total Coal Cost (PhP)/ Total Coal
 Consumption (MT)
 ACR = Actual Fuel Consumption Rate kg/kWh
 = Total Coal Consumption (MT)/ Total Metered
 Quantity of the Plant (kWh)
 MCR_{CAP} = Maximum Consumption Rate equal to 0.75, kg/kWh
 escalated at a rate of 1.5% annually

Indexation: PH CPI_{BASE} = 121.4 (January 2023)

Other Pass-Through Charges: Market Charges and Line Rental
 Charges

18. Estimated Rate Impact. The indicative rate impact on LEYECO IF's overall generation rate with and without the additional supply from FDCMPC is as follows:¹³

Generation Rate Impact of EPSA	
Without FDCMPC	Php6.9182/kWh
With FDCMPC	Php5.5316/kWh
Rate Impact	Php1.3866/kWh

19. Environmental Compliance Certificate. The Department of Environment and Natural Resources – Environmental Management Bureau (“DENR-EMB”) issued the Environmental Compliance Certificate No. ECC-CO-1304-0012 covering the Power Plant.¹⁴

20. Board of Investments (“BOI”) Certificate. The Power Plant is registered with the BOI. A Certificate of Registration No. 213-177 was issued by the BOI to this effect.¹⁵

21. Fuel Supply. In order to ensure the supply of fuel for the operations of the Power Plant, FDCMPC solicited offers from reputable suppliers, and has contracted with the supplier that offered the best terms.¹⁶

22. DOE Certification. The DOE has certified that the Power Plant is consistent with the Power Development Plan. A Certificate of Endorsement No. 2015-03-010 was issued by the DOE to this effect.¹⁷

23. Provisional Authority to Operate (“PAO”). The Honorable Commission has issued a Certificate of Compliance No. 17-05-M-

¹³ See Annex “KK” of the Joint Application.

¹⁴ See Annex “I” of the Joint Application.

¹⁵ See Annex “H” of the Joint Application.

¹⁶ See Annexes “X” and “Y” of the Joint Application.

¹⁷ See Annex “K” of the Joint Application.

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00108M (“COC”) for the Power Plant, which expired. On 28 October 2021, the Honorable Commission issued a PAO for the Power Plant for a period of one (1) year until 16 October 2022. Finally, on 15 June 2023, the Honorable Commission issued a Certification that the PAO for the Power Plant is currently being evaluated. This Certification is valid for six (6) months from 15 June 2023 or until the resolution of its COC renewal application.¹⁸

24. Point-to-Point Application. In an application docketed as ERC Case No. 2015-054 MC, FDCMPC secured the authority from this Honorable Commission to develop, own, and operate dedicated point-to-point limited transmission facilities connecting the Power Plant to the Mindanao grid through the National Grid Corporation of the Philippines’ Villanueva Substation.

25. Copies of the following documents and/or information are attached to the Joint Application as annexes and made as integral parts hereof:

Annex	Documents/Information
“A”	LEYECO II-FDCMPC EPSA
“B”	LEYECO II Amended Articles of Incorporation,
“B-1”	LEYECO II Amended By-Laws
“C”	LEYECO II Certificate of Franchise
“D”	LEYECO II NEA Certificate of Registration of Amended Articles of Incorporation
“E”	LEYECO II List of Board of Directors
“F”	FDCMPC Amended Articles of Incorporation,
“F-1”	FDCMPC Amended By-Laws,
“F-2”	FDCMPC Amended General Information Sheet for 2023, and
“F-3”	FDCMPC Verified Certification on Parent, Subsidiaries, and Affiliates Board of Directors
“G”	FDCMPC SEC Certificate of Registration with Amendments and Shareholders’ Agreement
and series	
“H”	FDCMPC BOI Certificate of Registration with attached Terms and Conditions
“I”	FDCMPC DENR-EMB ECC
“J”	FDCMPC ERC COC No. 17-05-M-00108M
“J-1”	FDCMPC PAO valid until 16 October 2022
“J-2”	FDCMPC PAO Certificate of Filing dated 15 June 2023
“K”	FDCMPC DOE Certificate of Endorsement
“L”	LEYECO II Power Supply Procurement Plan and
“L-1”	LEYECO II Distribution Development Plan
“M”	LEYECO II Supply and Demand Scenario, Details of Existing Suppliers, and Contract Utilization and LEYECO II Average Daily Load Curve
“M-1”	
“N”	LEYECO II Single-line Diagram Connection
“O”	LEYECO II Performance Assessment

¹⁸ See Annexes “J” to “J-2” of the Joint Application.

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"P"	LEYECO II Potential for Load Reduction Due to Retail Competition
"Q" and series	LEYECO II Solicitation Letters to Generation Companies
"R"	FDCMPC Samuel R. Lamorena Verified Certification
"S" and series	Transmission Service Agreement and Metering Services Agreement of LEYECO II and FDCMPC, respectively
"T"	LEYECO II-FDCMPC EPSA Executive Summary
"U" "U-1"	FDCMPC Sources of Funds and Financial Plans and FDCMPC Bank Certifications
"V" and "V-1" "V-2"	FDCMPC Generation Rate and Derivation, FDCMPC Basis of Other Charges, FDCMPC Financial Model, Project Costs, and Breakdown of Costs
"W"	FDCMPC Cash Flow
"X" "X-1"	FDCMPC Fuel Supply Procurement Process FDCMPC Certification on Spot Fuel Agreement
"Y"	FDCMPC Sworn Statement on Fuel Concerns
"Z" "Z-1" "Z-2"	FDCMPC Relevant Technical and Economic Characteristics of the Generation Capacity, FDCMPC Engineering, Procurement, and Construction Contract Certification, and FDCMPC Simulation of Operating Units to Meet Minimum Energy Off-Take
"AA"	FDCMPC 2022 Audited Financial Statements
"BB"	FDCMPC WESM Registration
"CC" "CC-1" "JJ"	FDCMPC Affidavit in Support of Prayer for Provisional Authority and LEYECO II Affidavit in Support of Prayer for Provisional Authority Explanation for Non-Applicability of Documents

The conduct of a CSP is not required and the LEYECO II-FDCMPC EPSA is immediately implementable

26. LEYECO II need not undergo a CSP prior to execution of the LEYECO II-FDCMPC EPSA. Moreover, the LEYECO II-FDCMPC EPSA is immediately implementable upon its execution consistent with prevailing regulations of the Honorable Commission and the DOE.
27. As mentioned above, the Honorable Commission granted distribution utilities affected by the *Alyansa* Decision, like LEYECO II, an opportunity to negotiate an emergency power sales agreement for their respective power requirements.
28. Under Sections 2.3 and 2.3.5 of the DOE's DC2023-06-0021, the conduct of a CSP is not required for the negotiated procurement of emergency power supply, and the filing of an emergency power

supply agreement with the Honorable Commission does not need any prior clearance or certification from the DOE.

29. Moreover, in an *Advisory* dated 07 June 2023 as amended by another *Advisory* dated 23 June 2023,¹⁹ the Honorable Commission stated that an emergency power supply agreement shall be immediately implementable upon its execution, and the rates to be charged shall be capped at the latest ERC-approved generation tariff for the same technology in comparable areas.

**ALLEGATIONS RELATIVE TO THE PRAYER FOR
 CONFIDENTIAL TREATMENT OF INFORMATION**

30. Section 1, Rule 4 of the ERC Revised Rules of Practice and Procedure provides that a party to a proceeding before the Honorable Commission may move for information to be treated as confidential.
31. Pursuant thereto, FDCMPC prays that the information contained in the documents enumerated below be treated as *CONFIDENTIAL* and that the same be continuously protected from public disclosure, except to the officers and staff of the Honorable Commission (collectively referred to as “Confidential Documents”):

Annex	Documents/Information
“U”	FDCMPC Sources of Funds and Financial Plans
“U-1”	FDCMPC Bank Certifications
“V”	FDCMPC Generation Rate and Derivation
“V-1”	FDCMPC Basis of Other Charges
“V-2”	FDCMPC Financial Model, Project Costs, and Breakdown of Costs
“W”	FDCMPC Cash Flow
“X”	FDCMPC Fuel Supply Procurement Process
“X-1”	FDCMPC Certification on Spot Fuel Agreement
“Z”	FDCMPC Relevant Technical and Economic Characteristics of the Generation Capacity
“Z-1”	FDCMPC Engineering, Procurement, and Construction Contract Certification

32. The Confidential Documents contain certain non-public information, data, and calculations involving business operations and financial trade secrets reflecting FDCMPC’s investment and business calculations. As such, the foregoing information, data, and calculations fall within the bounds of “trade secrets” that are entitled to protection under the law.
33. In the case *Air Philippines Corporation vs. Pennswell Inc.*,²⁰ the Supreme Court defined “trade secret” as follows:

“A trade secret is defined as a plan or process, tool, mechanism, or compound known only to its owner and

¹⁹ See Annexes “II” and “II-2” of the Joint Application.

²⁰ G. R. No. 172835, 13 December 2007.

those of his employees to whom it is necessary to confide it. 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 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 advantage over competitors who do not possess the information. Generally, a trade secret is a process or device intended for continuous 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."

34. Also, the Confidential Documents were prepared and developed for the exclusive use of FDCMPC, and is designed for the specific use of the company in its power generation business. Consequently, should the same be disclosed to the public, they could easily be copied or used by FDCMPC's competitors or other entities engaged in the power business for their own benefit, and to the prejudice of FDCMPC.
35. The interest of LEYECO II's consumers is sufficiently protected by the review and evaluation of the rates under the EPSA by the Honorable Commission, without the need to disclose the contents of the Confidential Documents.
36. Given the foregoing, the Confidential Documents qualifies as "confidential information" and FDCMPC respectfully moves for the issuance of a Protective Order to this effect.

ALLEGATIONS IN SUPPORT FOR THE ISSUANCE OF
PROVISIONAL AUTHORITY

37. The Joint Applicants recognize the importance of the continued operation of LEYECO II and its ability to continuously supply electricity to the consumers within its franchise area. While LEYECO II intends to account for the deficit supply, this process will take time and LEYECO II's consumers will need the assurance of seamless, stable and reliable power while it prepares for the CSP.
38. Consequently, LEYECO II was compelled to enter into the LEYECO II-FDCMPC EPSA to ensure an adequate power supply at a rate advantageous to its consumers. In order to ensure the sustainability of their operations, LEYECO II should be permitted to collect the rates, fees, and charges provided in the LEYECO II-FDCMPC EPSA from its customers, as accordingly charged by FDCMPC against LEYECO II pursuant to the same agreement. Any rate lower than the one specified in the LEYECO II-FDCMPC EPSA is not economically feasible and goes against the regulatory principle of enabling generation companies to recover fair and reasonable costs along with a reasonable return.

39. The provisional approval of the EPSA will enable both LEYECO II and FDCMPC to fulfill their obligations without compromising the viability of their operations.
40. The Affidavits of Juan Eugenio L. Roxas, President and CEO of FDCMPC, and Fernan Paul R. Tan, General Manager of LEYECO II, attesting to the truth of the above matters and in support of the prayer for provisional authority are attached as Annexes "CC" and "CC-1".
41. Pursuant to the ERC Rules of Practice and Procedure, the Honorable Commission may exercise its discretion by granting a provisional authority or an Interim Relief prior to a final decision. It is understood that the provisional authority or Interim Relief sought by the Joint Applicants shall be subject to adjustments and other conditions that the Honorable Commission may impose.

PRAYER

WHEREFORE, premises considered, Joint Applicants LEYECO II and FDCMPC most respectfully pray that the Honorable Commission:

1. ISSUE AN ORDER declaring the Confidential Documents attached hereto as Annexes "U", "U-1", "V", "V-1", "V-2", "W", "X", "X-1", "Z", and "Z-1" as confidential information as well as directing that the same be treated with confidentiality and be protected from public disclosure;
2. ISSUE the corresponding PROTECTIVE ORDER in accordance with Section 2, Rule 4 of the ERC Revised Rules of Practice and Procedure;
3. Pending trial on the merits, GRANT PROVISIONAL AUTHORITY to implement the LEYECO II-FDCMPC EPSA and allow LEYECO II to collect such rates, fees, and charges as provided in the EPSA from its customers reckoned from the start of the supply by FDCMPC to LEYECO II; and
4. After due notice and hearing, ISSUE A DECISION (i) approving the instant Joint Application *in toto* which will thereby allow/authorize LEYECO II to charge and collect the fees from its consumers reckoned from the commencement of the supply to the latter by FDCMPC; and (ii) directing that the rates, terms, and conditions of the LEYECO II-FDCMPC EPSA be retroactively applied for the entire term of the EPSA.

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

The Commission hereby sets the instant *Joint Application* for determination of compliance with the jurisdictional requirements, expository presentation, Pre-Trial Conference, and presentation of evidence on the following dates and online platforms for the conduct

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thereof, pursuant to Resolution No. 09, Series of 2020²¹ and Resolution No. 01, Series of 2021²² (ERC Revised Rules of Practice and Procedure):

Date	Platform	Activity
08 March 2024 (Friday) at two o'clock in the afternoon (2:00 PM)	Microsoft Teams Application	Determination of compliance with the jurisdictional requirements and expository presentation
15 March 2024 (Friday) at two o'clock in the afternoon (2:00 PM)		Pre-Trial Conference and presentation of evidence

Accordingly, LEYECO II and FDCMPC are hereby directed to host the virtual hearings at LEYECO II's principal office at **Real St., Sagkahan Dist., Tacloban City, Leyte, Philippines**, 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, LEYECO II and FDCMPC shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

Any interested stakeholder may submit its comments and/or clarifications **at least one (1) calendar day** prior to the scheduled initial virtual hearing, via electronic mail (e-mail) at doCKET@erc.ph and copy furnish the Legal Service through legal@erc.ph. The Commission shall give priority to the stakeholders who have duly submitted their respective comments and/or clarifications, to discuss the same and propound questions during the course of the expository presentation.

Moreover, any person who has an interest in the subject matter of the instant case may become a party by filing with the Commission via e-mail at doCKET@erc.ph, and copy furnishing the Legal Service through legal@erc.ph, a verified Petition to Intervene **at least five (5) calendar days** prior to the date of the initial virtual hearing and must follow the requirements under Rule 9 of the ERC Revised Rules of

²¹ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

²² A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

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Practice and Procedure, indicating therein the docket number and title of the case, and stating the following:

- 1) The petitioner's name, mailing address, and e-mail address;
- 2) The nature of petitioner's interest in the subject matter of the proceeding and the way and manner in which such interest is affected by the issues involved in the proceeding; and
- 3) A statement of the relief desired.

Likewise, all other persons who may want their views known to the Commission with respect to the subject matter of the case may file through e-mail at docket@erc.ph, and copy furnish the Legal Service through legal@erc.ph, their Opposition or Comment thereon **at least five (5) calendar days** prior to the initial virtual hearing. Rule 9 of the ERC Revised Rules of Practice and Procedure shall govern. No particular form of Opposition or Comment is required, but the document, letter, or writing should contain the following:

- 1) The name, mailing address, and e-mail address of such person;
- 2) A concise statement of the Opposition or Comment; and
- 3) The grounds relied upon.

All interested parties filing their Petition to Intervene, Opposition or Comment are required to submit the hard copies thereof through personal service, registered mail or ordinary mail/private courier, **within five (5) working days** from the date that the same were electronically submitted, as reflected in the acknowledgment receipt e-mail sent by the Commission.

Any of the persons mentioned in the preceding paragraphs may access the copy of the *Joint Application* through 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 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 29th day of January 2024 in Pasig City.

mdimalanta
MONALISA C. DIMALANTA
Chairperson and CEO

ERC
Office of the Chairperson and CEO



MCD2024-013930

LS: JPM/MCC/LSP