



LEYTE V ELECTRIC COOPERATIVE, INC.

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Item No.: 14

Reference No. 2024-05-251

May 8, 2024

HON. LEONARDO M. JAVIER

Vice Governor and Presiding Officer
Sangguniang Panlalawigan
Province of Leyte

Province of Leyte
Date: 12 2024 MAY
14 MAY 2024
SANGGUNIANG PANLALAWIGAN

Subject: Request for a Certificate of Posting of the attached Order and Notice of Virtual Hearing for ERC CASE NO. 2024-049 RC: "IN THE MATTER OF THE JOINT APPLICATION FOR APPROVAL OF THE EMERGENCY POWER SUPPLY AGREEMENT ENTERED INTO BY AND BETWEEN LEYTE V ELECTRIC COOPERATIVE, INC. AND FDC MISAMIS POWER CORPORATION WITH PRAYER FOR PROVISIONAL AUTHORITY AND CONFIDENTIAL TREATMENT OF INFORMATION"

Dear Honorable Vice Governor Javier:

This refers to the above-entitled *Joint Application* filed by Leyte V Electric Cooperative, Inc. and FDC Misamis Power Corporation before the Energy Regulatory Commission ("ERC") docketed as ERC Case No. 2024-049 RC.

The ERC promulgated an *Order* and a *Notice of Virtual Hearing* (the "*Notice*"), both dated 01 April 2024, setting the hearings for the *Joint Application* on **30 May 2024 and 06 June 2024**.

In compliance with the *Order*, we are furnishing the Office of the Sangguniang Panlalawigan with copies of the *Order* and *Notice* for posting on your bulletin board for public information. Accordingly, we respectfully **request three (3) original copies of the Certificate of Posting** signed by you or your duly designated representative, bearing the dry seal and logo of your office, certifying the receipt, and posting on your bulletin boards of the said ERC *Order* and *Notice*. Attached is a blank certification, which your office may opt to use for this purpose.

If you have no dry seal and logo, kindly make a small note on the lower left side of the certification (i.e., not using a dry seal and logo), so that we can manifest the same to the ERC.

As the Certificate of Posting is required to be submitted before the date of the initial hearing as part of the compliance with the jurisdictional requirements of the above-mentioned case, we would highly appreciate receiving the Certificate of Posting on or before 17 May 2024 (Friday). This timeframe allows us to consolidate and prepare the jurisdictional requirements for submission to the ERC.

Kindly send an advance electronic copy of the Certificate to info@leyeco-v.com.ph and info@ojlawoffices.com.

Thank you very much for your usual cooperation.

Very truly yours,


ATTY. JANNIE ANN J. DAYANDAYAN, CPA
General Manager


AP / JRB / MRG

Executive Secretary: 206 InfoTech & Comm. Services: 216-218, 509
Institutional Services Dept.: 401 Public Relations: 214 Clinic: 209
Membership Division Chief: 403 Membership: 404 Housewiring: 407
Customer Welfare Desk: 200-205 Motorpool: 406
Human Resources: 402, 210 GSD Chief: 408 Warehouse: 405
Corporate Planning & Energy Trading Dept.: 219, 221, 223

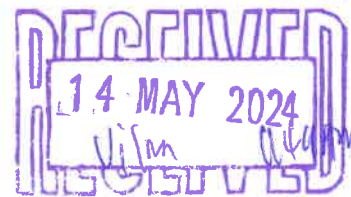
Technical Services Dept.: 801,802 Engineering: 803
Line Construction: 804
Internal Audit Dept.: 701 Auditors: 702
Finance Services Dept.: 501 Cashiering: 502
Collection: 503-504 Accounting: 505 Consumer Accts: 506
Meter Reading & Billing: 507, 508 & 510



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 V
ELECTRIC COOPERATIVE,
INC. AND FDC MISAMIS
POWER CORPORATION,
WITH PRAYER FOR
PROVISIONAL AUTHORITY
AND CONFIDENTIAL
TREATMENT OF
INFORMATION

SANGGUNIANG PANLALAWIGAN



PROVINCE OF LEYTE

ERC CASE NO. 2024-049 RC

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

Applicants.

X-----X

Promulgated:
April 01, 2024

ORDER

On 26 March 2024, Leyte V Electric Cooperative, Inc. (LEYECO V) and FDC Misamis Power Corporation (FDCMPC) filed a *Joint Application*, dated 29 November 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 *Joint Application* are hereunder quoted as follows:

THE JOINT APPLICANTS

1. LEYECO V 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 Brgy. San Pablo, Ormoc City. LEYECO V serves the power requirements

of the Municipalities of Merida, Isabel, Palompon, Villaba, Tabango, San Isidro, Calubi-an, Leyte, Matag-ob, Kananga, Albuera, and the City of Ormoc, all in the Province of Leyte (collectively, the “Franchise Area”). For purposes of this *Joint Application*, LEYECO V is represented herein by its Board President MR. EMMANUEL S. ARPON and General Manager ATTY. JANNIE ANN J. DAYANDAYAN, duly authorized by LEYECO V’s Board of Directors.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 *Joint 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 Secretary Certificate No. 202308-09.²
3. The Joint Applicants may be served with the orders, notices, and other processes of the Honorable Commission through their undersigned counsel at the address 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 V and FDCMPC dated 20 September 2023 (the “LEYECO V-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 the Department of Energy’s (“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 Joint 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.

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

STATEMENT OF FACTS

7. Necessity for Power Supply. LEYECO V executed a *Power Purchase and Sale Agreement* (“PPSA”) with GNP Power Dinginin Ltd. Co. (“GNPD”), which was submitted to the Honorable Commission for approval under ERC Case No. 2016-057 RC.
8. However, as will be discussed below, the Honorable Commission ultimately directed LEYECO V to stop implementing the PPSA, resulting to a significant drop in capacity available for LEYECO V. Thus, LEYECO V was constrained to look for alternative power suppliers and eventually executed the *LEYECO V-FDCMPC EPSA* subject of this *Joint Application*.
- 8.1 The Honorable Commission issued an *Order* dated 05 July 2016 granting provisional authority/interim relief to LEYECO V and GNPD to implement their 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 DOE Department Circular No. DC2018-02-003.
- 8.3 In an *Order* dated 19 April 2023 in ERC Case No. 2016-057 RC, the Honorable Commission: (i) dismissed with prejudice the application filed by LEYECO V and GNPD for the approval of the PPSA; (ii) terminated the provisional authority granted to LEYECO V and GNPD

⁸ See Annex “GG” of the *Joint Application*.

⁹ G.R. No. 227670, 03 May 2019.

to implement the PPSA; and (iii) directed LEYECO V and GNPD to stop implementing the PPSA immediately upon receipt of the said *Order*.

- 8.4 In compliance with the above-cited *Order*, which was received by LEYECO V on 23 August 2023, LEYECO V and GNPD stopped implementing their *PPSA*.
9. Without the power from GNPD, LEYECO V 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.
10. LEYECO V 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 V to prevailing WESM market prices in the interim period.
11. All these conditions resulted into an emergency situation which prompted LEYECO V to immediately procure emergency supply of energy.
12. LEYECO V then solicited offers from various generation companies¹⁰ for their emergency power requirements, and FDCMPC’s offer was the most advantageous given the circumstance. Accordingly, LEYECO V entered into negotiations with FDCMPC for emergency power supply, and eventually executed the *LEYECO V-FDCMPC EPSA* subject of the instant *Joint Application*.
13. Notably, 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 V, an opportunity to negotiate an emergency power sales agreement for their respective power requirements.¹¹

ABSTRACT OF THE EMERGENCY POWER SALES AGREEMENT AND RELATED INFORMATION

14. LEYECO V Power Situation. LEYECO V’s peak demand for its Franchise Area is 49.77 MW for 2023 to 2024 as provided in its Supply - Demand Scenario.¹²
15. Generation Facility. The power to be provided to LEYECO V 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 baseload

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

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

¹² See Annex “M” of the *Joint Application*.

power to LEYECO V under the terms stipulated in the *LEYECO V-FDCMPC EPSA*.

16. Salient Features of the EPSA.

16.1 Term: The Term of the EPSA shall be one (1) year from the delivery date, or from 22 September 2023 to 21 September 2024

16.2 Contract Type: Firm

16.3 Installed Capacity of the Power Plant: 405MW

16.4 Net Dependable Capacity of the Power Plant: 369MW

16.5 Contract Demand and Contract Energy: The Joint Applicants agreed to the following service specifications:

	FIRM
Contracted Demand	11,000 kW
Contracted Energy (Annual)	96,360,000 kWh
Customer Load Factor Per Interval	at least 70%
Delivery Point	Plant Gate of the Power Plant
Voltage at the Plant Gate	138 kV

16.6 Outage Allowance:

Planned	15.4 days or 369.6 hours
Unplanned	16.9 days or 405.6 hours

It is LEYECO V's obligation to procure Replacement Power, at its own costs, during outage within the Outage Allowance. While FDCMPC shall exert best efforts to procure Replacement Power beyond the Outage Allowance.

16.7 Billing and Settlement: FDCMPC shall provide a monthly Power Bill to LEYECO V that shall contain the volume of energy, and the amount of money (in Philippine Peso) due and payable by LEYECO V 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 EPSA.

16.8 Termination: Either Party may terminate the 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.

ERC CASE NO. 2024-049 RC
ORDER/ 1 APRIL 2024
PAGE 6 OF 19

16.9 Prompt Payment Discount: FDCMPC shall 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 V 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.

16.10 Generation Charge:

BASELOAD (FIRM):	RATE IN PHP/ KW/ MONTH	RATE IN PHP/KWH	BILLING DETERMINANT (BD)
Capital Recovery Fee (CRF), Php/ kW/ month	1,095.00	1.5000	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% LF, 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 = [(1,095.00Php/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)

ERC CASE NO. 2024-049 RC
ORDER/ 1 APRIL 2024
PAGE 7 OF 19

MCR_{CAP} = Maximum Consumption Rate equal kg/kWh
to 0.75, 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

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

Generation Rate Impact of EPSA	
With FDCMPC	Php 6.3450/kWh
Without FDCMPC	Php 6.7260/kWh
Rate Impact	(Php 0.3810/kWh)

18. **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
19. **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
20. **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
21. **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
22. **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 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, whichever comes earlier.¹⁸

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.

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

ERC CASE NO. 2024-049 RC
ORDER/ 1 APRIL 2024
PAGE 8 OF 19

23. 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.
24. Copies of the following documents and/or information are attached to this *Joint Application* as annexes and made as integral parts hereof:

Annex	Documents/Information
"A"	LEYECO V-FDCMPC EPSA
"B"	LEYECO V Articles of Incorporation
"B-1"	LEYECO V By-Laws
"C"	LEYECO V Certificate of Franchise
"D"	LEYECO V NEA Certificate of Registration of Articles of Incorporation
"E"	Verified Certification of LEYECO V List 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"	and FDCMPC PAO Certificate of Filing dated 15 June 2023
"K"	FDCMPC DOE Certificate of Endorsement
"L"	LEYECO V Power Supply Procurement Plan and
"L-1"	LEYECO V Distribution Development Plan
"M"	LEYECO V Supply and Demand Scenario, Details of Existing Suppliers, Contract Utilization, and Average Daily Load Curve
"N"	LEYECO V Single-line Diagram Connection
"O"	LEYECO V Performance Assessment
"P"	LEYECO V Potential for Load Reduction Due to Retail Competition
"Q" and series	LEYECO V Solicitation Letters to Generation Companies
"R"	FDCMPC Samuel R. Lamorena Verified Certification

"S"	FDCMPC Transmission Service Agreement and
"S-1"	FDCMPC Metering Services Agreement
"T"	LEYECO V-FDCMPC EPSA Executive Summary
"U"	FDCMPC Sources of Funds and Financial Plans and
"U-1"	FDCMPC Bank Certifications
"V"	FDCMPC Generation Rate and Derivation;
"V-1"	FDCMPC Basis of Other Charges; and
"V-2"	FDCMPC Financial Model, Project Costs, and Breakdown of Costs
"W"	FDCMPC Cash Flow
"X"	FDCMPC Fuel Supply Procurement Process and
"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;
"Z-1"	FDCMPC Engineering, Procurement, and Construction Contract Certification; and
"Z-2"	FDCMPC Simulation of Operating Units to Meet Minimum Energy Off-Take
"AA"	FDCMPC 2022 Audited Financial Statements
"BB"	FDCMPC WESM Registration and
"BB-1"	LEYECO V Proof of WESM Membership
"CC"	FDCMPC Affidavit in Support of Prayer for Provisional Authority and
"CC-1"	LEYECO V Affidavit in Support of Prayer for Provisional Authority
"DD"	LEYECO V Board Resolution No. 123 series of 2023
"EE"	FDCMPC Secretary's Certificate (<i>sic</i>)
"FF"	LGU Certifications/Affidavits of Service
"GG"	Affidavit of Publication
"HH"	ERC Advisory dated 10 August 2023
"II"	ERC Advisory dated 07 June 2023
"II-2"	ERC Advisory dated 23 June 2023
"JJ"	Explanation for Non-Applicability of Documents
"KK"	Estimated Rate Impact

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

25. LEYECO V need not undergo a CSP prior to execution of the LEYECO V-FDCMPC EPSA. Moreover, the LEYECO V-FDCMPC EPSA is immediately implementable upon its execution consistent with prevailing regulations of the Honorable Commission and the DOE.
26. As mentioned above, the Honorable Commission granted distribution utilities affected by the *Alyansa Decision*, like

LEYECO V, an opportunity to negotiate an emergency power sales agreement for their respective power requirements.

27. Under Sections 2.3 and 2.3.5 of DOE 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.
28. Moreover, in an *Advisory* dated 07 June 2023,¹⁹ as amended by another *Advisory* dated 23 June 2023,²⁰ 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

29. 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.
30. 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

31. 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

¹⁹ See Annex "II" of the *Joint Application*.

²⁰ See Annexes "II" and "II-2" of the *Joint Application*.

information, data, and calculations fall within the bounds of “trade secrets” that are entitled to protection under the law.

32. In the case *Air Philippines Corporation vs. Pennswell Inc.*,²¹ 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 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.”

33. 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.
34. The interest of LEYECO V’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.
35. 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

36. The Joint Applicants recognize the importance of the continued operation of LEYECO V and its ability to continuously supply electricity to the consumers within its franchise area. While LEYECO V intends to account for the deficit supply, this process will take time and LEYECO V’s consumers will need the assurance of seamless, stable and reliable power while it prepares for the CSP.

²¹ G.R. No. 172835, 13 December 2007.

37. Consequently, LEYECO V was compelled to enter into the LEYECO V-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 V should be permitted to collect the rates, fees, and charges provided in the LEYECO V-FDCMPC EPSA from its customers, as accordingly charged by FDCMPC against LEYECO V pursuant to the same agreement. Any rate lower than the one specified in the LEYECO V-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.
38. The provisional approval of the EPSA will enable both LEYECO II and FDCMPC to fulfill their obligations without compromising the viability of their operations.
39. The Affidavits of Juan Eugenio L. Roxas, President and CEO of FDCMPC, and Jannie Ann J. Dayandayan, General Manager of LEYECO V, 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".
40. 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 LEYTE III (*sic*) ELECTRIC COOPERATIVE, INC. and FDC MISAMIS POWER CORPORATION 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 V-FDCMPC EPSA and allow LEYECO V 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 V; and
4. After due notice and hearing, ISSUE A DECISION (i)

approving the instant *Joint Application in toto* which will thereby allow/authorize LEYECO V 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 V-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 hearing for determination of compliance with the jurisdictional requirements, expository presentation, Pre-Trial Conference and presentation of evidence on the following dates and online platforms for the conduct thereof, pursuant to Resolution No. 09, Series of 2020²² and Resolution No. 01, Series of 2021²³ (ERC Revised Rules of Practice and Procedure):

Date	Platform	Activity
30 May 2024 (Thursday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Teams Application	Determination of compliance with jurisdictional requirements and expository presentation
6 June 2024 (Thursday) at nine o'clock in the morning (9:00 A.M.)		Pre-Trial Conference and Presentation of Evidence

Accordingly, Applicants LEYECO V and FDCMPC are hereby directed to host the virtual hearings at **LEYECO V's Principal Office located at Barangay San Pablo, Ormoc City**, as the designated venue for the conduct thereof, and ensure that the same is open to the public. Moreover, Applicants LEYECO V and FDCMPC shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

RELATIVE THERETO, Applicants LEYECO V and FDCMPC are hereby directed to:

- 1) Cause the publication of the attached *Notice of Virtual Hearing* in two (2) newspapers of nationwide circulation

²² A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

²³ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

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 Governor, Mayors, and their respective Local Government Unit (LGU) legislative bodies within Applicant LEYECO V's franchise area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within Applicant LEYECO V'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 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 prior to the date of the initial virtual hearing, Applicants LEYECO V and FDCMPC 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 to 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 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 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 Applicants LEYECO V and FDCMPC to inform the consumers within Applicant LEYECO V'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, by all those making requests therefor, if any; and
- 6) Such other proofs of compliance with the requirements of the Commission.

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

Applicants LEYECO V and FDCMPC and all interested parties are also required to submit to the Commission 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 initial 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.

Applicants LEYECO V 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 initial virtual hearing and Pre-trial Conference pursuant to the preceding paragraph.

Failure of Applicants LEYECO V and FDCMPC to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearings.

Applicants LEYECO V 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 V 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 V and FDCMPC are further directed to submit, either through personal service, registered or ordinary mail/private courier, one (1) set of the original or certified true hard/printed 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.

Finally, Applicants LEYECO V and FDCMPC, including its authorized representatives and witnesses, are hereby directed to provide the Commission, thru 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, 01 April 2024.

**FOR AND BY AUTHORITY
OF THE COMMISSION:**

mdimalanta

MONALISA C. DIMALANTA
Chairperson and CEO

JSC/LSP/KTB
LS: JSC/LSP/KTB

ERC
Office of the Chairperson and CEO



MCD2024-016081

ERC CASE NO. 2024-049 RC
ORDER/ 1 APRIL 2024
PAGE 18 OF 19

Copy Furnished:

1. Leyte V Electric Cooperative, Inc. (LEYECO V)
Applicant
Brgy. San Pablo, Ormoc City, Leyte
info@leyeco-v.com.ph
2. FDC Misamis Power Corporation (FDCMPC)
Applicant
PHIVIDE Industrial Estate, Villanueva, Misamis Oriental
corpcomm@fdcutilities.com
3. Atty. Mary Felicci B. Ongchuan
Ongchuan Javelosa Law Offices
Counsel for Joint Applicants
3 Hilltop St., Horshoe, Quezon City
fbongchuan@ojlawoffices.com
4. Office of the Solicitor General (OSG)
134 Amorsolo Street, Legaspi Village, Makati City
docket@osg.gov.ph
5. Commission on Audit (COA)
Commonwealth Avenue, Quezon City
citizensdesk@coa.gov.ph
6. Senate Committee on Energy
GSIS Building, Roxas Boulevard, Pasay City
senateenergycommittee@gmail.com
7. House Committee on Energy
Batasan Hills, Quezon City
committee.energy@house.gov.ph
8. Regulatory Operations Service
Energy Regulatory Commission
14F Exquadra Tower, Jade 1 Drive, Pasig City
ros@erc.ph
9. Office of the Mayor
Municipality of Merida, Leyte
10. Office of the LGU Legislative Body
Municipality of Merida, Leyte
11. Office of the Mayor
Municipality of Isabel, Leyte
12. Office of the LGU Legislative Body
Municipality of Isabel, Leyte
13. Office of the Mayor
Municipality of Palompon, Leyte
14. Office of the LGU Legislative Body
Municipality of Palompon, Leyte
15. Office of the Mayor
Municipality of Villaba, Leyte
16. Office of the LGU Legislative Body
Municipality of Villaba, Leyte
17. Office of the Mayor
Municipality of Tabango, Leyte
18. Office of the LGU Legislative Body

ERC CASE NO. 2024-049 RC
ORDER/ 1 APRIL 2024
PAGE 19 OF 19

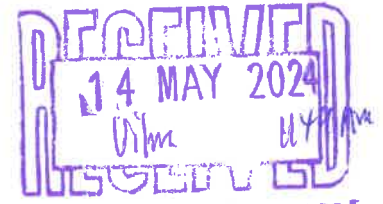
- Municipality of Tabango, Leyte
19. Office of the Mayor
Municipality of San Isidro, Leyte
 20. Office of the LGU Legislative Body
Municipality of San Isidro, Leyte
 21. Office of the Mayor
Municipality of Calubi-an, Leyte
 22. Office of the LGU Legislative Body
Municipality of Calubi-an, Leyte
 23. Office of the Mayor
Municipality of Leyte, Leyte
 24. Office of the LGU Legislative Body
Municipality of Leyte, Leyte
 25. Office of the Mayor
Municipality of Matag-ob, Leyte
 26. Office of the LGU Legislative Body
Municipality of Matag-ob, Leyte
 27. Office of the Mayor
Municipality of Kananga, Leyte
 28. Office of the LGU Legislative Body
Municipality of Kananga, Leyte
 29. Office of the Mayor
Municipality of Albuera, Leyte
 30. Office of the LGU Legislative Body
Municipality of Albuera, Leyte
 31. Office of the Mayor
City of Ormoc, Leyte
 32. Office of the LGU Legislative Body
City of Ormoc, Leyte
 33. Office of the Governor
Province of Leyte
 34. Office of the LGU Legislative Body
Province of Leyte

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 V
ELECTRIC COOPERATIVE,
INC. AND FDC MISAMIS
POWER CORPORATION,
WITH PRAYER FOR
PROVISIONAL AUTHORITY
AND CONFIDENTIAL
TREATMENT OF
INFORMATION**

SANGGUNIANG PANLALAWIGAN



PROVINCE OF LEYTE

ERC CASE NO. 2024-049 RC

**LEYTE V ELECTRIC
COOPERATIVE, INC. AND
FDC MISAMIS POWER
CORPORATION,**

Applicants.

X-----X

Promulgated:
April 01, 2024

NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 26 March 2024, Leyte V Electric Cooperative, Inc. (LEYECO V) and FDC Misamis Power Corporation (FDCMPC) filed a *Joint Application*, dated 29 November 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 *Joint Application* are hereunder quoted as follows:

THE JOINT APPLICANTS

1. LEYECO V 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 Brgy. San Pablo, Ormoc City. LEYECO V serves the power requirements of the Municipalities of Merida, Isabel, Palompon, Villaba, Tabango, San Isidro, Calubi-an, Leyte, Matag-ob, Kananga, Albuera, and the City of Ormoc, all in the Province of Leyte (collectively, the “Franchise Area”). For purposes of this *Joint Application*, LEYECO V is represented herein by its Board President MR. EMMANUEL S. ARPON and General Manager ATTY. JANNIE ANN J. DAYANDAYAN, duly authorized by LEYECO V’s Board of Directors.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 *Joint 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 Secretary Certificate No. 202308-09.²
3. The Joint Applicants may be served with the orders, notices, and other processes of the Honorable Commission through their undersigned counsel at the address 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 V and FDCMPC dated 20 September 2023 (the “LEYECO V-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 the Department of Energy’s (“DOE”) Department Circular No. 2023-06-0021 (the “DC2023-06-0021”).⁶

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.

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”

ERC CASE NO. 2024-049 RC
NOTICE OF VIRTUAL HEARING/ 1 APRIL 2024
PAGE 3 OF 15

5. In compliance with Section 2, Rule 6 of the ERC Revised Rules of Practice and Procedure, a copy of the instant Joint 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 City of Ormoc;
 - b. Office of the Presiding Officer of the Sangguniang Panlalawigan of the City of Ormoc;
 - c. Office of the Governor of the Province of Leyte; and
 - d. Office of the Presiding Officer of the Sangguniang Panlalawigan of the Province of Leyte.
 - e. Office of the Mayor of the Municipality of Villanueva;
 - f. Office of the Presiding Officer of the Sangguniang Bayan of the Municipality of Villanueva;
 - g. Office of the Governor of the Province of Misamis Oriental; and
 - h. Office of the Presiding Officer of the Sangguniang Panlalawigan of the Province of Misamis Oriental.
6. Further, this *Joint Application* was also published in a newspaper of general circulation.⁸

STATEMENT OF FACTS

7. Necessity for Power Supply. LEYECO V executed a *Power Purchase and Sale Agreement* (“PPSA”) with GNPowder Dinginin Ltd. Co. (“GNPD”), which was submitted to the Honorable Commission for approval under ERC Case No. 2016-057 RC.
8. However, as will be discussed below, the Honorable Commission ultimately directed LEYECO V to stop implementing the PPSA, resulting to a significant drop in capacity available for LEYECO V. Thus, LEYECO V was constrained to look for alternative power suppliers and eventually executed the *LEYECO V-FDCMPC EPSA* subject of this *Joint Application*.
- 8.1 The Honorable Commission issued an *Order* dated 05 July 2016 granting provisional authority/interim relief to LEYECO V and GNPD to implement their 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”)

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

⁸ See Annex “GG” of the *Joint Application*.

⁹ G.R. No. 227670, 03 May 2019.

ERC CASE NO. 2024-049 RC
NOTICE OF VIRTUAL HEARING/ 1 APRIL 2024
PAGE 4 OF 15

requirement provided under DOE Department Circular No. DC2018-02-003.

- 8.3 In an Order dated 19 April 2023 in ERC Case No. 2016-057 RC, the Honorable Commission: (i) dismissed with prejudice the application filed by LEYECO V and GNPD for the approval of the PPSA; (ii) terminated the provisional authority granted to LEYECO V and GNPD to implement the PPSA; and (iii) directed LEYECO V and GNPD to stop implementing the PPSA immediately upon receipt of the said *Order*.
- 8.4 In compliance with the above-cited *Order*, which was received by LEYECO V on 23 August 2023, LEYECO V and GNPD stopped implementing their *PPSA*.
9. Without the power from GNPD, LEYECO V 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.
10. LEYECO V 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 V to prevailing WESM market prices in the interim period.
11. All these conditions resulted into an emergency situation which prompted LEYECO V to immediately procure emergency supply of energy.
12. LEYECO V then solicited offers from various generation companies¹⁰ for their emergency power requirements, and FDCMPC’s offer was the most advantageous given the circumstance. Accordingly, LEYECO V entered into negotiations with FDCMPC for emergency power supply, and eventually executed the *LEYECO V-FDCMPC EPSA* subject of the instant *Joint Application*.
13. Notably, 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 V, an opportunity to negotiate an emergency power sales agreement for their respective power requirements.¹¹

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

14. **LEYECO V Power Situation.** LEYECO V’s peak demand for its Franchise Area is 49.77 MW for 2023 to 2024 as provided in its Supply - Demand Scenario.¹²

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

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

¹² See Annex “M” of the *Joint Application*.

15. **Generation Facility.** The power to be provided to LEYECO V 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 baseload power to LEYECO V under the terms stipulated in the *LEYECO V-FDCMPC EPSA*.

16. **Salient Features of the EPSA.**

16.1 **Term:** The Term of the EPSA shall be one (1) year from the delivery date, or from 22 September 2023 to 21 September 2024

16.2 **Contract Type:** Firm

16.3 **Installed Capacity of the Power Plant:** 405MW

16.4 **Net Dependable Capacity of the Power Plant:** 369MW

16.5 **Contract Demand and Contract Energy:** The Joint Applicants agreed to the following service specifications:

	FIRM
Contracted Demand	11,000 kW
Contracted Energy (Annual)	96,360,000 kWh
Customer Load Factor Per Interval	at least 70%
Delivery Point	Plant Gate of the Power Plant
Voltage at the Plant Gate	138 kV

16.6 **Outage Allowance:**

Planned	15.4 days or 369.6 hours
Unplanned	16.9 days or 405.6 hours

It is LEYECO V's obligation to procure Replacement Power, at its own costs, during outage within the Outage Allowance. While FDCMPC shall exert best efforts to procure Replacement Power beyond the Outage Allowance.

16.7 **Billing and Settlement:** FDCMPC shall provide a monthly Power Bill to LEYECO V that shall contain the volume of energy, and the amount of money (in Philippine Peso) due and payable by LEYECO V 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 EPSA.

ERC CASE NO. 2024-049 RC
NOTICE OF VIRTUAL HEARING/ 1 APRIL 2024
PAGE 6 OF 15

16.8 Termination: Either Party may terminate the 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.

16.9 Prompt Payment Discount: FDCMPC shall 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 V 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.

16.10 Generation Charge:

BASELOAD (FIRM):	RATE IN PHP/ KW/ MONTH	RATE IN PHP/KWH	BILLING DETERMINANT (BD)
Capital Recovery Fee (CRF), Php/ kW/ month	1,095.00	1.5000	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% LF, whichever is higher
Fuel Cost (FC), Php/kWh	Pass-through		Actual energy consumed in kWh

BASELOAD (FIRM)

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

$$\begin{aligned}
 \text{CRF Charge} &= [(1,095.00\text{Php/kW/month})] * \text{BD} \\
 \text{FOM Charge} &= [(452.09\text{Php/kW/month}) * (\text{PH CPI}_{\text{CURRENT}}/\text{PH CPI}_{\text{BASE}})] * \text{BD} \\
 \text{VOM Charge} &= [(0.1907\text{Php/kWh}) * (\text{PH CPI}_{\text{CURRENT}}/\text{PH CPI}_{\text{BASE}})] * \text{BD} \\
 \text{Fuel Cost} &= [(\text{DCP} * \text{ACR or MCR, whichever is lower})/1000] * \text{BD}
 \end{aligned}$$

Where:

ERC CASE NO. 2024-049 RC
NOTICE OF VIRTUAL HEARING/ 1 APRIL 2024
PAGE 7 OF 15

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

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

Generation Rate Impact of EPSA	
With FDCMPC	Php 6.3450/kWh
Without FDCMPC	Php 6.7260/kWh
Rate Impact	(Php 0.3810/kWh)

18. **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
19. **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
20. **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
21. **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
22. **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 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

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.

ERC CASE NO. 2024-049 RC
NOTICE OF VIRTUAL HEARING/ 1 APRIL 2024
PAGE 8 OF 15

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, whichever comes earlier.¹⁸

23. 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.
24. Copies of the following documents and/or information are attached to this *Joint Application* as annexes and made as integral parts hereof:

Annex	Documents/Information
"A"	LEYECO V-FDCMPC EPSA
"B"	LEYECO V Articles of Incorporation
"B-1"	LEYECO V By-Laws
"C"	LEYECO V Certificate of Franchise
"D"	LEYECO V NEA Certificate of Registration of Articles of Incorporation
"E"	Verified Certification of LEYECO V List 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"	and FDCMPC PAO Certificate of Filing dated 15 June 2023
"K"	FDCMPC DOE Certificate of Endorsement
"L"	LEYECO V Power Supply Procurement Plan and
"L-1"	LEYECO V Distribution Development Plan
"M"	LEYECO V Supply and Demand Scenario, Details of Existing Suppliers, Contract Utilization, and Average Daily Load Curve
"N"	LEYECO V Single-line Diagram Connection
"O"	LEYECO V Performance Assessment

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

ERC CASE NO. 2024-049 RC
NOTICE OF VIRTUAL HEARING/ 1 APRIL 2024
PAGE 9 OF 15

"P"	LEYECO V Potential for Load Reduction Due to Retail Competition
"Q" and series	LEYECO V Solicitation Letters to Generation Companies
"R"	FDCMPC Samuel R. Lamorena Verified Certification
"S"	FDCMPC Transmission Service Agreement and
"S-1"	FDCMPC Metering Services Agreement
"T"	LEYECO V-FDCMPC EPSA Executive Summary
"U"	FDCMPC Sources of Funds and Financial Plans and
"U-1"	FDCMPC Bank Certifications
"V"	FDCMPC Generation Rate and Derivation;
"V-1"	FDCMPC Basis of Other Charges; and
"V-2"	FDCMPC Financial Model, Project Costs, and Breakdown of Costs
"W"	FDCMPC Cash Flow
"X"	FDCMPC Fuel Supply Procurement Process and
"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;
"Z-1"	FDCMPC Engineering, Procurement, and Construction Contract Certification; and
"Z-2"	FDCMPC Simulation of Operating Units to Meet Minimum Energy Off-Take
"AA"	FDCMPC 2022 Audited Financial Statements
"BB"	FDCMPC WESM Registration and
"BB-1"	LEYECO V Proof of WESM Membership
"CC"	FDCMPC Affidavit in Support of Prayer for Provisional Authority and
"CC-1"	LEYECO V Affidavit in Support of Prayer for Provisional Authority
"DD"	LEYECO V Board Resolution No. 123 series of 2023
"EE"	FDCMPC Secretary's Certificate (<i>sic</i>)
"FF"	LGU Certifications/Affidavits of Service
"GG"	Affidavit of Publication
"HH"	ERC Advisory dated 10 August 2023
"II"	ERC Advisory dated 07 June 2023
"II-2"	ERC Advisory dated 23 June 2023
"JJ"	Explanation for Non-Applicability of Documents
"KK"	Estimated Rate Impact

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

25. LEYECO V need not undergo a CSP prior to execution of the LEYECO V-FDCMPC EPSA. Moreover, the LEYECO V-

ERC CASE NO. 2024-049 RC
NOTICE OF VIRTUAL HEARING/ 1 APRIL 2024
PAGE 10 OF 15

FDCMPC EPSA is immediately implementable upon its execution consistent with prevailing regulations of the Honorable Commission and the DOE.

26. As mentioned above, the Honorable Commission granted distribution utilities affected by the *Alyansa Decision*, like LEYECO V, an opportunity to negotiate an emergency power sales agreement for their respective power requirements.
27. Under Sections 2.3 and 2.3.5 of DOE 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.
28. Moreover, in an *Advisory* dated 07 June 2023,¹⁹ as amended by another *Advisory* dated 23 June 2023,²⁰ 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**

29. 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.
30. 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

¹⁹ See Annex “II” of the *Joint Application*.

²⁰ See Annexes “II” and “II-2” of the *Joint Application*.

31. 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.
32. In the case *Air Philippines Corporation vs. Pennswell Inc.*,²¹ 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 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."
33. 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.
34. The interest of LEYECO V'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.
35. 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**

36. The Joint Applicants recognize the importance of the continued operation of LEYECO V and its ability to

²¹ G.R. No. 172835, 13 December 2007.

ERC CASE NO. 2024-049 RC
NOTICE OF VIRTUAL HEARING/ 1 APRIL 2024
PAGE 12 OF 15

continuously supply electricity to the consumers within its franchise area. While LEYECO V intends to account for the deficit supply, this process will take time and LEYECO V's consumers will need the assurance of seamless, stable and reliable power while it prepares for the CSP.

37. Consequently, LEYECO V was compelled to enter into the LEYECO V-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 V should be permitted to collect the rates, fees, and charges provided in the LEYECO V-FDCMPC EPSA from its customers, as accordingly charged by FDCMPC against LEYECO V pursuant to the same agreement. Any rate lower than the one specified in the LEYECO V-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.
38. The provisional approval of the EPSA will enable both LEYECO II and FDCMPC to fulfill their obligations without compromising the viability of their operations.
39. The Affidavits of Juan Eugenio L. Roxas, President and CEO of FDCMPC, and Jannie Ann J. Dayandayan, General Manager of LEYECO V, 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".
40. 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 LEYTE III (*sic*) ELECTRIC COOPERATIVE, INC. and FDC MISAMIS POWER CORPORATION 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 V-FDCMPC EPSA

ERC CASE NO. 2024-049 RC
NOTICE OF VIRTUAL HEARING/ 1 APRIL 2024
PAGE 13 OF 15

and allow LEYECO V 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 V; and

4. After due notice and hearing, ISSUE A DECISION (i) approving the instant *Joint Application in toto* which will thereby allow/authorize LEYECO V 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 V-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 hearing for determination of compliance with the jurisdictional requirements, expository presentation, Pre-Trial Conference and presentation of evidence on the following dates and online platforms for the conduct thereof, pursuant to Resolution No. 09, Series of 2020²² and Resolution No. 01, Series of 2021²³ (ERC Revised Rules of Practice and Procedure):

Date	Platform	Activity
30 May 2024 (Thursday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Teams Application	Determination of compliance with jurisdictional requirements and expository presentation
6 June 2024 (Thursday) at nine o'clock in the morning (9:00 A.M.)		Pre-Trial Conference and Presentation of Evidence

Accordingly, Applicants LEYECO V and FDCMPC are hereby directed to host the virtual hearings at **LEYECO V's Principal Office located at Barangay San Pablo, Ormoc City**, as the designated venue for the conduct thereof, and ensure that the same is open to the public. Moreover, Applicants LEYECO V 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

²² A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

²³ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

ERC CASE NO. 2024-049 RC
NOTICE OF VIRTUAL HEARING/ 1 APRIL 2024
PAGE 14 OF 15

initial virtual hearing, via electronic mail (e-mail) at doCKET@erc.ph, and copy furnish the Legal Service through legal@erc.ph. The Commission shall give priority to the stakeholders who have duly submitted their respective comments and/or clarifications, to discuss the same and propound questions during the course of the expository presentation.

Moreover, all persons who have an interest in the subject matter of the instant case may become a party by filing with the Commission via e-mail at doCKET@erc.ph, and copy furnishing the Legal Service through legal@erc.ph, a verified Petition to Intervene at **least five (5) calendar days** prior to the date of the initial virtual hearing. The verified Petition to Intervene must follow the requirements under Rule 9 of the ERC Revised Rules of Practice and Procedure, indicate therein the docket number and title of the case, and state the following:

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

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

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

ERC CASE NO. 2024-049 RC
NOTICE OF VIRTUAL HEARING/ 1 APRIL 2024
PAGE 15 OF 15

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

Any of the persons mentioned in the preceding paragraphs may access the copy of the *Joint Application* on the Commission's official website at www.erc.gov.ph.

Finally, all interested persons may be allowed to join the scheduled initial virtual hearings by providing the Commission, thru legal.virtualhearings@erc.ph, their respective e-mail addresses and indicating therein the case number of the instant *Joint Application*. The Commission will send the access link/s to the aforementioned hearing platform **within five (5) working days** prior to the scheduled hearings.

WITNESS, the Honorable Commissioners **ALEXIS M. LUMBATAN, CATHERINE P. MACEDA, FLORESINDA G. BALDO-DIGAL, and MARKO ROMEO L. FUENTES**, Energy Regulatory Commission, this 1st day of April 2024 in Pasig City.


MONALISA C. DIMALANTA
Chairperson and CEO


LS: JSC/LSP/KTB

ERC
Office of the Chairperson and CEO



MCD2024-016081