

Item No.: 13

Date: 02 2024 JUL

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**

**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

- 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.<sup>8</sup>

#### STATEMENT OF FACTS

7. Necessity for Power Supply. LEYECO V executed a *Power Purchase and Sale Agreement* (“PPSA”) with GNPower 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*”),<sup>9</sup> 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

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<sup>8</sup> See Annex “GG” of the *Joint Application*.

<sup>9</sup> G.R. No. 227670, 03 May 2019.

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.

MRC<sub>CAP</sub> = Maximum Consumption Rate equal kg/kWh  
to 0.75, escalated at a rate of 1.5%  
annually

Indexation = PH CPI<sub>BASE</sub> = 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:<sup>13</sup>

| 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.<sup>14</sup>
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.<sup>15</sup>
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.<sup>16</sup>
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.<sup>17</sup>
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.<sup>18</sup>

<sup>13</sup> See Annex “KK” of the Joint Application.

<sup>14</sup> See Annex “I” of the Joint Application.

<sup>15</sup> See Annex “H” of the Joint Application.

<sup>16</sup> See Annexes “X” and “Y” of the Joint Application.

<sup>17</sup> See Annex “K” of the Joint Application.

<sup>18</sup> See Annexes “J” to “J-2” of the Joint Application.

|        |  |
|--------|--|
| "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

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.*,<sup>21</sup> 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.

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<sup>21</sup> G.R. No. 172835, 13 December 2007.



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 2020<sup>22</sup> and Resolution No. 01, Series of 2021<sup>23</sup> (ERC Revised Rules of Practice and Procedure):

| <b>Date</b>   | <b>Platform</b>                    | <b>Activity</b>  |
|---|------------------------------------|--|
| <b>30 May 2024</b><br>(Thursday) at nine o'clock in the morning (9:00 A.M.) | <b>Microsoft Teams Application</b> | Determination of compliance with jurisdictional requirements and expository presentation |
| <b>6 June 2024</b><br>(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

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

<sup>23</sup> A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

*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](mailto:doCKET@erc.ph), and copy furnish the Legal Service through [legal@erc.ph](mailto: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;



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](mailto: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.**

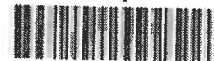
Pasig City, 01 April 2024.

FOR AND BY AUTHORITY  
OF THE COMMISSION:

*mdimalanta*  
**MONALISA C. DIMALANTA**  
*Chairperson and CEO*

*[Signature]*  
LS: JSC/LSP/KTB

**ERC**  
Office of the Chairperson and CEO



MCD2024-016081

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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

**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.<sup>1</sup>
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.<sup>2</sup>
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 25<sup>3</sup> and 45(b)<sup>4</sup> 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 2021<sup>5</sup> (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").<sup>6</sup>

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<sup>1</sup> See Annex "DD" of the *Joint Application*.

<sup>2</sup> See Annex "EE" of the *Joint Application*.

<sup>3</sup> 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.

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

<sup>5</sup> A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

<sup>6</sup> 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"

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 companies<sup>10</sup> 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.<sup>11</sup>

**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.<sup>12</sup>

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<sup>10</sup> See Annex “Q” and series of the *Joint Application*.

<sup>11</sup> See Annex “HH” and series of the *Joint Application*.

<sup>12</sup> See Annex “M” of the *Joint Application*.

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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

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

Where:



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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.<sup>18</sup>

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  |

<sup>18</sup> See Annexes "J" to "J-2" of the *Joint Application*.

*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,<sup>19</sup> as amended by another *Advisory* dated 23 June 2023,<sup>20</sup> 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          |

<sup>19</sup> See Annex "II" of the *Joint Application*.

<sup>20</sup> See Annexes "II" and "II-2" of the *Joint Application*.

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

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initial virtual hearing, via electronic mail (e-mail) at [docket@erc.ph](mailto:docket@erc.ph), and copy furnish the Legal Service through [legal@erc.ph](mailto: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](mailto:docket@erc.ph), and copy furnishing the Legal Service through [legal@erc.ph](mailto: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](mailto:docket@erc.ph), and copy furnish the Legal Service through [legal@erc.ph](mailto: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.