

Item No.: 06
Date: 30 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 II
ELECTRIC COOPERATIVE,
INC. AND FDC MISAMIS
POWER CORPORATION,
WITH PRAYER FOR
PROVISIONAL AUTHORITY
AND CONFIDENTIAL
TREATMENT OF
INFORMATION



ERC CASE NO. 2023-135 RC

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

Applicants.

X-----X

Promulgated:
January 29, 2024

ORDER

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

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

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

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

STATEMENT OF FACTS

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

⁸ See Annex "GG" and series of the Joint Application.

⁹ G.R. No. 227670, 03 May 2019.

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

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

17.3. Contract Type: Firm and Non-Firm

17.4. Installed Capacity of the Power Plant: 405MW

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

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

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

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

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

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

Where:

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

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

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

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

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

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

¹³ See Annex “KK” of the Joint Application.

¹⁴ See Annex “I” of the Joint Application.

¹⁵ See Annex “H” of the Joint Application.

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

¹⁷ See Annex “K” of the Joint Application.

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

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

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

article of trade having commercial value. A trade secret may consist of any formula, pattern, device, or compilation of information that (1) is used in one's business; and (2) gives the employer an opportunity to obtain advantage over competitors who do not possess the information. Generally, a trade secret is a process or device intended for continuous operation of the business, for example, a machine or formula, but can be a price list or catalogue or specialized customer list. It is indubitable that trade secrets constitute proprietary rights."

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

ALLEGATIONS IN SUPPORT FOR THE ISSUANCE OF
PROVISIONAL AUTHORITY

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

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

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

Accordingly, LEYECO II and FDCMPC are hereby directed to host the virtual hearings at LEYECO II's principal office at **Real St., Sagkahan Dist., Tacloban City, Leyte, Philippines**, as the designated venue for the conduct thereof, and ensure that the same is open to the public and the community quarantine guidelines are observed at all times. Moreover, LEYECO II and FDCMPC shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

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

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

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

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

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

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

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


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

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

SO ORDERED.

Pasig City, 29 January 2024.

FOR AND BY AUTHORITY
OF THE COMMISSION:


MONALISA C. DIMALANTA
Chairperson and CEO

ERC

Office of the Chairperson and CEO

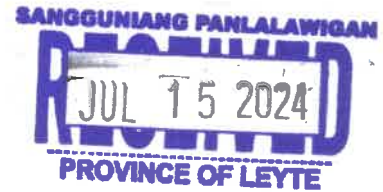


MCD2024-013930


LS: JPM/MCC/LSP

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ENERGY REGULATORY COMMISSION
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FDC MISAMIS POWER
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Applicants.

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Promulgated:
January 29, 2024

NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

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

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

STATEMENT OF FACTS

7. Necessity for Power Supply: LEYECO II executed a Power Purchase and Sale Agreement (“PPSA”) with GNPowder Dinginin Ltd. Co. (“GNPD”) for 20 MW Baseload Power Supply, which was submitted to the Honorable Commission for approval under ERC Case No. 2016-046 RC.
8. However, as will be discussed below, the Honorable Commission ultimately directed LEYECO II to stop implementing the PPSA; thus, LEYECO II was constrained to look for alternative power suppliers and eventually executed the LEYECO II-FDCMPC EPSA subject of this Joint Application.
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17. Salient Features of the EPSA.

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

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

17.3. Contract Type: Firm and Non-Firm

17.4. Installed Capacity of the Power Plant: 405MW

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Voltage at the Plant Gate	138 kV		

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

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

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

¹³ See Annex “KK” of the Joint Application.

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¹⁵ See Annex “H” of the Joint Application.

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

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"P"	LEYECO II Potential for Load Reduction Due to Retail Competition
"Q" and series	LEYECO II Solicitation Letters to Generation Companies
"R"	FDCMPC Samuel R. Lamorena Verified Certification
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The conduct of a CSP is not required and the LEYECO II-FDCMPC EPSA is immediately implementable

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those of his employees to whom it is necessary to confide it. The definition also extends to a secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade having commercial value. A trade secret may consist of any formula, pattern, device, or compilation of information that (1) is used in one's business; and (2) gives the employer an opportunity to obtain advantage over competitors who do not possess the information. Generally, a trade secret is a process or device intended for continuous operation of the business, for example, a machine or formula, but can be a price list or catalogue or specialized customer list. It is indubitable that trade secrets constitute proprietary rights."

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

ALLEGATIONS IN SUPPORT FOR THE ISSUANCE OF
PROVISIONAL AUTHORITY

37. The Joint Applicants recognize the importance of the continued operation of LEYECO II and its ability to continuously supply electricity to the consumers within its franchise area. While LEYECO II intends to account for the deficit supply, this process will take time and LEYECO II's consumers will need the assurance of seamless, stable and reliable power while it prepares for the CSP.
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ERC CASE NO. 2023-135 RC
NOTICE OF VIRTUAL HEARING / 29 JANUARY 2024
PAGE 13 OF 15

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

Date	Platform	Activity
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15 March 2024 (Friday) at two o'clock in the afternoon (2:00 PM)		Pre-Trial Conference and presentation of evidence

Accordingly, LEYECO II and FDCMPC are hereby directed to host the virtual hearings at LEYECO II's principal office at **Real St., Sagkahan Dist., Tacloban City, Leyte, Philippines**, as the designated venue for the conduct thereof, and ensure that the same is open to the public and the community quarantine guidelines are observed at all times. Moreover, LEYECO II and FDCMPC shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

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

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


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

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

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

WITNESS, the Honorable Commissioners **ALEXIS M. LUMBATAN, CATHERINE P. MACEDA, FLORESINDA G. BALDO-DIGAL** and **MARKO ROMEO L. FUENTES**, Energy Regulatory Commission, this 29th day of January 2024 in Pasig City.


MONALISA C. DIMALANTA
Chairperson and CEO

ERC

Office of the Chairperson and CEO



MCD2024-013930


LS: JPM/MCC/LSP