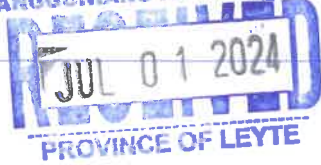


4



Lighting Houses
Lighting Homes
Lighting Hopes

SANGGUNIANG PANLALAWIGAN



July 1, 2024

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

Item No.: 06

Date: 09 2024 JUL

LEYTE III ELECTRIC COOPERATIVE, INC.

LEYECO III

REAL STREET, BRGY. SAN ROQUE, TUNGA, LEYTE

EMAIL AD: leytelle@yahoo.com

Office of the Vice Governor

Received

By: REBECCA
Date: 7/1/2024
Time: 2:19 PM

Subject: In the Matter of the Joint Application for Approval of the Emergency Power Supply Agreement Entered Into by and between Leyte III Electric Cooperative, Inc. and FDC Misamis Power Corporation with Prayer for Provisional Authority and Confidential Treatment of Information

Sir:

In compliance with the directives of the Energy Regulatory Commission (ERC) in connection with the abovementioned subject, we are furnishing this Honorable Office a copy of the following:

1. ERC Case No. 2024-048 RC Order dated June 20, 2024
2. ERC Case No. 2024-048 RC Notice of Virtual Hearing dated June 20, 2024

LEYECO III is open to your comments, suggestions, and requests for clarification on any matter related thereto.

Likewise, in compliance with the requirements of the ERC, may we subsequently request for a Certification stating that the above Joint Application be posted at the Bulletin Board of the Provincial Capitol and thereafter, a Certification (Please see attached suggested format) bearing the Dry Seal of your office be issued as proof of posting.

Thank you very much and More Power.

Very truly yours,

ALLAN L. LANIBA, OFS
General Manager

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

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

ERC CASE NO. 2024-048 RC

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

Applicants.

x-----x

Promulgated:

June 20, 2024

ORDER

On 26 March 2024, the Leyte III Electric Cooperative, Inc. (LEYECO III) and FDC Misamis Power Corporation (FDCMPC) filed their *Joint Application* dated 03 January 2024, 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 in the *Joint Application* are hereunder quoted, as follows:

THE JOINT APPLICANTS

1. LEYECO III 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 National Highway, Barangay San Roque, Tunga, Leyte. LEYECO III serves the power

requirements of the Municipalities of Alangalang, Barugo, Capoocan, Carigara, Jaro, Pastrana, San Miguel, Sta. Fe, and Tunga, all in the Province of Leyte (collectively, the "Franchise Area"). For purposes of this *Joint Application*, LEYECO III is represented herein by its Board President MR. SANTIAGO F. HANTIG JR. and General Manager MR. ALLAN L. LANIBA duly authorized by virtue of Board Resolution No. 2023-09-100.¹

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. 202308-06.²
3. The Joint Applicants may be served with the orders, notices, and other processes of the Honorable Commission through their respective undersigned counsels at the addresses indicated herein.

NATURE OF THE APPLICATION

4. The instant *Joint Application* for approval of the *Emergency Power Supply Agreement* ("EPSA") entered into by and between LEYECO III and FDCMPC dated 01 September 2023 (the "*LEYECO III-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 Municipality of Tunga;
 - b. Office of the Presiding Officer of the *Sangguniang Bayan* of the Municipality of Tunga;
 - 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;
 - 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 III executed a *Power Purchase and Sale Agreement* (“PPSA”) with GNPowr Dinginin Ltd. Co. (“GNPD”), which was submitted to the Honorable Commission for approval under ERC Case No. 2016-053 RC.
8. However, as will be discussed below, the Honorable Commission ultimately directed LEYECO III to stop implementing the PPSA, resulting to a significant drop in capacity available for LEYECO III. Thus, LEYECO III was constrained to look for alternative power suppliers and eventually executed the *LEYECO III-FDCMPC EPSA* subject of this *Joint Application*.
- 8.1. On 28 September 2016, the Honorable Commission issued an *Order* dated 05 July 2016 granting provisional authority to LEYECO III 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. Subsequently, in an *Order* dated 19 April 2023 in ERC Case No. 2016-053 RC, which was received by LEYECO III on 16 August 2023,¹⁰ the Honorable Commission

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

⁹ G.R. No. 227670, 03 May 2019.

¹⁰ Section 1, Rule VI of the *Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission* provides that Orders by the Honorable Commission received beyond working hours or days shall be deemed received on the next working day. Considering that LEYECO III received the *Order* dated 19 April 2023 for ERC Case No. 2016-048 RC on 5:41pm, 15 August 2023, the *Order* was deemed received by LEYECO III on 16 August 2023.

issued an *Order*: (i) dismissing with prejudice the application filed by LEYECO III and GNPD for the approval of the PPSA; (ii) terminating the provisional authority granted to LEYECO III and GNPD to implement the PPSA; and (iii) directing LEYECO III and GNPD to stop implementing the PPSA immediately upon receipt of the said *Order*.

- 8.4. In compliance with the above-cited *Order*, LEYECO III and GNPD stopped implementing their *PPSA*.
9. Without the power from GNPD, LEYECO III 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 III 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 III to prevailing WESM market prices in the interim period.
11. All these conditions resulted into an emergency situation which prompted LEYECO III to immediately procure emergency supply of energy.
12. LEYECO III then solicited offers from various generation companies¹¹ for their emergency power requirements, and FDCMPC’s offer was the most advantageous given the circumstance. Accordingly, LEYECO III entered into negotiations with FDCMPC for emergency power supply, and eventually executed the *LEYECO III-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, like LEYECO III, an opportunity to negotiate an emergency power sales agreement for their respective power requirements.¹²

ABSTRACT OF THE EMERGENCY POWER SALES
AGREEMENT AND RELATED INFORMATION

14. LEYECO III Power Situation. LEYECO III’s peak demand for its Franchise Area is 12.85 MW for 2023 to 2024 as provided in its Supply - Demand Scenario.¹³
15. Generation Facility. The power to be provided to LEYECO III 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

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

¹² See Annex “HH” and series of the *Joint Application*.

¹³ See Annex “M” of the *Joint Application*.

405 MW and net dependable capacity of 369 MW (the "Power Plant"). FDCMPC shall supply baseload power to LEYECO III under the terms stipulated in the *LEYECO III-FDCMPC EPSA*.

16. Salient Features of the EPSA.

- 16.1. Term: The Term of the EPSA shall be one (1) year from commencement of delivery, or 08 September 2023 to 07 September 2024.
- 16.2. Date of Commencement of Supply: The obligation of FDCMPC to deliver electric power to LEYECO III shall commence immediately following the execution of the EPSA.
- 16.3. Contract Type: Firm
- 16.4. Installed Capacity of the Power Plant: 405MW
- 16.5. Net Dependable Capacity of the Power Plant: 369MW
- 16.6. Contract Demand and Contract Energy: The Joint Applicants agreed to the following service specifications:

	FIRM
Contracted Demand	7,000 kW
Contracted Energy (Annual)	61,320,000 kWh
Customer Load Factor Per Interval	at least 70%
Delivery Point	Plant Gate of the Power Plant
Voltage at the Plant Gate	138 kV

- 16.7. Outage Allowance: FDCMPC is allowed an Outage Allowance of 32.30 days or 775.2 hours.

It is LEYECO III'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.

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

- 16.9. 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.

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

- (i) Payment is made on or before 11:00 am of the tenth (10th) day of the Payment Month; and
- (ii) LEYECO III 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.

16.11. 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 60% of Contract Energy in kWh, whichever is higher
Fuel Cost (FC), Php/kWh	pass-through		Actual energy consumed in kWh

BASELOAD (FIRM)

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

CRF Charge = (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)
 MCR_{CAP} = Maximum Consumption Rate equal to 0.75, kg/kWh escalated at a rate of 1.5% annually

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

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

17. Estimated Rate Impact. The indicative rate impact on LEYECO III's overall generation rate with and without the additional supply from FDCMPC is as follows:¹⁴

Generation Rate Impact of EPSA	
Without FDCMPC	Php 7.1020/kWh
With FDCMPC	Php 5.7271 /kWh
Rate Impact	(Php 1.3749/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.¹⁵
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.¹⁶
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.¹⁷
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.¹⁸
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

¹⁴ See Annex “KK” of the *Joint Application*

¹⁵ See Annex “I” of the *Joint Application*.

¹⁶ See Annex “H” of the *Joint Application*.

¹⁷ See Annexes “X” and “Y” of the *Joint Application*.

¹⁸ See Annex “K” of the *Joint Application*.

June 2023 or until the resolution of its COC renewal application, whichever comes earlier.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 III-FDCMPC EPSA
"B"	LEYECO III Articles of Incorporation
"C"	LEYECO III By-Laws
"D"	LEYECO III NEA Certificate of Registration of Articles of Incorporation
"E"	Verified Certification of LEYECO III List of Directors
"F" "F-1" "F-2" "F-3" "F-4" "F-5"	FDCMPC Amended Articles of Incorporation; FDCMPC Amended By-Laws; FDCMPC Amended General Information Sheet for 2023; FDCMPC Verified Certification on Parent, Subsidiaries, Affiliates BOD; FDCMPC Original Articles of Incorporation; and FDCMPC Original By-Laws
"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" "J-1" "J-2"	FDCMPC ERC COC No. 17-05-M-00108M; FDCMPC PAO valid until 16 October 2022, and FDCMPC PAO Certificate of Filing dated 15 June 2023
"K"	FDCMPC DOE Certificate of Endorsement
"L" "L-1"	LEYECO III Power Supply Procurement Plan and LEYECO III Distribution Development Plan
"M"	LEYECO III Supply and Demand Scenario, Details of Existing Suppliers, and Contract Utilization
"M-1"	LEYECO III Average Daily Load Curve
"N"	LEYECO III Single-line Diagram Connection

¹⁹ See Annexes "J" to "J-2" of the *Joint Application*.

Annex	Documents/Information
"O"	LEYECO III Performance Assessment
"P"	LEYECO III Potential for Load Reduction Due to Retail Competition
"Q" and series	LEYECO III Solicitation Letters to Generation Companies
"R"	FDCMPC Samuel R. Lamorena Verified Certification
"S" "S-1" "S-2" "S-3"	LEYECO III Transmission Service Agreement; LEYECO III Metering Services Agreement; FDCMPC Transmission Service Agreement; and FDCMPC Metering Services Agreement
"T"	LEYECO III-FDCMPC EPSA Executive Summary
"U" "U-1"	FDCMPC Sources of Funds and Financial Plans and FDCMPC Bank Certifications
"V" and "V-1" "V-2"	FDCMPC Generation Rate and Derivation; FDCMPC Basis of Other Charges; FDCMPC Financial Model;, Project Costs, and Breakdown of Costs
"W"	FDCMPC Cash Flow
"X" "X-1"	FDCMPC Fuel Supply Procurement Process; FDCMPC Certification on Spot Fuel Agreement
"Y"	FDCMPC Sworn Statement on Fuel Concerns
"Z" "Z-1" "Z-2"	FDCMPC Relevant Technical and Economic Characteristics of the Generation Capacity; FDCMPC Engineering, Procurement, and Construction Contract Certification; and FDCMPC Simulation of Operating Units to Meet Minimum Energy Off-Take
"AA"	FDCMPC 2022 Audited Financial Statements
"BB" "BB-1"	FDCMPC WESM Registration and LEYECO III WESM Registration
"CC" "CC-1"	FDCMPC Affidavit in Support of Prayer for Provisional Authority and LEYECO III Affidavit in Support of Prayer for Provisional Authority
"DD" "DD-1"	LEYECO III Board Resolution No. 2023-09-100 and LEYECO III Board Resolution No. 2023-09-102
"EE"	FDCMPC Secretary's Certificate
"FF" and series	Affidavits of Service/Certifications
"GG"	Affidavit of Publication
"HH"	ERC Advisory dated 10 August 2023
"II" "II-2"	ERC Advisory dated 07 June 2023 and ERC Advisory dated 23 June 2023
"JJ"	Explanation for Non-Applicability of Documents

Annex	Documents/Information
"KK"	LEYECO III Estimated Rate Impact Analysis
"LL"	FDCMPC Sample Computation with Derivation of Pass-Through Charges
"MM"	FDCMPC Outage Summary

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

25. LEYECO III need not undergo a CSP prior to execution of the *LEYECO III-FDCMPC EPSA*. Moreover, the *LEYECO III-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 III, 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 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"):

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

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
"LL"	FDCMPC Sample Computation with Derivation of Pass-Through Charges
"MM"	FDCMPC Outage Summary

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

²¹ G. R. No. 172835, 13 December 2007.

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 III'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 III and its ability to continuously supply electricity to the consumers within its franchise area. While LEYECO III intends to account for the deficit supply, this process will take time and LEYECO III's consumers will need the assurance of seamless, stable and reliable power while it prepares for the CSP.
 37. Consequently, LEYECO III was compelled to enter into the LEYECO III-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 III should be permitted to collect the rates, fees, and charges provided in the LEYECO III-FDCMPC EPSA from its customers, as accordingly charged by FDCMPC against LEYECO III pursuant to the same agreement. Any rate lower than the one specified in the LEYECO III-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 III 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 Allan L. Laniba, General Manager of LEYECO III, 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.
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PRAYER

WHEREFORE, premises considered, Joint Applicants LEYTE III 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", "Z-1", "LL", and "MM" 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 III-FDCMPC EPSA and allow LEYECO III 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 III; and
4. After due notice and hearing, ISSUE A DECISION (i) approving the instant *Joint Application in toto* which will thereby allow/authorize LEYECO III 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 III-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 issued an *Order* and a *Notice of Virtual Hearing*, both dated 29 May 2024, setting the instant case for hearings on 02 and 09 July 2024.

However, on 19 June 2024, the Applicants filed a *Motion to Reschedule Hearing*, of even date, stating that the Commission's *Order and Notice of Virtual Hearing* was received on 14 June 2024, rendering the applicants unable to comply with the period for publication required in the *Order* and under Section 4, Rule 13 of the *ERC Revised Rules of Practice and Procedure*.

Finding the *Motion to Reschedule Hearing* meritorious, the same is hereby granted. The hearings set on 02 and 09 July 2024 are cancelled.

The Commission sets anew the *Joint Application* for hearing for the determination of compliance with the jurisdictional requirements, expository presentation, Pre-Trial Conference and presentation of evidence on the following dates and online platform for the conduct thereof, pursuant to Resolution No. 09, Series of 2020²² and Resolution No. 01, Series of 2021²³ (ERC Revised Rules of Practice and Procedure):

Date	Platform	Activity
25 July 2024 (Thursday) at nine o'clock in the morning (9:00 AM)	Microsoft Teams Application	Determination of compliance with the jurisdictional requirements and expository presentation
01 August 2024 (Thursday) at nine o'clock in the morning (9:00 AM)		Pre-Trial Conference and presentation of evidence

Accordingly, LEYECO III and FDCMPC are hereby directed to host the virtual hearings at **LEYECO III's Principal Office at National Highway, Barangay San Roque, Tunga, Leyte**, as the designated venue for the conduct thereof, and ensure that the same is open to the public. Moreover, LEYECO III and FDCMPC shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

RELATIVE THERETO, LEYECO III 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 hearing;
- 2) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing* the Offices of the Provincial Governor,

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.

the Mayors and the Local Government Unit (LGU) legislative bodies within LEYECO III's franchise area for the appropriate posting thereof on their respective bulletin boards;

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

Within five (5) calendar days before the date of the initial virtual hearing, LEYECO III 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 with the aforementioned jurisdictional requirements, attaching the following methodically arranged and duly marked documents:

- 1) The evidence of publication of the attached *Notice of Virtual Hearing* consisting of affidavits of the Editors or Business Managers of the 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 LEYECO III and FDCMPC to inform the consumers within LEYECO III'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, LEYECO III 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 Offices of the Governor, Mayors, and Local Legislative Bodies, and to submit proof of posting thereof.

Joint Applicants LEYECO III 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, 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.

Joint Applicants LEYECO III and FDCMPC must ensure that all the documents or exhibits proposed to be presented have already been duly submitted to the Commission **at least five (5) calendar days**

before the date of the scheduled virtual hearing and Pre-Trial Conference pursuant to the preceding paragraph.

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

Joint Applicants LEYECO III 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.

Joint Applicants LEYECO III 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. LEYECO III and FDCMPC 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.

Joint Applicants LEYECO III and FDCMPC are further directed to submit, either through personal service, registered mail or ordinary mail/private courier, one (1) set of the original or certified true hard copies of their Jurisdictional Compliance, Expository Presentation, Pre-Trial Brief, and Judicial Affidavits of witnesses, **within five (5) working days** from the date that the same were electronically submitted, as reflected in the acknowledgment receipt e-mail sent by the Commission.

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Finally, LEYECO III 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, 20 June 2024.

FOR AND BY AUTHORITY
OF THE COMMISSION:


MONALISA C. DIMALANTA
Chairperson and CEO


LS:JRBC/ARG/KTB

ERC

Office of the Chairperson and CEO



MCD2024-017739

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Copy Furnished:

1. Leyte III Electric Cooperative, Inc. (LEYECO III)
Co-Applicant
National Highway, Barangay San Roque,
Tunga, Leyte
2. GULA LAW & NOTARIAL OFFICE
Atty. Rogelio P. Gula
Counsel for Co-Applicant LEYECO III
Door 7, Cabigon Bldg., Del Pilar Street, (across Sacred Heart Church)
Brgy. 8, 6500 Tacloban City, Leyte
Email: nhoygula@yahoo.com
3. FDC Misamis Power Corporation (FDCMPC)
Co-Applicant
PHIVIDEDEC Industrial Estate,
Villanueva, Misamis Oriental 9002
4. ONGCHUAN JAVELOSA LAW OFFICES
Atty. Mary Felicci B. Ongchuan
Counsel for Co-Applicant FDCMPC
3 Hilltop St., Horseshoe, Quezon City, 1112
Email: fongchuan@oilawoffices.com
5. Office of the Solicitor General (OSG)
134 Amorsolo Street, Legaspi Village, Makati City
docket@osg.gov.ph
6. Commission on Audit (COA)
Commonwealth Avenue, Quezon City
citizensdesk@coa.gov.ph
7. Senate Committee on Energy
GSIS Building, Roxas Boulevard, Pasay City
senateenergycommittee@gmail.com
8. House Committee on Energy
Batasan Hills, Quezon City
committee.energy@house.gov.ph
9. Office of the Provincial Governor
Province of Leyte
10. Office of the Local Government Unit (LGU) Legislative Body
Province of Leyte
11. Office of the Municipal Mayor
Alangalang, Leyte
12. Office of the Local Government Unit (LGU) Legislative Body
Alangalang, Leyte
13. Office of the Municipal Mayor
Barugo, Leyte
14. Office of the Local Government Unit (LGU) Legislative Body
Barugo, Leyte
15. Office of the Municipal Mayor
Capoocan, Leyte
16. Office of the Local Government Unit (LGU) Legislative Body
Capoocan, Leyte
17. Office of the Municipal Mayor

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- Carigara, Leyte
18. Office of the Local Government Unit (LGU) Legislative Body
Carigara, Leyte
 19. Office of the Municipal Mayor
Jaro, Leyte
 20. Office of the Local Government Unit (LGU) Legislative Body
Jaro, Leyte
 21. Office of the Municipal Mayor
Pastrana, Leyte
 22. Office of the Local Government Unit (LGU) Legislative Body
Pastrana, Leyte
 23. Office of the Municipal Mayor
San Miguel, Leyte
 24. Office of the Local Government Unit (LGU) Legislative Body
San Miguel, Leyte
 25. Office of the Municipal Mayor
Sta. Fe, Leyte
 26. Office of the Local Government Unit (LGU) Legislative Body
Sta. Fe, Leyte
 27. Office of the Municipal Mayor
Tunga, Leyte
 28. Office of the Local Government Unit (LGU) Legislative Body
Tunga, Leyte
 29. Regulatory Operations Service
14th Floor, Exquadra Tower, Jade Drive, Ortigas Center, Pasig City
ros@erc.ph

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

ERC CASE NO. 2024-048 RC

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

Applicants.

x-----x

Promulgated:

June 20, 2024

NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 26 March 2024, the Leyte III Electric Cooperative, Inc. (LEYECO III) and FDC Misamis Power Corporation (FDCMPC) filed their *Joint Application* dated 03 January 2024, 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 in the *Joint Application* are hereunder quoted, as follows:

THE JOINT APPLICANTS

1. LEYECO III 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 National Highway, Barangay San Roque, Tunga, Leyte. LEYECO III serves the power requirements of the Municipalities of Alangalang, Barugo, Capocan, Carigara, Jaro, Pastrana, San Miguel, Sta. Fe, and Tunga, all in the Province of Leyte (collectively, the "Franchise Area"). For purposes of this *Joint Application*, LEYECO III is represented herein by its Board President MR. SANTIAGO F. HAMTIG JR. and General Manager MR. ALLAN L. LANIBA duly authorized by virtue of Board Resolution No. 2023-09-100.¹
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. 202308-06.²
3. The Joint Applicants may be served with the orders, notices, and other processes of the Honorable Commission through their respective undersigned counsels at the addresses indicated herein.

NATURE OF THE APPLICATION

4. The instant *Joint Application* for approval of the *Emergency Power Supply Agreement* ("EPSA") entered into by and between LEYECO III and FDCMPC dated 01 September 2023 (the "*LEYECO III-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*"

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 Municipality of Tunga;
 - b. Office of the Presiding Officer of the *Sangguniang Bayan* of the Municipality of Tunga;
 - 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;
 - 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 III 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. 2016-053 RC.
8. However, as will be discussed below, the Honorable Commission ultimately directed LEYECO III to stop implementing the PPSA, resulting to a significant drop in capacity available for LEYECO III. Thus, LEYECO III was constrained to look for alternative power suppliers and eventually executed the *LEYECO III-FDCMPC EPSA* subject of this *Joint Application*.
 - 8.1. On 28 September 2016, the Honorable Commission issued an *Order* dated 05 July 2016 granting provisional authority to LEYECO III 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.

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

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

⁹ G.R. No. 227670, 03 May 2019.

- 8.3. Subsequently, in an *Order* dated 19 April 2023 in ERC Case No. 2016-053 RC, which was received by LEYECO III on 16 August 2023,¹⁰ the Honorable Commission issued an *Order*: (i) dismissing with prejudice the application filed by LEYECO III and GNPD for the approval of the PPSA; (ii) terminating the provisional authority granted to LEYECO III and GNPD to implement the PPSA; and (iii) directing LEYECO III and GNPD to stop implementing the PPSA immediately upon receipt of the said *Order*.
- 8.4. In compliance with the above-cited *Order*, LEYECO III and GNPD stopped implementing their PPSA.
9. Without the power from GNPD, LEYECO III 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 III 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 III to prevailing WESM market prices in the interim period.
11. All these conditions resulted into an emergency situation which prompted LEYECO III to immediately procure emergency supply of energy.
12. LEYECO III then solicited offers from various generation companies¹¹ for their emergency power requirements, and FDCMPC's offer was the most advantageous given the circumstance. Accordingly, LEYECO III entered into negotiations with FDCMPC for emergency power supply, and eventually executed the *LEYECO III-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, like LEYECO III, an opportunity to negotiate an emergency power sales agreement for their respective power requirements.¹²

ABSTRACT OF THE EMERGENCY POWER SALES
AGREEMENT AND RELATED INFORMATION

¹⁰ Section 1, Rule VI of the *Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission* provides that Orders by the Honorable Commission received beyond working hours or days shall be deemed received on the next working day. Considering that LEYECO III received the *Order* dated 19 April 2023 for ERC Case No. 2016-048 RC on 5:41pm, 15 August 2023, the *Order* was deemed received by LEYECO III on 16 August 2023.

¹¹ See Annex "Q" and series of the *Joint Application*.

¹² See Annex "HH" and series of the *Joint Application*.

14. LEYECO III Power Situation. LEYECO III's peak demand for its Franchise Area is 12.85 MW for 2023 to 2024 as provided in its Supply - Demand Scenario.¹³

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

16. Salient Features of the EPSA.

16.1. Term: The Term of the EPSA shall be one (1) year from commencement of delivery, or 08 September 2023 to 07 September 2024.

16.2. Date of Commencement of Supply: The obligation of FDCMPC to deliver electric power to LEYECO III shall commence immediately following the execution of the EPSA.

16.3. Contract Type: Firm

16.4. Installed Capacity of the Power Plant: 405MW

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

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

	FIRM
Contracted Demand	7,000 kW
Contracted Energy (Annual)	61,320,000 kWh
Customer Load Factor Per Interval	at least 70%
Delivery Point	Plant Gate of the Power Plant
Voltage at the Plant Gate	138 kV

16.7. Outage Allowance: FDCMPC is allowed an Outage Allowance of 32.30 days or 775.2 hours.

It is LEYECO III'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.

¹³ See Annex "M" of the *Joint Application*.

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

16.9. **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.

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

- (i) Payment is made on or before 11:00 am of the tenth (10th) day of the Payment Month; and
- (ii) LEYECO III 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.

16.11. **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 60% of Contract Energy in kWh, whichever is higher
Fuel Cost (FC), Php/kWh	pass-through		Actual energy consumed in kWh

BASELOAD (FIRM)

$$\text{Generation Charge} = [\text{CRF} + \text{FOM} + \text{VOM} + \text{FC}] \text{ Charges}$$

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

Where:

BD = Billing Determinant kW or kWh
 DCP = Delivered Coal Price PhP/MT
 = Total Coal Cost (PhP)/ Total Coal Consumption (MT)
 ACR = Actual Fuel Consumption Rate kg/kWh
 = Total Coal Consumption (MT)/Total Metered Quantity of the Plant (kWh)
 MCR_{CAP} = Maximum Consumption Rate equal to 0.75, kg/kWh escalated at a rate of 1.5% annually
 Indexation: PH CPI_{BASE} = 121.4 (January 2023)

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

17. Estimated Rate Impact. The indicative rate impact on LEYECO III's overall generation rate with and without the additional supply from FDCMPC is as follows:¹⁴

Generation Rate Impact of EPSA	
Without FDCMPC	Php 7.1020/kWh
With FDCMPC	Php 5.7271/kWh
Rate Impact	(Php 1.3749/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.¹⁵
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.¹⁶
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.¹⁷
21. DOE Certification. The DOE has certified that the Power Plant is consistent with the Power Development Plan. A *Certificate of*

¹⁴ See Annex “KK” of the *Joint Application*

¹⁵ See Annex “I” of the *Joint Application*.

¹⁶ See Annex “H” of the *Joint Application*.

¹⁷ See Annexes “X” and “Y” of the *Joint Application*.

Endorsement No. 2015-03-010 was issued by the DOE to this effect.¹⁸

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.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 III-FDCMPC EPSA
“B”	LEYECO III Articles of Incorporation
“C”	LEYECO III By-Laws
“D”	LEYECO III NEA Certificate of Registration of Articles of Incorporation
“E”	Verified Certification of LEYECO III List of Directors
“F” “F-1” “F-2” “F-3” “F-4” “F-5”	FDCMPC Amended Articles of Incorporation; FDCMPC Amended By-Laws; FDCMPC Amended General Information Sheet for 2023; FDCMPC Verified Certification on Parent, Subsidiaries, Affiliates BOD; FDCMPC Original Articles of Incorporation; and FDCMPC Original By-Laws
“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” “J-1”	FDCMPC ERC COC No. 17-05-M-00108M; FDCMPC PAO valid until 16 October 2022, and

¹⁸ See Annex “K” of the *Joint Application*.

¹⁹ See Annexes “J” to “J-2” of the *Joint Application*.

Annex	Documents/Information
"J-2"	FDCMPC PAO Certificate of Filing dated 15 June 2023
"K"	FDCMPC DOE Certificate of Endorsement
"L" "L-1"	LEYECO III Power Supply Procurement Plan and LEYECO III Distribution Development Plan
"M"	LEYECO III Supply and Demand Scenario, Details of Existing Suppliers, and Contract Utilization
"M-1"	LEYECO III Average Daily Load Curve
"N"	LEYECO III Single-line Diagram Connection
"O"	LEYECO III Performance Assessment
"P"	LEYECO III Potential for Load Reduction Due to Retail Competition
"Q" and series	LEYECO III Solicitation Letters to Generation Companies
"R"	FDCMPC Samuel R. Lamorena Verified Certification
"S" "S-1" "S-2" "S-3"	LEYECO III Transmission Service Agreement; LEYECO III Metering Services Agreement; FDCMPC Transmission Service Agreement; and FDCMPC Metering Services Agreement
"T"	LEYECO III-FDCMPC EPSA Executive Summary
"U" "U-1"	FDCMPC Sources of Funds and Financial Plans and FDCMPC Bank Certifications
"V" and "V-1" "V-2"	FDCMPC Generation Rate and Derivation; FDCMPC Basis of Other Charges; FDCMPC Financial Model; Project Costs, and Breakdown of Costs
"W"	FDCMPC Cash Flow
"X" "X-1"	FDCMPC Fuel Supply Procurement Process; FDCMPC Certification on Spot Fuel Agreement
"Y"	FDCMPC Sworn Statement on Fuel Concerns
"Z" "Z-1" "Z-2"	FDCMPC Relevant Technical and Economic Characteristics of the Generation Capacity; FDCMPC Engineering, Procurement, and Construction Contract Certification; and FDCMPC Simulation of Operating Units to Meet Minimum Energy Off-Take
"AA"	FDCMPC 2022 Audited Financial Statements
"BB" "BB-1"	FDCMPC WESM Registration and LEYECO III WESM Registration
"CC" "CC-1"	FDCMPC Affidavit in Support of Prayer for Provisional Authority and

Annex	Documents/Information
	LEYECO III Affidavit in Support of Prayer for Provisional Authority
"DD"	LEYECO III Board Resolution No. 2023-09-100 and
"DD-1"	LEYECO III Board Resolution No. 2023-09-102
"EE"	FDCMPC Secretary's Certificate
"FF" and series	Affidavits of Service/Certifications
"GG"	Affidavit of Publication
"HH"	ERC Advisory dated 10 August 2023
"II"	ERC Advisory dated 07 June 2023 and
"II-2"	ERC Advisory dated 23 June 2023
"JJ"	Explanation for Non-Applicability of Documents
"KK"	LEYECO III Estimated Rate Impact Analysis
"LL"	FDCMPC Sample Computation with Derivation of Pass-Through Charges
"MM"	FDCMPC Outage Summary

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

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

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

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
"LL"	FDCMPC Sample Computation with Derivation of Pass-Through Charges
"MM"	FDCMPC Outage Summary

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

²¹ G. R. No. 172835, 13 December 2007.

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 III'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 III and its ability to continuously supply electricity to the consumers within its franchise area. While LEYECO III intends to account for the deficit supply, this process will take time and LEYECO III's consumers will need the assurance of seamless, stable and reliable power while it prepares for the CSP.
 37. Consequently, LEYECO III was compelled to enter into the LEYECO III-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 III should be permitted to collect the rates, fees, and charges provided in the LEYECO III-FDCMPC EPSA from its customers, as accordingly charged by FDCMPC against LEYECO III pursuant to the same agreement. Any rate lower than the one specified in the LEYECO III-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 III and FDCMPC to fulfill their obligations without compromising the viability of their operations.
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39. The Affidavits of Juan Eugenio L. Roxas, President and CEO of FDCMPC, and Allan L. Laniba, General Manager of LEYECO III, 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 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", "Z-1", "LL", and "MM" 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 III-FDCMPC EPSA and allow LEYECO III 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 III; and
4. After due notice and hearing, ISSUE A DECISION (i) approving the instant *Joint Application in toto* which will thereby allow/authorize LEYECO III 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 III-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 sets the instant *Joint Application* for determination of compliance with the jurisdictional requirements, expository presentation, Pre-Trial Conference and presentation of evidence on the following dates and online platform for the conduct

thereof, pursuant to Resolution 09, Series of 2020²² and Resolution No. 01, Series of 2021²³ (ERC Revised Rules of Practice and Procedure):

Date	Platform	Activity
25 July 2024 (Thursday) at nine o'clock in the morning (9:00 AM)	Microsoft Teams Application	Determination of compliance with the jurisdictional requirements and expository presentation
01 August 2024 (Thursday) at nine o'clock in the morning (9:00 AM)		Pre-Trial Conference and presentation of evidence

LEYECO III and FDCMPC are directed to host the virtual hearings at **LEYECO III's Principal Office at National Highway, Barangay San Roque, Tunga, Leyte**, as the designated venue for the conduct thereof, and ensure that the same is open to the public. LEYECO III 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. The verified Petition to Intervene must follow the requirements under Rule

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.

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 **at least five (5) calendar days** prior to the initial virtual hearing. Rule 9 of the ERC Revised Rules of Practice and Procedure shall govern. No particular form of Opposition or Comment is required, but the document, letter, or writing should contain the following:

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

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

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

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

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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 20th day of June 2024 in Pasig City.

mdimalanta
MONALISA C. DIMALANTA
Chairperson and CEO

ERC
Office of the Chairperson and CEO



MCD2024-017739

LS: JRBC/ARG/10/24