

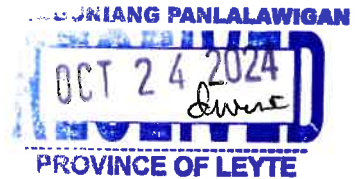


Item No.: 01

Date: 13 2024 NOV

October 23, 2024

SANGGUNIANG PANLALAWIGAN
Palo, Leyte



THRU: **HON. LEONARDO M. JAVIER, JR.**
Presiding Officer

Re: IN THE MATTER OF THE JOINT APPLICATION FOR APPROVAL OF THE EMERGENCY POWER SUPPLY AGREEMENT (EPSA) BETWEEN LEYTE II ELECTRIC COOPERATIVE (LEYECO II) AND FDC MISAMIS POWER CORPORATION, WITH PRAYER FOR CONFIDENTIAL TREATMENT OF INFORMATION

Gentlemen:

In compliance with the Revised Rules of Practice and Procedure of the Energy Regulatory Commission ("ERC"), we are furnishing this Honorable Office with a complete copy of the above-captioned Application and its annexes.

In line with this, we are requesting for a Certification with Dry Seal from this Honorable Office stating that a complete copy of the Application of the above-captioned case, including its annexes, was served to, and duly received by this Honorable Office today.

Very truly yours,


ENGR. FERNAN PAUL R. TAN
General Manager

Real St., Sagkahan District, Tacloban City 6500
Tel. No. (053) 832-1731

email: leyeco2@yahoo.com

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Ortigas Center, 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 CONFIDENTIAL
TREATMENT OF INFORMATION**



ERC CASE NO. 2024-_____ RC

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

Joint Applicants.

x ----- x

JOINT APPLICATION

(With Prayer for Confidential Treatment of Information)

Joint Applicants **LEYTE II ELECTRIC COOPERATIVE, INC. ("LEYECO II")** and **FDC MISAMIS POWER CORPORATION ("FDCMPC")** (collectively with LEYECO II, the "Applicants"), through the undersigned counsel and unto the Honorable Commission, most respectfully state, that:

THE JOINT APPLICANTS

1. Applicant **LEYECO II** is a non-stock, non-profit electric cooperative, duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at Real St., Sagkahan Dist., Tacloban City, Leyte. It is authorized to distribute and provide electricity services to its member-consumers in the Municipalities of Palo and Babatngon, both in the Province of Leyte, and the City of Tacloban (collectively, the "Franchise Area"). For purposes of this instant Application, LEYECO II is represented herein by its Board President, **MR. FELICIANO E.**

ELIZON, and General Manager, ENGR. FERNAN PAUL R. TAN, duly authorized by virtue of a Board Resolution No. 150-09-2024.¹

2. Applicant FDCMPC is a corporation duly organized and existing under and by the laws of the Republic of the Philippines, with principal office address at the PHIVIDEC Industrial Estate, Villanueva, Misamis Oriental 9002. For purposes of this Application, FDCMPC is represented by its President and Chief Executive Officer (“CEO”), MR. JUAN EUGENIO L. ROXAS, duly authorized for the purpose by virtue of a Secretary’s Certificate²

3. Applicants may be served with the orders, notices, and other processes of the Honorable Commission through the undersigned counsel at the addresses indicated herein.

NATURE OF THE APPLICATION

4. The instant *Joint Application* for the approval of the *Emergency Power Supply Agreement* (“EPSA”) entered into by and between the Applicants dated 3 September 2024 (the “2nd LEYECO II-FDCMPC EPSA”) is being submitted to the Honorable Commission for its review and approval pursuant to Sections 25³ and 45(b)⁴ of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (the “EPIRA”), Rule 20(B) of the Honorable Commission’s *Resolution* No. 01, Series of 2021⁵ (the “ERC Revised Rules of Practice and Procedure”), and *Resolution* No. 16, Series of 2023⁶ (the “ERC Implementing Guidelines for the Procurement, Execution, and Evaluation of Power Supply Agreements”), and Department of Energy’s (“DOE”) *Department Circular* No. 2023-06-0021 (the “DOE 2023 CSP Policy”).⁷

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

¹ See Annex “B” hereof.

² See Annex “N” hereof.

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, “*Implementing Guidelines for the Procurement, Execution, and Evaluation of Power Supply Agreements Entered Into by Distribution Utilities for the Supply of Electricity To Their Captive Market.*”

⁷ 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*”

confidential treatment of information) shall be furnished to the following offices:

- a. Office of the Mayor of the Municipality of Villanueva;
- b. Office of the Presiding Officer of the *Sangguniang Bayan* of the Municipality of Villanueva;
- c. Office of the Governor of the Province of Misamis Oriental;
- d. Office of the Presiding Officer of the *Sangguniang Panlalawigan* of the Province of Misamis Oriental;
- e. Office of the Mayor of the City of Tacloban;
- f. Office of the Presiding Officer of the *Sangguniang Panlungsod* of the City of Tacloban;
- g. Office of the Governor of the Province of Leyte; and
- h. Office of the Presiding Officer of the *Sangguniang Panlalawigan* of the Province of Leyte.

6. Further, this *Joint Application* shall also be published in a newspaper of general circulation.

ALLEGATION ON TIMELINESS

7. For purposes of the filing of this *Joint Application*, the timeliness for the same is reckoned from 11 August 2024, the expiration of the 1st LEYECO II-FDCMPC EPSA. The following discussion will however show that circumstances were present that would justify Applicants' reasonable and minimal deviation from the periods for filing provided in the *ERC Implementing Guidelines for the Procurement, Execution, and Evaluation of Power Supply Agreements*.

STATEMENT OF FACTS

8. Applicant LEYECO II executed a Power Purchase and Sale Agreement ("PPSA") with GNPower Dinginin Ltd. Co. ("GNPD") for 20 MW Baseload Power Supply (the "*LEYECO II-GNPD PPSA*"), which was submitted to the Honorable Commission for approval under ERC Case No. 2016-046 RC (the "*PPSA Case*"). The Honorable Commission granted a Provisional Authority for the implementation of the *LEYECO II-GNPD PPSA* in the same case.

9. On 03 May 2019, the Supreme Court rendered its Decision in the case of *Alyansa Para sa Bagong Pilipinas, Inc. vs. Energy Regulatory Commission, et al.*, G.R. No. 227670, 03 May 2019, (the "*Alyansa Case*"), 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's *Department Circular No. DC2018-02-003*.

10. On 18 July 2023, Applicant LEYECO II received the Honorable Commission's *Order* dated 19 April 2023 which: (i) dismissed applicant LEYECO II and GNPD's Application for the approval of the *LEYECO II-GNPD PPSA*; (ii) terminated the Provisional Authority issued for the *LEYECO II-GNPD PPSA*; and (iii) directed applicant LEYECO II and GNPD to immediately stop implementing the *LEYECO II-GNPD PPSA* upon receipt of the said *Order*.

Without the power from GNPD, applicant LEYECO II would not be able to cover its total demand requirements and was forced to purchase power from the Wholesale Electricity Spot Market ("WESM"), thereby exposing itself (and its consumers) to the volatile prices in the market. Such Force Majeure Event compelled applicant LEYECO II to enter into an *Emergency Power Supply Agreement* dated 11 August 2023 (the "*1st LEYECO II-FDCMPC EPSA*")⁸ with applicant FDCMPC. The *1st LEYECO II-FDCMPC EPSA* provides that its term shall be effective for one (1) year from the delivery date, or 12 August 2023 to 11 August 2024.

11. After the execution of the *1st LEYECO II-FDCMPC EPSA*, applicant LEYECO II prioritized the preparations for the conduct of its CSP.

12. Relevantly, the *DOE 2023 CSP Policy* provides that both the Honorable Commission and the NEA shall be issuing their respective Rules which must be complied with by all Distribution Utilities ("DUs") in the conduct of their CSPs.⁹ Applicant LEYECO II was therefore constrained to first wait for the Honorable Commission and the NEA to issue the said rules, so that applicant LEYECO II may comply with the same pursuant to its CSP now under the *DOE 2023 CSP Policy*.¹⁰

13. On 9 October 2023, the Honorable Commission issued its *ERC Implementing Guidelines for the Procurement, Execution, and Evaluation of Power Supply Agreements*. Thereafter, on 6 December 2023, the NEA's

⁸ Pending before the Honorable Commission in ERC Case No. 2023-135 RC.

⁹ See Sections 4.6. and 5.1. of the *DOE 2023 CSP Policy*.

¹⁰ See also Section 7.1. of the *DOE 2023 CSP Policy* which provides that "[a]ll DUs that will commence their CSP activities without issued Certificates of Posting (COP) upon the effectivity of the ERC guidelines shall undertake the CSP in accordance with [the *DOE 2023 CSP Policy*]."

Memorandum No. 2023-057 (the “NEA CSP Guidelines”)¹¹ came into effect. It was only after the effectivity of these two (2) guidelines that applicant LEYECO II could conduct its CSP under the *DOE 2023 CSP Policy*.

Applicant LEYECO II’s conduct of CSP

14. On 16 February 2024, the NEA furnished applicant LEYECO II the *Notice to Commence* of even date, informing it that applicant LEYECO II may commence its CSP for its 20MW power load requirement (the “*LEYECO II CSP*”).¹² Pursuant thereto, on 7 March 2024, applicant LEYECO II published its *Terms of Reference for LEYECO II CSP*.¹³ Applicant LEYECO II then proceeded to disseminate its *Final Instructions to Bidders for the LEYECO II CSP*.¹⁴

15. On 11 June 2024, applicant LEYECO II issued *BAC Resolution No. CSP-2024-10* of even date,¹⁵ declaring KEPCO SPC Power Corporation (“KEPCO SPC”) as the winning bidder in the *LEYECO II CSP*. Subsequently, on 19 August 2024, applicant LEYECO II furnished KEPCO SPC with its *Letter of even date*,¹⁶ informing it that it was declared the winning bidder in the *LEYECO II CSP*.

16. On 29 August 2024, Applicant submitted Board Resolution No. 149-08 series of 2024 requesting the NEA to issue the *Notice to Execute Agreement* for the execution of the LEYECO II-KEPCO SPC Power Supply Agreement (“LEYECO II-KEPCO SPC PSA”). To date, no approval has been received by LEYECO II from the NEA regarding this matter.

The 2nd LEYECO II-FDCMPC EPSA

17. With the *LEYECO II CSP* having been concluded (pending final approval from the NEA to execute the corresponding PSA), applicant LEYECO II will still have to file the necessary application for the approval of the LEYECO II-KEPCO SPC PSA by the Honorable Commission, as well as to re-devote its manpower and resources to its current power situation. Relevantly, the expiration on the 1st *LEYECO II-FDCMPC EPSA* was looming (i.e. on 11 August 2024). Thus, sometime in July 2024, applicant LEYECO II had already begun informally inquiring with generation companies for the

¹¹ *The National Electrification Administration Competitive Selection Process Guidelines Implementing the Department of Energy’s Department Circular No. DC 2023-06-0021 and the Energy Regulatory Commission’s Resolution No. 16, Series of 2023.*

¹² Annex “R” hereof.

¹³ Annex “S” hereof.

¹⁴ Annex “T” hereof.

¹⁵ Annex “U” hereof.

¹⁶ Annex “V” hereof.

execution of another EPSA to cover the period during which the Honorable Commission would evaluate *LEYECO II CSP*, and hopefully approve, the *LEYECO II-KEPCO SPC PSA*. Applicant *LEYECO II* also thought it prudent to pursue this course of action to minimize as much as possible its exposure to the *WESM* and its volatile prices.

18. Relevantly, applicant *LEYECO II* would be participating in the *RE Expo* from 29-31 August 2024 (the "*RE Expo*"), which would also be participated in by numerous generation companies, to wit:

1. ALTERNATIVE POWER SOLUTIONS, INC.	18. SURVIVANT TECHNOLOGY CORPORATION	37. ETHIOPIA RENEWABLE ENERGY CORPORATION (EREC)	46. CENTURUM INTEGRATED SALES CORPORATION	54. POLARITY INTERNATIONAL PHILIPPINES, INC.
2. DILKANG DOMOLINO METEOR CO., LTD.	19. HAWK ELECTRIC CO.	38. PHILRECA PARTY-257	47. ANILONA INTEGRATED TECHNOLOGY, INC.	55. JAMES SHAW BYEM ELECTRIC EQUIPMENT GROUP CO. LTD.
3. BECKHOFF CONSTRUCTION, INC.	20. RICKLEE ENTERPRISES, INC.	39. CARABON PHILIPPINES ELECTRIC CORP.	48. BAKER HANDBUILDING AND ELECTRICAL SERVICES, INC.	56. HAPPI & GLOBAL SPECIALIST
4. CO BAN EAST HARDWARES, INC.	21. FLUKE SOURCY EAST ASIA PTE LTD	40. ALCONO POWER GROUP	49. BHM PHILIPPINES, INC.	57. KOMAR SINOPOWER EQUIPMENT CO., LTD.
5. CTS SATVAD CENTER, INC.	22. HANGKAI ZHONGTIAN TECHNOLOGY CO., LTD	41. PNC UTILITIES INC.	50. HELLA LAMP INTERNATIONAL SALES AND SERVICES, INC.	58. HORMAN SINOPOWER EQUIPMENT CO., LTD.
6. FLORENZINO JOURNAL FRONTIER & TECHNOLOGICAL DEVELOPMENT CO., LTD.	23. ZHANGSHI ELECTRIC CO., LTD	42. HYNAM ENERGY CORPORATION	51. HIRSHI BLDG. INC.	59. BEYCO & BEYCO RURAL ELECTRIFICATION TRAINING CORPORATION FOR A RURAL ELECTRIFICATION FRANCHISE CORPORATION
7. JALIX ELECTRIC PHIL INC/MS SHIR	24. INDUSTRIAL GALVANIZERS CORPORATION OF THE PHILIPPINES	43. SINGGONIG SOLAR/TECH/ENERGY, INC.	52. HIRSHI 2 LIMITED FINANCIAL SERVICES INC	60. SARAY PHILIPPINES
8. JIN FALSHING POWER, INC.	25. ALLIANCE AUTO AND TRUCK REPAIRERS, INC.	44. SIBALCO POWER GENERATION CORPORATION	53. AIRPHIN RECONSTRUCTION	61. DANTECH POWER SYSTEMS, INC.
9. JIN ELECTRIC SALES PHILIPPINES, INC.	26. PUNJABIAN JERMA ELECTRIC FORGERS/AN ELECTRICAL SUPPLY/REPAIR MANUFACTURING CO. LTD.	45. FAYO GREEN RENEWABLE ENERGY INC.	54. HIRSHI SOLUTIONS INC.	62. PURTEAN BUSINESS INNOVATION PHILIPPINES CORP.
10. COMMERCIAL SYSTEMS AND INTEGRATED SOLUTIONS INC.	27. APE F PARTY-257	46. HIRSHI INNOVATIONS INC.	55. HALLSHIRE ELECTRIC & ELECTRONIC(S) CO. LTD/ COMPANY/ INC. TRADING	63. EPSON PHILIPPINES CORPORATION
11. PACIFIC BATA RESOURCES ASIA, INC.	28. APE F PARTY-257	47. BAKORITE POWER CORPORATION	56. AC HIRSHI CABLE CORPORATION	64. SATON/ I FLUX INDUSTRIES I HIRATA TECHNOLOGY SOLUTIONS
12. KINCHIT TRADING	29. ALTERNARBY HOLDING CORPORATION	48. HIRSHI CORP.	57. TARI DELTA ELECTRIC CORPORATION	65. UTILITY SOLUTIONS INDUSTRIES CORP.
13. LANGHARD INDUSTRIAL SALES, INC.	30. PRETTY GEN CORPORATION	49. TOP RING INDUSTRIAL SAFETY SUPPLY, INC.	58. SYSTEMS CONTROLS INTERNATIONAL INC. (SCI)	66. ONE TIC NETWORKS FOUNDATION INC. / EC CALLED DELSANTA/TA/TON/ D/AV/ DC/ MCC/ MICRO/MANAGER
	31. THE JOCKEY CORPORATION	50. STRESSCRITE POLE CORPORATION	59. TURASOON CO.	

A copy of the *RE Expo's* Program which shows the participating generation companies is attached as Annex "W".

19. Given the sheer number of generation companies that would be participating in the *RE Expo*, applicant *LEYECO II* reasonably thought that it would be the best venue to shop for the most advantageous EPSA to replace the 1st *LEYECO II-FDCMPC EPSA*.

20. Applicant *LEYECO II* proceeded to attend the *RE Expo* and inquired with all viable generation companies of who would be willing to execute an EPSA with it. After discussing with the various generation company representatives in the *RE Expo*, applicant *LEYECO II* determined that

Energy Development Corporation (“EDC”) and applicant FDCMPC would offer the most advantageous price. Applicant LEYECO II then proceeded to send out their solicitation letters¹⁷ to EDC and applicant FDCMPC, and eventually executed the 2nd LEYECO II-FDCMPC EPSA.

The mandatory regulatory process after the conclusion of the LEYECO II CSP constitutes force majeure allowing Applicants to execute the 2nd LEYECO II-FDCMPC EPSA subject of this Joint Application

21. Section 3.8. of the *DOE 2023 CSP Policy* defines force majeure as “any extraordinary event not foreseeable or avoidable, or to an event that could not be foreseen, **or which, though foreseen, is inevitable and independent of human will or the DU’s participation**, whether by active intervention, neglect or failure to act.” The Supreme Court as early as the case of *Murillo vs. Mendoza*, G.R. No. L-46020, 8 December 1938, in resolving events which would constitute as force majeure likened it to addressing the question of whether unforeseen acts arose wherein no fault or negligence from those involved intervened.

22. Applying the aforesaid rule and jurisprudence, the antecedents presented herein clearly constitute force majeure, justifying the execution of the 2nd LEYECO II-FDCMPC EPSA.

23. To reiterate, upon the resolution of the *Alyansa Case*, applicant LEYECO II immediately entered into the 1st LEYECO II-FDCMPC EPSA and thereafter prepared for the conduct of its CSP to cover for the deficiency left by the dismissal of the *PPSA Case*. Applicant LEYECO II’s efforts to immediately conduct its CSP were interrupted only by the issuance of the *ERC Implementing Guidelines for the Procurement, Execution, and Evaluation of Power Supply Agreements* and the *NEA CSP Guidelines* pursuant to the *DOE 2023 CSP Policy* – a development **completely independent** of applicant LEYECO II’s participation. This event led applicant LEYECO II to reasonably execute the 2nd LEYECO II-FDMPC EPSA.

24. In fact, during the effectivity of the 1st LEYECO II-FDCMPC EPSA, **applicant LEYECO II was able to conduct and conclude the LEYECO II CSP** to cover its power requirements. Were it not for the newly introduced

¹⁷ Annex “G” hereof.

administrative procedures (which are again **completely independent** of LEYECO II's participation), applicant LEYECO II firmly believes that it would have been able to file the necessary application with the Honorable Commission which would have in all probability timely resolved the same.

25. Additionally, under the *DOE 2023 CSP Policy* and the *NEA CSP Guidelines* and assuming normal circumstances, applicant LEYECO II would have two (2) years to conduct CSP before the expiration of an existing PSA. However, in the present situation, due to the unforeseen regulatory changes, applicant LEYECO II had less than a year to complete the CSP and obtain the necessary approvals.

26. Based on the foregoing, the described events clearly constitute Force Majeure Events which allow for the execution of the *2nd LEYECO II-FDCMPC EPSA*.

ABSTRACT OF THE EMERGENCY POWER SUPPLY AGREEMENT AND RELATED INFORMATION

27. **LEYECO II's Power Situation.** Applicant LEYECO II's average peak demand for its Franchise Area is 59.19 MW for the 12 month period prior to the implementation of the *2nd LEYECO II-FDCMPC EPSA* as provided in its Supply-Demand Scenario.¹⁸

28. **Generation Facility.** The power to be provided to applicant LEYECO II will be sourced from applicant 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"). Applicant FDCMPC shall supply power to applicant LEYECO II under the terms stipulated in the *2nd LEYECO II-FDCMPC EPSA*.

29. Salient Features of the *2nd LEYECO II-FDCMPC EPSA*.

29.1. **Term:** The term of the *2nd LEYECO II-FDCMPC EPSA* shall be one (1) year from its execution or until the issuance of the Provisional Authority by the Honorable Commission in connection with the application for approval of the PSA resulting from the *LEYECO II CSP*, whichever comes first.

¹⁸ See Annex "C" of the Joint Application.

29.2. Date of Commencement of Supply: The obligation of applicant FDCMPC to deliver electric power to applicant LEYECO II shall commence immediately following the execution of the 2nd LEYECO II-FDCMPC EPSA, and more specifically on 03 September 2024.

29.3. Contract: Firm

29.4. Contracted Capacity: 20 MW

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

	FIRM
Contracted Demand (monthly)	20,000 kW
Contracted Energy (annual), kWh	175,200,000
Customer Load Factor Per Interval	At least 70%
Delivery Point	Plant Gate of the Power Plant
Nodal Point	11FDC Unit 1, Unit 2, Unit 3
Voltage at the Plant Gate	138kV

29.6. Outage Allowance: 20 days or 480 hours.

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

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

The Billing and Settlement between the Parties shall be in accordance with *Schedule 3* of the 2nd LEYECO II-FDCMPC EPSA.

29.8. Termination: Either Party may terminate the 2nd LEYECO II-FDCMPC EPSA with immediate effect by serving written notice to the other Party in the event that the other Party breaches any provision of the 2nd LEYECO II-FDCMPC EPSA and fails to cure such breach within a period of thirty (30) days from receipt of notice of such breach.

29.9. Generation Charge:

BASELOAD (FIRM):	RATE IN PHP/KW/MONTH	RATE IN PHP/KWH	BILLING DETERMINANT(BD)
Capital Recovery Fee (CRF), Php/kW/month	1,460.00	2.0000	Contract Demand in kW
Fixed O&M (FOM), Php/kW/month	452.09	0.6193	Contract Demand in kW
Variable O&M (VOM), Php/kWh	0.1907		Actual energy consumed or 70% of Contract Energy in kWh, whichever is higher
Fuel Cost (FC), Php/kWh	pass-through		Actual energy consumed in kWh

BASELOAD (FIRM)

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

$$\begin{aligned} \text{CRF Charge} &= (1,460.00\text{Php/kW-month}) * \text{BD} \\ \text{FOM Charge} &= [(452.09\text{Php/kW-month}) * (\text{PH CPI}_{\text{CURRENT}}/\text{PH CPI}_{\text{BASE}})] * \text{BD} \\ \text{VOM Charge} &= [(0.1907\text{Php/kWh}) * (\text{PH CPI}_{\text{CURRENT}}/\text{PH CPI}_{\text{BASE}})] * \text{BD} \\ \text{Fuel Cost} &= [(DCP * \text{ACR or MCR, whichever is lower})/1000] * \text{BD} \end{aligned}$$

WHERE:

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}= 124.8 (January 2024)

Other Pass-Through Charges: (1) Market Charges and Fees including Line Rental Charges; and (2) Value Added Tax (VAT) (if applicable)

29.10. Estimated Rate Impact The indicative rate impact on applicant LEYECO II's overall generation rate with and without the additional supply from applicant FDCMPC is as follows:¹⁹

With FDCMPC

Power Supplier	October 2024 - September 2025 Total Quantity (kWh)	Amount (PhP)	Percent Share (%)	Resulting Capacity Utilization Factor (%)	Average Rate (PhP/kWh)	Weighted Average Rate (PhP/kWh)
GCGI	140,160,000.00	902,840,640.00	36.71%	100%	6.4415	6.2862
FDC	175,200,000.00	1,012,183,200.00	45.89%	100%	5.7773	
WESM	66,412,469.28	484,857,579.74	17.40%		7.3007	
TOTAL	381,772,469.28	2,399,881,419.74	100.0%			

Without FDCMPC

Power Supplier	October 2024 - September 2025 Total Quantity (kWh)	Amount (PhP)	Percent Share (%)	Resulting Capacity Utilization Factor (%)	Average Rate (PhP/kWh)	Weighted Average Rate (PhP/kWh)
GCGI	140,160,000.00	902,840,640.00	36.71%	100%	6.4415	6.8532
FDC	0.00	0.00	0.00%	0%	0.0000	
WESM	241,612,469.28	1,713,511,509.39	63.29%		7.0920	
TOTAL	381,772,469.28	2,616,352,149.39	100%			

GENERATION RATE IMPACT (0.5670)

30. 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"	2 nd LEYECO II-FDCMPC EPSA
"B"	LEYECO II Board Resolution
"C"	LEYECO II Supply and Demand Scenario, Details of Existing Suppliers, Contract Utilization
"D"	LEYECO II Average Daily Load Curve
"E"	Estimated Rate Impact Analysis
"F"	2 nd LEYECO II-FDCMPC EPSA Executive Summary

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

"G"	Solicitation Letters sent to Generation Companies
"H"	FDCMPC Financial Model with Breakdown of Project Costs,
"H-1"	FDCMPC Cost Analysis
"I"	FDCMPC Generation Rate and Derivation
"J"	FDCMPC Sample Computation of Power Rates
"K"	FDCMPC Basis of Other Charges
"L"	FDCMPC Fuel Supply Procurement Process
"L-1"	FDCMPC Certification on Spot Fuel Agreement
"L-2"	FDCMPC Sworn Statement on Fuel Matters
"M"	FDCMPC Relevant Technical and Economic Characteristics of the Generation Capacity
"N"	FDCMPC Secretary's Certificate
"O"	Proof of Service to LGU Offices
"P"	Affidavit of Publication
"Q"	Explanation for Non-Applicability of Documents
"R"	Notice to Commence dated 16 February 2024 issued by NEA
"S"	LEYECO II Terms of Reference
"T"	LEYECO II Final Instructions to Bidders
"U"	LEYECO II <i>BAC Resolution</i> No. CSP-2024-10
"V"	LEYECO II Notice of Award to KEPCO SPC
"W"	NEA-PHILRECA RE Expo Program

The conduct of a CSP is not required and the 2nd LEYECO II-FDCMPC EPSA is immediately implementable

31. Applicant LEYECO II need not undergo a CSP prior to the execution of the 2nd LEYECO II-FDCMPC EPSA. Moreover, the 2nd LEYECO II-FDCMPC EPSA is immediately implementable upon its execution, consistent with the prevailing regulations of this Honorable Commission and the DOE.

32. Under Sections 2.3 and 2.3.5 of the DOE 2023 CSP Policy, the conduct of a CSP is not required for the negotiated procurement of emergency power supply, and the filing for approval of an emergency power supply agreement with the Honorable Commission does not need any prior clearance or certification from the DOE.

33. In compliance with prevailing regulations, the generation component to be charged under the 2nd LEYECO II-FDCMPC EPSA, pending the Honorable Commission’s approval of the same, shall be capped at the latest ERC-approved generation tariff for the plant.

ALLEGATIONS RELATIVE TO THE PRAYER FOR CONFIDENTIAL TREATMENT OF INFORMATION

34. Section 2, 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.

35. Pursuant thereto, applicant FDCMPC prays that 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
“H”	FDCMPC Financial Model with Breakdown of Project Costs
“H-1”	Cost Analysis
“I”	FDCMPC Generation Rate and Derivation
“J”	FDCMPC Sample Computation of Power Rates
“K”	FDCMPC Basis of Other Charges
“L”	FDCMPC Fuel Supply Procurement Process

"L-1"	FDCMPC Certification on Spot Fuel Agreement
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36. The Confidential Documents contain certain non-public information, data, and calculations involving business operations and financial trade secrets reflecting applicant 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.

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

"A trade secret is defined as a plan or process, tool, mechanism, or compound known only to its owner and those of his employees to whom it is necessary to confide it. The definition also extends to a secret formula or process not patented, but known only to certain individuals using it in compounding some 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."

38. Also, the Confidential Documents were prepared and developed for the exclusive use of applicant 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 applicant FDCMPC's competitors or other entities engaged in the power business for their own benefit, and to the prejudice of applicant FDCMPC.

39. The interest of applicant LEYECO II's Member-Consumer-Owners ("MCOs") are sufficiently protected by the review and evaluation of the rates under the 2nd LEYECO II-FDCMPC EPSA by the Honorable Commission, without the need to disclose the contents of the Confidential Documents.

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

40. Given the foregoing, the Confidential Documents qualify as “confidential information” and applicant FDCMPC respectfully moves for the issuance of a Protective Order to this effect.

PRAYER

WHEREFORE, premises considered, Joint Applicants **LEYTE II 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 “H”, “H-1”, “I”, “J”, “K”, “L”, and “L-1”** as confidential information as well as directing that the same be treated with confidentiality and be protected from public disclosure;
2. **ISSUE** the corresponding **PROTECTIVE ORDER** in accordance with Section 2, Rule 4 of the *ERC Revised Rules of Practice and Procedure*;
3. After due notice and hearing, **ISSUE A DECISION** (i) approving the *Joint Application in toto* which will thereby allow/authorize applicant LEYECO II to charge and collect the fees from its consumers reckoned from the commencement of the supply to the latter by applicant FDCMPC; and (ii) directing that the rates, terms, and conditions of the *2nd LEYECO II-FDCMPC EPSA* be retroactively applied for the entire term of the *2nd LEYECO II-FDCMPC EPSA*.

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

Tacloban City and Quezon City for Pasig City, 10 September 2024.



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*Counsel for LEYTE II Electric
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Republic of the Philippines)
_____) S.S.

**VERIFICATION AND
CERTIFICATION AGAINST FORUM SHOPPING**

I, **Juan Eugenio L. Roxas**, of legal age, married, with office address at PHIVIDEC Industrial Estate, Villanueva, Misamis Oriental 9002, after having been duly sworn to in accordance with law, do hereby depose and state for FDC Misamis Power Corporation ("FDCMPC"), that:

1. I am currently the President and Chief Executive Officer ("PCEO") of FDCMPC with authority to commence, initiate, sign, and file the foregoing Joint Application with the Energy Regulatory Commission ("ERC") for the approval of the Emergency Power Supply Agreement ("EPSA") entered into by Leyte II Electric Cooperative, Inc. ("LEYECO II") and FDCMPC, with prayer for confidential treatment of information (the "Joint Application").
2. I have read the Joint Application and the allegations therein are true and correct based on my personal knowledge or the authentic records of FDCMPC;
3. The Joint Application is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
4. The factual allegations in the Joint Application have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery;
5. I or FDCMPC have not commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals or any court, tribunal, or quasi-judicial agency and, to the best of my knowledge, no such other action or claim is pending therein; and
6. If I or FDCMPC should hereinafter learn that the same or a similar action or claim has been filed or is pending in the Supreme Court, the Court of Appeals or any court, tribunal, or quasi-judicial agency, I shall report the said fact within five (5) days from discovery thereof to the Honorable Commission.

IN WITNESS WHEREOF, we have hereunto affixed our signatures this _____ in Tacloban City, Philippines.


FERNAN PAUL R. TAN
Affiant



FELICIANO E. ELIZON
Affiant

SUBSCRIBED and SWORN TO before me this _____ in Tacloban City, with affiants Fernan Paul R. Tan and Feliciano E. Elizon having presented to me their government issued ID as competent and reliable evidence of his identity, to wit:

NAME	GOVT ID	DATE/PLACE ISSUED
Fernan Paul R. Tan	SSS ID No. 06-1461403-1	Tacloban City
Feliciano E. Elizon	TIN ID No. 272-588-380	Palo, Leyte

WITNESS MY HAND AND SEAL on the date and place as above-indicated.

Doc. No. 55 ;
Page No. 12 ;
Book No. 3 ;
Series of 2024.


ATTY. PETER JOVEN Y. DE OÑO
NOTARY PUBLIC FOR TACLOBAN CITY
P.C. NO. 2023-04-143 valid until 31 Dec 2024
C-751 Mendocino St. Brgy. Sta Cruz, P. Leyte
Roll of Attorneys No. 72478
IBP No. 398294 / 01-04-24; Tac. City
PTR No. 8481678 / 01-04-24; Tac. City
MCLE Compliance No. VI-0001147

Republic of the Philippines)
City of Tacloban) S.S.

VERIFICATION AND CERTIFICATION
AGAINST NON-FORUM SHOPPING

We, **FERNAN PAUL R. TAN** and **FELICIANO E. ELIZON**, of legal age, and with office address at Real Street, Sagkahan District, Tacloban City, after having been duly sworn to in accordance with law, do hereby depose and state for myself and for Leyte II Electric Cooperative, Inc. ("LEYECO II"), that:


1. We are currently the General Manager and Board President, respectively of LEYECO II with authority to commence, initiate, sign, and file the foregoing Joint Application with the Energy Regulatory Commission ("ERC") for the approval of the Emergency Power Supply Agreement ("EPSA") entered into by and between Leyte II Electric Cooperative, Inc. and FDC Misamis Power Corporation, with confidential treatment of information (the "Joint Application").
2. We have read the Joint Application and the allegations therein are true and correct based on my personal knowledge or the authentic records of LEYECO II;
3. The Joint Application is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
4. The factual allegations in the Joint Application have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery;
5. We or LEYECO II, have not commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals or before any court, tribunal, or quasi-judicial agency and, to the best of my knowledge, no such other action or claim is pending therein; and
6. If we or LEYECO II should hereinafter learn that the same or a similar action or claim has been filed or is pending in the Supreme Court, the Court of Appeals or any court, tribunal, or quasi-judicial agency, we shall report the said fact within five (5) days from discovery thereof to the Honorable Commission.

IN WITNESS WHEREOF, I have hereunto affixed my signature this day
of OCT 17 2024 at QUEZON CITY, Metro Manila.


JUAN EUGENIO L. ROXAS
Affiant

SUBSCRIBED and SWORN TO before me this day of OCT 17 2024,
with affiant _____ having presented to me her P0007571B, issued
at DFA MNL on 20 Dec 2018, valid until 19 Dec 2028 as competent and reliable
evidence of his identity.

Doc. No. 700 ;
Page No. 01 ;
Book No. 1 ;
Series of 2023.


ATTY. MA. CECILIA T. ABAYON
Notary Public for and In Quezon City
Adm. Matter No. NP-252 (2023-2024)
PTR No. 5555371, January 03, 2024- Q.C.
IBP OR No. 380643, 12.29.23 / Roll No. 84156
MCLE Compliance No. VIII-0004212- 09; October 2023
84 L11 De Leon St., Isidora Hills Subd. Holy Spirit, Q.C.