



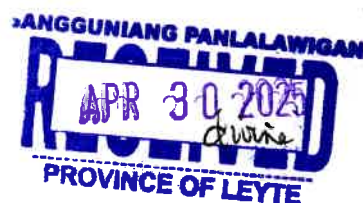
Item No.: 20

Date: MAY 27 2025

April 29, 2025

SANGGUNANG 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) ENTERED INTO BY AND BETWEEN LEYTE II ELECTRIC COOPERATIVE, INC. (LEYECO II) AND FDC MISAMIS POWER CORPORATION (FDCMPC), WITH PRAYER FOR CONFIDENTIAL TREATMENT OF INFORMATION" **ERC CASE NO. 2025-047 RC**

Gentlemen:

In compliance with the Rules of Practice and Procedure of the Energy Regulatory Commission ("ERC") and the Order and Notice of Virtual Hearing of the ERC, we are furnishing this Honorable Office with the said Order and Notice both dated April 16, 2025.

In line with this, we are requesting that the said Order and Notice of Virtual Hearing be posted on the Sanggunian bulletin board of this Honorable Office, in compliance with the said Order and the Rules of Practice and Procedure of the ERC.

Consequently, we are also requesting for a **Certification of Posting with Dry Seal** from this Honorable Office stating that a complete copy of the Order and Notice of Virtual Hearing of the above-captioned case was served to, duly received, and duly posted by this Honorable Office.

Very truly yours,


ENGR. FERNAN PAUL R. TAN
General Manager *apd.*

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

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



ERC CASE NO. 2025-047 RC

LEYTE II ELECTRIC
COOPERATIVE, INC.
(LEYECO II) AND FDC
MISAMIS POWER
CORPORATION (FDCMPC),
Applicants.

Promulgated:
April 16, 2025

X-----X

ORDER

On 19 February 2025, FDC Misamis Power Corporation (FDCMPC) and Leyte II Electric Cooperative, Inc. (LEYECO II) filed a *Joint Application*, dated 10 September 2024, seeking the Commission’s approval of their Emergency Power Supply Agreement (EPSA), with prayer for confidential treatment of information.

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

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 PHIVIDEK 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 2021*⁵ (the "*ERC Revised Rules of Practice and Procedure*"), and *Resolution No. 16, Series of 2023*⁶ (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*

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"

Application (with all its annexes and accompanying documents, except those subject of a motion for 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 *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

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]."

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.*

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 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:

¹² Annex "R" hereof.

¹³ Annex "S" hereof.

¹⁴ Annex "T" hereof.

¹⁵ Annex "U" hereof.

¹⁶ Annex "V" hereof.



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

¹⁷ Annex “G” hereof.

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 aforecited 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 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 PHIVIDEDEC 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.

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.

18 See Annex "C" of the Joint Application.

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), <u>Php</u> /kW/month	1,460.00	2.0000	Contract Demand in kW
Fixed O&M (FOM), <u>Php</u> /kW/month	452.09	0.6193	Contract Demand in kW
Variable O&M (VOM), <u>Php</u> /kWh	0.1907		Actual energy consumed or 70% of Contract Energy in kWh, whichever is higher
Fuel Cost (FC), <u>Php</u> /kWh	pass-through		Actual energy consumed in kWh

BASELOAD (FIRM)

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

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

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}= 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
“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

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

"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 BAC Resolution 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

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

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

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.
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.

Finding the said *Joint Application* to be sufficient in form and with the required fees having been paid, the Commission hereby sets the same for hearing for determination of compliance with the jurisdictional requirements, expository presentation, Pre-Trial Conference, and presentation of evidence on the following dates and online platform for the conduct thereof, pursuant to Resolution No. 09, Series of 2020²¹ and Resolution No. 01, Series of 2021²² (ERC Revised Rules of Practice and Procedure):

Date	Platform	Activity
27 May 2025 (Tuesday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Teams Application	Determination of compliance with jurisdictional requirements and expository presentation
03 June 2025 (Tuesday) at nine o'clock in the morning (9:00 A.M.)		Pre-Trial Conference and Presentation of Evidence

Accordingly, LEYECO II and FDCMPC are hereby directed to mirror the virtual hearings to be hosted by the Commission at **LEYECO II's principal office located at Real St., Sagkahan Dist., Tacloban City, Leyte**, as the designated venue for the conduct thereof, and ensure that the same is open to the public. Moreover, LEYECO II and FDCMPC shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

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

- 1) Cause the publication of the attached *Notice of Virtual Hearing* in two (2) newspapers of nationwide circulation in the Philippines at their own expense, twice (2x) within two (2) successive weeks, the dates of publication not being less than seven (7) days apart, and the date of the last publication to be made not later than ten (10) days before the date of the scheduled initial virtual hearing;

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

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

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

Within five (5) calendar days prior to the date of the initial virtual hearing, LEYECO II and FDCMPC must submit to the Commission via electronic mail (e-mail) at docket@erc.ph, and copy furnish the Legal Service through legal@erc.ph, the scanned copies of their written compliance to the aforementioned jurisdictional requirements, attaching the following methodically arranged and duly marked documents:

- 1) The evidence of publication of the attached *Notice of Virtual Hearing* consisting of affidavits of the Editors or Business Managers of the newspapers where the said *Notice of Virtual Hearing* was published, and the complete issues of the said newspapers;
- 2) The evidence of actual posting of this *Order* and the attached *Notice of Virtual Hearing* consisting of certifications issued to that effect, signed by the aforementioned Governor, Mayors and LGU legislative

bodies or their duly authorized representatives, bearing the seals of their offices;

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

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

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

- 1) A summary of admitted facts and proposed stipulation of facts;
- 2) The issues to be tried or resolved;
- 3) The documents or exhibits to be presented, stating the purposes and proposed markings therefor, which should also be attached to the Pre-trial Brief; and

- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-trial Brief.

Joint Applicants LEYECO II and FDCMPC must ensure that all the documents or exhibits proposed to be presented have already been duly submitted to the Commission **at least five (5) calendar days** before the date of the scheduled initial virtual hearing and Pre-trial Conference pursuant to the preceding paragraph.

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

SO ORDERED.

Pasig City, 16 April 2025.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ATTY. KRISHA MARIE T. BUELA
Director III, Legal Service


LS: JBY/MVM

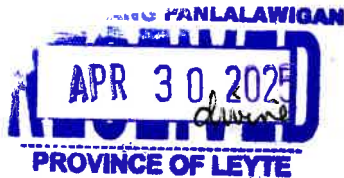
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Copy Furnished:

1. Leyte II Electric Cooperative, Inc. (LEYECO II)
Applicant
Real St., Sagkahan Dist., Tacloban City, Leyte
2. Atty. Tyron Jan G. Albao
Counsel for Applicant LEYECO II
attyteejalbao@gmail.com
3. FDC Misamis Power Corporation (FDCMPC)
Applicant
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4. Atty. Mary Felicci Ongchuan
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9. Office of the Governor
Province of Leyte
10. Office of the Local Government Unit (LGU) Legislative Body
Province of Leyte
11. Office of the Mayor
Palo, Leyte
12. Office of the Local Government Unit (LGU) Legislative Body
Palo, Leyte
13. Office of the Mayor
Babatngon, Leyte
14. Office of the Local Government Unit (LGU) Legislative Body
Babatngon, Leyte
15. Office of the Mayor
Tacloban, Leyte
16. Office of the Local Government Unit (LGU) Legislative Body
Tacloban, Leyte
17. Regulatory Operations Service
Energy Regulatory Commission
14th Floor, Exquadra Tower, 1 Jade Drive,
San Antonio, 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 II
ELECTRIC COOPERATIVE,
INC. AND FDC MISAMIS
POWER CORPORATION,
WITH PRAYER FOR
CONFIDENTIAL
TREATMENT OF
INFORMATION,



ERC CASE NO. 2025-047 RC

LEYTE II ELECTRIC
COOPERATIVE, INC.
(LEYECO II) AND FDC
MISAMIS POWER
CORPORATION (FDCMPC),
Applicants.

Promulgated:
April 16, 2025

X-----X

NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 19 February 2025, FDC Misamis Power Corporation (FDCMPC) and Leyte II Electric Cooperative, Inc. (LEYECO II) filed a *Joint Application*, dated 10 September 2024, seeking the Commission’s approval of their Emergency Power Supply Agreement (EPSA), with prayer for confidential treatment of information.

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

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 PHIVIDEK 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")

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."

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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 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*

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”

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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 GNPDP’s Application for the approval of the *LEYECO II-GNPDP PPSA*; (ii) terminated the Provisional Authority issued for the *LEYECO II-GNPDP PPSA*; and (iii) directed applicant LEYECO II and GNPDP to immediately stop implementing the *LEYECO II-GNPDP PPSA* upon receipt of the said *Order*.

Without the power from GNPDP, 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 *Memorandum* No. 2023-057 (the “*NEA CSP Guidelines*”)¹¹ came into effect.

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].”

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.

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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 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

¹² Annex "R" hereof.

¹³ Annex "S" hereof.

¹⁴ Annex "T" hereof.

¹⁵ Annex "U" hereof.

¹⁶ Annex "V" hereof.

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would also be participated in by numerous generation companies, to wit:



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,

17 Annex "G" hereof.

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 aforecited 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 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 PHIVIDEK 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.
- 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.

18 See Annex "C" of the Joint Application.

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

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

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}= 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
“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

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

"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 BAC Resolution 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

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

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

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.
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.

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The Commission hereby sets the instant *Joint Application* for hearing for determination of compliance with the jurisdictional requirements, expository presentation, Pre-Trial Conference, and presentation of evidence on the following dates and online platform for the conduct thereof, pursuant to Resolution No. 09, Series of 2020²¹ and Resolution No. 01, Series of 2021²² (ERC Revised Rules of Practice and Procedure):

Date	Platform	Activity
27 May 2025 (Tuesday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Teams Application	Determination of compliance with jurisdictional requirements and expository presentation
03 June 2025 (Tuesday) at nine o'clock in the morning (9:00 A.M.)		Pre-Trial Conference and Presentation of Evidence

Accordingly, LEYECO II and FDCMPC are hereby directed to mirror the virtual hearings to be hosted by the Commission at **LEYECO II's principal office located at Real St., Sagkahan Dist., Tacloban City, Leyte**, as the designated venue for the conduct thereof, and ensure that the same is open to the public. Moreover, LEYECO II and FDCMPC shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

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

Moreover, all persons who have an interest in the subject matter of the instant case may become a party by filing with the Commission via e-mail at doCKET@erc.ph, and copy furnishing the Legal Service through legal@erc.ph, a verified Petition to Intervene **at least five (5) calendar days** prior to the date of the initial virtual hearing. The

²¹ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.
²² A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

verified Petition to Intervene must follow the requirements under Rule 9 of the ERC Revised Rules of Practice and Procedure, indicate therein the docket number and title of the case, and state the following:

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

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

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

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

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

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

WITNESS, the Honorable Chairperson and CEO **MONALISA C. DIMALANTA** and the Honorable Commissioners **ALEXIS M. LUMBATAN**, **CATHERINE P. MACEDA**, **FLORESINDA G. BALDO-DIGAL**, and **MARKO ROMEO L. FUENTES**, Energy Regulatory Commission, this 16th day of April 2025 in Pasig City.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ATTY. KRISHA MARIE T. BUELA
Director III, Legal Service


LS: JBY/MVM