

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

**IN THE MATTER OF THE
JOINT APPLICATION FOR
APPROVAL OF THE
EMERGENCY POWER SUPPLY
AGREEMENT BY AND
BETWEEN NEGROS
ORIENTAL II ELECTRIC
COOPERATIVE AND FDC
MISAMIS POWER
CORPORATION, WITH
PRAYER FOR PROVISIONAL
AUTHORITY AND
CONFIDENTIAL TREATMENT
OF INFORMATION,**

ERC CASE NO. 2024-084 RC

**NEGROS ORIENTAL II
ELECTRIC COOPERATIVE
(NORECO II) AND FDC
MISAMIS POWER
CORPORATION (FDCMPC),**

Applicants.

X-----X

Promulgated:
October 14, 2024

NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 03 July 2024, Negros Oriental II Electric Cooperative (“NORECO II”) and FDC Misamis Power Corporation (“FDCMPC”) filed their *Joint Application (With Prayer for Provisional Authority and for Confidential Treatment of Information)* dated 25 March 2024, seeking the Commission’s approval of their Emergency Power Supply Agreement (EPSA).

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

THE JOINT APPLICANTS

1. Applicant NORECO 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 Street, Dumaguete City. Applicant NORECO II serves the power requirements of the cities of Bayawan, Tanjay, and Dumaguete, and the municipalities of Amlan, Bacong, Basay, Dauin, Pamplona, San Jose, Sibulan, Siaton, Sta. Catalina, Valencia, and Zamboanguita, all in the province of Negros Oriental (collectively, the “Franchise Area”). For purposes of this *Joint Application*, applicant NORECO II is represented herein by its Chairman of the Board, **GUILER IAN K. BUCITA** and General Manager **FE MARIE D. TAGLE**, duly authorized by NORECO II’s Board of Directors by virtue of Resolution No. 180-23.¹
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 PHIVIDECE Industrial Estate, Villanueva, Misamis Oriental 9002. For purposes of this *Joint Application*, applicant FDCMPC is represented by its President and Chief Executive Officer (“CEO”), **MR. JUAN EUGENIO L. ROXAS**, duly authorized for the purpose by virtue of Secretary’s Certificate No. 202310-04.²
3. The Applicants may be served with the orders, notices, and other processes of the Honorable Commission through their undersigned counsel at the address indicated herein.

NATURE OF THE APPLICATION

4. The instant *Joint Application* for the approval of the *Emergency Power Supply Agreement* (“*EPSA*”) entered into by and between the Applicants dated 13 October 2023 (the “*NORECO 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 the Department of Energy’s (“DOE”) *Department Circular* No. 2023-06-0021 (the “*DC2023-06-0021*).⁶
5. In compliance with Section 2, Rule 6 of the *ERC Revised Rules of Practice and Procedure*, a copy of the instant *Joint Application* (with all its annexes and accompanying documents, except those

¹ See **Annex “DD”** of the *Joint Application*.

² See **Annex “EE”** of the *Joint Application*.

³ SEC.25. Retail Rate. – The retail rates charged by distribution utilities for the supply of electricity in their captive market shall be subject to regulation by the ERC based on the principle of full recovery of prudent and reasonable economic costs incurred, or such other principles that will promote efficiency as may be determined by the ERC.

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

⁵ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

⁶ Entitled, “*Prescribing the policy for the mandatory conduct of the Competitive Selection Process by the Distribution Utilities for the procurement of power supply for their captive market*”

subject of a motion for confidential treatment of information) was furnished to the following offices:⁷

- a. Office of the City Mayor of Dumaguete;
 - b. Office of the Presiding Officer of the *Sangguniang Panlungsod* of Dumaguete City;
 - c. Office of the Provincial Governor of Negros Oriental;
 - d. Office of the Presiding Officer of the *Sangguniang Panlalawigan* of the Province of Negros Oriental;
 - e. Office of the Municipal Mayor of Villanueva;
 - f. Office of the Presiding Officer of the *Sangguniang Bayan* of the Municipality of Villanueva;
 - g. Office of the Provincial Governor of Misamis Oriental; and
 - h. Office of the Presiding Officer of the *Sangguniang Panlalawigan* of the Province of Misamis Oriental.
6. Further, this *Joint Application* was also published in a newspaper of general circulation.⁸

STATEMENT OF FACTS

7. **Necessity for Power Supply:** applicant NORECO II is a member of the Negros Electric Cooperative Association (“NECA”), a regional association composed of non-stock, non-profit electric cooperatives located within Region VII of the Philippines. NECA was organized for the purpose, among others, of aggregating its member electric cooperatives’ power requirements to take advantage of a lower price for electricity resulting from “economies of scale”.
8. NECA’s members in late 2021 were already preparing to conduct its joint Competitive Selection Process (“CSP”) for their aggregated power supply requirements. Before NECA could do so however, its members including NORECO II, were hit by Typhoon Odette, with typhoon conditions categorized as Signal No. 3 (described as “destructive typhoon-force winds”) harshly affecting the province of Negros Oriental.⁹
9. The intense damage to the respective distribution assets of NECA’s members compelled them to prioritize the repair of the same,¹⁰ in addition to ensuring the safety of their respective personnel and their families. Thus, NECA’s members (including applicant NORECO II), which have been previously preparing to conduct a joint CSP for their aggregated power requirements, have to first restore power supply to **all** of its member-ECs’ franchise areas and have to defer the collective conduct of said

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

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

⁹ “Typhoon Odette over Panay Gulf after 8th landfall in Negros Oriental”, available at <https://www.rappler.com/nation/weather/typhoon-odette-pagasa-forecast-december-17-2021-5am/>.

¹⁰ See “Still no electricity, water in northern Negros Oriental, 4 days after ‘Odette’”, available at <https://newsinfo.inquirer.net/1530055/still-no-electricity-water-in-northern-negros-oriental-4-days-after-odette>.

CSP.¹¹ Records show that applicant NORECO II even suffered a fatality in undertaking the restoration of the power supply.¹² It is also reported that electric power restoration efforts were still ongoing as of 2 February 2022, or more than one (1) month from the time Typhoon Odette made landfall.¹³

10. Due to the restoration works that will have to be undertaken with utmost priority, NECA was not able to timely conduct its joint CSP which could have addressed applicant NORECO II's power supply requirements. It also bears stressing that applicant NORECO II's supply agreement subsisting at the time was likewise nearing its expiration. These circumstances forced applicant NORECO II to apply for a Certificate of Exemption from the Competitive Selection Process ("COE-CSP") from the Department of Energy ("DOE"),¹⁴ which the latter saw fit to grant. The COE-CSP allowed applicant NORECO II to enter into an EPSA with KEPCO SPC Power Corporation¹⁵ ("KSPC") (the "*NORECO II-KSPC EPSA*") to address its interim power supply. The *NORECO II-KSPC EPSA* was due to expire on **25 September 2023**.
11. After restoration works were substantially completed, NECA was able to conduct the above-described joint CSP for its member ECs, including applicant NORECO II (the "*1st NECA CSP*"). Unfortunately, however, and without any intervention attributable to NECA's member ECs (including applicant NORECO II), all bidders manifested that they will no longer be tendering bids during the submission and opening of bids for the *1st NECA CSP*. NECA was thus forced to declare a failure of the *1st NECA CSP*.¹⁶
12. NECA (including applicant NORECO II), from the time of the declaration of the failure of its *1st CSP*, had diligently tried to conduct a second (2nd) round of CSP for its member ECs. However, further delay¹⁷ in the 2nd conduct of the NECA CSP was caused by industrial concerns of some of NECA's member ECs, and for independent reasons of the aforesaid NECA member ECs, and the other member ECs. These NECA member-ECs even communicated that they will be *withdrawing* from the NECA aggregation for the intended second (2nd) round of CSP.
13. The *NORECO II-KSPC EPSA* expired on September 25, 2023. Foreseeing that the second round of the NECA aggregated CSP

¹¹ "NONECO Task Force Kapatid (Typhoon Odette) Send Off Ceremony", *available at* <https://www.nonecoelectric.com/news/noneco-sendoff-ceremony>.

¹² "Lineman dies amid power restoration efforts in Negros Oriental: police", *available at* <https://news.abs-cbn.com/news/12/26/21/lineman-dies-of-electrocution-in-negros-oriental>.

¹³ See the United Nations Office for the Coordination of Humanitarian Affairs' report entitled "Humanitarian Needs and Priorities Revision – Super Typhoon (Odette), Philippines" as of 2 February 2022, *available at* <https://reliefweb.int/report/philippines/philippines-super-typhoon-rai-odette-humanitarian-needs-and-priorities-revision>.

¹⁴ See Annex "KK" of the Joint Application.

¹⁵ See Annex "LL" of the Joint Application.

¹⁶ See Annex "MM" of the Joint Application.

¹⁷ "Illegal Occupying Post" | Noceco acting general manager suspended for 90 days", *available at* <https://www.sunstar.com.ph/bacolod/illegal-occupying-post-noceco-acting-general-manager-suspended-for-90-days>.

would not be concluded by 25 September 2023, applicant NORECO II solicited proposals from power suppliers.¹⁸ Applicant NORECO II entered into negotiations with applicant FDCMPC for emergency power supply and eventually executed the *NORECO II-FDCMPC EPSA* subject of the instant *Joint Application*.

All the above-described events constitute Force Majeure or Fortuitous Events that are beyond the control of applicant NORECO II, thus allowing the procurement of Emergency Power

14. Section 2.3.5. of the DOE's *Department Circular* No. DC2023-06-0021 allows for the negotiated procurement of Emergency Power supply in the event that a distribution utility's power supply falls below its low demand due to Force Majeure or Fortuitous Events that are beyond its control.¹⁹ Force Majeure or Fortuitous Event is likewise defined as follows, to wit:

Force Majeure or Fortuitous Event refers to 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.

This further refers to any event or circumstance generally caused: (1) by nature, such as, but not limited to, fires, **floods, typhoons or other catastrophes, or acts of God**; and/or (2) by the acts of man, such as, but not limited to, war, **national emergencies**, revolution, riot, insurrection, civil unrest, or any other violent or threatening actions."²⁰ [Emphasis and underscoring supplied]

15. Based on the above definition, the incidents previously discussed constitute Force Majeure or Fortuitous Events which would justify the procurement by applicant NORECO II of emergency power supply through the *NORECO II-FDCMPC EPSA*. To elaborate:

15.1. **First**, the occurrence of Typhoon Odette falls squarely as "floods, typhoons or other catastrophes or acts of God" described under Section 3.8. of the DOE's *Department Circular* No. DC2023-06-0021. As previously discussed, NECA had to first prioritize restoring the immense damage arising from Typhoon Odette. It likewise bears stressing that this event devastated both

¹⁸ See **Annex "Q"** of the *Joint Application*.

¹⁹ See also Section 3.7. of the DOE's *Department Circular* No. DC2023-06-0021.

²⁰ See Section 3.8. of the DOE's *Department Circular* No. DC2023-06-0021.

structures and infrastructures needed to properly conduct NECA's intended and aggregated CSP, which included applicant NORECO II's power requirements.

It bears reiteration that this damage was of an extent that forced not only applicant NORECO II, but *other* electric cooperatives **found within Region VII** to devote their full and undivided attention towards the restoration of power and electric distribution services in the affected areas of the Province of Negros Oriental. It further bears stressing that Typhoon Odette was inevitable and independent of applicant NORECO II's participation.

15.2. **Second**, and in fact, NECA (which includes applicant NORECO II) **conducted the 1st NECA CSP**. Unfortunately however, and without any fault attributable to applicant NORECO II, all of the bidders participating in the *1st NECA CSP* chose not to submit any bids to be considered.

15.3. **Third**, NECA's other member ECs have since already communicated that they intend to withdraw from NECA's aggregated CSP, the causes of which are totally independent from any participation from applicant NORECO II. **It must be stressed that applicant NORECO II is still actively pursuing its second (2nd) CSP, only that these circumstances will dictate whether it can still course it through NECA to take advantage of economies of scale, or if it will be constrained to pursue its own CSP.**

16. All things considered, the incidents discussed above clearly constitute Force Majeure and/or Fortuitous Events which should allow applicant NORECO II to procure Emergency Power without undergoing a CSP.

ABSTRACT OF THE EMERGENCY POWER SALES AGREEMENT AND RELATED INFORMATION

17. **NORECO II Power Situation.** Applicant NORECO II's peak demand for its Franchise Area for 2023 to 2024 is provided in its Supply - Demand Scenario.²¹

18. **Generation Facility.** The power to be provided to applicant NORECO 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 baseload power to applicant NORECO II under the terms stipulated in the *NORECO II-FDCMPC EPSA*.

19. **Salient Features of the EPSA.**

²¹ See Annex "M" of the Joint Application.

19.1. Term: The Term of the EPSA shall be one (1) year from commencement of delivery, or 26 October 2023 to 25 October 2024.

19.2. Contract Type: Firm

19.3. Installed Capacity of the Power Plant: 405MW

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

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

	FIRM
Contracted Demand	18,000 kW ²²
Contracted Energy (Annual)	at least 141,985,000.00 kWh
Customer Load Factor Per Hourly Interval	At least 72.22% LF
Customer Load Factor Per Monthly Interval	At least 90%
Delivery Point	Plant Gate of the Power Plant
Voltage at the Plant Gate	138 kV

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

It is applicant NORECO II’s obligation to procure Replacement Power, at its own costs, during outage within the Outage Allowance. While applicant FDCMPC shall exert best efforts to procure Replacement Power beyond the Outage Allowance.

19.7. Billing and Settlement: Applicant FDCMPC shall provide a monthly Power Bill to applicant NORECO II that shall contain the volume of energy delivered, and the amount of money (in Philippine Peso) due and payable by applicant NORECO 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 *NORECO II-FDCMPC EPSA*.

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

In addition, either party reserves the unequivocal right to terminate the *NORECO II-FDCMPC EPSA* in the event that the NECA CSP winning bidder, initiates the delivery of power before the expiration of the *NORECO II-FDCMPC EPSA*. Applicant NORECO II, as the terminating party, shall dutifully provide written notice of its intent to terminate, ensuring such notice is

²² p. 27 of the *NORECO II-FDCMPC EPSA* provides that the Contracted Demand is only “18 kW”. The Joint Applicants beg the Honorable Commission’s indulgence for this typographical error.

served to applicant FDCMPC at least two (2) months prior to the anticipated commencement of power delivery. Termination for this reason shall not suffer the consequences as stipulated in Section 12.3 (Immediate Payment) and Section 12.4 (Termination Amount) of the *NORECO II-FDCMPC EPSA*.

19.9. Generation Charge:

BASELOAD (FIRM):	RATE IN PHP/KW/MONTH	RATE IN PHP/KWH	BILLING DETERMINANT(BD)
Capital Recovery Fee (CRF), Php/kW/month	1,014.70	1.3900	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 72.22% 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

FOM Charge

VOM Charge

Fuel Cost

= [(1,014.70Php/kW/month)]* BD

= [(452.09Php/kW/month)* BD

= [(0.1907Php/kWh)* BD

= [(DCP * ACR or MCR, whichever is lower)/1000] * BD

Where:

BD

DCP

ACR

MCR_{CAP}

= Billing Determinant

= Delivered Coal Price

= Total Coal Cost (Php)/ Total Coal Consumption (MT)

= Actual Fuel Consumption Rate

= Total Coal Consumption (MT)/Total Metered Quantity of the Plant (kWh)

= Maximum Consumption Rate equal to 0.75, escalated at a rate of 1.5% annually

kW or kWh

PhP/MT

kg/kWh

kg/kWh

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

20.Estimated Rate Impact. The indicative rate impact on applicant NORECO II’s overall generation rate with and without the additional supply from applicant FDCMPC is as follows:²³

²³See Annex “KK” of the Joint Application.

POWER SUPPLIER	RATE (Php/kWh)	kWH PURCHASED	AMOUNT DUE (Php)
GCGI	6.4064	204,960,000.00	1,313,046,350.00
IEMOP	8.8205	270,465,282.73	2,385,635,502.26
TOTAL		475,425,282.73	3,698,681,852.26
BLENDED RATE:			7.7797

POWER SUPPLIER	RATE (Php/kWh)	kWH PURCHASED	AMOUNT DUE (Php)
GCGI	6.4064	204,960,000.00	1,313,046,350.00
FDCMPC	5.5699	142,374,000.00	793,012,821.00
IEMOP	8.7046	128,091,282.73	1,114,985,493.56
TOTAL		475,425,282.73	3,221,044,664.56
BLENDED RATE (Php/kWh)			6.7751

RATE IMPACT: Php/kWh		-1.00
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21. **Environmental Compliance Certificate.** The Department of Environment and Natural Resources – Environmental Management Bureau (“DENR-EMB”) issued the *Environmental Compliance Certificate* No. ECC-CO-1304-0012 covering the Power Plant.²⁴
22. **Board of Investments (“BOI”) Certificate.** The Power Plant is registered with the BOI. A *Certificate of Registration* No. 213-177 was issued by the BOI to this effect.²⁵
23. **Fuel Supply.** In order to ensure the supply of fuel for the operations of the Power Plant, applicant FDCMPC solicited offers from reputable suppliers, and has contracted with the supplier that offered the best terms.²⁶
24. **DOE Certification.** The DOE has certified that the Power Plant is consistent with the Power Development Plan. A *Certificate of Endorsement* No. 2015-03-010 was issued by the DOE to this effect.²⁷
25. **Provisional Authority to Operate (“PAO”).** The Honorable Commission has issued a *Certificate of Compliance* No. 17-05-M-00108M (“COC”) for the Power Plant, which expired. On 28 October 2021, the Honorable Commission issued a PAO for the Power Plant for a period of one (1) year until 16 October 2022. Subsequently, on 15 June 2023, the Honorable Commission issued a Certification, valid until 15 December 2023, that the PAO for the Power Plant is currently being evaluated. Finally, through a letter dated 01 December 2023 from the Honorable Commission, the validity period of FDCMPC’s PAO was extended until 16 October 2024 subject to the same terms and conditions.²⁸
26. **Point-to-Point Application.** In an application docketed as ERC Case No. 2015-054 MC, applicant FDCMPC secured the authority from this Honorable Commission to develop, own, and

²⁴ See Annex “I” of the *Joint Application*.
²⁵ See Annex “H” of the *Joint Application*.
²⁶ See Annexes “X” and “Y” of the *Joint Application*.
²⁷ See Annex “K” of the *Joint Application*.
²⁸ See Annexes “J” to “J-3” of the *Joint Application*.

operate dedicated point-to-point limited transmission facilities connecting the Power Plant to the Mindanao grid through the National Grid Corporation of the Philippines’ Villanueva Substation.

27. 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”	NORECO II-FDCMPC EPSA
“B” “B-1”	Applicant NORECO II’s Articles of Cooperation, Applicant NORECO II’s Amended By-Laws
“C”	Applicant NORECO II’s Certificate of Franchise
“D” “D-1”	Applicant NORECO II’s Cooperative Development Authority (“CDA”) Certificate of Registration CDA Certification
“E”	Verified Certification of applicant NORECO II’s List of Directors
“F” “F-1” “F-2” “F-3”	Applicant FDCMPC’s Amended Articles of Incorporation Applicant FDCMPC’s Amended By-Laws Applicant FDCMPC’s Amended General Information Sheet for 2023 Applicant FDCMPC’s Verified Certification on Parent, Subsidiaries, and Affiliates Board of Directors
“G” and series	Applicant FDCMPC’s SEC Certificate of Registration with Amendments and Shareholders’ Agreement
“H”	Applicant FDCMPC’s BOI Certificate of Registration with attached Terms and Conditions
“I”	Applicant FDCMPC’s DENR-EMB ECC
“J” “J-1” “J-2” “J-3”	Applicant FDCMPC’s ERC COC No. 17-05-M- 00108M Applicant FDCMPC’s PAO valid until 16 October 2022 Applicant FDCMPC’s PAO Certificate of Filing dated 15 June 2023 Applicant FDCMPC’s Extension of Validity of PAO
“K”	Applicant FDCMPC’s DOE Certificate of Endorsement
“L”	Applicant NORECO II’s Details Regarding Load Forecast Projections
“M” “M-1”	Applicant NORECO II’s Supply and Demand Scenario, Details of Existing Suppliers, and Contract Utilization Applicant NORECO II’s Average Daily Load Curve
“N”	Applicant NORECO II’s Single-line Diagram Connection
“O”	Applicant NORECO II’s Performance Assessment
“P”	Applicant NORECO II’s Potential for Load Reduction Due to Retail Competition

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“Q” and series	Applicant NORECO II’s Solicitation Letters to Generation Companies
“R”	Applicant FDCMPC’s Verified Certification
“S”	Applicant NORECO II’s Transmission Service Agreement
“S-1”	Applicant NORECO II’s Metering Service Agreement
“S-2”	Applicant FDCMPC’s Transmission Service Agreement
“S-3”	Applicant FDCMPC’s Metering Service Agreement
“T”	<i>NORECO II-FDCMPC EPSA</i> Executive Summary
“U”	Applicant FDCMPC’s Sources of Funds and Financial Plans
“U-1”	Applicant FDCMPC’s Bank Certifications
“V”	Applicant FDCMPC’s Generation Rate and Derivation
“V-1”	Applicant FDCMPC’s Basis of Other Charges
“V-2”	Applicant FDCMPC’s Financial Model, Project Costs, and Breakdown of Costs
“W”	Applicant FDCMPC’s Cash Flow
“X”	Applicant FDCMPC’s Fuel Supply Procurement Process
“X-1”	Applicant FDCMPC’s Certification on Spot Fuel Agreement
“Y”	Applicant FDCMPC’s Sworn Statement on Fuel Concerns
“Z”	Applicant FDCMPC’s Relevant Technical and Economic Characteristics of the Generation Capacity
“Z-1”	Applicant FDCMPC’s Engineering, Procurement, and Construction Contract Certification
“Z-2”	Applicant FDCMPC’s Simulation of Operating Units to Meet Minimum Energy Off-Take
“AA”	Applicant FDCMPC’s 2022 Audited Financial Statements (“AFS”)
“BB”	Applicants’ respective WESM Registrations
“BB-1”	
“CC”	Applicant FDCMPC’s Affidavit in Support of Prayer for Provisional Authority
“CC-1”	Applicant NORECO II’s Affidavit in Support of Prayer for Provisional Authority
“DD”	NORECO II Board Resolution No. 180-23
“EE”	FDCMPC Secretary’s Certificate
“FF”	Certifications/ Affidavits of Service
“GG”	Affidavit of Publication
“HH”	ERC Advisory dated 07 June 2023
“II”	ERC Advisory dated 23 June 2023
“JJ”	Explanation for Non-Applicability of Documents
“KK”	NORECO II COE-CSP
“KK-1”	NORECO II Request for COE
“LL”	<i>NORECO II-KSPC EPSA</i>
“MM”	NECA Declaration of Failure of 1 st CSP
“NN”	NORECO II Estimated Rate Impact

“OO”	Sample Computation with Derivation of Pass-Through Charges
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*The conduct of a CSP is not required
and the NORECO II-FDCMPC EPSA
is immediately implementable*

28. **Point Application.** In an application docketed as ERC Case No. 2015-054 MC, applicant FDCMPC secured the authority from this Honorable Commission to develop, own, and operate dedicated point-to-point limited transmission facilities connecting the Power Plant to the Mindanao grid through the National Grid Corporation of the Philippines’ Villanueva Substation.
29. Under Sections 2.3 and 2.3.5 of DOE DC2023-06-0021, the conduct of a CSP is not required for the negotiated procurement of emergency power supply, and the filing of an emergency power supply agreement with the Honorable Commission does not need any prior clearance or certification from the DOE.
- 29.1. In an *Advisory* dated 31 August 2023, the DOE directed that “[a]ll EPSAs intended to be executed before the effectivity of the ERC Guidelines pursuant to DC No. DC2023-06-0021 shall be directly filed with the ERC for its approval...”.
- 29.2. As exhaustively discussed above, the Force Majeure Events prompting applicant NORECO II to enter into an EPSA falls within the definitions found in Sections 3.7²⁹ and 3.8³⁰ of DOE DC2023-06-0021. Thus, pursuant to Section 2.3.5 of DOE DC2023-06-0021, applicant NORECO II can validly enter into an EPSA with applicant FDCMPC *sans* the conduct of the CSP
30. Moreover, in an *Advisory* dated 07 June 2023,³¹ as amended by another *Advisory* dated 23 June 2023,³² the Honorable Commission stated that an emergency power supply agreement shall be immediately implementable upon its execution, and the rates to be charged shall be capped at the latest ERC-approved generation tariff for the same technology in comparable areas.

**Allegations Relative to the Prayer for Confidential
Treatment of Information**

²⁹ **Emergency Power** refers to the power required by the DU in the event that its actual power supply falls below its load demand due to Force Majeure or Fortuitous Events that are beyond the control of the DU, subject to the final determination by the ERC.

³⁰ **Force Majeure or Fortuitous Event** refers to 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.

This further refers to an event or circumstance generally caused: (1) by nature, such as, but not limited to, fires, floods, typhoons or other catastrophes, or acts of God; and/or (2) by the acts of man, such as, but not limited to, war, national emergencies, revolution, riot, insurrection, civil unrest, or any other similar violent or threatening actions.

³¹ See **Annex “HH”** of the *Joint Application*.

³² See **Annex “II”** of the *Joint Application*.

31. Section 1, Rule 4 of the *ERC Revised Rules of Practice and Procedure* provides that a party to a proceeding before the Honorable Commission may move for information to be treated as confidential.
32. Pursuant thereto, applicant FDCMPC prays that the information contained in the documents enumerated below be treated as *CONFIDENTIAL* and that the same be continuously protected from public disclosure, except to the officers and staff of the Honorable Commission (collectively referred to as “Confidential Documents”).

Annex	Documents/Information
“U”	FDCMPC Sources of Funds and Financial Plans
“U-1”	FDCMPC Bank Certifications
“V”	FDCMPC Generation Rate and Derivation
“V-1”	FDCMPC Basis of Other Charges
“V-2”	FDCMPC Financial Model, Project Costs, and Breakdown of Costs
“W”	FDCMPC Cash Flow
“X”	FDCMPC Fuel Supply Procurement Process
“X-1”	FDCMPC Certification on Spot Fuel Agreement
“Z”	FDCMPC Relevant Technical and Economic Characteristics of the Generation Capacity
“Z-1”	FDCMPC Engineering, Procurement, and Construction Contract Certification
“OO”	Sample Computation with Derivation of Pass-Through Charges

33. 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.
34. In the case *Air Philippines Corporation vs. Pennswell, Inc.*,³³ 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

³³ G.R. No. 172835, December 13, 2007.

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."

35. 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.
36. The interest of applicant NORECO II's consumers is sufficiently protected by the review and evaluation of the rates under the EPSA by the Honorable Commission, without the need to disclose the contents of the Confidential Documents.
37. Given the foregoing, the Confidential Documents qualifies as "confidential information" and applicant FDCMPC respectfully moves for the issuance of a Protective Order to this effect.

**ALLEGATIONS IN SUPPORT FOR THE ISSUANCE OF
PROVISIONAL AUTHORITY**

38. The Applicants recognize the importance of the continued operation of applicant NORECO II and its ability to continuously supply electricity to the member-consumers within its franchise area. While applicant NORECO II intends to account for the deficit supply, this process will take time and applicant NORECO II's member-consumers will need the assurance of seamless, stable and reliable power while it prepares for the CSP.
39. Consequently, applicant NORECO II was compelled to enter into the *NORECO II-FDCMPC EPSA* to ensure an adequate power supply at a rate advantageous to its member-consumers. In order to ensure the sustainability of their operations, applicant NORECO II should be permitted to collect the rates, fees, and charges provided in the *NORECO II-FDCMPC EPSA* from its member-customers, as accordingly charged by applicant FDCMPC against applicant NORECO II pursuant to the same agreement. Any rate lower than the one specified in the *NORECO II-FDCMPC EPSA* is not economically feasible and goes against the regulatory principle of enabling generation companies to recover fair and reasonable costs along with a reasonable return.

40. The provisional approval of the *NORECO II-FDCMPC EPSA* will enable Applicants to fulfill their obligations without compromising the viability of their operations.
41. The Affidavits of Juan Eugenio L. Roxas, President and CEO of applicant FDCMPC, and Fe Marie D. Tagle, General Manager of applicant NORECO II, attesting to the truth of the above matters and in support of the prayer for provisional authority are attached as **Annexes “CC”** and **“CC-1”**.
42. Pursuant to the *ERC Rules of Practice and Procedure*, the Honorable Commission may exercise its discretion by granting a provisional authority or an Interim Relief prior to a final decision. It is understood that the provisional authority or Interim Relief sought by the Applicants shall be subject to adjustments and other conditions that the Honorable Commission may impose.

PRAYER

WHEREFORE, premises considered, Joint Applicants **NEGROS ORIENTAL II ELECTRIC COOPERATIVE** and **FDC MISAMIS POWER CORPORATION** most respectfully pray that the Honorable Commission:

1. **ISSUE AN ORDER** declaring the Confidential Documents attached hereto **Annexes “U”, “U-1”, “V”, “V-1”, “V-2”, “W”, “X”, “X-1”, “Z”, “Z-1”, and “OO”** as confidential information as well as directing that the same be treated with confidentiality and be protected from public disclosure;
2. **ISSUE** the corresponding **PROTECTIVE ORDER** in accordance with Section 2, Rule 4 of the ERC Revised Rules of Practice and Procedure;
3. Pending trial on the merits, **GRANT PROVISIONAL AUTHORITY** to implement the *NORECO II-FDCMPC EPSA* and allow NORECO II to collect such rates, fees, and charges as provided in the EPSA from its customers reckoned from the start of the supply by FDCMPC to NORECO II; and
4. After due notice and hearing, **ISSUE A DECISION** (i) approving the instant Joint Application *in toto* which will thereby allow/authorize NORECO II to charge and collect the fees from its member-consumers reckoned from the commencement of the supply to the latter by FDCMPC; and (ii) directing that the rates, terms, and conditions of the *NORECO II-FDCMPC EPSA* be retroactively applied for the entire term of the EPSA.

Other kinds of relief, just and equitable under the premises are likewise prayed for.

The Commission hereby sets the instant *Joint Application* for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of

evidence on the following dates and online platforms for the conduct thereof, pursuant to Resolution No. 09, Series of 2020³⁴ and Resolution No. 01, Series of 2021³⁵ (ERC Revised Rules of Practice and Procedure):

Date	Platform	Activity
28 November 2024 (Thursday) at ten o'clock in the morning (10:00 AM)	Microsoft Teams Application	Determination of compliance with the jurisdictional requirements and Expository Presentation
05 December 2024 (Thursday) at ten o'clock in the morning (10:00 AM)		Pre-Trial Conference and Presentation of Evidence

Accordingly, NORECO II and FDCMPC are hereby directed to host the virtual hearings at **Real Street, Dumaguete City, Philippines**, as the designated venue for the conduct thereof, and ensure that the same is open to the public. Moreover, NORECO 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 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:

³⁴ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.
³⁵ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

- 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.

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 Officer-In-Charge Chairperson **JESSE HERMOGENES T. ANDRES** and the Honorable Commissioners **ALEXIS M. LUMBATAN**, **CATHERINE P. MACEDA**, **FLORESINDA G. BALDO-DIGAL**, and **MARKO ROMEO L. FUENTES**, Energy Regulatory Commission, this 14th day of October 2024 in Pasig City.


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


LS: JPM