

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

ERC CASE NO. 2024-102 RC

EASTERN SAMAR  
ELECTRIC COOPERATIVE,  
INC. AND FDC MISAMIS  
POWER CORPORATION,  
*Applicants.*

Promulgated:  
August 29, 2024

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**ORDER**

On 12 August 2024, the Eastern Samar Electric Cooperative, Inc. (ESAMELCO) and FDC Misamis Power Corporation (FDCMPC) filed a *Joint Application* dated 31 January 2024, seeking the Commission’s approval of their Emergency Power Supply Agreement (EPSA), with prayer for provisional authority and confidential treatment of information.

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

**THE JOINT APPLICANTS**

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1. **ESAMELCO** 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 Borongan, Eastern Samar. ESAMELCO serves the power require [sic] of the Municipalities of Borongan, Jipapad, Arteché, San Policarpio, Oras, Dolores, Maslog, Can-avid, Taft, Sulat, San Julian, Maydolong Balangkayan, Llorente, Hernani, General MacArthur, Quinapondan, Giporlos, Balangiga, Lawaan, Salcedo, Mercedes, and Guiuan, all in the Province of Eastern Samar (collectively, the "Franchise Area"). For purposes of this *Joint Application*, ESAMELCO is represented herein by its Board President **MR. REYNALDO S. GERNA** and General Manager **ATTY. JOSE MICHAEL EDWIN S. AMANCIO, CPA** duly authorized by virtue of Board Resolution No. 74-A, series of 2023.<sup>1</sup>

2. **FDCMPC** is a corporation duly organized and existing under and by the laws of the Republic of the Philippines, with principal office address at the PHIVIDECE Industrial Estate, Villanueva, Misamis Oriental 9002. For purposes of this *Joint Application*, FDCMPC is represented by its President and Chief Executive Officer ("CEO"), **MR. JUAN EUGENIO L. ROXAS**, duly authorized for the purpose by virtue of Secretary Certificate No. 202309-26.<sup>2</sup>
3. The Joint 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 approval of the *Emergency Power Supply Agreement* ("EPSA") entered into by and between ESAMELCO and FDCMPC (the "*ESAMELCO-FDCMPC EPSA*") is being submitted to the Honorable Commission for its review and approval pursuant to Sections 25<sup>3</sup> and 45(b)<sup>4</sup> 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<sup>5</sup> (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").<sup>6</sup>

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<sup>1</sup> See Annex "DD" of the *Joint Application*.

<sup>2</sup> See Annex "EE" of the *Joint Application*.

<sup>3</sup> 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.

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

<sup>5</sup> A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

<sup>6</sup> Entitled, "Prescribing the policy for the mandatory conduct of the Competitive Selection Process by the Distribution Utilities for the procurement of power supply for their captive market"

5. In compliance with Section 2, Rule 6 of the *ERC Revised Rules of Practice and Procedure*, a copy of the instant *Joint Application* (with all its annexes and accompanying documents, except those subject of a motion for confidential treatment of information) was furnished to the following offices:<sup>7</sup>
- a. Office of the Municipal Mayor of Borogan [sic];
  - b. Office of the Municipal Mayor of Villanueva;
  - c. Office of the Presiding Officer of the *Sangguniang Bayan* of Borogan [sic];
  - d. Office of the Presiding Officer of the *Sangguniang Bayan* of Villanueva;
  - e. Office of the Governor of the Province of Eastern Samar
  - f. Office of the Governor of the Province of Misamis Oriental;
  - g. Office of the Presiding Officer of the *Sangguniang Panlalawigan* of Eastern Samar; and
  - h. Office of the Presiding Officer of the *Sangguniang Panlalawigan* of Misamis Oriental.
6. Further, this *Joint Application* was also published in a newspaper of general circulation.<sup>8</sup>

#### **STATEMENT OF FACTS**

7. **Necessity for Power Supply:** ESAMELCO executed a *Power Purchase and Sale Agreement* (“PPSA”) with GNPowder Dinginin Ltd. Co. (“GNPD”) for 15 MW baseload power supply, which was submitted to the Honorable Commission for approval under ERC Case No. 2016-058 RC.
8. However, as will be discussed below, the Honorable Commission ultimately directed ESAMELCO to stop implementing the PPSA; thus, ESAMELCO was constrained to look for alternative power suppliers and eventually executed the *ESAMELCO-FDCMPC EPSA* subject of this *Joint Application*.
- 8.1. On 18 October 2016, the Honorable Commission issued an *Order* dated 05 July 2016 granting provisional authority to ESAMELCO and GNPD to implement their PPSA.
- 8.2. On 03 May 2019, the Supreme Court rendered its *Decision* in the case of ***Alyansa Para sa Bagong Pilipinas, Inc. v. Energy Regulatory Commission, et al.*** (the “*Alyansa Decision*”),<sup>9</sup> requiring all applications for approval of power supply agreements filed before the Honorable Commission on or after 30 June 2015 to comply with the

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<sup>7</sup> See Annex “FF” and series of the *Joint Application*.

<sup>8</sup> See Annex “GG” and series of the *Joint Application*.

<sup>9</sup> G.R. No. 227670, 03 May 2019.

Competitive Selection Process ("CSP") requirement provided under DOE *Department Circular* No. DC2018-02-003.

- 8.3. Subsequently, in an *Order* dated 19 April 2023 in ERC Case No. 2016-058 RC, *which was received by ESAMELCO on 29 August 2023*, the Honorable Commission issued an *Order*: (i) dismissing with prejudice the application filed by ESAMELCO and GNPD for the approval of the PPSA; (ii) terminating the provisional authority granted to ESAMELCO and GNPD to implement the PPSA; and (iii) directing ESAMELCO and GNPD to stop implementing the PPSA immediately upon receipt of the said *Order*.
- 8.4. In compliance with the above-cited *Order*, ESAMELCO and GNPD stopped implementing their PPSA.
9. Without the power from GNPD, ESAMELCO is not able to cover its total demand requirements and is forced to purchase power from the Wholesale Electricity Spot Market ("WESM"), thereby exposing itself (and its consumers) to the volatile prices in the market.
10. ESAMELCO intends to account for the deficit supply in its upcoming Power Supply Procurement Plan and conduct the necessary CSP to secure its energy needs. However, the CSP process will take time thereby subjecting ESAMELCO to prevailing WESM market prices in the interim period.
11. All these conditions resulted into an emergency situation which prompted ESAMELCO to immediately procure emergency supply of energy.
12. Notably, on 10 August 2023, the Honorable Commission issued an Advisory approving a "Transition Period" to allow distribution utilities affected by the *Alyansa Decision*, like ESAMELCO, an opportunity to negotiate an emergency power sales agreement for their respective power requirements.<sup>10</sup>
13. ESAMELCO then solicited offers from various generation companies<sup>11</sup> for their emergency power requirements, and FDCMPC's offer was the most advantageous given the circumstance. Accordingly, ESAMELCO entered into negotiations with FDCMPC for emergency power supply, and eventually executed the *ESAMELCO-FDCMPC EPSA* subject of the instant *Joint Application*.

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<sup>10</sup> See Annex "HH" and series of the *Joint Application*.

<sup>11</sup> See Annex "Q" and series of the *Joint Application*.

ABSTRACT OF THE EMERGENCY POWER SALES  
AGREEMENT AND RELATED INFORMATION

14. **ESAMELCO Power Situation.** ESAMELCO’s peak demand for its Franchise Area is 22.62 MW for 2023 to 2024 as provided in its Supply - Demand Scenario.<sup>12</sup>
15. **Generation Facility.** The power to be provided to ESAMELCO will be sourced from 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”). FDCMPC shall supply power to ESAMELCO under the terms stipulated in the *ESAMELCO-FDCMPC EPSA*.
16. **Salient Features of the EPSA.**
- 16.1. Term: The Term of the EPSA shall be one (1) year from commencement of delivery.
- 16.2. Date of Commencement of Supply: The obligation of FDCMPC to deliver electric power to ESAMELCO shall commence immediately following the execution of the EPSA, and more specifically on 26 September 2023.
- 16.3. Contract Type: Firm
- 16.4. Installed Capacity of the Power Plant: 405MW
- 16.5. Net Dependable Capacity of the Power Plant: 369MW
- 16.6. Contract Demand and Contract Energy: The Joint Applicants agreed to the following service specifications:

	FIRM
Contracted Demand	10,000 kW
Contracted Energy (Annual)	61,320,000 kWh
Customer Load Factor Per Interval	At least 70% of the Contracted Demand, per Interval
Delivery Point	Plant Gate of the Power Plant

- 16.7. Outage Allowance:

FDCMPC shall have an Outage Allowance of 32.30 Days or 775.2 Hours.

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<sup>12</sup> See Annex “M” of the Joint Application.

It is ESAMELCO’s obligation to procure Replacement Power, at his own costs, during Outage within the Outage Allowance. While FDCMPC shall exert best efforts to procure Replacement Power beyond the Outage Allowance.

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

The Billing and Settlement between the Parties shall be in accordance with *Schedule 3* of the EPSA.

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

- 16.10. Generation Charge:

BASELOAD (FIRM):	RATE IN PHP/KW/MONTH	RATE IN PHP/KWH	BILLING DETERMINANT(BD)
Capital Recovery Fee (CRF), Php/kW/month	1,095.00	1.5000	Contract Demand in kW
Fixed O&M (FOM), Php/kW/month	452.09	0.6193	Contract Demand in kW
Variable O&M (VOM), Php/kWh	0.1907		Actual energy consumed or 60% of Contract Energy in kWh, whichever is higher
Fuel Cost (FC), Php/kWh	pass-through		Actual energy consumed in kWh

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BASELOAD (FIRM)

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

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

WHERE:

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

Indexation: PH CPI<sub>BASE</sub>= 121.4 (January 2023)

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

17. **Estimated Rate Impact.** The indicative rate impact on ESAMELCO’s overall generation rate with and without the additional supply from FDCMPC is as follows:<sup>13</sup>

Generation Rate Impact of EPSA	
Without FDCMPC	8.2751
With FDCMPC	6.8521
Rate Impact	(1.4229)

18. **Environmental Compliance Certificate.** The Department of Environment and Natural Resources – Environmental Management Bureau (“DENR-EMB”) issued the *Environmental Compliance Certificate* No. ECC-CO-1304-0012 covering the Power Plant.<sup>14</sup>
19. **Board of Investments (“BOI”) Certificate.** The Power Plant is registered with the BOI. A *Certificate of Registration* No. 213-177 was issued by the BOI to this effect.<sup>15</sup>
20. **Fuel Supply.** In order to ensure the supply of fuel for the operations of the Power Plant, FDCMPC solicited offers from reputable suppliers, and has contracted with the supplier that offered the best terms.<sup>16</sup>

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<sup>13</sup> See Annex “KK” of the Joint Application.  
<sup>14</sup> See Annex “I” of the Joint Application.  
<sup>15</sup> See Annex “H” of the Joint Application.  
<sup>16</sup> See Annexes “X” and “Y” of the Joint Application.

21. **DOE Certification.** The DOE has certified that the Power Plant is consistent with the Power Development Plan. A *Certificate of Endorsement* No. 2015-03-010 was issued by the DOE to this effect.<sup>17</sup>
22. **Provisional Authority to Operate (“PAO”).** The Honorable Commission has issued a *Certificate of Compliance* No. 17-05-M-00108M (“COC”) for the Power Plant, which expired. On 28 October 2021, the Honorable Commission issued a PAO for the Power Plant for a period of one (1) year until 16 October 2022. 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.<sup>18</sup>
23. **Point-to-Point Application.** In an application docketed as ERC Case No. 2015-054 MC, FDCMPC secured the authority from this Honorable Commission to develop, own, and operate dedicated point-to-point limited transmission facilities connecting the Power Plant to the Mindanao grid through the National Grid Corporation of the Philippines’ Villanueva Substation.
24. Copies of the following documents and/or information are attached to this *Joint Application* as annexes and made as integral parts hereof:

Annex	Documents/Information
“A”	ESAMELCO-FDCMPC EPSA
“B”	ESAMELCO Articles of Incorporation
“B-1”	ESAMELCO Amended By-Laws
“C”	ESAMELCO Certificate of Franchise
“D”	ESAMELCO Certificate of Registration of Articles of Incorporation
“E”	Verified Certification of ESAMELCO List of Directors
“F”	FDCMPC Amended Articles of Incorporation;
“F-1”	FDCMPC Amended By-Laws;
“F-2”	FDCMPC Amended General Information Sheet for 2023; and
“F-3”	FDCMPC Verified Certification of the members of the Board of Directors of FDCMPC, its Ultimate Parent, and its Affiliates.
“F-4”	
“G” and series	FDCMPC Securities and Exchange Commission Certificate of Registration with Amendments and Shareholders’ Agreement

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<sup>17</sup> See Annex “K” of the *Joint Application*.

<sup>18</sup> See Annexes “J” to “J-3” of the *Joint Application*.

“H”	FDCMPC BOI Certificate of Registration with attached Terms and Conditions
“I”	FDCMPC DENR-EMB ECC
“J”	FDCMPC ERC COC No. 17-05-M-00108M; FDCMPC PAO valid until 16 October 2022; FDCMPC PAO Certificate of Filing dated 15 June 2023; and FDCMPC Extension of Validity of PAO
“J-1”	
“J-2”	
“J-3”	
“K”	FDCMPC DOE Certificate of Endorsement
“L”	ESAMELCO Power Supply Procurement Plan; and ESAMELCO Distribution Development Plan
“L-1”	
“M”	ESAMELCO Supply and Demand Scenario, Details of Existing Suppliers, and Contract Utilization
“M-1”	ESAMELCO Average Daily Load Curve
“N”	ESAMELCO Single-line Diagram
“O”	ESAMELCO Performance Assessment
“P”	ESAMELCO Potential for Load Reduction Due to Retail Competition
“Q” and series	ESAMELCO Solicitation Letters to Generation Companies
“R”	Verified Certification of Samuel R. Lamorena
“S”	ESAMELCO Transmission Service Agreement; ESAMELCO Metering Services Agreement; FDCMPC Transmission Service Agreement; and FDCMPC Metering Services Agreement
“S-1”	
“S-2”	
“S-3”	
“T”	ESAMELCO-FDCMPC EPSA Executive Summary
“U”	FDCMPC Sources of Funds and Financial Plans
“U-1”	FDCMPC Bank Certifications
“V”	FDCMPC Generation Rate and Derivation; FDCMPC Basis of Other Charges; and FDCMPC Financial Model, Project Costs, and Breakdown of Costs
“V-1”	
“V-2”	
“W”	FDCMPC Cash Flow
“X”	FDCMPC Fuel Supply Procurement Process
“X-1”	FDCMPC Certification on Spot Fuel Agreement
“Y”	FDCMPC Sworn Statement on Fuel Concerns
“Z”	FDCMPC Relevant Technical and Economic Characteristics of the Generation Capacity; FDCMPC Engineering, Procurement, and Construction Contract Certification; and
“Z-1”	

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"Z-2"	FDCMPC Simulation of No. of Operating Units to Meet Minimum Energy Off-Take
"AA"	FDCMPC 2022 AFS
"BB" "BB-1"	FDCMPC WESM Registration; and ESAMELCO WESM Registration
"CC" "CC-1"	FDCMPC Affidavit in Support of Prayer for Provisional Authority; and ESAMELCO Affidavit in Support of Prayer for Provisional Authority
"DD"	ESAMELCO Board Resolutions
"EE"	FDCMPC Secretary's Certificate
"FF" and series	Certifications/ Affidavit of Service
"GG"	Affidavit of Publication
"HH"	ERC Advisory dated 10 August 2023
"II"	ERC Advisory dated 07 June 2023
"II-2"	ERC Advisory dated 23 June 2023
"JJ"	Explanation for Non-Applicability of Documents
"KK"	ESAMELCO Estimated Rate Impact Analysis
"LL"	FDCMPC Sample Computation with Derivation of Pass-Through Charges

*The conduct of a CSP is not required and the ESAMELCO-FDCMPC EPSA is immediately implementable*

25. ESAMELCO need not undergo a CSP prior to execution of the *ESAMELCO-FDCMPC EPSA*. Moreover, the *ESAMELCO-FDCMPC EPSA* is immediately implementable upon its execution consistent with prevailing regulations of the Honorable Commission and the DOE.
26. As mentioned above, the Honorable Commission granted distribution utilities affected by the *Alyansa* Decision, like ESAMELCO, an opportunity to negotiate an emergency power sales agreement for their respective power requirements.
27. Under Sections 2.3 and 2.3.5 of DOE DC2023-06-0021, the conduct of a CSP is not required for the negotiated procurement of emergency power supply, and the filing of an emergency power supply agreement with the Honorable Commission does not need any prior clearance or certification from the DOE.
28. Moreover, in an *Advisory* dated 07 June 2023, as amended by another *Advisory* dated 23 June 2023<sup>19</sup> 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

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<sup>19</sup> See Annex "II" and "II-2" of the *Joint Application*.

latest ERC-approved generation tariff for the same technology in comparable areas.

ALLEGATIONS RELATIVE TO THE  
PRAYER FOR CONFIDENTIAL TREATMENT OF  
INFORMATION

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

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

31. The Confidential Documents contain certain non-public information, data, and calculations involving business operations and financial trade secrets reflecting FDCMPC's investment and business calculations. As such, the foregoing information, data, and calculations fall within the bounds of "trade secrets" that are entitled to protection under the law.
32. In the case *Air Philippines Corporation vs. Pennswell Inc.*,<sup>20</sup> the Supreme Court defined "trade secret" as follows:

<sup>20</sup> G. R. No. 172835, 13 December 2007.

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

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

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

36. The Joint Applicants recognize the importance of the continued operation of ESAMELCO and its ability to continuously supply electricity to the consumers within its franchise area. While ESAMELCO intends to account for the deficit supply, this process will take time and ESAMELCO’s consumers will need the assurance of seamless, stable and reliable power while it prepares for the CSP.
37. Consequently, ESAMELCO was compelled to enter into the ESAMELCO-FDCMPC EPSA to ensure an adequate power supply at a rate advantageous to its consumers. In order to ensure the sustainability of their operations, ESAMELCO should be permitted to collect the rates, fees, and charges provided in the ESAMELCO-FDCMPC EPSA from its customers, as accordingly charged by FDCMPC against ESAMELCO pursuant to the same agreement. Any rate lower than the one specified in the ESAMELCO-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.

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38. The provisional approval of the EPSA will enable both ESAMELCO and FDCMPC to fulfill their obligations without compromising the viability of their operations.
39. The Affidavits of Juan Eugenio L. Roxas, President and CEO of FDCMPC, and Jose Michael Edwin S. Amancio, General Manager of ESAMELCO, attesting to the truth of the above matters and in support of the prayer for provisional authority are attached as Annexes "CC" and "CC-1".
40. Pursuant to the *ERC Rules of Practice and Procedure*, the Honorable Commission may exercise its discretion by granting a provisional authority or an Interim Relief prior to a final decision. It is understood that the provisional authority or Interim Relief sought by the *Joint Applicants* shall be subject to adjustments and other conditions that the Honorable Commission may impose.

**PRAYER**

**WHEREFORE**, premises considered, Joint Applicants **EASTERN SAMAR ELECTRIC COOPERATIVE, INC.** and **FDC MISAMIS POWER CORPORATION** most respectfully pray that the Honorable Commission:

1. **ISSUE AN ORDER** declaring the Confidential Documents attached hereto as Annexes "U", "U-1", "V", "V-1", "V-2", "W", "X", "X-1", "Z", "Z-1", and "LL" 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 ESAMELCO-FDCMPC EPSA and allow ESAMELCO 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 ESAMELCO; and
4. After due notice and hearing, **ISSUE A DECISION** (i) approving the instant *Joint Application in toto* which will thereby allow/authorize ESAMELCO to charge and collect the fees from its consumers reckoned from the commencement of the supply to the latter by FDCMPC; and (ii) directing that the rates, terms, and conditions of the *ESAMELCO-FDCMPC EPSA* be retroactively applied for the entire term of the EPSA.

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

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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 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 2020<sup>21</sup> and Resolution No. 01, Series of 2021 (ERC Revised Rules of Practice and Procedure):<sup>22</sup>

Date	Platform	Activity
<b>24 September 2024</b> (Tuesday) at nine o'clock in the morning (9:00 A.M.)	<b>Microsoft Teams Application</b>	Determination of compliance with the jurisdictional requirements and expository presentation
<b>01 October 2024</b> (Tuesday) at nine o'clock in the morning (9:00 A.M.)		Pre-Trial Conference and presentation of evidence

Accordingly, Joint Applicants ESAMELCO and FDCMPC are hereby directed to host the virtual hearings at **ESAMELCO's principal office located at Brgy. Cabong, Borongan City, Eastern Samar**, as the designated venue for the conduct thereof, and ensure that the same is open to the public. Moreover, Applicants shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

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

**RELATIVE THERETO**, Joint Applicants ESAMELCO and FDCMPC are hereby directed to:

- 1) Cause the publication of the attached *Notice of Virtual Hearing* in two (2) newspapers of nationwide circulation in the Philippines at their own expense, twice (2x) within two (2) successive weeks, the dates of publication not being less than seven (7) days apart, and the date of the last publication to be made not later than ten (10) days before the date of the scheduled initial virtual hearing;
- 2) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing* the Offices of the Provincial Governor, the Mayors, and their respective Local Government Unit (LGU) legislative bodies within ESAMELCO's franchise area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within ESAMELCO's franchise area, by any other means available and appropriate, of the filing of the *Joint Application*, the reasons therefor, and of the scheduled virtual hearings thereon;
- 4) Furnish copies of this *Order* and the attached *Notice of Virtual Hearing*, the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress. They are hereby requested, if they so desire, to send their duly authorized representatives and attend the scheduled hearings; and
- 5) Furnish with copies of the *Joint Application* and its attachments, except those subject of a motion for confidential treatment of information, all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

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

- mmp*
- 1) The evidence of publication of the attached *Notice of Virtual Hearing* consisting of affidavits of the Editor or

Business Manager 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 ESAMELCO and FDCMPC to inform the consumers within ESAMELCO's franchise area of the filing of the *Joint Application*, the 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 covered by motion for confidential treatment of information, by all those making requests therefor, if any; and
- 6) Such other proof of compliance with the requirements of the Commission.

Further, Joint Applicants ESAMELCO 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 Provincial Governor, Mayors, and Local Legislative Bodies, and to submit proof of posting thereof.

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

- 1) A summary of admitted facts and proposed stipulation of facts;
- 2) The issues to be tried or resolved;

*mmp*

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

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

Joint Applicants ESAMELCO 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 ESAMELCO and FDCMPC are hereby directed to file a copy of their Expository Presentation via e-mail at [doCKET@erc.ph](mailto:doCKET@erc.ph), copy furnish the Legal Service through [legal@erc.ph](mailto:legal@erc.ph), at least **five (5) calendar days** prior to the scheduled virtual hearing. Applicants 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 ESAMELCO and FDCMPC are further directed to submit, either through personal service, registered 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.

mmp

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

**SO ORDERED.**

Pasig City, 29 August 2024.

FOR AND BY AUTHORITY  
OF THE COMMISSION:

*medimalanta*  
**MONALISA C. DIMALANTA**  
Chairperson and CEO *mmp*

*LS: CER/ARG/RTB*  
LS: CER/ARG/RTB



**ERC CASE NO. 2024-102 RC**  
**ORDER/29 AUGUST 2024**  
**PAGE 19 OF 21**

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Copy Furnished:

1. Eastern Samar Electric Cooperative, Inc. (ESAMELCO)  
*Applicant*  
Brgy. Cabong, Borongan City, Eastern Samar
2. FDC Misamis Power Corporation (FDCMPC)  
*Applicant*  
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6. The Senate Committee on Energy  
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7. The Committee on Energy  
House of Representatives  
Batasan Hills, Quezon City
8. Office of the Municipal Mayor  
Jipapad, Eastern Samar
9. Office of the Sangguniang Bayan  
Jipapad, Eastern Samar
10. Office of the Municipal Mayor  
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11. Office of the Sangguniang Bayan  
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12. Office of the Municipal Mayor  
San Policarpo, Eastern Samar
13. Office of the Sangguniang Bayan  
San Policarpo, Eastern Samar
14. Office of the Municipal Mayor  
Oras, Eastern Samar
15. Office of the Sangguniang Bayan  
Oras, Eastern Samar
16. Office of the Municipal Mayor  
Dolores, Eastern Samar
17. Office of the Sangguniang Bayan  
Dolores, Eastern Samar
18. Office of the Municipal Mayor  
Maslog, Eastern Samar
19. Office of the Sangguniang Bayan  
Maslog, Eastern Samar
20. Office of the Municipal Mayor  
Can-avid, Eastern Samar

21. Office of the Sangguniang Bayan  
Can-avid, Eastern Samar
22. Office of the Municipal Mayor  
Taft, Eastern Samar
23. Office of the Sangguniang Bayan  
Taft, Eastern Samar
24. Office of the Municipal Mayor  
Sulat, Eastern Samar
25. Office of the Sangguniang Bayan  
Sulat, Eastern Samar
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San Julian, Eastern Samar
27. Office of the Sangguniang Bayan  
San Julian, Eastern Samar
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Maydolong, Eastern Samar
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Maydolong, Eastern Samar
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Llorente, Eastern Samar
31. Office of the Sangguniang Bayan  
Llorente, Eastern Samar
32. Office of the Municipal Mayor  
Hernani, Eastern Samar
33. Office of the Sangguniang Bayan  
Hernani, Eastern Samar
34. Office of the Municipal Mayor  
General MacArthur, Eastern Samar
35. Office of the Sangguniang Bayan  
General MacArthur, Eastern Samar
36. Office of the Municipal Mayor  
Quinapondan, Eastern Samar
37. Office of the Sangguniang Bayan  
Quinapondan, Eastern Samar
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Giporlos, Eastern Samar
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Giporlos, Eastern Samar
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Balangiga, Eastern Samar
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Balangiga, Eastern Samar
42. Office of the Municipal Mayor  
Lawaan, Eastern Samar

43. Office of the Sangguniang Bayan  
Lawaan, Eastern Samar
44. Office of the Municipal Mayor  
Salcedo, Eastern Samar
45. Office of the Sangguniang Bayan  
Salcedo, Eastern Samar
46. Office of the Municipal Mayor  
Mercedes, Eastern Samar
47. Office of the Sangguniang Bayan  
Mercedes, Eastern Samar
48. Office of the Municipal Mayor  
Guiuan, Eastern Samar
49. Office of the Sangguniang Bayan  
Guiuan, Eastern Samar
50. Office of the Municipal Mayor  
Balangkayan, Eastern Samar
51. Office of the Sangguniang Bayan  
Balangkayan, Eastern Samar
52. Office of the City Mayor  
Borongan, Eastern Samar
53. Office of the Sangguniang Panglungsod  
Borongan, Eastern Samar
54. Office of the Provincial Governor  
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55. Office of the Sangguniang Panlalawigan  
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