

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
CONFIDENTIAL
TREATMENT OF
INFORMATION**

ERC CASE NO. 2024-157 RC

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

Joint Applicants.

Promulgated:
December 04, 2024

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NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 21 November 2024, the Eastern Samar Electric Cooperative, Inc. (ESAMELCO) and FDC Misamis Power Corporation (FDCMPC) filed a *Joint Application* dated 22 October 2024, seeking the Commission’s approval of their Emergency Power Supply Agreement (EPSA), with prayer for confidential treatment of information.

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

The Joint Applicants

1. Applicant **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. It is authorized to distribute and provide electricity services to its member-consumers in the Municipalities of Borongan, Jipapad, Arteche, 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 a Board Resolution.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 Certificate.²

3. Applicants may be served with orders, notices, and other processes of this 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 23 September 2024 (the “*2nd ESAMELCO-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*”), *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 **Annex “B”** of the *Joint Application*.

² **Annex “N”** 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, “*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:⁸

- a. Office of the Municipal Mayor of Borongan;
- b. Office of the *Sangguniang Panlungsod* of Borongan City;
- c. Office of the Provincial Governor of Eastern Samar;
- d. Office of the *Sangguniang Panlalawigan* of the Province of Eastern Samar;
- e. Office of the Municipal Mayor of Villanueva;
- f. Office of the *Sangguniang Bayan* of the Municipality of Villanueva;
- g. Office of the Provincial Governor of Misamis Oriental; and
- h. Office the *Sangguniang Panlalawigan* of the Province of Misamis Oriental.

6. Further, this *Joint Application* shall also be published in a newspaper of general circulation.⁹

ALLEGATION ON TIMELINESS

7. For purposes of the filing of this *Joint Application*, the timeliness for the same is reckoned from 25 September 2024. 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 ESAMELCO executed a Power Purchase and Sale Agreement (“PPSA”) with GNPower Dinginin Ltd. Co. (“GNPD”) for 15 MW Baseload Power Supply (the “*ESAMELCO-GNPD PPSA*”), which was submitted to the Honorable Commission for approval under ERC Case No. 2016-058 RC (the “*PPSA 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

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*”

⁸ **Annex “O”** of the *Joint Application*.

⁹ **Annex “P”** of the *Joint Application*.

Competitive Selection Process (“CSP”) requirement provided under the DOE’s *Department Circular* No. DC2018-02-003.

10. On 29 August 2023, applicant ESAMELCO received the Honorable Commission’s *Order* dated 19 April 2023 which: (i) dismissed applicant ESAMELCO and GNPD’s Application for the approval of the ESAMELCO-GNPD PPSA; and (ii) directed applicant ESAMELCO and GNPD to immediately stop implementing the ESAMELCO-GNPD PPSA upon receipt of the said *Order*.

11. Without the power from GNPD, applicant ESAMELCO was not 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. Applicant ESAMELCO thus immediately prepared by participating in the Joint CSP to be conducted by the Federation of Rural Electric Cooperatives of Region 8 (“FRECOR 8”) for the Long-Term Aggregated Baseload Demand of its member electric cooperatives (the “FRECOR 8 CSP”). At that time, the CSP was still governed by the DOE’s *Department Circular* No DC2021-09-0030 dated 24 September 2021 (the “*DOE 2021 CSP Policy*”). Applicant ESAMELCO (through FRECOR 8) was already in the process of preparing its bidding documents to be submitted to the National Electrification Administration (“NEA”) for evaluation and approval.

12. On 30 June 2023, during which applicant ESAMELCO (through FRECOR 8) was still preparing its documents for its CSP under the *DOE 2021 CSP Policy*, the DOE released the *DOE 2023 CSP Policy*, which explicitly provides that the *DOE 2021 CSP Policy* was repealed.¹⁰ This caused applicant ESAMELCO’s ongoing efforts for a CSP to become futile.¹¹ This development, coupled with its continuing exposure to the volatile prices in the WESM, forced applicant ESAMELCO to enter into an *Emergency Power Supply Agreement* dated 22 September 2023 (the “*1st ESAMELCO-FDCMPC EPSA*”)¹² with applicant FDCMPC. The *1st ESAMELCO-FDCMPC EPSA* provides that its term shall be effective for one (1) year from the delivery date, or 26 September 2023 to 25 September 2024.

13. 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.¹³ Applicant ESAMELCO was therefore constrained to first wait for the Honorable Commission and the NEA to issue the said rules, so that

¹⁰ See Section 8 of the *DOE 2023 CSP Policy*.

¹¹ See 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*].”

¹² Pending before the Honorable Commission in ERC Case No. 2024-102 RC.

¹³ See Sections 4.6. and 5.1. of the *DOE 2023 CSP Policy*.

applicant ESAMELCO may comply with the same pursuant to its CSP now under the *DOE 2023 CSP Policy*.¹⁴

14. 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*")¹⁵ came into effect. It was only after the effectivity of these two (2) guidelines that applicant ESAMELCO could now conduct its CSP under the *DOE 2023 CSP Policy*.

Applicant ESAMELCO's conduct of CSP

15. Applicant ESAMELCO is a member of FRECOR 8. Following the termination of the *ESAMELCO-GNPD PPSA*, ESAMELCO decided to participate in FRECOR 8's Joint CSP for Long-Term Aggregated Baseload Demand of its member electric cooperatives (the "FRECOR 8 CSP").

16. On 20 March 2024, the NEA furnished FRECOR 8 the *Notice to Commence* of even date, informing it that it may commence the FRECOR 8 CSP.¹⁶ Pursuant thereto, on 6 April 2024 and 13 April 2024, applicant ESAMELCO published its Terms of Reference for the FRECOR 8 CSP.¹⁷

17. On 3 July 2024, FRECOR 8 (which includes applicant ESAMELCO) issued *JBAC Resolution No. 02, series of 2024 (for Lot 1) and JBAC Resolution No. 03, series of 2024 (for Lot 2)*,¹⁸ declaring the winners of the FRECOR 8 CSP. Subsequently, on 19 August 2024, FRECOR 8 furnished the winning bidders of the FRECOR 8 CSP Notices of Award,¹⁹ informing them that they were declared the winning bidders.

18. On 13 September 2024 the NEA issued to FRECOR 8 the *Notices to Execute Agreement*,²⁰ which would only then allow FRECOR 8's member electric cooperatives (including applicant ESAMELCO) to execute their respective Power Supply Agreements ("PSAs") with the winning bidders. Applicant ESAMELCO is now currently in the process of securing the Honorable Commission's approval for its PSA arising from the successful conduct of the FRECOR 8 CSP.

The 2nd ESAMELCO -FDCMPC EPSA

¹⁴ 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*]."

¹⁵ *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.*

¹⁶ **Annex "R"** of the *Joint Application*.

¹⁷ **Annex "S"** of the *Joint Application*.

¹⁸ **Annexes "T" and "T-1"** of the *Joint Application*.

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

²⁰ **Annexes "V" to "V-3"** of the *Joint Application*.

19. With the FRECOR 8 CSP having been concluded, applicant ESAMELCO still has to file the necessary applications for the approval of its PSA, as well as to re-devote its manpower and resources to its current power situation. In a letter dated 17 July 2024, FRECOR 8, on behalf of its member ECs sought to confirm with the Honorable Commission and DOE the propriety of entering into a second (2nd) EPSA to address the circumstances brought by the **Alyansa Decision**.²¹ Relevantly, during the conduct of the FRECOR 8 CSP and only shortly after the NEA’s approval to execute the resulting PSAs, the expiration of the 1st **ESAMELCO-FDCMPC EPSA** was looming (i.e. on 25 September 2024). Thus, some time in August 2024, applicant ESAMELCO had already begun inquiring with generation companies for the execution of another EPSA to cover the period during which the Honorable Commission would evaluate, and hopefully approve, applicant ESAMELCO’s forthcoming PSA. Applicant ESAMELCO 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.

20. Relevantly, applicant ESAMELCO 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:



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

21. Given the sheer number of generation companies that would be participating in the *RE Expo*, applicant ESAMELCO

²¹ **Annex “X”** of the *Joint Application*.

reasonably thought that it would be the best venue to shop for the most advantageous EPSA to replace the *1st ESAMELCO-FDCMPC EPSA*.

22. Applicant ESAMELCO 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 ESAMELCO determined that KEPCO SPC Power Corporation (“KSPC”), Sual Power Inc. (“SPI”), Taft Hydro Energy Corp. (“THEC”), and applicant FDCMPC would offer the most advantageous price. Applicant ESAMELCO then proceeded to send out their solicitation letters to KSPC, SPI, THEC, and applicant FDCMPC, and eventually executed the *2nd ESAMELCO-FDCMPC EPSA*.

The pending application and approval of Applicant ESAMELCO’s PSA arising from the FRECOR 8 CSP, coupled with the expiration of the 1st ESAMELCO-FDCMPC EPSA, constitute force majeure allowing Applicants to execute the 2nd ESAMELCO-FDCMPC EPSA subject of this Joint Application

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

24. Applying the aforecited rule and jurisprudence, the antecedents presented herein clearly constitute force majeure, justifying the execution of the *2nd ESAMELCO-FDCMPC EPSA*.

25. To reiterate, upon the resolution of the ***Alyansa Case***, applicant ESAMELCO immediately prepared for the conduct of its CSP to cover for the deficiency left by the dismissal of the *PPSA Case*. Applicant ESAMELCO’s efforts were interrupted only by the issuance of the *DOE 2023 CSP Policy*. These developments are **completely independent** of applicant ESAMELCO’s participation. This event led applicant ESAMELCO to reasonably execute the *1st ESAMELCO-FDMPC EPSA*.

26. In fact, during the effectivity of the *1st ESAMELCO-FDCMPC EPSA*, **applicant ESAMELCO (through FRECOR 8) was able to conduct and conclude** the FRECOR 8 CSP to cover its power requirements. Were it not for the described regulatory bottlenecks (which are again **completely independent** of ESAMELCO’s participation), applicant ESAMELCO firmly believes that it would have been able to file the necessary applications with

the Honorable Commission which would have in all probability timely resolved the same.

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

**ABSTRACT OF THE EMERGENCY POWER SUPPLY
AGREEMENT AND RELATED INFORMATION**

28. **ESAMELCO's Power Situation.** Applicant ESAMELCO's average peak demand for its Franchise Area is 23.50 MW for 2024 as provided in its Supply-Demand Scenario.²²

29. **Generation Facility.** The power to be provided to applicant ESAMELCO 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 ESAMELCO under the terms stipulated in the 2nd *ESAMELCO-FDCMPC EPSA*.

**30. Salient Features of the 2nd ESAMELCO-FDCMPC
EPSA.**

30.1. Term: The maximum term of the 2nd *ESAMELCO-FDCMPC EPSA* shall be one (1) year from date of delivery or from date of execution until the issuance of Provisional Authority by the ERC in connection with the application for approval of the power supply agreement, which resulted from the CSP of applicant ESAMELCO's aggregate 15MW base load requirement, whichever comes first.

30.2. Date of Commencement of Supply: The obligation of applicant FDCMPC to deliver electric power to applicant ESAMELCO shall commence immediately following the execution of the 2nd *ESAMELCO-FDCMPC EPSA*, and more specifically on 26 September 2024.

30.3. Contract Type: Firm 8MW; Non-Firm 2MW

30.4. Contracted Demand and Contracted Energy: The Applicants agreed to the following service specifications:

²² See **Annex "C"** of the *Joint Application*.

	FIRM	NON-FIRM
Contracted Demand (monthly), kW	8,000	2,000
Contracted Energy (12 months), kWh	70,080,000	17,520,000
Customer Load Factor Per Interval	65%	
Delivery Point	Plant Gate of the Power Plant	
Nodal Point	11FDC Unit 1, Unit 2, Unit 3	
Voltage at the Plant Gate	138kV	

Joint Applicants shall coordinate for the non-firm portion of the requirement. Applicant ESAMELCO shall notify applicant FDCMPC of additional requirements from its non-firm service specification at least five (5) days before the next billing cycle. Applicant FDCMPC undertakes to commit free and prioritize the available capacity to satisfy applicant ESAMELCO’s non-firm requirements.

30.5. Outage Allowance: 20 days/480 hours

Applicant FDCMPC may assist applicant ESAMELCO in the procurement of Replacement Power during the Outage Allowance from third parties. Applicant ESAMELCO has the discretion to accept or reject the negotiated price of the Replacement Power. If applicant ESAMELCO approves the price of the Replacement Power as negotiated by applicant FDCMPC, applicant ESAMELCO shall pay the negotiated price. If applicant ESAMELCO rejects the negotiated price, it shall procure its own supply of Replacement Power.

Applicant FDCMPC shall exert best efforts to procure Replacement Power beyond the Outage Allowance and shall charge applicant ESAMELCO for the Replacement Power in excess of the Outage Allowance for the Billing Period based on the agreed Generation Charge under the 2nd ESAMELCO-FDCMPC EPSA.

30.6 Billing and Settlement: Applicant FDCMPC shall provide a monthly Power Bill to applicant ESAMELCO that shall contain the volume of energy delivered, and the amount of money (in Philippine Peso) due and payable by applicant 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 2nd ESAMELCO-FDCMPC EPSA.

30.7. Termination: Either Party may terminate the 2nd ESAMELCO-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 ESAMELCO-FDCMPC EPSA and fails to cure such breach within a period of thirty (30) days from receipt of notice of such breach.

30.8.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 65% 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

=

(1,460.00Php/kW-month)* BD

FOM Charge

=

[(452.09Php/kW-m~~on~~th) * (PH CPI_{CURRENT}/PH CPI_{BASE})] * BD

VOM Charge

=

[(0.1907Php/kWh)* (PH CPI_{CURRENT}/PH CPI_{BASE})] * BD

Fuel Cost

=

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

WHERE:

BD

=

Billing Determinant

kW or kWh

DCP

=

Delivered Coal Price

Php/MT

=

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

ACR

=

Actual Fuel Consumption Rate

kg/kWh

=

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

MCR_{CAP}

=

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

kg/kWh

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)

30.9 **Estimated Rate Impact** The indicative rate impact on applicant ESAMELCO’s overall generation rate with and without the additional supply from applicant FDCMPC is as follows: ²³

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

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With FDCMPC EPSA						
POWER SUPPLIER	Forecasted (kWh)	Amount (Php.)	Percent Share (%)	Resulting Capacity Factor (%)	Average Rate (P/kWh)	Weighted Average Rate (kWh)
KSPC	2,880,000.00	17,102,016.00	24.62%	100%	5.9382	6.0869
FDCMPC	5,760,000.00	31,327,488.00	49.24%		5.4388	
WESM	3,057,000.00	22,768,841.70	26.13%		7.4481	
TOTAL	11,697,000.00	71,198,345.70	100.00%		6.0869	

Without FDCMPC EPSA						
POWER SUPPLIER	Forecasted (kWh)	Amount (Php.)	Percent Share (%)	Resulting Capacity Factor (%)	Average Rate (P/kWh)	Weighted Average Rate (kWh)
KSPC	2,880,000.00	17,102,016.00	24.62%	100%	5.9382	7.0763
FDCMPC	0.00	0.00				
WESM	8,817,000.00	65,669,897.70	75.38%		7.4481	
TOTAL	11,697,000.00	80,451,401.72	100.00%		7.0763	
GENERATION RATE IMPACT						-0.9894

31. 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 ESAMELCO-FDCMPC EPSA
“B”	ESAMELCO Board Resolution
“C”	ESAMELCO Supply and Demand Scenario, Details of Existing Suppliers, Contract Utilization
“D”	ESAMELCO Average Daily Load Curve
“E”	Estimated Rate Impact Analysis
“F”	2 nd ESAMELCO-FDCMPC EPSA Executive Summary
“G”	Solicitation Letters sent to Generation Companies
“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
“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 LGUs
“P”	Affidavit of Publication
“Q”	Explanation for Non-Applicability of Documents
“R”	Notice to Commence issued by NEA
“S”	FRECOR 8 Affidavit of Publication for 1 st Publication of Invitation to Bid with TOR
“T”	<i>JBAC Resolution No. 02, series of 2024 (for Lot 1)</i>
“T-1”	<i>JBAC Resolution No. 03, series of 2024 (for Lot 2)</i>
“U”	FRECOR 8 Notice of Award to KSPC
“U-1”	FRECOR 8 Notice of Award to SPI
“U-2”	FRECOR 8 Notice of Award to TLI
“V”	Notice to Execute Agreement for Lot 1 SPI
“V-1”	Notice to Execute Agreement for Lot 1 TLI
“V-2”	Notice to Execute Agreement for Lot 2 TLI
“V-3”	Notice to Execute Agreement for Lot 1 KSPC
“W”	NEA-PHILRECA RE Expo Program
“X”	FRECOR 8 Letters to DOE and ERC dated 17 July 2024

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

32. Applicant ESAMELCO need not undergo a CSP prior to the execution of the 2nd ESAMELCO-FDCMPC EPSA. Moreover, the 2nd ESAMELCO-FDCMPC EPSA is immediately implementable upon its

execution consistent with the prevailing regulations of this Honorable Commission and the DOE.

33. 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.

34. In compliance with prevailing regulations, the generation component to be charged under the *2nd ESAMELCO-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**

35. 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.

36. 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

37. 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.

38. In the case *Air Philippines Corporation vs. Pennswell Inc.*,²⁴ the Supreme Court defined “trade secret” as follows:

²⁴ 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.”

39. 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.

40. The interest of applicant ESAMELCO’s Member-Consumer-Owners (“MCOs”) are sufficiently protected by the review and evaluation of the rates under the 2nd *ESAMELCO-FDCMPC EPSA* by the Honorable Commission, without the need to disclose the contents of the Confidential Documents.

41. 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 **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 “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 ESAMELCO 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 ESAMELCO-FDCMPC EPSA be retroactively applied for the entire term of the 2nd ESAMELCO-FDCMPC EPSA.

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

The Commission sets the instant *Joint Application* for determination of compliance with the jurisdictional requirements, expository presentation, Pre-Trial Conference, and presentation of evidence on the following dates and online platform for the conduct thereof, pursuant to Resolution No. 09, Series of 2020²⁵ and Resolution No. 01, Series of 2021 (ERC Revised Rules of Practice and Procedure):²⁶

Date	Platform	Activity
28 January 2025 (Tuesday) at nine o'clock in the morning (9:00 AM)	Microsoft Teams Application	Determination of compliance with the jurisdictional requirements and expository presentation
04 February 2025 (Tuesday) at nine o'clock in the morning (9:00 AM)		Pre-Trial Conference and presentation of evidence

Applicants ESAMELCO and FDCMPC are directed to host the virtual hearings at **ESAMELCO’s principal office located at Borongan, Eastern Samar**, as the designated venue for the conduct thereof, and ensure that the same is open to the public. Moreover, ESAMELCO 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 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

²⁵ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.
²⁶ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

respective comments and/or clarifications, to discuss the same and propound questions during the course of the expository presentation.

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

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 acknowledgement receipt e-mail sent by the Commission.

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

Finally, all interested persons may be allowed to join the scheduled virtual hearings by providing the Commission, 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.

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WITNESS, the Honorable Chairperson **MONALISA C. DIMALANTA**, and Honorable Commissioners **ALEXIS M. LUMBATAN**, **CATHERINE P. MACEDA**, **FLORESINDA G. BALDO-DIGAL**, and **MARKO ROMEO L. FUENTES**, Energy Regulatory Commission, this 4th day of December 2024 in Pasig City.

FOR AND BY AUTHORITY
OF THE COMMISSION:



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


LS: MND/ARG