

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 CAMARINES
SUR III ELECTRIC
COOPERATIVE, INC. AND
FDC MISAMIS POWER
CORPORATION, WITH
PRAYER FOR
CONFIDENTIAL
TREATMENT OF
INFORMATION

ERC CASE NO. 2024-147 RC

CAMARINES SUR III
ELECTRIC COOPERATIVE,
INC. AND FDC MISAMIS
POWER CORPORATION,
Applicants.

Promulgated:
December 27, 2024

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ORDER

On 29 October 2024, Camarines Sur III Electric Cooperative, Inc. (CASURECO III) and FDC Misamis Power Corporation (FDCMPC) filed their *Joint Application (With Prayer for Confidential Treatment of Information)* dated 23 September 2024, seeking the Commission’s approval of the Emergency Power Supply Agreement entered into by and between CASURECO III and FDCMPC, with prayer for confidential treatment of information.

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

THE JOINT APPLICANTS

1. Applicant **CASURECO III** is an Electric Cooperative (“EC”) duly organized by virtue of Presidential Decree No. 269, as amended, with principal office address at Iriga-Baao Rd., San Isidro, Iriga City, Camarines Sur. Applicant CASURECO III serves the power requirements of the municipalities of Bato, Nabua, Buhi,

Baao, Bula, and Balatan, all in the Province of Camarines Sur (collectively, the “Franchise Area”). For purposes of this *Joint Application*, applicant CASURECO III is represented herein by its Chairman of the Board, **MS. ANA SYLVIA M. ALSISTO** and Acting General Manager, **ENGR. WILFREDO O. BUCSIT**, duly authorized by virtue of Board Resolution No. 109, series of 2024.¹

2. Applicant **FDCMPC** is a corporation duly organized and existing under and by the laws of the Republic of the Philippines, with principal office address at principal office address at the PHIVIDEK 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 the Secretary’s Certificate.²

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

NATURE OF THE APPLICATION

4. The instant *Joint Application* for the approval of the *Emergency Power Supply Agreement* (“EPSA”) entered into by and between CASURECO III and FDCMPC dated 19 July 2024 (the “*CASURECO III-FDCMPC EPSA*”) is being submitted to the Honorable Commission for its review and approval pursuant to Sections 25³ and 45(b)⁴ of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (the “EPIRA”), Rule 20(B) of the Honorable Commission’s *Resolution* No. 01, Series of 2021⁵ (the “*ERC Revised Rules of Practice and Procedure*”), and *Resolution* No. 16, Series of 2023⁶ (the “ERC Implementing Guidelines for the Procurement, Execution, and Evaluation of Power Supply Agreements”), and Department of Energy’s (“DOE”) *Department Circular* No. 2023-06-0021 (the “*DOE 2023 CSP Policy*”).⁷

5. In compliance with Section 2, Rule 6 of the *ERC Revised Rules of Practice and Procedure*, a copy of the instant *Joint Application* (with all its annexes and accompanying documents,

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

² See **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.*”

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*”

except those subject of a motion for confidential treatment of information) shall be furnished to the following offices:⁸

- a. Office of the Provincial Governor of Camarines Sur;
- b. Office of the *Sangguniang Panlalawigan* of Camarines Sur;
- c. Office of the Mayor of Iriga City;
- d. Office of the *Sangguniang Panlungsod* of Iriga City;
- e. Office of the Provincial Governor of Misamis Oriental;
- f. Office of the *Sangguniang Panlalawigan* of Misamis Oriental;
- g. Office of the Municipal Mayor of Villanueva; and
- h. Office of the *Sangguniang Bayan* of Villanueva.

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

ALLEGATION ON TIMELINESS

7. Due to the nature of the force majeure events which led to the execution of the *CASURECO III-FDCMPC EPSA*, as will be further detailed below, it is not possible to identify the exact date of their occurrence. For purposes of the filing of this *Joint Application*, the timeliness for the same is reckoned from 03 July 2024, or when applicant *CASURECO III*'s finances inevitably could not handle the *WESM*'s volatile prices anymore.

STATEMENT OF FACTS

8. Applicant *CASURECO III* and San Miguel Energy Corporation ("SMEC") entered into a *Power Supply Contract* dated 10 April 2017 (the "*CASURECO III-SMEC PSC*") for a Contract Capacity of 18,000 kW with a contract term of 26 December 2019 to 25 December 2026. Applicant *CASURECO* and *SMEC* would submit the *CASURECO III-SMEC PSC* to the Honorable Commission for its approval in ERC Case No. 2018-078 RC (the "*1st ERC Case*"). The *1st ERC Case* remains pending with the Honorable Commission, without any Provisional or Final Authority having been issued for the *CASURECO III-SMEC PSC*.

9. The *CASURECO III-SMEC PSC* was applicant *CASURECO III*'s only subsisting Power Supply Agreement at that time, thus making it imperative that the same be approved for applicant *CASURECO III* to supply electricity to its franchise area without having to rely on the Wholesale Electricity Spot Market ("WESM") and its generally higher and more volatile prices.

⁸ See **Annex "O"** of the *Joint Application*.

⁹ See **Annex "P"** of the *Joint Application*.

Applicant CASURECO III was compelled to draw electricity under the *CASURECO III-SMEC PSC* without having been approved by the Honorable Commission. The generation charges for doing so was capped at the National Power Corporation (“NPC”) Time-of-Use (“TOU”) rate pursuant to the Honorable Commission’s *Resolution* No. 16, series of 2009,¹⁰ which was the rate at which applicant CASURECO III paid SMEC.

10. On 28 August 2018, applicant CASURECO III furnished the Honorable Commission with its *Letter* dated 24 August 2018,¹¹ seeking to clarify if it could implement/pass on the rate stipulated in the *CASURECO III-SMEC PSC* to its consumers, considering that *CASURECO III-SMEC PSC* had not yet been approved by the Honorable Commission.

11. On 11 September 2018, applicant CASURECO III received SMEC’s *Letter* dated 3 August 2018,¹² informing it that the Honorable Commission had already issued an approved rate for SMEC’s SUAL Power Plant. Based thereon, SMEC informed applicant CASURECO III that it would apply and bill applicant CASURECO III with the approved rate under the *CASURECO III-SMEC PSC*.

12. On 22 October 2018, applicant CASURECO III received a copy of the Honorable Commission’s *Letter* dated 11 September 2018¹³ (the “*ERC Letter*”), reminding applicant CASURECO III that generation costs for unapproved bilateral contracts (such as the *CASURECO III-SMEC PSC*) are capped at the NPC TOU rate, the proposed rate in the subject Power Supply Agreement (“PSA”), or the rate already approved by the Honorable Commission for the same generation company, whichever is lower, without prejudice to the resolution of the said PSA.

13. On 19 January 2022, applicant CASURECO III furnished SMEC with its *Letter* of even date,¹⁴ informing it of the Honorable Commission’s position in the *ERC Letter*, and thus requested that the basis for SMEC’s computation for power bills to applicant CASURECO III be adjusted in accordance with the applicable NPC TOU Rate.

14. Applicant CASURECO III thereafter received a copy of SMEC’s *Letter* dated 4 March 2022¹⁵ (the “*SMEC Letter*”), wherein SMEC stated that it shall continue to bill applicant CASURECO III based on the contract rates indicated in the *CASURECO III-SMEC PSC*, reiterating the fact that the Honorable Commission had already issued an approved rate for SMEC’s SUAL Power Plant.

¹⁰ *A Resolution Adopting the Rules Governing the Automatic Cost Adjustment and True-Up Mechanisms and Corresponding Confirmation Process for Distribution Utilities.*

¹¹ *See Annex “Q” of the Joint Application.*

¹² *See Annex “R” of the Joint Application.*

¹³ *See Annex “S” of the Joint Application.*

¹⁴ *See Annex “T” of the Joint Application.*

¹⁵ *See Annex “U” of the Joint Application.*

15. On 9 May 2023, applicant CASURECO III filed a *Motion for Interim Relief or Early Resolution* of even date in the 1st ERC Case (“1st Motion for Early Resolution”), praying that interim relief be issued, or in lieu thereof, a final resolution of the *CASURECO III-SMEC PSC* be rendered by the Honorable Commission.

16. Despite being billed by SMEC with the rates under the *CASURECO III-SMEC PSC*, and notwithstanding the *SMEC Letter*, **applicant CASURECO III paid SMEC based only on the approved NPC TOU rates in compliance with the ERC Letter.**

17. Foreseeing that the delay in the resolution of the 1st ERC Case as well as the possible disagreement on the applicable rate to be used for billing, applicant CASURECO III solicited for offers for an Emergency Power Supply Agreement (“EPSA”) whilst the 1st ERC Case was still pending with the Honorable Commission.¹⁶ Relevantly, no generation company offered any capacity to applicant CASURECO III at the time.

18. On 18 April 2024, applicant CASURECO III received a copy of SMEC’s *Letter* dated 01 April 2024,¹⁷ wherein it stated, among others, that it will be suspending supply to applicant CASURECO III under the *CASURECO III-SMEC PSC*, for its refusal to pay the rate stipulated therein, to wit:

“The accumulated amounts from the variance between the Capacity and Energy Fees under the [CASURECO III-SMEC PSC] and the amount actually paid by CASURECO III have severely affected our business operations and it reached the point where SMEC can no longer accommodate the supply to CASURECO III. x x x

Thus, SMEC will discontinue the supply of energy x x x and will temporarily refuse any nomination from your end for this purpose to prevent the accumulation of outstanding payables of CASURECO III to SMEC under the circumstances pending the ERC Approval.” [Emphasis and underscoring supplied]

19. On 26 April 2024, SMEC suspended the implementation of the *CASURECO III-SMEC PSC*. From then until the execution of the *CASURECO III-FDCMPC EPSA*, applicant CASURECO III was 100% exposed to the WESM for its power requirements, as well as its higher and more volatile prices.

20. Due to its dwindling resources, applicant CASURECO III thought it prudent to wait until the Honorable Commission finally resolves the 1st ERC Case, considering that it had already been filed. Pursuant thereto, on 28 May 2024, applicant CASURECO III filed a *Second Motion for Interim Relief or Early Resolution with Manifestation* of even date (“2nd Motion for Early Resolution”)

¹⁶ See **Annex “G”** of the *Joint Application*.

¹⁷ See **Annex “V”** of the *Joint Application*.

(collectively with the *1st Motion for Early Resolution*, the “*Motions for Resolution*”), fervently reiterating its prayer for an immediate resolution of the *CASURECO III-SMEC PSC*. While waiting for the Honorable Commission to resolve its *Motions for Resolution*, applicant CASURECO III was 100% exposed to the WESM for its power requirements.

21. While CASURECO III tried its best to avoid exposure to the volatile prices of WESM by soliciting offers for an emergency power supply agreement as early March 2024, no generation company offered any capacity to applicant CASURECO III—an unfortunate circumstance beyond the control of CASURECO III.

22. On 03 July 2024, applicant CASURECO III’s finances inevitably could not handle the WESM’s volatile prices, and determined that it would need to attempt again to enter into an emergency power supply agreement with a willing generation company with available capacity. Applicant CASURECO III opted to continue soliciting proposals from power suppliers.¹⁸ Applicants then entered into negotiations for applicant CASURECO III’s emergency power supply, which eventually led to the execution of the *CASURECO III-FDCMPC EPSA* subject of the instant *Joint Application*.

The pendency of the 1st ERC Case, taken together with applicant CASURECO III’s dwindling financial resources, constitutes force majeure allowing Applicants to execute the CASURECO III-FDCMPC EPSA subject of this Joint Application

23. Section 3.8. of the DOE’s *Department Circular No. DC2023-06-0021* (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 *CASURECO III-FDCMPC EPSA*.

25. It is undisputed that applicant CASURECO III already concluded its Competitive Selection Process for its power requirements, resulting to the execution of the *CASURECO III-SMEC PSC*. In fact, applicant CASURECO III **as early as 13 July 2018** had already filed its application for the approval of the *CASURECO III-SMEC PSC* in the *1st ERC Case*. The *1st ERC Case* had

¹⁸ See **Annex “G”** of the *Joint Application*.

already been heard on the merits, with applicant CASURECO III having rested its case therein by **January 2019**. Applicant CASURECO III even filed the *Motions for Early Resolution* to help ensure the resolution of the *CASURECO III-SMEC PSC*. It was therefore reasonable for it to expect that the *CASURECO III-SMEC PSC* would already be resolved.

ABSTRACT OF THE EMERGENCY POWER SUPPLY AGREEMENT AND RELATED INFORMATION

26. **CASURECO III’s Power Situation.** Applicant CASURECO III’s average peak demand for its Franchise Area is 29 MW for 2024 as provided in its Supply-Demand Scenario.¹⁹

27. **Generation Facility.** The power to be provided to applicant CASURECO III 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 CASURECO III under the terms stipulated in the *CASURECO III-FDCMPC EPSA*.

28. **Salient Features of the CASURECO III FDCMPC EPSA:**

28.1. Term: The maximum term of the EPSA shall be one (1) year from its execution.

28.2. Date of Commencement of Supply: The obligation of applicant FDCMPC to deliver electric power to applicant CASURECO III shall commence immediately following the execution of the EPSA, and more specifically on 26 July 2024.

28.3. Contract: Firm

28.4. Contracted Capacity: 22 MW

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

	FIRM
Contracted Demand (monthly), kW	22,000
Contracted Energy (12 months), kWh	192,720,000
Customer Load Factor Per Interval	at least 70%

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

Delivery Point	Plant Gate of the Power Plant
Nodal Point	11FDC Unit 1, Unit 2, Unit 3
Voltage at the Plant Gate	138kV

28.6. Outage Allowance:

Scheduled Interruption (PMS)	369 hours
Unscheduled Interruption	405 hours

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

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

28.8. Termination: Either Party may terminate the *CASURECO III-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 *CASURECO III-FDCMPC EPSA* and fails to cure such breach within a period of thirty (30) days from receipt of notice of such breach.

28.9. Generation Charge:

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

BASELOAD (FIRM)

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

CRF Charge = (1,460.00PhP/kW/month)* BD
FOM Charge = [(452.09PhP/kW/month)* (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}= 125.6 (May 2024)

Other Pass-Through Charges:

- Market Charges and Fees including Line Rental Charges
Value Added Tax, if applicable

28.10. **Estimated Rate Impact** The indicative rate impact analysis on applicant CASURECO III’s overall generation rate with and without the additional supply from applicant FDCMPC is as follows:²⁰

With FDCMPC	Forecasted Quantity (kWh)	Amount (Php)	Percent Share (%)	Resulting CUF (%)	Average Rate (Php/kWh)	Weighted Average rate (Php/kWh)
FDCMPC	156,833,400.00	869,249,119.50	85%	83%	5.5425	5.6838
WESM	22,412,264.28	149,550,613.93	15%		6.6727	
TOTAL	179,245,664.28	1,018,799,733.43	100%			

Without FDCMPC	Forecasted Quantity (kWh)	Amount (Php)	Percent Share (%)	Resulting CUF (%)	Average Rate (Php/kWh)	Weighted Average rate (Php/kWh)
FDCMPC	-	-	0%	0%	0.0000	7.6185
WESM	179,245,664.28	1,365,583,093.33	100%		7.6185	
TOTAL	179,245,664.28	1,365,583,093.33	100%			

Generation Rate Impact (Php/kWh)	(1.9347)
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29. 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”	CASURECO III-FDCMPC EPSA
“B”	CASURECO III Board Resolutions

²⁰ See **Annex “E”** of the *Joint Application*..

“C”	CASURECO III Supply and Demand Scenario, Details of Existing Suppliers, Contract Utilization
“D”	CASURECO III Average Daily Load Curve
“E”	Estimated Rate Impact Analysis
“F”	CASURECO III-FDCMPC EPSA Executive Summary
“G”	Solicitation Letters sent to Generation Companies
“H”	FDCMPC Financial Model with Breakdown of Project Costs
“H-1”	FDCMPC Cost Analysis
“I”	FDCMPC Generation Rate and Derivation
“J”	FDCMPC Sample Computation of Power Rates
“K”	FDCMPC Basis of Other Charges
“L”	FDCMPC Fuel Supply Procurement Process
“L-1”	FDCMPC Certification on Fuel Supply Agreement
“L-2”	FDCMPC Sworn Statement on Fuel Matters
“M”	FDCMPC Relevant and Economic Characteristics of the Generation Capacity
“N”	FDCMPC Secretary’s Certificate
“O”	Proof of Service to LGU Offices
“P”	Affidavit of Publication
“Q”	CASURECO III Letter to ERC dated 24 August 2018
“R”	SMEC Letter dated 03 August 2018
“S”	ERC Letter dated 11 September 2018
“T”	CASURECO III Letter dated 19 January 2022
“U”	SMEC Letter dated 04 March 2022
“V”	SMEC Notice of Suspension
“W”	Explanation for Non-Applicability of Documents

The conduct of a CSP is not required and the CASUERECO III-FDCMPC EPSA is immediately implementable

30. Applicant CASURECO III need not undergo a CSP prior to the execution of the *CASURECO III-FDCMPC EPSA*. Moreover, the *CASURECO III-FDCMPC EPSA* is immediately implementable upon its execution consistent with the prevailing regulations of this Honorable Commission and the DOE.

31. 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.

32. In compliance with prevailing regulations, the generation component to be charged under the *CASURECO III-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**

33. 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.

34. 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”	FDCMPC Cost Analysis
“I”	FDCMPC Generation Rate and Derivation
“J”	FDCMPC Sample Computation of Power Rates
“K”	FDCMPC Basis of Other Charges
“L”	FDCMPC Fuel Supply Procurement Process
“L-1”	FDCMPC Certification on Fuel Supply Agreement

35. 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.

36. In the case *Air Philippines Corporation vs. Pennswell Inc.*,²¹ 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

²¹ G. R. No. 172835, 13 December 2007.

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."

37. 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.

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

39. 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 **CAMARINES SUR III 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 CASURECO III 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 *CASURECO III-FDCMPC EPSA* be retroactively applied for the entire term of the *CASURECO III-FDCMPC EPSA* .

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

Finding the said *Joint Application* to be sufficient in form and with the required fees having been paid, the Commission hereby sets the same for 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 2020²² and Resolution No. 01, Series of 2021²³ (ERC Revised Rules of Practice and Procedure):

Date and Time	Platform	Activity
24 March 2025 (Monday) at two o'clock in the afternoon (2:00 P.M.)	Microsoft Teams Application	Determination of compliance with jurisdictional requirements, and Expository Presentation
31 March 2025 (Monday) at two o'clock in the afternoon (2:00 P.M.)		Pre-trial Conference and Presentation of Evidence

Accordingly, CASURECO III and FDCMPC are hereby directed to host the virtual hearing at **CASURECO III’s principal office at San Jose, Iriga City, Camarines Sur**, as the designated venue for the conduct thereof and ensure that the same is open to the public. Moreover, CASURECO III and FDCMPC shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

RELATIVE THERETO, CASURECO III and FDCMPC are hereby directed to:

- 1) Cause the publication of the attached *Notice of Virtual Hearing* in two (2) newspapers of nationwide circulation

²² A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.
²³ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

in the Philippines at its 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 Governors, the Mayors and the Local Government Unit (LGU) legislative bodies, within CASURECO III's franchise area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within CASURECO III's franchise area, by any other means available and appropriate, of the filing of the *Joint Application*, their reasons therefor, and of the scheduled virtual hearing thereon;
- 4) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing*, the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress. They are hereby requested, if they so desire, to send their duly authorized representatives and attend the scheduled hearing; 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, CASURECO III and FDCMPC must submit to the Commission via electronic mail (e-mail) at docket@erc.ph, and copy furnish the Legal Service through legal@erc.ph, the scanned copies of their **written compliance** with the aforementioned jurisdictional requirements attaching therewith, methodically arranged and duly marked, the following:

- 1) The evidence of publication of the attached *Notice of Virtual Hearing* consisting of affidavits of the Editors or Business Managers of the newspaper 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 CASURECO III to inform the consumers within its franchise area of the filing of the *Joint Application*, the reasons therefor, and of the scheduled hearing 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 *Application* and its attachments, except those subject of a 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.

Moreover, CASURECO III 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 Offices of the Governor, Mayors and Local Legislative Bodies, and to submit proof of posting thereof.

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

- 1) A summary of admitted facts and proposed stipulation of facts;
- 2) The issues to be tried or resolved;
- 3) The documents or exhibits to be presented, stating the purposes and proposed markings thereof; and

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

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

Failure of CASURECO III and FDCMPC to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from the said date of cancellation.

Applicants CASURECO III 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* with relevant information and pertinent details substantiating the reasons and justifications being cited in support thereof.

Applicants CASURECO III and FDCMPC are hereby directed to file a copy of their **Expository Presentation** via e-mail at docket@erc.ph, copy furnish the Legal Service through legal@erc.ph, at least five (5) calendar days prior to the scheduled virtual hearing. CASURECO III and FDCMPC shall also be required, upon the request of any stakeholder, to provide an advance copy of their expository presentations, at least five (5) calendar days prior to the scheduled virtual hearing.

Applicants CASURECO III and FDCMPC are hereby directed to submit, through personal service, registered mail or ordinary mail/private courier, one (1) set of the original or certified true hard/printed copy/ies of their Jurisdictional Compliance, Expository Presentation, Pre-trial Brief, and Judicial Affidavit/s of witness/es, 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.

Finally, CASURECO III and FDCMPC, including their authorized representatives and witnesses, are hereby directed to provide the Commission, through 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 hearing.

SO ORDERED.

Pasig City, 27 December 2024.

FOR AND BY AUTHORITY
OF THE COMMISSION:


KRISHA MARIE T. BUELA
Director III, Legal Service


LS:NMCRB/KACF

Copy Furnished:

1. Camarines Sur III Electric Cooperative, Inc. (CASURECO III)
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9. Office of the Governor
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10. Office of the Local Government Unit (LGU) Legislative Body
Province of Camarines Sur
11. Office of the City Mayor
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12. Office of the LGU Legislative Body
Iriga City
13. Office of the Municipal Mayor
Baao, Camarines Sur
14. Office of the LGU Legislative Body
Baao, Camarines Sur
15. Office of the Municipal Mayor
Buhi, Camarines Sur

- 16. Office of the LGU Legislative Body
Buhi, Camarines Sur
- 17. Office of the Municipal Mayor
Bula, Camarines Sur
- 18. Office of the LGU Legislative Body
Bula, Camarines Sur
- 19. Office of the Municipal Mayor
Bato, Camarines Sur
- 20. Office of the LGU Legislative Body
Bato, Camarines Sur
- 21. Office of the Municipal Mayor
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- 22. Office of the LGU Legislative Body
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