

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

**IN THE MATTER OF THE
APPLICATION FOR
THE APPROVAL OF THE
EMERGENCY ELECTRIC
POWER PURCHASE
AGREEMENT
(EPPA) BETWEEN CEBU I
ELECTRIC COOPERATIVE,
INC. AND PANAY ENERGY
DEVELOPMENT
CORPORATION WITH
MOTION FOR
CONFIDENTIAL
TREATMENT OF
INFORMATION**

ERC CASE NO. 2023-103 RC

**CEBU I ELECTRIC
COOPERATIVE, INC.
(CEBECO I) AND PANAY
ENERGY DEVELOPMENT
CORPORATION (PEDC),
*Applicants.***

Promulgated:
March 05, 2024

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NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES

Notice is hereby given that on 18 September 2023, Cebu I Electric Cooperative, Inc. (CEBECO I) and Panay Energy Development Corporation (PEDC) filed a *Joint Application*, dated 04 July 2023, seeking the Commission's approval of the Emergency Electric Power Purchase Agreement (EPPA) between CEBECO I and PEDC, with motion for confidential treatment of information.

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

THE JOINT APPLICANTS

1. Applicant CEBECO I is an electric cooperative, duly organized and existing under the laws of the Republic of the Philippines, with principal office address at Bitoon, Dumanjug, Cebu, Philippines. It was granted an exclusive franchise to own and operate a system for the distribution of electricity in the City of Carcar and the Municipalities of Barili, Dumanjug, Ronda, Alcantara, Moalboal, Badian, Alegria, Malabuyoc, Ginatilan, Samboan, Santander, Sibonga, Argao, Dalaguete, Alcoy, Boljo-on, and Oslob, all in the Province of Cebu.

1.1 CEBECO I is represented herein by its General Manager, Engr. Getulio Z. Crodua, who has been authorized by its Board of Directors to initiate, file, and pursue the instant application through Board Resolution No. 20, Series 2023 dated 11 February 2023, a copy of which is attached and made as an integral part herein as *Annex "A."*

2. Applicant PEDC is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at Barangay Ingore, Lapaz, Iloilo City. It owns and operates 2 x 82 MW circulating fluidized bed coal-fired power plant located in Barangay Ingore, Lapaz, Iloilo City.

2.1 PEDC is represented herein by its President, Jaime T. Azurin, and its Senior Vice President, Mr. Rochel Donato R. Gloria, who have been authorized by its Board of Directors to initiate, file, and pursue the instant application as evidenced by the Secretary's Certificate executed on 29 March 2023, a copy of which is attached and made as an integral part herein as *Annex "B."*

3. Applicants CEBECO I and PEDC may be served with notices, orders and other processes of the Honorable Commission through their respective counsel at their addresses indicated below.

NATURE OF THE APPLICATION

4. This is an application for the approval of the Electric Power Purchase Agreement between CEBECO I and PEDC, which was duly notarized on 08 March 2022 and 15 March 2023 respectively. A copy of the Emergency EPPA are attached herein as *Confidential Annex "C."*

NARRATION OF FACTS

5. In a letter dated 06 October 2022, CEBECO I requested the Department of Energy (DOE) for the issuance of a Certificate of Exemption (COE) for CEBECO I's emergency purchase power supply. A copy of the letter is attached as Annex "D."

5.1 CEBECO I's supply-demand profile indicated power shortage due to the expiration of the Power Supply Agreement with KEPCO-SPC Power Corporation (KSPC) on 25 December 2022, leaving a deficiency of 10MW for distribution to its captive market.

5.2 In order to avoid the impending power supply shortage, CEBECO I initiated the conduct of Competitive Selection Process (CSP) as early as December 2019 in accordance with DOE Department Circular No. 2018-02-0003, which was later on amended by DOE Department Circular No. 2021-09-0030.

5.3 However, despite best efforts to complete the CSP, the same cannot be completed prior to the expiration of the Power Supply Agreement with KSPC on the aforesaid date, thus, the expected shortfall in its power supply will result in sectional brown outs to the detriment of the member-consumers.

5.4 CEBECO I deemed that this is an emergency that required a prompt procurement of sufficient capacity of baseload energy from a reliable generator to ensure stability of power supply at a reasonable minimum cost for the paramount interest of its member-consumers in the coming months.

6. Thus, the Board of Directors of CEBECO I directed the management to conduct an emergency procurement of 10MW power supply as provided in Section 2.2.1.2. of DOE Department Circular No. 2021-09-0030. Pursuant to the instructions, CEBECO I sent out letters to different generation companies requesting for proposals for emergency power supply, namely:

- i. MGEN-GBP;
- ii. KEPCO SPC Power Corporation; and
- iii. Aboitiz Power Corporation.

Copies of the CEBECO I letters are attached as Annex "E" and Series.

7. CEBECO I received offers from MGEN-GBP through PEDC, KEPCO SPC Power Corporation, and Therma Visayas, Inc. Copies of the offers are attached as Annex "F and series

8. After a thorough evaluation of the proposals received by CEBECO I, on 03 December 2022, the Board of Directors in its Board Resolution No. 159, series of 2022 dated 03 December 2022 approved the offer submitted by PEDC. A copy of the Board Resolution is attached as Annex "G."

9. Thereafter, having found PEDC offer to be the most responsive among the three (3) power suppliers, the Board of

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Directors, on the same date, passed and approved Board Resolution No. 160, series of 2022 authorizing the management to submit the Emergency Power Supply Agreement with PEDC to the DOE and request for the issuance of a Certificate of Exemption (COE) from the conduct of Competitive Selection Process (COE-CSP). A copy of the Board Resolution is attached as Annex "H."

10. In a letter dated 06 December 2022, CEBECO I submitted to the DOE necessary documents to support its earlier request for issuance of a COE. A copy of the December 6, 2022 letter is attached as Annex "I."
11. On 31 January 2023, the DOE favorably issued a Certificate of Exemption (COE-CSP) with No. COE-CSP-2023-01-001 exempting CEBECO I from the conduct of CSP for the negotiated procurement of emergency power supply through Electric Power Purchase Agreement (EPPA) with PEDC for a contract capacity of 10 MW for the period of 26 December 2022 to 26 December 2023. Copy of the COE-CSP is attached hereto as *Annex "J."*
12. Consequently, on 08 March 2023, CEBECO I and PEDC executed an Electric Power Purchase Agreement (For Emergency Power Supply).
13. Thus, this instant Joint Application for the approval of the Emergency EPPA between CEBECO I and PEDC.

SALIENT FEATURES OF THE EPSA

14. Salient Features of the EPPA are as follows:

Contracted Capacity	The capacity of 10 MW reserved by PEDC for CEBECO I for the duration of the Contract Term.
Term	The Contract shall take effect between the Parties on the date of signing (Execution Date) and shall remain effective from the Execution Date to 25 December 2023 (Contract Term) unless earlier terminated in accordance with the provisions of this Contract. PEDC shall commence the supply of electric power on the day following the first submission by CEBECO I of a Day Ahead Daily Generation Schedule and Week-Ahead Daily Generation Schedule (DGS) xxx, provided the DOE has issued a COE from the conduct of CSP for the procurement of emergency electric power requirements to CEBECO I.
Minimum Contracted Energy	100% load factor as specified in Schedule 1.

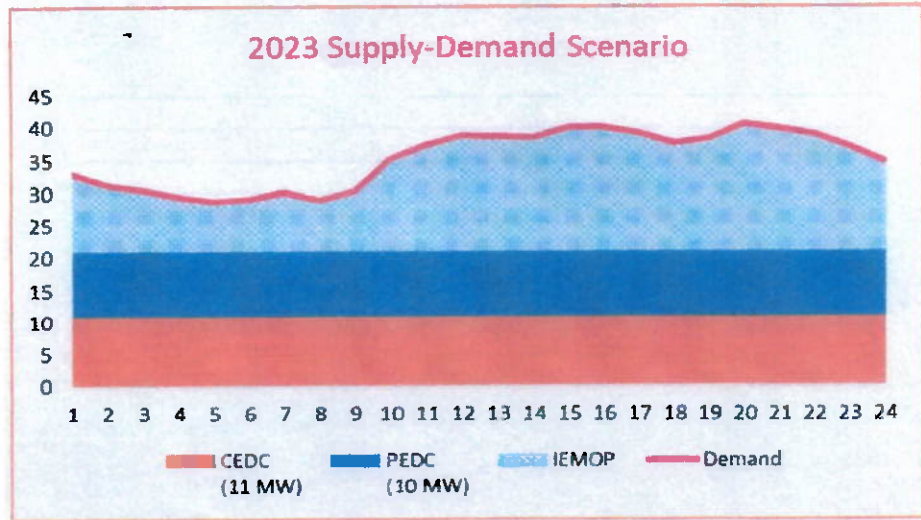
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Outage	PEDC shall not be entitled to any outage allowance.
Replacement Power	During outage, PEDC shall have the obligation to source replacement power to fulfill the Minimum Contracted Energy of the BUYER. CEBECO I shall pay the PEDC the Electricity Fees for the replacement power at the cost originally agreed, and the PEDC shall shoulder any and all cost difference in providing the same. In the event PEDC fails to source replacement power, CEBECO I shall be allowed to find replacement power in the WESM, and the SELLER shall pay to the BUYER the actual cost of replacement power sourced from WESM.
Delivery Point	Delivery point shall be at the high side of PEDC's substation at the Power Plant where the billing meter/s of the NGCP shall be installed and such other delivery points as may be agreed upon by PEDC and CEBECO I.
Other Charges	In relation to the supply of electricity by PEDC to CEBECO I, it is understood that any charges, costs, expenses, and fees charged to, incurred and/or assumed by SELLER or otherwise imposed by NGCP, Market Operator, any Governmental Authority, for the supply of the Contracted Capacity and its associated energy shall be paid by the CEBECO I

SUPPLY-DEMAND SCENARIO

15. Below is the Supply-Demand Scenario for CEBECO I for the period CY2023:

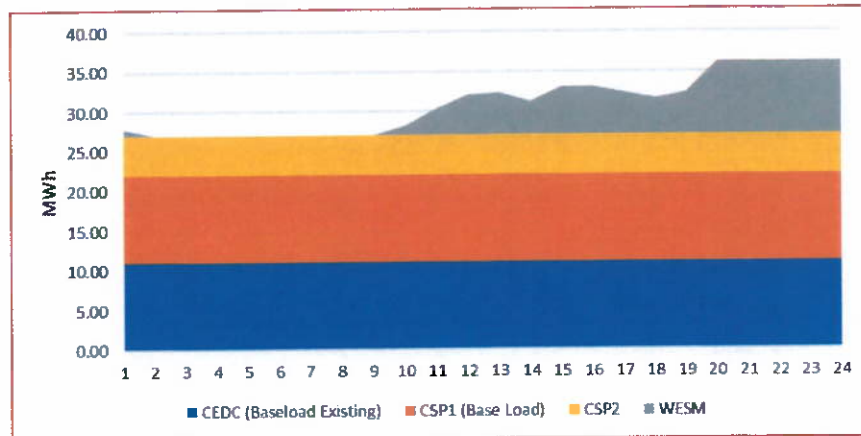
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Further details are found in the *10 Year Load Forecast and Forecasted Supply Demand Scenario* attached as Annex “K” and series and *2023 Supply-Demand Scenario* is attached as Annex “L.”

16. On the other hand, the Average Daily Load Curve is shown in this graph and further details in Annex M, as follows:

Average Daily Load Curve for the year 2022



RATE IMPACT ANALYSIS

17. The indicative rate impact on CEBECO I’s generation rate as of December 2022 is hereunder shown and further details in Confidential Annex “N” (“Rate Impact Analysis”), as follows:

Without PEDC emergency supply	11.9887
With PEDC emergency supply	10.1898
Rate Impact (PhP/kWh)	(1.7988)

ALLEGATIONS IN SUPPORT OF THE EMERGENCY EPPA RATE [sic]

18. Section 2.2.2 of the CSP Rules provides that the rate for the emergency power supply “shall not be higher than the latest ERC approved generation tariff for the same or similar technology in the area.”

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19. The latest ERC-approved generation tariff for the same or similar technology in the Province of Cebu, where Applicant CEBECO I's distribution network is located, is the generation rate for the supply of power between KEPCO SPC Power Corporation and Bohol Light Company, Inc. in the Honorable Commission's Order dated 04 August 2022 in ERC Case No. 2022-043 RC.
20. Attached as Confidential Annex "O" is a Comparative Matrix of Suppliers (Generation Rate Comparative Matrix).
21. The rates under Applicant's Emergency EPPA is subject to Applicant PEDC's motion for confidential treatment of information. The allegations in support of the said motion are provided below. [sic]
22. The applicants respectfully submit that the rates in the Emergency EPPA are compliant with the CSP Rules.

APPLICABILITY OF THE 2021 CSP RULES

23. As earlier alleged, the governing CSP Rules at the time CEBECO I was granted with a certificate of exemption and during the start of the implementation of the emergency supply of power by PEDC was the 2021 CSP Rules or the DOE Department Circular No. DC2021-09-0030.¹
24. Parties are aware that the DOE issued a Department Circular No. DC2023-06-0021 dated 30 June 2023, amending certain provisions in the 2021 CSP Rules ("Amended CSP Rules"). Section 7.4 of the Amended CSP Rules, provide:

"7.4. All PSAs procured and executed shall be reviewed and evaluated in accordance with the CSP Policy applicable at the time of their filing in the ERC. xxx"
25. Section 10 of the Amended CSP Rules further provides that the Amended CSP Rules shall take effect fifteen (15) calendar days upon its publication in at least two (2) newspapers of general circulation. No publication details are posted in the DOE website as of this date. Hence, the 2021 CSP Rules govern this case.

COMPLIANCE WITH PRE-FILING REQUIREMENTS AND SUPPORTING DOCUMENT

26. As further support to the instant Joint Application, the Applicants provide the following documents, which underwent the pre-filing conference with this Honorable Commission:

Description of Document	Annex
CEBECO I's Certification of Registration, Articles of Incorporation (AOI), and By-Laws	P and Series

¹ Entitled "Adopting and Prescribing the Policy for the Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreement for the Captive Market."

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Description of Document	Annex
List of Current Members of CEBECO I's Board of Directors	Q
Single Line Diagram of CEBECO I and PEDC	R and Series
CEBECO I's Performance Assessment of the System: historical and current SAIDI and SAIFI	S and series
CEBECO I's WESM Registration and Market Participation Agreement; Service Agreement with NGCP	T and Series
CEBECO I's Explanation and certification on the conduct of CSP; Statement on Potential Ancillary Service Cost; Explanation on Demand Side Management, Transmission Service Agreement with NPC, and Load Reduction due to Retail Competition; Explanation on No Discrepancy in documents;	U and series
PEDC's Certificate of Incorporation, AOI, and By Laws	V and series
PEDC's 2022 General Information Sheet and Certification on Members of the Board of Directors of the company and parent company	W and series
PEDC's 2023 Audited Financial Statements	X
PEDC Plant Permits: PEDC's Certification from the Board of Investments; Environmental Compliance Certificate (ECC) and Certification on Change of Name to PEDC; Decision on Point to Point Line	Y and Series
PEDC contracts: Market Participation Agreement (MPA) of PEDC; Supplemental MPA; Transmission Service Agreement with NGCP;	Z and series
Certification on PEDC's Certificate of Compliance <i>*(Confidential)</i>	AA*
Executive Summary of the Emergency which includes discussions on Electricity Fees and other financial information and sources of funds* <i>(Confidential)</i>	BB and Series
Fuel Procurement Process and Fuel Supply Contracts <i>*(Confidential)</i>	CC and series
Verified certification that the power plant is ready to deliver power to address the emergency and that the rates being charged are no more than the latest rate approved by the Commission for the same or relevant technology in the area; Plant technical and economical characteristics of the plant; Summary of Outages; Explanation on the Net Heat Rate; Performance Test Result; Simulation of the no. of operating units necessary to meet the Minimum Energy Off Take (MEOT); <i>*(Confidential)</i>	DD and series

Description of Document	Annex
PEDC's Explanation on non-applicability of some items in the PSA Checklist, namely: Shareholder's Agreement, DOE COE, Renewable Energy related documents, other related agreements	EE and series

**Subject to the Motion for Confidential Treatment of Information*

**ALLEGATIONS IN SUPPORT OF MOTION FOR
CONFIDENTIAL TREATMENT OF INFORMATION**

27. Under *Rule 4 of the ERC Revised Rules of Practice and Procedure*, a party to any proceeding before the Honorable Commission may request that certain information not be disclosed and be treated as confidential, by describing with particularity the information to be treated as confidential, specifying the ground for the claim of confidential treatment of the information and, if applicable, specifying the period during which the information must not be disclosed.

28. With respect to the documents marked and attached as ANNEX/ES C, N, O, AA , BB and series, CC and series, and DD and series, PEDC respectfully moves that these be treated as confidential and not be disclosed to any party for the reason that these contain non-public, proprietary information, data and calculations involving the investments, financial calculations, and business operations of PEDC. The data and information contained therein are part of the overall formula and process in arriving at the competitive rates of PEDC. These formula and process are specifically developed for the use of PEDC and are treated as trade secrets. If the information contained in these documents are unduly disclosed, it will seriously prejudice the competitiveness of PEDC. These documents are neither generally available to the public nor already in the possession of the Honorable Commission on a non-confidential basis.

29. In addition to the foregoing, pursuant to PEDC's agreement with its counterparties marked as Annexes "BB and series" and "CC and series" and likewise contain certain non-public information involving its lender's and counterparties' financial trade secrets. Hence, the confidentiality of those documents should be maintained.

30. In the case of *Air Philippines Corporation vs. Pennswell, Inc.*,² the Supreme Court defined "trade secret" as follows:

"A trade secret is defined as a plan or process, tool, mechanism or compound known only to its owner and those of his employees to whom it is necessary to confide it. The definition also extends to a secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade having commercial value. A trade secret may consist of any formula, pattern, device, or

² G. R. No. 172835, 13 December 2007.

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.**" (*Emphasis ours.*)

31. The protection of trade secrets is likewise recognized by the Honorable Commission in its Decision in ERC Case No. 2015-111 RC:

"In the case of PNOC RC, the documents sought to be protected from disclosure contains formula and pricing structures used in arriving at their proposed tariff. The prices cited in the documents were components of the proposed tariff. In fact, all three (3) documents were used by the Commission in evaluating the reasonableness of the proposed rate. In electric power industry [where] prices is a major consideration in selecting one's supplier, it is apparent that the assumption used in arriving at one's proposed tariff is considered a competitive leverage by one player against its competitors.

Thus, the Commission resolved to treat the said documents confidential and may not be publicly disclosed.³

32. It is respectfully submitted therefore that ANNEX/ES C, N, O, AA and series, BB and series, CC and series, and DD and series, fall within the bounds of proprietary "trade secrets" which are entitled to protection under the Constitution, statutes, and rules and regulations of this Honorable Commission.
33. Thus, Applicants hereby submit one (1) copy of each of the foregoing confidential documents in sealed envelopes, with the envelopes and each page of the documents marked "Confidential."
34. The interest of the consumers of CEBECO I is sufficiently protected by the review and evaluation of the rates under the Emergency EPPA by the Honorable Commission, without the need to disclose the contents of the confidential information. The reasonableness and transparency of the prices of electricity is to be assured by the Honorable Commission through its own review and verification of the foregoing documents sought to be afforded confidential treatment in the evaluation and handling thereof.
35. Lastly and corollary to the foregoing, PEDC would like to implore the discerning wisdom of the Honorable Commission

³ In the Matter of the Application for the Approval of the Power Supply Agreement Between Nueva Ecija II Electric Cooperative, Inc. – Area 2 (NEECO II – Area 2) and PNOC Renewables Corporation (PNOC RC) with Prayer for Provisional Authority, ERC Case No. 2015-111 RC, Decision dated 30 May 2017, p. 26.

to include in its issuance for this purpose the ***“procedures for the handling or returning the confidential information, as appropriate, upon the close of the proceedings or at the end of the period for which the information is to be treated as confidential.”***⁴

36. This is guided by the fact that PEDC will seek for the return of these sought to be declared confidential annexes after its utilization as evidence in this case and/or at the close of the proceedings hereof, so as to relieve the Honorable Commission of the burden of safekeeping the trade secrets of PEDC enclosed in the subject annexes.

PRAYER

WHEREFORE, premises considered, Applicants respectfully pray that the Honorable Commission:

- (i) Issue an Order TREATING ANNEX/ES C, N, O, AA and series, BB and series, CC and series, and DD and series, and all other information contained therein as CONFIDENTIAL, directing their non-disclosure to persons other than officers and staff of this Honorable Commission, continuously protecting the said information from public disclosure by maintaining the same separate and apart from the records of the case, and ensuring that these are not divulged to unauthorized persons, pursuant to Rule 4 of the ERC Revised Rules of Practice and Procedure; and
- (ii) After hearing on the merits, render a Decision APPROVING THE EMERGENCY EPPA between PEDC and CEBECO I and the terms and conditions thereunder, including the price.

Other relief just and equitable under the circumstances are likewise prayed for.

The Commission hereby sets the instant *Joint Application* for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on the following dates and online platforms for the conduct thereof, pursuant to Resolution No. 09, Series of 2020⁵ and Resolution No. 01, Series of 2021⁶ (ERC Revised Rules of Practice and Procedure):

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⁴ Letter (d), Section 4, of the ERC Rules and Practice and Procedure.

⁵ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

⁶ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

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Date	Platform	Activity
04 April 2024 (Thursday) at nine o'clock in the morning (9:00 A.M)	Microsoft Teams Application	Determination of compliance with jurisdictional requirements and Expository Presentation
11 April 2024 (Thursday) at nine o'clock in the morning (9:00 A.M)		Pre-Trial Conference and Presentation of Evidence

Accordingly, CEBECO I and PEDC are hereby directed to host the virtual hearings at **CEBECO I's Principal Office located at Bitoon, Dumanjug, Cebu**, as the designated venue for the conduct thereof, and ensure that the same is open to the public. Moreover, CEBECO I and PEDC shall also guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

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

Moreover, 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, copy furnish 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 and subject to the requirements under Rule 9 of the ERC Revised Rules of Practice and Procedure, indicating therein the docket number and title of the case and stating the following:

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

- 3) A statement of the relief desired.

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

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

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

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

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

WITNESS, the Honorable Commissioners **ALEXIS M. LUMBATAN, FLORESINDA G. BALDO-DIGAL**, and **MARKO ROMEO L. FUENTES**, Energy Regulatory Commission, this 5th day of March 2024 in Pasig City.

FOR AND BY AUTHORITY
OF THE COMMISSION:



CATHERINE P. MACEDA
*Commissioner and
Officer-in-Charge of the
Office of the Chairperson and CEO*


LS: EDR/LSP

ERC

Office of the Chairperson and CEO



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