

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

**IN THE MATTER OF THE
APPLICATION FOR
APPROVAL OF THE
EMERGENCY POWER
SUPPLY AGREEMENT
BETWEEN ENERGY
DEVELOPMENT
CORPORATION AND
SAMAR II ELECTRIC
COOPERATIVE, INC., WITH
MOTION FOR
CONFIDENTIAL
TREATMENT OF
INFORMATION**

ERC CASE NO. 2024-024 RC

**ENERGY DEVELOPMENT
CORPORATION (EDC) AND
SAMAR II ELECTRIC
COOPERATIVE, INC.
(SAMELCO II),**

Applicants.

X-----X

Promulgated:
March 06, 2024

ORDER

On 23 February 2024, Samar II Electric Cooperative, Inc. (SAMELCO II) and Energy Development Corporation (EDC) filed a *Joint Application*, dated 04 August 2023, seeking the Commission's approval of their Emergency Power Supply Agreement (EPSA), with motion for confidential treatment of information.

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

THE APPLICANTS

1. Applicant SAMELCO II is an electric cooperative duly organized and existing under and by virtue of the laws of the Philippines, with principal office at Barangay Arado, Paranas, Samar, Philippines, where it may be served with summons and other legal processes. SAMELCO II is represented here by

its President, Marrychan U. Pimentel, who has been authorized by its Board of Directors to file the Joint Application as evidenced by the Secretary's Certificate dated February 14, 2023, attached hereto as Annex "B-1".

2. Applicant EDC is a generation company duly organized, incorporated and registered, with principal office at Rockwell Business Center Tower 3, Ortigas Avenue, Pasig City, represented in this instance by its Senior Vice President and Deputy Chief Operating Officer, Jerome H. Cainglet, who has been authorized by its Board of Directors to file the Joint Application as evidenced by the Secretary's Certificate dated October 13, 2022, attached hereto as Annex "D-1".
 - 2.1. EDC, as a generation company, falls within the ambit of Sections 6 and 29 of Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 ("EPIRA").
 - 2.2. Pursuant to the Honorable Commission's Resolution No. 02, Series of 2015 requiring distribution utilities and generation companies to jointly file applications for the approval of power supply agreements, EDC has joined in this Application as a co-applicant.
 - 2.3. While EDC is a co-applicant, it manifests that this Joint Application shall neither modify, diminish, nor constitute as a waiver of EDC's rights nor expand its obligations and responsibilities as a generation company under the EPIRA.
3. Applicant SAMELCO II is the exclusive franchise holder to own and operate a system for the distribution of electricity in the City of Catbalogan and Municipalities of Jiabong, Motiong, Paranas, San Sebastian, Hinabangan, Calbiga, Villareal, Pinabacdao, Sta. Rita, Talalora, Basey, Marabut, Daram, Zumarraga, San Jose de Buan, all in the Province of Samar.
4. Applicant EDC owns and operates the approximately 592.33 MW Unified Leyte Geothermal Power Plant located in the Ormoc City and Kananga, Leyte ("Plant").

STATEMENT OF FACTS

5. SAMELCO II is in immediate need of 1MW contracted capacity for around one (1) year¹. To maintain an uninterrupted and reliable power supply due to a high level of supply deficit of at least 1MW, SAMELCO II decided to source the needed power at affordable and cheaper generation rates to help minimize the exposure of its customers to the volatile Wholesale Electricity Spot Market ("WESM") prices.

¹ Under the EPSA, the term shall end on the last day of the Cooperation Period, which shall not be later than the date prescribed by the DOE in the Certificate of Exemption; both the EPSA and the Certificate of Exemption provide for the period of 26 August 2022 to 25 August 2023.

6. Pursuant to Department of Energy (“DOE”) Department Circular 2018-02-003, as amended by DC 2021-09-0030, SAMELCO II is allowed to enter into a negotiated procurement of emergency electric power supply agreements with a generation company for a period not exceeding one (1) year, subject to such terms and conditions provided under Section 2.2.1.2 of DC 2021-09-0030.
7. The DOE has issued a Certificate of Exemption No. COE-CSP-2022-08-040 to SAMELCO II exempting it from the conduct of Competitive Selection Process (“CSP”) for the procurement of emergency electric power supply.
8. SAMELCO II wrote to the DOE requesting for the issuance of Certificate of Exemption for a negotiated procurement of 1MW emergency power supply from EDC. The Letter expressed SAMELCO II’s urgent need for supply of electricity due to circumstances beyond the control of SAMELCO II, and the limited time to conduct the said competitive selection process. On 31 August 2022, DOE issued a Certificate of Exemption in response to SAMELCO II’s letter-request.
9. In view of SAMELCO II’s supply deficit of at least 1MW for the period of 26 August 2022 to 25 August 2023, based on its Supply-Demand Scenario, and to protect its consumers from high electricity prices, SAMELCO II solicited for emergency power supply for one (1) year.
10. In response to SAMELCO II’s demand, EDC has offered to supply the emergency electric power supply requirements of SAMELCO II at a rate equivalent to or lower than the ERC-approved generation tariff for the same or similar technology in comparable areas, and SAMELCO II accepted the offer of EDC. Applicants executed the subject Emergency Power Supply Agreement (“EPSA”) for the supply of 1 MW emergency power supply to SAMELCO II.

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

11. Under the EPSA, EDC shall supply power to SAMELCO II for the term of the Cooperation Period, or unless sooner terminated pursuant to the EPSA, with a Contracted Capacity of 1MW.²
 - 11.1. Supply of Electricity – EDC shall make available to SAMELCO II the Contracted Capacity from the Power Plant and/or Other Sources throughout the duration of the Cooperation Period, subject to Section 2.2.1 of the EPSA. The Parties agree that EDC shall have no obligation to supply more than the Contracted Capacity to SAMELCO II. SAMELCO II shall submit to EDC the

² Unless otherwise defined herein, capitalized terms shall have the meaning ascribed to them in the EPSA.

week-ahead and day-ahead Daily Generation Schedule. SAMELCO II shall purchase and EDC shall supply, for each Billing Month in accordance with Nomination and Dispatch Protocol.

- 11.2. Purchase of Electricity – SAMELCO II is obliged to purchase the Minimum Contracted Energy throughout the duration of the Cooperation Period.
- 11.3. Start of Supply of Electricity – The supply of electricity by EDC and acceptance by SAMELCO II shall start no later than Initial Delivery Date which shall mark the beginning of the Cooperation Period or such earlier date as the Parties may mutually agree upon in writing, and the satisfaction of the conditions precedent under Section 11 of the EPSA.
- 11.4. Electricity Fees – Electricity fees shall refer to 5.8798 PhP/kWh for the billing period August 26, 2022 to December 25, 2022. Beginning January 2023 billing period, the Electricity Fee shall be in accordance with the formula in Schedule 3, multiplied by (a) the Minimum Contracted Energy corresponding for the applicable billing period or (b) BCQ, whichever is higher. In relation to the supply of electricity, it is understood that any charges, costs, expenses, and fees that may be charged to, incurred and/or assumed by EDC or otherwise imposed by NGCP, any Governmental Authority or any third party, for transmission and/or Ancillary Services and other related services in connection with the delivery of electricity under the EPSA shall be paid by SAMELCO II.

RATE IMPACT ANALYSIS

- 12. SAMELCO II simulated a rate impact analysis which resulted in a Php 0.0162/kWh decrease with the execution of the EPSA with EDC, as can be seen below:

	Weighted Average Rate (kWh)
SAMELCO II: WITHOUT EDC EPSA	12.2351
SAMELCO II: WITH EDC EPSA	12.2189
Generation Impact: Increase /(Decrease)	(0.0162)

OTHER RELATED DOCUMENTS

- 13. To substantiate the instant application, Applicants most respectfully submit to the Honorable Commission the following documents:

ANNEX	DOCUMENTS
A	Articles of Incorporation and By-laws of SAMELCO II
B	List of Board of Directors and Board Members and related ultimate parent company, subsidiaries and affiliates of SAMELCO II
C	Certificate of Incorporation of EDC and relevant past Articles of Incorporation and By-laws
C-1	Latest Amended Articles of Incorporation of EDC
C-2	Latest Amended By-laws of EDC
D	General Information Sheet of EDC
E	Board of Investments Certificate of Registration
F	Environmental Compliance Certificate
G-series	Certificate of Compliance or Provisional Authority to Operate
H-series	DOE Certificate of Endorsement
I*	Renewable Energy Service Contract
J	Certificate of Registration or Certificate of Commerciality
K	Rate Impact
L	Single Line diagram Connection
M	Emergency Power Supply Agreement between SAMELCO II and EDC
N	DOE Certificate of Exemption
O	Verified Certification in relation to delivery of power in emergency circumstances
P	NGCP Letter on Service Agreements Certification
P-1	Transmission Service Agreement between NGCP and SAMELCO II
Q	NGCP Certificate of Adequate Capacity

Q-1	Write up on TSC
R	Executive Summary of EPSA
S*	Write up regarding Sources of Funds/Financial Plans, Generation Rate and Derivation, Cash Flow specifying breakdown of costs and expenses
T*	Excel computations regarding Sources of Funds/Financial Plans, Generation Rate and Derivation, Cash Flow specifying breakdown of costs and expenses
U*	Bank Certifications
V*	Sworn statement on fuel procurement
W*	Relevant technical and economic characteristics of generation capacity
X	Supply Demand Scenario
Y	Estimated Load of Qualified Contestable Customers under RCOA
Z	Latest Audited Financial Statements
AA	Certification of net heat rate
BB	WESM Registration
CC	Write-up on non-applicable items
CC-1	SAMELCO II Write-up on Demand Side Management
CC-2	EDC Sample OR
DD	Water Permit from NWRB
EE	SAMELCO II's Reliability Indices
FF	PSPP and DDP

**Subject to Motion for Confidential Treatment*

COMPLIANCE WITH PRE-FILING REQUIREMENTS

14. In compliance with the ERC Rules of Practice and Procedure, Applicants have furnished the Office of the Mayor and Governor and the legislative bodies of the municipality and province wherein the principal place of business of SAMELCO II is located, a copy of the present Joint Application with all its annexes and accompanying documents. Copies of the Affidavits of Service to or Certifications issued by the Presiding Officer or Secretary of the legislative body and the Office of the Mayor of Paranas, Samar and the Presiding

Officer or Secretary of the legislative body and the Office of the Governor of Samar, or from their duly authorized representatives, attesting to the fact of service are attached hereto as Annexes “GG” to “GG-3”, respectively.

15. Likewise, a copy of the present Joint Application with all its annexes and accompanying documents was furnished to the City of Pasig where EDC’s principal place of business is located and to Ormoc City, Kananga, and Province of Leyte as EDC’s place of operation. Copies of the certification of receipt from and/or affidavits of service to the Presiding Officer or Secretary of the legislative body and the Office of the Mayor of the City of Pasig City, and the place of operation in Ormoc City and Kananga, and the Province of Leyte, or from their duly authorized representatives attesting to the fact of service are attached hereto as Annexes “HH” to “HH-7”.
16. Applicants have also caused the publication of the present Joint Application in a newspaper of general circulation within the Franchise Area of SAMELCO II. Copies of the corresponding duly notarized Affidavit of Publication and the newspaper publication are attached hereto as Annexes “II” and “JJ”, respectively.

REQUEST FOR CONFIDENTIAL TREATMENT OF INFORMATION

17. Applicants respectfully request that the information in the following documents be treated as confidential in nature:

ANNEX	DOCUMENTS
I	Renewable Energy Service Contract
S	Write up regarding Sources of Funds/Financial Plans, Generation Rate and Derivation, Cash Flow specifying breakdown of costs and expenses
T	Excel computations regarding Sources of Funds/Financial Plans, Generation Rate and Derivation, Cash Flow specifying breakdown of costs and expenses
U	Bank Certifications
V	Sworn statement on fuel procurement
W	Relevant technical and economic characteristics of generation capacity

18. Applicants treat the above-mentioned documents, such as related agreements, sources of funds/financial plans, certifications from bank/lending institutions, generation rate and derivation, cash flow, description of power plant, and steam sales agreement, as not generally available to the public on a non-confidential basis, as the same involve trade secrets

reflecting investment and business calculations and the Parties are similarly bound to third parties to keep the information and documents confidential.

19. This request is likewise being made by virtue of Section 1 (b), Rule 4 of the ERC Rules of Practice and Procedure under which the Honorable Commission may, upon request of a party and a determination of the existence of conditions which would warrant such remedy, treat certain information submitted to it as confidential.

PRAYER

WHEREFORE, premises considered, Applicants EDC AND SAMELCO II respectfully pray of this Honorable Commission the following:

- a. After due hearing, render a decision approving with finality the EPSA subject of the instant Joint Application, including the approval of the rates in the EPSA as implemented by the Applicants; and
- b. Issue an Order declaring the documents, and the information therein, duly marked as Annexes "I", "S", "T", "U", "V" and "W" as confidential information, within the purview of Rule 4 of the ERC Rules, thereby directing the same to be treated with confidentiality and be protected from public disclosure.

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 hearing 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 2020³ and Resolution No. 01, Series of 2021⁴ (ERC Revised Rules of Practice and Procedure):

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³ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

⁴ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

Date	Platform	Activity
17 April 2024 (Wednesday) at two o'clock in the afternoon (02:00 P.M.)	Microsoft Teams Application	Determination of compliance with jurisdictional requirements and expository presentation
24 April 2024 (Wednesday) at two o'clock in the afternoon (02:00 P.M.)		Pre-Trial Conference and Presentation of Evidence

Accordingly, SAMELCO II and EDC are hereby directed to host the virtual hearings at **SAMELCO II's Principal Office located at Barangay Arado, Paranas, Samar, Philippines**, as the designated venue for the conduct thereof and ensure that the same is open to the public. Moreover, SAMELCO II and EDC shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

RELATIVE THERETO, SAMELCO II and EDC are hereby directed to:

- 1) Cause the publication of the attached *Notice of Virtual Hearing* in two (2) newspapers of nationwide circulation in the Philippines at their own expense, twice (2x) within two (2) successive weeks, the dates of publication not being less than seven (7) days apart, and the date of the last publication to be made not later than ten (10) days before the date of the scheduled initial virtual hearing;
- 2) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing* the Offices of the Provincial Governors, the City and Municipal Mayors, and their respective Local Government Unit (LGU) legislative bodies within SAMELCO II's franchise area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within SAMELCO II's franchise area, by any other means available and appropriate, of the filing of the *Joint Application*, its reasons therefor, and of the scheduled virtual hearings 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 at 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, SAMELCO II and EDC must submit to the Commission via electronic mail (e-mail) at [doCKET@erc.ph](mailto:docket@erc.ph), and copy furnish the Legal Service through legal@erc.ph, 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 SAMELCO II and EDC to inform the consumers within SAMELCO II's franchise area of the filing of the *Joint Application*, its reasons therefor, and of the scheduled hearings thereon;
- 4) The evidence of receipt of copies of this *Order* and the attached *Notice of Virtual Hearing* by the OSG, the COA, and the Committees on Energy of both Houses of Congress;

- 5) The evidence of receipt of copies of the *Joint Application* and its attachments, except those subject of a motion for confidential treatment of information, if any, by all those making requests therefor; and
- 6) Such other proof of compliance with the requirements of the Commission.

Moreover, SAMELCO II and EDC are hereby required to post on their bulletin boards, the scanned copies of the foregoing jurisdictional requirements, together with the newspaper publication and certifications issued by the concerned Offices of the Governor, Mayors and Local Legislative Bodies, and to submit proof of posting thereof.

Joint Applicants SAMELCO II and EDC, 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 therefor, which should also be attached to the Pre-trial Brief; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-trial Brief.

Joint Applicants SAMELCO II and EDC 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 SAMELCO II and EDC to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearings.

Joint Applicants SAMELCO II and EDC must also be prepared to make an expository presentation of the instant *Joint Application*, aided by whatever communication medium that they may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties, the nature of the *Joint Application*. Relevant information and pertinent details substantiating the reasons and justifications for the *Joint Application* must be cited in support thereof.

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

Joint Applicants SAMELCO II and EDC 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 copies of their Jurisdictional Compliance, Expository Presentation, Pre-trial Brief, and Judicial Affidavits of witnesses, **within five (5) working days** from the date that the same were electronically submitted, as reflected in the acknowledgment receipt e-mail sent by the Commission.

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Finally, SAMELCO II and EDC, 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, 06 March 2024.

FOR AND BY AUTHORITY
OF THE COMMISSION:



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


LS: ECI/M/M/LSP

ERC

Office of the Chairperson and CEO



CPM2024-015207

ERC CASE NO. 2024-024 RC
ORDER/ 06 MARCH 2024
PAGE 14 OF 16

Copy Furnished:

1. Samar II Electric Cooperative, Inc. (SAMELCO II)
Co-Applicant
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3. Energy Development Corporation (EDC)
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Quiason Makalintal Barot Torres Ibarra Sison & Damaso
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Email: gmbti@gmbti.com
5. Office of the Solicitor General
134 Amorsolo Street, Legaspi Village, Makati City
Email: docket@osg.gov.ph
6. Commission on Audit
Commonwealth Avenue, Quezon City
Email: citizensdesk@coa.gov.ph
7. Senate Committee on Energy
GSIS Bldg. Roxas Blvd., Pasay City
Email: senateenergycommittee@gmail.com
8. House Committee on Energy
Batasan Hills, Quezon City
Email: committees@house.gov.ph
9. Regulatory Operations Service
Energy Regulatory Commission
14th Floor Exquadra Tower, 1 Jade Drive,
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Email: ros@erc.ph
10. Office of the Governor
Province of Samar
11. Office of the Local Government Unit (LGU) legislative body
Province of Samar
12. Office of the City Mayor
Catbalogan, Samar
13. Office of the LGU legislative body
Catbalogan, Samar
14. Office of the Municipal Mayor
Jiabong, Samar
15. Office of the LGU legislative body
Jiabong, Samar
16. Office of the Municipal Mayor
Motiong, Samar
17. Office of the LGU legislative body
Motiong, Samar
18. Office of the Municipal Mayor
Paranas, Samar
19. Office of the LGU legislative body

ERC CASE NO. 2024-024 RC
ORDER/ 06 MARCH 2024
PAGE 15 OF 16

- Paranas, Samar
20. Office of the Municipal Mayor
San Sebastian, Samar
 21. Office of the LGU legislative body
San Sebastian, Samar
 22. Office of the Municipal Mayor
Hinabangan, Samar
 23. Office of the LGU legislative body
Hinabangan, Samar
 24. Office of the Municipal Mayor
Calbiga, Samar
 25. Office of the LGU legislative body
Calbiga, Samar
 26. Office of the Municipal Mayor
Villareal, Samar
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Villareal, Samar
 28. Office of the Municipal Mayor
Pinabacdao, Samar
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 30. Office of the Municipal Mayor
Sta. Rita, Samar
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Sta. Rita, Samar
 32. Office of the Municipal Mayor
Talalora, Samar
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Basey, Samar
 35. Office of the LGU legislative body
Basey, Samar
 36. Office of the Municipal Mayor
Marabut, Samar
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 38. Office of the Municipal Mayor
Daram, Samar
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Daram, Samar
 40. Office of the Municipal Mayor
Zumarraga, Samar
 41. Office of the LGU legislative body
Zumarraga, Samar
 42. Office of the Municipal Mayor
San Jose de Buan, Samar
 43. Office of the LGU legislative body
San Jose de Buan, Samar

