

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
EASTERN SAMAR ELECTRIC
COOPERATIVE, INC., WITH
MOTION FOR
CONFIDENTIAL TREATMENT
OF INFORMATION**

ERC CASE NO. 2024-035 RC

**ENERGY DEVELOPMENT
CORPORATION (EDC) AND
EASTERN SAMAR ELECTRIC
COOPERATIVE, INC.
(ESAMELCO),**

Applicants.

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Promulgated:
March 22, 2024

NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 13 March 2024, Eastern Samar Electric Cooperative, Inc. (ESAMELCO) and Energy Development Corporation (EDC) filed their *Joint Application* dated 25 September 2023, seeking the Commission's approval of their Emergency Power Supply Agreement (EPSA), with motion for confidential treatment of information.

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

THE 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 at Barangay Cabong, Real Street, Borongan City, Easter Samar, Philippines, where it may be served with summons and other legal processes. ESAMELCO is represented here by its Board President, Reynaldo S. Gerna, who has been authorized by its Board of Directors to file the Joint Application as evidenced by the Board Resolution dated July 21, 2023, attached hereto as Annex "B-1".

2. Applicant EDC is a generation company duly organized, incorporated and registered under and by virtue of the laws of the Philippines, with principal office at Rockwell Business Center Tower 3, Ortigas Avenue, Pasig City, represented in this instance by its Vice President, Marvin Kenneth S. Bailon, who has been authorized by its Board of Directors to file the Joint Application as evidenced by the Secretary's Certificate dated September 21, 2023, 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 ESAMELCO is the exclusive franchise holder to own and operate a system for the distribution of electricity in the Cities/Municipalities of Arteche, Balangiga, Balangakayan, Can-Avid, Borongan City, Dolores, General Macarthur, Giporlos, Guiuan, Hernani, Jipapad, Lawaan, Llorente, Maslog, Maydolong, Mercedes, Oras, Quinapondan, Salcedo, San Julian, San Policarpo, Sulat, Taft, all in the Province of Eastern 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").
5. The Joint Applicants may be served with the orders, notices, and other processes of the Honorable Commission through their respective undersigned counsels at the address indicated herein.

6. This is a Joint Application for the approval of the Emergency Power Supply Agreement (“EPSA”) entered into by and between ESAMELCO and EDC dated October 24, 2022, being submitted to the Honorable Commission for its review and approval.

STATEMENT OF FACTS

7. ESAMELCO is in immediate need of a 2MW contracted capacity for around one (1) year¹. To maintain an uninterruptible and reliable power supply due to a high level of supply deficit of at least 2MW, ESAMELCO decided to source the needed power at affordable and cheaper generation rates to help minimize the exposure of its customers to volatile Wholesale Electricity Spot Market (“WESM”) prices.
8. Pursuant to Department of Energy (“DOE”) Department Circular 2018-02-003, as amended by DC 2021-09-0030, ESAMELCO 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.
9. ESAMELCO wrote to the DOE requesting for the issuance of Certificate of Exemption for a negotiated procurement of 2MW emergency power supply from EDC. The Letter expressed ESAMELCO’s urgent need for supply of electricity due to circumstances beyond the control of ESAMELCO, and the limited time to conduct the said Competitive Selection Process.
10. On 31 August 2022, the DOE, in response to ESAMELCO’s letter-request, issued Certificate of Exemption No. COE-CSP-2022-08-036 exempting it from the conduct of CSP for the procurement of emergency electric power supply.
11. In view of ESAMELCO’s supply deficit of at least 2MW 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, ESAMELCO solicited for emergency power supply for one (1) year.
12. In response to ESAMELCO’s demand, EDC has offered to supply a portion of the emergency electric power supply requirements of ESAMELCO at a rate equivalent to or lower than the ERC-approved generation tariff for the same or similar technology in comparable areas, and ESAMELCO accepted the offer of EDC. Applicants executed the subject

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.

Emergency Power Supply Agreement (“EPSA”) for the supply of 2 MW emergency power supply to ESAMELCO².

13. Due to circumstances beyond the control of ESAMELCO and EDC, the implementation of the EPSA was delayed such that supply only commenced on 26 December 2022. As such, on 10 May 2023, ESAMELCO requested from the DOE the amendment of the validity period of Certificate of Exemption No. COE-CSP-2022-08-036.
14. Recognizing that the delay in the implementation of the EPSA is considered a force majeure/fortuitous event in accordance with Section 3.30 of Department Circular 2021-09-0030, DOE issued an Amended Certificate of Exemption with Certificate No. COE-CSP-2023-07-031 dated 17 August 2023 to reflect the change in the validity period from 26 August 2022 to 25 August 2023 to 26 December 2022 to 25 December 2023. As such, ESAMELCO and EDC entered into an Amendment Agreement to the EPSA on 24 August 2023.

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

15. Under the EPSA, EDC shall supply power to ESAMELCO for the term of the Cooperation Period, or unless sooner terminated pursuant to the EPSA, with a Contracted Capacity of 2MW.³

15.1 Supply of Electricity – EDC shall make available to ESAMELCO 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 ESAMELCO. ESAMELCO shall submit to EDC the week-ahead and day-ahead Daily Generation Schedule. ESAMELCO shall purchase and EDC shall supply, for each Billing Month in accordance with Nomination and Dispatch Protocol.

15.2 Purchase of Electricity – ESAMELCO is obliged to purchase the Minimum Contracted Energy throughout the duration of the Cooperation Period.

15.3 Start of Supply of Electricity – The supply of electricity by EDC and acceptance by ESAMELCO 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.

² ESAMELCO and EDC executed a letter confirming that the Contracted Capacity for supply under DOE Certificate of Exemption No. COE-CSP-2022-08-036 is 2MW.

³ Unless otherwise defined herein, capitalized terms shall have the meaning ascribed to them in the EPSA.

15.4 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 ESAMELCO.

RATE IMPACT ANALYSIS

16. ESAMELCO simulated a rate impact analysis which resulted in a Php0.4235/kWh decrease with the execution of the EPSA with EDC, as can be seen below:

	Average Blended Rate (Php/kW)
ESAMELCO Blended rate: Existing Suppliers WITHOUT EDC EPSA	12.033
ESAMELCO Blended rate: Existing Suppliers WITH EDC EPSA	11.6095
Generation Impact: Increase / (Decrease)	(0.4235)

OTHER RELATED DOCUMENTS

17. 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 ESAMELCO
B	List of Board of Directors and Board Members and related ultimate parent company, subsidiaries and affiliates of ESAMELCO
B-1	Board Resolution of ESAMELCO
C-Series	Certificate of Incorporation of EDC and relevant past Articles of Incorporation or By-laws
C-1	Latest Amended Articles of Incorporation of EDC

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C-2	Latest Amended By-laws of EDC
D	General Information Sheet of EDC
D-1	Secretary's Certificate of EDC
D-2	Special Power of Attorney of EDC
E	Board of Investments Certificate of Registration
F	Environmental Compliance Certificate
G-Series	Certificates of Compliance or Provisional Authority to Operate
H-Series	DOE Certificates of Endorsement
I*	Renewable Energy Service Contracts
J	Certificate of Registration or Certificate of Commerciality
K	Rate Impact
L	Single Line Diagram Connection
M	Emergency Power Supply Agreement between ESAMELCO and EDC
M-1	Letter of ESAMELCO and EDC clarifying items in the Emergency Power Supply Agreement
M-2	Amendment Agreement to the Emergency Power Supply Agreement between ESAMELCO and EDC
N	DOE Certificate of Exemption
N-1	DOE Amended Certificate of Exemption
O	Certification in relation to delivery of power in emergency circumstances
P	NGCP Certification on Service Agreements
P-1	Transmission Service Agreement between NGCP and ESAMELCO
Q	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	Estimation of Potential for Reduction in Load
Z	Latest Audited Financial Statements
AA	Certification of net heat rate
BB	WESM Registration
CC	Write-up on non-applicable items
CC-1	ESAMELCO Write-up on Demand Side Management and Transmission Supply Contract
CC-2	EDC Sample OR
DD	Water Permits from NWRB
EE	ESAMELCO's Reliability Indices
FF	PSPP and DDP

**Subject to Motion for Confidential Treatment of Information*

COMPLIANCE WITH PRE-FILING REQUIREMENTS

18. 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 ESAMELCO 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 Borongan City and the Presiding Officer or Secretary of the legislative body and the Office of the Governor of Easter Samar, or from their duly authorized representatives, attesting to the fact of service of the Application are attached hereto as Annexes "GG" to "GG-3", respectively.

19. 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”.

20. Applicants have also caused the publication of the present Joint Application in a newspaper of general circulation within the Franchise Area of ESAMELCO. 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

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

ANNEX	DOCUMENTS
I	Renewable Energy Service Contracts
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

22. 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 nonconfidential 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.
23. 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 ESAMELCO 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, thereby confirming 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.

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 09, Series of 2020⁴ and Resolution No. 01, Series of 2021⁵ (ERC Revised Rules of Practice and Procedure):

Date	Platform	Activity
16 May 2024 (Thursday) at two o'clock in the afternoon (2:00 PM)	Microsoft Teams Application	Determination of compliance with the jurisdictional requirements and expository presentation
23 May 2024 (Thursday) at two o'clock in the afternoon (2:00 PM)		Pre-Trial Conference and presentation of evidence

ESAMELCO and EDC are directed to host the virtual hearings at **ESAMELCO’s Principal Office at Barangay Cabong, Real Street, Borongan City, Eastern Samar**, as the designated venue for the conduct thereof, and ensure that the same is open to the public. ESAMELCO and EDC shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

⁴ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

⁵ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

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 and 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, 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.

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, and 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. Rule 9 of the ERC Revised Rules of Practice and Procedure shall govern. 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 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 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* 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, through 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.

WITNESS, the Honorable Commissioners **ALEXIS M. LUMBATAN, CATHERINE P. MACEDA, FLORESINDA G. BALDO-DIGAL** and **MARKO ROMEO L. FUENTES**, Energy Regulatory Commission, this 22nd day of March 2024 in Pasig City.


MONALISA C. DIMALANTA
Chairperson and CEO


LS: JRBC/ARG/LSP

ERC
Office of the Chairperson and CEO



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