ANNEX "A"

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Ortigas Center, Pasig City

IN THE MATTER OF THE JOINT APPLICATION FOR APPROVAL OF THE EMERGENCY POWER SUPPLY AGREEMENT ENTERED INTO BY AND BETWEEN CAPIZ ELECTRIC COOPERATIVE, INC. AND FDC MISAMIS POWER CORPORATION, WITH PRAYER FOR CONFIDENTIAL TREATMENT OF INFORMATION

ERC CASE NO. 2025-151**_ RC**

July 30, 2025

CAPIZ ELECTRIC COOPERATIVE, INC. (CAPELCO) AND FDC MISAMIS POWER CORPORATION (FDCMPC),
***Joint Applicants*.**
x - x

JOINT APPLICATION
(With Prayer for Confidential Treatment of Information)

Joint Applicants, **CAPIZ ELECTRIC COOPERATIVE, INC. ("CAPELCO")** and **FDC MISAMIS POWER CORPORATION ("FDCMPC")** (collectively with applicant CAPELCO, the "Applicants"), through the undersigned counsel and unto the Honorable Commission, most respectfully state, that:

PARTIES

1. Applicant CAPELCO is an Electric Cooperative ("EC"), duly organized and existing under and by virtue of the laws of the Philippines, with principal office at Brgy. Timpas, Panitan, Capiz, Philippines. Applicant CAPELCO is authorized to operate light and power services covering the municipalities of Cuartero, Dao, Dumalag, Dumarao, Ivisan, Jamindan, Maayon, Mambusao, Panay, Panitan, Pilar, Pontevedra, President Roxas, Sapian, Sigma, Tapaz and the city of Roxas, all in the Province of Capiz, (the

"Franchise Area"). For purposes of this *Joint Application*, applicant CAPELCO is represented by its Board President and/or General Manager.[1]

2. Applicant **FDCMPC** is a corporation duly organized and existing under and by the laws of the Republic of the Philippines, with principal office address at the PHIVIDEC Industrial Estate, Villanueva, Misamis Oriental 9002. For purposes of this Application, FDCMPC is represented by its President and Chief Executive Officer ("CEO"), **MR. JUAN EUGENIO L. ROXAS**, duly authorized for the purpose by virtue of a *Secretary's Certificate*.[2]

NATURE OF THE APPLICATION

3. This *Joint Application* for the approval of the *Emergency Power Supply Agreement* ("EPSA") entered into by and between the Applicants dated 9 May 2025 (the "*CAPELCO-FDCMPC EPSA*"), a copy of which is attached as **Annex "A"**, is being submitted to the Honorable Commission for its review and approval pursuant to Sections 25[3] 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 2021[5] (the "*ERC Revised Rules of Practice and Procedure*"), the Honorable Commission's *Resolution* No. 16, Series of 2023[6] (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]

4. In compliance with Section 2, Rule 6 of the *ERC Revised Rules of Practice and Procedure*, a copy of the instant *Joint Application* (with all its annexes and accompanying documents, except those subject of a motion for confidential treatment of information) shall be furnished to the following offices:[8]

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[1] **Annex "B"** hereof.

[2] **Annex "N"** hereof.

[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"*

[8] **Annex "O"** hereof.

a. Office of the Municipal Mayor of Panitan;
b. Office of the Presiding Officer of the *Sangguniang Bayan* of the Municipality of Panitan;
c. Office of the Provincial Governor of Capiz;
d. Office of the Presiding Officer of the *Sangguniang Panlalawigan* of the Province of Capiz;
e. Office of the Municipal Mayor of Villanueva;
f. Office of the Presiding Officer of the *Sangguniang Bayan* of the Municipality of Villanueva;
g. Office of the Provincial Governor of Misamis Oriental; and
h. Office of the Presiding Officer of the *Sangguniang Panlalawigan* of the Province of Misamis Oriental.

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

ALLEGATION ON TIMELINESS

6. For purposes of the filing of this *Joint Application*, its timeliness is reckoned from **26 April 2025**.[10]

STATEMENT OF FACTS

7. Applicant CAPELCO is a member EC of the Panay-Guimaras Electric Cooperatives Power Consortium, Inc. ("PGECPCI"), a regional association composed of ECs from Region VI. PGECPCI was responsible for the conduct of the Joint Competitive Selection Process ("CSP") for the aggregated baseload requirements of its member ECs, including applicant CAPELCO.

7.1. In the interim, and to cover the power requirements of its Member-Consumer-Owners ("MCOs") until the PGECPCI Joint CSP is concluded, applicant CAPELCO entered into an EPSA with GNPower Kauswagan Ptd. Ltd. ("GNPower"),

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[9] **Annex "P"** hereof.

[10] Rule 11, Section 1 of the Honorable Commission's *ERC Revised Rules of Practice and Procedure* provides, among others, that in computing any period of time prescribed or allowed under these Rules and a day therein falls on a Saturday, Sunday, or a legal holiday, the period of time shall not run until the next working day. The Pre-filing deadline for the instant *Joint Application* will have fallen on Sunday, **11 May 2025**, while **12 May 2025** was declared a non-working holiday on account of the local and national elections. Applicants therefore are pre-filing this instant *Joint Application* on **13 May 2025**, or the next working day, and is thus timely pre-filed.

which was set to expire on **<u>26 April 2025</u>** (the "*CAPELCO-GNPower EPSA*").

8. PGECPCI conducted two (2) rounds of the Joint CSP for the aggregated power requirements of its member ECs (including applicant CAPELCO), all of which failed. This development allowed the PGECPCI member ECs to conduct direct negotiations for its intended Power Supply Agreement ("PSA").[11]

9. Applicant CAPELCO, together with PGECPCI member ECs, then directly negotiated and eventually executed a PSA with Sual Power, Inc. ("SPI") (the "*CAPELCO-SPI PSA*"), and submitted the same to the Honorable Commission in ERC Case No. 2025-018 RC for its approval (the "*1st ERC Case*").

10. On 19 March 2025, the Honorable Commission in the *1st ERC Case* issued an *Order* of even date, dismissing applicant CAPELCO's Application for the approval of the *CAPELCO-SPI PSA*. Applicant CAPELCO has since filed a Motion for the Reconsideration of the Honorable Commission's *Order* in the *1st ERC Case*. It was clear however that the Honorable Commission would need more time to resolve applicant CAPELCO's Motion in the *1st ERC Case*, and in all probability could not favorably resolve the same in time to allow the *CAPELCO-SPI PSA* to promptly replace the capacity under the *CAPELCO-GNPower EPSA*. This development, coupled with the looming increased electricity prices from the Wholesale Electricity Spot Market ("WESM"), applicant CAPELCO was left with no other recourse other than to begin soliciting offers for a replacement to the *CAPELCO-GNPower EPSA* for the time being.

11. This development, combined with the approaching summer season, the anticipated rise in electricity demand due to high ambient temperatures, and the upcoming national and local elections on 12 May 2025, created a confluence of urgent circumstances that compelled applicant CAPELCO to secure a stable and reliable emergency power supply. The situation was made even more critical by the escalating and volatile prices in the WESM -- a risk that would have inevitably been borne by its Member-Consumer-Owners ("MCOs") had applicant CAPELCO not secured a temporary and stable power supply through an EPSA.

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[11] *See* Article IV, Section 10 of the *ERC Implementing Guidelines for the Procurement, Execution, and Evaluation of Power Supply Agreements* which provides, among others, that "[d]irect negotiation with an interested Captive Market Supplier for the supply of electricity may be undertaken by the DU x x x after at least two (2) failed competitive public bidding x x x".

12. Faced with the imminent expiration of the *CAPELCO-GNPower EPSA* and the inability to implement the *CAPELCO-SPI PSA*, applicant *CAPELCO* was left with no viable alternative but to immediately solicit offers for emergency power supply.

13. Thus, on 10 April 2025, CAPELCO's Board of Directors issued Board Resolution No. 73, Series of 2025,[12] authorizing it to conduct a negotiated procurement for emergency power supply, in view of the occurrence of fortuitous event to ensure the continuous supply of electricity to its MCOs in the least cost manner.

14. On 26 April 2025, applicant CAPELCO notified the Honorable Commission, the DOE, and the NEA[13] of the occurrence of a force majeure or fortuitous event which warrants applicant CAPELCO's conduct of a negotiated procurement of emergency power supply; Accordingly, applicant CAPELCO solicited proposals[14] to potential power suppliers, namely: applicant FDCMPC, First Gen Integrated Business Solutions, Inc., GNPower Dinginin Ltd. Co., GNPower Kauswagan Ltd. Co. ("GNPK"), Palm Concepcion Power Corporation, Panay Energy Development Corporation, and Sual Power Inc. ("SPI") for another emergency power supply in accordance with the prevailing procurement guidelines.

15. On 07 May 2025, applicant CAPELCO's CSP-Bids and Awards Committee (CSP-BAC) evaluated the offers[15] received and submitted by three (3) generation companies, namely applicant FDCMPC, GNPK, and SPI, and proceeded to the conduct of due diligence. After a thorough evaluation of the offers received, applicant CAPELCO's CSP-BAC issued a Final Evaluation Summary[16], followed by Board Resolution No. 01, Series of 2025[17], determining that applicant FDCMPC's offer was most advantageous to applicant CAPELCO's MCOs, for the approval of the Board of Directors.

16. On 08 May 2025, applicant CAPELCO's Board of Directors issued Board Resolution No. 100, Series of 2025,[18] approving the recommendation of the CSP-BAC and declared applicant FDCMPC as the winning proponent in the negotiated procurement of emergency power supply it has conducted.

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[12] **Annex "G"** hereof.
[13] **Annex "G-1" and series** hereof.
[14] **Annex "G-2" and series** hereof.
[15] **Annex "G-3" and series** hereof.
[16] **Annex "G-4"** hereof.
[17] **Annex "G-5"** hereof.
[18] **Annex "G-6"** hereof.

17. On the same date, applicant CAPELCO's Board of Directors issued Board Resolution No. 101, Series of 2025,[19] authorizing its Board President, Engr. Salvador A. Asis, and Acting General Manager, Engr. Edgar D. Diaz, to execute and sign the *CAPELCO-FDCMPC EPSA* to be negotiated, on behalf of applicant CAPELCO. Likewise, on the same date, a Notice of Award[20] was issued to applicant FDCMPC. Immediately thereafter, the applicants commenced the negotiations on the terms of the EPSA.

18. On 09 May 2025, the Applicants signed and executed the *CAPELCO-FDCMPC EPSA* subject of this *Joint Application*.

19. After evaluating offers received from various generation companies, applicant CAPELCO determined that applicant FDCMPC's offer was most advantageous to the former's MCOs. Applicants eventually executed the *CAPELCO-FDCMPC EPSA*.

The expiration of the term of the CAPELCO-GNPower EPSA without any PSA approved to replace the same, constitutes a fortuitous event allowing Applicants to execute the CAPELCO-FDCMPC EPSA subject of this Joint Application

20. Section 3.8. of the *DOE 2023 CSP Policy* defines a fortuitous event 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.

21. Applying the aforecited rule and jurisprudence, the antecedents presented herein clearly constitute a fortuitous event, justifying the execution of the *CAPELCO-FDCMPC EPSA*. The convergence of failed CSPs, unanticipated circumstances in regulatory approval, and external circumstances such as soaring temperatures, increased demand, and volatile market conditions has created an extraordinary situation not reasonably foreseeable nor attributable to any fault of applicant CAPELCO.

[19] **Annex "B"** hereof.
[20] **Annex "G-7"** hereof.

22. ***First***, it was reasonable for applicant CAPELCO to expect that the *CAPELCO-SPI PSA* would have already been approved by the expiration of the *CAPELCO-GNPower EPSA* on **26 April 2025**. The intent was to ensure a seamless transition from the interim EPSA to a long-term PSA, thereby preserving supply continuity without resorting to emergency procurement measures. To stress, applicant CAPELCO had always intended to secure a long-term PSA and not rely on successive emergency supply agreements, as shown in its efforts to conduct CSPs.

23. ***Second,*** applicant CAPELCO, together with PGECPCI's other member-ECs, were able to conduct two (2) rounds of CSPs. Upon the failure of the same, applicant CAPELCO exercised utmost diligence in immediately directly negotiating with qualified generation companies to immediately execute the *CAPELCO-PSI PSA*, to promptly replace the *CAPELCO-GNPower EPSA*.

> 23.1. The fact that both CSPs failed and that the PGECPCI ECs (including applicant CAPELCO) acted without delay to pursue the direct negotiations to secure a long term power contract shows the absence of any negligence or inaction on the part of applicant CAPELCO and the PGECPCI member ECs. Moreover, these steps were undertaken well before the onset of the 2025 summer months, precisely to ensure supply continuity and to proactively address the heightened risk of power shortages during this critical period -- including the national and local elections scheduled on 12 May 2025, where uninterrupted electricity supply is essential for public order and the integrity of the electoral process.

24. ***Third***, it likewise bears mentioning that applicant CAPELCO executed the *CAPELCO-FDCMPC EPSA* only as an interim measure, intended to bridge the supply gap while the EC pursues a long-term power supply. The temporary nature of the *CAPELCO-FDCMPC EPSA* demonstrates applicant CAPELCO's intention to comply with the CSP framework while maintaining power supply stability.

25. Based on the foregoing, there is clearly a fortuitous event which allows for the execution of the *CAPELCO-FDCMPC EPSA*. Attached as **Annex "R"** is an Affidavit of Fortuitous Event.

ABSTRACT OF THE *CAPELCO-FDCMPC EPSA* AND RELATED INFORMATION

26. The capacity and energy subject of this EPSA is very much needed by CAPELCO to ensure that its base load requirement is covered, as detailed in its Supply-Demand Scenario.[21]

27. **Generation Facility**. The power to be provided to applicant CAPELCO will be sourced from applicant FDCMPC's 3 x 135 MW circulating fluidized bed coal fired thermal power plant in the PHIVIDEC 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 CAPELCO under the terms stipulated in the *CAPELCO-FDCMPC EPSA*.

28. **Salient Features of the *CAPELCO-FDCMPC EPSA*.**

28.1. Term: The term of the *CAPELCO-FDCMPC EPSA* shall be one (1) year from the commencement of supply, which is the date of execution, or upon the approval of the *CAPELCO-SPI PSA*, or upon the approval of the pertinent PSA in relation to a CSP to be conducted by applicant CAPELCO, in case the dismissal of the Application for Approval of the *CAPELCO-SPI PSA* is affirmed, whichever comes first.

28.2. Contract Type: 8 MW Firm.

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

	FIRM
Contracted Demand (monthly), kW	8,000
Contracted Energy (12 months), kWh	70,080,000
Customer Load Factor Per Interval	100%
Delivery Point	Plant Gate of the Power Plant
Nodal Point	11FDC Unit 1, Unit 2, Unit 3
Voltage at the Plant Gate	138kV

[21] A copy of its Supply and Demand Scenario, Details of Existing Suppliers, Contract Utilization and Average Daily Load Curve, in accordance with the prescribed formats under Annexes 1 and 2 of the Appendix "F" of Resolution No. 16, Series of 2023 ("Prefiling Checklist"), are attached hereto as **Annex "C"** hereof.

28.4. Outage Allowance: 369 Hours – Scheduled Outage (PMS), 405 Hours – Unscheduled Outage.

Applicant CAPELCO shall be responsible for the procurement of Replacement Power during the Outage Allowance.

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

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

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

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

28.7. Generation Charge:

BASELOAD (FIRM):	RATE IN PHP/KW/MONTH	RATE IN PHP/KWH	BILLING DETERMINANT(BD)
Capital Recovery Fee (CRF), Php/kW/month	1,460.00	2.0000	Contract Demand in kW
Fixed O&M (FOM), Php/kW/month	494.72	0.6777	Contract Demand in kW
Variable O&M (VOM), Php/kWh	0.2588		100% of Contracted Energy in kWh
Fuel Cost (FC), Php/kWh	pass-through		Actual energy consumed in kWh
Fuel Cost (FC), (base)	2.7289		March Billing mo.

BASELOAD (FIRM)

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

CRF Charge	=	(1,460.00PhP/kW-month) * BD
FOM Charge	=	[(494.72PhP/kW-month) * BD
VOM Charge	=	[(0.2588PhP/kWh) * 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: No Indexation

Other Pass-Through Charges: (1) Market Charges and Fees including Line Rental Charges; and (2) Value Added Tax (VAT) (if applicable)

28.8. **Estimated Rate Impact**. Based on applicant CAPELCO's rate impact analysis, the implementation of the instant *CAPELCO-FDCMPC EPSA* would lower applicant CAPELCO's weighted average generation rate from P6.8702/kWh to P 6.5690/kWh -- or a decrease of about P0.3012/kWh:

Generation Rate Impact

Simulation of Generation Mix Rate with EPSA

Power Supplier	Energy (kWh)	Percent Share (%)	Average Rate (Php/kWh)	Weighted Average Rate (Php/kWh)	Amount (Php)
GCGI	10,890,000.00	40.03%	6.6062	6.5690	71,941,518.00
PEDC	4,687,422.65	17.23%	8.1841		38,362,287.91
ESCI	-	0.00%	0.0000		-
EPSA (FDCMPC)	5,760,000.00	21.17%	5.6654		32,632,704.00
WESM	5,868,345.00	21.57%	5.8203		34,155,816.46
TOTAL	27,205,767.65	100.00%	26.2760		177,092,326.36

Simulation of Generation Mix Rate without EPSA

Power Supplier	Energy (kWh)	Percent Share (%)	Average Rate (Php/kWh)	Weighted Average Rate (Php/kWh)	Amount (Php)
GCGI	10,890,000.00	40.03%	6.6062	6.8702	71,941,518.00
PEDC	4,687,422.65	17.23%	8.1841		38,362,287.91
ESCI	-	0.00%	0.0000		-
WESM	11,628,345.00	42.74%	5.8203		67,636,034.75
TOTAL	27,205,767.65	100.00%	20.6106		177,939,840.66

* *Without VAT*

Rate Impact increase/(decrease), Php/kWh	(0.3012)	PHP (847,514.29)

A copy of the Rate Impact Simulation is hereto attached as **Annex "E"**.

29. Copies of the following documents and/or information are attached to this *Joint Application* as annexes and made integral parts hereof:

Annex	Documents/Information
"A"	*CAPELCO-FDCMPC EPSA*
"B"	Applicant CAPELCO Board Resolution No. 101 series of 2025
"C"	Applicant CAPELCO Supply and Demand Scenario, Details of Existing Suppliers, Contract Utilization
"D"	Applicant CAPELCO Average Daily Load Curve
"E"	Estimated Rate Impact Analysis
"F"	*CAPELCO-FDCMPC EPSA* Executive Summary
"G"	Applicant CAPELCO Board Resolution No. 73, Series of 2025 – Authorizing applicant CAPELCO

	to conduct a negotiated procurement for emergency power supply
"G-1" and series	Applicant CAPELCO's Notice of Force Majeure to the DOE, ERC, and NEA
"G-2" and series	Applicant CAPELCO's Solicitation Letters to various generation companies
"G-3" and series	Responses received from various generation companies on the solicitation letters of applicant CAPELCO
"G-4"	Applicant CAPELCO's CSP-BAC Final Evaluation Summary
"G-5"	Applicant CAPELCO's CSP-BAC Board Resolution No. 01, Series of 2025 – Recommending applicant FDCMPC's proposal
"G-6"	Applicant CAPELCO's Board Resolution No. 100, Series of 2025 – Approving the recommendation of the CSP-BAC
"G-7"	Applicant CAPELCO's Notice of Award
"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 Spot Fuel Agreement
“L-2”	FDCMPC Sworn Statement on Fuel Matters
“L-3”	FDCMPC Letter to Fuel Supplier dated 09 December 2022
“L-4”	FDCMPC Follow up Email to Fuel Supplier
“L-5”	FDCMPC Coal Supply Agreement
“M”	FDCMPC Relevant Technical and Economic Characteristics of the Generation Capacity
“N”	FDCMPC Secretary’s Certificate
“O”	Proof of Service to LGU Offices
“P”	Affidavit of Publication
“Q”	Explanation for Non-Applicability of Documents
“R”	CAPELCO’s Affidavit on the Occurrence of Force Majeure

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

30. Applicant CAPELCO need not undergo a CSP prior to the execution of the *CAPELCO-FDCMPC EPSA*. Moreover, the *CAPELCO-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 *CAPELCO-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. 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" **"H-1"**	FDCMPC Financial Model with Breakdown of Project Costs Cost Analysis
"I"	FDCMPC Generation Rate and Derivation
"J"	FDCMPC Sample Computation of Power Rates
"K"	FDCMPC Basis of Other Charges
"L" **"L-1"** **"L-5"**	FDCMPC Fuel Supply Procurement Process FDCMPC Certification on Spot Fuel Agreement FDCMPC Coal 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***,[22] 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 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 CAPELCO's MCOs are sufficiently protected by the review and evaluation of the rates under the *CAPELCO-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 **CAPIZ ELECTRIC COOPERATIVE, INC.** and **FDC MISAMIS POWER CORPORATION**, most respectfully pray that the Honorable Commission:

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[22] G. R. No. 172835, 13 December 2007.

1. **ISSUE AN ORDER** declaring the Confidential Documents attached hereto as **Annexes "H", "H-1", "I", "J", "K", "L", "L-1", and "L-5"** 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 CAPELCO 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 *CAPELCO-FDCMPC EPSA* be retroactively applied for the entire term of the *CAPELCO-FDCMPC EPSA*.

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

Pasig City and Quezon City for Pasig City, 29 May 2025.

ONGCHUAN JAVELOSA LAW OFFICES
Counsel for FDC Misamis Power Corporation
3 Hilltop St., Horseshoe, Quezon City, 1112
Tel. No.: (02)77968273
Email: info@ojlawoffices.com

By:

[redacted]

MARY FELICI ONGCHUAN

Roll of Attorneys No. 65610
PTR No. 5431594 – 01/08/2024 – Quezon City
IBP No. 413188 – 01/09/2024 – Quezon City
MCLE Compliance No. VIII-0037376 – valid until 04/14/2028
E-mail: fbongchuan@ojlawoffices.com

[redacted]

JEORGE SO CHUA, JR.

Roll of Attorneys No. 80588
PTR No. A-6396684 – 01/07/2025 – Taguig City
IBP No. 245172 – 07/06/2022 – RSM
MCLE Compliance No. VIII-0024004 – 04/14/2028
E-mail: jschua@ojlawoffices.com

DECHAVEZ LERIOS-AMBOY AND EVANGELISTA LAW OFFICES[23]
Counsel for the Applicant
CAPIZ ELECTRIC COOPERATIVE, INC.
Unit 2008, Tycoon Centre
Pearl Drive, Ortigas Center, Pasig City 1605
Tel. Nos. 7910-1587
E-mail: powerlawfirm@gmail.com

By: [redacted]

LORAINE B. BOBILES
Roll of Attorneys No. 73213
PTR No. 3040282, January 06, 2025, Pasig City
IBP Member No. 501218, January 07, 2025, RSM Chapter
MCLE Compliance No. VIII – 0027697, Valid Until 14 April 2028

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[23] Pursuant to Office of the Court Administrator Circular No. 56-2015, hereunder are the MCLE Compliance Numbers of the undersigned Firm's named partners, to wit:

Partners	MCLE Compliance	Date of Issuance
Joseph Ferdinand M. Dechavez	MCLE Exemption Certificate No. VIII-Acad004390	February 26, 2025
Ditas A. Lerios-Amboy	Certification No. VII-0022795 *(Completed the MCLE 8th Compliance Period. The certification, however, is still pending issuance by the MCLE Office.)*	August 1, 2022
Nelson V. Evangelista	Certification No. VII-0022649 *(Completed the MCLE 8th Compliance Period. The certification, however, is still pending issuance by the MCLE Office.)*	July 20, 2022

VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING

I, ENGR. SALVADOR A. ASIS, of legal age, Filipino, and with office address at Capiz Electric Cooperative, Inc. (CAPELCO), Brgy. Timpas, Panitan, Capiz, after having been duly sworn to in accordance with law, do hereby depose and state that:

1. I am the Board President and the duly authorized representative of Applicant **CAPELCO,** in the instant Joint Application as evidenced by the attached **Board Resolution No. 102, Series of 2025, dated April 8, 2025.**

2. As such, I have caused the preparation of the foregoing Joint Application, which I have read and understood, the contents of which are all true and correct of my personal knowledge and/or based on authentic records.

3. I also attest that the factual allegations in the Joint Application are not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

4. The factual allegations in the Joint Application herein have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery.

5. I further certify that I and/or **CAPELCO** have not heretofore commenced any action involving the same issues in the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency; and to the best of my knowledge, no such other action or proceeding is pending in the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency.

6. Should I hereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, I undertake to promptly inform this Honorable Court within five (5) days therefrom.

IN WITNESS WHEREOF, I have hereunto set my hand this day of JUN 0 5 2025 2025 in Roxas City, Philippines.

[redacted]

ENGR. SALVADOR A. ASIS
Affiant

SUBSCRIBED AND SWORN TO BEFORE ME this JUN 0 5 2025 2025, affiant exhibiting to me his Driver's License ID bearing No. F04-83-001118 valid until April 6, 2032, as competent proof of identity.

[redacted]

JOSE ALEXIS EMMANUEL A. ESCUTIN
Notary Public
For the City of Roxas & Province of Capiz
Commission No. 09-24 until 31/12/25
Brgy. Tiza, Roxas City, Capiz
Roll No. 85606 entered on 02/05/23
IBP No. 492986; Pasay; 01/02/25
PTR No. 320117; Capiz; 01/02/25
MCLE Compliance No. VIII - 0017077
Valid until April 14, 2028

Doc. No. 305;
Page No. 62;
Book No. IV;
Series of 2025.

Republic of the Philippines)
MAKATI CITY) S.S.

VERIFICATION AND
CERTIFICATION AGAINST FORUM SHOPPING

I, **JUAN EUGENIO L. ROXAS**, of legal age, married, with office address at PHIVIDEC Industrial Estate, Villanueva, Misamis Oriental 9002, after having been duly sworn to in accordance with law, do hereby depose and state for FDC Misamis Power Corporation ("FDCMPC"), that:

1. I am currently the President and Chief Executive Officer ("PCEO") of FDCMPC with authority to commence, initiate, sign, and file the foregoing Joint Application with the Energy Regulatory Commission ("ERC") for the approval of the Emergency Power Supply Agreement ("EPSA") entered into by Capiz Electric Cooperative, Inc. ("CAPELCO") and FDCMPC, with prayer for confidential treatment of information (the "Joint Application");

2. I have read the Joint Application, and the allegations therein are true and correct based on my personal knowledge or the authentic records of FDCMPC;

3. The Joint Application is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

4. The factual allegations in the Joint Application have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery;

5. I or FDCMPC have not commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals or any court, tribunal, or quasi-judicial agency and, to the best of my knowledge, no such other action or claim is pending therein; and

6. If I or FDCMPC should hereinafter learn that the same or a similar action or claim has been filed or is pending in the Supreme Court, the Court of Appeals or any court, tribunal, or quasi-judicial agency, I shall report the said fact within five (5) days from discovery thereof to the Honorable Commission.

IN WITNESS WHEREOF, I have hereunto affixed my signature this day of MAY 29 2025 at MAKATI CITY, Metro Manila.

[redacted]

JUAN EUGENIO L. ROXAS
President and CEO

SUBSCRIBED and SWORN TO before me this day of MAY 29 2025 with affiant having presented to me his Philippine Passport No. P0007571B, issued at DFA Manila, on December 20, 2018, valid until December 19, 2028, as competent and reliable evidence of his identity.

Doc No. 149
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Book No. I
Series of 2025.

[redacted]

KRISTINE BERNADETH A. PACARIEM
NOTARY PUBLIC FOR AND IN MAKATI CITY
APPOINTMENT NO. M-261 (2025-2026)
UNTIL 31 DECEMBER 2026
29F, PBCOM TOWER 6795, AYALA AVENUE
COR. V.A. RUFINO ST., MAKATI CITY
IBP NO. 483819 / 12/16/2024 / MAKATI CITY
PTR NO. 10473283 / 01/07/2025 / MAKATI CITY
ROLL OF ATTORNEYS NO. 81390
MCLE COMPLIANCE NO. VIII-0013505; 09/17/2024