Republic of the Philippines
ENERGY REGULATORY COMMISSION
Exquadra Tower, Jade Drive, Ortigas Center
Pasig City

IN THE MATTER OF THE APPLICATION FOR APPROVAL OF THE EMERGENCY POWER SUPPLY AGREEMENT BETWEEN NEGROS OCCIDENTAL ELECTRIC COOPERATIVE (NOCECO) AND FDC MISAMIS POWER CORPORATION (FDC MISAMIS), WITH MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION,

ERC CASE NO. 2026-090 RC

June 19, 2026

NOCECO AND FDC MISAMIS,
Applicants.

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JOINT APPLICATION

(With Motion for Confidential Treatment of Information)

Joint Applicants, **NOCECO** and **FDC MISAMIS**, through their respective counsel, unto this Honorable Commission, respectfully state that:

THE APPLICANTS

1. NOCECO is an electric cooperative duly organized and existing under and by virtue of laws of the Republic of the Philippines.

1.1 NOCECO is a holder of an exclusive franchise to provide electricity distribution service in the Cities of La Carlota, Himamaylan, Kabankalan and Sipalay and the Municipalities of Pulupandan, Valladolid, San Enrique, Pontevedra, Hinigaran, Binalbagan, La Castellana, Moises Padilla, Isabela, Ilog, Cauayan, Candoni and Hinoba-an, all in the Province of Negros Occidental.

1.2 NOCECO is represented herein by its Project Supervisor and Acting General Manager Engr. Domingo S. Santiago, Jr., who was authorized to file this *Joint Application* by virtue of the *National Electrification Administration (NEA) Office Order No. 2026-009.*

2. FDC MISAMIS is a generation company duly organized and existing under and by virtue of laws of the Republic of the Philippines, with principal office address at PHIVIDEC Industrial Estate, Villanueva, Misamis Oriental.

2.1 FDC MISAMIS is represented herein by its President and CEO, Mr. Juan Eugenio L. Roxas, who was authorized by its Board of Directors to file this *Joint Application.*

3. NOCECO and FDC MISAMIS are jointly filing this Application pursuant to Honorable Commission's *Resolution No. 7, Series of 2026* ("Amended CSP Guidelines")[1] requiring distribution utilities and generation companies to jointly file applications for the approval of power supply agreements.[2] *(NOCECO and FDC MISAMIS are jointly referred hereinafter as "Joint Applicants.")*

4. The Joint Applicants may be served with the orders, notices, and other processes of the Honorable Commission through their respective counsel at the addresses indicated below.

NATURE AND TIMELINESS OF THE APPLICATION

5. This is a *Joint Application* for the approval of the Emergency Power Supply Agreement (EPSA) executed by Joint Applicants on 26 February 2026.

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[1] *ERC Resolution No. 07, Series of 2026,* 16 February 2015. *"Amended 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."*

[2] While FDC Misamis is a co-applicant, it manifests that this Joint Application shall neither modify, diminish, nor constitute as a waiver of FDC Misamis' rights nor expand its obligations and responsibilities as a generation company under the EPIRA.

6. *Section 8* of the Honorable Commission's Amended CSP Guidelines provides that *"[t]he DU may engage in negotiated procurement of an Emergency Power Supply Agreement (EPSA) under the circumstances contemplated in Section 2.3.6 of the DOE CSP Policy."*

7. Further, *Section 2.3.6* of the Department of Energy (DOE) *CSP Policy*[3] provides that *"the conduct of CSP shall not be required in negotiated procurement of Emergency Power supply wherein the Emergency Power Supply Agreement ("EPSA") shall be filed with the ERC within thirty (30) calendar days after the occurrence of the Force Majure/Fortuitous Events, without need of any prior clearance or certification from the DOE, and shall have a maximum and non-extendible period of one (1) year from its execution."*

8. Pursuant to the foregoing provisions on the exemption from the conduct of CSP, NOCECO is permitted to procure power supply through direct negotiation due to the occurrence of force majeure or other circumstances beyond its control, thereby ensuring continuous and reliable supply of electricity to its member-consumers owners (MCOs) in a least cost manner.

STATEMENT OF FACTS

9. NOCECO previously entered into an EPSA with FDC MISAMIS ("previous EPSA") which was submitted for the approval of the Honorable Commission in an application docketed as *ERC Case No. 2025-100 RC*. The term of the said EPSA was until 04 March 2026, with NOCECO reasonably expecting that it would have concluded its CSP process within its term.

10. NOCECO had to completely revise its power supply procurement plan and conduct its own CSP for its requirements after NEA issued a *Memorandum* dated 23 January 2025 disallowing the proposed aggregated procurement with neighboring electric cooperatives (ECs) through the Negros Electric Cooperatives Association (NECA) and ordering NOCECO and other member-ECs to "**INDIVIDUALLY COMMENCE** and **CONDUCT** their respective CSPs."

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3 *DOE Circular No. DC2023-06-0021* dated 20 June 2023, *"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,"* as amended by DOE Circular No. DC2025-10-0022.

11. On 08 March 2025, NOCECO submitted the initial set of bid documents for NEA's approval. Subsequently, NOCECO submitted all of the revisions and additional documents required by NEA.

12. The last communication from NEA on this CSP process was an acknowledgment of NOCECO's last submission in an email dated 17 September 2025. During the last quarter of 2025, NOCECO suffered severe devastation of its distribution system caused by Typhoon Tino on 04 November 2025. Restoration activities had to be prioritized, especially given the limited working days during the upcoming holiday season.

13. Still, NOCECO had every intention of pursuing this CSP. NEA, however, issued a letter dated 13 January 2026 to NOCECO and other member-ECs directing the conduct of a NEA-led aggregated CSP. Consultative meetings were held on 20 January 2026 and 04 February 2026.

14. In light of this, NOCECO had to completely revise its proposed CSP documents in order to carve out the power requirements that would be included with the NEA aggregation.

15. The expiration of the term of the previous EPSA without any concluded CSP, thus, constitutes a fortuitous event considering that it was independent of any negligence or failure to act on NOCECO's part.

16. NOCECO was left with no choice but to engage in a negotiated procurement culminating in the execution of this EPSA because it could not increase its exposure to the Wholesale Electricity Spot Market (WESM), especially because the contract termination of the previous EPSA coincides with periods of historically higher system demand and seasonal reductions in available generating capacity in the market leading to high market prices.

17. NOCECO solicited proposals for its EPSA from three (3) generation companies. However, only FDC MISAMIS was able to submit a proposal on the given deadline of 20 February 2026.

18. The proposal submitted by FDC MISAMIS was evaluated and found to be advantageous to NOCECO and its MCOs.

19. On 24 February 2026, after due consideration and deliberations, the Executive Committee issued *Resolution No. 043, Series*

of 2026 accepting the offer of FDC MISAMIS and authorizing the execution of the instant EPSA.

20. On 26 February 2026, Joint Applicants executed the EPSA. As provided therein, FDC MISAMIS commenced the delivery of power to NOCECO on 05 March 2026.

INDICATIVE RATE IMPACT

21. A Rate Impact Analysis based on the March 2026 blended rate would show that there would be a **decrease in NOCECO's generation rate by approximately PhP 0.2933/kWh** (a decrease from a blended rate of PhP6.1986 to a blended rate of PhP5.9052) had NOCECO been procuring energy from FDC MISAMIS in February 2026, to *wit:*

RATE IMPACT ANALYSIS (MARCH 2026 BLENDED RATE)

SUPPLIER	RATES Php/kWh	WITHOUT FDC (new EPSA)*		WITH FDC (new EPSA)**	
		KWH PURCHASED	AMOUNT DUE	KWH PURCHASED	AMOUNT DUE
KSPC	4.97	7,440,000.00	36,976,800.00	7,440,000.00	36,976,800.00
PCPC***	7.44	7,440,000.00	55,353,600.00	7,440,000.00	55,353,600.00
FDC (old EPSA)	5.33	2,520,000.00	13,431,600.00	2,520,000.00	13,431,600.00
FDC (new EPSA)	5.20	-	-	8,280,000.00	43,048,548.00
WESM	6.34	14,803,150.00	93,851,971.00	6,523,150.00	41,356,771.00
TOTAL		32,203,150.00	199,613,971.00	32,203,150.00	190,167,319.00
BLENDED GENERATION RATE			6.1986		5.9052
				RATE IMPACT:	-0.2933

22. Hence, the implementation and approval of the EPSA will redound to the benefit of NOCECO's MCOs through a more affordable, stable, and reliable supply of electricity.

ABSTRACT OF THE POWER SUPPLY AGREEMENT AND RELATED INFORMATION

23. Under the EPSA, FDC MISAMIS shall supply power to NOCECO for the entire term of the contract for a Contracted Capacity of 15 MW.

24. The power supply will be sourced from FDC MISAMIS' circulating fluidized bed (CFB) coal-fired thermal power plant, with an installed capacity of 135 MW x 3 units for a total 405 MW and net

dependable capacity of 369 MW located at the PHIVIDEC Industrial Estate, Villanueva, Misamis Oriental. FDC MISAMIS shall supply power to NOCECO under the terms stipulated in the EPSA.

25. The following are the salient features of the EPSA:

25.1 Contract Term: The Term of the EPSA shall have a maximum of one (1) year, or until the implementation of the contract resulting from the NEA-aggregated Competitive Selection Process, whichever comes first.

25.2 Service Specifications: The Parties agreed to the following specifications:

	FIRM
Contracted Demand (monthly), KW	15,000
Contracted Energy (12 months), kWh	131,400,000
Customer Load Factor Per Interval	70% to 100%
Delivery Point	Plant Gate FDC Misamis Power Corporation's Power Plant
Nodal Point	11FDC Unit 1, Unit 2, Unit 3
Voltage at the Plant Gate	138kV

25.3 Replacement Power during Outages: It is the Supplier's obligation to procure Replacement Power, at its own costs, during Outages.

25.4 Customer Failure to Offtake Power: If the Customer offtakes power less than the Minimum Energy Off-Take (MEOT) which is equivalent to 70% load factor, as defined in Annex "D", except in the course of a force majeure event, the Customer shall pay the Generation Charge for the difference between the actual energy consumption and the MEOT, and all applicable fees, charges and costs.

25.5 Transmission Fees, Ancillary Services Charges, Line Rental Charges, and WESM Costs: The Customer shall pay for Transmission Fees, Ancillary Services Charges, Line Rental Charges, and WESM Costs. All other transmission charges and market related fees/charges that are not part of the generation charge shall be for the account of the Customer.

25.6 Assignment by the Parties: Either Party may not assign or transfer any of its rights or obligations under this Agreement, including some or all of the electric power supplied by Supplier without the latter's written consent, which consent shall not be unreasonably withheld. Despite anything stated in the EPSA, the other Party is not obliged to give its consent to a proposed assignment by the Assignor.

25.7 Adjustments due to Force Majeure: The Supplier shall have seventy-two (72) hours to restore interrupted supply counted from the time a Force Majeure Event prevented it from supplying electric power to the Customer. The Customer shall not be entitled to interruption adjustment during such period. On the other hand, the Customer shall have seventy-two (72) hours to resume taking electric power counted from the time a Force Majeure Event prevented it from fully taking its Contracted Energy. If its consumption falls below the Contracted Energy due to a Force Majeure Event, the Customer shall be entitled to interruption adjustment but only on the actual number of hours (up to a maximum of 72 hours) that it was unable to receive electric power. The number of hours that Customer can claim for interruption adjustments is limited to a maximum of 72 hours per Force Majeure Event. The total cumulative interruption adjustment due to a Force Majeure Event shall not in any case exceed 72 hours per Billing Period.

PRE-FILING REQUIREMENTS AND OTHER RELATED DOCUMENTS

26. In support of the *Joint Application,* the following documents are attached herein as annexes and made integral part hereof:

ANNEXES	DOCUMENTS
"A," series	NOCECO's ExeCom Resolutions *(accepting the offer of FDC Misamis, designating signatories to the EPSA and the signing of EPSA and authorizing the engagement of counsel)* National Electrification Administration (NEA) Office Order No. 2026-009
"B"	FDC MISAMIS' Secretary's Certificate *(authorizing the signing of EPSA, designating an Authorized*

	Representative to sign the verification and certification, and authority of counsel)
"C"	EPSA
"D", series	Notice of Fortuitous Event/Force Majeure to ERC, DOE, and NEA with acknowledgment of receipt
"E," series	NOCECO's Supply-Demand Scenario
"F"	NOCECO's Load Curves
"G," series	NOCECO's letters requesting proposal for emergency supply and the replies thereto
"H"	NOCECO's Explanation on Non-Applicability of Certification on Occurrence of Fortuitous Event
"I"	NOCECO's Affidavit of Fortuitous Event
"I-1"	NEA Memorandum dated 23 January 2025 (disallowing the proposed aggregated procurement)
"I-2"	NEA Acknowledgment of NOCECO's submission of CSP documents
"I-3" to "I-4"	NEA Letters regarding the conduct of aggregated CSP
"I-5"	NOCECO Non-Applicability of Certification of Occurrence of Fortuitous Event
"J"	Executive Summary of EPSA
"K," series	NOCECO's Articles of Incorporation, By Laws, Certificate of Franchise, Certificate of Registration
"L," series	FDC MISAMIS' Amended Articles of Incorporation, Amended By-Laws, and Amended General Information Sheet for 2025
"M," series	FDC MISAMIS' SEC Certificate of Registration with Amendments and Shareholders' Agreement
"N"	FDC MISAMIS' BOI Certificate of Registration with attached Terms and Conditions
"O"	FDC MISAMIS' DENR-EMB ECC
"P"	FDC MISAMIS' ERC COC
"Q"	FDC MISAMIS' PAO Certificate
"R"	FDC MISAMIS' DOE Certificate of Endorsement
"S"	NOCECO's Power Supply Procurement Plan ("PSPP")
"S-1"	NOCECO's Distribution Development Plan ("DDP")
"T"	NOCECO's Contestable Customer Information
"U"	FDC MISAMIS' Verified Certification

"V," series	Transmission Service Agreement ("TSA") and Metering Services Agreement ("MSA")
"W"	FDC MISAMIS' Sources of Funds and Financial Plans *(Confidential)*
"X"	Bank Certifications *(Confidential)*
"Y"	FDC MISAMIS'Generation Rate and Derivation *(Confidential)*
"Z" to "Z-3"	FDC MISAMIS' Basis of Other Charges; Fuel Supply Agreement; Certification Fuel Supply Agreement; Cost Analysis for NOCECO *(Confidential)*
"AA"	FDC MISAMIS' Financial Model, Project Costs and Breakdown of Costs *(Confidential)*
"BB"	FDC MISAMIS' Cash Flow *(Confidential)*
"CC"	FDC MISAMIS' Fuel Supply Procurement Process *(Confidential)*
"DD"	FDC MISAMIS' Relevant Technical and Economic Characteristics of the Generation Capacity *(Confidential)*
"EE"	FDC MISAMIS'simulation of number of operating units to meet MEOT *(Confidential)*
"FF"	FDC MISAMIS' Sworn Statement on Fuel Concerns
"GG"	FDC MISAMIS' Audited Financial Statements (AFS)
"HH"	FDC MISAMIS' WESM Registration
"II"	NOCECO's WESM Registration
"JJ"	Power Bill to NOCECO
"KK"	FDC MISAMIS' Explanation on Non-Applicability of Documents
"LL"	Rate Impact Analysis
"MM," series	Proof of furnishing copies of the Joint Application to the Offices of the Mayor, Governor, Sangguniang Panlungsod of Kabankalan, and Sangguniang Panlalawigan of Negros Occidental
"NN," series	Proof of furnishing copies of the Joint Application to the Offices of the Mayor, Governor, Sangguniang Bayan of Villanueva, and Sangguniang Panlalawigan of Misamis Oriental where FDC MISAMIS operates
"OO", series	Proof of publication of the Joint Application in a newspaper of general circulation within

	NOCECO's franchise area or where it principally operates

ALLEGATIONS IN SUPPORT OF THE MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION

27. Pursuant to *Rule 4* of the Honorable Commission's *Rules of Practice and Procedure,* Applicants may request that certain information not be disclosed and be treated as confidential.[4] Pursuant to this, FDC MISAMIS prays for the confidential treatment of the information contained in the following annexes:

Annex	Documents/Information
"W"	FDC MISAMIS' Sources of Funds and Financial Plans
"X"	Bank Certifications
"Y"	FDC MISAMIS' Generation Rate and Derivation
"Z" to "Z-3"	FDC MISAMIS' Basis of Other Charges; Fuel Supply Agreement; Certification Fuel Supply Agreement; Cost Analysis for NOCECO
"AA"	FDC MISAMIS' Financial Model, Project Costs and Breakdown of Costs
"BB"	FDC MISAMIS' Cash Flow
"CC"	FDC MISAMIS' Fuel Supply Procurement Process
"DD"	FDC MISAMIS' Relevant Technical and Economic Characteristics of the Generation Capacity
"EE"	FDC MISAMIS' simulation of number of operating units to meet MEOT

28. FDC MISAMIS treats the information contained in the above-mentioned documents, such as sources of funds/financial plans, certifications from bank/lending institutions, generation rate and derivation, cash flow, description of power plant, and fuel supply agreement, as **proprietary** in nature considering that it involves trade secrets reflecting investment and business calculations.

29. These documents are considered as trade secrets contemplated by law and jurisprudence. In the case of *Air Philippines*

4 Section 1, Rule 4, *Rules of Practice and Procedure* of the Honorable Commission.

Corporation vs. Pennswell, Inc.[5], the Supreme Court defined a trade secret, as follows:

> 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 an advantage over competitors who do not possess the information.** Generally, a trade secret is a process or device intended for continuous use in the 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. The inventor, discoverer, or possessor of a trade secret or similar innovation has rights therein which may be treated as property, and ordinarily an injunction will be granted to prevent the disclosure of the trade secret by one who obtained the information "in confidence" or through a "confidential relationship". American jurisprudence has utilized the following factors to determine if an information is a trade secret, to wit:
>
> (1) the extent to which the information is known outside of the employer's business;
>
> (2) the extent to which the information is known by employees and others involved in the business;
>
> (3) the extent of measures taken by the employer to guard the secrecy of the information;
>
> (4) the value of the information to the employer and to competitors;
>
> (5) the amount of effort or money expended by the company in developing the information; and
>
> (6) the extent to which the information could be easily or readily obtained through an independent source.[6]

30. The foregoing documents were prepared and developed for the exclusive use of FDC MISAMIS and were designed for its specific use in its power generation business. If the information contained in these documents are disclosed to the public, FDC MISAMIS' competitors or

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

6 Citations omitted, emphasis supplied.

other entities engaged in the power business they will gain undue advantage and could incorporate the said information in their operations. Consequently, the negotiating power of FDC MISAMIS with parties it plans to contract with or who it is currently doing business with will be undermined if it is compelled to disclose such information.

31. Accordingly, Joint Applicants hereby submit one (1) copy of the confidential documents *via:* in a sealed envelope, with the envelope and each page of the document stamped with the word "*Confidential.*"[7]

PRAYER

WHEREFORE, premises considered, Joint Applicants respectfully pray unto the Honorable Commission to:

1. **APPROVE** the **JOINT APPLICATION** authorizing NOCECO to charge and collect the fees from its member-consumer-owners and **DIRECT** the retroactive application of the rates, terms, and conditions of the EPSA for the entire term thereof; and

2. **TREAT** Annexes **"W" to "EE"** and the information contained therein as confidential and **DIRECT** their non-disclosure to persons other than the necessary officers and staff of this Honorable Commission in accordance with *Rule 4 of the Rules of Practice and Procedure.*

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

Pasig City, 25 March 2026.

(Signature pages follow)

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[7] In line with the Honorable Commission's rules and regulations, soft copies of the documents covered by the prayer for confidential treatment were password-protected and submitted *via* electronic submission.

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