

Republic of the Philippines  
**ENERGY REGULATORY COMMISSION**  
San Miguel Avenue, Pasig City



**FDC MISAMIS POWER  
CORPORATION**

***Petitioner,***

**-versus-**

**ERC CASE NO. 2018-006 DR**

**INDEPENDENT ELECTRICITY  
MARKET OPERATOR OF THE  
PHILIPPINES AND  
PHILIPPINE ELECTRICITY  
MARKET CORPORATION**

***Respondents.***

Promulgated:  
FEB 19 2019

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## **ORDER**

On 07 December 2018, FDC Misamis Power Corporation (FDCMPC) filed a *Petition for Recovery of Unaccounted for Energy* dated 03 December 2018 against the Independent Electricity Market Operator of the Philippines (IEMOP) and Philippine Electricity Market Corporation (PEMC).

The pertinent allegations of the said *Petition* are hereunder quoted as follows:

### **I. THE PARTIES**

1. Petitioner FDCMPC is a private domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal place of business located at Phividec Industrial Estate, Villanueva, Misamis Oriental 9002, and is represented herein by its President and CEO, Juan Eugenio L. Roxas. Petitioner is engaged in the business of power generation. For purposes of the instant *Petition*, petitioner may be served with the notices, orders, and other legal processes of the Honorable Commission through the undersigned counsel Tantoco Villanueva De Guzman & Llamas Law Offices, with office address at 4<sup>th</sup> Floor, Filipino Building, 135 Dela Rosa Street, Legaspi Village, Makati City, Metro Manila.

2. Respondent **INDEPENDENT ELECTRICITY MARKET OPERATOR OF THE PHILIPPINES** (Respondent IEMOP) is an independent private entity, now tasked to run the Wholesale Electricity Spot Market (WESM), and impleaded herein in its capacity as such. It is a non-stock, non-profit organization, with address at 9th Floor, Robinsons Equitable Tower, ADB Avenue, Ortigas Center, Pasig City 1600 Metro Manila where it may be served with the notices, orders, and other legal processes of the Honorable Commission.
3. Respondent **PHILIPPINE ELECTRICITY MARKET CORPORATION** (Respondent PEMC) is a non-stock, non-profit organization, with address at 9th Floor, Robinsons Equitable Tower, ADB Avenue, Ortigas Center, Pasig City 1600 Metro Manila, where it may be served with the notices, orders, and other legal processes of the Honorable Commission. Respondent PEMC impleaded herein in its capacity as the former operator of the WESM, particularly during the period pertinent to the case at bar.

## **II. NATURE OF PETITION**

4. This is a petition seeking affirmative relief from this Honorable Commission (the Petition), under Section 4, Rule 5 of Resolution No. 38, Series of 2006 – A Resolution Promulgating the Energy Regulatory Commission's (ERC) Rules of Practice and Procedure (the ERC Rules).
5. Specifically, this Petition seeks (i) *preliminarily*, the due disclosure of relevant information from Respondents IEMOP and/or PEMC on the particulars and figures regarding the electricity generated by power companies that was consumed by distribution utilities and end-users in Mindanao without payment, as a result of the suspension of the Interim Mindanao Electricity Market (IMEM), and (ii) *ultimately*, the recovery by Respondent IEMOP as the IMEM Operator, for and on behalf of Petitioner FDCMPC, in the latter's respective and specific capacities as Independent Power Producer Administrator of Mt. Apo 1 and Mt. Apo 2 Geothermal Power Plants in Kidapawan City, North Cotabato,<sup>1</sup> and as registered owner and operator of a coal-fired power plant located in Villanueva, Misamis Oriental, of the payments for such electricity consumed by said distribution utilities and end-users in Mindanao, after the relevant particulars and figures have been duly disclosed by Respondent IEMOP in the instant proceedings, under rates that have previously been applied for by Petitioner FDCMPC and/or approved by this Honorable Commission.
6. Petitioner FDCMPC has undeniable substantial legal standing and interest regarding the relief herein sought, as

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<sup>1</sup> See paragraphs 13 and 19.1 below, for the proper context and qualification regarding this matter;

Petitioner FDCMPC stands to be unjustly prejudiced, as it already has been so prejudiced, by the continued (i) absence of information regarding the recipients and actual users of the unaccounted-for generated and consumed electricity during the suspension of the IMEM, and (ii) total non-payment to date, by such recipients and users of the aforesaid generated and consumed electricity.

7. Without the proper compensation and accounting of this essentially unaccounted-for energy, the resulting average electricity costs consumed by electricity consumers in Mindanao appear lower than its true cost, thus potentially creating, if not already having created, a false perception of the true cost of electricity and unwarranted benefit at the highly unjust expense of Petitioner FDCMPC relative to the power it had generated.
8. Hence, in the interest of fairness and accountability for all parties affected and of orderly procedure on the instant matter within the regulatory ambit of this Honorable Commission, and in order to protect interested parties such as Petitioner FDCMPC and all others similarly situated who may likewise be so prejudiced, Petitioner FDCMPC respectfully files the instant Petition before this Honorable Commission.

## **II. STATEMENT OF RELEVANT FACTS**

### *Mt. Apo 1 & 2*

9. Sometime in March 2014, PSALM invited interested parties to participate in, and bid for, the selection and appointment of an Independent Power Producer (IPP) Administrator to manage and control the output of Mt. Apo 1 and Mt. Apo 2 Geothermal Power Plants in Kidapawan City, North Cotabato (Mt. Apo 1 & 2). On 24 September 2014, Petitioner FDCMPC emerged as the winning bidder for the right to administer the output of Mt. Apo 1 & 2, thereby securing the right to serve as the IPP Administrator therefor.
10. On 12 November 2014, an *Administration Agreement For the Selection and Appointment of the Independent Power Producer Administrator (IPPA) For The Output of the Mindanao I and II (Mt. Apo 1 and 2) Geothermal Power Plants Located In Kidapawan City, North Cotabato*. (the IPPA Administration Agreement) was executed between PSALM and Petitioner FDCMPC, with the conformity of NPC.
11. As the IPP Administrator of Mt. Apo 1 & 2, Petitioner FDCMPC entered into Electric Power Purchase Agreements (the EPPAs) with thirteen (13) distribution utilities (the DUs). These bilateral contracts covered a combined total output of 95 MW from Mt. Apo 1 & 2, and were subsequently filed with this Honorable Commission for approval on the

dates appearing below, the final approvals of which EPPAs for the final rate (*Final Rate Approval*) have to date not been issued by the Honorable Commission:

| #  | Electric Cooperative | ERC Case No. | Date filed with ERC | Commission Approval Date of PA |
|----|----------------------|--------------|---------------------|--------------------------------|
| 1  | ANECO                | 2015-036RC   | 3-Mar-2015          | 4-May-2015                     |
| 2  | BUSECO               | 2014-162RC   | 5-Nov-2014          | 18-Dec-2014                    |
| 3  | COTELCO              | 2015-034RC   | 3-Mar-2015          | 11-May-2015                    |
| 4  | DANECO               | 2015-073RC   | 24-Apr-2015         | 22-Jun-2015                    |
| 5  | DORECO               | 2015-028RC   | 17-Feb-2015         | 20-Apr-2015                    |
| 6  | FIBECO               | 2015-033RC   | 3-Mar-2015          | 4-May-2015                     |
| 7  | LANECO               | 2015-035RC   | 3-Mar-2015          | 11-May-2015                    |
| 8  | MOELCI II            | 2015-032RC   | 3-Mar-2015          | 11-May-2015                    |
| 9  | MORESCO I            | 2015-047RC   | 10-Mar-2015         | 18-May-2015                    |
| 10 | MORESCO II           | 2015-037RC   | 3-Mar-2015          | 4-May-2015                     |
| 11 | SOCOTECO I           | 2015-038RC   | 3-Mar-2015          | 11-May-2015                    |
| 12 | SOCOTECO II          | 2015-046RC   | 10-Mar-2015         | 18-May-2015                    |
| 13 | SURNECO              | 2015-045RC   | 10-Mar-2015         | 18-May-2015                    |

12. On this matter of the EPPAs, it is noted that this Honorable Commission had on the interim, approved a provisional rate of about Php5.1827/kWh (the *Mt. Apo 1 & 2 Provisional Rate*), instead of the applied-for rate of Php5.3999/kWh (the *Mt. Apo 1 & 2 Applied-for Rate*). A comparative table of the Mt. Apo 1&2 Provisional Rate vis-à-vis the Mt. Apo 1 & 2 Applied-for Rate, appearing in the Orders is outlined as follows:

| Mt. Apo – Component   | Application (PhP/kWh) | Provisional Approval (PhP/kWh) | Difference    |
|-----------------------|-----------------------|--------------------------------|---------------|
| Fixed Charge to PSALM | 2.0110                | 2.0110                         | -             |
| Energy Charge         | 3.0340                | 3.0340                         | -             |
| Administration Cost   | 0.1377                | 0.1377                         | -             |
| Margin                | 0.2172                | -                              | 0.2172        |
| <b>Total</b>          | <b>5.3999</b>         | <b>5.1827</b>                  | <b>0.2172</b> |

| Mt. Apo – Component   | Application           | Provisional Approval  | Difference          |
|-----------------------|-----------------------|-----------------------|---------------------|
| Fixed Charge          | PhP 1,628.61/kW/month | PhP 1,469.87/kW/month | PhP 158.74/kW/month |
| Administration Charge | PhP 100.64/kW/month   | PhP 100.64/kW/month   | -                   |
| Energy Charge         | PhP 3.034/kWh         | PhP 3.034/kWh         | -                   |

13. Pending the Final Rate Approval by the ERC of Petitioner FDCMPC's application, PSALM had sent the ERC a Notice of

Termination of the IPPA Administration Agreement, on 28 December 2017. Accordingly, a resulting termination dispute, undergoing arbitration proceedings, is presently pending between PSALM and FDCMPC (the *FDCMPC-PSALM Arbitration Proceedings*).

*FDCMPC 3x135 Coal-fired Power Plant*

14. Petitioner FDCMPC likewise is the registered owner and operator of 3x135MW coal-fired power plant located in Villanueva, Misamis Oriental ("*FDCMPC Coal*"). Since FDCMPC Coal's project completion on June 2016, Petitioner FDCMPC has been injecting electricity into the Mindanao Grid through FDCMPC Coal, with Petitioner FDCMPC having registered FDCMPC Coal with PEMC on 26 June 2016.

14.1 Relative to FDCMPC Coal, Petitioner FDCMPC secured EPPAs with various customers, and filed with the Honorable Commission the following applications therefor:

| #  | Customer    | ERC Case No. | Date Filed  | Final Approval Date |
|----|-------------|--------------|-------------|---------------------|
| 1  | ANECO       | 2015-069RC   | 20-Apr-2015 | 13-Sep-2016         |
| 2  | BUSECO      | 2014-152RC   | 7-Oct-2014  | 22-Jun-2015         |
| 3  | CAMELCO     | 2015-068RC   | 20-Apr-2015 | 11-Apr-2018         |
| 4  | COTELCO     | 2015-048RC   | 10-Mar-2015 | 30-Aug-2018         |
| 5  | DANECO      | 2015-075RC   | 24-Apr-2015 | 30-May-2017         |
| 6  | DASURECO    | 2014-133RC   | 5-Sep-2014  | 22-Jun-2105         |
| 7  | DORECO      | 2014-129RC   | 1-Sep-2014  | 9-Dec-2014          |
| 8  | FIBECO      | 2014-097RC   | 30-Jun-2014 | 3-Apr-2018          |
| 9  | LANECO      | 2015-067RC   | 20-Apr-2015 | 30-Aug-2016         |
| 10 | MOELCI II   | 2015-070RC   | 20-Apr-2015 | 24-Aug-2016         |
| 11 | MORESCO I   | 2014-149RC   | 3-Oct-2014  | 22-Jun-2015         |
| 12 | MORESCO II  | 2015-076RC   | 24-Apr-2015 | 13-Sep-2016         |
| 13 | SOCOTECO I  | 2015-119RC   | 24-Jun-2015 | 13-Sep-2016         |
| 14 | SOCOTECO II | 2015-178RC   | 20-Oct-2015 | On Going            |
| 15 | SURNECO     | 2015-074RC   | 24-Apr-2015 | 5-Oct-2016          |
| 16 | SURSECO II  | 2015-175RC   | 13-Oct-2015 | 30-May-2017         |

14.2 The ERC approved the final rate for the said applications regarding FDCMPC Coal as follows (the *Final Approved FDCMPC Coal Rate*):

| Cost Component       | Rate                                   |
|----------------------|--|
| Capital Recovery Fee | PhP 1,924.48/kW/month                  |
| Fixed O&M Fee        | PhP 366.16/kW/month                    |
| Variable O&M Fee     | PhP 0.1907 /kWh                        |
| Fuel Cost            | Pass through subject to efficiency cap |

*Unaccounted-for Energy Quantity*

15. Petitioner FDCMPC later on discovered that the respective outputs of Mt. Apo 1 & 2, and of FDCMPC Coal, have been consumed without payment by electricity consumers in the grid as a result of the suspension of the IMEM in February 2014, and which consumed-and-unpaid-for-energy totals 311,782.97 kWh in quantity (the *Unaccounted-for Energy*). This quantity has in fact been duly confirmed by Respondent PEMC in its letter to Petitioner FDCMPC dated 4 July 2018 (*PEMC Letter*), per its attached Summary.<sup>2</sup> This Unaccounted-for Energy is the central issue in the instant petition.
16. To provide the necessary factual context, the IMEM-launched in 2013 pursuant to the issuance by the Department of Energy (*DOE*) of Department Circular No. DC2013-01-0001 entitled “Directing the Philippine Electricity Market Corporation to Develop and Implement an Interim Mindanao Electricity (IMEM) as a Measure to Immediately Address the Power Supply Situation In Mindanao” - had featured day-ahead pricing market wherein the generators or market participants submitted their bids or offers a day before the actual delivery or curtailment of energy.
17. The IMEM had mandated generators, directly-connected customers, and distribution customers to offer their excess generation capacities to help correct energy imbalances through the use of the merit order system, a system that gives dispatch priority to the lowest bidders. However, the IMEM was suspended a few months after its initial launch, due to a “system collapse” and the need to “resolve operational and commercial issues and concerns.”
18. There was thus a resulting absence of a venue for transparent and efficient utilization of all available and additional capacities over and above the contracted supply capacities of the load customers. Accordingly, Petitioner FDCMPC thus now respectfully seeks the able regulatory disposition of this Honorable Commission of this particular matter of Unaccounted-for Energy, owing in considerable part, to this apparent void caused by the aforementioned suspension of the IMEM.
19. On this particular score, it is noted that prior to the filing of the instant Petition, Petitioner FDCMPC had requested for data from Respondent IEMOP, in the latter’s capacity as IMEM Operator, pertaining to the Mindanao electric end-users that had consumed without payment, the electricity generated by Petitioner FDCMPC as IPPA Administrator of

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<sup>2</sup> Copies of the PEMC Letter and of the thereto attached Summary, are hereto attached and made integral parts hereof as Annexes “A” and “A-1” respectively;

the output from Mt. Apo 1 & 2, as well as the registered owner and operator of FDCMPC Coal.<sup>3</sup>

19.1 Petitioner FDCMPC had sought such data to make possible the recovery of the payment for the Unaccounted-for Energy, within the context of the FDCMPC-PSALM Arbitration Proceedings where applicable,<sup>4</sup> and particularly in Petitioner FDCMPC's standing as the IPP Administrator under the IPPA Administration Agreement, and as the registered owner and operator of FDCMPC Coal, as aforementioned.

19.2 In response, however, Respondent IEMOP advised Petitioner FDCMPC, through a letter dated 26 October 2018 (the *IEMOP Reply*), that considering the nature of the data requested for, Respondent IEMOP would not be disclosing the same save "upon orders of competent authorities[.]"<sup>5</sup>

19.3 Hence, proceeding from the foregoing premises, especially from Respondent IEMOP's confirmation of the Unaccounted-for Energy quantity, and proximately, from the constrained response of Respondent IEMOP per the *IEMOP Reply*, Petitioner FDCMPC is itself now constrained to seek the proper regulatory disposition of this Honorable Commission on this particular matter of Unaccounted-for Energy, herein praying for affirmative relief therefrom relative to the recovery of the due payments for the said Unaccounted-for Energy, all by way of the instant Petition.

#### **IV. DISCUSSION**

##### *Quantity of Unaccounted-for Energy as determined by the IEMOP*

20. In the PEMC Letter, Respondent PEMC had advised to determine the unallocated quantity per month of both Mt. Apo 1 & 2 and FDCMPC Coal to be 311,782.97 MWh, as indicated in the thereto attached and referred to Summary.<sup>6</sup> As Respondent PEMC had explained in the PEMC Letter, the unallocated quantity was derived by the sum of undeclared quantity (MQ-CQ submitted) and the capped quantity.<sup>7</sup>

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<sup>3</sup> A copy of the letter dated 15 October 2018 from Petitioner FDCMPC is hereto attached and made an integral part hereof as Annex "B";

<sup>4</sup> Without prejudice to Petitioner FDCMPC's position in the FDCMPC-PSALM Arbitration Proceedings, and to what the disposition shall be in said proceedings;

<sup>5</sup> A copy of the *IEMOP Reply* dated 26 October 2018 is hereto attached and made an integral part hereof as Annex "C";

<sup>6</sup> See Annex "A-1";

<sup>7</sup> See Annex "A";

*Applicable Rate of Unaccounted-for Energy determined / for final approval by the Honorable Commission*

21. By specific identification of applicable rates for each generation source, the following can be derived:

(a) Mt. Apo 1&2 – Applied Rate of

| <b><i>Mt. Apo – Component</i></b> | <b><i>Mt. Apo 1 &amp; 2 Applied-for Rate</i></b> |
|-----------------------------------|--|
| Fixed Charge                      | Php 1,628.61/kW/month                            |
| Administration Charge             | Php 100.64/kW/month                              |
| Energy Charge                     | Php 3.034/kWh                                    |

and;

(b) FDC MPC Coal – Final Approved Rate of

| <b><i>FDC Coal - Component</i></b> | <b><i>Final Approved FDCMPC Coal Rate</i></b> |
|------------------------------------|---|
| Capital Recovery Fee               | PhP 1,924.48/kW/month                         |
| Fixed O&M Fee                      | PhP 366.16/kW/month                           |
| Variable O&M Fee                   | PhP 0.1907 /kWh                               |
| Fuel Cost                          | Pass through subject to efficiency cap        |

22. As discussed above, the Final Rate Approval for Mt. Apo 1 & 2 remains pending with the Honorable Commission. The Mt. Apo 1 & 2 Provisional Rate on the other hand, excludes the applied Margin –for a reasonable and conservative assumption for return /margin considering the cost of money incurred while the EPPA applications have been pending.

*Computation of the Aggregate amount due from Unaccounted-for Energy*

23. Using the quantity determined by PEMC as afore-discussed, and the herein proposed applicable rates for the Unaccounted-for Energy (the Mt. Apo 1 & 2 Applied-for Rate and the Final Approved FDCMPC Coal Rate), the aggregate amount due for Unaccounted-for Energy, stands at the total of Pesos: One Billion Four Hundred Seventy Six Million Two Hundred One Thousand Nine Hundred Thirty Three Pesos and Forty One Centavos (PhP 1,476,201,933.41) (the “Aggregate Amount Due”).<sup>8</sup>

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<sup>8</sup> The detailed computation of the Aggregate Amount Due is hereto attached and made an integral part hereof as Annex “D”;



*Authority of IEMOP*

24. To stress anew, the Unaccounted-for Energy has remained ENTIRELY unpaid to date and essentially unmonitored, especially from Petitioner FDCMPC's end, owing as above-discussed, to the suspension of the IMEM in February 2014.
25. Based on the information and documents currently at hand, as confirmed by Respondent IEMOP itself in the IEMOP Reply, information regarding the quantity and particulars of the Unaccounted-for Energy as consumed by the end-users thereof, and accordingly, regarding the said end-users themselves, is available to Respondent IEMOP, in its capacity as market operator. The pertinent portions of the said letter states:

“We calculate the amounts of uncontracted energy for each Generation Company and Mindanao Customer every month after considering system loss and contract quantity declarations of all participants. We generate a list of Generation Companies and Mindanao Customers with a brief summary of their corresponding energy generated or consumed not covered by contracts. We submit this list to the Department of Energy (DOE) monthly. x x x This list submitted to DOE contains the information on the quantities of unaccounted energy that Mindanao Customers consume and the quantities of the unaccounted energy of Mindanao Generation Companies, among them, FDCMPC, generate.

We regret, however, that we cannot provide you this or the specific information requested on the specific Mindanao electricity end-users that consumed the unaccounted energy of FDCMPC and the particular quantities of energy they consumed. While we can derive this information from the data we have or from the list we submit to the DOE, it will entail disclosing to you the metered contract quantities of other entities not directly associated with FDCMPC.

Much as we would want to accommodate your request, we are constrained by the IMEM Rules, the IMEM Manual on Information and Confidentiality and DOE DC 2017-05-0009, which provide for the transition guidelines prior the commercial operations of the WESM in Mindanao. Specifically, the IMEM Rules Clause 4.4.4.2 and the IMEM Manual on Information and Confidentiality accord confidential treatment of these metering data. x x x “<sup>9</sup>

26. Significantly, Respondent IEMOP (previously the PEMC) is the designated IMEM Operator and is thus responsible for

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<sup>9</sup> See Annex “C”;

the overall implementation of the IMEM in Mindanao.<sup>10</sup> Pursuant to the IMEM Implementing Rules and Regulations (IRR), Respondent IEMOP is obligated to produce any pertinent information to this Honorable Commission, “which would help the latter effectively perform its regulatory function,”<sup>11</sup> which is precisely what the information being sought to be secured herein is, as above-butressed.

26.1 This Honorable Commission would note, that even in the event of a market suspension, as what had transpired herein, IMEM Rules should continue to apply.<sup>12</sup> Thus, with Respondent IEMOP taking on the role of IMEM Operator, Respondent IEMOP is therefore tasked to collect amounts due from IMEM Trading Participants.

26.2 With the compensation for the Unaccounted-for Energy essentially constituting a settlement amount due from IMEM Members, it is incumbent upon Respondent IEMOP to thus collect the due payment for the Unaccounted-for Energy from the end-users to be disclosed in the instant proceedings.

27. On this score, it is a time-honored principle that no one should be allowed to unjustly enrich oneself at the expense of another. Unjust enrichment is a form of abuse of rights, which is proscribed by Article 19 of the Civil Code of the Philippines.<sup>13</sup>

28. Notably, there is unjust enrichment when (i) a person is unjustly benefited, and (ii) such benefit is derived at the expense of or with damages to another. The main objective of the principle of unjust enrichment is to prevent one from enriching oneself at the expense of another. It is commonly accepted that this doctrine simply means that a person shall not be allowed to profit or enrich himself inequitably at another’s expense.<sup>14</sup>

29. Thus, considering the declared policy of the State on parity under the Electric Power Industry Reform Act of 2001 (EPIRA),<sup>15</sup> the statutory and regulatory functions granted this Honorable Commission per the ERC Rules and EPIRA,<sup>16</sup> and the aforesaid applicable Civil Law provisions on equity and fundamental fairness and accountability, it behooves this Honorable Commission as the regulating body therefor, to (i) protect *both* the consuming public and the public and private sector entities from the demand side, thereby ensuring “fair and non-discriminatory treatment” to all

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<sup>10</sup> Department of Energy Circular No. DC2013-05-0008 entitled “Promulgating the Interim Mindanao Electricity Market Implementing Rules” dated 24 May 2013;

<sup>11</sup> Section 6.1.1.5 of the IMEM IRR;

<sup>12</sup> Section 7.1.4.1 of the IMEM IRR;

<sup>13</sup> *Republic v. Court of Appeals*, G.R. No. 103882 and 105276, 25 November 1998;

<sup>14</sup> *Grandteq Industrial Steel Products, Inc. vs. Edna Margallo*, G.R. No. 181393, 28 July 2009;

<sup>15</sup> Section 2(e) of the EPIRA;

<sup>16</sup> Section 43 of the EPIRA;

electric power industry participants, and accordingly, (ii) direct Respondents IEMOP and/or PEMC to provide and make of record the herein requested data regarding the Unaccounted-for Energy, and (iii) direct Respondent IEMOP, in its capacity as market operator, to secure the necessary payment from the aforesaid recipients and users of the Unaccounted-for-Energy - at the Mt. Apo 1 & 2 Applied-for Rate for that generated from Mt. Apo 1 & 2, and at the Final Approved FDCMPC Coal Rate for that generated from FDCMPC Coal - thereby making up the Aggregate Amount Due.

30. Indeed, to allow the consuming recipients and users exemption from due regulation and payment for the Unaccounted-for Energy, under the inequitable cloak of confidentiality, would be tantamount to plain and undeniable unjust enrichment, to the significant and undeniable prejudice of, among others, Petitioner FDCMPC, in its capacity as IPP Administrator of Mt. Apo 1 & 2, and as registered owner and operator of FDCMPC Coal, with all the concomitant responsibilities/costs of/to Petitioner FDCMPC as such.
31. Under the circumstances therefore, there is a clear need for the Honorable Commission to exercise its regulatory power and authority as above-cited, not only to forestall unjust enrichment as afore-discussed, but also to ensure orderly procedure and an equitable recovery mechanism for all similarly situated and prejudiced by the monitoring and regulatory vacuum caused by the suspension of the IMEM, and which resulted in the wholly unpaid Unaccounted-for-Energy. To have it otherwise and to blindly proceed with the status quo, would cause, as it has already so caused, great and irreparable damage and prejudice not only to Petitioner FDCMPC, but likewise to various other electric power industry participants adversely affected thereby.

#### **V. PRAYER**

WHEREFORE, all premises considered, Petitioner respectfully prays that after due consideration and proceedings, this Honorable Commission issue or render an Order / Resolution / Decision:

- (a) directing Respondents IEMOP and/or PEMC to identify during the instant proceedings, the Mindanao electricity customers that had consumed the Unaccounted-for-Energy;
- (b) Authorizing and directing Respondents IEMOP and/or PEMC in its/their capacity as IMEM Operator to secure the necessary payment/compensation in the Aggregate Amount Due of Pesos: One Billion Four Hundred Seventy Six Million Two Hundred One Thousand Nine Hundred Thirty Three Pesos and Forty One Centavos (PhP 1,476,201,933.41), from the Mindanao electricity

customers/end-users of said Unaccounted-for-Energy within twelve (12) months from date of the Order/Resolution/Decision therefor;

- (c) directing Respondents IEMOP and/or PEMC to transmit, within 15 days from obtention thereof, the payment/s it/they so secure/s from the Mindanao electricity customers/end-users of said Unaccounted-for-Energy, to Petitioner FDCMPC to be held by it, or for the latter's own disposition, in its specific, respective capacities as IPP Administrator of the output of Mt. Apo 1 and Mt. Apo 2,<sup>17</sup> and as the registered owner and operator of FDCMPC Coal, in relation or owing to the suspension of the Interim Mindanao Electricity market.

Other relief, just and equitable under the foregoing premises, are likewise prayed for.

Finding the said *Petition* to be sufficient in form and in substance, with the required fees having been paid, the same is hereby set for determination of compliance with the jurisdictional requirements, expository presentation, pre-trial conference, and presentation of evidence on **26 March 2019 (Tuesday) at ten o'clock in the morning (10:00 A.M.) at the ERC Hearing Room, 15<sup>th</sup> Floor, Pacific Center Building, San Miguel Avenue, Pasig City.**

FDCMPC is hereby directed to cause the publication of the attached *Notice of Public Hearing* at its own expense, once in a newspaper of nationwide circulation, at least ten (10) days before the scheduled hearing.

Moreover, pursuant to Section 6, Rule 5 of the ERC Rules of Practice and Procedure, IEMOP and PEMC are hereby directed to file their Comments on the *Petition* within fifteen (15) days from receipt of this *Order*.

On the date of the initial hearing, FDCMPC must submit to the Commission its written Compliance with the foregoing requirements attaching therewith the affidavit of the Editor or Business Manager of the newspaper where the said *Notice of Public Hearing* was published, together with the complete issue of the said newspaper.

FDCMPC, IEMOP and PEMC, as well as all interested parties are directed to submit, at least five (5) days before the date of initial

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<sup>17</sup> See paragraphs 13 and 19.1 above, for the proper context and qualification regarding this matter;

hearing and pre-trial conference, their respective Pre-trial Briefs containing, among others:

- a. A summary of admitted facts and proposed stipulation of facts;
- b. The issues to be tried or resolved;
- c. The documents or exhibits to be presented, stating the purposes and proposed markings therefore; and
- d. The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form, to be attached to the Pre-trial Brief.

Failure of FDCMPC to submit the required Pre-trial Brief and Judicial Affidavits of its witnesses within the prescribed period shall be a ground for cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from said date of cancellation.

As part of the pre-trial conference, FDCMPC must also be prepared to make an expository presentation of the instant *Petition*, aided by whatever communication medium it may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the other concerned parties, the nature of the *Petition* with relevant information and pertinent details substantiating the reasons and justifications being cited in support thereof.

Pasig City, 06 February 2019.

FOR AND BY AUTHORITY  
OF THE COMMISSION:

  
**JOSEFINA PATRICIA A. MAGPALE-ASIRIT**  
Commissioner 

  
LS: MFD/ARG/GLO

Copy Furnished:

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2. FDC Misamis Power Corporation (FDCMPC)  
*Petitioner*  
Phividec Industrial Estate, Villanueva,  
Misamis Oriental
3. Independent Electricity Market Operator of the Philippines (IEMOP)  
*Respondent*  
9<sup>th</sup> Floor, Robinsons Equitable Tower,  
ADB Avenue, Ortigas Center, Pasig City
4. Philippine Electricity Market Corporation (PEMC)  
*Respondent*  
9<sup>th</sup> Floor, Robinsons Equitable Tower,  
ADB Avenue, Ortigas Center, Pasig City
5. The Office of the Solicitor General (OSG)  
234 Amorsolo Street, Legaspi Village, Makati City  
Metro Manila
6. The Commission on Audit (COA)  
Don Mariano Marcos Avenue  
Diliman, Quezon City, Metro Manila
7. The Committee on Energy  
Senate of the Philippines  
GSIS Building, Roxas Blvd., Pasay City, Metro Manila
8. The Committee on Energy  
House of Representatives  
Batasan Hills, Quezon City
9. Office of the President of PCCI  
Philippine Chamber of Commerce and Industry (PCCI)  
3<sup>rd</sup> Floor, Chamber and Industry Plaza (CIP)
10. Regulatory Operations Service (ROS)  
Energy Regulatory Commission  
17<sup>th</sup> Floor, Pacific Center, San Miguel Avenue, Pasig City