

Republic of the Philippines  
**ENERGY REGULATORY COMMISSION**  
Pasig City



**IN THE MATTER OF THE  
21<sup>st</sup> APPLICATION FOR  
THE RECOVERY OF THE  
INCREMENTAL COSTS ON  
FOREIGN CURRENCY  
EXCHANGE RATE  
FLUCTUATIONS UNDER  
THE INCREMENTAL  
CURRENCY EXCHANGE  
RATE ADJUSTMENT,  
WITH PRAYER FOR  
PROVISIONAL  
AUTHORITY (PA)**

**ERC CASE NO. 2021-067 RC**

**NATIONAL POWER  
CORPORATION (NPC),**  
*Applicant.*

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**Promulgated:**  
January 06, 2022

**O R D E R**

Before the Commission for consideration is the prayer for the issuance of provisional authority contained in the *Application* dated 01 June 2021 filed by the National Power Corporation (NPC).

**FACTUAL ANTECEDENT**

On 23 August 2021, NPC filed the instant *Application* seeking the Commission's approval of the recovery of the incremental costs on foreign currency exchange rate fluctuations under the Incremental Currency Exchange Rate Adjustment (ICERA), with prayer for provisional authority.

The pertinent provisions of the *Application* relevant to NPC's prayer for provisional authority are hereunder quoted as follows:

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ALLEGATIONS IN SUPPORT OF THE PRAYER FOR  
PROVISIONAL AUTHORITY

16. Consistent with the principle of structural and functional unbundling of the electric power industry participants, the proposed ICERA is based on foreign exchange-related adjustments attributable only to NPC-SPUG operations, i.e. excluding those associated with NPC's operation in the main grids.
17. The existing approved based foreign exchange rates used in the calculation are based on the 1993 levels of P27.40 to US\$1.00 and P0.2329 to Japanese ¥1.
18. Since these expenses were incurred in the 2<sup>nd</sup> semester of 2019, immediate recovery of the adjustment through a provisional authority would help alleviate the operational funding of applicant, without prejudice to the authority of the Honorable Commission to approve the recovery of this adjustment as part of the applicant's True Cost Generation Rate (TCGR).
19. Moreover, pursuant to Rule 15, Section 3 of the Commission's Rules of Practice and Procedure, the Honorable Commission has the authority to grant a provisional authority pending final approval of the instant petition, it states, as follows:

*“Section 3. Action and Motion. – Motions for provisional authority or interim relief may be acted upon with or without hearing. The Commission shall act on the motion on the basis of the allegations of the application or petition and supporting documents and other evidences that applicant or petitioner has submitted and the comments or oppositions filed by any.”*  
(Emphasis supplied)
20. With due respect, the proposed 21<sup>st</sup> ICERA DAA adjustment, once approved, should be implemented or applied on top of the Subsidized Approved Generation Rate (“SAGR”) in both NPC-SPUG and delegated NPC-SPUG areas, or upon entry of NPPs thereof to level the rates in the said areas and consistent with Resolution 21, series of 2011 and with the clarification letter of ERC dated 05 March 2012 issued to NPC during the implementation of the 4<sup>th</sup> to 6<sup>th</sup> GRAM and ICERA DAA. A copy of the said ERC letter dated 05 March 2012, which was identified by the witness in her Judicial Affidavit and pre-marked, is thereto attached as Exhibits “G to G-3”, forming an integral part of this Application.

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**Proceedings Conducted  
by the Commission**

On 10 September 2021, the Commission issued an *Order* dated 03 September 2021, setting the instant *Application* for determination of jurisdictional compliance and expository presentation for the Luzon, Visayas, and Mindanao stakeholders on 05 November 2021; for pre-trial conference and presentation of evidence on 12 November 2021; and other dates for the presentation of evidence on 19 November 2021 and 26 November 2021.

However, on 14 September 2021, NPC filed an *Urgent Motion to Reset* dated 13 September 2021 (Motion) wherein it stated that due to the proximity of the scheduled hearings and the current pandemic, it would not be able to comply with the publication and posting of notice requirements pursuant to the *Order* dated 03 September 2021. In view thereof, NPC prayed that the hearing dates be set preferably on 04 February 2022 or at any later date most convenient to the Commission to give it sufficient time to comply with the Commission's jurisdictional requirements.

Finding the said *Motion* in order, the Commission granted the same. Accordingly, on 07 October 2021, the Commission issued another *Order* and a *Notice of Virtual Hearing*, both dated 27 September 2021, setting the instant *Application* for determination of compliance with the jurisdictional requirements and expository presentation for the Luzon, Visayas, and Mindanao stakeholders on 18 February 2022; for pre-trial conference and presentation of evidence on 04 March 2022; and other hearing dates for the presentation of evidence on 11 March 2022 and 18 March 2022.

**DISCUSSION**

After due deliberation and thorough evaluation of the *Application* and its supporting documents, the Commission, pursuant to its regulatory powers, resolves to **DENY** NPC's prayer for provisional authority.

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**Authority of the Commission  
to Grant or Deny Provisional  
Authority in the Instant  
Application**

The authority of the Commission to grant provisional authority or interim relief is provided for in Section 8 of Executive Order No. 172,<sup>1</sup> *to wit*:

Sec. 8. Authority to Grant Provisional Relief. The Board may, upon the filing of an application, petition or complaint or at any stage thereafter and **(1) without prior hearing, on the basis of supporting papers duly verified or authenticated, grant provisional relief on motion of a party in the case or (2) on its own initiative, without prejudice to a final decision after hearing**, should the Board find that the pleadings, together with such affidavits, documents and other evidence which may be submitted in support of the motion, substantially support the provisional order: Provided, That the Board shall immediately schedule and conduct a hearing thereon within thirty (30) days thereafter, upon publication and notice to all affected parties.

*(Emphasis and underscoring supplied.)*

The transfer of the Energy Regulatory Board's (ERB) authority to issue provisional authority or interim relief to the Commission was upheld by the Supreme Court in the landmark case of *Freedom from Debt Coalition (FDC) vs. Energy Regulatory Commission (ERC)*:<sup>2</sup>

The ERC is endowed with the statutory authority to approve provisional rate adjustments under the aegis of Sections 44 and 80 of the EPIRA. The sections read, thus:

SEC. 44. Transfer of Powers and Functions. — The powers and functions of the Energy Regulatory Board not inconsistent with the provisions of this Act are hereby transferred to the ERC. The foregoing transfer of powers and functions shall include all applicable funds and appropriations, records, equipment, property and personnel as may be necessary.

Sec. 80. Applicability and Repealing Clause. — The applicability provisions of Commonwealth Act No. 146, as amended, otherwise known as the "Public Services Act;" Republic Act 6395, as amended, revising the charter of NPC; Presidential Decree 269, as amended, referred to as the National Electrification Decree; Republic Act 7638, otherwise known as the "Department of Energy Act of 1992;" Executive Order

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<sup>1</sup> Entitled, Creating the Energy Regulatory Board.

<sup>2</sup> G.R. No. 161113, 15 June 2004.

172, as amended, creating the ERB; Republic 7832 otherwise known as the "Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994;" shall continue to have full force and effect except insofar as they are inconsistent with this Act.

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Similarly, Sections 8 and 14 of E.O. No. 172 or the ERB Charter continue to be in full force by virtue of Sections 44 and 80 of the EPIRA.

Relative thereto, the Commission's *Revised Rules of Practice and Procedure* (Revised RPP), particularly Sections 2 and 3 of Rule 14 thereof provide that:

**Section 2. Allegations in the Motion and Supporting Documents.** - The motion must allege such facts and circumstances that would justify the Commission's exercise of discretion in granting provisional authority or interim relief prior to a final decision. Such motion shall be accompanied by affidavits and documents in support of the allegations therein.

**Section 3. Action on the Motion.** - The Commission shall act on the motion for provisional authority or interim relief on the basis of the allegations in the application or petition, supporting documents and other pieces of evidence that the applicant or petitioner has submitted, as well as the comments or oppositions filed by interested persons, if there be any.

Motions for provisional authority or interim relief may be acted upon with or without hearing.

The Commission may act on the motion for provisional authority within seventy-five (75) days from the filing of the application or petition. If the Commission, through an order, acts on the motion without hearing, it shall schedule and start the hearing on the application or petition within thirty (30) days from the date of the issuance of the order. If such motion is included in the application or petition covered by Section 1, Rule 6 of these Rules, the Commission shall hold in abeyance its resolution on the said motion until after the lapse of thirty (30) days from the receipt of a copy of the application or petition by the Offices of the Governor, Mayor and the *Sanggunian* concerned within the franchise and/or publication of the application or petition in a newspaper of general circulation, whichever comes later.

Based on the foregoing, the authority to grant provisional authority and/or interim relief is a discretionary act exercised by the Commission as a regulator of the electric power industry. Consequently, such discretion implies therein its authority to deny the same.

**Commission's Evaluation for  
the Issuance of Provisional  
Authority**

Upon initial evaluation of the submissions made by NPC, the Commission resolves to deny its prayer for provisional authority, for reasons discussed in detail hereinafter.

Section 70 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), provides that NPC shall perform the missionary electrification function through its Small Power Utilities Group (SPUG) and shall be responsible for providing electric generation and its associated power delivery system in areas that are not connected to the transmission system.

In the performance of the said missionary electrification function, NPC alleged that it incurs additional operating costs/savings as a result of the fluctuation of foreign exchange which affects the costs of servicing foreign currency debts (excluding interest) and/or foreign exchange-related expenses such as insurance and imported power plant/transmission parts.

In its *Application*, NPC proposed to recover/(refund) the Deferred Accounting Adjustment (DAA) corresponding to additional cost from foreign exchange fluctuation in the settlement of Debt Service (Principal Repayment Portion) and Operating Expenses (OPEX), as well as the corresponding Carrying Charge for the billing period July 2019 to December 2019 for Luzon, Visayas, and Mindanao.

Table 1 shows the summary of NPC's total deferred Foreign Exchange (FOREX) costs and the proposed ICERA DAA for the test period July 2019 to December 2019:

**Table 1. Summary of NPC's Proposed 21<sup>st</sup> ICERA DAA**

<b>Particulars</b>	<b>In PhP</b>
Principal	8,055,703.40
Carrying Charge	134,338.45
<b>ICERA DAA</b>	<b>8,190,041.85</b>

NPC proposed to recover the above ICERA DAA within a period of twelve (12) months. In the calculation of the said ICERA DAA, NPC considered the following factors:

- a. Relevant billing period of July 2019 to December 2019;

- b. The existing approved base FOREX rates on the 1993 level of PhP27.40 to US\$1.00 and PhP0.2329 to Japanese Yen;<sup>3</sup> and
- c. Bangko Sentral ng Pilipinas (BSP) Prevailing 91-day T-bill Rate plus 300 points as Allowable Carrying Charge Interest Rates.

Table 2 shows the summary of NPC’s proposed recoverable FOREX costs covering the test period of July 2019 to December 2019:

**Table 2. Summary of Proposed 21<sup>st</sup> ICERA**

SPUG Areas	21 <sup>st</sup> ICERA		
	Proposed Amount, in PhP	Proposed Rate, in PhP/kWh	Proposed Recovery Period
Philippines	8,190,041.85	0.0144	12 Months

NPC proposed to charge the above rates to all missionary areas on top of the Subsidized Approved Generation Rate (SAGR). Thus, the said proposed rates are likewise the rate impact to the end-users.

NPC alleged that since these expenses were incurred in the 2<sup>nd</sup> semester of 2019, immediate recovery of the adjustment through a provisional authority would help alleviate the operational funding of NPC, without prejudice to the authority of the Commission to approve the recovery of this adjustment as part of NPC’s True Cost Generation Rate (TCGR). Thus, NPC prayed for the issuance of a provisional authority to ensure the unimpeded service of NPC in missionary areas.

Upon evaluation of the submissions of NPC, the Commission notes that the instant *Application* covers the same foreign currency exchange cost as applied for by NPC under its *Petition* for the recovery of the Calendar Year (CY) 2019 revenue shortfall from the Universal Charge for Missionary Electrification (UC-ME) under ERC Case No. 2021-017 RC,<sup>4</sup> which it filed on 16 March 2021.

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<sup>3</sup> ERB Case No. 93-108 entitled, “In the Matter of the Application for Approval of Foreign Exchange Adjustment Clause for Debt Service and/or Foreign Expenses (ForEx) – National Power Corporation (NPC)”.

<sup>4</sup> ERC Case No. 2021-017 RC entitled, “In the Matter of the Petition for the Recovery of CY2019 Revenue Shortfall from the Universal Charge for Missionary Electrification (UC-ME) and the Corresponding Adjustment of the UC-ME, with Prayer for Issuance Provisional Authority”.

The Commission's Resolution 21, Series of 2011<sup>5</sup> (Amended Guidelines for the SAGR and UC-ME) provides for reconciliation (true-up adjustment)<sup>6</sup> of actual UC-ME subject to confirmation by the Commission. If the reconciliation results to NPC-SPUG having surplus funds, the amount shall be deducted from NPC's current UC-ME petition. Conversely, if reconciliation results in NPC-SPUG having a deficiency, NPC shall be entitled to an increase in the UC-ME to cover the shortfall caused by the following factors:

1. Lower national electricity sales compared to forecast;
2. Adjustments due to Generation Rate Adjustment Mechanism (GRAM) and ICERA;
3. Adjustments in the New Power Provider's (NPP) True Cost of Generation Rate (TCGR);
4. Reasonable financing costs incurred by NPC-SPUG to cover any ME Subsidy shortfall; and
5. Other analogous cases.

Article III, Section 1 of the Amended Guidelines for the SAGR and UC-ME provides that NPC may be allowed to recover the FOREX adjustment either in the: (1) SAGR, through adjustment in the GRAM and ICERA to be charged directly to end-users in the SPUG areas; or (2) NPC-SPUG Total Cost Generation Rate (TCGR), through additional recovery in the UC-ME, *to wit*:

GRAM and ICERA Adjustments. The NPC-SPUG TCGR shall include GRAM and ICERA adjustments as approved by ERC prior to the promulgation of these Guidelines. **Subsequent adjustments due to GRAM and ICERA and such other adjustment mechanism that the ERC may hereafter adopt shall be applied to the SAGR or the NPC-SPUG TCGR, at the discretion of the ERC.**

*(Emphasis and underscoring supplied.)*

From the above provision, the Commission has the discretion whether the GRAM or ICERA DAA will be recovered thru the UC-ME or as an additional charge to the SAGR.

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<sup>5</sup> Entitled, "A Resolution Adopting the Amended Guidelines for the Setting and Approval of Electricity Generation Rates and Subsidies for Missionary Electrification Areas".

<sup>6</sup> Section 2 (c) Article V of ERC Resolution No. 21, Series of 2011.



Notably, the FOREX costs covered in the instant *Application* was also included under NPC's UC-ME true-up *Petition* under ERC Case No. 2021-017 RC.<sup>7</sup>

Table 3 shows NPC's proposed FOREX costs to be recovered as part of its alleged shortfall of the UC-ME for CY 2019, pursuant to the Commission's Resolution No. 21, Series of 2011:<sup>8</sup>

**Table 3. FOREX Cost Petitioned under UCME True-up**

	<b>Amount, in PhP</b>	<b>Rate, PhP/kWh</b>
<b>Forex Fluctuation (ICERA)</b>	27,451,671.35	0.00026

The Commission would like to stress that in the initial evaluation of the *Petition* of NPC to recover the UCME shortfall for CY2019 under ERC Case No. 2021-017 RC,<sup>9</sup> the Commission resolved to deny NPC's prayer for provisional authority due to the inconsistencies found in the NPC's *Petition*. Considering that the proposed amount in the subject *Application* is likewise covered by the same amount as prayed in the said UCME true-up *Petition* of NPC for CY 2019, the Commission finds the non-issuance of provisional authority appropriate due to the need for further verification of the proposed amount.

In view of the significant impact of the proposed ICERA to the end-users in the missionary areas, the Commission finds it necessary to further verify / validate the proposed amount of NPC.

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<sup>7</sup> *Supra*, note 4.

<sup>8</sup> *Supra*, note 6.

<sup>9</sup> *Supra*, note 4.

**WHEREFORE**, the foregoing premises considered, the prayer for the issuance of provisional authority as contained in the instant *Application* filed by the National Power Corporation (NPC) on 23 August 2021 is hereby **DENIED**.

**SO ORDERED.**

Pasig City, 07 October 2021.



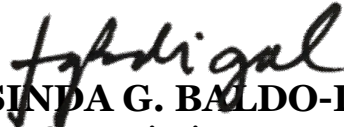
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*Chairperson and CEO*



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*Commissioner*



**CATHERINE P. MACEDA**  
*Commissioner*



**FLORESINDA G. BALDO-DIGAL**  
*Commissioner*

*(on leave)*

**MARKO ROMEO L. FUENTES**  
*Commissioner*

  
LS: KJP / LSP / MCG

  
ROS: GCM/GDB/AJMO/LLG

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Quezon City
10. Office of the Provincial Governor  
Batanes
11. Office of the Legislative Government Unit (LGU) Legislative Body  
Batanes
12. Office of the City Mayor  
Basco, Batanes
13. Office of the Legislative Government Unit (LGU) Legislative Body  
Basco, Batanes
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Itbayat, Batanes
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17. Office of the Legislative Government Unit (LGU) Legislative Body  
Sabtang, Batanes

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Uyugan, Batanes
21. Office of the Legislative Government Unit (LGU) Legislative Body  
Uyugan, Batanes
22. Office of the Municipal Mayor  
Ivana, Batanes
23. Office of the Legislative Government Unit (LGU) Legislative Body  
Ivana, Batanes
24. General Manager  
Batanes Electric Cooperative, Inc. (BATANELCO)
25. Office of the Provincial Governor  
Cagayan
26. Office of the Legislative Government Unit (LGU) Legislative Body  
Cagayan
27. Office of the Municipal Mayor  
Calayan, Cagayan
28. Office of the Legislative Government Unit (LGU) Legislative Body  
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29. General Manager  
Cagayan II Electric Cooperative, Inc. (CAGELCO II)
30. Office of the Provincial Governor  
Apayao
31. Office of the Legislative Government Unit (LGU) Legislative Body  
Apayao
32. Office of the Municipal Mayor  
Kabugao, Apayao
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34. Office of the Provincial Governor  
Kalinga
35. Office of the Legislative Government Unit (LGU) Legislative Body  
Kalinga
36. Office of the Municipal Mayor  
Lubuagan, Kalinga
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38. General Manager  
Kalinga-Apayao Electric Cooperative, Inc. (KAELCO)
39. Office of the Provincial Governor  
Isabela

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40. Office of the Legislative Government Unit (LGU) Legislative Body  
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Palanan, Isabela
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Dinapigue, Isabela
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Dinapigue, Isabela
47. General Manager  
Isabela II Electric Cooperative, Inc. (ISELCO II)
48. Office of the Provincial Governor  
Aurora
49. Office of the Legislative Government Unit (LGU) Legislative Body  
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50. Office of the Municipal Mayor  
Casiguran, Aurora
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Dilasag, Aurora
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Dilasag, Aurora
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Dinalungan, Aurora
57. Office of the Legislative Government Unit (LGU) Legislative Body  
Dinalungan, Aurora
58. General Manager  
Aurora Electric Cooperative, Inc. (AURELCO)
59. Office of the Provincial Governor  
Quezon
60. Office of the Legislative Government Unit (LGU) Legislative Body  
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61. Office of the Municipal Mayor  
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Patnanungan, Quezon
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65. Office of the Municipal Mayor  
Polilio, Quezon
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Polilio, Quezon
67. General Manager  
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68. Office of the Provincial Governor  
Batangas
69. Office of the Legislative Government Unit (LGU) Legislative Body  
Batangas
70. Office of the Municipal Mayor  
Tingloy, Batangas
71. Office of the Legislative Government Unit (LGU) Legislative Body  
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72. General Manager  
Batangas II Electric Cooperative, Inc. (BATELEC II)
73. Office of the Provincial Governor  
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87. General Manager  
Marinduque Electric Cooperative, Inc. (MARELCO)
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Occidental Mindoro
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90. Office of the City Mayor  
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Calintaan, Occidental Mindoro
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Looc, Occidental Mindoro
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108. Office of the Municipal Mayor  
Sablayan, Occidental Mindoro
109. Office of the Legislative Government Unit (LGU) Legislative Body  
Sablayan, Occidental Mindoro
110. Office of the Municipal Mayor  
Sta. Cruz, Occidental Mindoro
111. Office of the Legislative Government Unit (LGU) Legislative Body  
Sta. Cruz, Occidental Mindoro
112. General Manager  
Occidental Mindoro Electric Cooperative, Inc. (OMECCO)
113. General Manager  
Lubang Island Electric Cooperative (LUBELCO)
114. Office of the Provincial Governor  
Oriental Mindoro
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Pinamalayan, Oriental Mindoro
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Pinamalayan, Oriental Mindoro
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Gloria, Oriental Mindoro
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Bansud, Oriental Mindoro
137. Office of the Legislative Government Unit (LGU) Legislative Body  
Bansud, Oriental Mindoro
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476. Office of the Municipal Mayor  
Loreto, Dinagat Islands
477. Office of the Legislative Government Unit (LGU) Legislative Body  
Loreto, Dinagat Islands
478. General Manager  
Dinagat Islands Electric Cooperative, Inc. (DIELCO)
479. Office of the Provincial Governor  
Surigao del Norte



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- 480. Office of the Legislative Government Unit (LGU) Legislative Body  
Surigao del Norte
- 481. Office of the City Mayor  
Surigao City, Surigao del Norte
- 482. Office of the Legislative Government Unit (LGU) Legislative Body  
Surigao City, Surigao del Norte
- 483. General Manager  
Surigao del Norte Electric Cooperative, Inc. (SURNECO)
- 484. Regulatory Operations Service  
Energy Regulatory Commission  
17<sup>th</sup> Floor, Pacific Center, San Miguel Avenue, Pasig City  
Email: [ros@erc.ph](mailto:ros@erc.ph)