

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



IN THE MATTER OF THE JOINT APPLICATION FOR APPROVAL OF THE ELECTRIC POWER PURCHASE AGREEMENT (EPPA) ENTERED INTO BY AND BETWEEN DAVAO ORIENTAL ELECTRIC COOPERATIVE, INCORPORATED (DORECO) AND FDC MISAMIS POWER CORPORATION (FDC MISAMIS), WITH PRAYER FOR THE ISSUANCE OF PROVISIONAL AUTHORITY

ERC CASE NO. 2014-129 RC

DAVAO ORIENTAL ELECTRIC COOPERATIVE, INCORPORATED (DORECO) AND FDC MISAMIS POWER CORPORATION (FDC MISAMIS),

DOCKETED  
Date: SEP 23 2014  
By: [Signature]

Applicants.

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## ORDER

On September 1, 2014, Davao Oriental Electric Cooperative, Incorporated (DORECO) and FDC Misamis Power Corporation (FDC MISAMIS) filed an application for approval of their Electric Power Purchase Agreement (EPPA), with prayer for the issuance of provisional authority.

In the said application, DORECO and FDC MISAMIS alleged, among others, that:

### The Nature of the Application

1. The instant application is submitted to the Commission for its due consideration and approval of the EPPA executed by and between DORECO and FDC MISAMIS, pursuant

to Rule 20(B) of the Commission's Rules of Practice and Procedure (ERC Rules)<sup>1</sup> and other pertinent rules and regulations;

### **The Applicants**

2. DORECO was created pursuant to the provisions of Republic Act No. 6038 [the National Electrification Administration (NEA) Act], as amended by Presidential Decree No. 269. Pursuant to this decree, it was incorporated and registered with the NEA on December 30, 1977, with principal office at Madang National Highway, Mati City, Davao Oriental. It serves the power requirements of the City of Mati and the Municipalities of San Isidro, Manay, Cateel, Lupon, Gov. Generoso, Caraga, Boston, Banaybanay, Tarragona and Baganga, all in the Province of Davao Oriental;
3. FDC MISAMIS is a corporation duly organized and existing under the Philippine Laws, with principal office address at 23<sup>rd</sup> Floor, PBCom Tower, 6795 Ayala Avenue corner V.A. Rufino St., Makati City. It was formerly known and registered under the names Green Renewable Power Holdings, Incorporated and Strong Field Energy Corporation. It is a wholly-owned subsidiary of FDC Utilities, Incorporated;

### **Compliance with Pre-filing Requirements**

4. In compliance with Rule 6 of the ERC Rules and in support of the instant application for approval of the EPPA, copies of the instant application (including Annexes) were furnished to the respective legislative bodies of the City of Mati, and the Province of Davao Oriental, where DORECO principally operates;
5. Likewise, a copy of the instant application (including Annexes) was furnished to the Legislative Body of the City of Makati where FDC MISAMIS principally operates;

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<sup>1</sup> ERC Resolution No. 38, Series of 2006

6. The entire application, excluding the Annexes, was published in a newspaper of local circulation within the franchise area of DORECO and in a newspaper of general circulation in the Philippines;

#### **DORECO Power Situation**

7. Since 2010, the Mindanao Grid has been experiencing a significant shortfall in power supply causing widespread power interruption. The existing capacity in the Island is composed of more than fifty percent (50%) hydroelectric power plant which is dependent on the availability of water and affected by weather conditions. Based on the 2012-2030 Supply – Demand Outlook issued by the Department of Energy (DOE), a total of 1,600 MW additional capacities are needed during the planning period to meet the electricity demand and the required reserve margin of the grid;
8. DORECO is requiring an annual energy of 97,216,595 kWh and an annual demand of 18,114 kW for 2014. Its power supply is currently sourced from the Power Sector Assets and Liabilities Management Corporation (PSALM) and Therma Marine, Incorporated (TMI). For 2014, it has existing power supply agreements for 3,289,409 kWh contract energy with equivalent demand of 5,403 kW with PSALM/National Power Corporation (NPC) which will expire in December 2016. With the privatization of the PSALM/NPC generation plants coupled with the insufficiency of supply in Mindanao, it has become increasingly difficult for PSALM to sustain the demands of its Mindanao customers. As it is, PSALM can no longer supply the electric power requirements of its existing customers including DORECO. PSALM confirmed that it has insufficient capacity to supply the additional power requirements of Mindanao distribution utilities beyond the contracted energy and equivalent demand in its existing Contracts for the Supply of Electric Energy (CSEE);

9. Based on DORECO's actual and forecasted load data, its contract energy and demand requirements for the years 2014 to 2028 are increasing. In order for DORECO to meet its obligations to its member-consumers (Sec. 1, DOE Department Circular No. 2003-12-011)<sup>2</sup>, and in making sure that its requirements are fully covered by supply contracts (Sec. 4.3, DOE Department Circular No. 2010-03-0003)<sup>3</sup>, DORECO should secure a power supply agreement of about 6,000 kW;
10. Based on its Ten (10)-Year Demand and Energy Forecast, the demand requirement of DORECO is expected to grow every year, from 18 MW in 2014 to 27 MW in 2028;
11. Given its demand growth and in order to obtain a secure and adequate supply of electricity for its member-consumers during this time, DORECO sought out other generation companies and sources of electricity in the Mindanao Grid and solicited offers and/or expressions of interest from these power suppliers to supply its growing power requirements;
12. Among the offers that DORECO considered was one from FDC MISAMIS which made an offer to DORECO to supply its power requirements. FDC MISAMIS is committed to construct a 405 MW Coal-Fired Power Plant in the PHIVIDEC Industrial Estate in Misamis Oriental. The power plant is scheduled to be commissioned in 2016;
13. DORECO thoroughly evaluated all the offers/expressions of interest submitted to it and determined the offer of FDC MISAMIS to be the one most advantageous to its member-consumers;

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<sup>2</sup> All distribution utilities must henceforth take cognizance and assume full responsibility to forecast, assure and contract for the supply of electric power in their respective areas to meet their obligations as distribution utility (Sec. 1, DOE Department Circular No. 2003-12-011)

<sup>3</sup> Ensure that the power requirements within their franchise areas are adequately covered by supply contracts or spot purchases from the WESM at all times

14. DORECO has forecasted and simulated the effect of the inclusion of the power supplied by FDC MISAMIS on its generation costs upon the commercial operation of the power plant, taking into consideration the reduced supply from PSALM and the expected commercial operation of FDC MISAMIS, to wit:

Without FDC MISAMIS	Weighted Average Rate (PhP/kWh)	With FDC MISAMIS	Weighted Average Rate (PhP/kWh)	Rate Reduction
NPC/PSALM	5.1251	NPC/PSALM	4.7200	(0.4051)
TSI		TSI		
TMI		TMI		
GENSET (Embedded)		FDC MISAMIS		

#### The EPPA

15. After extensive negotiations with FDC MISAMIS, DORECO signed on May 20, 2013, an EPPA with FDC MISAMIS for a contracted demand of 6 MW for fifteen (15) years;

#### ***Executive Summary***

16. The EPPA governs the relationship between Supplier and Customer for the sale of electric power. The electric power supply will be drawn from the 3 x 135 MW CFB Coal-fired power plant to be constructed, owned and operated by FDC MISAMIS. During plant outage, replacement power will be sourced from other facilities of the FDC MISAMIS, or of any third party, including the Wholesale Electricity Spot Market (WESM) or its equivalent. The commencement of the obligation of FDC MISAMIS to deliver of electric power to its customers is subject to the satisfaction of conditions precedent, including the declaration of the commercial operation of the power plant. Generation Charges for pre-commercial operation and during commercial operation are computed separately. The EPPA is subject to customer's security deposit, assignment, termination and buy-out;

***Salient Features***

17. The EPPA contains the following salient terms and conditions:

a. Commercial Operation Date. The target Commercial Operation Date is thirty-six (36) calendar months after all the requirements (Conditions Precedent to Commercial Operation Date) has been met;

b. Term. The Term of the EPPA shall be fifteen (15) years from the Commercial Operation Date, unless extended: (a) by the grant of grace period; (b) due to Force Majeure; or (c) by mutual written agreement by the Parties;

c. Service Specification. They agreed to the following service specifications:

Contracted Demand	6,000 kW
Contracted Energy	52,560,000 kWh
Customer Load Factor	100%
Customer's Minimum Demand	At least 40% of customer's Contracted Demand
Delivery Point	Plant Gate FDC MISAMIS's Power Plant
Voltage at the Plant Gate	138 kV

d. Increase in Contracted Energy, Monthly Nominated Energy or Contracted Demand. Customer may request an increase to the Contracted Energy, monthly nominated energy or Contracted Demand of a particular Billing Period by delivery of written notice at least sixty (60) days before the date on which such adjustment is proposed to take effect, setting out the reasons therefor;

e. Premium Charge for Excess Consumption. For consumption higher than the Contracted Energy and/or monthly nominated energy, Customer shall pay the Generation Charge applicable plus a Premium Charge of ten percent (10%);

- f. Replacement Power In Excess of Outage Allowance. The Supplier shall exert best efforts to procure Replacement Power beyond the Outage Allowance. Notwithstanding any provision in this Agreement to the contrary, the Supplier has the right to source Replacement Power for the Customer from other current or future facilities of the Supplier or of any third party, including the WESM or its equivalent, at the sole election of the Supplier;
- g. Generation Charge. DORECO shall pay the generation charge consisting of variable and fixed charges, subject to adjustments. The generation charges for pre-commercial operation and during commercial operation are computed based on the Base Energy Rate (BER) computation as follows:

$$\text{BER} = (\text{FC}_{\text{base}} + \text{VC}_{\text{base}})/\text{Energy}$$

$$\text{FC}_{\text{base}} = (\text{CRF}_{\text{base}}^{\text{kW}} + \text{PHP O\&M}_{\text{base}}^{\text{kW}} + \text{US O\&M}_{\text{base}}^{\text{kW}}) * \text{CD}$$

Where:

$$\text{CRF}_{\text{base}}^{\text{kW}} = \text{PhP}1,924.48/\text{kW}$$

$$\text{PHP O\&M}_{\text{base}}^{\text{kW}} = \text{PhP}474.75/\text{kW}$$

$$\text{US O\&M}_{\text{base}}^{\text{kW}} = \text{PhP}30.64/\text{kW}$$

$$\text{VC}_{\text{base}} = [\text{DCP}_{\text{base}}]*[\text{Forex}_{\text{base}}]*[\text{MCR}]*[\text{Energy}]/\text{Conversion Factor}$$

Where:

$$\text{DCP}_{\text{base}} = \text{US}\$72/\text{MT}$$

$$\text{Forex}_{\text{base}} = \text{PHP } 41.12/\text{US}\$$$

$$\text{MCR} = 0.70\text{kg}/\text{kWh}$$

$$\text{Conversion Factor} = 1,000 \text{ kg}/\text{MT}$$

- h. Customer Failure to Off-take Power. If the Customer off-takes power less than the Contracted Energy and/or Contracted Demand, the Customer shall still pay the full Generation Charge for the Contracted Energy and/or Contracted Demand, and all applicable fees, charges and costs;
- i. 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 Customer;
- j. Security Deposit. The Security Deposit shall be in an amount equivalent to one hundred percent (100%) of the projected highest monthly Power Bill for the first Contract Year of the Agreement;
- k. Assignment. In all cases of valid assignment, the assignee shall assume all the rights and obligations of the assignor under this Agreement; and
- l. 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;



**Other Related Documents**

18. In further support of the instant application, Applicants most respectfully submit to the Honorable Commission, the following documents:

<b>Annex</b>	<b>Nature of Documents</b>
A	EPPA between DORECO and FDC MISAMIS dated May 20, 2013
B	DORECO Certificate of Franchise
C	DORECO Certificate of Registration
D	DORECO Articles of Incorporation
E	FDC MISAMIS Certificate of Registration
E-1	Green Renewable Power Holdings, Incorporated's Certificate of Incorporation
E-2	Strong Field Energy Corporation's Certificate of Filing of Amended Articles of Incorporation
F	FDC MISAMIS General Information Sheet (GIS)
G	FDC MISAMIS latest Audited Financial Statements (AFS)
H	Certification from the Legislative Body of the City of Mati, Province of Davao Oriental for the receipt of Joint Application (including Annexes)
H-1	Certification from the Legislative Body of the Province of Davao Oriental for the receipt of Joint Application (including Annexes)
I	Certification from the Legislative Body of the City of Makati for the receipt of Joint Application (including Annexes)
J	Copy of the affidavit of publication for DORECO
J-1	Copy of the Affidavit of Publication for FDC MISAMIS
J-2	Copy of newspaper publication of general circulation within the franchise area or area where DORECO principally operates
J-3	Copy of newspaper publication of general circulation where FDC MISAMIS principally operates
K	PSALM certification of insufficient capacity to supply Mindanao Distribution Utilities
L	DORECO Actual and Forecasted Load Data from 2013-2028
M	DORECO Comparison of Various Offers from Generation Companies (in a sealed envelope)
N	DORECO Rate Impact Analysis

O	DORECO Board Resolution No. 47, Series of 2013
P	Sources of Funds/Financial Plans; Debt/Equity Ratio; Project Cost; and Computation of Return on Investment/Weighted Average Cost of Capital (WACC) (in a sealed envelope)
Q	FDC MISAMIS Board of Investments (BOI) Certificate of Registration
R	FDC MISAMIS Environmental Compliance Certificate (ECC)
S	FDC MISAMIS Fuel Procurement Process (in a sealed envelope)
T	Land Bank of the Philippines (LBP) Certification – Indicative Key Terms and Conditions (in a sealed envelope)
U	Judicial Affidavit of Engr. Roderick Z. Fernandez

19. Pursuant to ERC Resolution No. 9, Series of 2010, FDC MISAMIS shall file the necessary application for a COC no later than (3) months prior to the commercial operations date of the 3 X 135 MW CFB coal-fired power plant;

**Allegations in Support of the Motion for Confidential Treatment of Information**

21. The Commission may, upon request of a party and determining that the disclosure of information requested to be treated as confidential information is justified, treat certain information submitted to it as confidential.<sup>4</sup> DORECO and FDC MISAMIS are bound by confidentiality agreement prohibiting the disclosure of any business, technical, marketing, operational, organizational, financial or other information and trade secrets and other confidential documents, papers and information.<sup>5</sup> Accordingly, they request before the Commission that Annexes “M”, “P”, “S”, and “T” not be disclosed and be treated as confidential in accordance with Rule 4 of the ERC Rules. These Annexes contain confidential information critical to the business operation of FDC MISAMIS including trade secrets and business calculations, assumptions and projections;

<sup>4</sup> Rule 4 - Confidential Information, ERC Rules

<sup>5</sup> Article 14 of the EPPA

**Allegations in Support for the Issuance  
of Provisional Authority**

22. The financing of the construction of the 3 x 135 MW CFB Coal-fired power plant requires, among others, the Commission's approved rate. The construction is, likewise, bound by contractual milestones, including the approval of the EPPA. A provisional approval of the said EPPA with indicative rate, from the Commission will sufficiently merit evaluation from financial institutions, and potential investors. The positive evaluation of the power plant financials redounds to the timely declaration of commercial operation of the 3 x 135 MW CFB coal-fired power plant for a reliable supply of electric power in time to address supply deficiency in Mindanao. The judicial affidavit to testify on the allegations made in the application in connection with their prayer for issuance of provisional authority in the instant application is attached and submitted;
23. In order to allow FDC MISAMIS to be able to deliver and DORECO to be able to receive power from the power plant as soon as it is commissioned, a provisional authority needs to be granted for the EPPA. The issuance of the provisional authority will allow DORECO to charge and collect the respective fees enumerated in the EPPA as well as authorize it to pass on the full amount to its member-consumers;
24. Pursuant to the ERC Rules, the Commission may exercise its discretion by granting provisional authority or interim relief prior to a final Decision; and
25. It is understood that the interim relief sought by them that may be granted by the Commission, shall be subject to adjustments and other conditions that the Commission may impose after hearing and final determination; and

Prayer

26. Thus, they pray that the Commission:
- 26.1 Approve their duly negotiated EPPA;
  - 26.2 Issue an Order: a) treating Annexes and the information contained therein as confidential; b) directing their non-disclosure pursuant to Rule 4 of the ERC Rules; and c) prescribing the guidelines for the protection thereof;
  - 26.3 Provisionally approve their EPPA as well as provisionally authorize DORECO to pass on the full amount of the fees and charges under the said EPPA to its member-consumers; and
  - 26.4 After trial on the merits, issue a permanent approval of their EPPA which would authorize DORECO to charge and collect the fees under the same as well as pass on the full amount to its member-consumers.

Finding the said application to be sufficient in form and substance with the required fees having been paid, the same is hereby set for jurisdictional hearing, expository presentation, pre-trial conference and evidentiary hearing on **October 22, 2014 (Wednesday) at ten o'clock in the morning (10:00 A.M.) at DORECO's Main Office, Madang National Highway, Mati City, Davao Oriental.**

DORECO and FDC MISAMIS are hereby directed to cause the publication of the attached Notice of Public Hearing, at their own expense, twice (2x) for two (2) successive weeks in two (2) newspapers of general circulation in the Philippines, with the date of the last publication to be made not later than ten (10) days before the date of the scheduled initial hearing. They are also directed to inform the customers within DORECO's franchise area, by any other means available and appropriate, of the filing of the instant application, their reasons therefor, and of the scheduled hearing thereon.

Let copies of the application, this Order, and the attached Notice of Public Hearing be furnished the Office of the Solicitor General (OSG), the Commission on Audit (COA) and the Committees on Energy of both Houses of Congress. They are hereby requested, if they so desire, to send their duly authorized representatives at the scheduled hearing.

Likewise, let copies of this Order and the attached Notice of Public Hearing be furnished the Offices of the Mayors of the City and Municipalities within DORECO's franchise area and the Provincial Governor of Davao Oriental for the appropriate posting thereof on their respective bulletin boards.

DORECO and FDC MISAMIS are hereby directed to furnish all those making requests therefor with copies of the application and its attachments, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing, DORECO and FDC MISAMIS must submit to the Commission their written Compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidences of the actual posting and publication of the Notice of Public Hearing consisting of certifications issued to that effect, signed by the afore-mentioned Mayors and Governor or their duly authorized representatives, bearing the seals of their offices, and the affidavits of the Editors or Business Managers of the newspapers where said Notice of Public Hearing were published together with the complete issues of the said newspapers, and such other proofs of compliance with the requirements of the Commission.

DORECO and FDC MISAMIS and all interested parties are directed to submit, at least five (5) days before the date of initial 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 thereof and proposed markings therefore; and

- (d) The number and names of the witnesses, with their written testimonies in an individual affidavit form, to be attached to the Pre-Trial Brief.

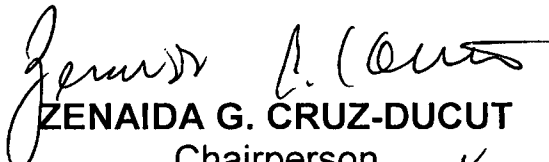
Failure of DORECO and FDC MISAMIS to submit the required Pre-Trial Brief and Judicial Affidavits of their witnesses within the prescribed period shall be a ground for cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from said date of cancellation.

As part of the pre-trial conference, DORECO and FDC MISAMIS must also be prepared to make an expository presentation of their application, aided by whatever communication medium that they may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the member-consumers and other concerned parties, what the application is all about and the reasons and justifications being cited in support thereof.

**SO ORDERED.**

Pasig City, September 15, 2014.

FOR AND BY AUTHORITY  
OF THE COMMISSION:

  
ZENAIDA G. CRUZ-DUCUT  
Chairperson 4

Copy Furnished:

1. **Lerios-Amboy Pingol and Gonzales Law Offices**  
*Counsel for DORECO*  
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Pearl Drive, Ortigas Center, Pasig City 1605
2. **Atty. Renato R. Vehemente**  
*Counsel for FDC MISAMIS*  
23<sup>rd</sup> Floor, PBCom Tower, 6795 Ayala Avenue  
corner V.A. Rufino St., Makati City
3. **Davao Oriental Electric Cooperative, Incorporated  
(DORECO)**  
Madang National Highway, Mati City, Davao Oriental
4. **FDC Misamis Power Corporation (FDC MISAMIS)**  
23<sup>rd</sup> Floor, PBCom Tower, 6795 Ayala Avenue  
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5. **Office of the Solicitor General (OSG)**  
134 Amorsolo Street, Legaspi Village,  
City of Makati 1229
6. **Commission on Audit (COA)**  
Commonwealth Avenue,  
Quezon City 1121
7. **Senate Committee on Energy**  
GSIS Building, Roxas Boulevard,  
Pasay City 1300
8. **House of Representatives Committee on Energy**  
Batasan Hills, Quezon City 1126
9. **Office of the City Mayor**  
Mati City, Davao Oriental
10. **Office of the Municipal Mayor**  
Baganga, Davao Oriental

11. **Office of the Municipal Mayor**  
Banaybanay , Davao Oriental
12. **Office of the Municipal Mayor**  
Boston, Davao Oriental
13. **Office of the Municipal Mayor**  
Caraga, Davao Oriental
14. **Office of the Municipal Mayor**  
Cateel, Davao Oriental
15. **Office of the Municipal Mayor**  
Gov. Generoso, Davao Oriental
16. **Office of the Municipal Mayor**  
Lupon, Davao Oriental
17. **Office of the Municipal Mayor**  
Manay, Davao Oriental
18. **Office of the Municipal Mayor**  
San Isidro, Davao Oriental
19. **Office of the Municipal Mayor**  
Tarragona, Davao Oriental
20. **Office of the Governor**  
Province of Davao Oriental
21. **Philippine Chamber of Commerce and Industry (PCCI)**  
3<sup>rd</sup> Floor, ECC Building, Sen. Gil Puyat Ave., Makati City