Republic of the Philippines ENERGY REGULATORY COMMISSION Pasig City

IN THE MATTER OF THE APPLICATION FOR APPROVAL OF THE **EMERGENCY POWER** SUPPLY AGREEMENT BETWEEN ALBAY ELECTRIC COOPERATIVE, INC. **MISAMIS POWER** CORPORATION, WITH **MOTION FOR** CONFIDENTIAL TREATMENT OF INFORMATION,

ERC CASE NO. 2025-049 RC

ALBAY ELECTRIC
COOPERATIVE, INC. (ALECO)
AND FDC MISAMIS POWER
CORPORATION (FDC
MISAMIS),

Applicants.

Promulgated:

April 16, 2025

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NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 24 February 2025, Albay Electric Cooperative, Inc. (ALECO) and FDC Misamis Power Corporation (FDC MISAMIS) filed a *Joint Application*, dated 10 January 2025, seeking the Commission's approval of their Emergency Power Supply Agreement (EPSA), with motion for confidential treatment of information.

The pertinent allegations of the *Joint Application* are hereunder quoted as follows:

THE APPLICANTS

1. Applicant ALECO is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal address a W. Vinzons St., Old Albay District, Legazpi

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City, Albay. ALECO is represented here by its Acting General Manager, Engr. Wilfredo O. Bucsit.

- 2. ALECO holds an exclusive franchise issued by the National Electrification Administration (NEA), to operate an electric light and power distribution service in the Cities of Legazpi, Ligao and Tabaco, the Municipalities of Daraga, Camalig, Manito, Rapu-Rapu, Tiwi, Malinao, Malilipot, Bacacay, Sto. Domingo, Guinobatan, Jovellar, Oas, Libon, Polangui and Sto. Pio Duran, all in the Province of Albay ("Franchise Area").
- 3. Applicant FDC Misamis is a generation company duly organized and existing under and by virtue of the laws of the Philippines, with principal office at PHIVIDEC Industrial Estate, Villanueva, Misamis Oriental, represented in this instance by its by its President & CEO, Mr. Juan Eugenio L. Roxas.
- 4. ALECO and FDC MISAMIS are jointly filing this Application pursuant to the Honorable Commission's Resolution No. 02, Series of 2015 requiring distribution utilities and generation companies to jointly file applications for the approval of power supply agreements. ALECO and FDC MISAMIS are referred hereinafter as Joint Applicants.
- 5. The Joint Applicants may be served with the orders, notices, and other processes of the Honorable Commission through their respective undersigned counsels at the addresses indicated herein.

NATURE AND TIMELINESS OF THE APPLICATION

- 6. This is a *Joint Application* for approval of the *Emergency* Power Supply Agreement ("EPSA") entered into by and between ALECO and FDC MISAMIS dated 24 May 2024 being submitted to the Honorable Commission for its review and approval.
- 7. Section 24 of Resolution No. 16, Series of 2023 entitled "Implementing Guidelines for the Procurement, Execution and Evaluation of Power Supply Agreements Entered into by Distribution Utilities for the Supply of Electricity to Their Captive Market" ("2023 CSP Rules") mandates that "the application for approval of the EPSA shall be filed with the ERC within thirty (30) calendar days after the occurrence of the Force Majeure or Fortuitous Event."
- 8. Under the foregoing provisions pertaining to the exemption from conducting a Competitive Selection Process (CSP), Applicant ALECO respectfully asserts its legal authorization to procure electricity through negotiated procurement due to circumstances beyond its control. As elaborated hereunder, it

¹ 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.

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is essential for ALECO to pursue this approach to ensure the cost-effective provision of electricity to its consumers.

STATEMENT OF FACTS

- 9. On 21 November 2022, the Concession Agreement between ALECO and Albay and Energy Corp. (APEC) was terminated.
- 10. Due to transfer of operations from APEC to ALECO, the ongoing Competitive Selection Process (CSP) being conducted by APEC for its demand requirements was deferred and eventually discontinued.
- 11. ALECO also immediately sought for an EPSA since it is sourcing 100% of its power supply form the Wholesale Electricity Spot Market (WESM). ALECO likewise requested from the Department of Energy (DOE) for the issuance of a Certificate of Exemption (COE) from the conduct of CSP.
- DOE issued a COE in favor of ALECO from the conduct of CSP for a period of one (1) year beginning 26 February 2024 to 25 February 2024.
- 13. After series of negotiations with Masinloc Power Partners Co. Ltd. (MPPCL), ALECO agreed to enter into an Emergency Power Supply Agreement with MPPCL for a period of one (1) year. However, the EPSA between ALECO and MPPCL did not materialize due to some circumstances beyond the control of the parties.
- 14. Worse, ALECO's conduct of CSP was discontinued considering the issuance of DOE Circular No. 2023-06-0021 providing for new CSP Policy and following the advice of DOE.
- 15. Sometime in November 2023, DOE issued DOE Circular No. DC2023-10-0022, directing the National Electrification Administration (NEA) to facilitate the joint conduct of the CSP ("Joint CSP") for the power supply of Electric Cooperatives in Luzon using an indigenous natural gas. ALECO was one of the electric cooperatives chosen to participate in the Joint CSP and ALECO committed its 60MW baseload demand.
- 16. On 01 March 2024, however, DOE directed NEA to hold in abeyance the conduct of the Joint CSP and all activities related thereto until further notice due to recent developments in fuel prices. Thus, ALECO was constrained to continually source its 100% power supply requirement from the WESM.
- 17. In view of the foregoing, and while waiting for the resumption of the Joint CSP with NEA and its effort to provide a reliable, adequate, and affordable electric power supply to its member-consumers-owners (MCOs) and in compliance with regulatory requirements, ALECO solicited offers for a 60MW EPSA from several power suppliers, i.e., San Miguel Global Power, Aboitiz Power Corporation, First Gen Corporation,

GNPower Ltd. Co., GNPower Kauswagan Ltd. Co., and FDC MISAMIS.

- As of April 2024, ALECO's MCOs are exposed to the volatile WESM rates procured by ALECO for January to March billing periods, by as much as PhP 4.6421/kWh, PhP 4.2584/kWh and PhP 5.9998kWh (inclusive of VAT), respectively. Moreover, ALECO is burdened with the increase in the required prudential requirement that threatens ALECO's financial operations. ALECO seeks to prevent the volatile WESM prices by entering into an emergency supply agreement.
- 19. On 17 May 2024, ALECO received from FDC MISAMIS an offer for ALECO's 10MW baseload (firm) and 30MW load-following (non-firm) for six (6) months commencing on 26 May 2024 until 25 November 2024, which can be extended up to one (1) year, upon mutual agreement of the parties.
- 20. On 24 May 2024, ALECO and FDC MISAMIS executed the EPSA for the review and approval of the Honorable Commission.
- 21. Pursuant to the 2023 CSP Rules, on 22 May 2024, ALECO sent a Notice of Force Majeure Majeure/Fortuitous Event of even date to the Honorable Commission, DOE, and NEA.
- 22. Consequently, FDC MISAMIS commenced delivery to ALECO under the terms of the EPSA on 26 May 2024.

RATE IMPACT

23. The indicative rate impact on ALECO's overall generation rate with the additional supply from FDC MISAMIS shows a decrease of about PhP 0.0339/kWh², to wit:

Generation Rate Impac	t of PSA with FDC MISAMIS
Without FDC MISAMIS PhP6.1664/kWh	
With FDC MISAMIS	PhP6.1325/kWh
Rate Impact (PhP0.0339/kWh)	

Note that ALECO's estimated annual savings is PhP25,103,061.00.

ABSTRACT OF THE POWER SUPPLY AGREEMENT AND RELATED INFORMATION

24. Under the EPSA, FDC shall supply power to ALECO for the Agreement Term, with a Contracted Capacity of 40MW (10MW Firm and 30MW Non-firm). ALECO's Supply - Demand Scenario is attached as Annex "H" for ready reference.

² Please see Annex "NN".

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- 25. The power to be provided to ALECO will be sourced from FDC MISAMIS's 3 x 135 MW circulating fluidized bed coal fired thermal power plant in the PHIVIDEC Industrial Estate, in Villanueva, Misamis Oriental, with a rated capacity of 405 MW and net dependable capacity of 369 MW (the "Power Plant"). FDC MISAMIS shall supply power to ALECO under the terms stipulated in their EPSA.
- 26. The following are the Salient Features of the EPSA:
 - 26.1 <u>Term</u>: The Term of the <u>EPSA shall be six (6)</u> months from commencement of delivery and can be extended up to 1 year, upon mutual agreement of both parties.
 - 26.2 <u>Date of Commencement of Supply</u>: The obligation of FDC MISAMIS to deliver electric power to ALECO shall commence immediately following the execution of the EPSA, and more specifically on 26 May 2024.
 - 26.3 Contract Type: 10MW Firm; 30MW Non-firm
 - 26.4 <u>Contract Demand and Contract Energy</u>: The Joint Applicants agreed to the following service specifications:

	FIRM	NON-FIRM	TOTAL
Contracted Demand (monthly), kW	10,000	30,000	40,000
Contracted Energy (6 months), kWh	44,160,000	Up to 132,480,000	Up to 176,640,000
Customer Load Factor Per Interval	At least 70%	Actual	
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		

- 26.5 Outage Allowance: 369 hours Scheduled Outage and 405 hours Unscheduled Outage. ALECO shall be responsible for the procurement of Replacement Power during the Outage Allowance. While FDC MISAMIS can assist ALECO in the procurement of Replacement Power beyond the Outage Allowance.
- 26.6 <u>Billing and Settlement</u>: FDC MISAMIS shall provide a monthly Power Bill to ALECO that shall contain the volume of energy delivered, and the amount of money (in Philippine Peso) due and payable by ALECO every Billing Period both reckoned from the Delivery Point.

The Billing and Settlement between the Parties shall be in accordance with *Schedule 3* of the EPSA.

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- Termination: Either Party may terminate the EPSA 26.7 with immediate effect by serving written notice to the other Party in the event that the other Party breaches any provision of the EPSA and fails to cure such breach within a period of thirty (30) days from receipt of notice of such breach.
- 26.8 **Prompt Payment Discount:** FDC MISAMIS shall grant a Prompt Payment Discount, provided that:
 - Payment is made on or before 11:00 am of the tenth (10th) day of the Payment Month; and
 - ALECO has not incurred any delay in the (ii) payment of its bills for the past three (3) Payment Months.

The Prompt Payment Discount shall be applied in the immediately succeeding billing.

26.9 Generation Charge:

BASELOAD (FIRM):	PhP/kW-mo.	RATE IN PHP/KWH	BILLING DETERMINANT (BD)
Capital Recovery Fee (CRF), Php/kW-month	1,460.00	2.0000	Contracted Capacity @ 100% LF In kW
Fixed O&M (FOM), Php/kW-month	452.09	0.6193	Contracted Capacity @ 100% LF in kW
Variable O&M (VOM), Php/kWh	0.1907		Actual energy consumed or 70% of Contract Energy in kWh, whichever is higher
Fuel Cost (FC), Php/kWh	pass-through		Actual energy consumed in kWh

BASELOAD (FIRM)

CRF Charge

FOM Charge VOM Charge

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

[(452.09 PhP/kW-mo.) * (PH CPI_{CURRENT}/PH CPI_{AASE})] * BD [(0.1907 PhP/kWh) * (PH CPI_{CURRENT}/PH CPI_{BASE})] * BD [(DCP * ACR or MCR, whichever is lower)/1000] * BD **Fuel Cost** BD **Billing Determinant** kW or kWh DCP Delivered Coal Price Total Coal Cost (PhP)/ Total Coal Consumption (MT) Actual Fuel Consumption Rate ACR kg/kWh Total Coal Consumption (MT)/ Total Metered Quantity of the Plant (kWh)

Maximum Consumption Rate equal to 0.75, MCRC kg/kWh

escalated at a rate of 1.5% annually PH CPlass = 125.5 (April 2024)

(1,460,00 PhP/kW-mo.) * BD

Other Pass-Through Charges:

Indexation:

- · Market Charges and Fees including Line Rental Charges
- Value Added Tax (VAT) (if applicable)

X

PRE-FILING REQUIREMENTS AND OTHER RELATED DOCUMENTS

In compliance with the Prefiling Checklist and in further 27. support of the instant Joint Application, ALECO and FDC

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MISAMIS most respectfully submit to the Honorable Commission the following documents:

ANNEXES	DOCUMENTS		
"A"	ALECO Board Resolution No. 68, Series of 2024		
"B"	ALECO Board Resolution No. 69, Series of 2024		
"B-1"	Board Resolution No. 68-A, Series of 2024		
"C"	FDC Misamis Board Resolution or Secretary's		
	Certificate (authorizing the signing of EPSA, and		
	authorizing the filing of the Joint Application)		
"C-1"	FDC MISAMIS Secretary's Certificate		
"D"	Emergency Power Supply Agreement		
"E"	Notice of Fortuitous Event/Force Majeure to ERC		
"F"	Notice of Fortuitous Event/Force Majeure to DOE		
"G"	Notice of Fortuitous Event/Force Majeure to NEA		
"TT"	ALECO Supply-Demand Scenario in accordance with		
"H"	Annex "1" of the Pre-filing Checklist		
" <u>I</u> "	ALECO Load Curves in accordance with Annex "2" of		
1	the Pre-filing Checklist		
".J"	DOE Letter dated 01 March 2024 directing NEA to hold		
J	in abeyance the conduct of Joint CSP		
"T7"	ALECO letters/invitation requesting proposal for		
"K", series	emergency supply		
"L"	ALECO Affidavit of Fortuitous Event/Force Majeure		
"M"	Executive Summary of EPSA		
	ALECO Articles of Incorporation,		
" > T"	ALECO By Laws		
"N", series	ALECO Certificate of Franchise		
	ALECO Certificate of Registration		
	FDC MISAMIS Amended Articles of Incorporation,		
"O", series	Amended By-Laws, and Amended General Information		
	Sheet for 2023		
"P", series	FDC MISAMIS SEC Certificate of Registration with		
P , series	Amendments and Shareholders' Agreement		
"Q"	FDC Misamis BOI Certificate of Registration with		
	attached Terms and Conditions		
"R"	FDC Misamis DENR-EMB ECC		
"S"	FDC Misamis ERC COC No. 17-05-M-00108M		
"S-1"	FDC Misamis PAO Certificate dated 01 December 2023		
"T"	FDC Misamis DOE Certificate of Endorsement		
"U"	ALECO Power Supply Procurement Plan ("PSPP")		
"U-1"	ALECO Distribution Development Plan ("DDP")		
"V"	ALECO Performance Assessment		
"W"	ALECO Industrial Customers		
"xr"	FDC Misamis Samuel R. Lamorena Verified		
"X"	Certification		

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	Transmission Service Agreement ("TSA") and Metering	
"Y", series	Services Agreement ("MSA") of ALECO and FDC	
, , , , , ,	Misamis, respectively	
"Z"	FDC MISAMIS Sources of Funds and Financial Plans	
2	(Confidential)	
"AA"	Bank Certifications (Confidential)	
"BB"	FDC MISAMIS Generation Rate and Derivation	
DD	(Confidential)	
"CC"	Basis of Other Charges (Confidential)	
"DD"	Excel File FDC MISAMIS Financial Model	
1000 BA	(Confidential)	
"EE"	Project Cost and Breakdown of Cost (Confidential)	
"EE-1"	Sample Computation of Power Rates	
"FF"	FDC Misamis Cash Flow (Confidential)	
"GG",	FDC Misamis Fuel Supply Procurement Process and	
series	Fuel Supply Agreements (Confidential)	
"HH"	FDC Misamis Sworn Statement on Fuel Concerns	
"II"	FDC Misamis Relevant Technical and Economic	
	Characteristics of the Generation Capacity	
	(Confidential)	
"JJ"	FDC Misamis simulation of no. of operating units to	
	meet MEOT (Confidential)	
"KK"	FDC Misamis 2023 Audited Financial Statements (AFS)	
"LL"	FDC Misamis WESM Registration	
"MM"	ALECO WESM Registration	
"NN"	Rate Impact Analysis	
"OO"	Cost Analysis for ALECO (Confidential)	
"PP"	FDC Misamis Write-up	
"QQ"	Updated Outages	
"RR"	Affidavit of Service	
"SS"	Affidavit of Service	
"TT"	Affidavit of Publication	
"UU"	Complete newspaper issue	

ALLEGATIONS IN SUPPORT OF THE MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION

28. Under the Revised Rules of Practice and Procedure of this Honorable Commission, a party to any proceeding before the Honorable Commission may request that certain information not be disclosed and be treated as confidential.³ Pursuant to this, Applicant FDC Misamis prays for the confidential treatment of the information contained in the following annexes:

cuments/Information
)

³ Section 1, Rule 4, Rules of Practice and Procedure of the Energy Regulatory Commission.

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"Z"	FDC MISAMIS Sources of Funds and	
	Financial Plans	
"AA"	Bank Certifications	
"BB"	FDC MISAMIS Generation Rate and	
	Derivation	
"CC"	Basis of Other Charges	
"DD"	Excel File FDC MISAMIS Financial Model	
"EE"	Project Cost and Breakdown of Cost	
"FF"	FDC MISAMIS Cash Flow	
"GG", series	FDC MISAMIS Fuel Supply Procurement	
	Process	
"II"	FDC MISAMIS Relevant Technical and	
	Economic Characteristics of the Generation	
	Capacity	
"JJ"	FDC MISAMIS simulation of no. of operating	
	units to meet MEOT	
"OO"	Cost Analysis for ALECO	

- 29. Applicants treat the above-mentioned documents, such as related agreements, sources of funds/financial plans, certifications from bank/lending institutions, generation rate and derivation, cash flow, description of power plant, and steam sales agreement, as not generally available to the public on a non-confidential basis, as the same involve trade secrets reflecting investment and business calculations and the Parties are similarly bound to third parties to keep the information and documents confidential.
- 30. Also, the Confidential Documents were prepared and developed for the exclusive use of FDC MISAMIS, and are designed for the specific use of the company in its power generation business. Consequently, should the same be disclosed to the public, they could easily be copied or used by FDC MISAMIS's competitors or other entities engaged in the power business for their own benefit, and to the prejudice of FDC MISAMIS.
- 31. This request is likewise being made by virtue of Section 1 (b), Rule 4 of the ERC Rules of Practice and Procedure under which the Honorable Commission may, upon request of a party and a determination of the existence of conditions which would warrant such remedy, treat certain information submitted to it as confidential.
- 32. Accordingly, Joint Applicants hereby submit one (1) copy of the confidential documents in a sealed envelope, with the envelope and each page of the document stamped with the word "Confidential".4

PRAYER

⁴ Soft copies of the same to be provided to this Honorable Commission are password protected.

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WHEREFORE, premises considered, Joint Applicants ALECO and FDC MISAMIS most respectfully pray that the Honorable Commission:

- 1. ISSUE AN ORDER declaring the Confidential Documents attached hereto as Annexes "Z", "AA", "BB", "CC", "DD", "EE", "FF", "GG", series, "II", "JJ", and "OO" as confidential information as well as directing that the same be treated with confidentiality and be protected from public disclosure, thereby issuing the corresponding PROTECTIVE ORDER in accordance with Section 2, Rule 4 of the ERC Revised Rules of Practice and Procedure; and
- 2. After due notice and hearing, ISSUE A DECISION (i) approving the instant *Joint Application in toto* and the EPSA which will thereby allow/authorize ALECO to charge and collect the fees from its consumers reckoned from the commencement of the supply to ALECO by FDC MISAMIS; and (ii) directing that the rates, terms, and conditions of the *EPSA* be retroactively applied for the entire term of the EPSA.

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

The Commission hereby sets the instant *Joint Application* for hearing for determination of compliance with the jurisdictional requirements, expository presentation, Pre-Trial Conference, and presentation of evidence on the following dates and online platform for the conduct thereof, pursuant to Resolution No. 09, Series of 2020⁵ and Resolution No. 01, Series of 2021⁶ (ERC Revised Rules of Practice and Procedure):

Date	Platform	Activity
27 May 2025 (Tuesday) at two o'clock in the afternoon (2:00 P.M.)	Microsoft Teams Application	Determination of compliance with jurisdictional requirements and expository presentation
O3 June 2025 (Tuesday) at two o'clock in the afternoon (2:00 P.M.)		Pre-Trial Conference and Presentation of Evidence

A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

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Accordingly, ALECO and FDC MISAMIS are directed to mirror the virtual hearings to be hosted by the Commision at ALECO's principal office located at W. Vinzons St., Old Albay District, Legazpi City, Albay, as the designated venue for the conduct thereof, and ensure that the same is open to the public. Moreover, ALECO and FDC MISAMIS shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

Any interested stakeholder may submit its comments and/or clarifications at least one (1) calendar day prior to the scheduled initial virtual hearing, via electronic mail (e-mail) at docket@erc.ph, and copy furnish the Legal Service through legal@erc.ph. The Commission shall give priority to the stakeholders who have duly submitted their respective comments and/or clarifications, to discuss the same and propound questions during the course of the expository presentation.

Moreover, all persons who have an interest in the subject matter of the instant case may become a party by filing with the Commission via e-mail at docket@erc.ph, and copy furnishing the Legal Service through legal@erc.ph, a verified Petition to Intervene at least five (5) calendar days prior to the date of the initial virtual hearing. The verified Petition to Intervene must follow the requirements under Rule 9 of the ERC Revised Rules of Practice and Procedure, indicate therein the docket number and title of the case, and state the following:

- 1) The petitioner's name, mailing address, and e-mail address;
- The nature of petitioner's interest in the subject matter of the proceeding and the way and manner in which such interest is affected by the issues involved in the proceeding; and
- 3) A statement of the relief desired.

Likewise, all other persons who may want their views known to the Commission with respect to the subject matter of the case may file through e-mail at <u>docket@erc.ph</u>, and copy furnish the Legal Service through <u>legal@erc.ph</u>, their Opposition or Comment thereon **at least five (5) calendar days** prior to the initial virtual hearing. Rule 9 of the ERC Revised Rules of Practice and Procedure shall govern. No particular form of Opposition or Comment is required, but the document, letter, or writing should contain the following:

- The name, mailing address, and e-mail address of such 1) person;
- A concise statement of the Opposition or Comment; and 2)
- The grounds relied upon. 3)

All interested parties filing their Petition to Intervene, Opposition or Comment are required to submit the hard copies thereof through personal service, registered mail or ordinary mail/private courier, within five (5) working days from the date that the same were electronically submitted, as reflected in the acknowledgment receipt e-mail sent by the Commission.

Any of the persons mentioned in the preceding paragraphs may access the copy of the Joint Application on the Commission's official website at www.erc.gov.ph.

Finally, all interested persons may be allowed to join the scheduled initial virtual hearings by providing the Commission, thru legal.virtualhearings@erc.ph, their respective e-mail addresses and indicating therein the case number of the instant Joint Application. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearings.

WITNESS, the Honorable Chairperson and CEO MONALISA C. DIMALANTA and the Honorable Commissioners ALEXIS M. LUMBATAN, CATHERINE P. MACEDA, FLORESINDA G. BALDO-DIGAL, and MARKO ROMEO L. FUENTES, Energy Regulatory Commission, this 16th day of April 2025 in Pasig City.

> FOR AND BY AUTHORITY OF THE COMMISSION:

ATTY. KRISHA MARIE T. BUELA

Diréctor III, Legal Service

LS: JBY/MVM