

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

**IN THE MATTER OF THE
PETITION FOR DISPUTE
RESOLUTION ON
ERRONEOUS BILLINGS,
WITH MOTION FOR
ISSUANCE OF PROVISIONAL
AUTHORITY**

ERC CASE NO. 2024-004 DR

**SURIGAO DEL NORTE
ELECTRIC COOPERATIVE,
INC. (SURNECO),**
Petitioner,

-versus-

**FDC MISAMIS POWER
CORPORATION (FDC
MISAMIS),**
Respondent.

Promulgated:
December 26, 2024

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NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 13 December 2024, the Surigao Del Norte Electric Cooperative, Inc. (SURNECO) filed a *Petition* dated 17 October 2024, against the FDC Misamis Power Corporation (FDC Misamis), for the alleged erroneous billings, with motion for issuance of provisional authority to hold in abeyance FDC Misamis’ collection of Capital Recovery Fee (CRF) and Minimum Energy Off-take (MEOT) for the months of January, February and March 2022, and the imposition of interests, penalties and surcharges thereto.

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

* The allegation numbers quoted herein are the same with the numberings in the filed *Petition*.

THE PETITIONER

1. SURNECO is a non-stock, non-profit electric cooperative, duly organized and existing under and by virtue of Philippine laws, with principal office address at Espina Street, Surigao City, Surigao del Norte. It holds a franchise from the National Electrification Commission, to operate an electric light and power distribution service in Surigao City as well as certain municipalities in the province of Surigao del Norte, namely: Alegria, Bacuag, Claver, Gigaquit, Mainit, Malimono, Placer, San Francisco, Sison, Taganaan and Tubod.

THE RESPONDENT

2. FDC Misamis Power Corporation (FDC Misamis) is a power generation company duly organized and existing under Philippine laws, with principal office at 23rd Floor, PBCOM Tower, 6975 Ayala Avenue cor. V.A. Rufino St., Makati City, where it may be served with summons and processes of the Honorable Commission.

LEGAL AND CONTRACTUAL BASES FOR THE PETITION

3. The instant petition is anchored on the jurisdiction of the Honorable Commission as prescribed under Section 43 (u) of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 or the “EPIRA”, to wit:

“Section 43. Functions of the ERC.

xxx xxx xxx

(u) The ERC shall have original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties imposed by the ERC in the exercise of the above-mentioned powers, functions and responsibilities and over all cases involving disputes between and among participants in the energy sector.”

4. Further, under the Electric Power Purchase Agreement (EPPA) between SURNECO and FDC Misamis dated 02 May 2013, it is provided that:

“12.1 **Settlement of Disputes.** The Parties shall exert reasonable efforts **to amicable and in good faith settle all disputes arising in connection with this Agreement**, as a condition precedent to dispute resolution. If the Parties are unable to resolve their difference within thirty (30) days after the commencement of such settlement discussions, then either Party **may commence dispute resolution proceedings in addition to other remedies in law or contract**, including arbitration proceedings in accordance with the Philippine Arbitration Law (RA 876). In case the dispute is validly lodged before a competent court, venue of the action shall exclusively be any appropriate courts in Metro Manila. Notwithstanding the foregoing, the Parties if they so desire and mutually agree for expediency, convenience and other plausible or beneficial reasons, may opt to take other mode of settling disputes like executive resolution, where the top executives of both Parties would meet and settle the issues, mediation or conciliation under

such rules and procedures that they may agree upon.” (Emphasis supplied)

THE ANTECEDENT FACTS

5. On 02 May 2013, SURNECO and FDC Misamis entered into an Electric Power Purchase Agreement (EPPA) for FDC Misamis’ supply of 8MW power to SURNECO for a term of 15 years. A copy of the EPPA dated 02 May 2013 is attached hereto and made an integral part hereof as **Annex “A”**;
6. Subsequently, on 27 February 2014, SURNECO and FDC Misamis executed an Amendment Agreement, revising the contracted demand under the EPPA from 8MW to 13MW. A copy of the Amendment Agreement dated 27 February 2014 is attached hereto and made an integral part hereof as **Annex A-1**”;
7. On 24 April 2015, SURNECO and FDC Misamis filed with the Honorable Commission a Joint Application for the approval of their EPPA, docketed as ERC Case No. 2015-074 RC;
8. After due notice and hearing, the Honorable Commission rendered a decision on the joint application, approving the EPPA with modification. The dispositive portion of the Decision states as follows, to wit:

“WHEREFORE, the Joint Application of Surigao del Norte Electric Cooperative Inc. (SURNECO), and FDC Misamis Power Corporation (FDC Misamis), is hereby APPROVED WITH MODIFICATION subject to the following conditions:

1. Applicable Rates:

Particulars	Rates
Capital Recovery Fee	PhP1,924.48/kW/Month
Fixed O&M Fee	PhP366.16/kW/month
Variable O&M Fee	PhPo.1907/kWh
Fuel Cost	Pass-through

The foregoing applicable generation rate shall be subject to adjustments based on the formula provided in the EPPA.

2. The adjustment formula based on the movement of the Foreign Currency Denomination exchange (ForEx) rate under the CRF is denied;
3. The pass-through fuel cost shall be subject to efficiency cap of 0.70 kg/kWh escalated at 1.5% annual degradation factor or the actual fuel consumed, whichever is lower;
4. The applicable generation rate during pre-commercial operation shall be based on variable cost, as follows:

Particulars	Rate
Variable O&M Fee	PhP 0.1907/kWh
Fuel Fee	Pass-through subject to efficiency cap

Relative thereto, FDC Misamis be directed to submit its actual cost incurred during the Commissioning Period, audited and verified by an independent party.

5. In the event that the consumption is higher than the contracted energy, FDC Misamis shall charge SURNECO the applicable generation rates only;

6. SURNECO is directed to include in the monthly calculation of its generation rate in accordance with the Automatic Generation Rate Adjustment (AGRA) Rules, the indices used by FDC Misamis in the calculation of monthly payment and the details of the fuel cost calculation including the relevant heat rates and actual consumption;

7. FDC Misamis is directed to submit its Audited Financial Statements (AFS) for the first year of commercial operation and the final Independent Engineer’s Report, as soon as they become available. Upon submission of the actual costs incurred by FDC Misamis on the construction and operation of the plant, the approved rates herein shall be adjusted, if warranted. The test of reasonability shall not be the actual cost incurred but whether or not such cost is incurred based on good utility practice and comparable or within the level of power plants similarly situated that of FDC Misamis. Further, the cost of audit shall be shouldered by FDC Misamis; and

8. The approval of the EPPA is without prejudice (sic) the evaluation of FDC Misamis’ application for Certificate of Compliance (COC).”

A copy of the Decision dated 05 October 2016 is attached hereto and made an integral part hereof as **Annex “B”**;

9. SURNECO commenced drawing power from FDC Misamis on 29 July 2016. The EPPA is still in effect up to present.

10. On 16 December 2021, Super Typhoon Odette struck the Province of Surigao del Norte, among other parts of the country, bringing sustained winds of 185 kph and gusts up to 230 kph. PAGASA raised Storm Signal No. 4 over the area. A copy of Tropical Cyclone Bulletin No. 10 issued by DOST_PAGASA on its official Facebook Page on 16 December 2021 is attached hereto and made an integral part hereof as **Annex “C”**;

11. The devastation caused by the super typhoon severely damaged SURNECO’s distribution lines, facilities, and equipment, leading to a widespread power outage across its entire franchise area. Approximately 54.62% of SURNECO’s distribution system was damaged, rendering the cooperative physically unable to receive energy from the grid and its power suppliers during the period of 16 to 19 December 2021;

12. No generation company could deliver their respective contracted capacities to SURNECO due to the destruction of transmission as well as subtransmission and distribution systems. In the aftermath of the typhoon, the following timeline shows the gradual restoration of power in SURNECO's franchise area:

Dates	Power Restoration and Amount of Supply
20 December 2021	A nominal amount of 13kW power was drawn from 10 MVA Sta Cruz Substation

23 December 2021	10 MVA Tubod Substation was energized and consumed a demand of only 211kW
25 December 2021	Tubod Substation consumed a demand of mere 918 kW while 10MVA Sta. Cruz Substation consumed a demand of 82kW
26 December 2021	20 MVA Looc Substation was energized and consumed a demand of 22kW and a maximum demand of 3,326 kW
28 December 2021	The National Grid Corp. of the Phils. (NGCP) completed repairs of 121 toppled poles/towers and energized its substation in Anislagan, Placer, Surigao del Norte
29 December 2021	5 MVA Ladgaron Substation was energized with a demand of only 285kW

13. With the occurrence of the foregoing force majeure event and pursuant to ERC Resolution No. 26, Series of 2009, SURNECO filed with the Honorable Commission a Force Majeure Event (FME) Capital Expenditure (CAPEX) Application docketed as ERC Case No. 2022-073 RC, entitled “*In the Matter of Application for Approval/Confirmation of Force Majeure Event Capital Expenditure Projects, Re: Repair, Restoration and Rehabilitation of Distribution Facilities and Infrastructures and Replacement of Materials and Equipment damaged by Super Typhoon Odette with Application for Authority to Secure Loan from the National Electrification Administration (NEA) and/or Private Financial Institution*”. A copy of the Application as well as Annex A thereof which is an Executive Summary providing details of the Force Majeure Event, the damages sustained as well as the repairs, restoration and rehabilitation undertaken by SURNECO, is attached hereto and made integral parts hereof as **Annexes “D” and “D-1”**, respectively;

14. Despite the extremely difficult situation in the entire province of Surigao del Norte, SURNECO immediately undertook repairs and restoration activities in an effort to re-energize its franchise area. A recently updated copy of the Gantt Chart detailing the schedule of repairs undertaken, , is attached herein and made an integral part hereof as **Annex “E”**;

15. The above-mentioned Executive Summary and Gantt Chart show that the extensive repair, restoration and rehabilitation activities necessitated a significant amount of time to restore SURNECO’s distribution system to full operation;

16. Aside from the restoration time required, SURNECO suffered a shortage of materials. In fact, on 23 December 2021, SURNECO sent a letter dated 22 December 2021 via email to Ms. Cez Danielle L. Ostrea, Customer Relations Officer of FDC Misamis, soliciting 40-feet steel/wood poles to facilitate restoration of the system. A copy of the email with letter attachment dated 22 December 2021, is attached herein and made an integral part hereof as **Annex “F”**;

17. In view of the occurrence of the foregoing force majeure event and pursuant to the provisions of the EPPA between SURNECO and FDC Misamis, on 24 December 2021, SURNECO sent a Notice of Force Majeure to FDC Misamis through its Senior Manager-Market Operations, Mr. Leonides Martin Raymund B. Memphin. A copy of the Notice of Force Majeure dated 24 December 2021 is attached hereto and made an integral part hereof as **Annex “G”**;

18. Considering the effect of the force majeure event on the operation of SURNECO, on 28 December 2021, SURNECO sent a letter to FDC Misamis via email to cez.lagbas@fdcutilities.com and tbsd@fdcutilities.com, requesting for adjustments on its power bill, more particularly, that it be billed Capital Recovery Fee (CRF) and Fixed Cost Adjustment only for the actual nominated demand, and be excused from Minimum Energy Charge (MEOT). A copy of the letter dated 28 December 2021 is attached hereto and made an integral part hereof as **Annex “H”**;

19. On 18 February 2022, SURNECO sent another letter to FDC Misamis via email, reiterating its request in the letter dated 24 December 2021. In the second letter, SURNECO requested to be billed only for demand actually nominated, noting that no nomination had been made due to severely low demand due to ongoing restoration of damaged distribution lines and facilities. A copy of the letter dated 18 February 2022 is attached hereto and made an integral part hereof as **Annex “I”**;

22. However, despite being physically unable to take full delivery of energy into SURNECO’s system, FDC Misamis still issued power bills, which imposed CRF, Fixed Cost Adjustment and MEOT as well as credit memos providing Prompt Payment Discounts (PPD) covering the dates when SURNECO could not accept delivery. Copies of FDC Misamis power bills and credit memos for billing periods prior to the FME as well as during the months affected by the FME, for comparison of the billed charges, are attached hereto and made integral parts hereof as **Annexes “J” to “J-7”**, respectively.

23. In a letter dated 11 March 2022, SURNECO acknowledged FDC Misamis for not billing MEOT charge for the billing month of January 2022 in view of the FME. In the same letter, SURNECO requested that it be billed only for energy actually nominated and consumed, and Fixed Operation and Maintenance (FOM) for the 13MW contracted demand, but requested that in order to mitigate the rate impact to member-consumers, the CRF for the months of January to March 2022 be amortized without interest over a period of one (1) year, from July 2022 to June 2023. A copy of the Letter dated 11 March 2022 is attached hereto and made an integral part hereof as **Annex “K”**;

24. However, FDC Misamis sent a Statement of Account as of 22 July 2022 for the Restructured/Uncharged CRF in the amount of PhP7,518,721.48. A copy of the Statement of Account is attached hereto and made an integral part hereof as **Annex “L”**;

25. For the foregoing 22 July 2022 billing, on 05 August 2022, SURNECO wrote FDC Misamis explaining that it cannot pay the deferred CRF due to current financial condition and the CRF was never passed on to member-consumers due to high blended generation mix which resulted to an effective rate of almost PhP19.00 per kWh, and further, its forecasted generation rate for July 2022 was not realized because of the unpredicted increasing fuel cost per kWh that its power providers were charging. A copy of SURNECO's letter to FDC Misamis dated 05 August 2022 is attached herein and made an integral part hereof as **Annex M**;

26. On 04 October 2022, FDC Misamis sent a response to SURNECO's letter dated 11 March 2022, and with subject: Letter of Agreement: Recovery of Uncharged Capital Recovery Fees and Minimum Energy Off-take Charges due to FME Typhoon Odette. In the Letter of Agreement, FDC Misamis proposed an outline of the requirements and procedures for implementing the agreed-upon recovery of CRF and MEOT costs, restructuring of the unpaid power bills from December 2021 to March 2022 including interest charges for late payment, and a recovery plan to pay the restructured amount in six monthly amortizations from January to June 2023. A copy of the Letter of Agreement proposed by FCD Misamis is herein attached and made an integral part hereof as **Annex N**;

27. The parties however, failed to agree on the terms and conditions proposed by FDC Misamis in its Letter of Agreement. In view thereof, on 07 February 2024, SURNECO sent a Notice of Dispute to FDC Misamis pertaining to its power billings covering the months affected by FME - Super Typhoon Odette, pursuant to the provisions of Article 12 of the EPPA. In the Notice, SURNECO submitted its authorized representatives and requested FDC Misamis to submit its counterpart and for them to set the date, time and place to discuss the unresolved issues and possibly come up with an amicable settlement thereof. A copy of the Notice of Dispute is attached hereto and made an integral part hereof as **Annex "O"**.

29. On 12 March 2024, FDC Misamis replied to SURNECO, acknowledging receipt of its Letters dated 07 and 06 March 2024 and, summarizing the issues laid down by SURNECO, requested for a meeting to discuss the same. A copy of FDC Misamis letter-reply dated 12 March 2024 is attached to and made an integral part hereof as **Annex "P"**.

30. On 21 March 2024, the parties' representatives held a meeting to discuss the matters in issue, and on 03 April 2024, SURNECO wrote FDC Misamis, formally presenting its requests as discussed in the said meeting. A copy of SURNECO's letter dated 03 April 2024 is attached hereto and made an integral part hereof as **Annex "Q"**.

31. After a month, or on 02 May 2024, SURNECO wrote a follow up letter to FDC Misamis, reiterating the matters presented in its letter dated 03 April 2024. However, FDC Misamis never replied thereto. A copy of the SURNECO's letter date 02 May 2024 is attached hereto and made an integral part hereof as **Annex "R"**.

32. Despite the meeting held by the parties and the subsequent letters of SURNECO to FDC Misamis, the parties failed to come up with an amicable settlement of the billing dispute. Hence, this petition for dispute resolution.

33. In support of the instant petition, SURNECO narrates below its factual and legal arguments on the matter.

33.a. The occurrence of Super Typhoon Odette on 16 December 2021 which ravaged SURNECO's franchise area is a Force Majeure Event (FME) in contemplation of the Force Majeure provisions of the parties' EPPA dated 02 May 2013, pertinent portions thereof are cited hereunder, as follows, to wit:

"ARTICLE 11
FORCE MAJEURE

11. Effects of *Force Majeure Event*. Except as otherwise stated in this Agreement, **a Party shall be excused from the performance of its obligations** and shall not be construed to be in default in respect of its obligations for so long as the failure to perform such obligations is due to a *Force Majeure Event*.

xxx

11.7 Extended *Force Majeure*. A *Force Majeure Event*, which prevents a Party from supplying or taking electric power shall entitle the Supplier to any or all of the following remedies:

11.7.1 extension of the term of the Agreement corresponding to the length of the *Force Majeure Event*;

11.7.2 the modification or amendment of this Agreement to the extent necessary to resolve the issues arising from the *Force Majeure Event*, and maintain, to the extent feasible, the rights and obligations of the Parties under this Agreement; and/or

11.7.3. the termination of this Agreement, in cases where the Force Majeure Event extends to at least six (6) months." (Emphasis and underscoring supplied)

33.b. The effects of Super Typhoon Odette on the operation of SURNECO, more particularly its disability to take supply of the contracted energy from FDC Misamis as well as its other power suppliers, much less distribute the same to its member-consumers due to destroyed transmission, subtransmission, and distribution lines and facilities began on 16 December 2021.

33.c. Under the foregoing circumstances, and based on Article 11 of the parties' EPPA, SURNECO is excused from paying Capital Recovery Fee (CRF), Fixed Cost

Adjustment and Minimum Energy Off-Take (MEOT) costs corresponding to the days when the effects of Super Typhoon Odette was persisting which rendered SURNECO incapable to receive delivery of energy from FDC Misamis, or enabled SURNECO to nominate only a minimal supply from the latter.

33.d. SURNECO acknowledges other provisions of Article 11 of its EPPA with FDC Misamis, to wit:

“11.6 Adjustments Due to Force Majeure. The Supplier shall have seventy-two (72) hours to restore interrupted supply counted from the time a Force Majeure Event prevented it from supplying electric power to the Customer. The Customer shall not be entitled to interruption adjustment during such period.

On the other hand, the Customer shall have seventy-two (72) hours to resume taking electric power counted from the time a Force Majeure Event prevented it from fully taking its Contracted Energy. If its consumption falls below the Contracted Energy due to a Force Majeure Event, the Customer shall be entitled to interruption adjustment but only on the actual number of hours (up to a maximum of 72 hours) that it was unable to receive electric power.

The number of hours that Customer can claim for interruption adjustments is limited to a maximum of 72 hours per Force Majeure Event. The total cumulative interruption adjustment due to a Force Majeure Event shall not in any case exceed 72 hours Billing Period.”

33.e. Unfortunately, the massive destruction in the franchise area of SURNECO caused by the ravages of Super Typhoon Odette extended beyond the initial period of 72 hours provided in the EPPA, such that, SURNECO continued in its inability to receive energy from its power suppliers, including FDC Misamis. In this regard, Article 11.7 of the EPPA supplies remedies in case of an extended force majeure, to wit:

“11.7 Extended *Force Majeure*. A *Force Majeure Event*, which prevents a Party from supplying or taking electric power, shall entitle the Supplier to any or all of the following remedies:

11.7.1 extension of the term of the Agreement corresponding to the length of the *Force Majeure Event*;

11.7.2 **the modification or amendment of this Agreement to the extent necessary to resolve the issues arising from the *Force Majeure Event***, and maintain, to the extent feasible, the rights and obligations of the Parties under this Agreement; and/or

11.7.3 the termination of this Agreement, in cases where the Force Majeure Event extends to at least six (6) months.” (Emphasis and underscoring supplied)

33.f. Considering the continued inability of SURNECO to receive energy from its power suppliers, including FDC Misamis due to the ongoing restoration of transmission, subtransmission, and distribution lines and facilities, SURNECO submits that the MEOT obligation remains suspended throughout the duration of the FME and the extensions thereof.

34. The pertinent provision of Article 11 Force Majeure of the EPPA, provide as follows:

“11.6 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 taking its Contracted Energy. If its consumption falls below the Contracted Energy due to Force Majeure Event, the Customer shall be entitled to interruption adjustment but only on the actual number of hours (up to a maximum of 72 hours) that it was unable to receive electric power.

The number of hours that Customer can claim for interruption adjustments is limited to a maximum of 72 hours per Force Majeure Event. The Total cumulative interruption adjustment due to a Force Majeure Event shall not in any case exceed 72 hours Billing Period.”

35. The foregoing provision notwithstanding, item 11.7 of Article 11 of the EPPA provides for a situation where the effects of Force Majeure is extended, as follows, to wit:

“11.7 Extended Force Majeure. A Force Majeure Event, which prevents a Party from supplying or taking electric power, shall entitle the Supplier to any or all of the following remedies:

11.7.1 extension of the term of the Agreement corresponding to the length of the *Force Majeure Event*;

11.7.2 **the modification or amendment of this Agreement to the extent necessary to resolve the issues arising from the Force Majeure Event**, and maintain, to the extent feasible, the rights and obligations of the Parties under this Agreement; and/or

11.7.3 the termination of this Agreement, in cases where the Force Majeure Event extends to at least six (6) months.” (Emphasis and underscoring supplied)

36. In the case of *Awayan vs. Sulu Development Resources Corporation*¹, the Supreme Court ruled that:

“Under Article 1174 of the New Civil Code, *force majeure* refers to those extraordinary events that "could not be foreseen, or which, though foreseen, were inevitable.”

¹ G.R. No. 200474, November 09, 2020.

To successfully invoke *force majeure*, the following requisites must concur:

(a) the cause of the unforeseen and unexpected occurrence, or the failure of the debtors to comply with their obligations, must have been independent of human will; (b) the event that constituted the [*force majeure*] must have been impossible to foresee or, if foreseeable, impossible to avoid; (c) the occurrence must have been such as to render it impossible for the debtors to fulfill their obligation in a normal manner; and (d) the obligor must have been free from any participation in the aggravation of the resulting injury to the creditor.¹³⁰ (Citation omitted)”

37. The facts narrated above plainly show that it was physically impossible for SURNECO to draw power from the grid in accordance with its contracted capacity. Given this circumstance, SURNECO is not obligated to pay the contracted capacity nor the MEOT during the time when the FME rendered the delivery of energy impossible.

38. In compliance with the terms and conditions of the EPPA as well as SURNECO’s duty to secure the least cost of power in favor of its consumers, the latter actively communicated with FDC Misamis requesting waiver of the charges as well as possible extension of the term of the EPPA. The following were communications between the parties pertinent to the foregoing, attached hereto and made integral parts hereof as follows, to wit:

Annex Markings	Communications between SURNECO and FDC Misamis
K	SURNECO’s Letter to FDC Misamis Re Proposal for January to March Power Billings Under Force Majeure Event dated 11 March 2022
L	SURNECO’s Letter to FDC Misamis Re Restructured and Uncharged CRF dated 05 August 2022
M	SURNECO’s letter to FDC Misamis dated 05 August 2022
N	Letter of Agreement proposed by FCD Misamis dated 04 October 2024
O	Notice of Dispute dated 07 February 2024
P	FDC Misamis Reply Letter to SURNECO dated 12 March 2024
Q	SURNECO Appeal Petition Request to FDC Misamis dated 03 April 2024
R	SURNECO Follow up Letter to FDC Misamis dated 02 May 2024
S	SURNECO Letter to FDC Misamis dated 21 February 2024 (with proof of mailing) together with the following attached communications: 1. SURNECO Letter dated 24 December 2021; 2. SURNECO Letter dated 28 December 2021; 3. SURNECO Letter dated 11 March 2022; 4. Board Resolution No. 115 Series of 2022; 5. Letter Reply from FDC Misamis dated 6. 04 October 2022; 7. Board Resolution No. 40, Series of 2023;

	8. SURNECO Letter dated 26 June 2023; 9. SURNECO Letter dated 30 August 2023; 10. Minutes of the Meeting- 11 October 2023; 11.SURNECO Letter dated 07 February 2024.
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39. SURNECO likewise updated the National Electrification Administration (NEA) regarding the unresolved dispute between the parties which was treated by NEA as an unpaid obligation of SURNECO. A copy of SURNECO’s Letter to NEA is attached hereto and made an integral part hereof as **Annex “T”**.

**ALLEGATIONS IN SUPPORT OF THE MOTION FOR
PROVISIONAL AUTHORITY**

40. SURNECO repleads the foregoing allegations insofar as may be applicable or relevant to the instant motion.

41. Article 7, Billing and Settlement, of the EPPA between SURNECO and FDC Misamis provides for the protocol which must be observed in case of a billing dispute, to wit:

“7.2 Billing Dispute. The following protocol shall be observed by the Parties with respect to any billing disputes:

7.2.1 Any question on a Power Bill shall be made in writing by Customer and served to the Supplier on or before the fifteenth (15th) day of the Payment Month. Parties shall endeavor to resolve the dispute within ten (10) days from the date when the Supplier receives the Customer’s letter disputing the Power Bill. Failure to question bills on time shall constitute a waiver by Customer of any claim on such bills.

7.2.2 Disputed bills shall be paid by Customer on the Payment Due Date without deductions or offsets without prejudice to the evaluation by Supplier of the claim and the adjustment of the disputed bill, if warranted. A disputed billing shall not be an excuse or ground for Customer to delay or deferment of any billing or to unilaterally deduct any amount therefrom.”

42. As narrated above, FDC Misamis was already billing SURNECO Minimum Energy Off-take (MEOT) in the amount of PhP4,040,309.16 as of 02 May 2024, Capital Recovery Fee (CRF) amounting to PhP 28,020,428.80 for the month of February 2022, and interest, penalties and surcharges amounting to PhP 55,631,135.30 as of 31 March 2024 for its outstanding balance covering the billing months of January, February and March 2022.

43. Despite the fact that the foregoing amounts were being billed against SURNECO, the latter cannot, in good conscience pass on the same to its member-consumers.

44. SURNECO respectfully manifests that the pendency of the foregoing charges adversely impacts its financial status as well as its good standing insofar as the performance standards of set by NEA for electric cooperatives.

45. The continued imposition of the foregoing charges should therefore be held in abeyance, and the interests being imposed should not start to fall due.

SUBMISSION OF PRE-FILING REQUIREMENTS

46. Finally, in compliance with the pre-filing requirements for the instant petition under the Revised ERC Rules of Practice and Procedure, SURNECO is submitting herewith the following documents which are being made integral parts hereof as follows, to wit:

Annex Markings	Description of Documents
U series	Proofs of furnishing of copies of the Petition to the Offices of the Governor and Sangguniang Panlalawigan of Surigao del Norte, and Offices of the Mayor and Sangguniang Panlungsod of Surigao City
V series	Proofs of publication of the Application in a newspaper of general circulation covering SURNECO's franchise area or where it principally operates

PRAYER

WHEREFORE, premises considered, petitioner most respectfully prays of this Honorable Commission that:

1. upon initial evaluation and during the pendency of the instant petition, respondent FDC Misamis's collection of Capital Recovery Fee (CRF) and Minimum Energy Off-take (MEOT) corresponding to the months of January, February and March 2022 and imposition of interests, penalties, and surcharges thereon against SURNECO, be held in abeyance.
2. After due notice and hearing, FDC Misamis be forever barred from collecting the CRF and MEOT corresponding to the months of January, February and March 2022.

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

The Commission sets the instant *Petition* 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 2020² and Resolution No. 01, Series of 2021 (ERC Revised Rules of Practice and Procedure):³

Date	Platform	Activity
20 February 2025 (Thursday) at nine o'clock in the morning (9:00 AM)	Microsoft Teams Application	Determination of compliance with the jurisdictional requirements and expository presentation
06 March 2025 (Thursday) at nine o'clock in the morning (9:00 AM)		Pre-Trial Conference and presentation of evidence

Any interested stakeholder may submit its comments and/or clarifications **at least one (1) calendar day** prior to the scheduled 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, any person who has 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;
- 2) 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.

² A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.
³ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.


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 acknowledgement receipt e-mail sent by the Commission.

Any of the persons mentioned in the preceding paragraphs may access the copy of the *Petition* through the Commission's official website at www.erc.gov.ph.

Finally, all interested persons may be allowed to join the scheduled 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 *Petition*. 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 **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 26th day of December 2024 in Pasig City.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ATTY. KRISHA MARIE T. BUELA
Director III, Legal Service


LS: MND/ARG