

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

**IN THE MATTER OF THE
APPLICATION FOR
APPROVAL OF THE 2ND
AMENDMENT TO THE
ELECTRICITY SUPPLY
AGREEMENT (ESA)
BETWEEN FIRST
CATANDUANES ELECTRIC
COOPERATIVE, INC.
(FICELCO) AND SUNWEST
WATER AND ELECTRIC
COMPANY INC. (SUWECO),
WITH PRAYER FOR
PROVISIONAL AUTHORITY**

ERC CASE NO. 2023-123 RC

**FIRST CATANDUANES
ELECTRIC COOPERATIVE,
INC. (FICELCO) AND
SUNWEST WATER AND
ELECTRIC COMPANY, INC.
(SUWECO),**

Applicants.

Promulgated:
November 17, 2023

X-----X

ORDER

On 09 November 2023, First Catanduanes Electric Cooperative, Inc. (FICELCO) and Sunwest Water and Electric Company, Inc. (SUWECO) filed a *Joint Application* dated 25 November 2022, seeking the Commission's approval of the Second Amendment to their Electricity Supply Agreement (ESA), with prayer for provisional authority.

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

THE APPLICANTS

1. Applicant FICELCO is a non-stock, non-profit electric cooperative organized and existing under the laws of the

Republic of the Philippines, with office address at Brgy. Marinawa, Bato, Catanduanes.

2. Applicant FICELCO is a holder of an exclusive franchise to operate an electric light and power service in the Municipalities of Bagamanok, Baras, Bato, Caramoran, Gigmoto, Pandan, Panganiban, San Andres, San Miguel, Viga, and Virac, all in the Province of Catanduanes.

Copies of FICELCO's Articles of Incorporation (AOI), By-Laws, Verified Certification showing the list of Board of Directors and Certification on FICELCO's franchise are hereto attached as *Annexes "A and series"*.

3. SUWECO is a corporation duly authorized and existing under the laws of the Republic of the Philippines, with principal office address at 3rd Floor, Building 9, Embarcadero de Legazpi, Port Area, Victory Village, Legazpi City.

Copies of SUWECO's Certificate of Incorporation, AOI, Certificate of Filing of Amended AOI with the attached Amended AOI, By-laws, latest General Information Sheet, Audited Financial Statements, Verified Certification showing the list of Board of Directors and its Organizational Structure are hereto attached as *Annexes "B" and series*.

4. The Joint Applicants may be served with orders and other processes of this Honorable Commission through the undersigned counsel.

NATURE OF THE APPLICATION

5. The aforementioned parties are jointly filing the instant Application for the approval of the 2nd AMENDMENT TO THE ESA dated 24 November 2014 by and between FICELCO and SUWECO (the "*2nd Amendment to the ESA*") pursuant to Rule 20(B), in relation to Rule 14 of the Revised Rules of Practice and Procedure of the ERC ("*Revised ERC Rules*").¹
6. The 2nd Amendment between FICELCO and SUWECO provides for diesel-fueled power generators with the capacity of 6.6 MW with 70% generated capacity. It is understood that the power generators in the 2nd Amendment are considered as back-up to Capipian Mini Hydro Power Plant and Hitoma 2 Mini Hydro Power Plant; and are distinct and separate generators from the units pursuant to the 1st Amendment of the ESA. Such is necessary for purposes of ensuring the steady supply of electricity brought about by the increasing demand for electricity in the Province of Catanduanes. At this juncture, it is worth noting that FICELCO and SUWECO are capable of providing power supply to Catanduanes. However, in order to urgently ensure a more stable and sufficient power operation

¹ Revised Rules of Practice and Procedure of the Energy Regulatory Commission, Resolution No. 01, Series of 2021.

in Catanduanes, the Parties are hereby applying for the immediate approval of the 2nd Amendment to the ESA.

7. The 2nd Amendment is intended to be implemented throughout the remaining period of 17 years counted from the Honorable Commission's approval of the ESA between SUWECO and FICELCO through its Decision dated 19 January 2009 which granted 30 years of commercial operations of the Mini Hydropower Plants.

Copies of the 2nd Amendment to the ESA, the Electricity Supply Agreement, the 1st Amendment to the ESA and the Comparison of the ESA and its Amendments are attached hereto as *Annexes "C" and series*.

STATEMENT OF FACTS

8. Necessity for Power Supply. At present, FICELCO sources its power requirements from SUWECO by virtue of the implementation of the Electricity Supply Agreement ("ESA") dated 7 August 2007 entered into between the said parties. Years later, in order to comply with the increasing demands of the consumers, the need to modify and thereafter implement the 1st Amendment to the ESA, dated 25 August 2014, arose.
9. Upon implementation of the aforementioned Agreement, the residents, as well as commercial and industrial establishments of Catanduanes, are provided with stable and reliable power sources used for day-to-day living and operations, respectively. As a result, further increase of such resources is only but expected and imminent, thus, the approval of the 2nd Amendment to the ESA is being applied for before this Honorable Commission.
10. In light thereof, FICELCO, SUWECO and the National Power Corporation ("NPC") entered into a Phase-In, Phase-Out ("PIPO") Agreement which sought the transition from utilizing NPC's generating function in areas of Catanduanes to fully adapting SUWECO's generating power plants as the main power supply in the said province. Effective 31 December 2021, the NPC decommissioned its diesel power generating facilities in Catanduanes and by virtue of which, SUWECO is reposed to continuously supply and augment such electricity resources.
11. Procurement Process for Supply. Thus, FICELCO executed efforts to procure the appropriate power supply to answer the increase in demand. It is imperative that such action is taken given that the current power supply is insufficient to meet the greatly increasing demand, in light of NPC's ceased generation function in the area.
12. Hence, in compliance with this Honorable Commission's rules, FICELCO conducted a Competitive Selection Process

("CSP") through Swiss Challenge in the procurement of its supply. As ruled by this Honorable Commission in its Order 30 May 2017,² FICELCO has complied with the competitive selection process requirement for the supply subject of the present Joint Application.

Copies of FICELCO's Invitation to Participate and Submit Proposal, Terms of Reference (TOR), Proposal received by the DU, Special Bids and Awards Committee (SBAC) Letter Recommendation, Board Resolution approving the recommendation of SBAC, Notice of Award, Certification from the General Manager for the conduct of CSP and Matrix and type of CSP are attached hereto as *Annexes "D and series"*.

13. Pursuant to item 16 of the pre-filing requirements which requires Certification by the NPC whether Transition Supply Contract ("TSC") capacity and energy are expected to be available during the contractual period, FICELCO sent a letter request dated 23 June 2017 to NPC.
14. However, in response, the NPC states in its letter dated 14 December 2021 that *"NPC does not issue TSC in the SPUG areas since the NPC Offer of Transition Supply Contract under Section 67 of RA 9136 and Rule 30 of its Implementing Rules and Regulations are intended only for the main grid of Luzon, Visayas and Mindanao."*

Copies of FICELCO's request and NPC's reply are attached hereto as *Annexes "E" and "E-1."*

15. Urgency of Supply. In view of the prevailing situation, considering that the Catandunganons' demand for power resources incessantly increased over time, and there arose growing concerns about power outages during calamities and crisis within the area, the intended supply, in effect, has decreased or become insufficient. This, in part, is in light of the subsequent effects brought about by the non-issuance of TSC. Thus, it only has become more imperative for FICELCO and SUWECO to bring into the fold the supply under the 2nd Amendment to the ESA which is necessary to address the demand of FICELCO's customers.
16. Demand Projections. Moreover, the supply under the 2nd Amendment to the ESA will help address the expected steady increase in the power demand in FICELCO's franchise area. The expected increase is indicated in FICELCO's Power

² The Order was issued in ERC Case No. 2015-065 RC entitled, *"In the Matter of the Application for Approval of the 1st Amendment to the Electricity Supply Agreement (ESA) Between First Catanduanes Electric Cooperative, Inc. and Sunwest Water and Electric Company, with Prayer for Provisional Authority, First Catanduanes Electric Cooperative, Inc. (FICELCO) and Sunwest Water and Electric Company (SUWECO), Applicants"* which involves the 1st amendment to the ESA between SUWECO and FICELCO. The competitive selection processes covered both the 1st and 2nd amendments to the said ESA.

Supply Procurement Plan (“PSPP”) and supply-demand projections.

Copies of FICELCO’s PSPP, Supply and Demand Scenario, Single- Line Diagram Connection, and Performance Assessment of the System are attached to the Application as *Annexes “F and series,”* respectively.

17. Demand Side Management. An affidavit of undertaking from FICELCO as regards demand side management is attached hereto as *Annex “G”*.
18. Under the law, no contract for the supply of power can become legally effective unless approved by this Honorable Commission. Hence, this Joint Application.

**ABSTRACT OF THE 2nd AMENDMENT
AND RELATED INFORMATION**

19. The Generation Facilities. SUWECO is supplying power under the 2nd Amendment to the ESA using diesel-fired power generating plants in Marinawa, Bato, Catanduanes (the “Marinawa Power Station”) and in Viga, Catanduanes (the “Viga Power Station”) with a capacity of 6.6 MW and 70% rated capacity, with a back- up unit/ reserve contingency plan equivalent to 1.1 MW (collectively, the “Power Stations”).
 - 19.1. The Marinawa Power Station consisting of five (5) units of diesel generator sets which includes one (1) unit of N-1.
 - 19.2. The Viga Power Station consisting of two (2) units of diesel generator sets.

The technical and economic characteristics of the Generation Capacity, Other Technical Details, Simulation of the Operating Units and Certification from the Engine Manufacturer are attached hereto as *Annex “H and series”*.

20. The Specific Fuel Oil Consumption (“SFOC”) rate of the Power Stations shall not be greater than 0.280 liter/kWh.

A copy of a certification on the SFOC rate is attached hereto as *Annex “I”*.

21. Salient Features of the PSA.
 - 21.1. Supply of Power Requirements. Under the 2nd Amendment to the ESA, SUWECO shall install and commission diesel-fueled power generators with a capacity of 6.6 MW with 70% rated capacity, as indicated in and subject to the terms and conditions of the 2nd Amendment to the ESA.

- 21.2. Term. The Power Stations shall be in operation throughout the term as provided for under the ESA in order to ensure a continuous and reliable power supply in the Province of Catanduanes.
22. Purchased Power Rate. The computation of the fees under the 2nd Amendment to the ESA shall be the same as the fees under the 1st Amendment to the ESA executed by the Joint Applicants on 25 June 2014, and subject of ERC Case No. 2015-065 RC.
23. FICELCO shall pay the monthly payments based on the following formulas:

Computation of the Total Fee for the Diesel Plant

1. Total Electricity Fees. The Total Electricity Fees for the supply of power by SUWECO shall be the sum of the Capacity Fee, the Local O&M Fee, the Foreign O&M Fee, Lube Oil Charge and the Fuel Charge.

$$(TEF=CF + \text{Local O\&M Fee} + \text{Foreign O\&M Fee} + \text{Lube Oil Charge} + \text{Fuel Charge})$$

The parties agree that in cases where the TRUE COST GENERATION RATE (TCGR) of SUWECO is higher than the SUBSIDIZED APPROVED GENERATION RATE (SAGR) determined by the Energy Regulatory Commission, then SUWECO shall be allowed to recover the difference between the TCGR and the SAGR from the UC-ME subsidy.

2. Capacity Fee. The monthly Capacity Fee shall be PhP2.94/kWh of Delivered Energy per month during the entire cooperation period subject to adjustment from time to time upon agreement of the parties and approval of the Energy Regulatory Commission.
3. Local O&M Fee. The monthly Local Operation & Maintenance Fee shall be PhP0.89/kWh of Delivered Energy per month during the entire cooperation period subject to adjustment from time to time upon agreement of the parties and approval of the Energy Regulatory Commission.
4. Foreign O&M Fee. The monthly Foreign Operation and Maintenance Fee shall be computed in accordance with the following formula:

$$FOMF = FOMR \times DE \times \text{CPI current} / \text{CPI base}$$

Where:

FOMF	Foreign Operation and Maintenance Fee
FOMR	Foreign operation and maintenance rate of PhP0.71/kWh
DE	Delivered Energy
CPI current	The latest Philippine Consumer Price Index as published by the NSO applicable during the Billing Period
CPI base	The Philippine Consumer Price Index as published by the NSO for the month at the time of signing of the First Addendum.

5. Lube Oil Charge. The monthly Lube Oil charge shall be computed in accordance with the following formula:

$$\text{LOC} = \text{DE} \times \text{LOC/kWhr}$$
$$\text{LOC/kWhr} = \text{GLOR} \times \text{ALOC}$$

Where:

LOC	Lube Oil Charge
LOC/kWhr	Lube Oil Charge per Kilowatt-Hour
DE	Delivered energy
GLOR	Guaranteed Lube Oil Consumption Rate of 0.001 liter/kWh
ALOC	Actual Lube Oil Cost

6. Fuel Charge. The monthly Fuel Charge shall be computed in accordance with the following formula:

$$\text{FC} = \text{DE} \times \text{FC/kWhr}$$
$$\text{FC/kWhr} = \text{GFCR} \times \text{AFC}$$

Where:

FC	Fuel Charge
FC/kWhr	Fuel Charge per Kilowatt-Hour
DE	Delivered Energy
GFCR	Guaranteed fuel consumption rate of 0.280 liter/kWh
AFC	Average Actual Fuel Cost in Pesos per liter

A copy of the Executive Summary of the PSA is hereto attached as *Annex "J"*.

- 23.1. Sample computation. For reference, a sample computation of the rate is attached hereto as *Annex "K"*.
- 23.2. Basis for indexation. The indexation is based on Annex A of the 2nd Amendment to the ESA.
- 23.3. Basis of Other Charges. Other Charges were based on the actual cost incurred for year 1 and 2, and the forecasted future capital expenditures.

As to the replacement, the Generator Sets estimate useful lives is four (4) years. As such, it is subject to replacement during the duration of the contractual term.

- 23.4. Financial Model. A copy of SUWECO's financial model for the tariff is attached hereto as *Annex "L"*. As discussed below, the financial model is the subject of a Motion for Confidential Treatment of Information.
24. Sources of Funds/Financial Plans
- 24.1. Cost of Capital. The project has a debt-to-equity ratio of 70:30. A breakdown of the Weighted Average Cost of Capital is attached hereto as *Annex "M"*.

- 24.2. SUWECO's cost of debt indicated in the term sheet, latest amortization schedule and updated balances are attached hereto as *Annex "N" and "series"*.
- 24.3. Life of Asset vs. Term of Loan. 4 years vs. 6 years.
- 24.4. Project Cost. A breakdown of the total project cost for the Power Stations is attached hereto as *Annex "O"*.
25. Cash Flow.
- 25.1. Breakdown of Operating and Maintenance Expenses. Breakdowns of the projected local and foreign operating expenses are attached hereto as *Annexes "P" and "P-1,"* respectively.
- 25.2. Offtake Arrangement. Under the 2nd Amendment to the ESA, there is no minimum energy offtake arrangement. However, SUWECO is required to deliver an annual contracted energy, and additional supply as may be required by FICELCO.
26. The 2nd Amendment to the ESA is different from the Original ESA and 1st Amendment to the ESA. The Joint Applicants previously filed ESAs (Original ESA and 1st Amendment to the ESA) are different from the ESA (2nd Amendment to the ESA), which is subject of the present application.
- A summary of the Power Plants costs and Operations and Maintenance Fee, as well its supporting documents are hereto attached as *Annexes "Q" and "Q-1"*. As discussed below, the supporting documents is the subject of a Motion for Confidential Treatment of Information.
27. Fuel supply. The fuel necessary for the operations of the Power Stations shall be procured from Unioil Petroleum Philippines, Inc.
- A copy of the sworn statement on SUWECO's fuel procurement process, including a copy of the fuel supply agreement, is attached hereto as *Annex "R"*.
28. Environmental Compliance Requirements. The Department of Environment and Natural Resources ("DENR") has issued the necessary Environmental Compliance Certificates ("ECCs") covering the Power Stations under the 2nd amendment to the ESA.
- Copies of the ECCs are attached hereto as *Annexes "S" and "S-1"*.
29. DOE Certification. The Department of Energy ("DOE") Certificate of Endorsement ("COE") for both Viga and Marinawa Power Station are already available.

Copies of the certification from the DOE are attached hereto as *Annexes "T" and "T-1."*

30. Certificate of Compliance. The application for the issuance of a Certificate of Compliance by this Honorable Commission for the Marinawa and Viga Power Station has already been filed.

A copy of a proof of filing of the said application and write-up on its status, are attached hereto as *Annex "U and series"*.

31. A Write-up Justifying the Inconsistency between the Joint Application and its Annexes is hereto attached as *Annex "V"*.
32. Rate implications. The 2nd Amendment to the ESA will have no rate impact to FICELCO's member-consumers as they will only be paying the subsidized approved generation rate.

MOTION FOR CONFIDENTIAL TREATMENT OF INFORMATION

33. As mentioned above, the financial model attached as *Annex "L"* and the supporting documents of *Annex "Q and Q-1"* are hereby submitted under a motion to treat information confidential.
34. The financial model discloses the basis for the tariff under the 2nd Amendment to the ESA. It includes all the formulas and calculations as well as the assumptions and values considered therein.

On the other hand, the supporting documents which includes the Official Receipts, Sales Invoices and Contract contains personal and confidential information of the contracting parties that should not be disclosed to the public, except if it is being required by pertinent government agencies for a lawful purpose.

35. In accordance with Section 1, Rule 4 of this Honorable Commission's Rules of Practice and Procedure ("ERC Rules"), Applicant SUWECO respectfully moves that the financial model and the supporting documents be treated as confidential information for the following reasons:
- 35.1. The financial model qualifies as a "trade secret" as contemplated under existing jurisprudence.
- 35.2. In the case of "Air Philippines Corporation vs. Pennswell Inc,"³ the Supreme Court defined "trade secret" as follows:

"A trade secret is defined as a plan or process, tool, mechanism or compound known only to its owner and those of his employees to whom it is necessary to confide it. The definition also extends to

a secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade having commercial value. A trade secret may consist of any formula, pattern, device, or compilation of information that (1) is used in one's business; and (2) gives the employer an opportunity to obtain advantage over competitors who do not possess the information. Generally, a trade secret is a process or device intended for continuous operation of the business, for example, a machine or formula, but can be a price list or catalogue or specialized customer list. It is indubitable that trade secrets constitute proprietary rights."

36. Also, the financial model was prepared and developed for the exclusive use of SUWECO, and is designed for the specific use of the company in its power generation business. Consequently, should the financial model be disclosed to the public, it could easily be copied or used by SUWECO's competitors or other entities engaged in the power business for their own benefit, and to the prejudice of SUWECO. Thus, the commercial value of the said model will be diminished significantly.
37. The supporting documents are covered by the Data Privacy Act of 2012, particularly Section 11 which provides that the processing of personal information must be:
 - (a) Collected for specified and legitimate purposes only;
 - (b) Processed fairly and lawfully;
 - (c) Accurate and relevant;
 - (d) Adequate and not excessive in relation to the purposes for which they are collected and processes;
 - (e) Retained only for as long as necessary for the fulfillment of the purposes for which the data was obtained; and
 - (f) Kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected and processes.
38. Given the foregoing, the financial model and the supporting documents qualify as "confidential information" as defined under Section 2, Rule 4 of the ERC Rules.
39. In accordance with Section 1 (b), Rule 4 of the ERC Rules, an electronic copy of the financial model and the supporting documents is contained in one Universal Serial Bus (USB) and submitted in a sealed envelope marked with the word "Confidential."

40. Further, all parties furnished copies of the present Application are not furnished copies of the documents subject of the present motion.
41. In accordance with Sections 3 and 4, Rule 4 of the ERC Rules, Applicant SUWECO reserves the right to use the financial model and its contents and the supporting document of Annexes Q and Q-1 as evidence, and respectfully moves for the issuance of a Protective Order.

**ALLEGATIONS IN SUPPORT OF
THE MOTION FOR PROVISIONAL AUTHORITY
AND/OR INTERIM RELIEF**

Joint Applicants replead the foregoing application and further state that:

42. There is a paramount relevance and urgent need for additional generating capacity in the Province of Catanduanes due to insufficiency of power supply resulting in numerous forced outages, much to the substantial prejudice of the consumers. Thus, the urgent need to implement the 2nd Amendment to the ESA.
43. As discussed above, the 2nd Amendment to the ESA is necessary to address the demand of FICELCO's customers.
 - 43.1. In particular, the projected peak demand for 2022 is 17.06 MW.
 - 43.2. Moreover, NPC entered into a PIPO Agreement with FICELCO and SUWECO on 31 December 2021.
44. Furthermore, by 2023, FICELCO's peak demand is projected at 18.34 MW.
45. To prevent delay in the implementation of the 2nd Amendment to the ESA, a provisional authority is respectfully prayed for.
46. Clearly, public interest compels the immediate issuance of a provisional authority, subject to any provisional or final authority that may be subsequently issued by this Honorable Commission.
47. In view of the foregoing, Joint Applicants respectfully move for the provisional approval of the instant Application pursuant to Rule 14 of the Revised ERC Rules of Practice and Procedure.

A copy of a Sworn Statement supporting the said motion is attached hereto as *Annex "W"*.

INAPPLICABILITY OF CERTAIN REQUIREMENTS

48. Certain documentary requirements contained in this Honorable Commission's Checklist of Pre-Filing Requirements for Applications for Approval of Power Supply Agreement are not applicable to the present Joint Application.

A written explanation on the inapplicability of the said requirements is attached hereto as *Annex "X"*.

PRAYER

WHEREFORE, premises considered, Joint Applicants FICELCO and SUWECO respectfully pray that this Honorable Commission:

1. Issue an Order declaring the financial model attached hereto as *Annex "L"* and the supporting documents of *Annex "Q and Q-1"* as confidential information within the purview of Rule 4 of the Revised ERC Rules, as well as directing that the financial model and the supporting documents be treated with confidentiality and be protected from public disclosure;
2. Issue the corresponding Protective Order in accordance with Section 2 and 4 of the said Rule 4;
3. Immediately issue an Order provisionally approving the present Joint Application and/or interim relief; and
4. After due hearing, render judgment approving the 2nd Amendment to the ESA subject of the instant Joint Application, as well as the generation rate and adjustment mechanisms indicated therein.

Joint Applicants pray for other just and equitable relief under the premises.

Finding the said *Joint Application* to be sufficient in form and with the required fees having been paid, the Commission hereby sets the same 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 2020³ and Resolution No. 01, Series of 2021⁴ (ERC Revised Rules of Practice and Procedure):

³ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

⁴ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

Date and Time	Platform	Activity
25 January 2024 (Thursday) at two o'clock in the afternoon (2:00 P.M.)	MS Teams Application	Determination of compliance with the jurisdictional requirements, and Expository Presentation
01 February 2024 (Thursday) at two o'clock in the afternoon (2:00 P.M.)		Pre-trial Conference and presentation of evidence

Accordingly, FICELCO and SUWECO are hereby directed to host the virtual hearings at **FICELCO's principal office located at Brgy. Marinawa, Bato, Catanduanes**, as the designated venue for the conduct thereof, and ensure that the same is open to the public and the community quarantine guidelines are observed at all times. Moreover, FICELCO and SUWECO shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

RELATIVE THERETO, FICELCO and SUWECO are hereby directed to:

- 1) Cause the publication of the attached *Notice of Virtual Hearing* in two (2) newspapers of nationwide circulation in the Philippines at their own expense, twice (2x) within two (2) successive weeks, the dates of publication not being less than seven (7) days apart, and the date of the last publication to be made not later than ten (10) days before the date of the scheduled initial hearing;
- 2) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing* the Offices of the Provincial Governor, the City and Municipal Mayors and the respective Local Government Unit (LGU) legislative bodies within the FICELCO's franchise area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within FICELCO's franchise area, by any other means available and appropriate, of the filing of the *Joint Application*, their reasons therefor, and of the scheduled hearing thereon;

- 4) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing* 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 and attend the scheduled hearing; and
- 5) Furnish with copies of the *Joint Application* and its attachments, except those subject of a motion for confidential treatment of information, all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

Within five (5) calendar days prior to the date of the initial hearing, FICELCO and SUWECO must submit to the Commission via electronic mail (e-mail) at docket@erc.ph, and copy furnish the Legal Service through legal@erc.ph, the scanned copies of their written compliance with the aforementioned jurisdictional requirements, attaching the following methodically arranged and duly marked documents:

- 1) The evidence of publication of the attached *Notice of Virtual Hearing* consisting of the affidavits of the Editors or Business Managers of the newspapers where the said *Notice of Virtual Hearing* was published, and the complete issues of the said newspapers;
- 2) The evidence of actual posting of this *Order* and the attached *Notice of Virtual Hearing* consisting of certifications issued to that effect, signed by the aforementioned Governor, Mayors, and LGU legislative bodies or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by FICELCO to inform the consumers within its franchise area of the filing of the *Joint Application*, its reasons therefor, and of the scheduled hearings thereon;
- 4) The evidence of receipt of copies of this *Order* and the attached *Notice of Virtual Hearing* by the OSG, the COA, and the Committees on Energy of both Houses of Congress;

- 5) The evidence of receipt of copies of the *Joint Application* and its attachments, except those subject of a motion for confidential treatment of information, if any, by all those making requests therefor; and
- 6) Such other proof of compliance with the requirements of the Commission.

Moreover, FICELCO and SUWECO are hereby required to post on their bulletin boards, the scanned copies of the foregoing jurisdictional requirements, together with the newspaper publication and certifications issued by the concerned Offices of the Governor, Mayors, and Local Legislative Bodies, and to submit proof of posting thereof.

Joint Applicants FICELCO and SUWECO and all interested parties are also required to submit via e-mail at docket@erc.ph, and copy furnish the Legal Service through legal@erc.ph, **at least five (5) calendar days** before the date of the scheduled virtual hearing and Pre-Trial Conference, their respective Pre-Trial Briefs containing, among others:

- 1) A summary of admitted facts and proposed stipulation of facts;
- 2) The issues to be tried or resolved;
- 3) The documents or exhibits to be presented, stating the purposes and proposed markings therefor, which should be attached to the Pre-trial Brief; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-trial Brief.

Joint Applicants FICELCO and SUWECO must ensure that all the documents or exhibits proposed to be presented have already been duly submitted to the Commission **at least five (5) calendar days** before the date of the scheduled initial hearing and Pre-trial Conference pursuant to the preceding paragraph.

Failure of FICELCO and SUWECO to comply with the above requirements 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 the said date of cancellation.

Joint Applicants FICELCO and SUWECO must also be prepared to make an expository presentation of the instant *Joint 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 consumers and other concerned parties, the nature of the *Joint Application*. Relevant information and pertinent details substantiating the reasons and justifications for the *Joint Application* must be cited in support thereof.

Joint Applicants FICELCO and SUWECO are hereby directed to file a copy of their Expository Presentation via e-mail at docket@erc.ph, and copy furnish the Legal Service through legal@erc.ph, **at least five (5) calendar days** prior to the scheduled virtual hearing. FICELCO and SUWECO shall also be required, upon the request of any stakeholder, to provide an advance copy of their expository presentation, **at least five (5) calendar days** prior to the scheduled virtual hearing.

Joint Applicants FICELCO and SUWECO are hereby directed to submit, through personal service, registered mail or ordinary mail/private courier, one (1) set of the original or certified true hard copies of their Jurisdictional Compliance, Expository Presentation, Pre-trial Brief, and Judicial Affidavits of witnesses, **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.

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Finally, FICELCO and SUWECO, including their authorized representatives and witnesses, are hereby directed to provide the Commission, thru legal.virtualhearings@erc.ph, their respective e-mail addresses upon receipt of this *Order*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled virtual hearing.

SO ORDERED.

Pasig City, 17 November 2023.

FOR AND BY AUTHORITY
OF THE COMMISSION:

Medimalanta

MONALISA C. DIMALANTA
Chairperson and CEO

[Handwritten signature]
LS: ECI/MCM/LSP/MCCG

ERC

Office of the Chairperson and CEO



MCD2023-010999

ERC CASE NO. 2023-123 RC
ORDER/17 NOVEMBER 2023
PAGE 18 OF 19

COPY FURNISHED:

1. First Catanduanes Electric Cooperative, Inc. (FICELCO)
Applicant
Brgy. Marinawa, Bato, Catanduanes
2. Sunwest Water and Electric Company, Inc. (SUWECO)
Applicant
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11. Office of the Sangguniang Bayan
Bagamanok, Catanduanes
12. Office of the Municipal Mayor
Baras, Catanduanes
13. Office of the Sangguniang Bayan
Baras, Catanduanes
14. Office of the Municipal Mayor
Bato, Catanduanes
15. Office of the Sangguniang Bayan
Bato, Catanduanes
16. Office of the Municipal Mayor
Caramoran, Catanduanes
17. Office of the Sangguniang Bayan
Caramoran, Catanduanes
18. Office of the Municipal Mayor
Gigmoto, Catanduanes

ERC CASE NO. 2023-123 RC
ORDER/17 NOVEMBER 2023
PAGE 19 OF 19

19. Office of the Sangguniang Bayan
Gigmoto, Catanduanes
20. Office of the Municipal Mayor
Pandan, Catanduanes
21. Office of the Sangguniang Bayan
Pandan, Catanduanes
22. Office of the Municipal Mayor
Panganiban, Catanduanes
23. Office of the Sangguniang Bayan
Panganiban, Catanduanes
24. Office of the Municipal Mayor
San Andres, Catanduanes
25. Office of the Sangguniang Bayan
San Andres, Catanduanes
26. Office of the Municipal Mayor
San Miguel, Catanduanes
27. Office of the Sangguniang Bayan
San Miguel, Catanduanes
28. Office of the Municipal Mayor
Viga, Catanduanes
29. Office of the Sangguniang Bayan
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30. Office of the Municipal Mayor
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