

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City



IN THE MATTER OF THE APPLICATION FOR CONFIRMATION AND OF APPROVAL OF FORCE MAJEURE EVENT CAPITAL EXPENDITURE PROJECT, RE: REPAIR, RESTORATION, REPLACEMENT OF DISTRIBUTION LINES, TRANSFORMERS, METERING EQUIPMENT/FACILITIES AND POLES INFRASTRUCTURE DAMAGED BY SUPER TYPHOON ROLLY, WITH APPLICATION FOR AUTHORITY TO SECURE LOAN FROM THE NATIONAL ELECTRIFICATION ADMINISTRATION (NEA) AND OTHER BANKING/ FINANCING INSTITUTION(S) AND PRAYER FOR PROVISIONAL AUTHORITY

ERC CASE NO. 2021-071 RC

**FIRST CATANDUANES
ELECTRIC COOPERATIVE,
INC. (FICELCO),**

Applicant.

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Promulgated:
September 20, 2021

ORDER

On 01 September 2021, First Catanduanes Electric Cooperative, Inc. (FICELCO) filed an *Application* dated 12 August 2021, for confirmation and of approval of force majeure event capital expenditure project, for the repair, restoration, replacement of distribution lines, transformers, metering equipment/facilities and poles infrastructure damaged by Super Typhoon Rolly, with application for authority to secure loan from the National

Electrification Administration (NEA) and other banking/financing institution(s) and prayer for provisional authority.

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

1. That applicant (FICELCO) is an electric cooperative duly organized and existing under and by virtue of the laws of the Philippines, with the principal office at Marinawa, Bato, Catanduanes, where it may be served with summons and other legal process in its instance by its General Manager, RAUL V. ZAFE, of legal age, Filipino, married and with office address also located at Marinawa, Bato, Catanduanes;
2. Herein applicant is the exclusive franchise holder issued by the National Electrification Administration (NEA) to operate an electric light and power services in the 11 municipalities, namely the Municipalities of Virac, San Andres, Caramoran, Pandan, Bato, San Miguel, Baras, Viga, Gigmoto, Panganiban, and Bagamanoc all in the Province of Catanduanes;

LEGAL BASIS FOR THE APPLICATION

3. The filing of this application is authorized under Board Resolution No. 05 and 06, Series of 2021 pursuant to Section 3.3 of ERC Resolution No. 26 Series of 2009, which provides that if a Force Majeure or Fortuitous Event.
4. That on the other hand, the accompanying application for authority to secure loan from National Electrification Administration (NEA) is being filed pursuant to Section 20 (e) of Commonwealth Act No. 146 otherwise known as the Public Service Act, which provides that it shall be unlawful for any public service to issue any bonds or other evidence of indebtedness payable in more than one year from issuance thereof, without the approval and authorization of the Commission.

THE FORCE MAJEURE EVENT (SUPER TYPHOON "ROLLY")

5. According to PAGASA in its Severe Weather Bulletin # 1 issued at 11 :00 PM, 29 October 2020, Typhoon "Rolly" (Goni) entered the Philippine Area of Responsibility (PAR) and rapidly intensified into a typhoon. On 1 November 2020 at 4:50 AM, Super Typhoon "Rolly" made a landfall in the vicinity of Bato, Catanduanes with maximum sustained winds of 225km/h near the center and gustiness of up to 280 km/h based on PAGASA's Severe Weather Bulletin #13. Catanduanes was placed under Tropical Cyclone Wind Signal (TCWS) Number 5.
6. The powerful winds and heavy rains of Super Typhoon "Rolly" caused massive destruction to distribution lines and facilities

resulting to total loss of power in FICELCO's coverage area. The most severe damaged was recorded in the municipality of Virac, Bato, San Miguel, Baras, Gigmoto and San Andres

7. That the instant Force Majeure CAPEX application is being filed pursuant to Section 3.3 of ERC Resolution No. 26 Series of 2009, which provides that if a Force Majeure or Fortuitous Event, as the case may be, occurs, the regulated entity shall seek the Commission's confirmation of the implementation of capital expenditure projects arising from such event.

DESCRIPTION OF THE PROJECT

8. The project consists of the repair, restoration and replacement of the FICELCO's distribution lines, metering facilities, distribution transformer, poles, hardware and accessories and other line equipment necessary to restore and immediately provide power in the whole province of Catanduanes.

ESTIMATED PROJECT COST

9. The initial cost for funding requirement for the repair, restoration, replacement and/or rehabilitation of the damaged properties was estimated Two Hundred Twenty-Six Million, Nine Hundred Thirty-Nine Thousand Five Hundred Pesos (PhP226,939,500.00) and filed as calamity loan with NEA through Board Resolution No. 153, Series of 2020. Upon thorough evaluation of FICELCO, the actual incurred project cost as of June 30, 2021 amounted to One Hundred Ninety-Three Million Eight Hundred Sixty-Four Thousand Two Hundred Twenty Pesos and 20/100 (PhP193,864,200.20) only.

No.	Particulars	Amount
1	Material Cost	163,652,420.05
2	Labor Cost	11,367,467.78
3	Other Overhead Expenses	18,844,312.37
Total:		193,864,200.20

PROJECT SCHEDULE

10. At around 11 :00 AM of November 1, 2020, immediately after the storm subsided, FICELCO's workforce conducted clearing operation and damaged assessment to the distribution line facilities destroyed by Super Typhoon Rolly. On the next day, November 2, 2021, at 5:00 AM, FICELCO started the restoration activities to speedily restore back the power. Considering the extent of damage left by Super Typhoon Rolly and the shortage of manpower, FICELCO seek the assistance of Task Force Kapatid thru NEA and Philippine Rural Electric Cooperatives Association (PHILRECA) to fast track restoration activities. Working before sun rise until nightfall, FICELCO was able to completely energized all its distribution lines in our franchise area on June 23, 2021.

JUSTIFICATION ON BENEFITS TO BE DELIVERED

11. This project is intended to restore the severely damaged distribution lines by Super Typhoon "Rolly" including its safety and protection of the cooperative's entire distribution system. The purpose is to provide safe, adequate, affordable and reliable/efficient power supply to 56,637 affected consumers.

PROJECT FINANCING PLAN

12. The total cost of restoration and rehabilitation of FICELCO's damaged distribution lines and properties shall be sourced through a calamity loan from the National Electrification Administration (NEA). Also, the coop intends to borrow funds from other banking/financing institution to finance the incurred project cost for the repair, restoration and replacement of FICELCO's damaged distribution lines, metering facilities, distribution transformer, poles, hardware and accessories and other line equipment.
13. An initial amount of Twenty-Four Million One Hundred Sixty-One Thousand (Php 24,161,000.00) was released by NEA. This initial calamity loan and future calamity loan releases applied from NEA will be converted to subsidy in the event that the National Government grants subsidy to the Bicol typhoon-ravaged electric cooperatives, and, as requested by FICELCO through its Board Resolution No. 170, Series of 2020, dated November 20, 2020, that the same calamity fund be converted by NEA into subsidy/grant. As of this date, no calamity loan was converted to subsidy or grant and no additional releases of calamity loan from NEA and other banking/financing institution.

INDICATIVE RATE IMPACT

14. The RFSC is intended to finance the approved capital expenditure projects. Shown below is the rate simulation impact for the force majeure event capital expenditure project.

	2021	2022	2023	2024
Energy Sales Forecast, kWh	62,732,931.30	63,075,683.00	65,928,117.00	68,713,662.00
Approved RFSC Rate, Php/kWh	0.5447	0.5447	0.5447	0.5447
Cash Balance Beginning, Php (Excess/Shortfall)	7,230,946.82	(140,017,356.64)	(116,315,343.75)	(91,115,011.81)
CASH IN FLOWS				
Current Year RFSC Collection, in Php, @ 97% Collection Efficiency	33,145,508.85	33,326,604.79	34,833,713.97	36,305,481.74
50% Income on Leased Properties, in Php	-	-	-	-
Government Subsidy, in Php			-	-
Loan Proceeds from Financial Institutions (NEA), in Php	24,161,000.00		-	-
Total Cash Inflows, in Php	57,306,508.85	33,326,604.79	34,833,713.97	36,305,481.74
Available Cash for Disbursement, in Php	64,537,455.67	(106,690,751.85)	(81,481,629.78)	(54,809,530.07)
CASH OUTFLOWS				
Applied Force Majeure CAPEX Requirement, in Php	193,864,200.20		-	-
Applied Force Majeure CAPEX Amortization, in Php	2,540,140.65	3,386,854.20	3,386,854.20	3,386,854.20

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Amortization of Previous Approved CAPEX (2011-2015), in Php	6,596,489.96	6,237,737.70	6,246,527.83	
2% Engineering and Administrative Overhead (EAO) for Calamity Grant /Subsidy	100,000.00	-	-	-
Other Fees Relative to CAPEX Application, in Php		-	-	-
ERC Permit Fees, in Php	1,453,981.50	-	-	-
Total Cash Outflows, in Php	204,554,812.31	9,624,591.90	9,633,382.03	3,386,854.20
Cash Balance Ending, in Php, Excess/(Shortfall)	(140,017,356.64)	(116,315,343.75)	(91, 115,011.81)	(58,196,384.27)
Rate Impact on RFSC, Php/kWh, Excess/(Shortfall)	(2.2320)	(1.8441)	(1.3820)	(0.8469)

15. FICELCO is currently paying the annual amortization of Six Million Five Hundred Ninety-Six Thousand Four Hundred Eighty-Nine and 96/100 (Php 6,596,489.96) loan from Security Bank for the approved CAPEX of 2011-2015 with a maximum of 10 years term and will mature on 2023.

**COMPLIANCE WITH PRE-FILING AND
OTHER DOCUMENTARY REQUIREMENTS**

16. In support of this application, the applicant has likewise submitted the following documents, as follows:

Annex A - Project Cost
Annex B - Technical Write-Up for the Majeure Event
Annex C - Notice to ERC, Re: Force Majeure Event
Annex D - Board Resolution No. 05, Series of 2021
Annex D-1 - Board Resolution No. 06, Series of 2021
Annex E - Board Resolution No. 153, Series of 2020
Annex F - Board Resolution No. 170, Series of 2020
Annex G - RFSC Beginning Balance for December 2020
Annex H - FICELCO Calamity Loan Amortization to NEA
Annex I - Existing CAPEX (2010 to 2015) Loan Amortization to Security Bank

PRAYER

WHEREFORE, premises considered, it is respectfully prayed of this Honorable Commission that after due proceedings, a decision be rendered:

1. Approving the Proposed Force Majeure Capital Project in the total amount of One Hundred Ninety-Three Million, Eight Hundred Sixty-Four Thousand Two Hundred Pesos and 20/100 (Php193,864,200.20), in view of the need to immediately implement the project which are necessary to repair, restore and replace FICELCO's distribution lines, metering facilities, distribution transformer, poles, hardware and accessories and other line equipment damaged by Super Typhoon Rolly.
2. Approving the Authority to borrow funds from NEA and other bank/financial institutions to fund the capital expenditures in the amount of One Hundred Ninety-Three Million, Eight Hundred Sixty-Four Thousand Two Hundred Pesos and

20/100 (Php 193,864,200.20); and, pending the proceedings in the instant application, a provisional authority for the purpose be granted.

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

Finding the said *Application* to be sufficient in form with the required fees having been paid, the same is hereby set for the 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 2020,¹ dated 24 September 2020, and Resolution No. 01, Series of 2021, dated 17 December 2020 (ERC Revised Rules of Practice and Procedure):²

Date	Platform	Activity
28 October 2021 (Thursday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Teams Application	Determination of compliance with jurisdictional requirements and Expository Presentation
04 November 2021 (Thursday) at nine o'clock in the morning (9:00 A.M.)		Pre-trial Conference and Presentation of Evidence

Accordingly, FICELCO is hereby directed to host the virtual hearings at **FICELCO's Principal Office in 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, Applicant shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

RELATIVE THERETO, FICELCO is 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 its 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

¹ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

² A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

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 Mayors and the Local Government Unit (LGU) legislative bodies within 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 *Application*, its reasons therefor, and of the scheduled virtual hearings 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 hearings; and
- 5) Furnish with copies of the *Application* and its attachments all those making requests therefor, subject to the resolution of the prayer for confidential treatment of information, and reimbursement of reasonable photocopying costs.³

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

- 1) The evidence of publication of the attached *Notice of Virtual Hearing* consisting of affidavit 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

³ For the e-mail address of the applicants, please see page 11.

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 *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, COA, and the Committees on Energy of both Houses of Congress;
- 5) The evidence of receipt of copies of the *Application* and its attachments by all those making requests therefor, if any; and
- 6) Such other proof of compliance with the requirements of the Commission.

Moreover, FICELCO is hereby required to post on its bulletin boards, the scanned copies of the foregoing jurisdictional requirements, together with the newspaper publications and certifications issued by the concerned Office of the Mayors, Governor and Local Legislative Bodies, and to submit proof of its posting thereof.

FICELCO and all interested parties are also required to submit via e-mail at doCKET@erc.ph, 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 also 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.

FICELCO 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 virtual hearing and Pre-trial Conference pursuant to the preceding paragraph.

Failure of FICELCO to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearings, and the resetting of which shall be six (6) months from the said date of cancellation.

FICELCO must also be prepared to make an expository presentation of the instant *Application*, aided by whatever communication medium that it 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 *Application* with relevant information and pertinent details substantiating the reasons and justifications being cited in support thereof.

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

Any interested stakeholder may submit its comments and/or clarifications at least one (1) calendar day prior to the scheduled virtual hearing, via e-mail at doCKET@erc.ph, 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.

FICELCO is hereby directed to submit, either through personal service, registered or ordinary mail/private courier, one (1) set of the original or certified true hard/printed copy/ies of its Jurisdictional Compliance, Expository Presentation, Pre-trial Brief, and Judicial Affidavit/s of witness/es, 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. Similarly, all interested parties who filed their Petition for Intervention or Opposition are required to submit the hard/printed copy thereof within the same period through any of the available modes of service.

Finally, FICELCO, including its authorized representative/s and witness/es, are hereby directed to provide the Commission, through legal.virtualhearings@erc.ph, with 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 hearings.

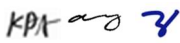
SO ORDERED.

Pasig City, 09 September 2021.

FOR AND BY AUTHORITY
OF THE COMMISSION:



AGNES VST DEVANADERA
Chairperson and CEO

KPA 
LS: KPA/ARG/MCCG



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COPY FURNISHED:

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24. Office of the Sangguniang Bayan
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