

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

**IN THE MATTER OF THE
PETITION FOR THE
RECOVERY OF CY 2020
REVENUE SHORTFALL FROM
THE UNIVERSAL CHARGE FOR
MISSIONARY
ELECTRIFICATION (UC-ME)
AND THE CORRESPONDING
ADJUSTMENT OF THE UC-ME
WITH PRAYER FOR THE
ISSUANCE OF PROVISIONAL
AUTHORITY**

ERC CASE NO. 2022-030 RC

**NATIONAL
CORPORATION,**

POWER

Petitioner.

X-----X

Promulgated:
August 02, 2022

ORDER

On 22 April 2022, National Power Corporation (NPC) filed a *Petition* dated 02 March 2022, seeking the Commission's approval of the recovery of the Calendar Year (CY) 2020 revenue shortfall from the Universal Charge for Missionary Electrification (UC-ME) and the corresponding adjustment of the UC-ME with prayer for the issuance of provisional authority.

In the *Order* and *Notice of Virtual Hearing*, both dated 18 May 2022, the Commission has set the instant *Application* for hearing on the following dates: a) 05 July 2022 for the determination of compliance with the jurisdictional requirements and expository presentation; b) 12 July 2022 for pre-trial conference and presentation of evidence; and 19 and 20 July 2022 for the presentation of evidence.

During the hearing held on 05 July 2022, NPC presented its proof of compliance with the publication and notice requirements pursuant to the Commission's *Order* dated 18 May 2022.

As proof of its publication requirements, NPC submitted copies of the newspapers, wherein the *Notice of Virtual Hearing* dated 18 May 2022 was published, namely: (1) *The Philippine Star* newspapers dated 09 June 2022, and 21 June 2022; and (2) *The Manila Times* newspapers dated 09 June 2022, and 21 June 2022.

Upon examination of the said newspapers, the Commission noted that the first publication was made on 09 June 2022, while the second publication was made on 21 June 2022. The Commission found that the dates of both publication failed to comply with the required two (2) successive week intervals pursuant to the Commission's *Order* dated 18 May 2022 and Section 43¹ of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act (EPIRA) of 2001.

In view thereof, the Commission declared NPC to have failed to comply with the jurisdictional requirements and cancelled the hearings of the instant case.

Subsequently, on 12 July 2022, NPC filed a *Motion for Reconsideration (Re: Order dated 05 July 2022)*² (Motion). In the said *Motion*, NPC prayed that the Commission's *Order* dated 05 July 2022 be set aside and a new one be issued, *to wit*:

1. Admitting Petitioner NPC's documents and give due course to its Jurisdictional Compliance;
2. Acquiring jurisdiction over the instant Petition; and
3. Setting the case for trial on the merits.

In its *Motion*, NPC raised that the Commission erred in holding that it has not acquired jurisdiction over the instant case solely on the basis of the alleged defect in the successive publication of the *Notice of Virtual Hearing*.

NPC alleged that it had substantially complied with the jurisdictional requirements of the Commission. Further, NPC stated that the purpose of the Commission in directing NPC to cause the publication of its *Notice of Virtual Hearing* is to notify and inform the public. NPC explained that such purpose has been fully satisfied by NPC as the date of the last publication which was on 21 June 2022 was

¹ All notices of hearings to be conducted by the [Energy Regulatory Commission (ERC)] for the purpose of fixing rates or fees shall be published at **least twice for two (2) successive weeks in two (2) newspapers of nationwide circulation.**

² Referring to the Commission's ruling in the 05 July 2022 hearing for determination of the NPC's jurisdictional compliance and expository presentation.

made not less than ten (10) days prior the date of the scheduled hearing which was on 05 July 2022. In effect, NPC submits that the public was given sufficient time to participate and intervene in the proceeding.

The Commission finds the *Motion* of NPC bereft of merit, and therefore, the same should be denied.

The required publication of the *Notice of Virtual Hearing* is a jurisdictional requirement which vests the Commission with the authority to hear and determine the instant *Application*. The said jurisdictional requirements is mandated under Section 43³ of the EPIRA. Moreover, the Commission, in the *Order* dated 18 May 2022, clearly directed NPC to comply with said publication requirements, *to wit*:

xxx

Accordingly, NPC 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 publication to be made not later than ten (10) days before the date of the scheduled initial hearing**

xxx

(Emphasis and underscoring supplied.)

Based on the foregoing, for the Commission to acquire jurisdiction over the instant case, it is not just enough for NPC to establish that it had complied with the publication of the *Notice of Virtual Hearing* in two (2) newspapers of nationwide circulation. NPC must likewise establish that these publications were made within two successive weeks.

In the case of NPC, its first publication was made on 09 June 2022 while its second publication was made on 21 June 2022, which is a week after the first publication. Clearly, the dates between the first and the second publication failed to comply with the required two (2) successive week intervals pursuant to the Commission's *Order* dated 18 May 2022 and the EPIRA.

³ *Supra*, note 1.

Considering the foregoing, the Commission maintains its ruling during the 05 July 2022 hearing. In view thereof, the *Motion* of NPC is hereby denied.

ACCORDINGLY, the Commission hereby sets anew 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 2020⁴ dated 24 September 2020 and Resolution No. 01, Series of 2021 dated 17 December 2020 (ERC Revised Rules of Practice and Procedure):⁵

Date	Platform	Activity
04 October 2022 (Tuesday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Teams	Determination of compliance with jurisdictional requirements and Expository Presentation for Luzon Visayas and Mindanao Stakeholders
18 October 2022 (Tuesday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Teams	Pre-trial Conference and Presentation of Evidence
03 November 2022 (Thursday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Teams	Presentation of Evidence
10 November 2022 (Thursday) at nine o'clock in the morning (9:00 A.M.)	Microsoft	Presentation of Evidence

ACCORDINGLY, NPC 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

⁴ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

⁵ 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 City and Municipal Mayors, and the Local Government Unit (LGU) legislative bodies within the affected areas and the City Mayor and LGU legislative body of Quezon City for the appropriate posting thereof on their respective bulletin boards;
3. Inform the consumers within the affected area, by any other means available and appropriate, of the filing of the *Petition* its 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 hearings scheduled hearing; and
5. Furnish with copies of the *Petition* and its attachments all those making requests therefor, subject to the resolution of the prayer for confidential treatment, if any, and reimbursement of reasonable photocopying costs.⁶

Within five (5) calendar days prior to the date of the virtual hearing, NPC 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 their 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 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;

⁶ For the e-mail address of the petitioner, please see page 9.

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 Governors, Mayors and LGU legislative bodies or their duly authorized representatives, bearing the seals of their offices;
3. The evidence of other means employed by NPC to inform the consumers within the affected area of the filing of the *Petition*, 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 *Petition* 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, NPC 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 Provincial Governors, City and Municipal Mayors and Local Legislative Bodies, and to submit proof of its posting thereof.

NPC 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.

NPC 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 NPC 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.

NPC must also be prepared to make an expository presentation of the instant *Petition*, 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 *Petition* with relevant information and pertinent details substantiating the reasons and justifications being cited in support thereof.

NPC 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. NPC 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.

NPC 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 mode of service.

Finally, NPC, including its authorized representative/s and witness/es, are hereby directed to provide the Commission, thru 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 hearing.

SO ORDERED.

Pasig City, 02 August 2022.

FOR AND BY AUTHORITY
OF THE COMMISSION:


FLORESINDA G. BALDO-DIGAL
Oversight Commissioner
For the Legal Service


LS: KJP/LSP/MCCG

ERC CASE NO. 2022-030 RC
ORDER/02 AUGUST 2022
PAGE 9 of 31

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10. Office of the City Mayor
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11. Office of the Legislative Government Unit (LGU) Legislative Body
Quezon City
12. Office of the Provincial Governor
Batanes
13. Office of the Legislative Government Unit (LGU) Legislative Body
Batanes
14. Office of the City Mayor
Basco, Batanes
15. Office of the Legislative Government Unit (LGU) Legislative Body
Basco, Batanes
16. Office of the Municipal Mayor
Itbayat, Batanes
17. Office of the Legislative Government Unit (LGU) Legislative Body
Itbayat, Batanes

ERC CASE NO. 2022-030 RC
ORDER/02 AUGUST 2022
PAGE 10 of 31

18. Office of the Municipal Mayor
Sabtang, Batanes
19. Office of the Legislative Government Unit (LGU) Legislative Body
Sabtang, Batanes
20. Office of the Municipal Mayor
Mahatao, Batanes
21. Office of the Legislative Government Unit (LGU) Legislative Body
Mahatao, Batanes
22. Office of the Municipal Mayor
Uyugan, Batanes
23. Office of the Legislative Government Unit (LGU) Legislative Body
Uyugan, Batanes
24. Office of the Municipal Mayor
Ivana, Batanes
25. Office of the Legislative Government Unit (LGU) Legislative Body
Ivana, Batanes
26. General Manager
Batanes Electric Cooperative, Inc. (BATANELCO)
27. Office of the Provincial Governor
Cagayan
28. Office of the Legislative Government Unit (LGU) Legislative Body
Cagayan
29. Office of the Municipal Mayor
Calayan, Cagayan
30. Office of the Legislative Government Unit (LGU) Legislative Body
Calayan, Cagayan
31. General Manager
Cagayan II Electric Cooperative, Inc. (CAGELCO II)
32. Office of the Provincial Governor
Apayao
33. Office of the Legislative Government Unit (LGU) Legislative Body
Apayao
34. Office of the Municipal Mayor
Kabugao, Apayao
35. Office of the Legislative Government Unit (LGU) Legislative Body
Kabugao, Apayao
36. Office of the Provincial Governor
Kalinga
37. Office of the Legislative Government Unit (LGU) Legislative Body
Kalinga
38. Office of the Municipal Mayor
Lubuagan, Kalinga
39. Office of the Legislative Government Unit (LGU) Legislative Body
Lubuagan, Kalinga
40. General Manager
Kalinga-Apayao Electric Cooperative, Inc. (KAELCO) CP

ERC CASE NO. 2022-030 RC
ORDER/02 AUGUST 2022
PAGE 11 of 31

41. Office of the Provincial Governor
Isabela
42. Office of the Legislative Government Unit (LGU) Legislative Body
Isabela
43. Office of the Municipal Mayor
Palanan, Isabela
44. Office of the Legislative Government Unit (LGU) Legislative Body
Palanan, Isabela
45. Office of the Municipal Mayor
Maconacon, Isabela
46. Office of the Legislative Government Unit (LGU) Legislative Body
Maconacon, Isabela
47. Office of the Municipal Mayor
Dinapigue, Isabela
48. Office of the Legislative Government Unit (LGU) Legislative Body
Dinapigue, Isabela
49. General Manager
Isabela II Electric Cooperative, Inc. (ISELCO II)
50. Office of the Provincial Governor
Aurora
51. Office of the Legislative Government Unit (LGU) Legislative Body
Aurora
52. Office of the Municipal Mayor
Casiguran, Aurora
53. Office of the Legislative Government Unit (LGU) Legislative Body
Casiguran, Aurora
54. Office of the Municipal Mayor
Dingalan, Aurora
55. Office of the Legislative Government Unit (LGU) Legislative Body
Dingalan, Aurora
56. Office of the Municipal Mayor
Dilasag, Aurora
57. Office of the Legislative Government Unit (LGU) Legislative Body
Dilasag, Aurora
58. Office of the Municipal Mayor
Dinalungan, Aurora
59. Office of the Legislative Government Unit (LGU) Legislative Body
Dinalungan, Aurora
60. General Manager
Aurora Electric Cooperative, Inc. (AURELCO)
61. Office of the Provincial Governor
Quezon
62. Office of the Legislative Government Unit (LGU) Legislative Body
Quezon

ERC CASE NO. 2022-030 RC
ORDER/02 AUGUST 2022
PAGE 12 of 31

63. Office of the Municipal Mayor
Jomalig, Quezon
64. Office of the Legislative Government Unit (LGU) Legislative Body
Jomalig, Quezon
65. Office of the Municipal Mayor
Patnanungan, Quezon
66. Office of the Legislative Government Unit (LGU) Legislative Body
Patnanungan, Quezon
67. Office of the Municipal Mayor
Polilio, Quezon
68. Office of the Legislative Government Unit (LGU) Legislative Body
Polilio, Quezon
69. General Manager
Quezon II Electric Cooperative, Inc. (QUEZELCO II)
70. Office of the Provincial Governor
Batangas
71. Office of the Legislative Government Unit (LGU) Legislative Body
Batangas
72. Office of the Municipal Mayor
Tingloy, Batangas
73. Office of the Legislative Government Unit (LGU) Legislative Body
Tingloy, Batangas
74. General Manager
Batangas II Electric Cooperative, Inc. (BATELEC II)
75. Office of the Provincial Governor
Marinduque
76. Office of the Legislative Government Unit (LGU) Legislative Body
Marinduque
77. Office of the Municipal Mayor
Boac, Marinduque
78. Office of the Legislative Government Unit (LGU) Legislative Body
Boac, Marinduque
79. Office of the Municipal Mayor
Mogpog, Marinduque
80. Office of the Legislative Government Unit (LGU) Legislative Body
Mogpog, Marinduque
81. Office of the Municipal Mayor
Santa Cruz, Marinduque
82. Office of the Legislative Government Unit (LGU) Legislative Body
Santa Cruz, Marinduque
83. Office of the Municipal Mayor
Torrijos, Marinduque
84. Office of the Legislative Government Unit (LGU) Legislative Body
Torrijos, Marinduque

ERC CASE NO. 2022-030 RC
ORDER/02 AUGUST 2022
PAGE 13 of 31

85. Office of the Municipal Mayor
Buenavista, Marinduque
86. Office of the Legislative Government Unit (LGU) Legislative Body
Buenavista, Marinduque
87. Office of the Municipal Mayor
Gasán, Marinduque
88. Office of the Legislative Government Unit (LGU) Legislative Body
Gasán, Marinduque
89. General Manager
Marinduque Electric Cooperative, Inc. (MARELCO)
90. Office of the Provincial Governor
Occidental Mindoro
91. Office of the Legislative Government Unit (LGU) Legislative Body
Occidental Mindoro
92. Office of the City Mayor
Lubang, Occidental Mindoro
93. Office of the Legislative Government Unit (LGU) Legislative Body
Lubang, Occidental Mindoro
94. Office of the Municipal Mayor
Mamburao, Occidental Mindoro
95. Office of the Legislative Government Unit (LGU) Legislative Body
Mamburao, Occidental Mindoro
96. Office of the Municipal Mayor
Paluan, Occidental Mindoro
97. Office of the Legislative Government Unit (LGU) Legislative Body
Paluan, Occidental Mindoro
98. Office of the Municipal Mayor
San Jose, Occidental Mindoro
99. Office of the Legislative Government Unit (LGU) Legislative Body
San Jose, Occidental Mindoro
100. Office of the Municipal Mayor
Abra de Ilog, Occidental Mindoro
101. Office of the Legislative Government Unit (LGU) Legislative Body
Abra de Ilog, Occidental Mindoro
102. Office of the Municipal Mayor
Calintaan, Occidental Mindoro
103. Office of the Legislative Government Unit (LGU) Legislative Body
Calintaan, Occidental Mindoro
104. Office of the Municipal Mayor
Looc, Occidental Mindoro
105. Office of the Legislative Government Unit (LGU) Legislative Body
Looc, Occidental Mindoro
106. Office of the Municipal Mayor
Magsaysay, Occidental Mindoro

ERC CASE NO. 2022-030 RC
ORDER/02 AUGUST 2022
PAGE 14 of 31

107. Office of the Legislative Government Unit (LGU) Legislative Body
Magsaysay, Occidental Mindoro
108. Office of the Municipal Mayor
Rizal, Occidental Mindoro
109. Office of the Legislative Government Unit (LGU) Legislative Body
Rizal, Occidental Mindoro
110. Office of the Municipal Mayor
Sablayan, Occidental Mindoro
111. Office of the Legislative Government Unit (LGU) Legislative Body
Sablayan, Occidental Mindoro
112. Office of the Municipal Mayor
Sta. Cruz, Occidental Mindoro
113. Office of the Legislative Government Unit (LGU) Legislative Body
Sta. Cruz, Occidental Mindoro
114. General Manager
Occidental Mindoro Electric Cooperative, Inc. (OMECCO)
115. General Manager
Lubang Island Electric Cooperative (LUBELCO)
116. Office of the Provincial Governor
Oriental Mindoro
117. Office of the Legislative Government Unit (LGU) Legislative Body
Oriental Mindoro
118. Office of the City Mayor
Calapan, Oriental Mindoro
119. Office of the Legislative Government Unit (LGU) Legislative Body
Calapan, Oriental Mindoro
120. Office of the Municipal Mayor
Baco, Oriental Mindoro
121. Office of the Legislative Government Unit (LGU) Legislative Body
Baco, Oriental Mindoro
122. Office of the Municipal Mayor
San Teodoro, Oriental Mindoro
123. Office of the Legislative Government Unit (LGU) Legislative Body
San Teodoro, Oriental Mindoro
124. Office of the Municipal Mayor
Puerto Galera, Oriental Mindoro
125. Office of the Legislative Government Unit (LGU) Legislative Body
Puerto Galera, Oriental Mindoro
126. Office of the Municipal Mayor
Naujan, Oriental Mindoro
127. Office of the Legislative Government Unit (LGU) Legislative Body
Naujan, Oriental Mindoro
128. Office of the Municipal Mayor
Victoria, Oriental Mindoro

ERC CASE NO. 2022-030 RC
ORDER/02 AUGUST 2022
PAGE 15 of 31

129. Office of the Legislative Government Unit (LGU) Legislative Body
Victoria, Oriental Mindoro
130. Office of the Municipal Mayor
Socorro, Oriental Mindoro
131. Office of the Legislative Government Unit (LGU) Legislative Body
Socorro, Oriental Mindoro
132. Office of the Municipal Mayor
Pola, Oriental Mindoro
133. Office of the Legislative Government Unit (LGU) Legislative Body
Pola, Oriental Mindoro
134. Office of the Municipal Mayor
Pinamalayan, Oriental Mindoro
135. Office of the Legislative Government Unit (LGU) Legislative Body
Pinamalayan, Oriental Mindoro
136. Office of the Municipal Mayor
Gloria, Oriental Mindoro
137. Office of the Legislative Government Unit (LGU) Legislative Body
Gloria, Oriental Mindoro
138. Office of the Municipal Mayor
Bansud, Oriental Mindoro
139. Office of the Legislative Government Unit (LGU) Legislative Body
Bansud, Oriental Mindoro
140. Office of the Municipal Mayor
Bongabong, Oriental Mindoro
141. Office of the Legislative Government Unit (LGU) Legislative Body
Bongabong, Oriental Mindoro
142. Office of the Municipal Mayor
Roxas, Oriental Mindoro
143. Office of the Legislative Government Unit (LGU) Legislative Body
Roxas, Oriental Mindoro
144. Office of the Municipal Mayor
Mansalay, Oriental Mindoro
145. Office of the Legislative Government Unit (LGU) Legislative Body
Mansalay, Oriental Mindoro
146. Office of the Municipal Mayor
Bulalacao, Oriental Mindoro
147. Office of the Legislative Government Unit (LGU) Legislative Body
Bulalacao, Oriental Mindoro
148. General Manager
Oriental Mindoro Electric Cooperative, Inc. (ORMECO)
149. Office of the Provincial Governor
Palawan
150. Office of the Legislative Government Unit (LGU) Legislative Body
Palawan

ERC CASE NO. 2022-030 RC
ORDER/02 AUGUST 2022
PAGE 16 of 31

151. Office of the City Mayor
Puerto Prinsesa, Palawan
152. Office of the Legislative Government Unit (LGU) Legislative Body
Puerto Prinsesa, Palawan
153. Office of the Municipal Mayor
Agulaya, Palawan
154. Office of the Legislative Government Unit (LGU) Legislative Body
Agulaya, Palawan
155. Office of the Municipal Mayor
Araceli, Palawan
156. Office of the Legislative Government Unit (LGU) Legislative Body
Araceli, Palawan
157. Office of the Municipal Mayor
BaLbac, Palawan
158. Office of the Legislative Government Unit (LGU) Legislative Body
BaLabac, Palawan
159. Office of the Municipal Mayor
Busuanga, Palawan
160. Office of the Legislative Government Unit (LGU) Legislative Body
Busuanga, Palawan
161. Office of the Municipal Mayor
Coron, Palawan
162. Office of the Legislative Government Unit (LGU) Legislative Body
Coron, Palawan
163. Office of the Municipal Mayor
Cagayancillo, Palawan
164. Office of the Legislative Government Unit (LGU) Legislative Body
Cagayancillo, Palawan
165. Office of the Municipal Mayor
Cullion, Palawan
166. Office of the Legislative Government Unit (LGU) Legislative Body
Cullion, Palawan
167. Office of the Municipal Mayor
Cuyo, Palawan
168. Office of the Legislative Government Unit (LGU) Legislative Body
Cuyo, Palawan
169. Office of the Municipal Mayor
El Nido, Palawan
170. Office of the Legislative Government Unit (LGU) Legislative Body
El Nido, Palawan
171. Office of the Municipal Mayor
Linapacan, Palawan
172. Office of the Legislative Government Unit (LGU) Legislative Body
Linapacan, Palawan

ERC CASE NO. 2022-030 RC
ORDER/02 AUGUST 2022
PAGE 17 of 31

173. Office of the Municipal Mayor
Magsaysay, Palawan
174. Office of the Legislative Government Unit (LGU) Legislative Body
Magsaysay, Palawan
175. Office of the Municipal Mayor
Narra, Palawan
176. Office of the Legislative Government Unit (LGU) Legislative Body
Narra, Palawan
177. Office of the Municipal Mayor
Rizal, Palawan
178. Office of the Legislative Government Unit (LGU) Legislative Body
Rizal, Palawan
179. Office of the Municipal Mayor
Roxas, Palawan
180. Office of the Legislative Government Unit (LGU) Legislative Body
Roxas, Palawan
181. Office of the Municipal Mayor
San Vicente, Palawan
182. Office of the Legislative Government Unit (LGU) Legislative Body
San Vicente, Palawan
183. Office of the Municipal Mayor
Taytay, Palawan
184. Office of the Legislative Government Unit (LGU) Legislative Body
Taytay, Palawan
185. Office of the Municipal Mayor
Aborlan, Palawan
186. Office of the Legislative Government Unit (LGU) Legislative Body
Aborlan, Palawan
187. Office of the Municipal Mayor
Brooke's Point, Palawan
188. Office of the Legislative Government Unit (LGU) Legislative Body
Brooke's Point, Palawan
189. Office of the Municipal Mayor
Española, Palawan
190. Office of the Legislative Government Unit (LGU) Legislative Body
Española, Palawan
191. Office of the Municipal Mayor
Quezon, Palawan
192. Office of the Legislative Government Unit (LGU) Legislative Body
Quezon, Palawan
193. Office of the Municipal Mayor
Bataraza, Palawan
194. Office of the Legislative Government Unit (LGU) Legislative Body
Bataraza, Palawan

ERC CASE NO. 2022-030 RC
ORDER/02 AUGUST 2022
PAGE 18 of 31

195. Office of the Municipal Mayor
Dumaran, Palawan
196. Office of the Legislative Government Unit (LGU) Legislative Body
Dumaran, Palawan
197. General Manager
Main Office
Palawan Electric Cooperative, Inc. (PALECO)
198. General Manager
Sub-Office
Palawan Electric Cooperative, Inc. (PALECO)
199. General Manager
Busuanga Island Electric Cooperative, Inc. (BISELCO)
200. Office of the Provincial Governor
Romblon
201. Office of the Legislative Government Unit (LGU) Legislative Body
Romblon
202. Office of the City Mayor
Romblon, Romblon
203. Office of the Legislative Government Unit (LGU) Legislative Body
Romblon, Romblon
204. Office of the Municipal Mayor
Banton, Romblon
205. Office of the Legislative Government Unit (LGU) Legislative Body
Banton, Romblon
206. Office of the Municipal Mayor
Concepcion, Romblon
207. Office of the Legislative Government Unit (LGU) Legislative Body
Concepcion, Romblon
208. Office of the Municipal Mayor
Corcuera, Romblon
209. Office of the Legislative Government Unit (LGU) Legislative Body
Corcuera, Romblon
210. Office of the Municipal Mayor
Odiongan, Romblon
211. Office of the Legislative Government Unit (LGU) Legislative Body
Odiongan, Romblon
212. Office of the Municipal Mayor
San Fernando, Romblon
213. Office of the Legislative Government Unit (LGU) Legislative Body
San Fernando, Romblon
214. Office of the Municipal Mayor
San Jose, Romblon
215. Office of the Legislative Government Unit (LGU) Legislative Body
San Jose, Romblon
216. Office of the Municipal Mayor
Alcantara, Romblon

ERC CASE NO. 2022-030 RC
ORDER/02 AUGUST 2022
PAGE 19 of 31

217. Office of the Legislative Government Unit (LGU) Legislative Body
Alcantara, Romblon
218. Office of the Municipal Mayor
Calatrava, Romblon
219. Office of the Legislative Government Unit (LGU) Legislative Body
Calatrava, Romblon
220. Office of the Municipal Mayor
Ferrol, Romblon
221. Office of the Legislative Government Unit (LGU) Legislative Body
Ferrol, Romblon
222. Office of the Municipal Mayor
Looc, Romblon
223. Office of the Legislative Government Unit (LGU) Legislative Body
Looc, Romblon
224. Office of the Municipal Mayor
San Agustin, Romblon
225. Office of the Legislative Government Unit (LGU) Legislative Body
San Agustin, Romblon
226. Office of the Municipal Mayor
San Andres, Romblon
227. Office of the Legislative Government Unit (LGU) Legislative Body
San Andres, Romblon
228. Office of the Municipal Mayor
Santa Fe, Romblon
229. Office of the Legislative Government Unit (LGU) Legislative Body
Santa Fe, Romblon
230. Office of the Municipal Mayor
Sta. Maria (Imelda), Romblon
231. Office of the Legislative Government Unit (LGU) Legislative Body
Sta. Maria (Imelda), Romblon
232. Office of the Municipal Mayor
Magdiwang, Romblon
233. Office of the Legislative Government Unit (LGU) Legislative Body
Magdiwang, Romblon
234. Office of the Municipal Mayor
Cadidiocan, Romblon
235. Office of the Legislative Government Unit (LGU) Legislative Body
Cadidiocan, Romblon
236. General Manager
Romblon Electric Cooperative, Inc. (ROMELCO)
237. General Manager
Tablas Island Electric Cooperative, Inc. (TIELCO)
238. Provincial Governor
Camarines Sur

ERC CASE NO. 2022-030 RC
ORDER/02 AUGUST 2022
PAGE 20 of 31

239. Office of the Legislative Government Unit (LGU) Legislative Body
Camarines Sur
240. Office of the Municipal Mayor
Caramoan, Camarines Sur
241. Office of the Legislative Government Unit (LGU) Legislative Body
Caramoan, Camarines Sur
242. Office of the Municipal Mayor
Garchitorena, Camarines Sur
243. Office of the Legislative Government Unit (LGU) Legislative Body
Garchitorena, Camarines Sur
244. Office of the Municipal Mayor
Sagay, Camarines Sur
245. Office of the Legislative Government Unit (LGU) Legislative Body
Sagnay, Camarines Sur
246. General Manager
Camarines Sur IV Electric Cooperative, Inc. (CASURECO IV)
247. Provincial Governor
Catanduanes
248. Office of the Legislative Government Unit (LGU) Legislative Body
Catanduanes
249. Office of the Municipal Mayor
Bato, Catanduanes
250. Office of the Legislative Government Unit (LGU) Legislative Body
Bato, Catanduanes
251. Office of the Municipal Mayor
Caramoran, Catanduanes
252. Office of the Legislative Government Unit (LGU) Legislative Body
Caramoran, Catanduanes
253. Office of the Municipal Mayor
Viga, Catanduanes
254. Office of the Legislative Government Unit (LGU) Legislative Body
Viga, Catanduanes
255. Office of the Municipal Mayor
Pandan, Catanduanes
256. Office of the Legislative Government Unit (LGU) Legislative Body
Pandan, Catanduanes
257. Office of the Municipal Mayor
Bagamonoc, Catanduanes
258. Office of the Legislative Government Unit (LGU) Legislative Body
Bagamonoc, Catanduanes
259. Office of the Municipal Mayor
Panganiban (Payo), Catanduanes
260. Office of the Legislative Government Unit (LGU) Legislative Body
Panganiban (Payo), Catanduanes

ERC CASE NO. 2022-030 RC
ORDER/02 AUGUST 2022
PAGE 21 of 31

261. Office of the Municipal Mayor
Gigmoto, Catanduanes
262. Office of the Legislative Government Unit (LGU) Legislative Body
Gigmoto, Catanduanes
263. Office of the Municipal Mayor
San Miguel, Catanduanes
264. Office of the Legislative Government Unit (LGU) Legislative Body
San Miguel, Catanduanes
265. Office of the Municipal Mayor
San Andres, Catanduanes
266. Office of the Legislative Government Unit (LGU) Legislative Body
San Andres, Catanduanes
267. Office of the Municipal Mayor
Virac, Catanduanes
268. Office of the Legislative Government Unit (LGU) Legislative Body
Virac, Catanduanes
269. Office of the Municipal Mayor
Baras, Catanduanes
270. Office of the Legislative Government Unit (LGU) Legislative Body
Baras, Catanduanes
271. General Manager
First Catanduanes Electric Cooperative, Inc. (FICELCO)
272. Provincial Governor
Albay
273. Office of the Legislative Government Unit (LGU) Legislative Body
Albay
274. Office of the Municipal Mayor
Rapu-rapu, Albay
275. Office of the Legislative Government Unit (LGU) Legislative Body
Rapu-rapu, Albay
276. General Manager
Albay Power and Energy Corp. (APEC)/Albay Electric Cooperative, Inc. (ALECO)
277. Provincial Governor
Masbate
278. Office of the Legislative Government Unit (LGU) Legislative Body
Masbate
279. Office of the City Mayor
Masbate, Masbate
280. Office of the Legislative Government Unit (LGU) Legislative Body
Masbate, Masbate
281. Office of the Municipal Mayor
Aroroy, Masbate
282. Office of the Legislative Government Unit (LGU) Legislative Body
Aroroy, Masbate

ERC CASE NO. 2022-030 RC
ORDER/02 AUGUST 2022
PAGE 22 of 31

283. Office of the Municipal Mayor
Baleno, Masbate
284. Office of the Legislative Government Unit (LGU) Legislative Body
Baleno, Masbate
285. Office of the Municipal Mayor
Balud, Masbate
286. Office of the Legislative Government Unit (LGU) Legislative Body
Balud, Masbate
287. Office of the Municipal Mayor
Batuan, Masbate
288. Office of the Legislative Government Unit (LGU) Legislative Body
Batuan, Masbate
289. Office of the Municipal Mayor
Cataingan, Masbate
290. Office of the Legislative Government Unit (LGU) Legislative Body
Cataingan, Masbate
291. Office of the Municipal Mayor
Cawayan, Masbate
292. Office of the Legislative Government Unit (LGU) Legislative Body
Cawayan, Masbate
293. Office of the Municipal Mayor
Dimasalang, Masbate
294. Office of the Legislative Government Unit (LGU) Legislative Body
Dimasalang, Masbate
295. Office of the Municipal Mayor
Esperanza, Masbate
296. Office of the Legislative Government Unit (LGU) Legislative Body
Esperanza, Masbate
297. Office of the Municipal Mayor
Mandaon, Masbate
298. Office of the Legislative Government Unit (LGU) Legislative Body
Mandaon, Masbate
299. Office of the Municipal Mayor
Milagros, Masbate
300. Office of the Legislative Government Unit (LGU) Legislative Body
Milagros, Masbate
301. Office of the Municipal Mayor
Mobo, Masbate
302. Office of the Legislative Government Unit (LGU) Legislative Body
Mobo, Masbate
303. Office of the Municipal Mayor
Monreal, Masbate
304. Office of the Legislative Government Unit (LGU) Legislative Body
Monreal, Masbate

ERC CASE NO. 2022-030 RC
ORDER/02 AUGUST 2022
PAGE 23 of 31

305. Office of the Municipal Mayor
Palanas, Masbate
306. Office of the Legislative Government Unit (LGU) Legislative Body
Palanas, Masbate
307. Office of the Municipal Mayor
Pio V. Corpuz, Masbate
308. Office of the Legislative Government Unit (LGU) Legislative Body
Pio V. Corpuz, Masbate
309. Office of the Municipal Mayor
Placer, Masbate
310. Office of the Legislative Government Unit (LGU) Legislative Body
Placer, Masbate
311. Office of the Municipal Mayor
San Fernando, Masbate
312. Office of the Legislative Government Unit (LGU) Legislative Body
San Fernando, Masbate
313. Office of the Municipal Mayor
San Jacinto, Masbate
314. Office of the Legislative Government Unit (LGU) Legislative Body
San Jacinto, Masbate
315. Office of the Municipal Mayor
San Pascual, Masbate
316. Office of the Legislative Government Unit (LGU) Legislative Body
San Pascual, Masbate
317. Office of the Municipal Mayor
Uson, Masbate
318. Office of the Legislative Government Unit (LGU) Legislative Body
Uson, Masbate
319. General Manager
Masbate Electric Cooperative, Inc. (MASELCO)
320. General Manager
Ticao Island Electric Cooperative (TISELCO)
321. Office of the Provincial Governor
Iloilo
322. Office of the Legislative Government Unit (LGU) Legislative Body
Iloilo
323. Office of the Municipal Mayor
Carles, Iloilo
324. Office of the Legislative Government Unit (LGU) Legislative Body
Carles, Iloilo
325. Office of the Provincial Governor
Guimaras
326. Office of the Legislative Government Unit (LGU) Legislative Body
Guimaras

ERC CASE NO. 2022-030 RC
ORDER/02 AUGUST 2022
PAGE 24 of 31

- 327. Office of the Municipal Mayor
Nueva Valencia, Guimaras
- 328. Office of the Legislative Government Unit (LGU) Legislative Body
Nueva Valencia, Guimaras
- 329. Office of the Provincial Governor
Antique
- 330. Office of the Legislative Government Unit (LGU) Legislative Body
Antique
- 331. Office of the Municipal Mayor
Caluya, Antique
- 332. Office of the Legislative Government Unit (LGU) Legislative Body
Caluya, Antique
- 333. Office of the Municipal Mayor
Culasi, Antique
- 334. Office of the Legislative Government Unit (LGU) Legislative Body
Culasi, Antique
- 335. General Manager
Antique Electric Cooperative, Inc. (ANTECO)
- 336. Office of the Provincial Governor
Cebu
- 337. Office of the Legislative Government Unit (LGU) Legislative Body
Cebu
- 338. Office of the Municipal Mayor
Bantayan, Cebu
- 339. Office of the Legislative Government Unit (LGU) Legislative Body
Bantayan, Cebu
- 340. Office of the Municipal Mayor
Pilar, Cebu
- 341. Office of the Legislative Government Unit (LGU) Legislative Body
Pilar, Cebu
- 342. Office of the Municipal Mayor
Poro, Cebu
- 343. Office of the Legislative Government Unit (LGU) Legislative Body
Poro, Cebu
- 344. Office of the Municipal Mayor
Santa Fe, Cebu
- 345. Office of the Legislative Government Unit (LGU) Legislative Body
Santa Fe, Cebu
- 346. General Manager
Bantayan Electric Cooperative, Inc. (BANELCO)
- 347. General Manager
Camotes Electric Cooperative, Inc. (CELCO)
- 348. Office of the Provincial Governor
Siquijor

ERC CASE NO. 2022-030 RC
ORDER/02 AUGUST 2022
PAGE 25 of 31

- 349. Office of the Legislative Government Unit (LGU) Legislative Body
Siquijor
- 350. Office of the Municipal Mayor
Larena, Siquijor
- 351. Office of the Legislative Government Unit (LGU) Legislative Body
Larena, Siquijor
- 352. Office of the Municipal Mayor
Lazi, Siquijor
- 353. Office of the Legislative Government Unit (LGU) Legislative Body
Lazi, Siquijor
- 354. Office of the Municipal Mayor
Siquijor, Siquijor
- 355. Office of the Legislative Government Unit (LGU) Legislative Body
Siquijor, Siquijor
- 356. General Manager
Province of Siquijor Electric Cooperative, Inc. (PROSIELCO)
- 357. Office of the Provincial Governor
Biliran
- 358. Office of the Legislative Government Unit (LGU) Legislative Body
Biliran
- 359. Office of the Municipal Mayor
Maripipi, Biliran
- 360. Office of the Legislative Government Unit (LGU) Legislative Body
Maripipi, Biliran
- 361. General Manager
Maripipi Multi-Purpose Cooperative, Inc. (MMPC)
- 362. Office of the Provincial Governor
Southern Leyte
- 363. Office of the Legislative Government Unit (LGU) Legislative Body
Southern Leyte
- 364. Office of the Municipal Mayor
Limasawa, Southern Leyte
- 365. Office of the Legislative Government Unit (LGU) Legislative Body
Limasawa, Southern Leyte
- 366. General Manager
Southern Leyte Electric Cooperative, Inc. (SOLECO)
- 367. Office of the Provincial Governor
Samar
- 368. Office of the Legislative Government Unit (LGU) Legislative Body
Samar
- 369. Office of the Municipal Mayor
Almagro, Samar
- 370. Office of the Legislative Government Unit (LGU) Legislative Body
Almagro, Samar

ERC CASE NO. 2022-030 RC
ORDER/02 AUGUST 2022
PAGE 26 of 31

- 371. Office of the Municipal Mayor
Santo Niño, Samar
- 372. Office of the Legislative Government Unit (LGU) Legislative Body
Santo Niño, Samar
- 373. Office of the Municipal Mayor
Tagapul-an, Samar
- 374. Office of the Legislative Government Unit (LGU) Legislative Body
Tagapul-an, Samar
- 375. Office of the Municipal Mayor
Zumarraga, Samar
- 376. Office of the Legislative Government Unit (LGU) Legislative Body
Zumarraga, Samar
- 377. General Manager
Samar I Electric Cooperative, Inc. (SAMELCO I)
- 378. General Manager
Samar II Electric Cooperative, Inc. (SAMELCO II)
- 379. Office of the Provincial Governor
Northern Samar
- 380. Office of the Legislative Government Unit (LGU) Legislative Body
Northern Samar
- 381. Office of the Municipal Mayor
Biri, Northern Samar
- 382. Office of the Legislative Government Unit (LGU) Legislative Body
Biri, Northern Samar
- 383. Office of the Municipal Mayor
Capul, Northern Samar
- 384. Office of the Legislative Government Unit (LGU) Legislative Body
Capul, Northern Samar
- 385. Office of the Municipal Mayor
San Antonio, Northern Samar
- 386. Office of the Legislative Government Unit (LGU) Legislative Body
San Antonio, Northern Samar
- 387. Office of the Municipal Mayor
San Vicente, Northern Samar
- 388. Office of the Legislative Government Unit (LGU) Legislative Body
San Vicente, Northern Samar
- 389. General Manager
Northern Samar Electric Cooperative, Inc. (NORSAMELCO)
- 390. Office of the Provincial Governor
Bohol
- 391. Office of the Legislative Government Unit (LGU) Legislative Body
Bohol
- 392. Office of the Municipal Mayor
Baclayon, Bohol

ERC CASE NO. 2022-030 RC
ORDER/02 AUGUST 2022
PAGE 27 of 31

- 393. Office of the Legislative Government Unit (LGU) Legislative Body
Baclayon, Bohol
- 394. Office of the Municipal Mayor
Calape, Bohol
- 395. Office of the Legislative Government Unit (LGU) Legislative Body
Calape, Bohol
- 396. Office of the Municipal Mayor
Inabanga, Bohol
- 397. Office of the Legislative Government Unit (LGU) Legislative Body
Inabanga, Bohol
- 398. Office of the Municipal Mayor
Loon, Bohol
- 399. Office of the Legislative Government Unit (LGU) Legislative Body
Loon, Bohol
- 400. Office of the Municipal Mayor
Panglao, Bohol
- 401. Office of the Legislative Government Unit (LGU) Legislative Body
Panglao, Bohol
- 402. Office of the Municipal Mayor
Tubigon, Bohol
- 403. Office of the Legislative Government Unit (LGU) Legislative Body
Tubigon, Bohol
- 404. Office of the Provincial Governor
Zamboanga del Sur
- 405. Office of the Legislative Government Unit (LGU) Legislative Body
Zamboanga del Sur
- 406. Office of the Provincial Governor
Davao del Sur
- 407. Office of the Legislative Government Unit (LGU) Legislative Body
Davao del Sur
- 408. Office of the Municipal Mayor
Jose Abad Santos, Davao del Sur
- 409. Office of the Legislative Government Unit (LGU) Legislative Body
Jose Abad Santos, Davao del Sur
- 410. Office of the Provincial Governor
Sarangani
- 411. Office of the Legislative Government Unit (LGU) Legislative Body
Sarangani
- 412. Office of the Provincial Governor
Davao del Norte
- 413. Office of the Legislative Government Unit (LGU) Legislative Body
Davao del Norte
- 414. Office of the City Mayor
Samal, Davao del Norte

ERC CASE NO. 2022-030 RC
ORDER/02 AUGUST 2022
PAGE 28 of 31

415. Office of the Legislative Government Unit (LGU) Legislative Body
Samal, Davao del Norte
416. General Manager
Davao del Norte Electric Cooperative, Inc. (DANECO)
417. Office of the Provincial Governor
Sultan Kudarat
418. Office of the Legislative Government Unit (LGU) Legislative Body
Sultan Kudarat
419. Office of the Municipal Mayor
Kalamansig, Sultan Kudarat
420. Office of the Legislative Government Unit (LGU) Legislative Body
Kalamansig, Sultan Kudarat
421. Office of the Municipal Mayor
Lebak, Sultan Kudarat
422. Office of the Legislative Government Unit (LGU) Legislative Body
Lebak, Sultan Kudarat
423. Office of the Municipal Mayor
Palimbang, Sultan Kudarat
424. Office of the Legislative Government Unit (LGU) Legislative Body
Palimbang, Sultan Kudarat
425. Office of the Municipal Mayor
Sen. Ninoy Aquino, Sultan Kudarat
426. Office of the Legislative Government Unit (LGU) Legislative Body
Sen. Ninoy Aquino, Sultan Kudarat
427. General Manager
Sultan Kudarat Electric Cooperative, Inc. (SUKELKO)
428. Office of the Provincial Governor
Basilan
429. Office of the Legislative Government Unit (LGU) Legislative Body
Basilan
430. Office of the City Mayor
Isabela, Basilan
431. Office of the Legislative Government Unit (LGU) Legislative Body
Isabela, Basilan
432. Office of the Provincial Governor
Sulu
433. Office of the Legislative Government Unit (LGU) Legislative Body
Sulu
434. Office of the Municipal Mayor
Jolo, Sulu
435. Office of the Legislative Government Unit (LGU) Legislative Body
Jolo, Sulu
436. Office of the Municipal Mayor
Luuk, Sulu

ERC CASE NO. 2022-030 RC
ORDER/02 AUGUST 2022
PAGE 29 of 31

- 437. Office of the Legislative Government Unit (LGU) Legislative Body
Luuk, Sulu
- 438. Office of the Municipal Mayor
Siasi, Sulu
- 439. Office of the Legislative Government Unit (LGU) Legislative Body
Siasi, Sulu
- 440. Office of the Municipal Mayor
Bangulngi (Tongkil), Sulu
- 441. Office of the Legislative Government Unit (LGU) Legislative Body
Bangulngi (Tongkil), Sulu
- 442. Office of the Municipal Mayor
Hadju Pangalima Tahil (Marungas), Sulu
- 443. Office of the Legislative Government Unit (LGU) Legislative Body
Hadju Pangalima Tahil (Marungas), Sulu
- 444. Office of the Municipal Mayor
Lugus, Sulu
- 445. Office of the Legislative Government Unit (LGU) Legislative Body
Lugus, Sulu
- 446. Office of the Municipal Mayor
Pangutaran, Sulu
- 447. Office of the Legislative Government Unit (LGU) Legislative Body
Pangutaran, Sulu
- 448. Office of the Municipal Mayor
Pata, Sulu
- 449. Office of the Legislative Government Unit (LGU) Legislative Body
Pata, Sulu
- 450. Office of the Municipal Mayor
Tapul, Sulu
- 451. Office of the Legislative Government Unit (LGU) Legislative Body
Tapul, Sulu
- 452. General Manager
Sulu Electric Cooperative, Inc. (SULECO)
- 453. General Manager
Siasi Electric Cooperative, Inc. (SIASELCO)
- 454. Office of the Provincial Governor
Tawi-tawi
- 455. Office of the Legislative Government Unit (LGU) Legislative Body
Tawi-tawi
- 456. Office of the Municipal Mayor
Bongao, Tawi-tawi
- 457. Office of the Legislative Government Unit (LGU) Legislative Body
Bongao, Tawi-tawi
- 458. Office of the Municipal Mayor
Mapun, Tawi-tawi

ERC CASE NO. 2022-030 RC
ORDER/02 AUGUST 2022
PAGE 30 of 31

459. Office of the Legislative Government Unit (LGU) Legislative Body
Mapun, Tawi-tawi
460. Office of the Municipal Mayor
Pangalima Sugala, Tawi-tawi
461. Office of the Legislative Government Unit (LGU) Legislative Body
Pangalima Sugala, Tawi-tawi
462. Office of the Municipal Mayor
Simunul, Tawi-tawi
463. Office of the Legislative Government Unit (LGU) Legislative Body
Simunul, Tawi-tawi
464. Office of the Municipal Mayor
Sitangkai, Tawi-tawi
465. Office of the Legislative Government Unit (LGU) Legislative Body
Stitangkai, Tawi-tawi
466. Office of the Municipal Mayor
Tandubas, Tawi-tawi
467. Office of the Legislative Government Unit (LGU) Legislative Body
Tandubas, Tawi-tawi
468. Office of the Municipal Mayor
Sapa-sapa, Tawi-tawi
469. Office of the Legislative Government Unit (LGU) Legislative Body
Sapa-sapa, Tawi-tawi
470. Office of the Municipal Mayor
South Ubian, Tawi-tawi
471. Office of the Legislative Government Unit (LGU) Legislative Body
South Ubian, Tawi-tawi
472. General Manager
Tawi-tawi Electric Cooperative, Inc. (TAWELCO)
473. General Manager
Cagayan de Sulu Electric Cooperative, Inc. (CASELCO)
474. Office of the Provincial Governor
Dinagat Islands
475. Office of the Legislative Government Unit (LGU) Legislative Body
Dinagat Islands
476. Office of the Municipal Mayor
San Jose, Dinagat Islands
477. Office of the Legislative Government Unit (LGU) Legislative Body
San Jose, Dinagat Islands
478. Office of the Municipal Mayor
Loreto, Dinagat Islands
479. Office of the Legislative Government Unit (LGU) Legislative Body
Loreto, Dinagat Islands
480. General Manager
Dinagat Islands Electric Cooperative, Inc. (DIELCO)

ERC CASE NO. 2022-030 RC
ORDER/02 AUGUST 2022
PAGE 31 of 31

- 481. Office of the Provincial Governor
Surigao del Norte
- 482. Office of the Legislative Government Unit (LGU) Legislative Body
Surigao del Norte
- 483. Office of the City Mayor
Surigao City, Surigao del Norte
- 484. Office of the Legislative Government Unit (LGU) Legislative Body
Surigao City, Surigao del Norte
- 485. General Manager
Surigao del Norte Electric Cooperative, Inc. (SURNECO)
- 486. Regulatory Operations Service
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