

Republic of the Philippines  
**ENERGY REGULATORY COMMISSION**  
San Miguel Avenue, Pasig City



**IN THE MATTER OF THE  
APPLICATION FOR  
FRANCHISE AND  
CERTIFICATE OF PUBLIC  
CONVENIENCE AND  
NECESSITY FOR THE  
OPERATION OF THE  
BINCUNGAN-MADAUM 69  
KV LINE**

**ERC CASE NO. 2015-110 MC**

**DAVAO LIGHT AND POWER  
COMPANY, INC. (DLPC)  
AND DAVAO DEL NORTE  
ELECTRIC COOPERATIVE,  
INC. (DANECO),**

**Applicants.**

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**D O C K E T E D**  
Date: APR 13 2018  
By: [Signature]

**ORDER**

On 28 December 2015, an *Application* dated 14 December 2015 was filed by applicants Davao Light and Power Company, Inc. (DLPC) and Davao del Norte Electric Cooperative, Inc. (DANECO) seeking the Commission's approval for franchise and Certificate of Public Convenience and Necessity (CPCN) for the operation of the Bincungan-Madaum 69 kV line.

DLPC and DANECO alleged the following in its *Application*:

**THE APPLICANT**

1. DLPC is a corporation duly organized and existing under the laws of the Philippines, with office address on C. Bangoy, Sr. Street, Davao City. It has an exclusive franchise from the Congress of the Philippines under Republic Act No. 8960 to operate electric light and power services in Davao City, Panabo City, and the Municipalities of Carmen, Dujali, and Sto. Tomas in Davao del Norte.

2. DANECO is a non-stock, non-profit electric cooperative duly organized and existing under the laws of the Philippines, with office address at Km. 100 National Highway,

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Montevista, Compostela Valley, Province. It has an exclusive franchise from the National Electrification Commission (NEC) to operate an electric light and power distribution service in all municipalities of the Province of Compostela Valley, namely: Monkayo, Montevista, Nabunturan, Mawab, Compostela, New Bataan, Maragusan, Maco, Mabini, Pantukan and Laak, and in the city of Tagum and Island Garden City of Samal (IGACOS) and municipalities of the Province of Davao del Norte, namely: Asuncion, Kapalong, Talaingod, New Corella and San Isidro.

3. DLPC and DANECO may be served with the orders, notices and other legal processes of the Honorable Commission through their respective counsels at the address indicated hereafter.

4. On November 21, 2011, DLPC and DANECO (hereinafter, collectively referred to as the "Consortium") entered into a Consortium Agreement for the joint acquisition and operation of the Bincungan-Madaum 69kV line, being the distribution utilities directly connected thereto. The Bincungan-Madaum 69 kV line (the "Subtransmission Asset") is a subtransmission asset of the National Transmission Corporation (TRANSCO), presently the subject of a Contract to Sell between the Consortium and TRANSCO (the "Contract to Sell"). The purchase price of the Subtransmission Asset is PhP 4,705,032.28, exclusive of Value Added Tax. A copy of the Contract to Sell is attached as Annex "A", while the description and electrical diagram of the Subtransmission Asset is attached as Annex "B" hereof.

5. DLPC and DANECO entered into the Consortium Agreement pursuant to Section 8 of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001 (EPIRA), which provides in part:

The take over by a distribution utility of any subtransmission asset shall not cause a diminution of service and quality to the end-users. Where there are two or more connected distribution utilities, the consortium or juridical entity shall be formed by and composed of all of them and thereafter shall be granted a franchise to operate the subtransmission asset by the ERC.

6. The Parties' respective share in the Purchase Price of the Submission asset shall be borne by them in proportion to their ownership interest in the following proportion:

DANECO	80%
<u>DLPC</u>	<u>20%</u>
<b>TOTAL</b>	<b>100%</b>

A copy of the Consortium Agreement of DLPC and DANECO is attached as Annex "C" hereof.

7. For the purpose of operating the Subtransmission Asset following the approval of the Honorable Commission of the

2/10

Contract to Sell, the Consortium, by way of the instant Application, respectfully requests for the issuance of a franchise and Certificate of Public Convenience and Necessity (CPCN). Each of DLPC and DANECO possesses the qualifications for the issuance of a CPCN, as prescribed in Resolution No. 5, Series of 2008 (the "CPCN Resolution"),<sup>1</sup> thus:

- a) Filipino citizenship or corporations, co-partnerships, associations or joint-stock companies constituted and organized under the laws of the Philippines: Provided, that sixty (60) per centum of the stock or paid up capital of any such corporation, co-partnership, association or joint stock company must belong entirely to citizens of the Philippines;
- b) Technical capability;
- c) Financial capability; and
- d) Franchise for operating and maintaining a transmission or distribution system issued by the Congress of the Philippines, or the ERC pursuant to Section 8 of the Act.

#### *Citizenship and Franchise*

8. DLPC is a Filipino corporation, more than sixty percent (60%) of its shares being owned and/or controlled by Aboitiz Power Corporation, a publicly listed corporation. DANECO is likewise a Filipino organization, being a non-stock, non-profit electric cooperative with more than 60% of its membership being Filipino citizens.

9. DLPC is the grantee of a franchise to operate a distribution system, extended by Congress through Republic Act No. 8960. On the other hand, DANECO is the grantee of a franchise extended by the NEC. A copy of Republic Act No. 8960 is attached as Annex "D" hereof, while a copy of the Certificate of Franchise issued by the National Electrification Commission (NEC) in favor of DANECO is attached as Annex "E" hereof.

#### *Technical Capability*

10. The Consortium possesses the technical capabilities to operate the Subtransmission Assets as supported by the attached copy of the result of the evaluation of TRANSCO of the technical capability of the Applicants. A copy of the TRANSCO technical evaluation is attached as Annex "F" hereof.

#### *Financial Capability*

11. The Consortium is financially capable of sustaining the operation of the Subtransmission Asset as supported by the attached copy of the result of the evaluation of TRANSCO of the financial capability of the Applicants. A copy of the results of the

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<sup>1</sup> "A Resolution Adopting the Rules to Govern the Issuance of Certificate of Public Convenience and Necessity (CPCN) to Entities Engaged in the Transmission and Distribution of Electricity".

evaluation by TRANSCO of the financial capability of the Applicants is attached as Annex "G" hereof.

*Policy on Existing and Future End-User Connections*

12. The Consortium shall adhere to the provisions of applicable laws, rules and regulations with respect to end-user connections. Currently, there are no end-users connected to the Subtransmission Asset.

13. Should any end-users be connected to the Subtransmission Asset in the future, they shall be considered customers of DLPC or DANECO, as the case may be, depending on the geographical location of the connection point, whether in the franchise area of DLPC and DANECO.

The policy is set out in more detail in Annex "H" hereof.

14. Given the foregoing, the Consortium believes that it has established its expertise and resources to adequately and reliably serve the present and future electricity requirements of the customers of each of DLPC and DANECO with the operation of the Subtransmission Asset. Hence, having complied with the requirements of applicable rules including the STA Guidelines and the CPCN Resolution, the issuance of the CPCN to the Consortium is warranted under the circumstances. Such issuance will ultimately redound to the benefit of the end-users in terms of continuous, reliable and efficient services.

15. In further support of the Application, the Consortium submits the following documents in compliance with Resolution No. 5, Series of 2008:

Annex	Nature of Document
"I" to "I-1"	DLPC and DANECO Board Resolutions authorizing the Consortium Agreement and the acquisition of the Subtransmission Asset
"J" to "J-1"	General Information Sheet of DLPC and List of Management officers of DANECO
"K" to "K-1"	Lists of DLPC and DANECO technical officers responsible for the design, installation, maintenance and repair of equipment of the Subtransmission Asset
"L" to "L-1"	DLPC and DANECO Distribution Development Plans (DDP) containing information on the power supply in the franchise area and contracted demand and energy
"M" to "M-1"	DLPC and DANECO Franchise Area Description

**P R A Y E R**

**WHEREFORE**, the foregoing considered, it is respectfully prayed that the Honorable Commission issue to the Consortium of Davao Light and Power Company, Inc. and Davao del Norte Electric Cooperative, Inc. the franchise and CPCN to operate the Bincungan-Madaum 69 kV line.

Other reliefs, just and equitable are likewise prayed for.

Finding the said *Application* to be sufficient in form and in substance with the required fees having been paid, the same is hereby set for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on **24 April 2018 at ten o'clock in the morning (10:00 A.M.), at the ERC Hearing Room, 15<sup>th</sup> Floor, Pacific Center Building, San Miguel Avenue, Pasig City.**

Accordingly, DLPC and DANECO are hereby directed to:

- 1) Cause the publication of the attached Notice of Public Hearing once (1x) in a newspaper of nationwide circulation in the Philippines at its own expense, the date of the publication to be made not later than ten (10) days before the scheduled initial hearing;
- 2) Furnish with copies of this Order and the attached Notice of Public Hearing the Offices of the Provincial Governors, City and Municipal Mayors, and the Local Government Unit (LGU) legislative bodies within the affected franchise area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform of the filing of the *Application*, its reasons therefor, and of the scheduled hearing thereon, the consumers within the affected franchise area, by any other means available and appropriate;
- 4) Furnish with copies of this Order and the attached Notice of Public 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 at the scheduled hearing; and

- 5) Furnish with copies of the *Application* and its attachments all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing, Applicant must submit to the Commission 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 Public Hearing consisting of affidavit of the Editor or Business Manager of the newspaper where the said Notice of Public Hearing was published, and the complete issue of the said newspaper;
- 2) The evidence of actual posting of this Order and the attached Notice of Public 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 Applicant to inform of the filing of the *Application*, its reasons therefore, and of the scheduled hearing thereon, the consumers within the affected franchise area;
- 4) The evidence of receipt of copies of this Order and the attached Notice of Public Hearing by the Office of the Solicitor General (OSG), the Commission on Audit (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 proofs of compliance with the requirements of the Commission.

Applicant and all interested parties are also required to submit, at least five (5) days before the date of the initial hearing and Pre-trial Conference, their respective Pre-trial Briefs containing, among others:

6/2

- 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 therefore; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-trial Brief.


Failure of Applicant 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.

DLPC and DANECO 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, what the *Application* is all about and the reasons and justifications being cited in support thereof.

**SO ORDERED.**

Pasig City, 10 April 2018.

FOR AND BY AUTHORITY  
OF THE COMMISSION:

  
**AGNES VST DEVANADERA**  
*Chairperson and CEO*

  
LS/SLAN/KTB/APV



COPY FURNISHED:

1. Davao Light and Power Company, Inc. (DLPC)  
*Applicant*  
C. Bangoy Sr. Street, Davao City
2. Davao del Norte Electric Cooperative, Inc. (DANECO)  
Km. 100 National Highway, Montevista, Compostela Valley, Province



**ERC CASE NO. 2015-110 MC**  
**ORDER/10 APRIL 2018**  
**PAGE 8 OF 10**

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3. Atty. Paul B. Soriano and Atty. Lew Carlo C. Lopez  
*Counsel for Applicants DLPC*  
16<sup>th</sup> Floor, NAC Tower, 32<sup>nd</sup> St., Bonifacio Global, Taguig City
4. Atty. Jeremiah D. Francisco  
DECHAVEZ & EVANGELISTA LAW OFFICES  
*Counsel for Applicant DANECO*  
Units 1609-1610 Tycoon Centre, Pearl Drive, Ortigas Center, Pasig City
5. Office of the Mayor  
City of Davao
6. Office of the LGU legislative body  
City of Davao
7. Office of the Mayor  
City of Panabo
8. Office of the LGU legislative body  
City of Panabo
9. Office of the Mayor  
Carmen, Davao del Norte
10. Office of the LGU legislative body  
Carmen, Davao del Norte
11. Office of the Mayor  
Dujali, Davao del Norte
12. Office of the LGU legislative body  
Dujali, Davao del Norte
13. Office of the Mayor  
Sto. Tomas, Davao del Norte
14. Office of the LGU legislative body  
Sto. Tomas, Davao del Norte
15. Office of the Governor  
Province of Davao del Norte
16. Office of the LGU legislative body  
Province of Davao del Norte
17. Office of the Mayor  
Monkayo, Compostela Valley
18. Office of the LGU legislative body  
Monkayo, Compostela Valley
19. Office of the Mayor  
Montevista, Compostela Valley
20. Office of the LGU legislative body  
Montevista, Compostela Valley
21. Office of the Mayor  
Nabunturan, Compostela Valley
22. Office of the LGU legislative body  
Nabunturan, Compostela Valley
23. Office of the Mayor  
Mawab, Compostela Valley
24. Office of the LGU legislative body  
Mawab, Compostela Valley

8/4



**ERC CASE NO. 2015-110 MC**  
**ORDER/10 APRIL 2018**  
**PAGE 9 OF 10**

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25. Office of the Mayor  
Compostela, Compostela Valley
26. Office of the LGU legislative body  
Compostela, Compostela Valley
27. Office of the Mayor  
New Bataan, Compostela Valley
28. Office of the LGU legislative body  
New Bataan, Compostela Valley
29. Office of the Mayor  
Maragusan, Compostela Valley
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Maragusan, Compostela Valley
31. Office of the Mayor  
Maco, Compostela Valley
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Maco, Compostela Valley
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Mabini, Compostela Valley
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Pantukan, Compostela Valley
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Pantukan, Compostela Valley
37. Office of the Mayor  
Laak, Compostela Valley
38. Office of the LGU legislative body  
Laak, Compostela Valley
39. Office of the Mayor  
City of Tagum
40. Office of the LGU legislative body  
City of Tagum
41. Office of the Mayor  
City of Island Garden of Samal
42. Office of the LGU legislative body  
City of Island Garden of Samal
43. Office of the Governor  
Province of Compostela Valley
44. Office of the LGU legislative body  
Province of Compostela Valley
45. Office of the Mayor  
Asuncion, Davao del Norte
46. Office of the LGU legislative body  
Asuncion, Davao del Norte
47. Office of the Mayor  
Kapalong, Davao del Norte

968

**ERC CASE NO. 2015-110 MC**  
**ORDER/10 APRIL 2018**  
**PAGE 10 OF 10**

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48. Office of the LGU legislative body  
Kapalong, Davao del Norte
49. Office of the Mayor  
Talaingod, Davao del Norte
50. Office of the LGU legislative body  
Talaingod, Davao del Norte
51. Office of the Mayor  
New Corella, Davao del Norte
52. Office of the LGU legislative body  
New Corella, Davao del Norte
53. Office of the Mayor  
San Isidro, Davao del Norte
54. Office of the LGU legislative body  
San Isidro, Davao del Norte
55. Office of the Solicitor General  
134 Amorsolo Street, Legaspi Village, Makati City
56. Commission on Audit (COA)  
Commonwealth Avenue, Quezon City
57. Senate Committee on Energy  
GSIS Bldg. Roxas Blvd., Pasay City
58. House Committee on Energy  
Batasan Hills, Quezon City
59. Philippine Chamber of Commerce and Industry (PCCI)  
3<sup>rd</sup> Floor, Chamber and Industry Plaza (CIP),  
1030 Campus Avenue corner Park Avenue,  
McKinley Town Center, Fort Bonifacio, Taguig City
60. Regulatory Operations Service (ROS)  
[Tariffs and Rates Division (TRD)]  
17<sup>th</sup> Floor, Pacific Center Bldg., San Miguel Ave., Pasig City

10/10