

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



**IN THE MATTER OF DISPUTE
RESOLUTION: VIOLATION OF
FRANCHISE AREA OF MORESCO I
BY CEPALCO**

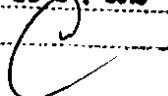
**MISAMIS ORIENTAL I RURAL
ELECTRIC SERVICE COOPERATIVE,
INCORPORATED (MORESCO I),
REPRESENTED BY PEDRITO H.
BACULIO, BOARD PRESIDENT,
Complainant,**

- versus -

ERC CASE NO. 2005-019 MC

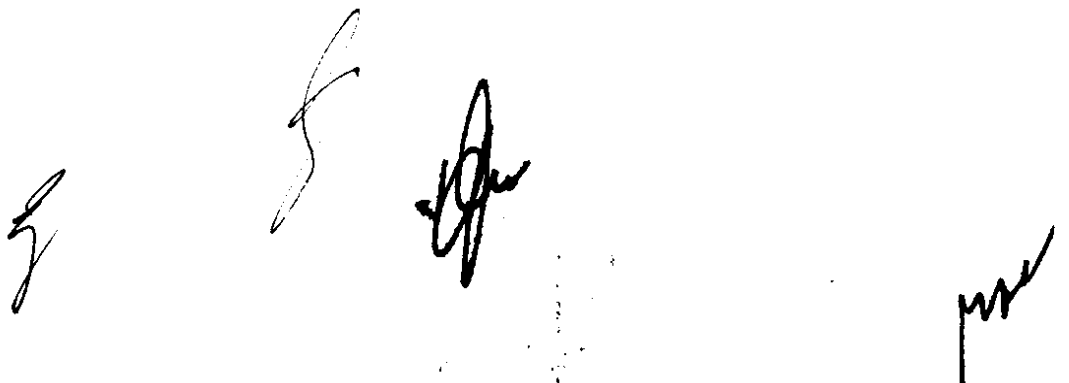
**CAGAYAN ELECTRIC POWER AND
LIGHT COMPANY, INCORPORATED
(CEPALCO), REPRESENTED BY
CONSUELO G. TION, PRESIDENT
AND CHIEF OPERATING OFFICER,
Respondent.**

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DOCKETED
Date: **FEB 24 2010**
By: 

DECISION

Before the Commission for resolution is the "Complaint" filed on January 27, 2005 by Misamis Oriental I Rural Electric Service Cooperative, Incorporated (MORESCO I) praying, among others, that: a) an Order be issued enjoining respondent Cagayan Electric Power and Light Company, Incorporated (CEPALCO) to stop its illegal construction of electric distribution line along the newly opened diversion road from landfill to SM; b) a judgment be rendered declaring it as the lawful franchise holder of the disputed area; and c) respondent be ordered to vacate the premises.



Having found the subject complaint sufficient in form and in substance with the required fees having been paid, an Order dated February 28, 2005 was issued setting the case for pre-hearing conference on March 29, 2005.

In the same Order, CEPALCO was directed to file its comment on the complaint within ten (10) days from receipt thereof.

On March 21, 2005, CEPALCO filed a "Motion for Extension of Time to File Comment and for Postponement of Pre-Hearing Conference". Relative thereto, on March 28, 2005, the Commission issued an Order granting said motion and resetting the pre-hearing conference to April 12, 2005.

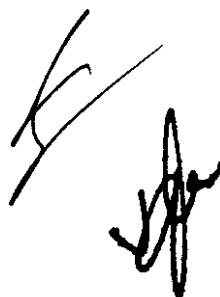
On April 28, 2005, CEPALCO filed a "Motion to Admit Answer/Comment" attaching therewith its "Answer/Comment".

On May 31, 2005, MORESCO I filed its "Motion (For Probational Authority to Serve Customer)".

On June 14, 2005, CEPALCO filed its "Opposition".

On July 1, 2005, MORESCO I filed its "Reply with Urgent Motion for Issuance of Provisional Authority".

On August 23, 2005, CEPALCO filed its "Rejoinder".



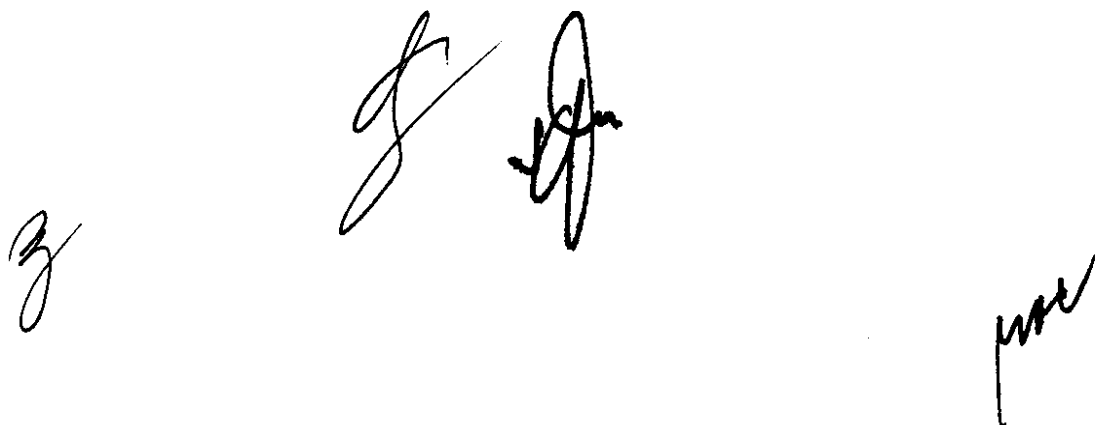
On various dates, the Commission conducted series of hearings. MORESCO I presented the following witnesses, who all testified in support of its complaint: a) Mr. Pedrito H. Baculio, its Board President; b) Engr. Jovel B. Ubay-Ubay, its Engineering Services Manager; and c) Mr. James Dunque, Mapping Division Chief of Cagayan de Oro's City Assessor's Office.

In the course of their respective direct examinations, the witnesses identified various documents which were duly marked as exhibits. Said witnesses were lengthily cross-examined by CEPALCO at the time they were presented as such.

For CEPALCO, it presented the following witnesses, who all testified in support of its answer/comment: a) Engr. Bonifacio A. Rana, Jr., Department Caretaker of its District Services Department; and b) Mr. Cletus Vallar, Technical Staff of the Arbitration Committee on Delineation of Barangay Boundaries of the City Government of Cagayan de Oro.

Likewise, said witnesses identified various documents in the course of their respective direct examinations. The documents were duly marked as exhibits for CEPALCO. They were also lengthily cross-examined by MORESCO I at the time they were presented as such.

On May 19, 2006, MORESCO I filed its "Manifestation (With Formal Offer of Exhibits)".

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On January 26, 2007, CEPALCO filed its "Objections to Formal Offer of Exhibits".

On September 20, 2007, CEPALCO filed its "Formal Offer of Evidence".

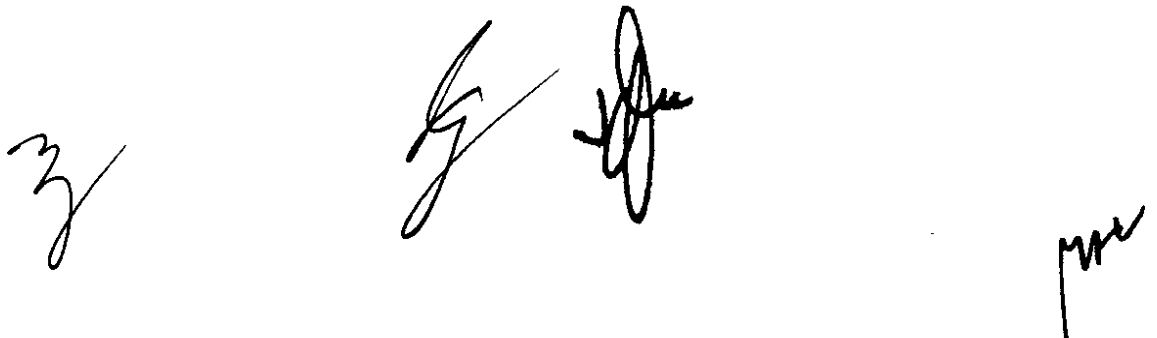
On October 26, 2007, MORESCO I filed its "Comment to Formal Offer of Exhibits of Respondent with Motion for Ocular Inspection and with Reservation to Present Rebuttal Evidence".

On November 19, 2007, CEPALCO filed its "Reply to Comments to Formal Offer".

On March 13, 2008, MORESCO I filed an "Urgent Motion for Issuance of TRO, Injunction, Ocular Inspection and To Cite CEPALCO in Contempt of Court" praying that: a) upon filing thereof, a Temporary Restraining Order (TRO) be issued immediately, and after due hearing, a permanent injunction prohibiting CEPALCO from violating MORESCO I's franchise area be issued; b) an ocular inspection on the three (3) disputed areas be conducted; and c) an Order be issued directing CEPALCO to explain why it should not be cited for contempt.

In the said motion, MORESCO I alleged, among others, that:

- a) On or about March 7, 2008, CEPALCO has, for the fourth (4th) time, built a distribution line along Macapagal Drive, Upper Canito-an (now Upper Carmen), Cagayan de Oro City, consisting of about seventeen (17) electric poles;
- b) The new line of CEPALCO is a duplication of MORESCO I's existing line and a violation of the Electric Power and Industry Reform Act of 2001 or the EPIRA;



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- c) It is constructed apparently without prior approved capital expenditure application;
- d) The said line, which is built very close to MORESCO I's existing line, engineering-wise, constitutes serious danger and hazard and must be stopped immediately;
- e) It is likewise highly contemptuous on the Commission, considering the existence of the two (2) above-entitled cases; and
- f) This is the 4th violation of MORESCO I's franchise area and is a serious insult to its Board and Management and greatly prejudices its member-consumers.

On April 2, 2008, CEPALCO filed an "Opposition to Urgent Motion for Issuance of TRO, Injunction, Ocular Inspection and to Cite CEPALCO in Contempt of Court".

On May 8, 2008, the Commission held a clarificatory meeting in order for MORESCO I and CEPALCO to ventilate their respective arguments. Thereafter, they were directed to file their respective memoranda within thirty (30) days from said date of meeting.

On even date, the Commission conducted an ocular inspection within the disputed area, subject of the instant complaint.

On May 26, 2008, the Commission issued an Order directing MORESCO I and CEPALCO to observe the Status Quo until such time that the Commission has resolved the matter.

On June 10, 2008, CEPALCO filed its "Memorandum".



On July 17, 2008, MORESCO I filed its "Memorandum for Complainant".

On December 3, 2008, CEPALCO filed an "Urgent Motion for the Issuance of a Cease and Desist Order Against MORESCO I and to Cite MORESCO I for Contempt" praying that: MORESCO I be: a) directed to cease and desist from further constructing distribution lines and facilities in the disputed area; b) directed to remove the distribution lines/facilities it has constructed in violation of the Status Quo Order; c) cited in contempt for violating the Status Quo Order of the Commission; and d) heavily fined in accordance with the Schedule of Penalties of the Commission. It further prayed that the officers and employees of MORESCO I involved in the violation be cited in contempt under Rule 71 of the Revised Rules of Court.

In the said motion, CEPALCO alleged, among others, that on November 22, 2008, it discovered that MORESCO I has been erecting primary poles and installing primary line facilities along the SM Alternate Road, situated well within the disputed area.

It further alleged that MORESCO I had already completed the construction of about fifteen (15) spans of primary poles with three (3)-phase primary lines. This line construction is a willful and deliberate disregard of the Commission's Status Quo Order and constitutes a clear violation of the said Order.

On January 4, 2010, MORESCO I filed a "Motion to Cite CEPALCO in Contempt" praying that: a) CEPALCO be made to explain why it should not be cited in contempt of court; and b) pending resolution of the instant motion,

CEPALCO be ordered to stop its illegal construction at Phase II, Silver Creek Subdivision at Puli, Canito-an, Cagayan de Oro City.

In the said motion, MORESCO I alleged, among others, that sometime in November 2009, in defiance and violation of the Status Quo Order dated May 26, 2008, CEPALCO constructed a distribution line to serve Phase II of Silver Creek Subdivision, located in Puli, Canito-an, Cagayan de Oro City. It further alleged that said violation is the latest of series of illegal encroachments by CEPALCO.

The "Formal Offer of Exhibits" filed on May 19, 2006 by MORESCO I and the "Formal Offer of Evidence" filed on September 20, 2007 by CEPALCO are hereby admitted for being relevant and material in the final resolution of the case.

DISCUSSION

The instant complaint stemmed from the alleged violation of the provisions of the compromise agreement executed by and between MORESCO I and CEPALCO, particularly the definition of the electric franchise boundary with respect to Barangay Canito-an, Cagayan de Oro City.

In the said complaint, MORESCO I alleged, among others, that:

- a. On or about August 18, 2004, CEPALCO, willfully, illegally and in bad faith, and in gross violation of the franchise area of MORESCO I, constructed an electric distribution line along the newly opened diversion road from Landfill to SM consisting of about two (2) kilometers; and
- b. CEPALCO is aware of the franchise boundary of MORESCO I, having participated in the preparation of the compromise agreement.



By way of special and affirmative defenses, CEPALCO, in its answer/comment, alleged, among others, that:

- a. MORESCO I does not state a cause of action; and
- b. CEPALCO's original franchise covered, among others, the entire City of Cagayan de Oro.

CEPALCO further alleged that it agreed, by way of a compromise agreement, to allow MORESCO I to serve electricity customers in the area which it was misled to believe is part of Barangay Canito-an (referred to as Lower Canito-an), a barangay of Cagayan de Oro City. To implement the agreement, a sketch map was prepared, indicating therein the supposed boundary line between Barangays Canito-an and Carmen. The said boundary line was supposed to delineate the respective franchises of MORESCO I and CEPALCO. From the outset, it was never the intention of the parties that any part of Barangay Carmen was to be ceded by CEPALCO to MORESCO I and be part of the latter's franchise area.

The core issue to be resolved in this case is which distribution utility has the right to provide electric service in the disputed area.

MORESCO I and CEPALCO presented several witnesses and submitted various documents in support of their respective allegations.

It is worth mentioning that on January 27, 2000, the National Electrification Commission (NEC) issued a Decision in NEC Case No. 97-15 [Application for




Franchise to Operate Electric Light and Power Service in the Municipality of Talakag, Bukidnon, and in the Fifteen (15) Upper Barangays of Cagayan de Oro City, Namely: Canito-an, Pagatpat, Baikington, San Simon, Tumpagon, Pigsagan, Tuburan, Pagalongan, Tagpangi, Taglimao, Bayanga, Mambuaya, Dansolihon, Tignapoloan and Bisigan, MORESCO I – Applicant *versus* Bukidnon II Electric Cooperative, Incorporated (BUSECO) and CEPALCO – Oppositors] the dispositive portion of which provides:

“WHEREFORE, in consideration of the joint motion of MORESCO I and BUSECO, MORESCO I is hereby allowed to continue its service in Talakag, Bukidnon in the meantime until such time that BUSECO shall have become capable of servicing said town or the real sentiments of the people concerned shall have been determined as to which of the two electric cooperatives shall serve them, or both cooperatives shall have settled the matter amicably between them at the instance of any party or the Commission itself.

FURTHERMORE, except in the Municipality of Talakag, in the Province of Bukidnon, and the upper portion of Barangay Canito-an, Cagayan de Oro City (referred to in the Compromise Agreement between MORESCO I and CEPALCO dated November 29, 1999), the herein application of MORESCO I for franchise in the Barangays of Pagatpat, Baikington, San Simon, Tumpagon, Pigsagan, Tuburan, Pagalongan, Tagpangi, Taglimao, Bayanga, Mambuaya, Dansolihon, Tignapoloan, Bisigan and the lower portion of Barangay Canito-an, all in the City of Cagayan de Oro is hereby APPROVED and that said barangays are therefore included in the franchise area of MORESCO I, PROVIDED however that the upper portion of Barangay Canito-an, Cagayan de Oro City referred to in the herein agreement, remain within the franchise of CEPALCO.

Let the respective franchises of both CEPALCO and MORESCO I be modified accordingly.” (*Underscoring supplied*)

Parenthetically, on March 31, 2004, the Congress of the Philippines enacted Republic Act No. 9284 (An Act Amending and Extending the term of the Franchise Granted to Cagayan Electric Power and Light Company, Incorporated Under Republic Act No. 3247, as Amended by Republic Act No. 3570 and

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Republic Act No. 620) granting CEPALCO, its successors or assigns, a franchise to construct, operate and maintain in the public interest and commercial purposes, a distribution system for the conveyance of electric power to the end-users in the City of Cagayan de Oro and the Municipalities of Tagoloan, Villanueva and Jasaan, all in the Province of Misamis Oriental, except the barangays of Baikingon, San Simon, Pagatpat, Tagpangi, Pagalungan, Taglimao, Tuburan, Pigsag-an, Tumpagon, Bayanga, Mabuaya, Dansolihon, Tignapoloan, Besigan and a portion of Canito-an, all located in the City of Cagayan de Oro.

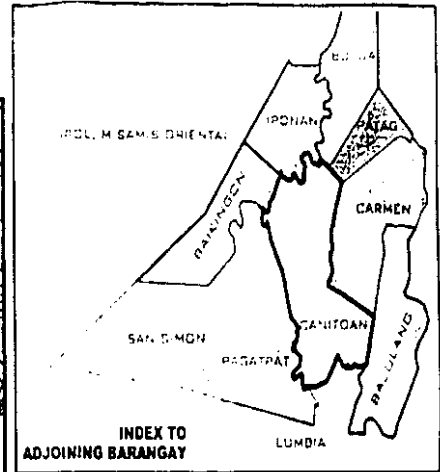
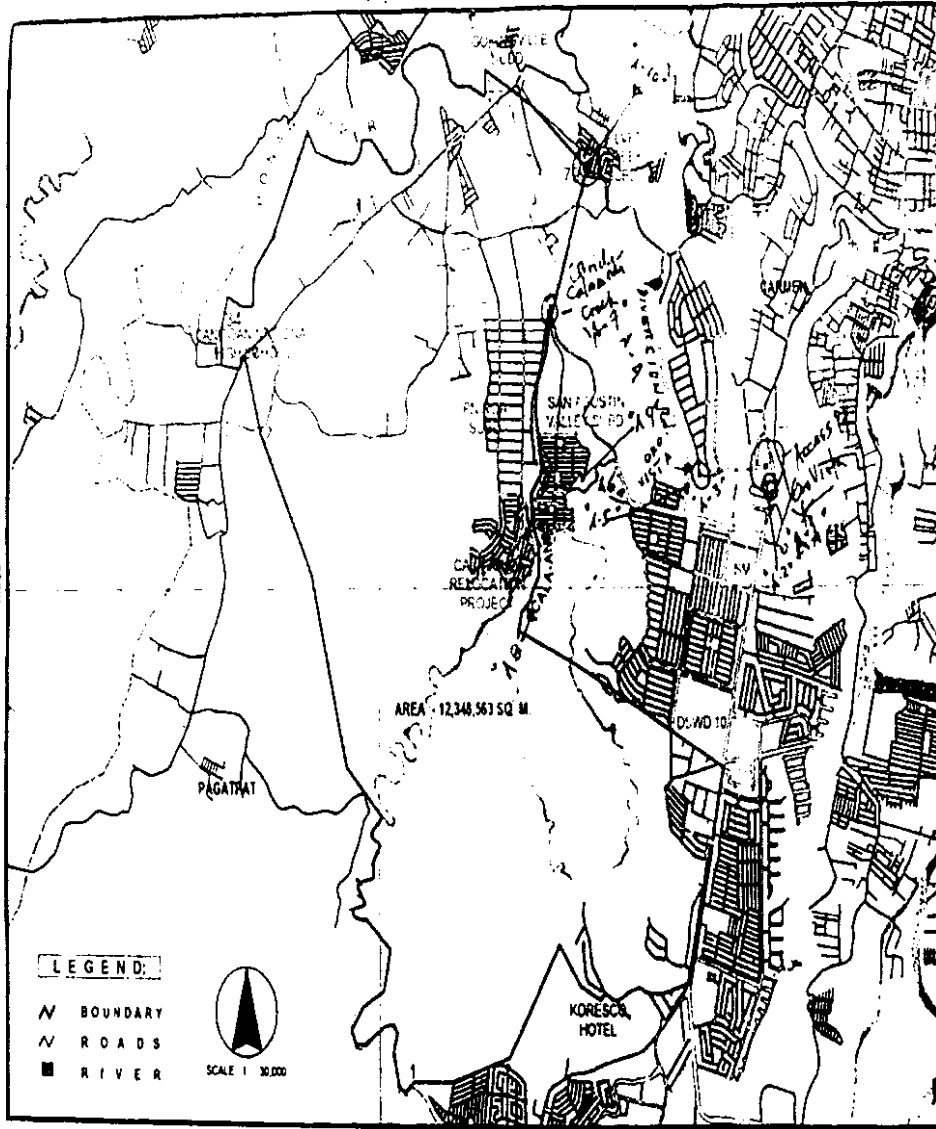
The NEC Decision expressly enumerated additional areas that would form part of MORESCO I's franchise area. The aforementioned law, likewise, provided the franchise area of CEPALCO.

During the ocular inspection of the disputed area by the Commission on May 8, 2008, both parties offered a common evidence, the Sketch Plan of Boundary for Barangay Canito-an, Cagayan de Oro City prepared by the Arbitration Committee on Delineation of Barangay Boundary Disputes, which was both acknowledged and signed by the representatives of MORESCO I and CEPALCO. Said document was duly marked as "Ocular Inspection Annex 1", as shown below:



*Order Annex 4
 1-2-05*

BARANGAY CANITONAN



City of Cagayan de Oro
 City of Cagayan de Oro
 HASTATION COMMITTEE ON DELINEATION
 OF BARANGAY BOUNDARY DISPUTES

**Sketch Plan of Boundary
 BARANGAY CANITONAN
 Cagayan de Oro City**

PROPOSED

Prepared & Submitted by: <i>[Signature]</i> MARCUS TAP Technical Staff City Planning Office	APPROVED BY: <i>[Signature]</i> RITO B. SALVACION Technical Staff City Planning & Dev. Office	<i>[Signature]</i> CLIFFORD VALLAR Technical Staff City Planning & Dev. Office
<i>[Signature]</i> EMMANUEL D. ABRAVIL Chairman	<i>[Signature]</i> ESTERITA C. ABRAVIL Member	<i>[Signature]</i> ALEXANDER S. DACER Member
<i>[Signature]</i> JOSE L. DINGORA Member	<i>[Signature]</i> JAMES V. CRONIN Member	<i>[Signature]</i> ATENCIO A. ASEQUIA Member
<i>[Signature]</i> ROGER D. BRADAT Member	<i>[Signature]</i> ANTHONY D. ABRARILLA Member	<i>[Signature]</i> EDOUARDO B. BERNAL Member
<i>[Signature]</i> VICENTE Y. ENANO Member	<i>[Signature]</i> VICENTE Y. ENANO Member	<i>[Signature]</i> RENATO M. RANCES Member

[Signature]
VICENTE Y. ENANO
City Mayor

APPROVED

[Handwritten signatures and initials]

From the said sketch map, it can be gleaned that the disputed area is beyond the boundary of Barangay Canito-an. Following the Index to Adjoining Barangay shown above, the disputed area is in fact, located in Barangay Carmen. Based on the NEC Decision, this is not part of MORESCO l's franchise area.

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WHEREFORE, in view of the NEC Decision dated January 27, 2000 in NEC Case No. 97-15, Republic Act No. 9284 and "Ocular Inspection Annex 1", as submitted by the parties, the instant complaint is hereby **DISMISSED**.

Misamis Oriental I Rural Electric Service Cooperative, Incorporated (MORESCO I) and Cagayan Electric Light and Power Company, Incorporated (CEPALCO) are hereby **ADVISED** to strictly comply with the terms and conditions set forth in the NEC Decision and Republic Act. No. 9284.

Accordingly, the Status Quo Order dated May 26, 2008 is hereby **LIFTED**.


SO ORDERED.


Pasig City, February 8, 2010.


ZENAIDA G. CRUZ-DUCUT
Chairperson *quasi*


RAUF A. TAN
Commissioner


ALEJANDRO Z. BARIN
Commissioner


MARIA TERESA A.R. CASTAÑEDA
Commissioner


JOSE C. REYES
Commissioner

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