

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

**IN THE MATTER OF THE APPLICATION
FOR: (1) AUTHORITY FOR A DIRECT
CONNECTION WITH THE NATIONAL
POWER CORPORATION (NPC) UNDER
SECTION 3 (G) OF REPUBLIC ACT NO.
6395, AND THE NATIONAL
TRANSMISSION CORPORATION
(TRANSCO) UNDER SECTION 31 OF
REPUBLIC ACT NO. 9136, AND (2) THE
APPROVAL OF THE MEMORANDUM
OF AGREEMENT ON THE SUPPLY OF
ELECTRIC POWER**



ERC CASE No. 2008-054 MC

**CARMEN COPPER CORPORATION
(CCC),**

Applicant.

x-.....x

D O C K E T E D
Date: SEP 19 2008
By: [Signature]

D E C I S I O N

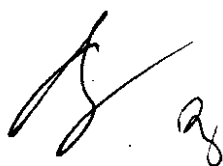
Before this Commission for resolution is the application filed by Carmen Copper Corporation (CCC) on April 23, 2008 for: (1) authority for a direct connection with the National Power Corporation (NPC) under Section 3 (g) of Republic Act No. 6395 (R.A. 6395), and the National Transmission Corporation (TRANSCO) under Section 31 of Republic Act No. 9136 (R.A. 9136); and (2) the approval of the Memorandum of Agreement (MOA) on the supply of electric power.

In the said application, CCC alleged, among others, the following:

1. It is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines and engaged in the business of, among others, prospecting, exploring, mining, milling, refining, preparing for market, manufacturing, buying, selling, exchanging, producing, and otherwise dealing with, all kinds of ores, metals, minerals, and other similar mineral resources;

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2. It is currently undertaking rehabilitation of its copper mines located at the Toledo City, Cebu, referred to as the "*Toledo Mine*" for the purpose of resuming commercial operations. The target date for the start of commercial operation of the Toledo Mines is on July 2008.
3. It is a large scale user of electricity given the magnitude of the rehabilitation measures being undertaken which will require electricity at an average of 3 MW to 5 MW per day and up to 30 MW to 50 MW upon its operations;
4. To adopt and implement a long-term power supply arrangement that will ensure delivery of electric power to the Toledo Mines during its operation, it initiated negotiations with various generation companies whose construction and development of their generation plants at Naga and Toledo, Cebu, will only be completed by 2011;
5. The existing power generation sources for Cebu Province have not been able to supply the fast growing power demand for all Cebu power end-users, including its escalating power requirements resulting in a severe power shortage crisis in Cebu and particularly at the Toledo Mine;
6. It is in urgent and immediate need of electricity that will support the on-going rehabilitation measures at the Toledo Mines in order for it to meet the fast-approaching July 2008 target date for the resumption of its commercial operations and comply with its obligations to its lending banks and off-takers for its copper concentrates and avoid costly default;
7. The direct connection with NPC and TRANSCO to the Visayas Grid is the only viable solution to address the acute power crisis and the emergency situation being faced by it and avert the potential catastrophic loss of the US\$200 Million investment and the displacement of 5,000 jobs already employed for its anticipated Toledo Mines re-opening;
8. To address its urgent need of electricity at the Toledo Mines, it entered into a MOA dated March 14, 2008 with NPC, whereby it agreed to purchase from NPC, and NPC agreed to supply to it, the electricity requirements of the Toledo Mines. For this purpose, it must directly connect to the Visayas Grid;
9. The MOA provides that TRANSCO will increase the current 360 MW capacity of its Leyte-Cebu submarine cables by an additional 40 MW (the "Increased Capacity"), subject to reliability and safety standards that will be determined by way of increased load capacity testing and installation of safety and protective systems;



10. The MOA allows NPC to supply to other consumers, including Visayan Electric Company (VECO), Balamban Economic Zone (BEZ) and/or Cebu III Electric Cooperative, Inc. (CEBECO III), any portion of the Increased Capacity not taken by it, subject however to prior written notice given by it to NPC that it will not take the entire Increased Capacity. If it does not provide such notice to NPC or if it fails to utilize what it has committed to take, it shall be charged by TRANSCO the energy equivalent to the actual net available capacity or the un-utilized committed energy, as the case may be;
11. The generation rate under the MOA shall be the Time of Use (TOU) rate for the Visayas Grid, as approved by the Commission;
12. The term of the MOA is three (3) years which will commence and become effective on the date of signing on March 14, 2008 and upon the signing of its application for a Transmission Service Agreement (TSA) with TRANSCO which occurred on March 18, 2008;
13. It has given NPC its consent to supply the portion of the Increased Capacity not taken by it during the rehabilitation and operation phases to VECO, Balamban Eco-zone and CEBECO III. In the event that it requires electricity in excess of 5 MW, said supply shall be discontinued in proportion to the amount of electricity demanded by it;
14. CEBECO III, the distribution utility concerned, has given its prior written consent to the aforesaid MOA for the supply of power by NPC to it through direct connection to TRANSCO as evidenced by the following: (a) the letter dated March 18, 2008 to NPC on the "Protocol on Written Notification for Excess Power Supply"; and (b) the letter to the Commission dated April 22, 2008 where CEBECO III interposes no objection for the immediate approval to its direct connection to NPC and TRANSCO in the Visayas Grid and the TSA to support the electricity requirements for the rehabilitation and operations of the Toledo Mines;
15. CEBECO III "confirms that it is unable to provide the electricity requirements of the Toledo Mine at this time", but that however, "CEBECO III and CCC are entering into and executing mutually satisfactory arrangements for the provision of back-up and alternative power supply in parallel to its direct connection agreement with TRANSCO, subject to the payment of reasonable access fees to, and the good faith exercise of termination rights by CEBECO III";
16. CEBECO III expressly states that it does "not likewise object to its prayer to dispense with the conduct of a hearing on its application pursuant to ERC Resolution No. 48, Series of 2006";



17. In anticipation of its re-opening, it hired around 5,000 employees within Toledo and Cebu and hundred millions worth of equipment have been purchased and/or delivered. Moreover, Barangay Don Andres Soriano and Toledo City have had in the past months an unprecedented resurgence of economic activity, attracted new investments anchored in the re-opening of the Toledo Mine and has uplifted the morale, hope and confidence of its people including the entire Cebu Province; and
18. All these long overdue and positive developments to the economy of Toledo and Cebu as well as the rest of the country are seriously threatened by the acute lack of power to supply its power requirements. NPC and TRANSCO have responded to this emergency power crisis and averts this potential economic catastrophe by dramatically increasing the capacity of the Leyte-Cebu submarine cable by another 40 MW sourced from the Leyte Geothermal power plants precisely to meet its urgent power requirements.

CCC thus, prayed that upon filing of the instant application, the Commission:

1. Immediately grant the approval of the application to directly connect with NPC and TRANSCO for purposes of meeting the urgent electricity requirements of the rehabilitation and operations of the Toledo Mine without need of any hearing; or
2. On the alternative, grant a provisional authority or approval for such application for direct connection pending the conduct of any hearing on the application, and after required hearings, approve the application of it to directly connect with NPC and TRANSCO for purposes of meeting the urgent electricity requirements for the rehabilitation and operations of the Toledo Mine; and whether under either (i) and (ii) options above,
3. Approve the following documents forming an integral part to its application for approval of direction connection to NPC and TRANSCO with the Visayas Grid, to wit:
 - (a) The MOA dated March 14, 2008 between NPC and CCC, including any and all contracts, instruments and other documents implementing the MOA,
 - (b) The TSA dated March 18, 2008 signed between TRANSCO and CCC,
 - (c) Its letter to NPC dated March 18, 2008 on the "Protocol on Written Notification for Excess Power Supply", and
 - (d) The Certificate of Approval for Interim Connection issued by TRANSCO to CCC dated April 17, 2008.



Having found said application sufficient in form and in substance, with the required fees having been paid, the Commission issued an Order and a Notice of Public Hearing, both dated May 8, 2008, setting the case for hearing on June 3, 2008.

In the same Order, the Commission directed NPC, TRANSCO and VECO to file their respective comments on the instant application, at least five (5) days before the initial hearing.

In the meantime, the Commission noted the following submissions made by the parties:

1. The "Motion for Extension of Time" filed by TRANSCO on May 21, 2008;
2. The "Manifestation with Motion" filed by NPC on May 22, 2008;
3. The "Comment" and "Pre-Trial Brief" filed by TRANSCO on May 26, 2008;
4. The "Pre-Trial Brief" filed by CCC on May 29, 2008; and
5. The "Comment" and Pre-Trial Brief" both filed by NPC on June 6, 2008.

In its comment, NPC alleged, among others, that the Commission is the proper body to determine whether or not NPC, without violating the right of the franchise holder CEBECO III, can provide CCC with direct supply of electric power. As manifested by CEBECO III, it interposed no objection to the instant application.



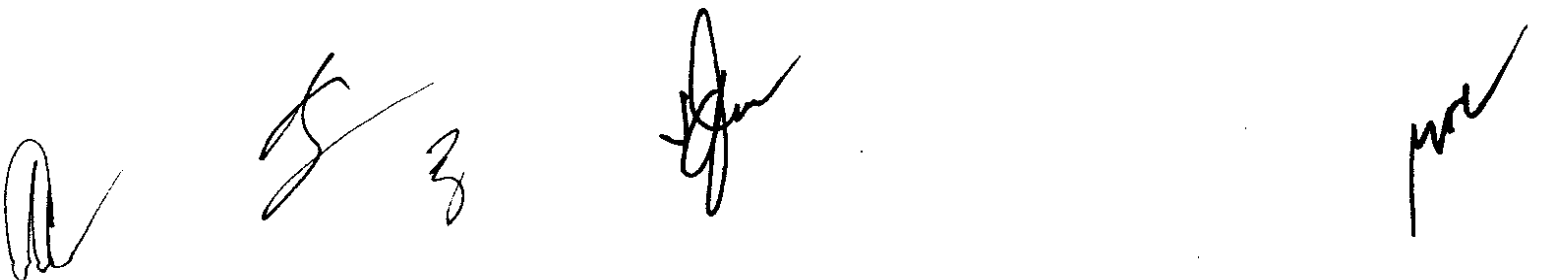
For its part, TRANSCO averred, among others, that in view of the consent of the franchised distribution utility concerned to such direct connection, it granted interim service to CCC subject to the condition that the Commission will finally approve the instant application. Once approved, CCC shall be entitled to a permanent TSA or permanent connection.

During the June 3, 2008 initial hearing, NPC, TRANSCO, and CCC appeared.

At the said hearing, CCC presented its proofs of compliance with the Commission's publication of notice requirements. Thereafter, a pre-trial conference was conducted wherein the parties entered into stipulation of facts and issues to be resolved by the Commission.

At the continuation of the hearing on July 8, 2008, NPC and TRANSCO manifested that they interpose no objection to the application in view of the fact that CEBECO III has already issued a waiver in favor of CCC. CCC then moved that a Decision be issued by the Commission considering that all the other parties interposed no objection to the instant application. CCC was directed to file its formal offer of evidence.

On July 29, 2008, CCC filed its "*Formal Offer of Evidence*" which is hereby admitted for being relevant and material in the final resolution of this case.



DISCUSSION

The Commission is cognizant of the fact that there may be instances where an end-user's power requirement cannot be reliably provided by the existing distribution system of a franchised distribution utility (DU). Thus, such end-user may be allowed to source its power requirements directly from NPC through the regulated transmission service of TRANSCO.

In its letter dated April 22, 2008, CEBECO III interposed no objection to the instant application in view of its inability to provide the electricity requirements of the Toledo Mines.

It must be noted that CCC's application for direct connection finds its basis on Section 3 (g) of Republic Act No. 6395, as amended, which provides that:

"Sec. 3. Power and General Functions of the Corporation – The powers, functions, rights and activities of the Corporation shall be the following:

x x x

g. x x x x; to sell electric power in bulk to: **1) industrial enterprises, 2) city, municipal or provincial system and other government institutions, 3) electric cooperatives, 4) franchise holders, and 5) real estate subdivisions; Provided, That the sale of power in bulk to industrial enterprises and real estate subdivisions may be undertaken by the Corporation when the power requirement of such enterprises or real estate subdivisions is not less than 100 kilowatts;** Provided, finally, That no restriction shall apply to sale of power in bulk to enterprises registered with the Board of Investments; x x x (Underscoring supplied)

The unreliability in the supply of power as well as its high costs are considered by CCC as major disincentives in its business operation. Being a



power intensive industry, it requires a continuous supply of electricity at a reasonable cost in order to meet the demands of its customer and compete in the global market.

It was established that CCC is qualified to directly source its power requirements from NPC through TRANSCO being an industrial enterprise consuming more than 100 kilowatts. It will require electricity at an average of 3 MW to 5 MW per day during its rehabilitation and up to 30 MW to 50 MW upon its large-scale commercial operation.

The Commission recognizes and fully agrees with the contention of CCC that the viability of its business and the quality of its service to its clients depend on the efficiency, affordability and reliability of the electric power supply. It is, thus, indubitable to approve the instant application given the nature and the impact of the business on the Philippine economy.

Anent the MOA and the TSA entered into by CCC with NPC and TRANSCO, respectively, the Commission finds the terms and conditions thereof to be reasonable and consistent with existing laws, rules and regulations.

WHEREFORE, in view of the foregoing, the application filed by Carmen Copper Corporation (CCC) for direct connection with the National Power Corporation (NPC) through the regulated transmission lines of the National Transmission Corporation (TRANSCO) is hereby **APPROVED** subject to the conditions set forth under ERC Resolution No. 48, Series of 2006, to wit:

- a. The sub-transmission assets shall ultimately become the property of the franchised DU or CEBECO III in this case, if qualified, or, in its absence, of TRANSCO and treated as Contribution in Aid of Construction (CIAC), until such time that these assets can be transferred to CEBECO III;



- b. If TRANSCO finances the assets, CCC shall pay the charges related to such assets to TRANSCO. TRANSCO shall treat such assets as CIAC and shall transfer the said assets to CEBECO III within a reasonable period of time;
- c. If CEBECO III in its behalf funds and constructs the assets, CCC shall pay the charge related to such assets and the other applicable charges for services availed from CEBECO III and other non-by-passable charges authorized by law; and
- d. If CCC puts up the assets, the same shall be transferred to CEBECO III and such assets shall be treated as CIAC and shall not form part of its Regulatory Asset Base. Should CEBECO III be not qualified, the said assets shall be transferred to TRANSCO and similarly, the assets shall be treated as CIAC and shall not form part of TRANSCO's Regulatory Asset Base. In the latter case, TRANSCO shall transfer the asset to CEBECO III within a reasonable period of time. CCC shall pay the applicable charges for operating and maintenance expenses and, in any case, it shall be liable to pay the applicable charges for services availed from CEBECO III and other non-by-passable charges authorized by law.

The Memorandum of Agreement (MOA) and the Transmission Service Agreement (TSA) entered into by CCC with the NPC and TRANSCO, respectively, are likewise **APPROVED**.

SO ORDERED.

Pasig City, September 8, 2008.


ZENAIDA G. CRUZ-DUCUT
Chairperson


RAUF A. TAN
Commissioner


ALEJANDRO Z. BARIN
Commissioner


MARIA TERESA A.R. CASTAÑEDA
Commissioner


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