

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

IN THE MATTER OF THE APPLICATION
FOR THE ISSUANCE OF CERTIFICATE
OF PUBLIC CONVENIENCE AND
NECESSITY (CPCN) TO ENGAGE IN THE
OPERATION OF ELECTRICAL
TRANSMISSION SERVICES AND TO
CONSTRUCT, INSTALL, FINANCE,
MANAGE, IMPROVE, EXPAND,
OPERATE, MAINTAIN, REHABILITATE,
REPAIR AND REFURBISH THE
NATIONWIDE TRANSMISSION SERVICE
OF THE REPUBLIC OF THE PHILIPPINES,
WITH PRAYER FOR PROVISIONAL
AUTHORITY



ERC Case No. 2008-116 MC

NATIONAL GRID CORPORATION OF THE
PHILIPPINES (NGCP),

Applicant.

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D O C K E T E D
Date: MAR 10 2009
By: [Signature]

DECISION

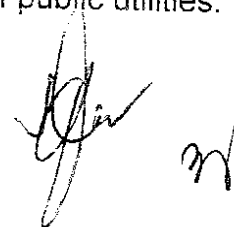
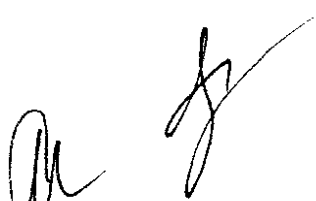
On December 19, 2008, the National Grid Corporation of the Philippines (NGCP) filed an application for the issuance of Certificate of Public Convenience and Necessity (CPCN) to engage in the operation of electrical transmission services and to construct, install, finance, manage, improve, expand, operate, maintain, rehabilitate, repair, and refurbish the nationwide transmission system of the Republic of the Philippines, with prayer for provisional authority.

In the said application, NGCP alleged, among others, that:

1. It is a corporation organized and existing under and by virtue of the laws of the Republic of the Philippines, at least 60% of the capital of which is owned by Philippine nationals, with office address at Suite 3304 West Tower, Philippine Stock Exchange Center, Exchange Road, Ortigas Center, Pasig City, Metro Manila, Philippines. It may be served orders and other processes through undersigned counsel;

[Handwritten signatures and initials at the bottom of the page]

2. On December 12, 2007, pursuant to the public bidding conducted by the Power Sector Assets and Liabilities Management Corporation (PSALM) under Republic Act No. 9136, the winning consortium (later incorporated as NGCP) was awarded the concession to assume the power transmission functions of the National Transmission Corporation (TRANSCO);
3. Under Republic Act No. 9511, it has been granted a franchise by the Republic of the Philippines. Certain relevant provisions of the franchise are as follows:
 - 3.1. *Section 1. Nature and Scope of the Franchise.* – Subject to the provisions of the Constitution and applicable laws, rules and regulations, and subject to the terms and conditions of the Concession Agreement and other documents executed with the National Transmission Corporation (TRANSCO) and the Power Sector Assets & Liabilities Management Corporation (PSALM) pursuant to Section 21 of Republic Act No. 9136, which are not inconsistent herewith, hereby granted to the National Grid Corporation of the Philippines, hereunder referred to as the Grantee, its successors or assigns, a franchise to operate, manage and maintain, and in connection therewith, to engage in the business of conveying or transmitting electricity through high voltage back-bone system of interconnected transmission lines, substations and related facilities, systems operations, and other activities that are necessary to support the safe and reliable operation of a transmission system and to construct, install, finance, manage, improve, expand, operate, maintain, rehabilitate, repair and refurbish the nationwide transmission system of the Republic of the Philippines. The Grantee shall continue to operate and maintain the subtransmission systems which have not yet been disposed by TRANSCO. Likewise, the Grantee is authorized to engage in ancillary business and any related business which maximizes the utilization of its assets such as, but not limited to telecommunications system, pursuant to Section 20 of Republic Act No. 9136. The scope of the franchise shall be nationwide in accordance with the Transmission Development Plan, subject to amendments or modifications of the said Plan, as may be approved by the Department of Energy of the Republic of the Philippines.
 - 3.2. *SEC. 2. Terms and Conditions of Franchise.* –This franchise shall be for a term of fifty years from the effectivity of this Act, and is hereby granted under the condition that it shall be subject to amendment, alteration, or repeal by Congress when the common good so requires. During the period of operation of the franchise herein granted, at least sixty per centum (60%) of the capital of the Grantee shall be owned by citizens of the Philippines. The Grantee shall comply with the Constitution and applicable laws pertaining to foreign ownership and management of public utilities.

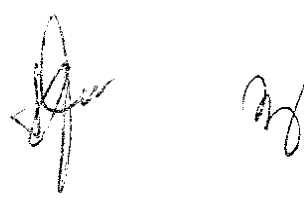
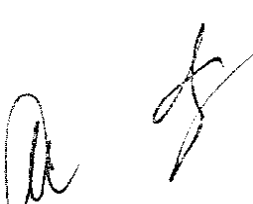


4. Pursuant to ERC Resolution No. 05-08¹ approved by this Commission on March 12, 2008, as well as the ERC Rules of Practice and Procedure, approved by the Commission on June 22, 2006 in Resolution No. 38, Series of 2006, this Application is submitted to the Commission for its review and for the issuance of a Certificate of Public Convenience and Necessity (CPCN) to operate, manage and maintain, and in connection therewith, to engage in the business of conveying or transmitting electricity through a high voltage back-bone system of interconnected transmission lines, substations and related facilities, systems operations, and other activities that are necessary to support the safe and reliable operation of a transmission system and to construct, install, finance, manage, improve, expand, operate, maintain, rehabilitate, repair and refurbish the nationwide transmission system of the Republic of the Philippines;
5. Pursuant to ERC Resolution No. 05-08, it submits the following general documentary requirements:
 - 5.1. Map of the service area clearly showing the boundary of Applicant NGCP's service area;
 - 5.2. Proposed tariff to be adopted by NGCP, as embodied in the October 15, 2008 Application of the National Transmission Corporation or Any Future Concessionaire Thereof for the Approval of the Maximum Allowable Revenue (MAR) for Calendar Year 2009; and
 - 5.3. The proposed standard practices it will follow when dealing with its customers.
6. It is technically capable of operating, managing and maintaining the nationwide transmission system; in evidence thereof, pursuant to ERC Resolution No. 05-08, it submits the following technical documentary requirements:
 - 6.1. Mr. Ruan Qiantu (with address c/o Suite 3304 West Tower, Philippine Stock Exchange Center, Exchange Road, Ortigas Center, Pasig City, Metro Manila, Philippines) shall, as interim Chief Technical Officer, be responsible for advising/supervising the personnel responsible for the design, installation, maintenance, and repair of equipment for the system, the majority of whom shall consist of current employees of TRANSCO with existing expertise in such matters. The employment of Mr. Ruan and any non-Filipino national shall be contingent on his/her qualification under the law and the acquisition of the necessary government permits, including but not limited to a work-visa from the

¹ 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



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- Bureau of Immigration, a work permit from the Department of Labor and Employment, and the approval of the Department of Justice;
- 6.2. Information regarding the power supply for the proposed service area indicating the contracted demand and energy;
 - 6.3. Single line diagram of the transmission system drawn in adequate scale on the map of the franchise area to be supplied with electricity, showing the location of substation; poles, and lines indicating substation name and capacity; designation of feeders or circuits; type of poles used (wood, steel or concrete); voltage level in kilovolt (kV) per feeder or circuit; length of each feeders in circuit-kilometers; and number of customers connected to each feeder or circuit;
 - 6.4. It adopts by reference the Statement of Compliance/ Compliance Plan to the Philippine Grid Code, (issued by TRANSCO, its predecessor), as approved by the Commission in its April 16, 2008 Decision in ERC Case No. 2003-326; and
 - 6.5. The judicial affidavit of Mr. Ambrosio T. Gutierrez, a copy of which is attached hereto and made an integral part hereof.
7. It is financially capable of operating, managing and maintaining the nationwide transmission system; in evidence thereof, pursuant to ERC Resolution No. 05-08, it submits the following financial documentary requirements:
 - 7.1. Copies of the most recent year's balance sheet and income statement of the principal owners of the business (as the NGCP is a new business which proposes to operate as a utility); and
 - 7.2. The judicial affidavit of Mr. Roel Z. Castro, a copy of which is attached hereto and made an integral part hereof.
 8. Given the above, it is submitted that public interest will be served by the granting of the instant Application. It is willing to comply with all pertinent laws, rules, regulations, and policies that the Commission has or may prescribe, and is willing to submit further evidence of its technical and financial capability as may be required by the Commission;
 9. The facts and the circumstances of this application clearly warrant the issuance by the Commission of provisional or interim relief before the final decision on the instant application. It, the concessionaire/successor to TRANSCO, is the sole entity with the legal franchise and technical capability to engage in the transmission of electricity through the nationwide transmission system of the Philippines, which is a service essential to the power industry; and



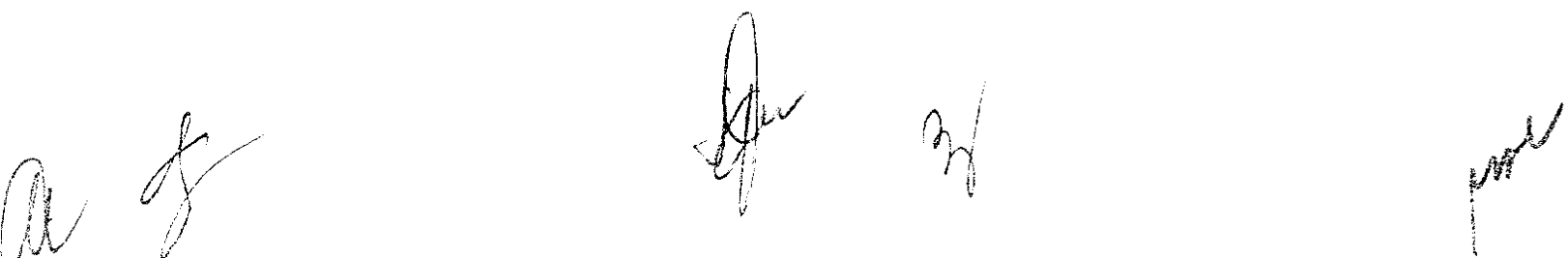
10. Given the above, it is submitted that the issuance of a provisional authority is warranted to ensure that, pending consideration of the application, the transmission system throughout the Philippines can be operated and maintained without delay or disruption and within required technical standards.

Having found the said application sufficient in form and in substance with the required fees having been paid, an Order and a Notice of Public Hearing, both dated December 22, 2008, were issued setting the application for initial hearing on January 15, 2009.

In the same Order, NGCP was provisionally authorized to engage in the operation of electrical transmission services and to construct, install, finance, manage, improve, expand, operate, maintain, rehabilitate, repair and refurbish the nationwide transmission system of the Philippines.

NGCP was directed to cause the publication of the attached Notice of Public Hearing, at its own expense, once (1x) in a newspaper of nationwide circulation in the Philippines, with the date of publication to be made not later than ten (10) days before the scheduled date of initial hearing. It was also directed to inform the consumers by any other means available and appropriate, of the filing of the instant application, its reasons therefor, and of the scheduled hearing thereon.

The Office of the Solicitor General (OSG), the Commission on Audit (COA) and the Committees on Energy of both Houses of Congress were furnished with copies of the Order and the Notice of Public Hearing and were requested to have their respective duly authorized representatives present at the aforesaid initial hearing.



Likewise, the Offices of the Mayors of the Cities and Municipalities where NGCP principally operates were furnished with copies of the Order and the Notice of Public Hearing for the appropriate posting thereof on their respective bulletin boards.


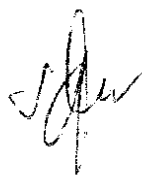
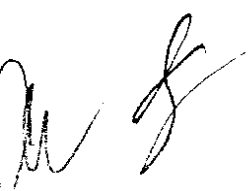
On January 12 and 14, 2009, respectively, the Manila Electric Company (MERALCO) filed its "Petition for Intervention" and "Pre-Trial Brief."

During the January 15, 2009 hearing, NGCP and MERALCO appeared.

At the said hearing, NGCP manifested that it filed its "Pre-Trial Brief". It then presented its proofs of compliance with the Commission's posting and publication of notice requirements which were duly marked as Exhibits "O" to "AA-1", inclusive. Thereafter, the Commission conducted a pre-trial hearing where the parties stipulated on the facts and issues relative to the instant application.

NGCP presented two (2) witnesses, Mr. Ambrosio Gutierrez, its Technical Advisor, and Mr. Roel Z. Castro, its Corporate Secretary, who both testified in support of the application. In the course thereof, additional documents were presented and marked as Exhibits "A" to "N-3", inclusive. NGCP was directed to furnish MERALCO copies of the affidavits of its witnesses.

At the continuation of the hearing on January 23, 2009, NGCP presented another witness, Mr. Edgardo Orenca, its Officer-In-Charge of Utility Economics, who testified relative to the credit and collection policies of NGCP. It, then, moved that the Concession Agreement it entered into with the Power Sector



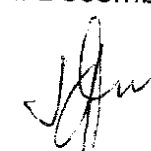
Assets and Liabilities Management Corporation (PSALM) be treated as confidential in nature. Said motion was duly noted.

The direct examination having been terminated, MERALCO conducted its cross-examination on the said witness and manifested that it was waiving its right to present evidence. On the other hand, NGCP was directed to submit various documents and its formal offer of evidence.

On January 29, 2009 and February 9, 2009, respectively, NGCP filed its "Compliance" and "Formal Offer of Evidence" which are hereby admitted for being relevant and material in the final resolution of this case.

DISCUSSION

On December 1, 2008, the Congress of the Philippines enacted into law Republic Act No. 9511 (*"An Act Granting the National Grid Corporation of the Philippines a Franchise to Engage in the Business of Conveying or Transmitting Electricity Through High Voltage Back-Bone System of Interconnected Transmission Lines, Substations and Related Facilities, and For Other Purposes"*) granting NGCP a franchise to operate, manage and maintain, and in connection therewith, engage in the business of conveying or transmitting electricity through high-voltage back-bone system of interconnected transmission lines, substation and related facilities, systems operations, and other activities that are necessary to support the safe and reliable operation of a transmission system and to construct, install, finance, manage, improve, expand, operate, maintain, rehabilitate, repair and refurbish the present nationwide transmission system of the Republic of the Philippines, for a period of fifty (50) years from the effectivity of the said Act or until December 1, 2058.



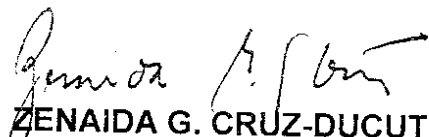
On the basis of the evidence presented herein, it was established that NGCP has the expertise and resources to adequately and reliably provide electrical transmission services. It has submitted sufficient evidence to prove its technical and financial capabilities to operate and maintain the transmission system in the country.

A thorough evaluation of the record of this application showed that its approval will redound to the benefit of the consumers in terms of continuous, reliable and efficient electric transmission service.

WHEREFORE, the foregoing premises considered, the provisional authority granted to the National Grid Corporation of the Philippines (NGCP) on December 22, 2008 is hereby made **PERMANENT**.

SO ORDERED.

Pasig City, March 9, 2009.


ZENAIDA G. CRUZ-DUCUT
Chairperson


RAUF A. TAN
Commissioner


ALEJANDRO Z. BARIN
Commissioner


MARIA TERESA A. R. CASTAÑEDA
Commissioner


JOSE C. REYES
Commissioner

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3. **Office of the Solicitor General**
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4. **Commission on Audit**
Commonwealth Avenue, Quezon City MM
5. **Senate Committee on Energy**
GSIS Bldg., Roxas Blvd., Pasay City, MM
6. **House Committee on Energy**
Batasan Hills, Quezon City
7. **Legal Department**
Manila Electric Company
Lopez Building, Pasig City



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

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ERC Certificate No. CPCN-09-03

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY that, pursuant to the power and authority conferred upon it by Republic Act No. 9136, the

ENERGY REGULATORY COMMISSION

after having duly considered the application filed in ERC Case No. 2008-116 MC for the issuance of Certificate of Public Convenience and Necessity (CPCN) to engage in the operation of electrical transmission services and to construct, install, finance, manage, improve, expand, operate, maintain, rehabilitate, repair, and refurbish the nationwide transmission system of the Republic of the Philippines and the evidence submitted in support thereof, has rendered a decision on March 9, 2009 declaring that the operation by the applicant of the business described therein will promote public interest in a proper and suitable manner.

WHEREFORE, the **COMMISSION** hereby issues to


NATIONAL GRID CORPORATION OF THE PHILIPPINES

this **CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY** which shall be valid until December 1, 2058 subject to the rules and regulations issued by the Commission in accordance with law.

Given at Pasig City, Philippines, this 9th day of March 2009.


ZENAIDA G. CRUZ-DUCUT
 Chairperson


RALF A. TAN
 Commissioner


MARIA TERESA A.R. CASTAÑEDA
 Commissioner


ALEJANDRO Z. BARIN
 Commissioner


JOSE C. REYES
 Commissioner

Attested by:


ATTY. FRANCIS SATURNINO C. JUAN
 Executive Director III