

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



IN THE MATTER OF THE  
APPLICATION FOR APPROVAL OF  
THE SALE OF VARIOUS  
SUBTRANSMISSION ASSETS WITHIN  
THE FRANCHISE AREA OF DAVAO  
LIGHT AND POWER COMPANY,  
INCORPORATED (DLPC)

ERC CASE NO. 2006-125 MC

NATIONAL TRANSMISSION  
CORPORATION (TRANSCO),  
Applicant.

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DOCKETED  
Date: MAR 09 2010  
By: [Signature]

**ORDER**

Before this Commission for resolution is the "Manifestation [In Opposition to the Application for Approval of the Sale of Various Subtransmission Assets Within the Franchise Area of Davao Light and Power Company, Inc. (DLPC)]" filed on August 23, 2007 by Davao del Sur Electric Cooperative, Inc. (DASURECO) praying that: a) the Decision on the above-captioned case dated July 11, 2007 be recalled or revoked; and b) the National Transmission Corporation (TRANSCO), DLPC and DASURECO be directed to come up with an agreement or settlement covering the contested structures, the terms and conditions of which will be acceptable to the parties.

In the said manifestation, DASURECO alleged, among others, that:

1. On August 21, 2007, it came across the Decision in instant application upon browsing the Commission's official website;

Four handwritten signatures in black ink, arranged horizontally. The signatures are stylized and appear to be of different individuals.


2. Structures 1 to 162 were originally constructed in 1977 and not in 1997 purposely and exclusively to service and cater its power needs;
3. In several meetings with TRANSCO, it manifested its desire and intention to buy the said structures together with the other structures going down to Davao del Sur area;
4. As a matter of fact, it had already complied with all requirements including the signing of the contract for the sale of subtransmission assets from Davao City down to Davao del Sur which is now pending before the Commission for approval;
5. It is surprised that instead of TRANSCO furnishing it with a copy of the application, being the concerned/interested distribution utility and rightful claimant of Structures 1 to 162, the same was furnished to the Municipal Mayors of Carmen, Dujali, Panabo and Sto. Tomas, all in the Province of Davao del Norte; and
6. It could have earlier filed its objection or officially intervened in the instant case, had it been properly furnished copies of the application.

On August 31, 2007, the Commission issued an Order directing TRANSCO and DLPC to file their respective comments within ten (10) days from receipt thereof.

On October 9, 2007, TRANSCO filed its "Comment (To the Manifestation Dated 23 August 2007 of Davao del Sur Electric Cooperative, Incorporated)".

On various dates, the Commission conducted several conferences for the parties to amicably settle the disputes among themselves.

During the conference conducted on June 6, 2008, TRANSCO, DLPC and DASURECO were directed to submit their respective position papers.



Relative thereto, on June 23, 2008 and July 16, 2008, TRANSCO and DLPC filed their respective "Position Paper".

## DISCUSSION

The issue of whether or not the Decision dated July 11, 2007 in the above-captioned case may be recalled or revoked stemmed from DASURECO's failure to intervene or oppose the application.

It is worth mentioning that during the initial hearing on November 27, 2006, TRANSCO presented its proofs of compliance with the Commission's publication and posting of notice requirements which were duly marked as Exhibits. The Notice of Public Hearing dated October 26, 2006 was published in Page B4 of the November 16, 2006 of *The Manila Times*, a newspaper of general circulation in the Philippines.

The publication alone is a constructive notice to the whole world that a case is pending before the Commission for its approval. Despite this, DASURECO did not intervene or oppose the same. Records of the Commission disclose that in the hearing above-mentioned, only TRANSCO and DLPC appeared. No intervenor/oppositor appeared nor was there any intervention/opposition registered.

Thus, DASURECO cannot invoke that it was deprived of due process simply because of its negligence to register its intervention or opposition on time.

However, the Commission is bound by the ruling in *Cando vs. Olazo*, 518 SCRA 741, wherein it was held that: "In the interest of its equity jurisdiction, the Supreme Court may disregard procedural lapses so that a case may be resolved on its merits – rules of procedure should promote, not defeat substantial justice." For this reason, the Commission believes that there is a need to consider the position of DASURECO, the same being a distribution utility connected to the disputed Davao – Digos 69 kV Line (Structure Nos. 1 to 162).

Section 8 of Republic Act No. 9136 otherwise known as the Electric Power Industry Reform Act of 2001 or the EPIRA expressly provides that:

*"x x x. 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 Commission.*

*The subscription rights of each distribution utility involved shall be proportionate to their load requirements unless otherwise agreed by the parties. x x x."*

Likewise, Section 2 of Article VI of the *Guidelines to the Sale and Transfer of TRANSCO's Subtransmission Assets and the Franchising of Qualified Consortiums*, as amended, states that the load requirements shall be based on the average demand recorded for the last twelve (12) months. Any share adjustment in the future shall be in accordance with the organizational framework (i.e. Articles of Incorporation) of the consortium.

Applying the foregoing provisions in the case at bar, the Commission believes that a consortium between DLPC and DASURECO should be formed

The image shows three handwritten signatures in black ink. The first signature is on the left, the second is in the middle, and the third is on the right. There is also a small, separate handwritten mark on the far right side of the page.

and the subscription rights of each distribution utility be based on their respective present loads.<sup>1</sup>

Finally, the Commission finds no cogent nor compelling reason to recall or revoke the assailed Decision as the same was based on the following considerations:

- a. The subject lines for sale are subtransmission assets;
- b. DLPC is qualified to take over the responsibility of operating, maintaining, upgrading and expanding said subtransmission assets; and
- c. The purchase price of the subject subtransmission assets is fair and reasonable.

**WHEREFORE**, the foregoing premises considered, the "Manifestation [In Opposition to the Application for Approval of the Sale of Various Subtransmission Assets Within the Franchise Area of Davao Light and Power Company, Inc. (DLPC)]" filed by Davao del Sur Electric Cooperative, Inc. (DASURECO) is hereby **DENIED** for lack of merit.

However, DLPC and DASURECO are hereby directed to form a consortium pursuant to the EPIRA and its existing Rules and Regulations and the subscription rights of each distribution utility be based on their respective present loads within sixty (60) days from receipt hereof.

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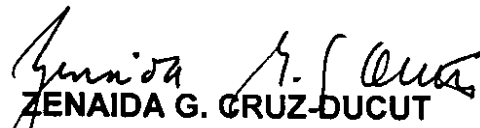
<sup>1</sup> Section 2 of Article VI of the *Guidelines to the Sale and Transfer of TRANSCO's Subtransmission Assets and the Franchising of Qualified Consortiums*, as amended, provides that: "x x x. Load requirements shall be based on the average demand recorded for the last twelve (12) months. x x x."



DLPC and DASURECO are further directed to file two (2) separate applications for grant/approval of franchise to operate the consortium and issuance of a Certificate of Public Convenience and Necessity (CPCN).

**SO ORDERED.**

Pasig City, March 2, 2010.

  
**ZENAIDA G. CRUZ-DUCUT**  
Chairperson *grate*

  
**RAUF A. TAN**  
Commissioner

  
**ALEJANDRO Z. BARIN**  
Commissioner

(Took No Part)  
**MARIA TERESA A.R. CASTAÑEDA**  
Commissioner

  
**JOSE C. REYES**  
Commissioner

Copy Furnished:

1. National Transmission Corporation (TRANSCO)  
Power Center, Quezon Avenue corner BIR Road  
Quezon City
2. Davao Light and Power Co., Inc. (DLPC)  
Davao City
3. Office of the Solicitor General  
134 Amorsolo Street, Legaspi Village,  
City of Makati 1229
4. Commission on Audit (COA)  
Commonwealth Avenue,  
Quezon City 1121
5. Senate Committee on Energy  
GSIS Building, Roxas Boulevard,  
Pasay City 1300
6. House of Representatives Committee on Energy  
Batasan Hills, Quezon City 1126
7. Office of the City Mayor  
Davao City
8. Office of the Municipal Mayor  
Carmen, Davao del Norte
9. Office of the Municipal Mayor  
Dujali, Davao del Norte
10. Office of the Municipal Mayor  
Panabo, Davao del Norte
11. Office of the Municipal Mayor  
Sto. Tomas, Davao del Norte
12. Davao del Sur Electric Cooperative, Inc.  
Cogon, Digos City, Davao del Sur 8002