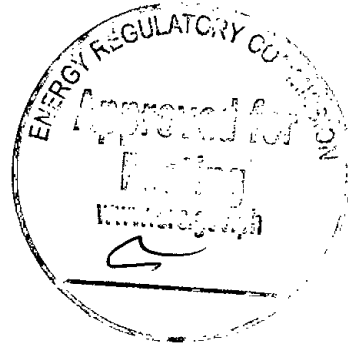


Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City



**BUKIDNON SECOND
ELECTRIC COOPERATIVE,
INC. (BUSECO),
Petitioner,**

-versus-

ERC CASE NO. 2016-001 DR

**BUKIDNON
SUBTRANSMISSION
CORPORATION (BSTC),
Respondent.**

D O C K E T E D
Date: APR 26 2016
By: [Signature]

X-----X

ORDER

On 17 March 2016, Bukidnon Second Electric Cooperative, Inc. (“**BUSECO**”) filed a Petition dated 14 March 2016 (“**Petition**”) against respondent Bukidnon Subtransmission Corporation (“**BSTC**”) pursuant to Section 43(b) of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (“**EPIRA**”).

In the Petition, petitioner BUSECO alleged, among others, the following:

PARTIES

1. Petitioner BUSECO is an electric cooperative existing pursuant to Presidential Decree No. 269, otherwise known as the National Electrification Administration (“**NEA**”) Decree, with postal address at Manolo Fortich, Bukidnon.
2. Respondent BSTC is a domestic stock corporation existing pursuant to law under the Corporation Code of the Philippines.

NATURE OF THE PETITION

3. Respondent BSTC is a consortium composed of First Bukidnon Electric Cooperative (“**FIBECO**”) and BUSECO. It was formed to enable the parties to own and operate the following subtransmission lines covering the following areas:

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Tagoloan (Natumulan) to Buseco	20 kilometers(km)
Kibawe to Maramag (Aglayan)	79.05 km
Maramag to Pulangi (lateral)	1.00 km

4. The consortium was formed pursuant to the provisions of Section 8 of the EPIRA, and Section 8, Rule 6 of the Implementing Rules and Regulations (“**IRR**”) of EPIRA. Under the said provisions, TRANSCO/NAPOCOR is mandated to sell or dispose of its subtransmission assets (i.e. 69 kV lines or less) to qualified distribution utilities and electric cooperatives. Notably, if the subtransmission line is being used by two or more electric cooperatives or distribution utilities, then the law requires that they form a consortium to own and operate the subtransmission line. Thus, in order to comply with the law, the two electric cooperatives, being joint users of the aforementioned subtransmission lines, formed respondent BSTC.

5. Of the total subscribed and fully paid up shares, FIBECO owns 49.93% and petitioner BUSECO 49.92% or a combined 99.95% of the total shares of BSTC. The Articles of Incorporation of respondent BSTC was attached to the Petition as **Annex “B”**. The latest General Information Sheet (“**GIS**”) was attached to the Petition and marked as **Annex “C”**.

6. The Articles of Incorporation of BSTC reflects that its incorporators and directors were members of the Board of Directors of BUSECO and FIBECO, each of whom holds one (1) share at BSTC; eight (8) directors were from BUSECO and seven (7) from FIBECO. The authorized capital stock of respondent BSTC at its incorporation, may be summarized as follows:

	Name	BUSECO/ FIBECO	Number of Sub- scribed Shares	Value of Share (PhP)
1.	Raul L. Alkuino	FIBECO	1	1,000.00
2.	Wilfredo D. Bajao	FIBECO	1	1,000.00
3.	Charlie C. Castillanes	BUSECO	1	1,000.00
4.	Rodelio B. Dacer	BUSECO	1	1,000.00
5.	Bonifacio B. Ebueza	BUSECO	1	1,000.00
6.	Jose A. Galula	BUSECO	1	1,000.00
7.	Regin D. Mordeno	FIBECO	1	1,000.00
8.	Romeo Y. Pacanan	FIBECO	1	1,000.00

9.	Miguel N. Quino	BUSECO	1	1,000.00
10.	Ricarte E. Salapang	FIBECO	1	1,000.00
11.	Catalino D. Villaflores	FIBECO	1	1,000.00
12.	Edgardo R. Masongsong	BUSECO	1	1,000.00
13.	Danilo P. Paciente	BUSECO	1	1,000.00
14.	Oliver A. Aldovino	BUSECO	1	1,000.00
15.	George J. Ares	FIBECO	1	1,000.00
16.	FIBECO, INC.		4,993	4,993,000.00 ¹
17.	BUSECO, INC.		4,992	4,992,000.00 ²

7. By the end of December 2015, majority of the initial set of Directors of respondent BSTC were no longer connected with either petitioner BUSECO or FIBECO inasmuch as their terms have ended or they did not run for re-election. Thus, six (6) of the eight (8) representatives of petitioner BUSECO were no longer members of the Board of petitioner BUSECO and five (5) out of seven (7) representatives of FIBECO were no longer members of the Board of FIBECO. In effect, only four (4) out of the fifteen (15) incorporators remained as members of the Board of FIBECO and respondent BUSECO.

8. The remaining incumbent Board members of respondent BUSECO are Charlie C. Castillanes and Danilo P. Paciente whereas FIBECO's remaining BOD members in the board of respondent BSTC are Regin D. Mordeno and Ricarte E. Salapang.

9. In order to be represented in the Board of Directors of respondent BSTC by its current Board members, petitioner BUSECO passed BOD Resolution No. 15-08-112 dated 21 August 2015 which approved and authorized directors **Edwin B. Galicia, Danilo T. Paciente, Gloria D. Ranile, Francis E. Bonia, Charlie C. Castillanes, Alex D. Payangga, Tarcisio L. Barros, and Deiter Hoff P. Arellano** to be the official BUSECO representatives in the BSTC Board of Directors. A copy of BOD Resolution No. 15-08-112 was attached as **Annex "D"**.

¹ The Articles of Incorporation of BSTC attached as Annex B of the Petition reflects the total number of shares subscribed by FIBECO at time of incorporation as 1,993 instead of 4,993 as alleged in Paragraph 4 of the Petition. Notably, the General Information Sheet of BSTC for the period of 15 January 2016 attached as Annex C of the Petition states that FIBECO owns 4,993 shares in BSTC.

² Similarly, Annex B of the Petition reflects the total number of shares subscribed by Petitioner BUSECO at time of incorporation as 1,992 instead of 4,992 as alleged in Paragraph 4 of the Petition. Likewise, Annex C of the Petition states that Petitioner BUSECO owns 4,993 shares in BSTC.

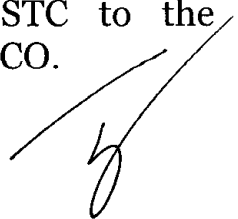
10. As a consequence of such Board Resolution, respondent BUSECO executed Deeds of Assignments in favor of Edwin Galicia (**Annex "E"**), Danilo T. Paciente (**Annex "E-1"**), Gloria D. Ranile (**Annex "E-2"**), Francis E. Boniao (**Annex "E-3"**), Charlie C. Castellanes (**Annex "E-4"**), Alex D. Payangga (**Annex "E-5"**), Tarcisio L. Barros (**Annex "E-6"**), and Deiter Hoff P. Arellano (**Annex "E-7"**) (collectively referred to as "**Deeds of Assignment**").

11. The Deeds of Assignment were then submitted to respondent BSTC together with Board Resolution No. 15-08-112 in order that the transfer to the new nominees of petitioner BUSECO will be registered in the Stock and Transfer Book of respondent BSTC qualifying the said nominees to run as members of the Board of Directors of respondent BSTC in the annual BOD election to be held on 15 January 2016.

12. However, despite the submission of these documents to respondent BSTC, the management of respondent BSTC refused to accept these documents and to register the new names of the assignees of petitioner BUSECO in the corporate books. The same thing also happened to the assignees of FIBECO.

13. During respondent BSTC's annual stockholders' meeting wherein part of the agenda is the election of the new Board of Directors of respondent BSTC held on 15 January 2016, the secretariat and management of respondent BSTC refused to acknowledge and honor the appointment of Director ALEX PAYANGGA as proxy for petitioner BUSECO because according to them, he is not a stockholder of record of respondent BSTC and therefore he is not entitled to vote. A copy of the proxy, duly received by BSTC, was attached to the Petition and marked as **Annex "F."**

14. In violation of the provisions of the Corporation Code on cumulative voting, the original incorporators who represent only .05% of the total shareholdings of respondent BSTC, managed to have themselves re-elected to the Board of Directors of respondent BSTC to the prejudice of both petitioner BUSECO and FIBECO.

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15. Subsequently, petitioner BUSECO passed Board Resolution No. 16-003, attached to the Petition and marked as **Annex "G"**, requesting respondent BSTC to invalidate the election held on 15 January 2016 and calling for the conduct of another election.

16. The Board of Directors of respondent BSTC passed a resolution increasing the authorized capital stock of BSTC from Ten Million Pesos (Php10,000,000.00) to Ninety Million Pesos (Php90,000,000.00).

17. Petitioner BUSECO then received from BSTC a notice/invitation to subscribe to the additional shares, in proportion to their original subscription interest, which respondent BSTC intends to offer to the public. The notice was marked and attached to the Petition as **Annex "H."**

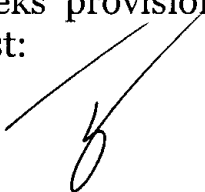
RELIEFS SOUGHT

In view of the foregoing, petitioner BUSECO seeks the following reliefs from the Commission:

1. Issuance of a resolution invalidating the 15 January 2016 election of respondent BSTC's Board of Directors;
2. Issuance of a resolution based on the Decision issued by Commission dated 23 February 2015 in ERC Case No. 2011-131 RC, invalidating the resolution of respondent BSTC's Board of Directors to increase its authorized capital stock;
3. Issuance of a resolution invalidating respondent BSTC's offer of its shares of stock to the public; and
4. Issuance of a resolution invalidating respondent BSTC's act of denying the registration of petitioner BUSECO's duly authorized assignees to its nominal shares of stock with respondent BSTC in the latter's stock and transfer book.

APPLICATION FOR CEASE AND DESIST ORDER

Petitioner BUSECO seeks provisional relief in the form of a Cease and Desist order against:



1. Respondent BSTC's intended increase in its authorized capital stock from Php10,000,000.00 to Php90,000,000.00 which would dilute the proportional interest of petitioner BUSECO in BSTC if such will be offered to the public; and

2. Any other corporate acts by respondent BSTC considering the pending question on the validity of the composition of respondent BSTC's board of directors.

Finding the said Petition to be sufficient in form and substance, with the required fees having been paid, pursuant to Section 4, Rule 13 of the Commission's Rules of Practice and Procedure, the same is hereby set for initial hearing on the jurisdictional requirements and motion for Cease and Desist Order on **01 June 2016 (Wednesday) at two o'clock in the afternoon (2:00 P.M.) at the ERC Hearing Room, 15th Floor, Pacific Center Building, San Miguel Avenue, Pasig City.**

Petitioner BUSECO is hereby directed to cause the publication of the attached Notice of Public Hearing at its own expense, once in a newspaper of general circulation in the locality or localities where the applicant or petitioner operates its business, if there be any such local newspaper, or in a newspaper of nationwide circulation, at least ten (10) days before the scheduled hearing.

Moreover, pursuant to Section 6, Rule 5 of the Commission's Rules of Practice and Procedure, the Commission hereby requires respondent BSTC to file its Comment on the Petition dated 14 March 2016 including the Motion for Issuance of a Cease and Desist Order contained therein within fifteen (15) days from receipt of the instant Order.

SO ORDERED.

Pasig City, 11 April 2016.

ERC
Office of the Chairman



D-2016-007-OC-02374

FOR AND BY AUTHORITY
OF THE COMMISSION:

for 
JOSE VICENTE B. SALAZAR
Chairman and CEO


C/B/GLS/APV

Copy Furnished:

1. **Atty. Eleuterio F. Diao, IV**
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2. **Mr. Edwin B. Galicia**
President
Petitioner Bukidnon Second Electric Cooperative, Inc.
Manolo Fortich, Bukidnon

3. **Mr. Raul P. Alkuino**
President
Respondent Bukidnon Subtransmission Corporation
Dacuyan Compound, Hagkol, Valencia City

4. **Mr. Reynaldo Balaba**
OIC-General Manager
First Bukidnon Electric Cooperative
Maramag, Bukidnon

