

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



**IN THE MATTER OF THE
APPLICATION FOR THE
ISSUANCE OF A
FRANCHISE AND
CERTIFICATE OF PUBLIC
CONVENIENCE AND
NECESSITY (CPCN) FOR
THE OPERATION OF THE
COMPOSTELA-
CONSOLACION 69kV LINE**

ERC CASE NO. 2016-020 MC

**VISAYAN ELECTRIC
COMPANY, INC. AND CEBU
II ELECTRIC
COOPERATIVE, INC.,
Applicants.**

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DOCKETED
Date: **SEP 29 2016**
By: _____

ORDER

On 28 June 2016, Visayan Electric Company, Inc. (VECO) and Cebu II Electric Cooperative, Inc. (CEBECO II) filed a Joint Application dated 24 May 2016 (Joint Application) for the issuance of a franchise and Certificate of Public Convenience and Necessity (CPCN) for the operation of the Compostela-Consolacion 69 kV Line.

In support of the Joint Application, VECO and CEBECO II alleged the following:

1. VECO is a private corporation existing under the laws of the Republic of the Philippines, with principal business address at J. Panis Street, Banilad, Cebu City. It is a duly authorized distribution utility of electric power in the municipalities of San Fernando, Minglanilla, Consolacion and Lilo-an and the Cities of Naga, Talisay, Cebu and Mandaue, all in the province of Cebu, pursuant to its franchise under Republic Act No. 9339.

2. Applicant CEBECO II is an electric cooperative organized and existing under and by virtue of Presidential Decree No. 269, as

amended, with principal office address at National Highway, Malingin, Bogó City, in the province of Cebu. It has a franchise to distribute electricity in the Municipalities of Compostela, Carmen, Catmon, Sogod, Borbon, Tabogon, Medellin, Daanbantayan, San Remegio, Tabuelan and Tuburan, and the Cities of Danao and Bogó.

Descriptions of the franchise area of VECO and CEBECO II are attached herein as Annex "A" and "B" respectively.

3. VECO and CEBECO II may be served with the orders, notices and other legal processes of the Honorable Commission through their respective counsels at the address indicated below.

4. VECO and CEBECO II entered into an Amended Consortium / Co-Ownership Agreement on 19 January 2016 (the "Consortium Agreement") forming a consortium (the "Consortium") for the purpose of jointly acquiring, operating and maintaining the Compostela-Consolacion 69 kV line (the "Subtransmission Asset"), being the distribution utilities directly connected thereto. The said Compostela - Consolacion 69kV line is a subtransmission asset presently owned by the National Transmission Corporation (TRANSCO). A copy of the Amended Consortium / Co-ownership Agreement is attached herewith as Annex "C" while the description and electrical diagram of the Subtransmission Asset is attached as Annex "D" hereof.

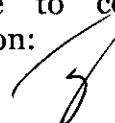
5. VECO and CEBECO II entered into the Consortium Agreement pursuant to Section 8 of Republic Act No. 9136, the Electric Power Industry Reform Act ("EPIRA"), which provides in part:

"The takeover by a distribution utility of any subtransmission asset shall not cause a diminution of service and quality to the end-users. 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 ERC.

"The subscription rights of each distribution utility involved shall be proportionate to their load requirements unless otherwise agreed by the parties. [Emphasis supplied]"

6. The Amended Consortium Agreement governs the rights and obligations of VECO and CEBECO II as between themselves and in relation to third parties in connection with the Subtransmission Asset.

7. Under the Amended Consortium / Co-Ownership Agreement, VECO and CEBECO II agree to co-own the Subtransmission Asset in the following proportion:



Length	CEBECO II	VECO	Total
4.266 km	100%	0%	100%
10.234 km	0%	100%	100%

8. On 17 March 2016, the Consortium, entered into an Amended Contract to Sell with the National Transmission Corporation (TRANSCO), whereby the latter agreed to sell to the Consortium, and the Consortium agreed to purchase from TRANSCO, all of its rights, title and interest in Subtransmission Asset, pursuant to Section 8 of the EPIRA and to Resolution No. 1, series of 2009¹ and Resolution No. 15, series of 2011,² of the Honorable Commission. A copy of the Amended Contract to Sell is attached herein as Annex "E".³

9. As provided in the Amended Contract to Sell and the Amended Consortium/ Co-ownership Agreement, the Purchase Price of the Subtransmission Asset is Eighteen Million Two Hundred Six Thousand One Hundred Sixty Four and 40/100, Philippine currency (PhP18,206,164.40) plus 12% Value Added Tax of Two Million One Hundred Eighty Four Thousand Seven Hundred Thirty Nine and 73/100, Philippine currency (PhP2,184,739.73), or a total of Twenty Million Three Hundred Ninety Thousand Nine Hundred Four and 13/100, Philippine currency (PhP20,390,904.13), net of adjustments and deductions, subject to further adjustments for any major capital improvements, such as but not limited to, the replacement of poles which will be undertaken after the signing of this Contract but before its effectivity, but not yet be included or recognized in the books of TRANSCO until the transfer of ownership of the asset to the Consortium.

10. The Purchase Price shall be borne by VECO and CEBECO II in proportion to their respective ownership interest in the Subtransmission Asset as follows:

Length	Amount to be Paid to TRANSCO	
	CEBECO II	VECO
4.266 km	Php 5,999,144.62	Php 0.00
10.234 km	0.00	Php 14,391,759.51
Sub-Total	PhP 5,999,144.62	Php 14,391,759.51

11. In Order for the Consortium of VECO and CEBECO II to operate the Subtransmission Asset, VECO and CEBECO II, by way of this Application, respectfully prays for the issuance of a franchise

¹ Entitled "A Resolution Adopting the Amendments to the Guidelines for the Sale and Transfer of TRANSCO's Sub-transmission Assets and the Franchising of Qualified Consortiums", subsequently amended by Resolution No. 26, series of 2011 and Resolution No. 4, series of 2013.

² Entitled "A Resolution Adopting the Amended Rules for the Approval of the Sale and Transfer of TRANSCO's Subtransmission Assets and the Acquisition by Qualified Consortiums."

³ The Amended Contract to Sell supersedes in its entirety the 26 December 2012 Contract to Sell among VECO, CEBECO II and TRANSCO.

and Certificate of Public Convenience and Necessity (“CPCN”). In support of this Application, the following documents are submitted in addition to those above-mentioned:

Annex	Document
F	Secretary’s Certificate on the resolution of the Board of Directors authorizing VECO to enter into an Amended Consortium Agreement with CEBECO II and to acquire the subtransmission asset
G and G-1	CEBECO II Board Resolution Nos. 118 and 119, Series of 2015
H	List of VECO and CEBECO II technical officers responsible for the design, installation, maintenance and repair of equipment of the subtransmission asset
I	VECO Certification on the capacity and expertise to operate a line with voltage level of subtransmission assets
J	CEBECO II Certification on capability to maintain and protect instrumentation used in substations and subtransmission lines
K	CEBECO II Certification of adequate subtransmission materials for the maintenance and operation of subtransmission lines
L	VECO Inventory of materials

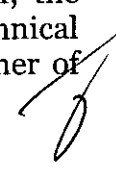
12. At present, except for the Applicants, there are no directly-connected entities to the Subtransmission Asset.

13. To further support the instant application for a franchise and CPCN, VECO and CEBECO II assert:

a. VECO is the grantee of a congressional franchise to operate a distribution utility, as well as a CPCN issued by the Honorable Commission. On the other hand, CEBECO II is the grantee of a franchise from the NEA to operate on an area coverage basis. Copies of the Certificates of Franchise of CEBECO II, the legislative franchise and CPCN of VECO are attached herewith as Annexes “M” to “O”, inclusive.

b. In the operation of the Subtransmission Asset, the Consortium shall adhere to the provisions of applicable laws, rules and regulations with respect to end-user connections. End-users connected, as well as end-users connecting, to the Subtransmission Asset shall be considered customers of VECO or CEBECO II, depending on the geographical location of the connection point.

c. The Consortium possesses the technical capability to operate the Subtransmission Asset. As proof thereof, the Consortium hereby submits the results of the technical evaluation conducted by TRANSCO, presently the owner of



the Subtransmission Asset, which outline the Consortium's compliance with each of the technical standards prescribed by the Honorable Commission. A copy of the results of the technical evaluation of TRANSCO is attached as Annexes "P" and "P-1" hereof.

d. The Consortium is financially capable of sustaining the operation of the Subtransmission Asset, as evidenced by the financial evaluation of TRANSCO, which are attached as Annexes "Q" and "Q-1" hereof, which show that VECO and CEBECO II are in good financial condition.

e. In the proposed operation of the Subtransmission Asset, the Consortium shall adopt practices and procedures prescribed by the Honorable Commission.

14. VECO and CEBECO II have been engaged in the operation of their respective distribution systems for a considerable number of years. Thus, the Consortium has the necessary expertise and resources to adequately and reliably serve the present and future electricity requirements of the customers of VECO and CEBECO II with the operation of the Subtransmission Asset. Hence, having complied with the requirements of Resolution No. 15, Series of 2011, as amended, and other applicable laws, rules and regulations, the Consortium respectfully requests for the issuance of the franchise and the CPCN. Such issuance will ultimately redound to the benefit of the end-users in terms of continuous, reliable and efficient services.

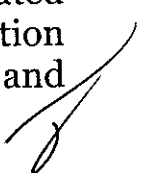
P R A Y E R

WHEREFORE, the foregoing considered, it is respectfully prayed that the Honorable Commission issue a franchise and CPCN to operate the Compostela-Consolacion 69 kV line, in favor of the Consortium between Visayan Electric Company, Inc. and Cebu II Electric Cooperative, Inc.

Other reliefs just and equitable under the premises are likewise prayed for.

On 25 August 2016, finding the said joint application to be sufficient in form and in substance with the required fees having been paid, the Commission issued an Initial Order (Initial Order) and Notice of Public Hearing (Notice of Public Hearing) setting the Application for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on 19 October 2016.

On 16 September 2016, VECO filed a Manifestation with Motion to Reissue an Order and Notice of Public Hearing *Ad Cautelam* dated 15 September 2016 (Motion *Ad Cautelam*) requesting clarification from the Commission whether there is a need to issue another IO and



NPH due to inconsistencies of the date of the instant Joint Application and date of filing of the Joint Application in the said Initial Order and Notice of Public Hearing with the facts at hand. In the Initial Order and Notice of Public Hearing, the date of the Application is 28 June 2016 while the date of filing is 29 June 2016, instead of the 24 May 2016 and 28 June 2016, respectively.

Finding the Motion *Ad Cautelam* to be meritorious, the same is granted and this Order is being reissued to supersede the IO issued on 25 August 2016.

The hearing of this Application is hereby scheduled on **19 October 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**, for determination of compliance with the jurisdictional requirements, Expository Presentation, Pre-trial Conference, and presentation of evidence.

Applicants VECO and CEBECO III are hereby directed to cause the publication of the attached Notice of Public Hearing, at its own expense, once (1x) in a newspaper of general circulation in the Philippines, at least ten (10) days before the date of the scheduled initial hearing. It is 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.

Let copies of the Joint Application, this Order, and the attached Notice of Public Hearing be furnished the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress. They are hereby requested, if they so desire, to send their duly authorized representatives at the scheduled hearing.

Likewise, let copies of this Order and the attached Notice of Public Hearing be furnished the Offices of the Provincial Governor, the City and Municipal Mayors, and Local Government Unit (LGU) Legislative Bodies within the franchise areas of VECO and CEBECO II for the appropriate posting thereof on their respective bulletin boards.



Applicants are hereby directed to furnish all those making requests therefor with copies of the Application and its attachments, subject to reimbursement of reasonable photocopying costs.

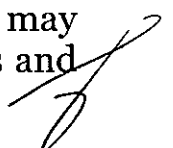
On the date of the initial hearing and Pre-trial Conference, VECO and CEBECO II must submit to the Commission their written Compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidence of the actual posting and publication of the Notice of Public Hearing consisting of certifications issued to that effect, signed by the aforementioned Governor, Mayors, and Local Government Legislative Bodies or their duly authorized representatives, bearing the seals of their offices, and the affidavits of the Editors or Business Managers of the newspapers where said Notice of Public Hearing was published together with the complete issues of the said newspapers, and such other proofs of compliance with the requirements of the Commission.

Applicants VECO and CEBECO II and all interested parties are directed to submit, at least five (5) days before the date of initial hearing and Pre-Trial Conference, their respective Pre-trial Briefs containing, among others:

- (a) A summary of admitted facts and proposed stipulation of facts;
- (b) The issues to be tried or resolved;
- (c) The documents or exhibits to be presented, stating the purposes thereof and proposed markings therefor; and
- (d) The number and names of the witnesses, with their written testimonies in an individual affidavit form, to be attached to the Pre-trial Brief.

Failure of VECO and CEBECO II to submit the required Pre-trial Brief and Judicial Affidavits of their witnesses within the prescribed period shall be a ground for cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from said date of cancellation.

As part of the Pre-trial Conference, VECO and CEBECO II must also be prepared to make an expository presentation of their application, aided by whatever communication medium that they may deem appropriate for the purpose, in order to put in plain words and



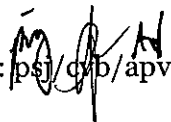
explain, for the benefit of the consumers and other concerned parties, what the application is all about and the reasons and justifications being cited in support thereof.

SO ORDERED.

Pasig City, 19 September 2016.

**FOR AND BY AUTHORITY
OF THE COMMISSION:**


JOSE VICENTE B. SALAZAR
Chairman and CEO

LS: 
psj/dyb/apv

ERC
Office of the Chairman



I-2016-029-OC-05021

Copy furnished:

1. Atty. Katrina M. Platon, Atty. Paul B. Sorino, Atty. Lew Carlo C. Lopez
Counsels for Applicant VECO
16th Floor, NAC Tower
32nd St., Bonifacio Global, Taguig City
2. Visayan Electric Company, Inc. (VECO)
Applicant
J. Panis Street, Banilad, Cebu City
3. A.C. Gaviola Law Office
Counsel for Applicant CEBECO II
Rm. 203, 2/f Crown Port View Hotel
3rd Ave., North Reclamation Area, Cebu City
4. Cebu II Electric Cooperative, Inc. (CEBECO II)
Applicant
National Highway, Malingin,
Bogo City, Cebu
5. Office of the Solicitor General
134 Amorsolo Street, Legaspi Village
Makati City, Metro Manila
6. Commission on Audit
Commonwealth Avenue
Quezon City, Metro Manila
7. Senate Committee on Energy
GSIS Building, Roxas Boulevard
Pasay City, Metro Manila

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8. House Committee on Energy
Batasan Hills
Quezon City, Metro Manila
9. Office of the Municipal Mayor
San Fernando, Cebu
10. Office of the LGU Legislative Body
San Fernando, Cebu
11. Office of the Municipal Mayor
Minglanilla, Cebu
12. Office of the LGU Legislative Body
Minglanilla, Cebu
13. Office of the Municipal Mayor
Consolacion, Cebu
14. Office of the LGU Legislative Body
Consolacion, Cebu
15. Office of the Municipal Mayor
Lilo-an, Cebu
16. Office of the LGU Legislative Body
Lilo-an, Cebu
17. Office of the City Mayor
Naga City, Cebu
18. Office of the LGU Legislative Body
Naga City, Cebu
19. Office of the City Mayor
Talisay City, Cebu
20. Office of the LGU Legislative Body
Talisay City, Cebu
21. Office of the City Mayor
Mandaue City, Cebu
22. Office of the LGU Legislative Body
Mandaue City, Cebu
23. Office of the Municipal Mayor
Compostela, Cebu
24. Office of the LGU Legislative Body
Compostela, Cebu
25. Office of the Municipal Mayor
Carmen, Cebu
26. Office of the LGU Legislative Body
Carmen, Cebu
27. Office of the Municipal Mayor
Catmon, Cebu
28. Office of the LGU Legislative Body
Catmon, Cebu
29. Office of the Municipal Mayor
Sogod, Cebu



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30. Office of the LGU Legislative Body
Sogod, Cebu
31. Office of the Municipal Mayor
Borbon, Cebu
32. Office of the LGU Legislative Body
Borbon, Cebu
33. Office of the Municipal Mayor
Tabogon, Cebu
34. Office of the LGU Legislative Body
Tabogon, Cebu
35. Office of the Municipal Mayor
Medellin, Cebu
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37. Office of the Municipal Mayor
Daanbantayan, Cebu
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39. Office of the Municipal Mayor
San Remegio, Cebu
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41. Office of the Municipal Mayor
Tabuelan, Cebu
42. Office of the LGU Legislative Body
Tabuelan, Cebu
43. Office of the Municipal Mayor
Tuburan, Cebu
44. Office of the LGU Legislative Body
Tuburan, Cebu
45. Office of the City Mayor
Danao City, Cebu
46. Office of the LGU Legislative Body
Danao City, Cebu
47. Office of the City Mayor
Bogo City, Cebu
48. Office of the LGU Legislative Body
Bogo City, Cebu
49. Office of the Provincial Governor
Province of Cebu
50. Office of the LGU Legislative Body
Province of Cebu
51. Regulatory Operations Service
Energy Regulatory Commission, Pacific Center Building,
San Miguel Avenue, Ortigas Center 1600, Pasig City

