

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City



**ENERGY WORLD POWER
OPERATIONS
PHILIPPINES, INC.
(EWPOPI),**

Petitioner,

-versus-

ERC CASE NO. 2017-006DR

**NATIONAL GRID
CORPORATION OF THE
PHILIPPINES (NGCP),
NATIONAL TRANSMISSION
CORPORATION (TRANSCO),
and GRID MANAGEMENT
COMMITTEE (GMC),**

Respondents.

X-----X

D O C K E T E D

Date: OCI 19 2017

By: [Signature]

ORDER

On 5 September 2017, Petitioner, Energy World Power Operations Philippines, Inc. (EWPOPI) filed the above-captioned petition for dispute resolution against National Grid Corporation of the Philippines (NGCP), National Transmission Corporation (TRANSCO) and Grid Management Committee.

In the said Petition, EWPOPI alleges the following:

1. Petitioner ENERGY WORLD POWER OPERATIONS PHILIPPINES, INC. (EWPOPI) is a corporation organized and existing under Philippine laws, with principal office at the 10th Floor, Ramon Magsaysay Centre, Roxas Boulevard, Ermita, Manila. It may be served with official processes and papers through the undersigned counsel at its address below.

2. Respondent NATIONAL GRID CORPORATION OF THE PHILIPPINES (NGCP) is a private corporation organized and existing under Philippine laws. It has principal office at NGCP Building, Quezon Avenue corner BIR Road, Diliman, Quezon City, where it may be served with official processes and papers.

3. Respondent NATIONAL TRANSMISSION CORPO-RATION (TRANSCO) is a government agency created under Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA). It has principal office at Power Center, Quezon Avenue corner BIR Road, Diliman, Quezon City, where it may be served with official processes and papers.

4. Respondent GRID MANAGEMENT COMMITTEE (GMC) is a non-stock, non-profit private organization organized and existing under Philippine laws. It has principal office at the 20th Floor, Pacific Center Building, San Miguel Avenue, Ortigas Center, Pasig City, where it may be served with official processes and papers.

5. This petition is filed under Section 1 of Rule 20(F) of the *Rules of Practice and Procedure* of the Honorable Commission:

Section 1. Inquiry of the Commission. –

The Commission may *motu proprio* initiate an action or inquiry against any person or entity when so required by law, national or public interest, and/or in its exercise of any of the powers and functions vested upon it by Republic Act No. 9136 or any other law enforced and administered by it.

6. An inquiry under Rule 20(F) on the matters subject of this petition, which materially affect the electric power industry and concern public interest, will help the parties resolve the issues in a non-adversarial manner.

7. *In the alternative*, EWPOPI files this petition under subsection (v) of Section 43 of the EPIRA, in relation to subsections (a), (l), (m), (s), and (u) thereof:

Section 43. Functions of the ERC. - The ERC shall promote competition, encourage market development, ensure customer choice and discourage/penalize abuse of market power in the restructured electricity industry. Towards this end, it shall be responsible for the following key functions in the restructured industry:

(a) Enforce the implementing rules and regulations of this Act;

xxx

(l) Monitor and take remedial measures to penalize abuse of market power, cartelization, and anti-competitive or discriminatory behavior by any electric power industry participant;

(m) Impose fines or penalties for any non-compliance with or breach of this Act, the IRR of this Act and the rules and regulations which it promulgates or administers;

xxx

(s) In the exercise of its investigative and quasi-judicial powers, act on any complaint by or against any participant or player in the energy sector for violations of any laws, rules and regulations governing the same, including the rules on cross-ownership, anti-competitive practices and other acts of abuse of market positions by any participant or player in the energy sector, as may be provided by law, and require any person or entity to submit any report or data relative to any investigation or hearing conducted in accordance with this Act;

xxx

(u) Perform such other regulatory functions as are appropriate in order to ensure the successful restructuring and modernization of the electric power industry xxx

xxx

(v) The ERC shall have the original and exclusive jurisdiction xxx over all cases involving disputes between and among participants or players in the energy sector.

xxx

8. EWPOPI respectfully submits the following matters for inquiry by the Honorable Commission under Rule 20(F) of the *Rules of Practice and Procedure*:

- (a) THE EXERCISE OF NGCP'S RIGHT OF EMINENT DOMAIN FOR RIGHT-OF-WAY (ROW) ACQUISITION IN CASE A GENERATION COMPANY DEVELOPS DEDICATED POINT-TO-POINT LIMITED TRANSMISSION FACILITIES UNDER SECTION 9 OF THE EPIRA.
- (b) THE TIMETABLE FOR NGCP'S COMPLETION OF THE NEW PAGBILAO SUBSTATION AND FACTORS THAT MAY EXPEDITE SUCH COMPLETION.
- (c) LIMITATIONS ON NGCP IN WITHHOLDING CONSENT TO THE CONNECTION OF A GENERATION COMPANY TO THE FACILITIES OF TRANSCO AND NGCP.
- (d) LIMITATIONS ON NGCP IN WITHHOLDING MATERIAL INFORMATION, INCLUDING BUT NOT LIMITED TO TRANSMISSION BASE CASE DATA.

9. *In the alternative*, EWPOPI submits the following issues under subsection (v) of Section 43 of the EPIRA, in relation to subsections (a), (l), (m), (s), and (u) thereof:

- (a) WHETHER NGCP SHOULD BE RESPONSIBLE FOR THE ACQUISITION OF A RIGHT-OF-WAY (ROW) FOR THE PROPOSED FACILITIES.
- (b) WHETHER THE NEW PAGBILAO SUBSTATION SHOULD BE COMPLETED AS SOON AS POSSIBLE.
- (c) WHETHER NGCP CAN WITHHOLD ITS CONSENT TO THE CONNECTION OF THE SUBJECT POWER PLANT TO THE FACILITIES OF TRANSCO AND NGCP.
- (d) WHETHER NGCP CAN WITHHOLD MATERIAL INFORMATION NECESSARY FOR THE COMPLETION OF THE PROPOSED FACILITIES.

10. Under R.A. No. 9511, NGCP was granted the exclusive right to operate and maintain the transmission system in the country.

11. Section 4 of R.A. No. 9511 also grants NGCP the right of eminent domain with a corresponding right to “acquire such private property as is actually necessary for the realization of the purposes for which [its] franchise is granted.”

12. Section 8 of the EPIRA provides that “no person, company or entity other than TRANSCO shall own any transmission facilities.” The only exception is under Section 9 of the law which provides that “a generation company may develop and own or operate dedicated point-to-point limited transmission facilities that are consistent with the TDP.”

13. TRANSCO is the owner of the transmission assets being operated and maintained by NGCP under a concession agreement, and TRANSCO has a key mandate to protect national government’s interest by ensuring NGCP’s compliance with the terms and conditions of the concession agreement and the policies of the Department of Energy (DOE). TRANSCO is therefore an indispensable party in the requested inquiry or in the resolution of the issues being submitted herein; hence, it is impleaded as a respondent.

14. The GMC, on the other hand, was created by this Honorable Commission to perform the following functions, among other things, under GM 2.2.1, Chapter 2 of the Philippine Grid Code (2016 Edition): (a) monitor the implementation of the Philippine Grid Code; (b) monitor, evaluate, and make recommendations on Grid planning and Grid operations; (c) review and recommend standards, procedures, and requirements for Grid connection, operation, maintenance, and development; and (d) manage queries on the application and/or interpretation in any provisions of the Philippine Grid Code; etc. GMC is also an indispensable party in the requested inquiry or in the resolution of the issues being submitted herein; hence, it is impleaded as a respondent.

15. EWPOPI has a pending application (ERC Case No. 2016-039MC) to develop and own dedicated point-to-

point limited facilities (the "*Proposed Facilities*"), which will be operated by the NGCP, to connect the 650 MW LNG gas-fired power plant (the "*Power Plant*") to the New Pagbilao Substation of NGCP. The Honorable Commission is requested to take judicial or official notice of the proceedings in and the records of ERC Case No. 2016-039MC.

16. EWPOPI was constrained to initiate ERC Case No. 2016-039MC even if there is already an existing Pagbilao-Tayabas 230kV transmission line which is only a few meters away from the Power Plant. It was originally intended that the Power Plant utilize the spare capacity on the existing Pagbilao-Tayabas 230kV transmission line for the export of power. This, however, was not supported or granted by NGCP due to the opposition of Team Energy Corporation (TEC), which owns the neighboring Pagbilao Coal Power Plant.

17. While R.A. No. 9511 gives NGCP the monopoly to operate and maintain the transmission system in the county coupled with the right of eminent domain, NGCP fails to provide the necessary transmission facilities or at least facilitate the immediate completion of the Proposed Facilities, which require the acquisition of a 12-kilometer ROW.

18. Worse, NGCP has deferred the construction of the New Pagbilao Substation. Consequently, the operation of the Power Plant, including the Proposed Facilities, will also be delayed.

19. NGCP has also been unduly withholding material information and delaying actions on crucial matters.

20. EWPOPI and NGCP have had numerous meetings and correspondences to discuss the interim connection of the first phase (200MW) of the Power Plant to the Pagbilao-Tayabas 230kV transmission line.

21. Despite EWPOPI's repeated follow-ups with NGCP, however, the latter unduly withheld material information necessary for the conduct of the System Impact Study (SIS) and Facility Study for the interim connection. It was only after the insistence of the DOE

that NGCP finally provided the Offer of Service to start the SIS.

22. There were also various site visits in 2017 arranged by TRANSCO and attended by NGCP, which confirmed that there is an available space in the switchyard of TEC for the proposed Tie-Line from EWC to TEC's substation. NGCP undertook to provide a report; but again, despite repeated follow-ups from EWPOPI, NGCP failed to timely provide the report. It was only after the insistence of the DOE that such report was eventually provided by NGCP.

23. The above-described omissions, inactions, or delayed actions of NGCP are violations of its legislative franchise, and they constitute abuse of market power and anti-competitive or discriminatory behavior against EWPOPI.

24. EWPOPI, therefore, respectfully submits that the Honorable Commission should inquire into these matters under Rule 20(F) of its *Rules of Practice and Procedure*, or resolve the issues under subsection (v) of Section 43 of the EPIRA, in relation to subsections (a), (l), (m), (s), and (u) thereof, with the end result that the Power Plant will be expeditiously connected to the facilities of TRANSCO and NGCP at the least possible cost.

RELIEF

PETITIONER prays that the Honorable Commission:

- (1) initiate an inquiry on the above matters, or in the alternative, direct (a) NGCP to exercise its right of eminent domain for the ROW acquisition for the Proposed Facilities, (b) NGCP to act with reasonable dispatch on EWPOPI's requests for assistance, information, reports, studies, or actions, and (c) TRANSCO and NGCP to expeditiously connect the Power Plant to their facilities at the least possible cost;

- (2) direct GMC to assist the Honorable Commission on the inquiry requested or on the issues submitted;
- (3) immediately set the petition for conference or hearing, and
- (4) grant other equitable relief.

Muntinlupa City for Pasig City, August 28, 2017.

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 2006 Rules of Practice and Procedure (2006 RPP), the same is hereby set for determination of compliance with the jurisdictional requirements, expository presentation, pre-trial conference, and presentation of evidence on **13 November 2017 (Monday) at ten o'clock in the morning (10:00 A.M.) at the ERC Hearing Room, 15th Floor, Pacific Center Building, San Miguel Avenue, Pasig City.**

Petitioner is hereby directed to cause the publication of the attached Notice of Public Hearing at its own expense, once (1X) in a newspaper of nationwide circulation, at least ten (10) days before the scheduled hearing.

Moreover, pursuant to Section 6, Rule 5 of the 2006 RPP, Respondents, impleaded by Petitioner, are likewise directed to file their Comment to the Petition within fifteen (15) days from receipt of the instant Order.

On the date of the initial hearing, Petitioner must submit to the Commission its written Compliance with the foregoing requirements attaching therewith the affidavit of the Editor or Business Manager of the newspaper where the said Notice of Public Hearing was published, together with the complete issue of the said newspaper.

Petitioner and Respondents, as well as 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 and proposed markings therefore; 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 the Petitioner to submit the required Pre-trial Brief and Judicial Affidavits of its 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, Petitioner must also be prepared to make an expository presentation of the instant Petition, aided by whatever communication medium it may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the other concerned parties, what the Petition is all about and the reasons and justifications being cited in support thereof.

SO ORDERED.

Pasig City, 6 October 2017.

FOR AND BY AUTHORITY
OF THE COMMISSION:



ALFREDO J. NON
OIC, Office of the Chairman & CEO



KTB/RFM/APV

Copy Furnished:

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3. **National Grid Corporation of the Philippines (NGCP)**
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Diliman, Quezon City

4. **Grid Management Committee (GMC)**
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San Miguel Avenue, Ortigas Center
Pasig City

5. **Department of Energy (DOE)**
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