

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



**IN THE MATTER OF THE
APPLICATION FOR
AUTHORITY TO DEVELOP,
OWN, OPERATE AND
MAINTAIN DEDICATED
POINT-TO-POINT LIMITED
FACILITIES TO CONNECT
TO THE TRANSMISSION
SYSTEM OF NATIONAL
GRID CORPORATION OF
THE PHILIPPINES (NGCP),
WITH PRAYER FOR
PROVISIONAL AUTHORITY**

ERC CASE NO. 2017-017 MC

**VICTORIAS MILLING
COMPANY, INC. (VMCI),
Applicant.
X-----X**

D O C K E T E D
Date: APR 20 2018
By: [Signature]

ORDER

On 12 October 2017, an *Application* dated 4 October 2017 was filed by applicant Victorias Milling Company, Inc. (VMCI) seeking the Commission's approval for authority to develop, own, operate and maintain dedicated point-to-point limited facilities to connect to the transmission system of National Grid Corporation of the Philippines (NGCP), with prayer for the issuance of provisional authority.

VMCI alleged the following in its Application:

1. VMCI is a power generation company duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at VMC Compound, J.J. Ossorio St., Brgy. XV, Victorias City, Negros Occidental. It may be served orders and other legal process through its undersigned counsel.

2. VMCI's primary purpose is to acquire, construct, maintain and operate mills in the Philippines, work refineries, machinery and appliances which may be used in the grinding of

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sugar cane and the manufacture of sugar, and to do all business incidental thereto.¹

3. Consequently, the secondary purpose of VMCI is to undertake and carry on any business venture or enterprise, whether commercial, manufacturing, including, but not limited to, ethanol and or potable alcohol production, agricultural, educational, mercantile, insurance, trading, real estate, fiduciary, infrastructure, transportation, telecommunications, mining, water, power generation, recreation, financial or credit, consultancy, provided that the Company shall not provide financial advise and/or engage as a financial adviser to an investment house, or otherwise, which is or may be undertaken and carried on through a public-private partnership with the government or by natural persons as capitalists, financiers, merchants, contractors, agriculturalists, agents, factors, trustees or otherwise, either directly itself in its own name or indirectly by agents, or trustees or through the medium of ownership of stock or shares or other interests in any other business venture or enterprise established for or carried on to engage in any such pursuits; and to do so not only for its own benefit, but also in the capacity of agent, contractor, attorney or trustee for any other person, firm or corporation.²

4. VMCI is a registered renewable energy developer with the Department of Energy (“DOE”) and has an operating contract for the exploration, development and utilization of biomass energy resource, among others.³

5. VMCI has yet to update its registration with the Board of Investments (“BOI”).⁴

6. In the 2016-2040 Demand-Supply Outlook, the DOE recognized the growing demand for power in the Philippines. For the Visayas Grid, the DOE projects the energy demand to increase by 7%, which is the highest average annual growth rate (“AAGR”), from 1,878 MW in 2016 to 9,210 MW in 2040. Based on the foregoing, the Visayas Grid still needs 9,180 MW of additional capacities of 5,330 MW base-load plant, 3,000 mid-merit plants and 850 MW peaking plants to meet the electricity demand.⁵

7. Recent developments in the power industry, as indicated in the presentation by the DOE Secretary regarding a briefing on the Electric Power Industry⁶ showed that the required

¹ Copies of VMCI’s Certificate of Incorporation, Amended Articles of Incorporation, By-Laws and a list of Key Management Officials are attached hereto as **Annexes “B”, “B-1”, “B-2” and “B-3”** and made integral parts hereof.

² Ibid. Citation [2].

³ A copy of VMCI’s Certificate of Registration as an RE Developer is attached hereto as **Annex “C”** and made an integral part hereof.

⁴ This is one of the government requirements contemplated in VMCI’s Affidavit of Approval from Concerned Agencies, which is attached hereto as **Annex “D”** and made an integral part hereof.

⁵ A copy of the DOE’s Power Development Plan 2016-2040 (*Please see* Figure 17, Visayas Demand-Supply Outlook, 2016-2040, p.46) is attached hereto as **Annex “E”** and made an integral part hereof.

⁶ A copy of the DOE presentation by Secretary Alfonso G. Cusi is attached hereto as **Annex “F”** and made an integral part hereof.

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power system capacity addition for the Visayas Grid between the years 2016 to 2040 is 9,180 MW.

8. To help address the need for additional capacity in the Visayas Grid, VMCI will design, engineer, procure, construct, supply, start-up, test, commission, own, operate and maintain a Biomass Plant with a capacity of approximately 63MW – 38MW for its own use and 25MW for export (the “Project”), located in VMC Compound, J.J. Ossorio St., Brgy. XV, Victorias City, Negros Occidental. The Project’s target date of completion and energization is in November 2017. Power for export generated from the Biomass Plant shall be delivered to the Visayas Grid.

9. In connection thereto, the DOE approved and issued an amended Biomass Renewable Energy Operating Contract (“BREOC”) and accompanying Certificate of Registration.⁷

10. On September 25, 2017, the DOE issued a letter addressed to the Honorable Commission stating that the Certificate of Confirmation of Commerciality is on-process and endorsing the Project of VMCI for testing and commissioning.⁸

11. To test, commission and dispatch its generating facility, soon after completion, VMCI proposes to connect the Project to the transmission system of the National Grid Corporation of the Philippines (“NGCP”) through a dedicated point-to-point limited interconnection facility (the “Transmission Line”) to be constructed by Thermax Ltd. of India and BUSSBAR Corporation.⁹

12. VMCI has secured the relevant permits for the Project and the Transmission Line.

12.1 The Department of Environment and Natural Resources (“DENR”) has allowed VMCI to operate notwithstanding the Cease and Desist Orders (“CDO”) it has issued through its Pollution Adjudication Board (“DENR-PAB”). The DENR-PAB has issued a Temporary Lifting Order (“TLO”) of the CDO, which has been repeatedly extended after VMCI’s diligent submission of requirements and compliance with the conditions stated in the orders of DENR-PAB. While there is a TLO valid until February 17, 2018,¹⁰ VMCI has a pending Motion for Issuance of Formal Lifting Order for the permanent lifting of the CDO.¹¹

⁷ Copies of the Amended BREOC and Amended Certificate of Registration are attached hereto as **Annexes “G” and “H”** and made integral parts hereof.

⁸ A copy of the DOE letter dated September 25, 2017 is attached hereto as **Annex “I”** and made an integral part hereof.

⁹ A copy of the description and scope of the project denominated as Description of the Project is attached as **Annex “J”** and made an integral part hereof.

¹⁰ A copy of the Extension of the TLO dated February 17, 2017 is attached as **Annex “K”** and made an integral part hereof.

¹¹ A copy of the Motion for Issuance of Formal Lifting Order dated June 10, 2017 is attached as **Annex “L”** and made an integral part hereof.

12.2 VMCI will apply with the DENR-EMB for the issuance of a Certificate of Non-Coverage for the Transmission Line, if necessary and applicable.¹²

12.3 VMCI will apply with the National Commission on Indigenous Peoples for the issuance of a Certificate of Non-Overlap for the Project, if necessary and applicable.¹³

13. VMCI intends to connect the Transmission Line to the Visayas Grid via 69 kV that will tap to the existing NGCP Victorias-Silay 69kV sub-transmission line through a Switching Station.¹⁴ The Transmission Line will consist of around 2.5 kilometers.

14. The proposed Connection Scheme Single Line Diagram for the project Transmission Line shall be as follows:

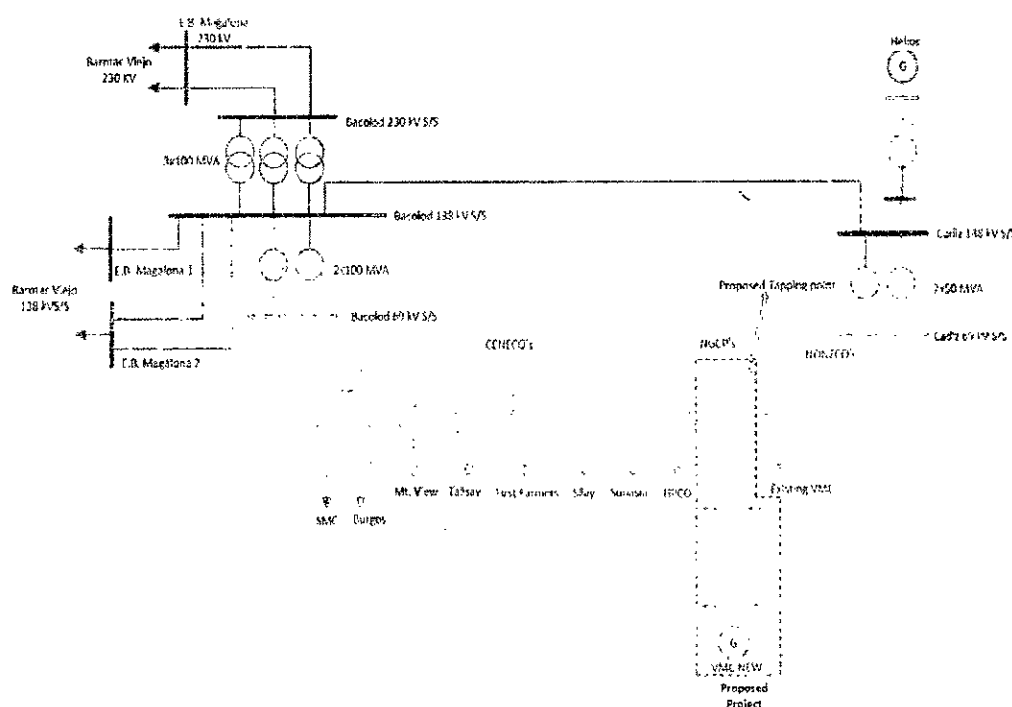


Figure 1. Connection Scheme Single Line Diagram¹⁵

15. Consistent with the projected date of energization of the Project, the target completion and commissioning of the Transmission Line was September 2017 but was moved to November 2017.¹⁶ The estimated cost for the Transmission Line is One Hundred Seventy-Two Million One Hundred Fifty-Four Thousand Eight Hundred and Fifty-Three Pesos (Php 172,154,853.00), based on the Transmission Line cost estimates.¹⁷

¹² This is one of the government requirements contemplated in VMCI's Affidavit of Approval from Concerned Agencies. Kindly refer to citation [5].

¹³ Ibid. Citation [5].

¹⁴ A copy of the Conceptual Engineering Design is attached as Annex "M" and made an integral part hereof.

¹⁵ NGCP, System Impact Study, please see p. 2 thereof.

¹⁶ A copy of the Project Schedule Gantt Chart is attached as Annex "N" and made an integral part hereof.

¹⁷ A copy of the Project Cost Estimate is attached hereto as Annexes "O" and made an integral part hereof.

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16. The proposed connection of the Project is the most viable and reasonable option among the interconnection schemes considered, recommended, and evaluated by VMCI that will enable VMCI to dispatch the Project's capacity when the need arises.¹⁸

16.1 A System Impact Study ("SIS") on the proposed Transmission Line has been conducted and based on the results thereof, the said interconnection is technically feasible.¹⁹ NGCP has reviewed the SIS.²⁰

16.2 A Facilities Study has been undertaken and approved by the NGCP.²¹

17. VMCI has a Connection Agreement with NGCP and is in the process of finalizing the Transmission Service Agreement and Metering Service Agreement.²²

18. Section 9(f) of the Electric Power Industry Reform Act ("EPIRA") provides:

A generation company may develop and own or operate dedicated point-to-point limited transmission facilities that are consistent with the TDP: Provided, that such facilities are required only for the purpose of connecting to the transmission system, and are used solely by the generating facility, subject to prior authorization by the ERC.

19. In accordance with the requirement of Section 9(f) of the EPIRA, VMCI hereby seeks the Honorable Commission's authorization to develop, own, and operate the Transmission Line, a dedicated point-to-point limited interconnection facility, to connect the Project to the grid.

20. The proposed Transmission Line meets the requirements provided in Section 9 of the EPIRA and the relevant regulations issued by this Honorable Commission as follows:

20.1 The Transmission Line is a dedicated point-to-point limited interconnection facility whose sole purpose is to connect the Project to the grid and is considered a "Connection Asset" under ERC Resolution No. 23, Series of 2016 ("ERC Resolution");

20.2 The Transmission Line will be exclusively used by VMCI for the operations of the Project and will not serve any end-user;

¹⁸ The discussion of the options/alternatives considered in lieu of the proposed Transmission Line is attached as **Annex "P"** and made an integral part hereof.

¹⁹ A copy of the System Impact Study is attached as **Annex "Q"** and made integral part hereof.

²⁰ Ibid.

²¹ Copies of the Facilities Study and the NGCP Letter dated May 5, 2017 are attached as **Annexes "R"** and **"R-1"** respectively and made integral parts hereof.

²² A copy of the Connection Agreement executed between VMCI and NGCP is attached as **Annex "S"** and made an integral part hereof.

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20.3 The Transmission Line is technically feasible;
 and

20.4 VMCI has the technical and financial ability to develop, construct, operate, and maintain the Transmission Line.

The Transmission Line is a dedicated point-to-point transmission facility and will be used exclusively by VMCI.

21. To reiterate, the Transmission Line is designed for the sole purpose of connecting the Project to the grid. The single-line diagram of the proposed interconnection shows that the Transmission Line will be exclusively used by VMCI and is not designed and configured to serve end-users.

21.1 The single-line diagram of the Transmission Line is illustrated in Figure 2 below.

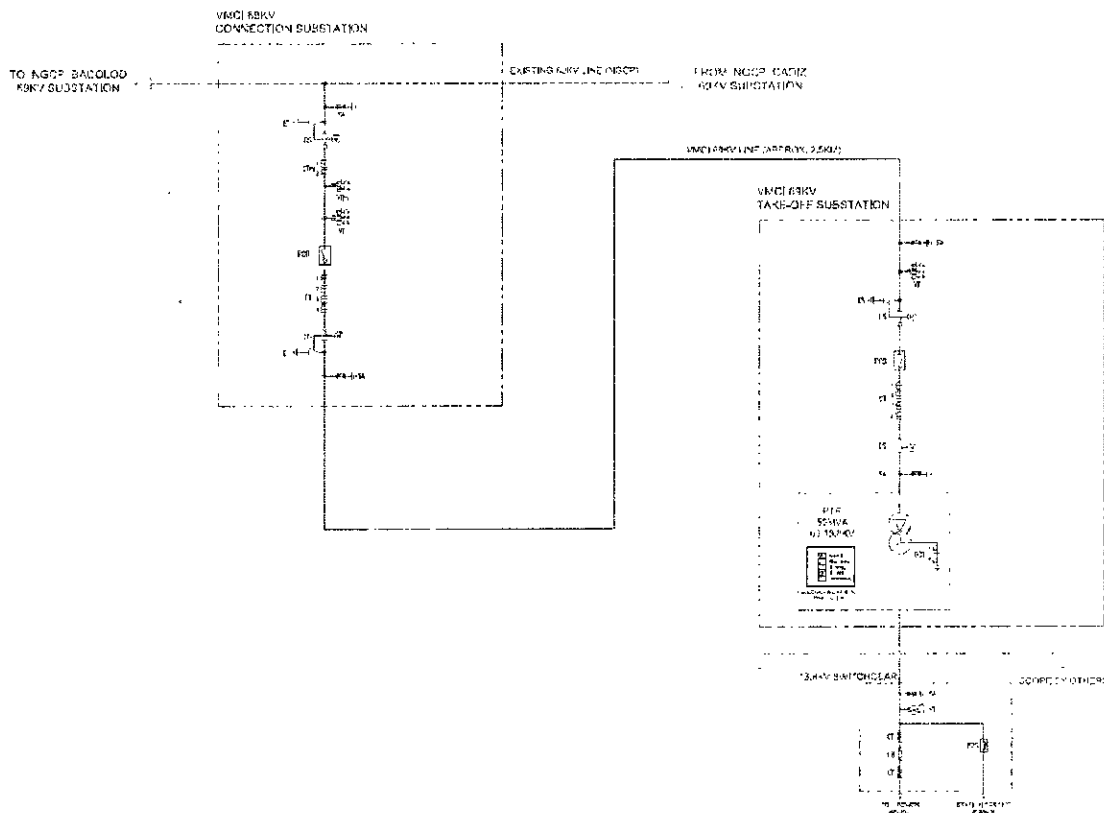


Figure 2. Single-line Diagram Transmission Line²³

22. The Transmission Line is also classified as a “Connection Asset” under the ERC Resolution since it is primarily designed to connect the Project to the grid and will be used for the conveyance of electricity from the Project to the grid.²⁴ If the Transmission Line is taken out of the transmission system of NGCP, such disconnection will only affect VMCI and will have no effect on the grid, or other connected customers.

²³ VMCI’s Facility Study, please see p.32.

²⁴ Resolution Adopting the Amended Rules on the Definition and Boundaries of Connection Assets for Customers of Transmission Providers, ERC Resolution No. 16, Series of 2011, Annex A, § 2, p.1.

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The Project is included in the DOE List of Private Sector-Initiated Power Projects for Visayas.

23. The Project is one of the committed projects in the DOE List of Private Sector-Initiated Power Projects for Visayas as of June 30, 2017.²⁵

The Transmission Line is technically feasible.

24. The SIS review conducted by NGCP shows that the connection of the Project through the Transmission Line is technically feasible but subject to limitations prior to the upgrading of Negros-Cebu interconnection and Cadiz Substation. The connection poses no significant system impact to the stability, reliability and operating characteristics of the Visayas Grid. Further the SIS review concluded that the proposed project could be safely and reliably integrated thereto.

25. VMCI proposed the Transmission Line connection because of its viability and technical feasibility for the connection of the Project. The Project will connect to the Visayas Grid via a 2.5 km long 69kV transmission line that will tap to the existing NGCP Victorias-Silay 69kV sub-transmission line, through a Switching Station.²⁶

26. VMCI has likewise ensured that the design and technical specifications for the Transmission Line are consistent with the standards of the Philippine Grid Code.²⁷

27. The Project is also consistent with the Transmission Development Plan ("TDP") of NGCP.²⁸

VMCI has the technical and financial capability to develop, construct, operate and maintain the Transmission Line

28. VMCI has the technical capability to develop the Transmission Line.

28.1 The Transmission Line will be constructed by Thermax Ltd. of India and BUSSBAR Corporation.²⁹

28.2 VMCI likewise has the financial capability to undertake the development and construction of the

²⁵ A copy of the DOE List of Private Sector-Initiated Power Projects (Visayas), as of June 30, 2017 is attached as **Annex "T"** and made an integral part hereof; *please see* p. 2 thereof.

²⁶ Citation [20], *please see* p. 2 thereof.

²⁷ A copy of the Statement of Compliance to the Philippine Grid Code is attached as **Annex "U"** and made an integral part hereof.

²⁸ A copy of the TDP 2014-2015 portion showing the Project (*Please see* Table A3.7 AWARDED BIOMASS PROJECTS, p.179) is attached as **Annex "V"** and made an integral part hereof.

²⁹ A copy of the Company Profile of BUSSBAR Corporation with a list of projects undertaken is attached as **Annex "W"** and made an integral part hereof.

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Transmission Line. The development and construction of the Project and the Transmission Line will be funded by VMCI through debt financing or internal funds.³⁰

29. Since VMCI will solely fund the development and construction of the Transmission Line and the Transmission Line will be exclusively used by VMCI for the operations of the Project and will not serve any end-user, the Transmission Line will not have an impact on the transmission rates currently being charged to the public.

30. Once completed, VMCI will undertake the operations and maintenance of the Transmission Line through NGCP and VMCI will subsequently fund the operations of the Transmission Line from its generation sales.³¹

31. VMCI also undertakes to file an application for a Certificate of Compliance with the Honorable Commission.

32. The foregoing clearly shows that the proposed Transmission Line complies with Section 9 of the EPIRA and the relevant regulations of this Honorable Commission.

**Motion for Provisional Authority
and Allegations in Support of Prayer for Provisional
Authority**

33. Rule 14 of the Honorable Commission's Rules of Practice and Procedure authorizes the issuance of a provisional authority or an interim relief prior to a final decision, provided that the facts and circumstances warrant the issuance of the same.

34. VMCI respectfully prays that the Honorable Commission provisionally authorize the development, ownership, and operation of the Transmission Line considering that the facts, circumstances and the magnitude of the opportunity costs entailed by any further delay in the interconnection of the Project warrants the issuance of a Provisional Authority.

34.1 VMCI hopes to be able to complete development and construction of the facilities at the soonest possible time in order to be able to dispatch electric power supply to the grid.

34.2 The Project is one of the energy projects under Republic Act No. 9513 or the Renewable Energy Act of 2008, which aims to accelerate the development and utilization of the country's renewable energy sources. Thus, it is in the interest of the government to help RE developers such as VMCI to achieve

³⁰ A copy of VMCI's General Information Sheet, Audited Financial Statements, and Financial Feasibility Study and Projected Financial and Economic Cost Analysis are attached as Annexes "X", "Y" and "Z" are made integral parts hereof.

³¹ A copy of VMCI's letter request to NGCP and the list of names and addresses of personnel responsible for the design, installation, maintenance, and repair of equipment for the proposed system are attached as Annexes "AA" and "BB" and made integral parts hereof.

commerciality and commence operations at the soonest practicable time.

34.3 The construction of the Transmission Line is a pre-requisite for the testing and commissioning, and ultimately, the commercial operations of VMCI. The Project is projected to be completed and energized in November 2017. Consistent with this timeline, VMCI intends to complete the development and construction of the Transmission Line by October 2017.

34.4 Moreover, the use of biomass energy reduces the country's dependence on fossil fuels, which not only minimizes harmful carbon greenhouse emissions in the environment but also reduces the country's exposure to price fluctuations in the international markets.

34.5 Further, given the immediate need for additional capacity by 2018, the completion of the Project within the timeframe is critical to ensure additional capacity will be available to the grid in a timely manner.

34.6 The issuance of a provisional authority is also critical in light of the deadline for qualification for the Feed-in Tariff ("FIT") allocation. Thus, it is necessary for VMCI to secure a provisional authority to immediately commence and complete the construction of the Transmission Line in order to avail of the FIT, which is essential to the economic viability of VMCI.

35. It is in such context that VMCI respectfully prays that provisional authority be immediately issued for the development and construction of the proposed Transmission Line.

PRAYER

WHEREFORE, VMCI respectfully prays that this Honorable Commission:

1. Immediately ISSUE an order provisionally authorizing VMCI to implement the development, ownership and operation of a dedicated point-to-point limited transmission facility to connect the Project to the Visayas Grid ; and

2. After due notice and hearing, GRANT VMCI the authority to develop, own, operate and maintain a dedicated point-to-point limited transmission facility to connect the Project to the Visayas Grid.

Other reliefs as may be appropriate under the circumstances are likewise prayed for.

Finding the said Application to be sufficient in form and in substance with the required fees having been paid, the same is hereby

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set for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on **5 June 2018 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.**

Accordingly, VMCI is hereby directed to:

- 1) Cause the publication of the attached Notice of Public Hearing once (1x) in a newspaper of nationwide circulation in the Philippines at its own expense, the date of the publication to be made not later than ten (10) days before the scheduled initial hearing;
- 2) Furnish with copies of this Order and the attached Notice of Public Hearing the Offices of the Provincial Governor, City Mayor, and the Local Government Unit (LGU) legislative bodies within the franchise area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform of the filing of the Application, its reasons therefor, and of the scheduled hearing thereon, the consumers within the affected franchise area, by any other means available and appropriate;
- 4) Furnish with copies of this Order and the attached Notice of Public Hearing, 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; and
- 5) Furnish with copies of the Application and its attachments all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing, Applicant must submit to the Commission its written compliance with the aforementioned jurisdictional requirements attaching therewith, methodically arranged and duly marked the following:

- 1) The evidence of publication of the attached Notice of Public Hearing consisting of affidavit of the Editor or Business Manager of the newspaper where the said Notice of Public

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Hearing was published, and the complete issue of the said newspaper;

- 2) The evidence of actual posting of this Order and the attached Notice of Public Hearing consisting of certifications issued to that effect, signed by the aforementioned Governor, Mayor, and LGU legislative bodies or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by Applicant to inform of the filing of the Application, its reasons therefore, and of the scheduled hearing thereon, the consumers within the affected franchise area;
- 4) The evidence of receipt of copies of this Order and the attached Notice of Public Hearing by the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress;
- 5) The evidence of receipt of copies of the Application and its attachments by all those making requests therefor, if any; and
- 6) Such other proofs of compliance with the requirements of the Commission.

Applicant and all interested parties are also required to submit, at least five (5) days before the date of the initial hearing and Pre-trial Conference, their respective Pre-trial Briefs containing, among others:

- 1) A summary of admitted facts and proposed stipulation of facts;
- 2) The issues to be tried or resolved;
- 3) The documents or exhibits to be presented, stating the purposes and proposed markings therefore; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-trial Brief.

Failure of Applicant to comply with the above requirements 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 the said date of cancellation.

VMCI must also be prepared to make an expository presentation of the instant Application, aided by whatever communication medium that it 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, 21 March 2018.

FOR AND BY AUTHORITY
OF THE COMMISSION:


AGNES VST DEVANADERA
Chairperson and CEO


LS: SLAN/KTB/APV



COPY FURNISHED:

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4. Office of the LGU legislative body
City of Victorias
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Province of Negros Occidental
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11. National Grid Corporation of the Philippines (NGCP)
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12. Philippine Chamber of Commerce and Industry (PCCI)
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Handwritten initials