

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



IN THE MATTER OF THE APPLICATION FOR THE APPROVAL OF THE SALE OF VARIOUS SUB-TRANSMISSION LINES/ASSETS OF THE NATIONAL TRANSMISSION CORPORATION (TRANSCO) TO ZAMBOANGA DEL NORTE ELECTRIC COOPERATIVE, INC. (ZANECO), AS COVERED BY A LEASE PURCHASE AGREEMENT DATED 26 DECEMBER 2012 AND A SUPPLEMENTAL AGREEMENT DATED 19 SEPTEMBER 2013

ERC CASE NO. 2014-065 RC

NATIONAL TRANSMISSION CORPORATION (TRANSCO) AND ZAMBOANGA DEL NORTE ELECTRIC COOPERATIVE, INC. (ZANECO),

DOCKETED
Date: JUL 08 2014
By: *[Signature]*

Applicants.

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ORDER

On May 26, 2014, the National Transmission Corporation (TRANSCO) and the Zamboanga Electric Cooperative, Inc. (ZANECO) filed a joint application for approval of the sale of various sub-transmission lines/assets of TRANSCO to ZANECO as covered by a Lease Purchase Agreement dated 26 December 2012 and a Supplemental Agreement dated 19 September 2013.

In the said joint application, TRANSCO and ZANECO alleged, among others, that:

1. TRANSCO is a government-owned-and-controlled corporation created pursuant to the Electric Power Industry Reform Act of 2001 (EPIRA), with principal office address at

the TRANSCO Main Building, Quezon Avenue corner BIR Road, Diliman, Quezon City;

2. ZANECO is an electric distribution utility (DU) duly organized and existing under the laws of the Republic of the Philippines, with principal office address at General Luna St., Central Barangay, Dipolog City, Philippines;
3. By virtue of Section 8 of the EPIRA, TRANSCO assumed the electrical transmission functions of the National Power Corporation (NPC) and its authority and responsibility for the planning, construction and centralized operation and maintenance of the high voltage transmission facilities, including grid interconnections and ancillary services. The EPIRA also mandates the segregation of the transmission and sub-transmission functions and assets for transparency and disposal;
4. Pursuant thereto, the Commission promulgated on October 17, 2003 the *Guidelines on the Sale and Transfer of the TRANSCO's Sub-transmission Assets (STAs) and the Franchising of Qualified Consortiums (ERC Guidelines)*, as amended by TRANSCO Board Resolution No. 3, Series of 2005 dated March 17, 2005 which set forth, among others, the standards to distinguish TRANSCO's transmission assets from its sub-transmission assets (STA), and establish the approval process prior to the final sale and transfer of STAs to DUs;
5. Consistent with the ERC Guidelines, TRANSCO adopted its own *Guidelines on the Sale of Sub-transmission Assets (TRANSCO Guidelines)* [Annex "A"] as approved by TRANSCO Board Resolution No. TC-2003-067 dated November 28, 2003 [Annex "A-1"], as further amended by TRANSCO Board Resolution No. TC-2004-009 dated March 16, 2004 [Annex "A-2"];
6. On July 16, 2011, the ERC issued Resolution No. 15, Series of 2011 entitled, "*A Resolution Adopting the Amended Rules for the Approval of the Sale and Transfer of TRANSCO's Sub-transmission Assets and the Acquisition by Qualified Consortiums*", the relevant provisions of which read, as follows:

"Article V, Section 6. TRANSCO/NGCP's Uncollected Deferred Connection Charges and Residual Sub-transmission Charge – For acquiring electric cooperatives (ECs), any

uncollected TRANSCO/NGCP's connection and residual charges resulting from the deferred charges as approved by the ERC shall be capitalized or included in the acquisition cost of the subject assets. The amount shall be based on previous year's charges. For sale of sub-transmission assets prior to this amendment, wherein the deferred charges were not yet capitalized, TRANSCO may continue to bill and collect the connection and residual charges resulting from the deferred charges as approved by the ERC."
(Emphasis ours)

7. After a thorough evaluation, and based on the aforesaid ERC Guidelines, TRANSCO has determined that the following assets are sub-transmission assets:
 - a. Molave-Polanco 69 kV line;
 - b. Polanco-Siom 69 kV line;
 - c. Polanco-Dapitan 69 kV line; and,
 - d. Ipil- Salug 69 kV line.

Attached as **Annexes "D", "E" and "F"**, respectively, are copies of the Report that the assets for sale meet the criteria for STAs, the List of STA/s for sale, and the Single line diagram;

8. TRANSCO has likewise established that ZANECO meets the technical and financial criteria to purchase, operate, maintain, upgrade and expand the subject assets which are located within its franchise area. Copies of the Technical and Financial Qualification Evaluations, Franchise Description and Audited Financial Statements of ZANECO as of December 31, 2010 are attached as **Annexes "G", "H", "I" and "J"**, respectively;
9. On August 19, 2012, the ZANECO Board of Directors issued Board Resolution No. 094, Series of 2012, [Annex "K"] relative to the acquisition of the subject assets;
10. On December 26, 2012, TRANSCO and ZANECO concluded a Lease Purchase Agreement [Annex "L"] covering the subject STAs amounting to **Two Hundred Sixty-Six Million One Hundred Sixty-Three Thousand One Hundred Thirty-Five Pesos (PhP266,163,135.00) plus twelve percent value added tax (12% VAT)**, net of adjustments and deductions;

11. Said purchase is fair and reasonable as it represents the disposal value of the subjects STAs based on potential revenue. A copy of the Asset Valuation Computation is attached as **Annex "M"**;
12. It bears stressing that aside from ZANECO, there is also another qualified distribution utility called Zamboanga del Sur 1 Electric Cooperative, Inc. (ZAMSURECO I) which is connected to the subject assets, as shown by **Annex "N"**;
13. However, ZAMSURECO I waived its right to the acquisition of the subject assets in favor of ZANECO, as evidenced by the ZAMSURECO 1 Board Resolution No. 090, Series of 2012 dated December 10, 2012;
14. On December 26, 2012, ZANECO sent TRANSCO a letter (**Annex "P"**) requesting for the exclusion of the Molave-Polanco 69 kV line from the sale contract due to the ongoing project of the National Grid Corporation of the Philippines (NGCP), whereby the Aurora-Polanco 138 kV line will pass through ZANECO's franchise area;
15. ZANECO intends to connect with NGCP's Aurora-Polanco 138 kV line instead of TRANSCO's Molave-Polanco 69 kV line. The Supplemental agreement (**Annex "Q"**) which excludes the Molave-Polanco 69 kV line from the sale contract was concluded by TRANSCO and ZANECO on September 19, 2013;
16. By virtue of the aforesaid Supplemental Agreement, the contract price was reduced from **Two Hundred Sixty-Six Million One Hundred Sixty-Three Thousand One Hundred Thirty Five Pesos (PhP266,163,135.00) plus twelve percent value added tax (12% VAT)**, to **One Hundred Sixty-Eight Million Two Hundred Sixty-One Thousand Four Hundred Thirty Seven Pesos (PhP168,261,437.00) plus twelve percent value added tax (12% VAT)**, which ZANECO undertakes to pay in two hundred forty (240) equal monthly installments, as per the attached Schedule of Payments (**Annex "R"**);
17. They also hereby submit a Draft Deed of Absolute Sale (**Annex "S"**) in support of their Joint Application;
18. The proposed sale is compliant with the EPIRA and its IRR, the *ERC* and *TRANSCO Guidelines on the Sale of*

Sub-transmission Assets, as well as relevant ERC Orders, Resolutions and Issuances;

19. The approval by the Commission of the instant joint application shall pave the way for the attainment of a reformed electricity industry under the EPIRA, towards a competitive regime/cost of electricity through open access and customer choice of supplier of electricity, which would ultimately best serve the interest of the consuming public; and
20. They pray that after due notice and hearing, judgment be rendered APPROVING the sale of the following STAs to ZANECO, under the terms set forth in the Lease Purchase Agreement dated December 26, 2012 and the Supplemental Agreement dated September 19, 2013:
 - a. Molave-Polanco 69 kV line;
 - b. Polanco-Siom 69 kV line;
 - c. Polanco-Dapitan 69 kV line; and,
 - d. Ipil- Salug 69 kV line.

Finding the said joint application sufficient in form and in substance with the required fees having been paid, the same is hereby set for jurisdictional hearing, expository presentation, pre-trial conference and evidentiary hearing on **August 6, 2014 (Wednesday) at one o'clock in the afternoon (1:00 P.M.) at the ZANECO Office, General Luna St., Central Barangay, Dipolog City.**

TRANSCO and ZANECO are hereby directed to cause the publication of the attached Notice of Public Hearing, at their own expense, twice (2x) for two (2) successive weeks in two (2) newspapers of general circulation in the Philippines, with the date of the last publication to be made not later than ten (10) days before the date of the scheduled initial hearing. They are also directed to inform the consumers within the franchise area of ZANECO, by any other means available and appropriate, of the filing of the instant application, their reasons therefor, and of the scheduled hearing thereon.

Let copies of the 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 Governor of Zamboanga del Norte and Mayors of Quezon City and the Municipalities/Cities within the franchise area of ZANECO for the appropriate posting thereof on their respective bulletin boards.

TRANSCO and ZANECO are directed to furnish all those making requests therefor with copies of the joint application and its attachments, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing and pre-trial conference, TRANSCO and ZANECO must submit to the Commission their respective written Compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidences on the actual posting and publication of the Notice of Public Hearing consisting of certifications issued to that effect, signed by the afore-mentioned Governor and Mayors or their duly authorized representatives, bearing the seals of their offices, and the affidavit of the Editors or Business Managers of the newspapers where the said Notice of Public Hearing were published together with the complete issues of the said newspapers, and such other proofs of compliance with the requirements of the Commission.

TRANSCO, ZANECO 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 and proposed markings thereof; 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 TRANSCO and ZANECO 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, TRANSCO and ZANECO must also be prepared to make an expository presentation of their joint 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 joint application is all about and the reasons and justifications being cited in support thereof.

SO ORDERED.

Pasig City, June 30, 2014.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ZENAIDA G. CRUZ-DUCUT
Chairperson


UBB/NJS

Copy Furnished:

1. **NATIONAL TRANSMISSION CORPORATION (TRANSCO)**
Attention: Attys. NOEL Z. DE LEON, LEON T. TAPEL, JR., GINA LOURDES D. VALEROS and SOLEDAD T. DE LA VEGA-CABANGIS
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2. **Atty. Alan C. Gaviola**
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3rd Ave., North Reclamation Area, Cebu City
3. **Zamboanga Del Norte Electric Cooperative, Inc. (ZANECO)**
Gen. Luna St., Central Barangay, Dipolog City
4. **Office of the Solicitor General**
134 Amorsolo Street, Legaspi Village
Makati City, Metro Manila
5. **Commission on Audit**
Commonwealth Avenue
Quezon City, Metro Manila
6. **Senate Committee on Energy**
GSIS Bldg. Roxas Blvd., Pasay City
Metro Manila
7. **House Committee on Energy**
Batasan Hills, Quezon City, Metro Manila
8. **National Electrification Administration**
NIA Road, Diliman, Quezon City
9. **Office of the Provincial Governor**
Province of Zamboanga del Norte
10. **The City Mayor**
Dipolog City, Zamboanga del Norte
11. **The City Mayor**
Dapitan City, Zamboanga del Norte

12. **Office of the Municipal Mayor**
Rizal, Zamboanga del Norte
13. **Office of the Municipal Mayor**
Sibutad, Zamboanga del Norte
14. **Office of the Municipal Mayor**
La Libertad, Zamboanga del Norte
15. **Office of the Municipal Mayor**
Piñan, Zamboanga del Norte
16. **Office of the Municipal Mayor**
Mutia, Zamboanga del Norte
17. **Office of the Municipal Mayor**
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