

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City



IN THE MATTER OF THE APPLICATION FOR AUTHORITY TO DEVELOP, OWN AND/OR OPERATE DEDICATED POINT-TO-POINT LIMITED TRANSMISSION FACILITIES TO CONNECT THE 60MW MAIBARARA GEOTHERMAL POWER PLANT PROJECT TO THE LUZON GRID THROUGH THE NGCP MAKBAN-CALAMBA 69KV LINE, WITH PRAYERS FOR CONFIRMATION OF THE CLASSIFICATION OF THE NGCP MAKBAN-CALAMBA 69KV LINE AS A TRANSMISSION ASSET, PRAYERS FOR PROVISIONAL AUTHORITY, AND INTERIM RELIEF

ERC Case No. 2021-003 MC

MAIBARARA GEOTHERMAL, INC.,

Applicant.

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Promulgated:

February 11, 2021

ORDER

On 20 January 2021, Maibarara Geothermal, Inc. (MGI) filed an *Application* dated 23 November 2020 (Application) for authority to develop, own and/or operate dedicated point-to-point limited transmission facilities to connect the 60MW Maibarara Geothermal Power Plant to the Luzon Grid, through the Makban-Calamba 69kV Line, and for confirmation of the classification of the said Line as a transmission asset, with prayer for issuance of provisional authority and/or interim relief.

The pertinent portions of the said *Application* are hereunder quoted as follows:

I.
THE APPLICANT

1. MGI is a corporation duly organized and existing by virtue of and under the laws of the Republic of the Philippines, with principal office address at 7th Floor, JMT Building, ADB Avenue, Ortigas Center, Pasig City, Metro Manila, Philippines.

*Copies of: (i) MGI's Certificate of Registration dated 11 August 2010; (ii) Certificate of Filing of Amended Articles of Incorporation dated 31 January 2018; (iii) Amended Articles of Incorporation; (iv) By-Laws; (v) and General Information Sheet for the year 2020, are attached hereto and made integral parts hereof as **Annexes "A," "B," "C," "D," and "E,"** respectively.*

2. MGI may be served orders and other processes through undersigned counsel at Puyat Jacinto & Santos Law Office, 10th Floor, 8 Rockwell Tower, Hidalgo cor. Plaza Drives, Rockwell Center, Makati City.

II.
NATURE OF THE APPLICATION

3. This Application is submitted to this Honorable Commission pursuant to Section 9 of Republic Act No. 9136 otherwise known as the *Electric Power Industry Reform Act of 2001* ("**EPIRA**"),¹ Rule 5, Section 5(a)(i) of the EPIRA Implementing Rules and Regulations ("**EPIRA IRR**"),² and Section 4.2 of Resolution No. 23 Series of 2016 or the *Resolution Adopting Amended Rules on the Definition and Boundaries of Connection Assets for Customers of Transmission Providers*³ for the consideration; and approval of MGI's

¹ Section 9. Functions and Responsibilities.

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(f) xxx

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: xxx

² Section 5. Dedicated Point-to-Point Limited Transmission Facility of a Generation Company.

(a) Subject to prior authorization from ERC, TRANSCO or its Buyer or Concessionaire may allow a Generation Company to develop, own and/or operate dedicated point-to-point limited transmission facilities; *Provided*, That:

(i) Such dedicated point-to-point limited transmission facilities are required only for the purpose of connecting to the Grid which will be used solely by the Generation Facility, and are not used to serve End-users or Suppliers directly.

³ 4.2. Connection Assets for Generation Customers of Transmission Provider

proposed development, ownership, and operation of interconnection facilities which shall connect the approximately 32MW Maibarara Geothermal Power Plant (“**MGPP**”) to the 69kV Makban-Calamba Line of the National Grid Corporation (“**NGCP**”).

*A copy of the Secretary’s Certificate dated 26 May 2020 authorizing the filing of the instant Application and appointing MGI’s authorized representatives therefor is attached hereto and made an integral part hereof as **Annex “F.”***

4. MGI likewise seeks confirmation of the Makban-Calamba Line’s reclassification to a transmission asset in view of the provisions under Section 9 of the EPIRA.⁴

5. On this note, and considering that the reliefs prayed for by MGI - namely: (i) the approval of its proposed connection to the 69kV Makban-Calamba Line; and (ii) confirmation that the 69kV Makban-Calamba Line has been reclassified as a transmission asset by operation of law for the reasons discussed in greater detail below – are inextricably linked, MGI respectfully submits that the consolidated nature of the instant *Application* will allow this Honorable Commission to resolve the submitted issues in the most efficient and practical manner possible.

III. **STATEMENT OF FACTS**

6. MGI is owned by the following principal shareholders: (i) PetroGreen Energy Corporation (“**PGEC**”), which holds 65% of its outstanding capital stock; (ii) AC Energy Philippines, Inc. (“**ACEPI**”), formerly PHINMA Energy Corporation (“**PEC**”; now known as AC Energy Philippines, Inc.), which holds 25% of its outstanding capital stock; and (iii) PNOG Renewables Corporation, which holds 10% of its outstanding capital stock.

6.1. PGEC, for its part, is a subsidiary of Petroenergy Resources Corporation (“**PRC**”), with the latter owning 90% of the former’s outstanding capital stock.

Connection Assets for generation customers of Transmission Provider include those assets from the last Single Mechanical Connection of a User System or Equipment of a Generation Company, at its Connection Point, to the last Single Mechanical Connection which is not shared with another Customer within the Grid.

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A Generation Company may develop and own or operate a dedicated point-to-point limited facilities 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.

⁴ Section 9. Functions and Responsibilities.

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xxx *Provided, further,* That in the event that such assets are required for competitive purposes, ownership of the same shall be transferred to the TRANSCO at a fair market price: *Provided, finally,* That in the case of disagreement on the fair market price, the ERC shall determine the fair market value of the asset.

7. PRC was the holder of Geothermal RE Energy Service Contract No. 2010-02-012 dated 1 February 2010 (“**GRES**C”), executed between the Republic of the Philippines, through the Department of Energy (“**DOE**”) and PRC.

8. By virtue of the GRES C, PRC was granted the right to explore, develop and utilize the Geothermal Energy Resources within an area covering 1,599.80 hectares in Maibarara, Batangas/Laguna.⁵

*A copy of the GRES C in the name of PRC is hereto attached and made an integral part hereof as **Annex “G.”***

9. Sometime in 2010, PRC caused the assignment of the GRES C to MGI by virtue of a Deed of Assignment and Assumption where PRC assigned all of its rights, interests, and obligations under the Service Contract in favor of MGI.

10. On 27 September 2010, PRC wrote a letter to the DOE requesting for the approval of the assignment of the GRES C by PRC to MGI, which request was granted by the DOE on 05 January 2011.

A Certificate of Registration dated 05 January 2011 was thus issued by the DOE in the name of MGI.

*Copies of: (i) the Deed of Assignment and Assumption dated 27 September 2010; (ii) the letter to the DOE requesting approval of transfer of interest dated 27 September 2010; (iii) the DOE letter of approval of the transfer dated 5 January 2011; and (iv) the Certificate of Registration in the name of MGI dated 5 January 2011, are hereto attached and made integral parts hereof as **Annexes “G-1,” “G-2,” “G-3,”** and **“G-4”** respectively.*

11. On 11 November 2011, the DOE issued a Certificate of Commerciality in favor of MGI confirming the commercial viability of the MGPP.

*A copy of the Confirmation of Commerciality dated 11 November 2011 is hereto attached and made an integral part hereof as **Annex “H.”***

12. Moreover, and pursuant to the GRES C, MGI is engaged in the development, construction, operation and ownership of the MGPP, with an initial net capacity of 20MW for its first phase (“**MGPP1**”), which commenced commercial operations on 08 February 2014.

Copies of: (i) the Project Rationale; (ii) Summary of relevant dates indicating the dates of construction, completion, commissioning and commercial operations of the Dedicated Facility Project and the MGPP; (iii) the Environmental Compliance Certificate issued by the Department of Environment and Natural Resources in favor of PRC for the MGPP and the Dedicated Facility Project; and (iv) the DENR

⁵ GRES C, Section 2.8.

Letter acknowledging the change in proponent from PRC to MGI are attached hereto and made integral parts hereof as Annexes “I,” “J,” “K,” and “K-1,” respectively.

13. In order to transmit the power that the MGPP1 generates to the Luzon grid at the start of its commercial operations date, MGI filed an Application with the Honorable Commission docketed as ERC Case No. 2013-051 MC and entitled as *In the Matter of the Application for Authority to Develop, Own and Operate Dedicated Point-to-Point Facilities to Connect to the Distribution System of Manila Electric Company (MERALCO), with Prayer for Provisional Authority (“Original P2P Application”)*.

13.1. Under the Original P2P Application, MGI proposed an interconnection scheme that consisted of a 6-kilometer line from MGPP’s switchyard to MERALCO’s distribution system through its existing 115kV line in Calamba, Laguna (“**MERALCO Interconnection**”).

13.2. At this juncture, MGI underscored that a connection to NGCP’s Makban 69 kV Substation was initially considered under the Original P2P Application. However, it was found not to be practical due to the geographical and legal constraints that, in turn, would entail significant additional costs and delay if such course of action is pursued.

13.3. Apart from the considerable distance between MGI’s facilities and the nearest NGCP Substation at Makban, which entails the construction of an 11 to 14.1 km, single-circuit 69kV line, the complications arising from obtaining the corresponding rights-of-way would impose both legal and financial burdens that are infeasible and disproportionate to MGI’s objectives.

13.4. Pursuant to such proposed interconnection scheme, MGI and MERALCO entered into an Interconnection Agreement for the physical interconnection of the generation and connection facilities of MGPP to MERALCO’s distribution system.

13.5. On 30 September 2013, the Honorable Commission approved the Original P2P Application.

14. MGI then proceeded with the expansion of MGPP by developing the 12MW Maibarara Geothermal Power Project – Phase 2 (“**MGPP2**”), which commenced commercial operations on 30 April 2018. To save capital costs, the MGPP2 uses the existing dedicated transmission facility of MGPP1 in transmitting its generated power to the Luzon grid.

15. On 21 September 2015 the DOE issued a Certificate of Commerciality in favor of MGI confirming the commercial viability of the MGPP2.

A copy of the Confirmation of Commerciality dated 21 September 2015 is hereto attached and made an integral part hereof as Annex “L.”

16. However, pursuant to certain economic considerations and after numerous discussions with NGCP, MGI seeks to transfer its connection to the Makban-Calamba Line, which entails the utilization of its existing 69kV line and the construction of a 70MVA 69/115kV step-down transformer at the connection point (the “**Dedicated Facility Project**”).

17. The Dedicated Facility Project is expected to be completed by 15 September 2020 to accommodate MGPP’s current capacity of 32MW, with plans of further expanding its capacity to 60MW in 2023.

Copies of: (i) the Project Description; (ii) the Detailed Single Line Diagram of the Dedicated Facility Project; and (iii) Simplified Single Line Diagram of the Dedicated Facility Project are attached hereto and made integral parts hereof as Annexes “M”, “N,” and “N-1” respectively.

17.1. The estimated cost of the construction of the Dedicated Facility Project is PhP146,500,000.00 with the following major cost components:

Description of Work	Contract Cost (Php)
HV Equipments (Brand: ABB)	88,248,514.00
Design, fabrication, supply, installation, testing and commissioning of panel	12,505,200.00
Civil works	10,200,000.00
Mechanical and other electrical works	11,831,286.00
General requirement and others	12,648,000.00
RTU/SCADA/Telecom System	11,067,000.00
TOTAL	146,500,000.00

Copies of: (i) the detailed breakdown of the Dedicated Facility Project Cost Estimate dated 12 August 2020; and (ii) Demand-Supply Scenario are attached hereto and made integral parts hereof as Annexes “O” and “P,” respectively.

17.2. The Dedicated Facility Project will be exclusively funded by MGI and will, therefore, not impact any regulated charges.

18. With the existing MERALCO interconnection, the MGPP is classified as an Embedded Generating Plant under the Open Access Transmission Service Rules (“**OATS Rules**”), hence, has been charged with the following NGCP transmission fees for Service Operator (“**SO**”) Charges and Ancillary Service (“**AS**”) Charges in accordance with NGCP’s interpretation and application of the OATS Rules:⁶

⁶ On 10 August 2018, MGI filed a *Petition for Dispute Resolution with Motion for Issuance of a Cease and Desist Order* against NGCP contesting the billing determinant used in computing the SO and AS Charges billed against MGI.

		Current Billing (as embedded generator) (in PHP)	
2019	Total (M1+M2) (in PHP)	M1	M2
January	5,025,840.76	3,194,994.01	1,830,845.25
February	5,311,043.08	3,363,386.72	1,947,657.31
March	5,402,687.45	3,437,002.97	1,965,683.28
April	6,223,494.89	3,966,469.84	2,257,028.20
May	5,015,988.12	3,191,369.38	1,824,619.11
June	4,633,067.69	2,915,599.54	1,717,470.22
July	4,143,959.25	2,605,445.56	1,538,511.46
August	4,307,787.74	2,710,792.82	1,596,993.07
September	4,579,973.34	2,884,808.04	1,695,163.55
October	3,488,962.00	2,194,893.99	1,294,069.75
November	4,737,088.58	2,976,761.40	1,760,327.04
December	3,301,278.79	2,082,388.34	1,218,888.97
Total	56,171,171.69	35,523,912.61	20,647,257.21
Monthly Ave., Total	4,680,930.97	2,960,326.05	1,720,604.77

19. Should the Honorable Commission approve this instant Application, the MGPP would then be classified as a Directly Connected Generating Plant by reason of its direct connection to the Makban-Calamba Line, which would result to a clear determination of the billing determinant to be used by NGCP in computing for the SO and AS Charges to be imposed and therefore significantly reducing the NGCP transmission fees, henceforth:

		Billing Simulation (as directly connected generator) (in PHP)	
2019	Total (M1+M2) (in PHP)	M1	M2
January	59,904.34	51,975.65	7,928.69
February	117,585.14	106,689.02	7,928.69
March	45,757.62	7,987.12	36,905.27
April	15,857.39	7,928.69	7,928.69
May	101,377.08	45,717.61	53,442.62
June	27,125.68	7,928.69	8,065.04
July	40,511.24	31,700.59	8,127.91
August	100,764.85	75,620.68	22,784.27
September	15,857.39	7,928.69	7,928.69
October	57,961.25	30,534.38	29,487.99
November	25,884.66	17,563.76	7,928.69
December	15,857.39	7,928.69	7,928.69
Total	624,444.01	399,593.58	206,385.25
Monthly Ave., Total	52,037.00	33,299.46	17,198.77

20. Upon discussions with the NGCP of MGI's intended connection transfer to the Makban-Calamba Line, MGI was required to build the Dedicated Facility Project within a 500-meter line distance

from the connection point in compliance with GCR 4.6.1.4 of the Philippine Grid Code.⁷

20.1. For this purpose, Section 4.6.1.4 of the Grid Connection Requirements prescribed by the Philippine Grid Code expressly states:

If the line between the Connection Point and the substation of the Distribution Utility (or other Grid User) is greater than 500 meters (m), a Circuit Breaker of appropriate rating shall be provided at the Connection Point. However, a line equal to or less than 500 m between Connection Point and substation of the Distribution Utility (or other Grid User) shall at least be provided with Disconnect Switch.

20.2. The Honorable Commission has consistently allowed applicants to explore and pursue courses of action that are more viable in the context of facts and circumstances attendant to each application.⁸

21. After a thorough review of its interconnection options, MGI has found that connecting to the Luzon Grid via the Dedicated Facility Project is the most cost-effective and viable option, giving MGI an average monthly savings of PhP4,628,893.97 for NGCP transmission fees. Further, the same will also eliminate MERALCO's wheeling charges, which is being paid by MGPP's sole off-taker, ACEPI.

22. Pursuant to the foregoing, MGI, on 19 July 2019, sent an official notice of its intention to transfer its current interconnection from MERALCO's distribution system to the Makban-Calamba Line.

*A copy of MGI's letter-notice to MERALCO dated 19 July 2019 is attached hereto and made an integral part hereof as **Annex "Q."***

23. On 18 May 2020, MGI received a letter from MERALCO dated 14 May 2020 regarding its intention to transfer the connection point of its facilities to the 69kV Makban-Calamba Line. Despite flagging several potential legal, technical, and commercial issues, MERALCO assured MGI that it would not oppose the intended transfer.

*A copy MERALCO letter dated 14 May 2020 is attached hereto and made an integral part hereof as **Annex "R."***

24. The Dedicated Facility Project shall be constructed by Philcantech Enterprises as the contractor of MGI.

⁷ GCR 4.6.1.4 If the line between the Connection Point and the substation of the Distribution Utility (or other Grid User) is greater than 500 meters (m), a Circuit Breaker of appropriate rating shall be provided at the Connection Point. However, a line equal to or less than 500 m between Connection Point and substation of the Distribution Utility (or other Grid User) shall at least be provided with Disconnect Switch. (Please refer the connections to the single line diagram shown in **Appendix 5**)

⁸ See the Decision dated 30 September for *In the Matter of the Application for Authority to Develop, Own and Operate Dedicated Point-to-Point Facilities to Connect to the Distribution System of Manila Electric Company (MERALCO), with Prayer for Provisional Authority* (ERC Case No. 2013-051-MC).

*Copies of: (i) the Conceptual Engineering Design and Drawing; (ii) the Substation Section View; (iii) the Gantt Chart for the construction of the Dedicated Facility Project; (iv) Company Profile of Philcantech Enterprises; (v) and matrix of ongoing and completed projects are attached hereto and made integral parts hereof as **Annexes “S,” “S-1,” “T,” “U” and “U-1,”** respectively.*

25. On 7 November 2019, the NGCP performed a System Impact Study (“**SIS**”) to determine the impact of connecting the MGPP to the Luzon Grid. The connection of MGPP to the Luzon Grid through the Dedicated Facility Project was found to be technically feasible.

*Copies of: (i) the SIS; and (ii) the NGCP’s SIS Final Review Report dated 7 November 2019 are attached hereto and made integral parts hereof as **Annexes “V” and “V-1,”** respectively.*

26. MGI also conducted a Facilities Study (“*Facilities Study*”) to ensure that: (i) the equipment to be installed will satisfy the recommendation of the NGCP’s SIS; (ii) the Dedicated Facility Project complies with the provisions of the Philippine Grid Code.

*Copies of: (i) the Facilities Study; and (ii) NGCP’s Review Report on the Facilities Study dated 22 May 2020 are attached hereto and made integral parts hereof as **Annexes “W” and “W-1,”** respectively.*

27. In a Letter dated 19 June 2020, NGCP confirmed the inclusion of the MGPP in the **2020-2040** Transmission Development Plan Final Report.

*A copy of the Letter from NGCP dated 19 June 2020 is attached hereto and made an integral part hereof as **Annex “X.”***

28. NGCP and MGI are currently in the process of finalizing the terms of their Connection Agreement for the interconnection of the MGPP to the Luzon Grid through the Dedicated Facility Project.

*A copy of NGCP Certification dated 16 June 2020 attesting to the fact that MGI and NG[C]P are in the process of negotiating and finalizing the terms of the Connection Agreement is hereto made an integral part hereof as **Annex “Y.”***

29. In light of the foregoing, MGI respectfully seeks the confirmation and approval of this Honorable Commission that the Dedicated Facility Project is the most viable option for the MGPP to connect to the Luzon Grid.

30. Upon completion of the Dedicated Facility Project, the operations, service, and maintenance (O&M) services of the Dedicated Facility Project shall be undertaken by the NGCP.

Copies of: (i) Letter from MGI dated 23 June 2020 confirming that MGI intends to avail of NGCP’s services for the operations, service, and maintenance of the Dedicated Facility Project; and (ii) the NGCP’s email dated 24 June 2020 acknowledging receipt of the same are

*hereto attached and made an integral parts hereof as **Annex “Z”** and “Z-1”, respectively.*

31. As of date, MGI has secured or is in the process of securing the necessary permits, licenses and authority from the appropriate regulatory agencies for the Dedicated Facility Project.

*A copy of the sworn statement of MGI’s authorized representative dated 26 June 2020, attesting to the fact that MGI obtained all the necessary permits from all concerned agencies that may have an interest in the Dedicated Facility Project is hereto attached and made an integral part hereof **as Annex “AA.”***

IV.
ALLEGATION IN SUPPORT OF PRAYER FOR
CONFIRMATION OF RECLASSIFICATION

32. One of the most notable issues raised by MERALCO in its letter dated 14 May 2020 pertains to the proper classification of the Makban-Calamba 69kV line. In MERALCO’s letter, it raised:

On the legal side, the portion of NGCP Makban-Calamba 69kV line with 8.8-kilometer circuit-length from the tapping point of First Industrial Townership Utilities of NGCP’s Calamba substation where MGI is proposing to transfer is part of the various subtransmission assets under STA-Batch 2 sold by the National Transmission Corporation (“TransCo”) to MERALCO. **The Contract to Sell between TransCo and MERALCO for the STA-Batch 2 assets were already approved by the Energy Regulatory Commission, MERALCO and TransCo are currently finalizing the divestment of these areas to MERALCO.** [Emphasis supplied.]

33. In view of such issue raised, MGI reviewed the various publicly available documents relating to such transfer and raises the same to the Honorable Commission for evaluation.

34. On 3 December 2009, the National Transmission Corporation (“**TRANSCO**”) and MERALCO filed a joint application for approval of the sale of various subtransmission lines/assets of TRANSCO within the franchise area of MERALCO pursuant to Section 8 of the EPIRA as well as the provisions of the *Guidelines to the Sale and Transfer of the TransCo’s Subtransmission Assets and Franchising of Qualified Consortiums*.

35. On 6 March 2012, the Honorable Commission approved the sale of various subtransmission lines/assets of TRANSCO within the franchise area of MERALCO through its *Decision* dated 6 March 2012 for ERC Case No. 2009-174 RC (the “**Subject Decision**”). The Subject Decision included the sale of the Makban-Calamba 69kV Line to which MGI – by virtue of the instant *Application* – proposes to connect the MGPP through the Dedicated Facility Project.

36. In view of the current function of the Makban-Calamba Line, MGI respectfully submits that the same should be reclassified into

a transmission asset in accordance with the relevant law and regulations.

36.1. Under ERC Resolution No. 15, series of 2011 otherwise known as the *Amended Rules for the Approval of the Sale and Transfer of TransCo's Subtransmission Assets and the Acquisition by Qualified Consortiums* (“**ERC Resolution No. 15**”), subtransmission and transmission assets shall be classified based on their technical and functional criteria specified under Section 2 of the ERC Resolution.

Section 2. Technical and Functional Criteria – The assets shall be classified based on the technical and functional criteria enumerated in Sections 4 and 6, Rule 6, Part II of the IRR of the Act, including, but not necessarily limited to, the following:

a) **Directly Connected Generators**

Lines, power transformers and other assets held by TransCo or NGCP, which allow the transmission of electricity to a grid from one or more directly connected generators shall be classified as transmission assets.

b) **Directly Connected End-Users**

Radial lines, power transformers, related protection equipment, control systems and other assets held by TransCo or NGCP which directly connect an end-user or group of end-users to a grid and are exclusively dedicated to the service of that end-user or group of end-users shall be classified as subtransmission assets.

c) **Directly Connected Load-End Substation**

Radial lines, power transformers, related protection equipment at the secondary of the power transformers and other assets held by TransCo or NGCP which directly connect a load-end substation of one or more distribution utilities to a grid but no directly connected generators shall be classified as subtransmission assets.

Dedicated point-to-point limited facilities of a generation company or connection assets for generators are not classified as subtransmission assets.

36.2. Currently, the following entities are connected to the Makban-Calamba 69kV Line:

NCGP MAKBAN/BAY Substation - NGCP CALAMBA Substation 69kV TL				
	LOAD CUSTOMER	RATING		REMARKS
1	MECO CUSTOMER			
	- MEGAPACK (STO TOMAS PAPER)	10	MVA	
2	FITUI (PHILTOWN)	10	MVA	
3	INGASCO	20	MVA	
4	BATELEC 2 AOR			
	- TALAGA S/S	20	MVA	

- LAUREL S/S	10	MVA	
- TANAUAN	10	MVA	
- FLEXOPAK	2.5	MVA	
- MALVAR S/S	10	MVA	
- CDO	-	-	Could not find in NGCP data
TOTAL	92.5	MVA	

36.3. Further, the Limaland substation is likewise connected to the Makban-Calamba 69kV Line simultaneously with the NGCP Batangas Substation for purposes of load shifting.

NGCP BATANGAS Substation - LIMALAND Substation 69kV TL			
LOAD CUSTOMER	RATING		REMARKS
LIMALAND	50	MVA	
TOTAL	50	MVA	

*A copy of the detailed Single Line Diagram showing all entities connected to the Makban-Calamba 69kV Line is attached hereto and made an integral part hereof as **Annex "BB."***

36.4. As to the functional criteria, the Makban-Calamba Line should be classified as a transmission asset.

36.5. In addition, Rule 6, Section 4 of the EPIRA IRR provides the technical and functional criteria in determining subtransmission and transmission assets.

Section 4. Separation Between Transmission and Subtransmission.

The ERC shall set the standards of the transmission voltages and other factors that shall distinguish transmission assets from Subtransmission Assets. Towards this end, ERC shall issue appropriate guidelines to distinguish between these categories of assets according to voltage level and function. The ERC shall take into account the objective of allowing non-discriminatory Open Access to the transmission and Subtransmission Systems.

The technical and functional criteria to be considered in distinguishing transmission assets from Subtransmission Assets shall include, but not limited to:

- (a) Subtransmission Assets are normally in close proximity to retail customers;
- (b) Subtransmission Assets are primarily radial in character;
- (c) Power flows into Subtransmission Assets; it rarely, if ever, flows out;
- (d) When power enters Subtransmission Assets, it is not recognized or transported on to some other market;
- (e) Power entering Subtransmission Assets is consumed in a comparatively restricted geographic area;
- (f) Meters are based at the interface of transmission and Subtransmission Assets to measure flows into the Subtransmission Assets; and

(g) Subtransmission Assets will be of reduced voltage.

36.6. It is clear, therefore, that while there was, indeed, a previous classification of the Makban-Calamba 69kV Line as a subtransmission asset, the current interconnection configuration of the Makban-Calamba 69kV Line, coupled with the eventual connection of the MGPP, shall result to the performance of transmission functions and will therefore be considered as a transmission asset by operation of law and in accordance with the relevant laws and regulations.

36.7. On this note, it bears emphasizing that the EPIRA only authorizes TRANSCO to dispose of subtransmission assets to qualified distribution utilities. Section 8 of the EPIRA provides:

Section 8. Creation of the National Transmission Company.- There is hereby created a National Transmission Corporation, hereinafter referred to as TRANSCO, which shall assume the electrical transmission function of the National Power Corporation, and have the powers and functions hereinafter granted. The TRANSCO shall assume the authority and responsibility of NPC for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services.

Within six (6) months from the effectivity of this Act, the transmission and subtransmission facilities of NPC and all other assets related to transmission operations, including the nationwide franchise of NPC for the operation of the transmission system and the grid, shall be transferred to the TRANSCO. The TRANSCO shall be wholly owned by the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.).

The subtransmission functions and assets shall be segregated from the transmission functions, assets and liabilities for transparency and disposal: Provided, That the subtransmission assets shall be operated and maintained by TRANSCO until their disposal to qualified distribution utilities which are in a position to take over the responsibility for operating, maintaining, upgrading, and expanding said assets. All transmission and subtransmission related liabilities of NPC shall be transferred to and assumed by the PSALM Corp.

TRANSCO shall negotiate with and thereafter transfer such functions, assets, and associated liabilities to the qualified distribution utility or utilities connected to such subtransmission facilities not later than two (2) years from the effectivity of this Act or the start of open access, whichever comes earlier: Provided, That in the case of electric cooperatives, the TRANSCO shall grant concessional financing over a period of twenty (20) years: Provided, however, That the installment payments to

TRANSCO for the acquisition of subtransmission facilities shall be given first priority by the electric cooperatives out of the net income derived from such facilities. The TRANSCO shall determine the disposal value of the subtransmission assets based on the revenue potential of such assets.

In case of disagreement in valuation, procedures, ownership participation and other issues, the ERC shall resolve such issues.

The take over 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 which has been 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.

Aside from the PSALM Corp., TRANSCO and connected distribution utilities, no third party shall be allowed ownership or management participation, in whole or in part, in such subtransmission entity.

The TRANSCO may exercise the power of eminent domain subject to the requirements of the Constitution and existing laws. Except as provided herein, no person, company or entity other than the TRANSCO shall own any transmission facilities.

Prior to the transfer of the transmission functions by NPC to TRANSCO, and before the promulgation of the Grid Code, ERC shall ensure that NPC shall provide to all electric power industry participants open and non-discriminatory access to its transmission system. Any violation thereof shall be subject to the fines and penalties imposed herein. [Emphasis supplied.]

36.8. As the EPIRA only contemplates the sale of subtransmission assets by TRANSCO, it follows that the sale of its transmission assets is not permitted by law.

36.9. In ***Romualdez vs. Marcelo***⁹ the Supreme Court emphasized that matters not expressly sanctioned by law are deemed to be impermissible pursuant to the principle of *expressio unius est exclusio alterius*. In such case, the Supreme Court held:

Indeed, it is an elementary rule of statutory construction that the express mention of one person, thing, act, or consequence excludes all others. This rule is expressed in the familiar maxim “*expressio unius est exclusio alterius*.” Where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. The rule proceeds

⁹ G.R. Nos. 165510-33, 28 July 2006.

from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned.

V.
ALLEGATIONS IN SUPPORT OF PRAYER FOR
INTERIM RELIEF

37. As discussed above, and based on the Subject Decision's express wording as well as publicly available information, the Makban-Calamba 69kV line was covered only by a contract to sell between TRANSCO and MERALCO.¹⁰

38. This is a crucial development as a contract to sell necessarily implies that the sale of Makban-Calamba 69kV Line has not yet been consummated through an actual deed of absolute sale or any other similar commercial document.

39. In several cases, the Supreme Court has ruled that a contract to sell is of a contingent nature and does not affect a transfer of title of the subject assets from the seller to the buyer.¹¹ Simply put: pending the fulfillment of certain conditions, no sale of the subject assets takes place between the parties to a contract to sell.

40. For this purpose, it is a cardinal principle of civil law that while parties are free to establish such stipulations, clauses, terms and conditions that they may deem convenient, they may not do so in a manner that contravenes the law.¹²

41. In the recent case of *Werr Corporation International vs. Highlands Prime, Inc.*¹³ the Supreme Court likewise held that laws are deemed written into every contract. Consequently, no contract can be entered into, much less produce legal effect, if it is contrary to existing laws.

42. Considering that: (i) the Makban-Calamba 69kV Line's title has not been transferred to MERALCO from TRANSCO; and (ii) Makban-Calamba 69kV Line is, by operation of law, a transmission asset, then MGI respectfully submits that it is incumbent upon this Honorable Commission to enjoin and to hold in abeyance the prospective sale of the same line between TRANSCO and MERALCO.

43. To be sure, the consummation of the sale of the Makban-Calamba 69kV line is an impermissible disposition of TRANSCO's transmission assets.

¹⁰ See (i) dispositive portion on page 14 of the Subject Decision; and (ii) "TransCo sells P140-M assets to Meralco, Alsons" dated 12 June 2012, accessed at: <https://www.philstar.com/business/2012/06/12/816056/transco-sells-p140-m-assets-meralco-alsons>.

¹¹ *Ventura vs. Heirs of Endaya*, G.R. No. 190016, 2 October 2013; *Spouses Tumibay vs. Spouses Lopez*, G.R. No. 171692, 3 June 2013.

¹² Civil Code of the Philippines, Article 1306.

¹³ G.R. No. 187543, 8 February 2017.

44. Proceeding from the foregoing considerations, MGI respectfully reiterates the urgent need for this Honorable Commission to issue the appropriate interim relief.

VI.
ALLEGATIONS IN SUPPORT OF PRAYER FOR
PROVISIONAL AUTHORITY

45. Subject to the foregoing discussion on the urgent need for Interim Relief, MGI respectfully submits that neither the Subject Decision nor the subsequent execution of a contract to sell between TRANSCO and MERALCO precludes this Honorable Commission from issuing a provisional authority in its favor.

46. As discussed above, no transfer of rights or ownership are effected by a mere contract to sell. Consequently, the Makban-Calamba 69kV Line remains the property of the NGCP for all intents and purposes. This being the case, it is well within this Honorable Commission's jurisdiction to issue a provisional authority in favor of MGI notwithstanding the Subject Decision and the contract to sell between TRANSCO and MERALCO.

47. As Republic Act No. 9513, also known as the Renewable Energy Act of 2008 ("**RE Act**") aims to accelerate the development of the country's renewable energy resources and increase the utilization of renewable energy, it is in the interest of the government to extend all possible assistance to MGI so its operations are both able to commence at the earliest possible as well as commercially viable. Needless to state, the Construction of the Dedicated Facility Project is an integral aspect of MGI's geothermal powerplant. This being the case, a provisional authority is urgently needed in order to avoid adverse consequences to MGI.

48. After all, the RE Act has expressly declared it the policy of the State to "[a]ccelerate the exploration and development of renewable energy resources such as, but not limited to, biomass, solar, wind, hydro, geothermal and ocean energy sources, including hybrid systems, to achieve energy self-reliance, through the adoption of sustainable energy development strategies to reduce the country's exposure to price fluctuations in the international markets, the effects of which spiral down to almost all sectors of the economy.¹⁴ It is in support of this policy that MGI was established to develop geothermal generation facilities.

49. In view of all the foregoing, MGI respectfully submits the instant Application for the Honorable Commission's urgent and utmost consideration.

*A copy of the Affidavit dated 26 June 2020 executed by Francisco G. Delfin in support of the instant Application is attached as **Annex "CC."***

¹⁴ RE Act, Section 2(a).

PRAYER

WHEREFORE, premises considered, Applicant **MAIBARARA GEOTHERMAL, INC.** respectfully prays that the Honorable Commission:

1. **ISSUE** an Order granting provisional authority for the implementation of the development, ownership and operation of the Dedicated Facility Project by MGI to connect the 60MW Maibarara Geothermal Power Plant to the Luzon Grid;
2. **ENJOIN** the consummation of the sale of the Makban-Calamba 69kV Line between TRANSCO and MERALCO;
3. After hearing on the merits, **RENDER** a Decision approving the instant Application; and
4. **CONFIRM** that the Makban-Calamba 69kV Line has been reclassified as a transmission asset by operation of law taking into consideration the technical and functional criteria under relevant laws and regulations.

Other just and equitable reliefs are likewise prayed for.

Finding the said *Application* to be sufficient in substance with the required fees having been paid, the same is hereby set for the determination of compliance with the jurisdictional requirements, expository presentation, pre-trial conference, and presentation of evidence on the following dates and online platform for the conduct thereof, pursuant to Resolution No. 09, Series of 2020¹⁵, dated 24 September 2020:

Date	Platform	Activity
31 March 2021 (Wednesday) at two o'clock in the afternoon (2:00 P.M.)	Microsoft (MS) Teams Application	Determination of compliance with jurisdictional requirements and Expository Presentation
07 April 2021 (Wednesday) at two o'clock in the afternoon (2:00 P.M.)		Pre-trial Conference and Presentation of Evidence

RELATIVE THERETO, MGI is hereby directed to:

¹⁵ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

- 1) Cause the publication of the attached *Notice of Virtual Hearing* at least 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 date of the scheduled initial hearing;
- 2) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing* the Office of the Provincial Governors, Mayors, and Local Government Unit (LGU) legislative bodies within the affected area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within the affected area, by any other means available and appropriate, of the filing of the *Application*, its reasons therefor, and of the scheduled virtual hearings thereon;
- 4) Furnish with copies of this *Order* and the attached *Notice of Virtual 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 and attend the scheduled hearings; and
- 5) Furnish with copies of the *Application* and its attachments all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

Within five (5) calendar days prior to the date of the initial virtual hearing, MGI must submit to the Commission via electronic mail (e-mail) at docket@erc.ph and records@erc.gov.ph, copy furnish the Legal Service through legal@erc.ph, the scanned copies of 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 Virtual Hearing* consisting of affidavit of the Editor or Business Manager of the newspaper where the said *Notice of Virtual 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 Virtual Hearing* consisting of certifications issued to that effect, signed by the

aforementioned Governors, Mayors, and LGU legislative bodies or their duly authorized representatives, bearing the seals of their offices;

- 3) The evidence of other means employed by MGI to inform the consumers affected of the filing of the *Application*, its reasons therefor, and of the scheduled hearings thereon;
- 4) The evidence of receipt of copies of this *Order* and the attached *Notice of Virtual Hearing* by the OSG, 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 proof of compliance with the requirements of the Commission.

Moreover, MGI is hereby required to post on its bulletin boards, the scanned copies of the foregoing jurisdictional requirements, together with the newspaper publication and certifications issued by the concerned Office of the Mayors, Governors and Local Legislative Bodies, and to submit proof of its posting thereof.

MGI and all interested parties are also required to submit via e-mail at docket@erc.ph and records@erc.gov.ph, copy furnish the Legal Service through legal@erc.ph, at least five (5) calendar days before the date of the scheduled initial virtual 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 therefor, which should also be attached to the Pre-trial Brief; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-trial Brief.

MGI must ensure that all the documents or exhibits proposed to be presented have already been duly submitted to the Commission at least five (5) calendar days before the date of the scheduled initial virtual hearing and pre-trial conference pursuant to the preceding paragraph.

Failure of MGI to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearings, and the resetting of which shall be six (6) months from the said date of cancellation.

MGI 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, the nature of the *Application* with relevant information and pertinent details substantiating the reasons and justifications being cited in support thereof.

MGI is hereby directed to file a copy of its expository presentation via e-mail at doCKET@erc.ph and records@erc.gov.ph, copy furnish the Legal Service through legal@erc.ph, at least five (5) calendar days prior to the scheduled initial virtual hearing. MGI shall also be required, upon the request of any stakeholder, to provide an advance copy of its expository presentation, at least five (5) calendar days prior to the scheduled initial virtual hearing.

Any interested stakeholder may submit its comments and/or clarifications at least one (1) calendar day prior to the scheduled initial virtual hearing, via e-mail at doCKET@erc.ph and records@erc.gov.ph, copy furnish the Legal Service through legal@erc.ph. The Commission shall give priority to the stakeholders who have duly submitted their respective comments and/or clarifications, to discuss the same and propound questions during the course of the expository presentation.

MGI is hereby directed to submit, either through personal service, registered or ordinary mail/private courier, one (1) set of the original or certified true hard/printed copy/ies of its Jurisdictional Compliance, Expository Presentation, Pre-trial Brief, and Judicial Affidavit/s of witness/es, within five (5) working days from the date that the same were electronically submitted, as reflected in the acknowledgment receipt e-mail sent by the Commission. Similarly, all interested parties who filed their Petition for Intervention or Opposition are required to submit the hard/printed copy thereof within the same period through any of the available modes of service.

Finally, Applicant, including its authorized representative/s and witness/es, are hereby directed to provide the Commission, through legal.virtualhearings@erc.ph, with their respective e-mail addresses upon receipt of this *Order*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearings.

SO ORDERED.

Pasig City, 02 February 2021.

FOR AND BY AUTHORITY
OF THE COMMISSION:




AGNES VST DEVANADERA
Chairperson and CEO


LS: AMA/ARG/MCCG

Copy Furnished:

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9. Office of the Local Government Unit (LGU) Legislative Body
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10. Office of the Governor
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11. Office of the Local Government Unit (LGU) Legislative Body
Province of Laguna
12. Office of the Mayor
Calamba, Laguna
13. Office of the LGU Legislative Body
Calamba, Laguna
14. Office of the Mayor
Bay, Laguna
15. Office of the Local Government Unit (LGU) Legislative Body
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16. Office of the Governor
Province of Batangas
17. Office of the Local Government Unit (LGU) Legislative Body
Province of Batangas
18. Office of the Mayor
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19. Office of the Local Government Unit (LGU) Legislative Body
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20. National Grid Corporation of the Philippines (NGCP)
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21. Manila Electric Company (MERALCO)
Lopez Building, Ortigas Avenue, Barangay Ugong, Pasig City
22. National Transmission Corporation (TransCo)
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23. Regulatory Operations Service (ROS)
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