

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



IN THE MATTER OF THE APPLICATION FOR THE APPROVAL OF THE LEASE AGREEMENTS (JOINT POLE RENTAL AGREEMENTS) BETWEEN THE AGUSAN DEL NORTE ELECTRIC COOPERATIVE, INC. (ANECO) AND VARIOUS PARTIES AND FOR GRANT OF AUTHORITY TO LEASE REGULATORY ASSET BASE (RAB) PROPERTIES PURSUANT TO RESOLUTION NO. 18, SERIES OF 2010 OF THE ENERGY REGULATORY COMMISSION

ERC CASE NO. 2010-065 MC

AGUSAN DEL NORTE ELECTRIC COOPERATIVE, INC. (ANECO),

Applicant.

x- - - - - x

Promulgated:

June 11, 2021

ORDER

On 11 October 2010, Agusan del Norte Electric Cooperative, Inc. (ANECO) filed an *Application* of even date (Application), seeking the Commission's approval its authority to lease its Regulatory Asset Base (RAB) property and the Joint Pole Rental Agreements it entered with various parties pursuant to the Commission-issued Resolution No. 18, Series of 2010.

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

I.

Applicant ANECO is an electric Cooperative duly organized and existing under and by virtue of the laws of the Philippines (Presidential Decree No. 269, otherwise known as the National Electrification Administration Decree), with principal office located at Km. 2, J.C. Aquino Avenue, Butuan City, at which address the applicant may be served with notices and other legal processes of this Honorable Commission in connection with the instant application.

For purposes of this application, the applicant ANECO is represented herein by its incumbent General Manager, HORACIO T. SANTOS, of legal age, Filipino, married and with office address likewise located at Km. 2, J.C. Aquino Avenue, Butuan City, pursuant to Resolution No. 018 (Series of 2005) adopted by the Board of Directors of ANECO on February 19, 2005, with photocopy of the EXCERPTS of the minutes pertinent thereto hereto attached and made integral part of this application.

II.

Applicant ANECO is the holder of an exclusive franchise issued by the National Electrification Commission to operate an electric light and power service(s) and distribution system in Butan City and in the Municipalities of the Province of Agusan del Norte

III.

The Honorable Commission has lately adopted **RESOLUTION NO. 18, Series of 2010**, with date of effectivity thereof on July 19, 2010, directing Distribution Utilities, such as herein applicant Agusan del Norte Electric Cooperative, Inc. (ANECO), to file the necessary applications with the Energy Regulatory Commission for authority to lease Regulatory Asset Base (RAB) properties as provided under **Article II (2.1)** thereof.

In relation to the foregoing, Article III (Transitory Provisions) of said Resolution No. 18, Series of 2010 further provides that all contracts of lease on RAB properties ***“executed prior to the effectivity of these guidelines which have not been covered by any application filed before the ERC shall be submitted to the ERC for approval”***.

IV.

Pursuant to and in compliance with the foregoing directive, applicant ANECO hereby filed the instant application and submits for the approval of this Honorable Commission copies of the lease agreements (joint pole rental agreements) entered into by ANECO with various entities or parties hereunder enumerated and correspondingly marked as ANNEXES hereof, to wit:

- 1) CARMEN HOME CABLE -ANNEX “A”
- 2) COMMISSION ON INFORMATION AND -ANNEX “B”

COMMUNICATIONS TECHNOLOGY- TELECOMMUNICATION OFFICE (ITALTEL)	
3) COMMISSION ON INFORMATION AND COMMUNICATIONS TECHNOLOGY- TELECOMMUNICATIONS OFFICE (MTPO)	-ANNEX "C"
4) ZENERGY CABLE TV NETWORK INC.	-ANNEX "D"
5) FIL-PRODUCTS SERVICE TV BUTUAN, INC.	-ANNEX "E"
6) GLOBE/INNOVE COMMUNICATIONS, INC.	-ANNEX "F"
7) PRIME STAR CABLE TV COMMUNITY NETWORK	-ANNEX "G"
8) BAYAN TELECOMMUNICATIONS INC. (BAYANTEL)	-ANNEX "H"
9) PHILIPPINE LONG DISTANCE TELEPHONE CO. (PLDT)	-ANNEX "I"
10) LTCOM CABLE TV	-ANNEX "J"
11) SMART BROADBAND, INC.	-ANNEX "K"

The foregoing lease agreements (joint pole rental agreements) affect Regulatory Asset Base (RAB) properties, more specifically electric poles of ANECO, which lease agreements have not yet been submitted to or approved by this Honorable Commission.

V.

Apart from the foregoing, ANECO hereby applies for the grant of authority from this Honorable Commission to lease, aside from electric poles thereof, other RAB properties of the cooperative, in connection with which and in compliance with Article II (2.1) of Resolution No. 18-Series of 2010, the herein applicant does hereby submit three (3) hard copies and three (3) electronic copies of the following:

1. Standard Lease Contract (affecting electric poles) governing the transaction(s) between the Distribution Utility (ANECO), as lessor, and the prospective lessee of the cooperative, specifying the standards of the DU to be complied with by the lessee- marked ANNEX "L";
2. Description of the properties to be leased-marked ANNEX "M"; and
3. Secretary's Certificate and Board Resolution No. 081, Series of 2010 approving the lease-ANNEX "N" and ANNEX "N-1".

PRAYER

WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Energy Regulatory Commission, after due hearing:

1. To approve the lease agreements (joint pole rental agreements), Annexes “A” to “K” hereof, entered into by applicant ANECO with various parties/entities that have not yet been submitted for approval by this Honorable Commission pursuant to its recently approved Resolution No. 18, Series of 2010.
2. To grant applicant ANECO the authority to lease its other Regulatory Asset Base (RAB) properties made subject of the instant petition and such other RAB properties of the applicant, subject to such applicable rules and regulations of this Commission pertinent thereto, under its aforestated Resolution.

Applicant ANECO further prays for such other reliefs and remedies as may be deemed just and equitable in the premises.

On 30 June 2011, the Commission issued an *Order* dated 21 June 2011 wherein it ruled that the *Application* was compliant with the Commission-issued Resolution No. 18, Series of 2010 and Resolution No. 25, Series of 2010.

On 03 November 2020, the Commission issued another *Order* dated 06 October 2020 wherein it directed the Applicant to submit a status update of the instant *Application*, within ten (10) days upon receipt of the said *Order*.

Consequently, on 10 November 2020, Applicant filed an electronic copy of its *Manifestation (Re: Order dated 06 October 2020)* of even date.

Finding the said *Application* to be sufficient in form with the required fees having been paid, the Commission hereby sets the same for 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 2020¹ dated 24 September 2020:

¹ Entitled: *A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.*

Date and Time	Platform	Activity
03 August 2021 (Tuesday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Teams	Determination of compliance with jurisdictional requirements and Expository presentation
10 August 2021 (Tuesday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Teams	Pre-trial Conference and presentation of evidence

RELATIVE THERETO, ANECO is hereby directed to:

- 1) Cause the publication of the attached *Notice of Virtual Hearing* once (1x) in a newspaper of nationwide circulation in the Philippines at its own expense, the date of 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 Offices of the Provincial Governor, the City and Municipal Mayors, and the Local Government Unit (LGU) legislative bodies within ANECO's franchise area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within ANECO's franchise area of the filing of the *Application*, its reasons therefor, and of the scheduled hearing thereon, by any other means available and appropriate;
- 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 at the scheduled hearing; and
- 5) Furnish with copies of the *Application* and its attachments all those making requests therefor, subject to the resolution

of the prayer for confidential treatment of information, if any, and reimbursement of reasonable photocopying costs.²

Within five (5) calendar days prior to the date of the virtual hearing, ANECO must submit to the Commission via electronic mail (e-mail) at doCKET@erc.ph, copy furnish the Legal Service through legal@erc.ph, the scanned copies of their 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 the 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 Governor, Mayors, and LGU legislative bodies or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by ANECO to inform the consumers within the affected area of the filing of the *Application*, its reasons therefor, and of the scheduled hearing thereon;
- 4) The evidence of receipt of copies of this *Order* and the attached *Notice of Virtual Hearing* by the OSG, the 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, except those covered by any motion for confidential treatment of information, if any; and
- 6) Such other proof of compliance with the requirements of the Commission.

Moreover, ANECO 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, or Provincial Governor and Local Legislative Bodies, and to submit proof of its posting thereof.

² For the e-mail address of the applicant, please see page 9.

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

ANECO 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 ANECO 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.

ANECO 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.

ANECO is further directed to file a copy of its Expository Presentation via e-mail at doCKET@erc.ph, copy furnish the Legal Service through legal@erc.ph, at least five (5) calendar days prior to the scheduled virtual hearing. ANECO 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 virtual hearing.

Any interested stakeholder may submit its comments and/or clarifications at least one (1) calendar day prior to the scheduled virtual hearing, via e-mail at doCKET@erc.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.

ANECO is further 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, ANECO, including its authorized representative/s and witness/es, are hereby directed to provide the Commission, thru 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 hearing.

SO ORDERED.

Pasig City, 01 June 2021.

FOR AND BY AUTHORITY
OF THE COMMISSION:



AGNES VST DEVANADERA
Chairperson and CEO

ERC

Office of the Chairperson



AVSTD-2021-06-510-0023



LS: BJV/MCCG

ERC CASE NO. 2010-065 MC
ORDER/01 June 2021
PAGE 9 OF 10

Copy Furnished:

1. Dechavez Lerios-Amboy and Evangelista Law Offices
Counsel for Applicant ANECO
Unit 2008, Tycoon Centre
Pearl Drive, Ortigas Center, Pasig City
2. Agusan del Norte Electric Cooperative, Inc. (ANECO)
Applicant
Km 2 J.C. Aquino Ave.,
Butuan City, Agusan del Norte
3. Office of the Provincial Governor
Province of Agusan del Norte
4. Office of the LGU legislative Body
Province of Agusan del Norte
5. Office of the Mayor
Butuan City
6. Office of the LGU legislative Body
Butuan City
7. Office of the Mayor
Cabadbaran City
8. Office of the LGU legislative Body
Cabadbaran City
9. Office of the Mayor
Carmen, Agusan del Norte
10. Office of the LGU legislative Body
Carmen, Agusan del Norte
11. Office of the Mayor
Nasipit, Agusan del Norte
12. Office of the LGU legislative Body
Nasipit, Agusan del Norte
13. Office of the Mayor
Buenavista, Agusan del Norte
14. Office of the LGU legislative Body
Buenavista, Agusan del Norte
15. Office of the Mayor
Las Nieves, Agusan del Norte
16. Office of the LGU legislative Body
La Nieves, Agusan del Norte
17. Office of the Mayor
Magallanes, Agusan del Norte
18. Office of the LGU legislative Body
Magallanes, Agusan del Norte
19. Office of the Mayor
Remedios T. Romuladez, Agusan del Norte
20. Office of the LGU legislative Body
Remedios T. Romuladez, Agusan del Norte
21. Office of the Mayor
Tubay, Agusan del Norte
22. Office of the LGU legislative Body
Tubay, Agusan del Norte
23. Office of the Mayor
Jabonga, Agusan del Norte

ERC CASE NO. 2010-065 MC

ORDER/o1 June 2021

PAGE 10 OF 10

24. Office of the LGU legislative Body
Jabonga, Agusan del Norte
25. Office of the Mayor
Santiago, Agusan del Norte
26. Office of the LGU legislative Body
Santiago, Agusan del Norte
27. Office of the Mayor
Kitcharao, Agusan del Norte
28. Office of the LGU legislative Body
Kitcharao, Agusan del Norte
29. Office of the Solicitor General
Amorsolo Street, Legaspi Village
Makati City, Metro Manila
30. Commission on Audit
Commonwealth Avenue
Quezon City, Metro Manila
31. Senate Committee on Energy
GSIS Building, Roxas Boulevard
Pasay City, Metro Manila
32. House Committee on Energy
Batasan Hills
Quezon City, Metro Manila
33. Regulatory Operations Service (ROS)
Energy Regulatory Commission
17th Floor Pacific Center Building
San Miguel Avenue, Pasig City