

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



**IN THE MATTER OF THE
APPLICATION FOR
APPROVAL OF THE
AUTHORITY TO LEASE RAB
PROPERTIES PURSUANT
TO ERC RESOLUTION NO.
18, SERIES OF 2010**

ERC CASE NO. 2010-072 MC

**AURORA ELECTRIC
COOPERATIVE, INC.
(AURELCO),**

Applicant.

X-----X

Promulgated:

June 21, 2021

O R D E R

On 30 November 2010, Aurora Electric Cooperative, Inc. (AURELCO) filed an *Application* dated 26 November 2010 (Application), seeking the Commission's approval of its authority to lease its Regulatory Asset Base (RAB) properties pursuant to the Commission-issued Resolution No. 18, Series of 2010.

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

1. That applicant is an electric cooperative duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with the principal office at Brgy. Reserva, Baler, Aurora, where it may be served with summons and other legal processes, represented in this instance by its General Manager, Agripino A. Teh San of legal age, Filipino, married and with office address also at Poblacion, Valencia City;
2. Herein applicant is the exclusive franchise holder issued by the National Electrification Administration (NEA) to operate an electric light and power services in the (10) municipalities, namely the municipalities of Baler, Casiguran, Dinalongan, Dipaculao, Ma. Aurora, San Luis, Dilasag, Dingalan, Dinapigue (Isabela), General Nakar (Quezon) all in the Province of Aurora;

3. That pursuant to Section 26 of the EPIRA and Rule 7, Section 5(e) of its IRR provide that a DU may directly or indirectly, engage in any related business undertaking which maximizes the utilization of its assets; Provided that a portion of the net income derived from such undertaking which utilizes assets that are part of the rate base shall be used to reduce its distribution wheeling charges as determined by the ERC, and that quality of service shall not deteriorate pursuant to the standards in the Distribution Code and Rule 10 of the IRR of the EPIRA on Structural and Functional Unbundling of Electric Power Industry Participants;
4. That pursuant to the said mandate AURELCO hereby applies for the approval of the following Leased Properties, to wit:
 - A. Regulatory Asset Base (RAB) Properties – Pole space rental/pole attachment:**
 - a. Contract for Joint Use of Poles between AURELCO and DIPACULAO CABLE-TV, INC., located at Dipaculao, Aurora;
 - b. Contract for Joint Use of Poles between AURELCO and BRIFILONIMARK COMMUNICATION CABLE NETWORKD, INC. located at Casiguran, Aurora;
 - c. Contract for Joint Use of Poles between AURELCO and BLUE SEAGULL BOYS (BSB) CORPORATION, located at San Luis, Aurora; This contract refers to the previous 3-year Joint Pole Agreement which expires December 2010;
 - d. Renewed Contract for Joint Use of Poles between AURELCO and BLUE SEAGULL BOYS (BSB) CORPORATION, located at San Luis, Aurora;
 - e. Contract for Joint Use of Poles between AURELCO and INTERLINK CABLE TELEVISION, INC., located at Baler, San Luis, Maria Aurora and Dipaculao, all in the province of Aurora;
 - B. Non-Regulatory Asset Base Property – NONE for AURELCO.**
5. That in connection with this application, herein Applicant hereby undertakes to observe the following conditions embodied in the Guidelines:
 - a. Applicant herein shall use a portion of the net annual income derived from such undertaking which utilizes assets that re part of the rate base to reduce its Distribution Wheeling Charges; Provided that such

portion shall not exceed fifty percent (50%) of the net income derived from such undertaking;

- b. Applicant shall maintain a separate account for each business undertaking to ensure that the distribution business shall neither subsidize in any way such business undertaking nor encumber its distribution assets in any way to support such business as provided for in the Business Separation Guidelines (BSG);
6. That in support of this application herein Applicant hereby submits the following documents:
 - a. Secretary's Certificate approving the filing of the said application;
 - b. Undertaking to use at least 50% of the income derived to reduce its Distribution Wheeling Charges;
 - c. Inventory of Poles;
 - d. Collection from Non-Operating Rental Income;
 - e. Board Policy No. 6-45 – showing the duly approved Board Policy on Pole Rentals;
 - f. Board Resolution No. 89-2010 – Guidelines for Pole Rental Rates on Joint Use of Poles;
 7. Applicant reserves the right to submit other documents as may be required later by this Hon. Commission to further support this application;

PRAYER

WHEREFORE, premises considered, it is respectfully prayed of this Honorable Commission that pending hearing, the herein submitted application for approval of the Contracts for Joint Use of Poles executed between AURELCO and other entities for the use of its Regulated Asset Base Properties.

Other relief/s, just and equitable in the premises are likewise prayed for.

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 16 November 2020, AURELCO filed an electronic copy of its *Compliance* dated 05 November 2020.

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:

Date and Time	Platform	Activity
03 August 2021 (Tuesday) at two o'clock in the afternoon (2:00 P.M.)	Microsoft Teams	Determination of compliance with jurisdictional requirements and Expository presentation
10 August 2021 (Tuesday) at two o'clock in the afternoon (2:00 P.M.)	Microsoft Teams	Pre-trial Conference and presentation of evidence

RELATIVE THERETO, AURELCO 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 AURELCO's franchise area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within AURELCO'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;

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

- 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.³

Within five (5) calendar days prior to the date of the virtual hearing, AURELCO 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 AURELCO 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, if any; and

³ For the e-mail address of the applicant, please see page 9.

- 6) Such other proof of compliance with the requirements of the Commission.

Moreover, AURELCO 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.

AURELCO 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.

AURELCO 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 AURELCO 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.

AURELCO 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.

AURELCO 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. AURELCO 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.

AURELCO 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.

(This space was intentionally left blank)

Finally, AURELCO, 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, 03 June 2021.

FOR AND BY AUTHORITY
OF THE COMMISSION:



AGNES VST DEVANADERA
Chairperson and CEO



LS: BJVG/MCCG

ERC

Office of the Chairperson



AVSTD-2021-06-510-0052

ERC CASE NO. 2010-072 MC
ORDER/03 June 2021
PAGE 9 OF 10

Copy Furnished:

1. Atty. Zenon Suarez
Counsel for AURELCO
19 Bulacan St., 10th Avenue
West Grace Park, Calocan City
Email: suarezzenon_412@yahoo.com
2. Aurora Electric Cooperative, Inc. (AURELCO)
Applicant
Brgy. Reserva, Baler
Aurora
3. Office of the Governor
Province of Aurora
4. Office of the LGU legislative body
Province of Aurora
5. Office of the Mayor
Baler, Aurora
6. Office of the LGU legislative body
Baler, Aurora
7. Office of the Mayor
San Luis, Aurora
8. Office of the LGU legislative body
San Luis, Aurora
9. Office of the Mayor
Ma. Aurora, Aurora
10. Office of the LGU legislative body
Ma. Aurora, Aurora
11. Office of the Mayor
Dipaculao, Aurora
12. Office of the LGU legislative body
Dipaculao, Aurora
13. Office of the Mayor
Casiguran, Aurora
14. Office of the LGU legislative body
Casiguran, Aurora
15. Office of the Mayor
Dinalungan, Aurora
16. Office of the LGU legislative body
Dinalungan, Aurora
17. Office of the Mayor
Dilasag, Aurora
18. Office of the LGU legislative body
Dilasag, Aurora
19. Office of the Mayor
Dingalan, Aurora
20. Office of the LGU legislative body
Dingalan, Aurora
21. Office of the Mayor
Dinapigue, Isabela
22. Office of the LGU legislative body
Dinapigue, Isabela

ERC CASE NO. 2010-072 MC
ORDER/03 June 2021
PAGE 10 OF 10

23. Office of the Mayor
Alfonso Castaneda, Nueva Vizcaya
24. Office of the LGU legislative body
Alfonso Castaneda, Nueva Vizcaya
24. Office of the Mayor
General Nakar, Quezon
25. Office of the LGU legislative body
General Nakar, Quezon
26. Office of the Solicitor General
Amorsolo Street, Legaspi Village
Makati City, Metro Manila
27. Commission on Audit
Commonwealth Avenue
Quezon City, Metro Manila
28. Senate Committee on Energy
GSIS Building, Roxas Boulevard
Pasay City, Metro Manila
29. House Committee on Energy
Batasan Hills
Quezon City, Metro Manila
30. Regulatory Operations Service (ROS)
Energy Regulatory Commission
17th Floor Pacific Center Building
San Miguel Avenue, Pasig City