

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



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

ERC CASE NO. 2010-081 MC

**IFUGAO ELECTRIC
COOPERATIVE, INC.
(IFELCO),**

Applicant.

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Promulgated:

June 29, 2021

ORDER

On 15 December 2010, Ifugao Electric Cooperative, Inc. (IFELCO), filed an *Application* dated 06 December 2010 (Application), seeking the Commission's approval of its authority to enter into lease contracts pursuant to the Commission-issued ERC Resolution No. 18, Series of 2010.

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

1. IFELCO is an electric cooperative duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at Poblacion East, Lagawe, Ifugao where it may be served with summons and other legal processes, represented in this instance by its General Manager, ENGR. JAIME PE BENITO, JR., per MSEC Resolution attached hereto and made integral part hereof as Annex "A";
2. Herein applicant is the exclusive franchise holder issued by the National Electrification Commission (NEC) to operate an electric light and power services in the cities/municipalities namely Aguineldo, Asipulo, Alfonso Lista, Banaue, Hingyon, Hungduan, Kiangnan, Lagawe, Lamut, Mayoyao and Tinoc of the Province of Ifugao;

3. The Honorable Commission issued Resolution No. 18, Series of 2010, adopting the rules to govern the submission, evaluation and approval of lease of property by distribution utilities and the corresponding guidelines to govern the submission, evaluation and approval of lease of property by distribution utilities;
4. Article II (Applications and Requirements) of the abovementioned Guidelines requires DUs to file applications with the ERC for authority to lease Regulatory Asset Base (RAB) Properties, submitting therewith the Standard Lease Contract that will govern the transactions between the DU as lessor, and the prospective lessee specifying the standards of the DU which the lessee must comply with, the description of the properties to be leased, and the corresponding Board Resolution/Secretary's Certificate approving the lease and the filing of the application;
5. On the other hand, Article III (Transitory Provisions) of the same Guidelines provides that all contracts of the lease on RAB and non-RAB properties executed prior to the effectivity of the guidelines which have not been covered by any application filed before the ERC shall be submitted to the ERC for approval within three (3) months from the effectivity of the guidelines.
6. As of present date, there is no new person or entity that has manifested intent to lease any of IFELCO's RAB or non-RAB properties. However, IFELCO has existing lease contracts with third parties involving its RAB properties, as follows:

A. POLE RENTAL LESSEES

A. POLE RENTAL LESSES

	LESSEE	Area Covered
1	LMDC CAT-V	Lagawe, Ifugao
2	UPLAND CABLE CAT-V	Kiangan, Ifugao
3	UPLAND CABLE CAT-V	Lamut, Ifugao
4	TAM-AN MULTI PURPOSE CAT-V	Banaue, Ifugao
5	DIGITEL	Banaue, Ifugao
6	DIGITEL	Lamut, Ifugao
7	INNOVE COMM., INC (GLOBE)	Banaue, Ifugao
8	INNOVE COMM., INC (GLOBE)	Lagawe, Ifugao

Copies of the corresponding Joint Use of Poles Contracts and Contracts for Exclusive Use of Transformer covering the above are attached and made integral parts here of as **Annexes ____ to ____**, respectively;

7. In compliance with the foregoing Resolution No. 18, Series of 2010, and the Guidelines to Govern the Submission, Evaluation and Approval of Lease of Property by Distribution Utilities, IFELCO is hereby submitting the above lease agreements for the approval of the Honorable Commission;

8. IFELCO further undertakes to file similar applications in the future for approval of corresponding standard lease contracts should any persons or entities offer to lease any of its RAB properties;
9. The terms and conditions of the subject lease agreements are legal, valid, just and reasonable, and would merit the approval of the Honorable Commission.

PRAYER

WHEREFORE, foregoing premises considered, it is most respectfully prayed of this Honorable Commission that the subject lease contracts be approved accordingly.

Other reliefs, 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* is compliant with the Commission-issued Resolution No. 18, Series of 2010 and Resolution No. 25, Series of 2010.

On 24 September 2012, the Commission issued another *Order* dated 17 September 2012, wherein it directed Applicant to submit the summary of its annual income derived from the submitted Lease Contracts for Calendar Years (CYs) 2008 to 2011, within fifteen (15) days upon receipt thereof.

In compliance to the *Order* of the Commission dated 17 September 2012, on 08 October 2012, Applicant filed a *Submission of Annual Income* dated 05 October 2012, with attached documents.

On 01 April 2013, the Commission issued another *Order* dated 14 March 2013, directing Applicant to submit a written explanation on the discrepancies found in the submitted *Submission of Annual Income*, within fifteen (15) days upon receipt of the said *Order*.

However, IFELCO failed to comply with the 14 March 2013 *Order* of the Commission. Hence, another *Order* dated 25 September 2013 was issued by the Commission reiterating the directives contained in the *Order* dated 14 March 2013.

Consequently, on 10 October 2013, Applicant filed a *Compliance (with Order dated September 25, 2013)* dated 09 October 2013, with attached documents.

On 03 November 2020, the Commission issued another *Order* dated 05 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*.

In compliance therewith, Applicant filed its *Manifestation (Re: Order dated 06 October 2020)* dated 13 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
05 August 2021 (Thursday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Teams	Determination of compliance with jurisdictional requirements and Expository presentation
12 August 2021 (Thursday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Teams	Pre-trial Conference and presentation of evidence

RELATIVE THERETO, IFELCO 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;

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

- 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 IFELCO's franchise area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within IFELCO'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.³

Within five (5) calendar days prior to the date of the virtual hearing, IFELCO 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 IFELCO to inform the consumers within the affected franchise area of the filing

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

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, IFELCO 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.

IFELCO 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.

IFELCO 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 IFELCO 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.

IFELCO 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.

IFELCO 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. IFELCO 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.

IFELCO 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, IFELCO, 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, 22 June 2021.

FOR AND BY AUTHORITY
OF THE COMMISSION:


AGNES VST DEVANADERA
Chairperson and CEO


LS: BJV/MCCG



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Copy Furnished:

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Province of Ifugao
5. Office of the Mayor
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26. Office of the LGU legislative body
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27. Office of the Solicitor General
134 Amorsolo Street, Legaspi Village, Makati City
28. Commission on Audit
Commonwealth Avenue, Quezon City
29. Senate Committee on Energy
GSIS Bldg. Roxas Blvd., Pasay City
30. House Committee on Energy
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31. Regulatory Operations Service (ROS)
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