

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



IN THE MATTER OF THE
PETITION FOR APPROVAL
OF THE RECLASSIFICATION
OF TEAM ENERGY
CORPORATION'S
SWITCHYARD, LIMAY-BPC
230kV LINES 1 AND 2, AND
ASSOCIATED EQUIPMENT
INTO TRANSMISSION ASSET

ERC CASE NO. 2014-081 MC

NATIONAL GRID
CORPORATION OF THE
PHILIPPINES (NGCP),
Petitioner.

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DOCKETED
Date: SEP 15 2014
By: *M*

ORDER

On June 9, 2014, the National Grid Corporation of the Philippines (NGCP) filed a petition for the approval of the reclassification of Team Energy Corporation's Switchyard, Limay-BPC 230 kV Lines 1 and 2, and associated equipment into transmission asset.

In the said petition, NGCP alleged, among others, the following:

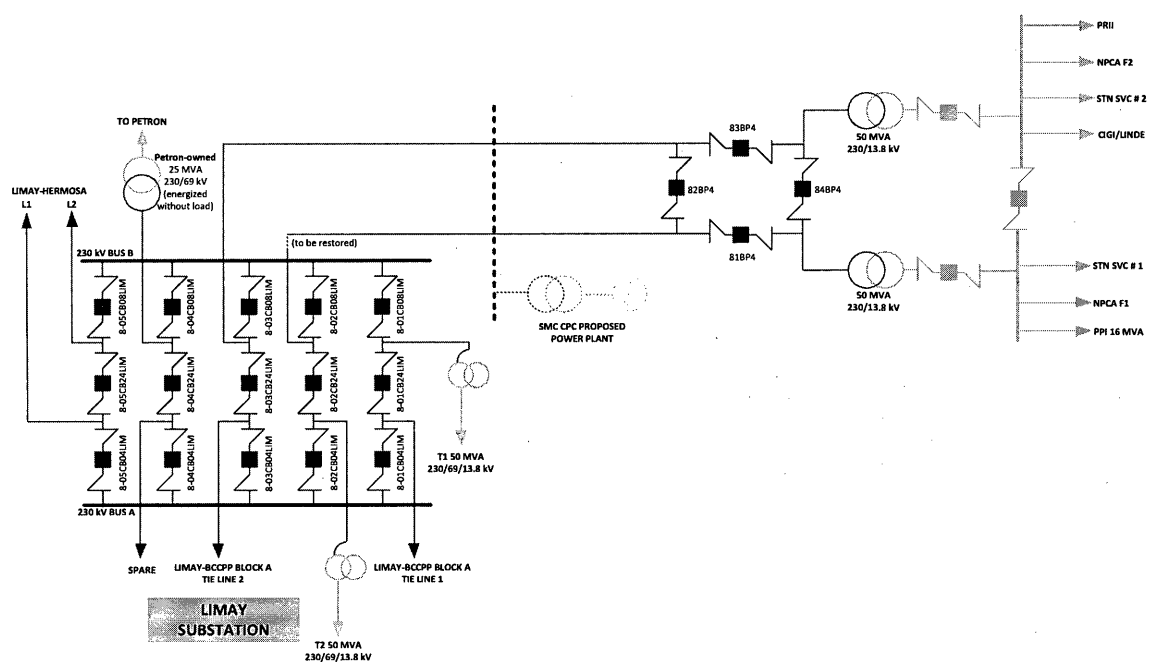
1. It is a corporation created and existing under the laws of the Philippines, with principal office address at NGCP Building, Quezon Avenue corner BIR Road, Diliman, Quezon City where it may be served with notices, orders, resolutions and other issuances of the Commission through its Office of the General Counsel;
2. Pursuant to Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), it is authorized and responsible for the planning, construction

and centralized operation and maintenance of its high-voltage transmission facilities, including grid interconnections and ancillary services, as well as the operation and maintenance of the subtransmission assets until their disposal to qualified distribution utilities;

3. Team (Philippines) Energy Corporation (Team Energy) is a corporation created and existing under the laws of the Philippines with office address at CTC Building, 2232 Roxas Boulevard, Pasay City. It is principally engaged in the business of power generation, and it owns and operates a switchyard and 230 kV lines located in PNOC-AFC Industrial Park, which consist of the following assets (collectively, Team Energy System):
 - a. Limay-BPC 230 kV Line 1;
 - b. Limay-BPC 230 kV Line 2;
 - c. Team Energy's 230 kV switchyard, consisting of:
 - i. 4-230kV Power Circuit Breaker;
 - ii. 8-230kV Disconnect Switches;
 - iii. 2x50 MVA Power Transformer; and
 - d. Secondary devices such as protective relays, SCADA, Telecom, and others;
4. The whole Team Energy System caters to the following load customers:
 - a. Philippine Resins Industries, Inc. (PRII);
 - b. Consolidated Industries Gases, Inc. (CIGI)/Linde Philippines;
 - c. NPC Alliance Corporation (NPCA);
 - d. Philippine Polypropylene, Inc. (PPI); and
5. The direct connection of PRII was approved by the Commission in its decision dated March 30, 2009 in ERC Case No. 2007-115MC¹ while NPCA filed a Petition for Direct Connection on November 13, 2012 and was docketed as ERC Case No. 2012-078 MC. To date, the case is pending resolution. PPI, on the other hand, is a Transmission Customer of NGCP;

¹ "In the Matter of the Petition for the Approval of the Direct Connection with the National Power Corporation (NPC) and the National Transmission Corporation (TRANSCO) with Prayer for Provisional Authority and Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction.

6. Presently, these four (4) load customers utilize the Team Energy System to draw power from the grid. From the grid, the power passes through the Limay-BPC 230 kV Lines 1 and 2, and the transformers owned by Team Energy. The power is then distributed to the aforementioned load customers;
7. In addition to the connection of multiple load users to the asset, SMC Consolidated Power Corporation (SMCCPC) intends to construct a 4x150 MW Coal Power Plant in Limay, Bataan which will connect to the Limay-BPC 230 kV line. The plant is expected to be operational in the year 2015;
8. A System Impact Study was undertaken by SMCCPC and the proposed connection scheme by SMCCPC was approved by NGCP. Presented below is the connection scheme:



A copy of the detailed Single Line Diagram showing Team Energy's System, is attached to the application as Annex "A";

DISCUSSION

9. As can be seen from the diagram above, the whole Team Energy System performs transmission functions taking into

account the connection of a generator and multiple load customers to the same assets;

10. Further, Team Energy, as a generation company, has no right to own and operate transmission facilities which are presently used to transmit and allocate power to the load customers connected to it;

i. The whole Team Energy System should be reclassified as a transmission asset taking into account the connection of a generator and load customers.

11. Article 2 Section III of the "*Guidelines to the Sale and Transfer of TRANSCO's Subtransmission Assets and the Franchising of Qualified Consortium*" promulgated by the Commission on October 17, 2003 provides:

"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 its buyer or concessionaire, **which allow the transmission of electricity to a grid from one or more directly connected generators, shall be classified as transmission assets.**" (Emphasis supplied)

12. The Commission thereafter issued Resolution No. 16, Series of 2011² which provides:

² Entitled "Resolution Adopting the Amended Rules on the Definition and Boundaries of Connection Asset for Customers of Transmission Provider"

“Section 2.0: Definition of Terms

“Connection Assets: **‘those assets that are put in place primarily to connect a Customer/s to the Grid and used for purposes of Transmission Connection Services for the conveyance of electricity** which if taken out of the System, will only affect the Customer connected to it and will have minimal effect on the Grid, or other Customers;’

“Section 4.2. Connection Assets for Generation Customers of Transmission Provider.

“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.” (Emphasis supplied.)

13. The Commission applied the foregoing provisions in reclassifying assets which are not solely used by either a load customer or generator into transmission assets:
 - a. In ERC Case No. 2010-032 MC entitled *“In the Matter of the Petition for Approval of the Reclassification of the National Transmission Corporation Subtransmission Asset to Full Transmission Asset Serving the Dingle-Passi Lines in Iloilo,”*³ the ERC ruled as follows:

“Section 2, Article III of the Guidelines to the Sale and Transfer of the TRANSCO’s Subtransmission Assets and the Franchising of Qualified Consortium reads:

“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:

³ Decision dated 01 December 2010.

“a) Directly Connected Generators

Lines, power transformers and other assets held by TRANSCO or its Buyer or Concessionaire, which allow the transmission of electricity to a Grid from one or more Directly Connected Generators, shall be classified as Transmission Assets.

X X X

“Based on the foregoing provision, the Commission may only reclassify TRANSCO’s subtransmission asset to a transmission asset when the generator, which intends to transmit electricity to the Grid, is connected to said subtransmission asset.

X X X

“WHEREFORE, the foregoing premises considered, the petition filed by Central Azucarera De San Antonio, Inc. (CASA) for approval of the reclassification of the National Transmission Corporation’s (TRANSCO) Subtransmission Asset to full transmission asset serving Dingle-Passi Lines in Iloilo is hereby APPROVED subject to the condition that CASA’s bagasse power plant should connect to the Dingle-Passi 69 kV Line and only the portion of the said line where CASA’s plant is connected shall be reclassified as transmission asset.”

- b. In ERC Case No. 2010-156 RC entitled “*In the Matter of the Approval of the Electric Power Purchase Agreement between Cebu 1 Electric Cooperative, Inc. and Cebu Energy Development Corporation,*”⁴ ERC Case No. 2010-100 RC entitled “*In the Matter of the Approval of the Electric Power Purchase Agreement between Mactan Electric Company, Inc. and Cebu Energy Development Corporation;*”⁵ and ERC Case No. 2010-095 RC entitled

⁴ ERC Decision dated 01 August 2011

⁵ ERC Decision dated 03 October 2011

*"In the Matter of the Approval of the Electric Power Purchase Agreement between Bohol 1 Electric Cooperative, Inc. and Cebu Energy Development Corporation,"*⁶ the ERC ruled as follows:

"However, the Sangi to Talavera 138kV, 5.1-kilometer Double Circuit Transmission Line does not qualify as a dedicated point-to-point limited facility considering that the same line is not solely used to connect CEDC's plant to the grid (NGCP Talavera Substation) but also used to transmit power to VECO through the 138kV CEDC-Colon Line and another line to CEBECO III and Balamban Enerzone Corporation. x x x

"The Commission believes that the 5.1 kilometer Sangi to Talavera Double Circuit 138kV Transmission Line should be owned, operated and maintained by the NGCP. Thus, the cost of the said line should be reimbursed by NGCP to CEDC and should not be recovered through the generation rate for the following reasons:

- "a. there was no approval from the Commission for the implementation or construction of the said line;
- "b. The EPIRA provides that a generation company is only allowed to own or operate dedicated point-to-point limited transmission facilities 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 Commission; and
- "c. On the basis of the definitions provided under the Commission's Resolution No. 41, Series of 2006, the 5.1-kilometer Sangi to Talavera Double Circuit 138kV Transmission Line is considered as a transmission asset

⁶ ERC Decision dated 26 September 2011

that should be owned by
TRANSCO/NGCP.”

- c. In ERC Case No. 2009-180RC entitled “*In the Matter of the Application for Approval of the Maximum Allowable Revenue for the Third Regulatory Period (2011-2015) of the National Grid Corporation of the Philippines During the Regulatory Reset Process for the Third Regulatory Period in Accordance with the Alternative Form of Rate Setting Methodology under the Rules in Setting Transmission Wheeling Rates,*”⁷ the ERC ruled:

“The La—Trinidad-Calot 69kV line is classified as Transmission asset since during off-peak hours, a generator connected to that line delivers power to the grid.”

14. Considering that the whole Team Energy System is used by load customers in drawing power from the grid, and a generator by delivering power to the grid, then these assets perform transmission functions. It is thus imperative that the subject assets be reclassified to full transmission assets;
- ii. Team Energy, a generator, is not allowed to own and operate a transmission system.
15. It should be pointed out that Team Energy, being a generation company, is not authorized to convey and transmit power to the load customers connected to its System for it is not a transmission company. It is also not authorized to distribute power to load customers, for it is neither a distribution utility nor an aggregator;
16. The function of a generation company is limited by the EPIRA and Philippine Grid Code to the **production of electricity**.⁸ It cannot engage in the business owning and operating a transmission facility and conveying power

⁷⁷ ERC Order dated 06 July 2011

⁸ Section 2(y) of the EPIRA Law and Section 1.6 of the Philippine Grid Code.

directly to loads, for only TRANSCO may own such facilities. Thus, Section 8 of Republic Act 9136 provides:

“Except as provided herein, no person, company or entity other than TRANSCO shall own any transmission facilities.”

17. On the other hand, the term ***“Transmission of Electricity”*** is defined under the Philippine Grid Code as ***conveyance of electricity through the Grid.***⁹ The Grid refers to the high-voltage backbone system of interconnected transmission lines, substations and related facilities, located in each of Luzon, Visayas and Mindanao, or as may be determined by the ERC.¹⁰ The same definition was adopted under the EPIRA;¹¹
18. Section 9 of the EPIRA likewise enumerated the functions of the transmission provider/system operator, as follows:
 - a. Act as system operator of the nationwide electrical transmission and subtransmission system, to be transferred to it by NPC;
 - b. Provide open and non-discriminatory access to its transmission system to all electricity users;
 - c. Ensure and maintain the reliability, adequacy, security, stability and integrity of the nationwide electrical grid;
 - d. Improve and expand its transmission facilities consistent with the Grid Code and Transmission Development Plan to be promulgated pursuant to this Act, to adequately serve generation companies, distribution utilities and suppliers requiring transmission service and/or ancillary services through the transmission system: Provided, That it shall submit any plan for expansion or improvement of its facilities for approval by the ERC;

⁹ Section 1.6 of the Philippine Grid Code

¹⁰ Ibid.

¹¹ Section 2(ccc) of Republic Act 9136, otherwise known as the Electric Power Industry Reform Act or EPIRA.

- e. Subject to technical constraints, provide central dispatch of all generation facilities connected, directly or indirectly, to the transmission system in accordance with the dispatch schedule submitted by the market operator, taking into account outstanding bilateral contracts; and
 - f. Undertake the preparation of the TDP;
19. Neither can Team Energy distribute power to the load customers and own a distribution system, for under the EPIRA, such right belongs to the Distribution Utilities;
20. The assets comprising the Team Energy System are actively performing transmission functions by conveying power to multiple load customers connected to such System. Under the EPIRA and its IRR, Team Energy may not own these transmission facilities for only NGCP, as concessionaire of TRANSCO, may own such facility;
21. It is thus imperative that the subject assets be reclassified to full transmission assets, otherwise, gross and blatant violation of the EPIRA provisions will be committed; and
22. It prays that the instant petition be granted and the following assets owned by Team Energy be reclassified as Transmission Assets:
- a. Limay-BPC 230 kV Line 1;
 - b. Limay-BPC 230 kV Line 2;
 - c. Team Energy's 230 kV switchyard, consisting of 4-230 kV Power Circuit Breaker, 8-230 kV Disconnect Switches, and 2x50 MVA Power Transformer; and
 - d. Secondary devices such as protective relays, SCADA, Telecom, and others.

Finding the said application sufficient in form and substance with the required fees having been paid, the same is hereby set for jurisdictional hearing, expository presentation, pre-trial conference and evidentiary hearing on **October 9, 2014 (Thursday) at ten o'clock in the morning (10:00 A.M.) at the ERC Hearing Room,**

15th Floor, Pacific Center Building, San Miguel Avenue, Pasig City.

NGCP is hereby directed to cause the publication of the attached Notice of Public Hearing, at its own expense, once (1x) in a newspaper of general circulation in the Philippines, with the date of the publication to be made not later than ten (10) days before the scheduled date of initial hearing. It is also directed to inform the consumers, by any other means available and appropriate, of the filing of the instant petition, its reasons therefor, and of the scheduled hearing thereon.

Let copies of the petition, this Order and the attached Notice of Public Hearing be furnished the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress. They are hereby requested, if they so desire, to send their duly authorized representatives at the scheduled hearing.

Likewise, let copies of this Order and the attached Notice of Public Hearing be furnished the Office of the Mayor of Quezon City for the appropriate posting thereof on its bulletin board.

NGCP is hereby directed to furnish all those making requests therefor with copies of the petition and its attachments, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing, NGCP must submit to the Commission its written Compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidences on the actual posting and publication of the Notice of Public Hearing consisting of a certification issued to that effect, signed by the afore-mentioned Mayor or his duly authorized representative, bearing the seal of his office, and the affidavit of the Editor or Business Manager of the newspaper where the said Notice of Public Hearing was published together with the complete issue of the said newspaper, and such other proofs of compliance with the requirements of the Commission.

NGCP and all interested parties are directed to submit, at least five (5) days before the date of initial hearing and pre-trial conference, their respective Pre-trial Briefs containing, among others:

- a) A summary of admitted facts and proposed stipulation of facts;
- b) The issues to be tried or resolved;
- c) The documents or exhibits to be presented, stating the purposes and proposed markings therefore; and
- d) The number and names of the witnesses, with their written testimonies in an individual affidavit form, to be attached to the Pre-trial Brief.

Failure of NGCP to submit the required Pre-trial Brief and Judicial Affidavits of its witnesses within the prescribed period shall be a ground for cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from said date of cancellation.

As part of the pre-trial conference, NGCP must also be prepared to make an expository presentation of its petition, 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, what the petition is all about and the reasons and justifications being cited in support thereof.

SO ORDERED.

Pasig City, September 8, 2014.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ZENAIDA G. CRUZ-DUCUT
Chairperson 4

Copy Furnished:

1. **Attys. Luis Manuel U. Bugayong, Ronald Dylan P. Concepcion, Mark Anthony S. Actub, and Jacqueline Kate Saliente-Tamayo**
Counsels for Applicant
National Grid Corporation of the Philippines (NGCP)
NGCP Building, Quezon Avenue cor. BIR Road
Diliman, Quezon City, Metro Manila
2. **THE OFFICE OF THE SOLICITOR GENERAL**
234 Amorsolo Street, Legaspi Village, Makati City
Metro Manila
3. **THE COMMISSION ON AUDIT**
Don Mariano Marcos Avenue
Diliman, Quezon City, Metro Manila
4. **THE COMMITTEE ON ENERGY**
House of the Senate
GSIS Building, Roxas Blvd., Pasay City, Metro Manila
5. **THE COMMITTEE ON ENERGY**
House of Representatives
Batasan Hills, Quezon City, Metro Manila
6. **OFFICE OF THE CITY MAYOR**
Quezon City
7. **Team (Philippines) Energy Corporation**
CTC Building, 2232 Roxas Boulevard, Pasay City
8. **National Transmission Corporation (TRANSCO)**
Quezon Avenue corner BIR Road
Diliman, Quezon City
9. **Power Sector Assets and Liabilities Management (PSALM)**
7th Floor, Bankmer Building, 6756 Ayala Avenue
1226 Makati City