

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



**IN THE MATTER OF THE  
PETITION FOR APPROVAL  
OF THE RECLASSIFICATION  
OF THE ASSETS OWNED  
AND OPERATED BY TOLEDO  
POWER COMPANY INTO  
TRANSMISSION ASSETS**

**ERC CASE NO. 2014-082 MC**

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

**X-----X**

**DOCKETED**  
Date: SEP 18 2014  
By: *[Signature]*

**ORDER**

On June 9, 2014, the National Grid Corporation of the Philippines (NGCP) filed a petition for the approval of the reclassification of the assets owned and operated by Toledo Power Company 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 Section 8 Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), as the concessioner of the National Transmission Corporation (TRANSCO), 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;

3. Toledo Power Company (TPC) is a general partnership created and existing under the laws of the Philippines with office address at Sangui, Toledo, Cebu. It is principally engaged in the business of power generation, and it owns and operates a system which is composed of the following assets (collectively referred to as the TPC System):
  - a. Toledo Substation including Toledo 2x40 MVA 138/34.5 kV transformers and 34.5 kV switchyard;
  - b. Toledo – Carcon 34.5 kV double circuit line;
  - c. Carcon 34.5 kV Substation;
  - d. Carcon – Sangi 34.5 kV line (3-circuits);
  - e. Carcon - 2<sup>nd</sup> Lift – Sangi 34.5 kV Line;
  - f. Sangi 34.5 kV Substation;
  - g. 2<sup>nd</sup> Lift 34.5 kV Substation; and
  - h. 40 MVA 138/34.5 kV transformer between CEDC and TPC.<sup>1</sup>;
  
4. The whole TPC system caters to a number of loads and generators. The following are the load customers connected to the TPC system:
  - a. Balamban Enerzone Corporation (BEZ);
  - b. Cebu III Electric Cooperative, Inc. (CEBECO III); and
  - c. Carmen Copper Corporation;
  
5. On the other hand, the following generators are presently connected to the said system:
  - a. 4x11.25MW Carmen Diesel Power Plant (DG1, DG2, DG3, and DG4);
  - b. 1x26MW Sangi Coal Power Plant (TG4); and
  - c. 1x40MW Sangi Coal Power Plant (TG5);
  
6. In addition to the generators above-mentioned, TPC is currently constructing a 1x82 MW circulating fluidized bed combustor boiler coal-fired power plant, called TPC1A Power Plant, located in Toledo City, Province of Cebu. The TPC1 power plant is expected to be commissioned in the 3<sup>rd</sup> Quarter of CY 2014. The said TPC1A Power Plant shall also be connected at the 34.5kV of the TPC system.

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<sup>1</sup> The 40 MVA 138/34.5 kV transformer is included in NGCP's application entitled "*In the Matter of the Application for the Approval of the Capital Expenditure for the Acquisition of the Cebu Energy Development Corporation (CEDC) Assets Pursuant to Section 9 of Republic Act No. 9136, with Prayer for Provisional Authority*" with docket number ERC Case No. 2011-133RC, filed on 22 September 2011. The case is submitted for resolution of the ERC.

A copy of the detailed Single Line Diagram showing the whole TPC System and the connection points of all loads and generators connected thereto, including the TPC1A Power Plant, is attached to the application as Annex "A";

7. As can be seen from the attached diagram, the three load customers and several generators are utilizing common assets located inside the TPC System;
8. Moreover, Carmen Diesel Power Plant is a WESM participant trading electricity in the market and utilizes the TPC System to supply power to load customers in the Visayas and Luzon. In fact, on April 1, 2014, TPC as owner of Carmen Diesel Power Plant entered into an Interim Power Supply Agreement with Manila Electric Company (MERALCO) for supply of power which is the subject of an application for approval by the Commission;<sup>2</sup>
9. Clearly, the transformers and lines inside the TPC System are used by generators to convey power to the loads connected to it and to other Distribution Utilities such as MERALCO. The TPC System thus acts as a transmission facility. TPC, being a generation company, is not authorized to engage in such activity;
10. The mandate and functions of the generation companies and the transmission provider are clearly delineated and defined under the EPIRA and the Philippine Grid Code (PGC);
11. The term "***Transmission of Electricity***" is defined under the PGC as ***conveyance of electricity through the Grid.***<sup>3</sup> 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.<sup>4</sup> The same definition was adopted under the EPIRA Law;<sup>5</sup>

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<sup>2</sup> ERC Case No. 2014-034RC

<sup>3</sup> Section 1.6 of the Philippine Grid Code

<sup>4</sup> Ibid.

<sup>5</sup> Section 2(ccc) of Republic Act 9136, otherwise known as the Electric Power Industry Reform Act or EPIRA.

12. For this purpose, TRANSCO was created pursuant to Section 8 of the EPIRA, thus:

“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 (NPC), 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.**”

13. Section 9 of the EPIRA Law 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;
- 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;

14. On the other hand, “Generation Facility” refers to the ***production of electricity by a generation company*** or a co-generation facility;<sup>6</sup>
15. Clearly, the function of a generation company is limited by the EPIRA and Philippine Grid Code to the **production of electricity**. It cannot engage in the business owning and operating a transmission facility and conveying power 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.”**

16. The only exception to such rule is found in Section 9 of the same law when it allowed a Generation Company to construct, own and operate a dedicated point-to-point limited transmission facilities. This exemption, however, is bounded by numerous strict limitations. Section 9 provides:

**“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;** 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.” (Emphasis supplied)**

17. This rule is reiterated in Rule 5, Section 5 of the Implementing Rules and Regulations of the EPIRA Law when it provides:

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<sup>6</sup> Section 2(y) of the EPIRA Law and Section 1.6 of the Philippine Grid Code.

“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;

“(ii) The facilities are included and consistent with the TCP as certified by TRANSCO or its Buyer or concessionaire; and

“(iii) Any other documents that may be required by the ERC.” (Emphasis Supplied)

18. Based on the above-quoted provisions of the law, in order for a generation company to own dedicated point-to-point limited transmission facilities, it should comply with all of the following requisites:

- 1) the dedicated point-to-point limited transmission facilities should be consistent with the TDP;
- 2) its use is solely for the purpose of connecting to the transmission system;
- 3) it should be used solely by the generating facility;
- 4) it should be constructed with prior authorization by the ERC; and
- 5) it should not be used to serve end-users and suppliers directly;

19. In this case, the assets composing the TPC System does not comply with any of the requisites above-mentioned. **The assets inside the TPC System are not dedicated point-to-point limited transmission facilities; they are not**

consistent with the TDP; they are not solely used by the generating facility; they are not used by a generator solely for purpose of connecting to the transmission system; and that TPC uses all these assets to serve the end-users directly. Hence, the ownership and operation of these assets performing transmission functions should be transferred to NGCP, as concessionaire of TRANSCO;

20. Further, the EPIRA provides that if a dedicated point-to-point limited transmission facility is being used for competitive purposes, the ownership of the same shall be transferred to the TRANSCO. Competitive purpose means that the transmission facility must not be used by a generation company for a potential unfair market advantage over its competitors;
21. This rule is likewise stated in Rule 5, Section 4(k) of the Implementing Rules and Regulations of the EPIRA Law:

“Section 4. Obligations of a Generation Company.-

X X X

“(k) A Generation Company that owns a dedicated point-to-point limited transmission facility **shall transfer ownership of such facility to the TRANSCO at a fair market price in the event that such facility is required for competitive purposes** as prescribed in Section 5 (b) of this Rule.”

22. In addition, Rule 5, Section 5 of the IRR states:

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

“(a) 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. In case of disagreement on the fair market price, the ERC shall determine the fair market value of

such asset, either directly or through such dispute resolution mechanism as ERC may specify.”

23. Competitive purpose means that the transmission facility must not be used by a generation company for a potential unfair market advantage over its competitors. In this case, TPC’s generation facilities directly serve other load customers through its facilities, to the disadvantage of other generation companies who are not given the opportunity to supply power to these load customers;
24. In sum, the assets inside the TPC System are actively performing transmission functions by conveying power from the generators to the load customers. Under the EPIRA Law and its IRR, TPC may not own these transmission facilities for these assets are not dedicated point-to-point limited transmission facilities. Further, these assets are used to serve end-users directly and are used for competitive purposes;
25. 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;
26. This is in consonance with several rulings of this Honorable Commission, thus:
  - a. In ERC Case No. 2010-156RC entitled “*In the Matter of the Approval of the Electric Power Purchase Agreement between Cebu 1 Electric Cooperative, Inc. and Cebu Energy Development Corporation,*”<sup>7</sup> Case No. 2010-100RC entitled “*In the Matter of the Approval of the Electric Power Purchase Agreement between Mactan Electric Company, Inc. and Cebu Energy Development Corporation,*”<sup>8</sup> and Case No. 2010-095 entitled “*In the Matter of the Approval of the Electric Power Purchase Agreement between Bohol 1 Electric Cooperative, Inc. and Cebu Energy Development Corporation,*”<sup>9</sup> the ERC ruled as follows:

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<sup>7</sup> ERC Decision dated 01 August 2011

<sup>8</sup> ERC Decision dated 03 October 2011

<sup>9</sup> ERC Decision dated 26 September 2011



“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 that should be owned by TRANSCO/NGCP.”  
(Emphasis supplied.)

- b. 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,*<sup>10</sup> the ERC ruled as follows:

**“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.”**

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“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.” (Emphasis supplied.)

- 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,”*<sup>11</sup> 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.”

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<sup>10</sup> Decision dated 01 December 2010.

<sup>111</sup> ERC Order dated 06 July 2011

27. In view of the foregoing, the assets comprising the TPC System should be immediately reclassified as transmission assets and its ownership, operation and maintenance should be immediately turned over to NGCP, as concessionaire of TRANSCO; and
  
28. It prays that the instant petition be granted and the following assets owned by Toledo Power Company be reclassified as Transmission Assets and its ownership and operation be turned over to NGCP:
  1. Toledo Substation including Toledo 2x40 MVA 138/34.5 kV transformers and 34.5 kV switchyard;
  2. Toledo – Carcon 34.5 kV double circuit line;
  3. Carcon 34.5 kV substation;
  4. Carcon – Sangi 34.5 kV line (3-circuits);
  5. Carcon - 2<sup>nd</sup> Lift – Sangi 34.5 kV line;
  6. Sangi 34.5 kV substation; and
  7. 2<sup>nd</sup> Lift 34.5 kV substation.

Finding the said petition 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 16, 2014 (Thursday) at ten o'clock in the morning (10:00 A.M.) at the ERC Hearing Room, 15<sup>th</sup> 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 15, 2014.

FOR AND BY AUTHORITY  
OF THE COMMISSION:

  
**ZENAIDA G. CRUZ-DUCUT**  
Chairperson

**Copy Furnished:**

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6. **OFFICE OF THE CITY MAYOR**  
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