

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 69 KV LINES OF
SOUTH COTABATO II
ELECTRIC COOPERATIVE,
INC. AND SEC PLANT PHASE
1 SWITCHYARD OF
SARANGANI ENERGY
CORPORATION TO
TRANSMISSION ASSETS

ERC CASE NO. 2014-087 MC

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

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DOCKETED
Date: SEP 26 2014

ORDER

On June 18, 2014, the National Grid Corporation of the Philippines (NGCP) filed a petition for the approval of the reclassification of the 69 kV Lines of South Cotabato II Electric Cooperative, Inc. (SOCOTECO II) and SEC Plant Phase 1 Switchyard of Sarangani Energy Corporation to 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. SOCOTECO II is a non-stock, non-profit electric cooperative organized and existing under and by virtue of Presidential

Decree No. 269, as amended, with office address at J. Catolico Avenue, Lagao, General Santos City. It has a franchise to distribute electricity in the City of General Santos, and the Municipalities of Alabel, Glan, Kiamba, Maitum, Malapatan, and Malungon, all in the Province of Sarangani, and the Municipalities of Polomolok and Tupi, both in the Province of South Cotabato;

3. Sarangani Energy Corporation (SEC) is a generation company duly authorized and existing under and by virtue of the laws of the Republic of the Philippines, with principal address at 3rd Floor, Solid House, 2285 Chino Roces Avenue, Makati City;
4. SEC will construct, own, operate, manage and maintain a 1 x 120 MW Circulating Fluidized Bed Combustor Boiler Coal-Fired power plant (SEC Power Plant) in the Municipality of Maasim, Sarangani;
5. 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 which are in a position to take over the responsibility for operating, maintaining, upgrading, and expanding said assets;
6. On October 7, 2011, SOCOTECO II and SEC filed a Joint Application for the approval of the Power Sales Agreement (PSA) docketed as ERC Case No. 2011-138 RC. Under the PSA, SEC will construct, own and manage a 120 MW Circulating Fluidized Bed Combustor Boiler Coal-Fired Power Plant (SEC Power Plant) in the Municipality of Maasim, Sarangani and deliver a capacity of 70 MW plus Dispatchable Energy to SOCOTECO II;
7. It intervened in said application and sought for the re-classification of the 69 kV line and associated equipment where the SEC Power Plant will be connected from a

subtransmission asset to a transmission asset on the ground that the same assets already perform transmission function;

8. In its Decision dated July 30, 2012, the PSA of SEC and SOCOTECO II was approved by the Commission, subject to conditions, such as, that the issue on the reclassification of SOCOTECO II's 69 kV line into a transmission asset shall be passed upon by the Commission in a separate case;
9. On June 21, 2013, Agusan Norte Electric Cooperative (ANECO) and SEC also filed a joint application for the approval of their PSA for a capacity of 10 MW plus Dispatchable Energy docketed as ERC Case No. 2013-010 RC. Said application was given provisional approval by the Commission in its Order dated 22 March 2013;
10. Agusan Sur Electric Cooperative (ASELCO) and SEC also filed a joint application for the approval of their PSA for a capacity of 10 MW plus Dispatchable Energy docketed as ERC Case No. 2013-012 RC. Said application was given provisional approval by the Commission in its Order dated 22 March 2013;
11. Similarly, Davao Norte Electric Cooperative (DANECO) and SEC also filed a joint application for the approval of their PSA for a capacity of 15 MW plus Dispatchable Energy docketed as ERC Case No. 2013-222 RC. Said application was given provisional approval by the Commission in its Order dated February 24, 2014;

DISCUSSION

- i. **The SOCOTECO II 69 kV lines and associated equipment that will connect SEC Power Plant to NGCP's General Santos Substation perform transmission function.**

12. The SEC Power Plant will directly connect to its General Santos Substation using the following lines owned by SOCOTECO II:
 - a. Gen. San-Siguel-SEC 69 kV line;
 - b. Gen. San-Fishport-Cargill –SEC 69 kV line;
 - c. Gen. San-New Society-Lanoy-SEC 69 kV line;
 - d. New Society-Lagao (Llido) Tie Line; and
 - e. Gen. San-Lagao Tie Line.

(Collectively, the SOCOTECO II 69 kV Lines.)

Attached as **Annex A** to its petition is the Single Line Diagram showing the proposed connection scheme of SEC;

13. As clearly shown in the Single Line Diagram, the SEC will use SOCOTECO II 69 kV lines and its associated equipment in order to transmit 70 MW to SOCOTECO II, 10 MW to ANECO, 10 MW to ASELCO, and 15 MW to DANECO. This being the case, these 69 kV lines and associated equipment already serve as a transmission highway in order for the capacity generated by the SEC 100 MW Power Plant to be transmitted to the Mindanao Grid;
14. In addition, the configuration of SOCOTECO 69 kV lines and SEC Switchyard already forms a power loop where power from the NGCP's Tacurong Substation and Matanao Substation also passes through going to the loads of SOCOTECO II;
15. Corollarily, Section 4, Rule 6 of the EPIRA Implementing Rules and Regulations (EPIRA IRR) provides a very clear and unmistakable criteria of a subtransmission asset as follows:

“The technical and functional criteria to be considered in distinguishing transmission assets from Subtransmission Assets shall include, but not limited to:

- “a. Subtransmission Assets are normally in close proximity to retail customers;

- "b. Subtransmission Assets are primarily radial in character;
- "c. Power flows into Subtransmission Assets; it rarely, if ever, flows out;
- "d. When power enters Subtransmission Assets, it is not reconsigned or transported on to some other market;
- "e. Power entering Subtransmission Assets is consumed in a comparatively restricted geographic area;
- "f. Meters are based at the interface of transmission and Subtransmission Assets to measure flows into the Subtransmission Assets; and
- "g. Subtransmission Assets will be of reduced voltage."

16. In this case, the SOCOTECO II 69 kV Lines do not fall under the said categories for them to be classified as subtransmission assets, as further discussed below:

CRITERIA	DISCUSSION
Subtransmission Assets are normally in close proximity to retail customers	It should be noted that the SOCOTECO II 69 kV lines are not in close proximity to its customers, as it will provide its excess power to ANECO, ASELCO, and DANECO which are all situated in provinces other than General Santos City.
Subtransmission Assets are primarily radial in character	SOCOTECO II 69 kV lines are also not radial in character, as these lines form a loop and the power flowing from the SOCOTECO 69 kV lines are bi-directional.
Power flows into Subtransmission Assets; it rarely, if ever, flows out When power enters Subtransmission Assets, it is not	As clearly shown in the Single Line Diagram, the SEC will use SOCOTECO II 69 kV lines and its associated equipment in order to

reconsigned or transported on to some other market	transmit 70MW to SOCOTECO II, 10 MW to ANECO, 10 MW to ASELCO, and 15 MW to DANECO. This being the case, these 69 kV lines and associated equipment already serve as a transmission highway in order for the capacity generated by the SEC 100 MW Power Plant to be transmitted to the Mindanao Grid
Power entering Subtransmission Assets is consumed in a comparatively restricted geographic area	
Meters are based at the interface of transmission and Subtransmission Assets to measure flows into the Subtransmission Assets	SOCOTECO II 69 kV lines are also not radial in character, as these lines form a loop and the power flowing from the SOCOTECO 69 kV lines are bi-directional.

17. Lastly, in addition to the power generated by SEC Power Plant, the SOCOTECO II 69 kV lines will also be used to convey the power generated by the 19.6 MW SOCSARGEN Diesel Power Plant owned by Peakpower Socsargen, Inc. which is expected to be in commercial operation by August 2014, and another 15 MW Diesel Power Plant;

18. Clearly therefore, the 69 kV lines and associated equipment are no longer considered subtransmission assets as they already perform transmission functions, hence, must be turned-over to it;

ii. The SEC Switchyard cannot be considered a dedicated point-to-point limited transmission facilities.

19. As a general rule, no person, company or entity other than the National Transmission Company may own any transmission facilities. The only exception to such rule is found in Section 9 of R.A. 9136 when the law 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:

“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)**

20. This rule is reiterated in Rule 5, Section 5 of the EPIRA IRR when it provides:

“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)

21. Conversely, the SEC Switchyard also directly serves SOCOTECO II's load customers in Maasim and Kiamba, General Santos City Airport, Leon Lido, Lagao, Ligaya, Cargill, Fishport, Lanoy, Cobox, and New Society. As such, the SEC Switchyard cannot be considered as a dedicated point to point limited transmission facility contemplated in Section 9 of Republic Act No. 9136, and its ownership, operation and maintenance should be turned over to NGCP;

22. This is in consonance with several pronouncements of this Commission:
 - a. In ERC Case No. 2010-032MC 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*,"¹ the ERC ruled as follows:

"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

"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."

¹ Decision dated 01 December 2010.

- b. 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,*"² 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,*"³ 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,*"⁴ 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 ratex x x[.]"

- 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,*"⁵ the ERC ruled:

² ERC Decision dated 01 August 2011

³ ERC Decision dated 03 October 2011

⁴ ERC Decision dated 26 September 2011

⁵ ERC Order dated 06 July 2011

"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."

23. Considering that the 69 kV lines and associated equipment, including the SEC Switchyard, where SEC Power Plant will connect will be used by multiple customers in drawing power from the grid, and by SEC Power Plant to deliver power to the grid, these assets performs transmission functions. It is thus imperative that the subject asset be reclassified to transmission asset; and
24. It prays that the instant petition be granted and the 69 kV Lines and associated equipment where SEC Power Plant is connected, namely: Gen. San-Siguel-SEC 69 kV line, Gen. San-Fishport-Cargill-SEC 69 kV Line, Gen. San-New Society-Lanoy-SEC 69 kV Line, New Society-Lagao (Llido) Tie Line, and Gen. San-Lagao Tie Line, including the SEC Coal Plant Phase 1 Switchyard, be reclassified as Transmission Assets.

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 28, 2014 (Tuesday) 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 22, 2014.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ZENAIDA G. CRUZ-DUCUT
Chairperson ✓

Copy Furnished:

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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**
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7. **South Cotabato II Electric Cooperative, Inc. (SOCOTECO II)**
J. Catolico Avenue, Lagao, General Santos City
8. **Sarangani Energy Corporation**
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9. **National Transmission Corporation (TRANSCO)**
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10. **Power Sector Assets and Liabilities Management (PSALM)**
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