

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City



IN THE MATTER OF THE APPLICATION FOR AUTHORITY TO DEVELOP, OWN AND/OR OPERATE DEDICATED POINT- TO- POINT LIMITED TRANSMISSION FACILITIES TO CONNECT THE ±20 MW BAY BATTERY ENERGY STORAGE SYSTEM TO THE LUZON GRID VIA THE 69KV BAY SUBSTATION OF THE NATIONAL GRID CORPORATION OF THE PHILIPPINES, WITH PRAYER FOR PROVISIONAL AUTHORITY AND CONFIDENTIAL TREATMENT OF INFORMATION

ERC CASE NO. 2021-028 MC

CELL POWER ENERGY CORPORATION (CPEC),
Applicant.

X-----X

Promulgated:
October 12, 2021

NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 27 September 2021, Cell Power Energy Corporation (CPEC) filed an *Application* dated 16 September 2021, seeking the Commission's approval of its authority to develop, own and/or operate dedicated point-to-point limited transmission facilities to connect the ±20 MW Bay Battery Storage System to the Luzon Grid via the 68KV Bay Substation of the National Grid Corporation of the Philippines (NGCP), with prayer for provisional authority and confidential treatment of information.

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

THE APPLICANT

1. CPEC is a company duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at Aboitiz Corporate Center, Gov. Manuel A. Cuenco Ave., Kasambagan, Cebu City. It may be served with orders, notices, and other processes of this Honorable Commission through the undersigned counsel.

CPEC's Articles of Incorporation and By-laws and the latest General Information Sheet are attached hereto and made integral part thereof as Annexes "A" and "B".

NATURE OF THE APPLICATION

2. The instant Application is being filed pursuant to Section 9 of the Electric Power Industry Reform Act of 2001 ("EPIRA"), which states that:

" . . . A generation company may develop and own or operatededicated point-to-point limited transmission line 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 for the purpose of connecting to the transmission system, and are used solely by the generating facilities, subject to prior authorization by the ERC. . ."

3. This Application is similarly being filed pursuant to Section 5 (a) of the Implementing Rules and Regulations of the EPIRA, which states that:

"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:

- 1) 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;
- 2) The facilities are included and consistent with the TDP as certified by TRANSCO or its Buyer or Concessionaire; and

- 3) Any other documents that may be required by the ERC.
4. CPEC is proposing to develop, own, and/or operate interconnection facilities (“Dedicated Facility Project”) to connect the ±20 MW Bay Battery Energy Storage System (“Bay BESS”) project to the Luzon Grid via the 69 kV Bay Substation of the National Grid Corporation of the Philippines (“NGCP”).

Copies of the Secretary’s Certificates attesting to the authorization of the filing of the instant Application and of the appointment of CPEC’s authorized representatives to the case, and to the approval of the Dedicated Facility Project, are attached hereto and made integral parts hereof as Annexes “C” and “D”.

STATEMENT OF FACTS

5. CPEC is duly registered to carry on the business of producing, manufacturing, transmitting, distributing, and selling electricity, and in engaging in energy storage systems.
6. To connect the Bay BESS to the Luzon Grid, CPEC shall develop and construct the Dedicated Facility Project, a dedicated point-to-point limited connection facility to be used solely by the Bay BESS Project for its dispatch and connection to the Bay substation owned and operated by NGCP. Said facilities are necessary to test, commission and dispatch the capacity of the BESS and shall be exclusively utilized by CPEC.
7. The Bay BESS will be connected through a 0.45 km single circuit 69 kV transmission line to the 69 kV Bay Substation of the NGCP.

The Project Description is attached hereto and made an integral part hereof as Annex “E”. A brief discussion on the options considered in lieu of the proposed project, as well as the Gantt chart schedule thereof, are likewise included in the Project Description. The relevant dates of the project are set out in Annex “E-1”.

8. To dispatch electricity from the Bay BESS, the Dedicated Facility Project shall directly connect to the 69 kV Bay Substation through a 0.45 km single circuit 69 kV transmission line. The direct connection facility to the Bay Substation will allow evacuation of power from the Bay BESS to the Luzon Grid. CPEC studied its options and found that such direct connection is the sole viable option to connect the Bay BESS project to the Luzon Grid.

Copies of the Single Line Diagram of the Dedicated Facility Project, the conceptual drawings and design, and the Environmental Compliance Certificate granted to CPEC are

ERC CASE NO. 2021-028 MC
NOTICE OF VIRTUAL HEARING/ 04 October 2021
PAGE 4 OF 9

attached and made integral parts hereof as Annexes “F”, “G” and “H”.

9. The estimated cost of the construction of the Dedicated Facility Project is PhP 9,144,663.470, with the following components:

Supply of imported materials	4,450,720.32
Supply of local materials	1,268,271.89
Installation works	2,469,338.23
Hauling works	125,000.00
Contingency	831,333.04
TOTAL COST TRANSMISSION	9,144,663.470

The Dedicated Facility Project will be exclusively funded by CPEC and will not impact any regulated charge.

The details of the cost estimate are included in the Project Description attached as Annex “E”.

10. Based on the System Impact Study (“SIS”) Report prepared by NGCP to determine the technical feasibility of the Dedicated Facility Project and the impact of connecting the Bay BESS to the Luzon Grid, the connection of the Bay BESS to the Luzon Grid was found to be technically feasible.

The details of NGCP’s findings are in the SIS Report which is attached and made an integral part hereof as Annex “I”.

11. CPEC also engaged MN Electro Industrial Supply & Services, Inc. to conduct the Interconnection Facilities Study (“Facilities Study”) to ensure that the equipment to be installed will satisfy the recommendation of the SIS, and that the Dedicated Facility Project complies with the provisions of the Philippine Grid Code.

A copy of CPEC’s request to NGCP for a Certification that the Facilities Study was submitted for its approval is attached as Annex “J”. NGCP’s Certification attesting to its review of the Facilities (*sic*) Study is attached as Annex “J-1”.

12. NGCP and CPEC are currently in the process of finalizing the terms of their Connection Agreement for the interconnection of the Bay BESS to the Luzon Grid through the Dedicated Facility Project.

CPEC’s request to NGCP for a Certification that CPEC is still securing its Connection Agreement therefrom is likewise included in Annex “J”.

13. The Bay BESS has been considered in NGCP’s Transmission Development Plan. In a Certification dated 19 April 2021,

NGCP has confirmed the inclusion of the Bay BESS in the formulation of the 2020-2040 Transmission Development Plan.

Copies of the Certification dated 19 April 2021 from NGCP and the DOE List of Private Sector Initiated Projects where CPEC's BESS are included herewith attached as Annexes "K" and "L".

14. Upon completion of the Dedicated Facility Project and the commercial operation of the Bay BESS, CPEC intends to operate and maintain the Dedicated Facility Project.

Proof of CPEC's technical capability is in the Project Description, attached as Annex "E".

15. CPEC intends to provide secondary reserve ancillary service to the Luzon Grid. A copy of the Demand-Supply Scenario is attached as Annex "M".
16. As of date, CPEC has secured or is in the process of securing the necessary permits, licenses, and authority from the appropriate regulatory agencies for the Dedicated Facility Project.

A copy of the sworn statement of CPEC's authorized representative attesting to the fact that CPEC obtained all the necessary permits from all concerned agencies that may have an interest in the Dedicated Facility Project is hereto attached and made an integral part hereof as Annex "N". A copy of the affidavit of CPEC's authorized representative regarding compliance with the Philippine Grid Code is attached as Annex "O".

17. In light of the foregoing, CPEC respectfully seeks the confirmation and approval of the Honorable Commission that the Dedicated Facility Project is the most viable option for the connection of the Bay BESS to the Luzon Grid.

**ALLEGATIONS IN SUPPORT OF THE PRAYER FOR
PROVISIONAL AUTHORITY**

18. In order to provide ancillary services as a secondary reserve to the Luzon Grid, there is a need for CPEC to commence operations in 2023. Needless to state, the construction of the Dedicated Facility Project is a pre-requisite for the testing and commissioning, and ultimately, the commercial operations of the Bay BESS. A provisional authority is urgently needed to enable CPEC to achieve the target commercial operations date of the Bay BESS and provide secondary reserve ancillary services to the Grid.

A copy of the Affidavit executed by CPEC's authorized representative in support of the prayer for issuance of provisional authority is hereto attached and made an integral

part hereof as Annex“P”.

19. Considering the foregoing, CPEC submits that there is clear and sufficient basis for the issuance of a provisional authority for the development, ownership and operation of the Dedicated Facility Project by CPEC to connect the Bay BESS to the Luzon Grid, pending the Honorable Commission’s issuance of a final decision on the instant Application.

ALLEGATIONS IN SUPPORT OF THE CONFIDENTIAL
TREATMENT OF INFORMATION

20. Under Rule 4 of the Honorable Commission’s Rules of Practice and Procedure, a party to any proceeding before the Honorable Commission may request that certain information not be disclosed and be treated as confidential. In this regard, CPEC prays for the confidential treatment of Annexes “E”, “E-1”, “F”, “G”, “I”, and “M” and the information contained therein and to not disclose thesame except to the officers and staff of the Honorable Commission.
21. CPEC respectfully manifests that Annexes “E”, “E-1”, “F”, “G”, “I”, and “M” of the instant *Application* contain valuable, non-public information, and data and insight, and should be treated as confidential. These confidential documents contain privileged and sensitive information, if unduly disclosed, will seriously prejudice CPEC’s competitiveness. It is therefore submitted that Annexes Annexes (*sic*) “E”, “E-1”, “F”, “G”, “I”, and “M” fall within the bounds of proprietary trade secrets which are confidential and are entitled to protection under the Constitution, statutes, and rules and regulations of this Honorable Commission.
22. Considering that CPEC has actual and valuable proprietary interest to protect with respect to such information, Annexes “E”, “E-1”, “F”, “G”, “I”, and “M” fall within the bounds of “trade secrets”, which are entitled to protection under the Constitution, statutes, and rules and regulations of this Honorable Commission.
23. In the case of *Air Philippines Corporation vs. Pennswell, Inc.*,¹ the Supreme Court defined “trade secrets” and explained as follows:

“A trade secret is defined as a plan or process, tool, mechanism or compound known only to its owner and those of his employees to whom it is necessary to confide it. The definition also extends to a secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade having a commercial value. A trade secret may consist of any **formula, pattern, device, or compilation of information that: (1) is used in one's business; and (2) gives the employer an**

¹ 564 Phil. 774 (2007), G.R. No. 172835.

opportunity to obtain an advantage over competitors who do not possess the information. Generally, a **trade secret is a process or device intended for continuous use in the operation of the business**, for example, a machine or formula, but can be a price list or catalogue or specialized customer list. **It is indubitable that trade secrets constitute proprietary rights.”**
(Emphasis supplied.)

24. Clearly, the Honorable Commission recognizes the importance of treating trade secrets as confidential in order to ensure the competitiveness of the generation sector. The information in Annexes “E”, “E-1”, “F”, “G”, “I”, and “M” therefore falls within the definition of a trade secret as defined by jurisprudence, merits the confidential treatment provided for under Rule 4 of the ERC Rules of Practice and Procedure.
25. In view of the foregoing, CPEC respectfully requests that the documents attached as Annexes “E”, “E-1”, “F”, “G”, “I”, and “M” be marked and treated as confidential and privileged, and not be disclosed to persons other than the necessary officers and staff of this Honorable Commission.
26. Accordingly, CPEC respectfully submits the instant Application for the Honorable Commission’s urgent and utmost consideration.

PRAYER

WHEREFORE, premises considered, Applicant CELL POWER ENERGY CORPORATION (“CPEC”) respectfully prays that the Honorable Commission:

1. Issue an Order granting provisional authority for the implementation of the development, ownership and operation of the Dedicated Facility Project by CPEC to connect the Bay Battery Energy Storage System to the Luzon Grid;
2. Issue an Order treating Annexes “E”, “E-1”, “F”, “G”, “I”, and “M” and the information contained therein as confidential information within the purview of Rule 4 of the ERC Rules of Practice and Procedure and prescribing the guidelines for the protection thereof; and
3. After hearing on the merits, a Decision be rendered approving the instant Application.

Other just and equitable relief are likewise prayed for.

The Commission hereby sets the instant *Application* for determination of compliance with the jurisdictional requirements,

ERC CASE NO. 2021-028 MC
NOTICE OF VIRTUAL HEARING/ 04 October 2021
PAGE 8 OF 9

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 2020² dated 24 September 2020 and Resolution No. 01, Series of 2021, dated 17 December 2020 (ERC Revised Rules of Practice and Procedure)³:

Date	Platform	Activity
09 November 2021 (Tuesday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Teams	Determination of compliance with jurisdictional requirements and expository presentation
16 November 2021 (Tuesday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Teams	Pre-Trial Conference and Presentation of Evidence

Any interested stakeholder may submit its comments and/or clarifications at least one (1) calendar day prior to the scheduled virtual hearing, via electronic mail (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.

Moreover, any person who have an interest in the subject matter of the instant case may become a party by filing with the Commission via e-mail at doCKET@erc.ph, copy furnish the Legal Service through legal@erc.ph, a verified Petition to Intervene at least five (5) calendar days prior to the date of the initial virtual hearing and subject to the requirements under Rule 9 of the ERC Revised Rules of Practice and Procedure, indicating therein the docket number and title of the case and stating the following:

- 1) The petitioner's name, mailing address, and e-mail address;
- 2) The nature of petitioner's interest in the subject matter of the proceeding and the way and manner in which such interest is affected by the issues involved in the proceeding; and

² Entitled: "A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission".

³ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

- 3) A statement of the relief desired.

Likewise, all other persons who may want their views known to the Commission with respect to the subject matter of the case may likewise file through e-mail at docket@erc.ph, copy furnish the Legal Service through legal@erc.ph, their Opposition or Comment thereon at least five (5) calendar days prior to the initial virtual hearing and subject to the requirements under Rule 9 of the ERC Revised Rules of Practice and Procedure. No particular form of Opposition or Comment is required, but the document, letter, or writing should contain the following:


- 1) The name, mailing address, and e-mail address of such person;
- 2) A concise statement of the Opposition or Comment; and
- 3) The grounds relied upon.

Any of the persons mentioned in the preceding paragraphs may access the copy of the *Application* on the Commission's official website at www.erc.gov.ph.

Finally, all interested persons may be allowed to join the scheduled initial virtual hearing by providing the Commission, thru legal.virtualhearings@erc.ph, with their respective e-mail addresses and indicating therein the case number of the instant *Application*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearing.

WITNESS, the Honorable Commissioners **ALEXIS M. LUMBATAN**, **CATHERINE P. MACEDA**, **FLORESINDA G. BALDO-DIGAL** and **MARKO ROMEO L. FUENTES**, Energy Regulatory Commission, this 04th day of October 2021 in Pasig City.


AGNES VST DEVANADERA
Chairperson and CEO


LS: SQD/LSP/MCCG

