

Republic of the Philippines  
**ENERGY REGULATORY COMMISSION**  
Pasig City



**PETITION FOR RECLASSIFICATION OF THE NATIONAL TRANSMISSION CORPORATION LAPU-LAPU 69KV GIS FEEDER 1 LINE AND THE MUELLE - OSMENA WHARF LINE TO TRANSMISSION**

**PHINMA ENERGY CORPORATION (PHINMA ENERGY),**

*Petitioner,*

-versus-

**ERC CASE NO. 2017-002 DR**

**NATIONAL TRANSMISSION CORPORATION (TRANSCO)**

*Respondent.*

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**DOCKETED**  
Date: JUN 16 2017  
By: *[Signature]*

**NOTICE OF PUBLIC HEARING**

**TO ALL INTERESTED PARTIES:**

Notice is hereby given that on 5 May 2017, Petitioner, Phinma Energy Corporation (PHINMA Energy) filed the above-captioned petition for dispute resolution against National Transmission Corporation (TRANSCO) over the sale of the following assets to Mactan Electric Company, Inc. (MECO): Lapu-Lapu 69 kV GIS Feeder 1 and Muelle-Osmeña Wharf Lines.

In the said Petition, PHINMA ENERGY alleges the following:

1. PHINMA Energy is a private corporation duly organized and existing under the laws of the Philippines and it may be served with summons and other processes of this Honorable Commission at

Level 3 PHINMA Plaza, 39 Plaza Drive, Rockwell Center, Makati City<sup>1</sup>;

2. The **National Transmission Corporation (“TransCo”)** is a government instrumentality created pursuant to Republic Act (“R.A.”) No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (“EPIRA”), with principal office address at TransCo Main Building, Quezon Avenue corner BIR Road, Diliman, Quezon City, where it may be served with summons and other processes of this Honorable Commission.
3. TransCo owns the national transmission facilities, including the Lapu-Lapu 69kV GIS Feeder 1 and the Muelle-Osmena Wharf Lines, which are now being operated by the **National Grid Corporation of the Philippines (“NGCP”)**;
4. NGCP is the corporation awarded the franchise to operate the transmission system of TransCo under Republic Act (“RA”) No. 9511, entitled *“An Act Granting the National Grid Corporation of the Philippines a Franchise to Engage in the Business of Conveying or Transmitting Electricity through High Voltage Back-bone System or Interconnected Transmission Lines, Substations and Related Facilities, and for other Purposes”*. As stated, NGCP operates the Lapu-Lapu 69kV GIS Feeder 1 Line and Muelle-Osmena Wharf lines.
5. PHINMA Energy owns and operates the 32MW Power Barge 103 (“PB103”) which is connected directly to the Visayas grid through the Lapu-Lapu 69kV GIS Feeder 1 to Muelle-Osmena Wharf line.
6. PHINMA Energy intends to transmit energy to the Visayas Grid and provide additional and much-needed Ancillary Services through its PB103.
7. The System Impact Study<sup>2</sup> (“SIS”) results for the PB103 recommended its connection to the Visayas Grid *via* the Lapu-Lapu 69kV GIS Feeder 1, thus:

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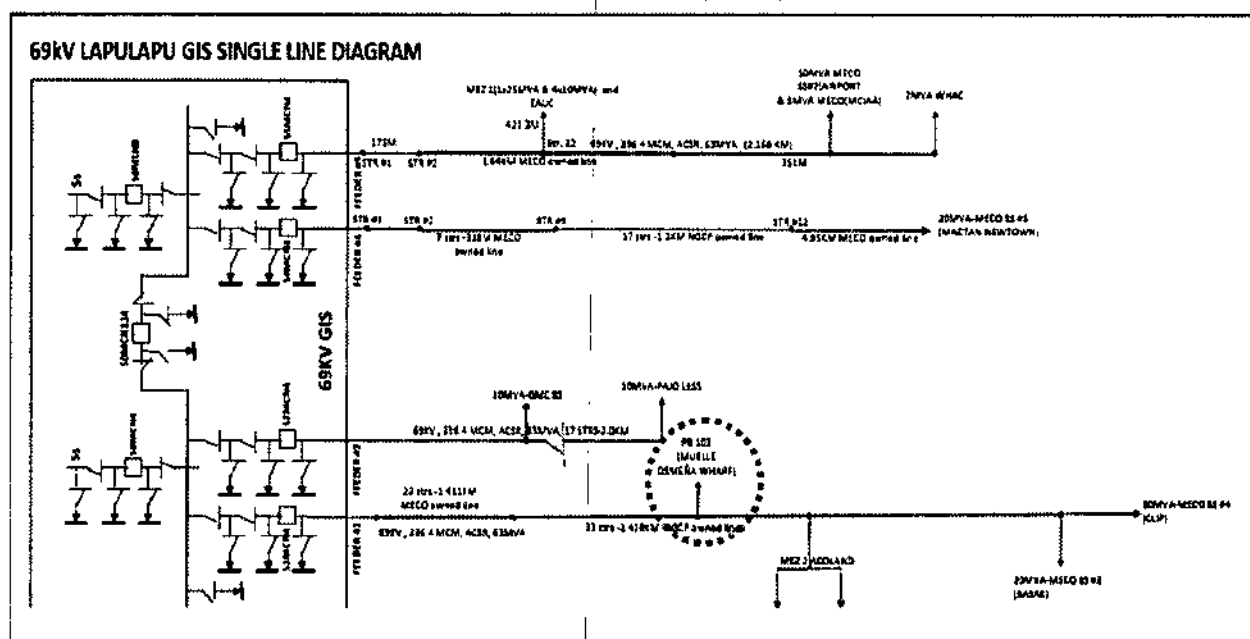
<sup>1</sup> A copy of PHINMA Energy's Securities and Exchange Commission (“SEC”) Certificate of Registration is attached hereto as **Annex “A”** to form an integral part hereof.

<sup>2</sup> A copy of the pertinent page of the SIS is attached hereto as **Annex “B”** to form an integral part hereof.

“The results of this SIS show that the connection of power plant will not result in the degradation of the Visayas grid. The operation of the power plant actually decongests LapuLapu GIS Feeder 1 and Cebu-Mandaue-LapuLapu 138 kV transmission lines.”

8. Pursuant to the said SIS, PB103 was granted authority by the NGCP to connect to the Lapu-Lapu 69kV GIS Feeder 1 in a letter dated 11 April 2017<sup>3</sup>;
9. Illustrated below is the simplified connection of PB103 to the Lapu-Lapu 69kV GIS Feeder 1 based on the SIS:

Figure 1. 32 MW PB 103 connected to Lapu-Lapu GIS 69 kV Feeder 1



10. As can be seen from the illustration, there are now three (3) users to the Lapu-Lapu 69kV GIS Feeder 1, as follows:
  - a. Mactan Electric Company (“MECO”)
  - b. Mactan Enerzone Corporation (“MEZ”) 2 Acoland
  - c. PB103
11. In view of these supervening developments, the Lapu-Lapu 69kV GIS Feeder 1 and the Muelle-Osmena Wharf lines now actually perform transmission

<sup>3</sup> A copy of the NGCP letter dated 11 April 2017 is attached hereto as Annex “C” to form an integral part hereof.

function and should be reclassified as transmission assets.

12. Any assets which is used by a generator and distribution utilities is undoubtedly performing transmission functions and must be reclassified as such.
13. A reclassification of the Lapu-Lapu 69kV GIS Feeder 1 and the Muelle-Osmena Wharf lines at this time is in consonance with the *Decision* dated December 1, 2010 of this Honorable Commission in **ERC Case No. 2010-032MC** entitled: "*In the Matter of the Petition for Approval of the reclassification of the National Transmission Corporation (TRANSCO) :Subtransmission Assets Serving the Dingle-Passi Lines in Iloilo*":

**"Section 2, Article III of the Guidelines to the Sale and Transfer of the TRANSCO's Subtransmission Assets and the Franchising of Qualified Consortiums 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:

**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.

**b) Directly Connected End Users**

Radial lines, power transformers, related protection equipment, control systems and other assets held by TransCo or its Buyer or Concessionaire, which directly connect an End-User or group of End-Users to a Grid and are

exclusively dedicated to the service of that End-User or group of End-Users shall be classified as Sub-transmission Assets.

**c) Directly Connected Load-End Substation**

Radial lines, power transformers, related protection equipment, control systems and other assets held by TransCo or its Buyer or Concessionaire, which directly connect a load-end substation of one or more Distribution Utilities to a Grid but o Directly Connected Generators shall be classified as Sub-transmission Assets.'

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.

The present classification of the Dingle-Passi 69 kV line as a subtransmission asset is not an impediment for CASA or any generator to connect to the said asset.

xxx      xxx      xxx

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 the 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 the CASA's plant is connected shall be reclassified as transmission asset." *[Emphasis supplied]*

14. A reclassification of the Lapu-Lapu 69kV GIS Feeder 1 and the Muelle-Osmena Wharf lines is also in accordance with the *Decision* dated 22 August 2011 of the Honorable Court in **ERC Case No. 2011-019MC**

entitled "In the Matter of the Petition for Confirmation and/or Prompt Reclassification of HHIC-PHIL Inc.'s Power Lines as Transmission Assets", wherein it was declared that:

"In the Commission's Resolution No. 41, Series of 2006, which clarified Resolution No. 25, Series of 2006 entitled, 'A Resolution Adopting the Definition and Boundaries of Connection Assets', Connection Assets (CAs) were defined as those assets that are put in place primarily to connect a Customer to the Grid and used for purposes of Transmission Connection Services for the conveyance of electricity. CAs are facilities 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 connected Customers. **The said Resolution was, however, amended by Resolution No. 16, Series of 2011. In this amended Resolution, the boundary of connection assets from transmission assets was clearly defined considering the functionality of each asset. Hence, bus-in and cut-in connections for load customers that are connection assets were considered as transmission assets. Moreover, connection assets for generation customers functioning as transmission were considered to be transmission assets in the said amended Resolution.**

XXX XXX XXX

Thus, with the entry of RPE, the Hanjin Power Lines, including other associated equipment, are deemed as transmission assets consistent with the guidelines and rules related to the sale of subtransmission assets, particularly **ERC Resolution No. 15, Series of 2011, entitled "Rules for the Approval of the Sale and Transfer of TransCo's Subtransmission Assets and the Acquisition by Qualified Consortiums"** which provides:

*'Section 2. 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 NGCP, which allow the transmission of electricity to a grid from one or more directly connected generators, shall be classified as transmission assets. xxx xxx xxx.” [Emphasis supplied]***

15. This is also in compliance with the provision of the Philippine Grid Code (“PGC”) which requires that all Large Generating Plants such as PB103 should be directly connected to the Grid, *to wit:*

***“GCR 4.4.1 GENERIC REQUIREMENTS FOR ALL LARGE GENERATING PLANTS***

*GCR 4.4.1.1 Requirements Relating to the Connection Point*

*GCR 4.4.1.1.1 The Large Generating Plant’s Equipment shall be directly connected to the Grid.”*

16. The entry of PB103 will provide much needed power and augment the Ancillary Services supply of NGCP in the Visayas Grid, where there is a clear shortage of back-up and ancillary power.

**ALLEGATIONS IN SUPPORT OF THE URGENT MOTION FOR THE ISSUANCE OF A CEASE AND DESIST ORDER AGAINST TRANSCO**

17. In a meeting called by NGCP in the Visayas Region last 14 November 2016, Mactan Electric Company

(“MECO”) claimed that it owned the lines where PHINMA Energy was to be connected.

18. Considering this was the first time that PHINMA Energy heard about MECO’s alleged ownership of the line when it has been coordinating with NGCP as regards PB103 as early as early as 13 October 2015<sup>4</sup>, PHINMA Energy inquired with NGCP whether there is truth to the claim of MECO. PHINMA Energy was informed that based on NGCP’s records the Lapu-Lapu 69kV GIS Feeder 1 and the Muelle-Osmena Wharf lines are still owned by TransCo and subject to NGCP’s control, operation and maintenance.
19. PHINMA Energy representatives also met with TransCo Subtransmission Department and Legal Department representatives to inquire on the status of the subject lines. This was the time that they were informed that said assets are the subject of a pending application for sale of subtransmission assets before the Honorable Commission.
20. Considering the substantial investments already made by PHINMA Energy in the connection of its PB103 to the Visayas Grid, any sale of the Lapu-Lapu 69kV GIS Feeder 1 and the Muelle-Osmena Wharf lines to MECO will clearly have injurious effects on PHINMA Energy.
21. Thus, PHINMA Energy is left with no other recourse but to seek this Honorable Commission’s authority to issue a cease and desist order against TransCo, prohibiting TransCo from proceeding with the sale and turn-over of the Lapu-Lapu 69kV GIS Feeder 1 and the Muelle-Osmena Wharf lines to MECO, pending the resolution of the present application.
22. In the event this Honorable Commission finds that the Lapu-Lapu 69kV GIS Feeder 1 and the Muelle-Osmena Wharf lines already perform transmission functions, the subject lines should be taken out of the assets which TransCo may dispose of. TransCo has respected findings of the Honorable Commission as regards the determination of the

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<sup>4</sup> A copy of PHINMA Energy's letter to NGCP dated 13 October 2015 is attached hereto as **Annex "D"** to form an integral part hereof.



functionality of assets, whether the same performs transmission or subtransmission functions.

23. Accordingly, a cease and desist order must be issued to TransCo, enjoining it from proceeding with the sale and turn-over of the Lapu-Lapu 69kV GIS Feeder 1 and the Muelle-Osmena Wharf lines, until after a determination of the functions of the assets are finally and completely resolved through the present Petition.
24. Under Section 43 of the EPIRA, the Honorable Commission has the power to issue provisional orders/reliefs, as follows:

“SEC. 43. Functions of the ERC. –The ERC shall promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry. **In appropriate cases, the ERC is authorized to issue cease and desist order after due notice and hearing.** Towards this end, it shall be responsible for the following key functions in the restructured industry: xxx xxx xxx”

25. The requirements for the issuance of a preliminary injunction stated in the Revised Rules of Court (“Rules of Court”) may be applied suppletorily in the present case pursuant to Section 5, Rule 10 of the ERC Rules of Practice and Procedure:

“Rule 1, Section 5. Application of the Rules of Court. – In the absence of any applicable provision in these rules, the pertinent provisions of the Supreme Court of the Philippines’ Rules of Court and Rules on Electronic Evidence may, in the expeditious disposition of the cases pending before the Commission and whenever practicable and convenient, be applied suppletorily or by analogy.”

26. In the case of *Placido Urbanes, Jr. vs. Court of Appeals*, the Supreme Court laid down the

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<sup>5</sup> G.R. No. 117964, 28 March 2001.

following rules on the issuance of preliminary injunction:

“Rule 58 of the Rules of Court provides for both preliminary and permanent injunction. A preliminary injunction is defined in Section 1 thereof as:

‘An order granted at any stage of an action prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts.’

On the other hand, Section 9 of the same rule defines a permanent injunction in this wise:

‘xxx xxx xxx. If after the trial of the action it appears that the applicant is entitled to have the act or acts complained of permanently enjoined, the court shall grant a final injunction perpetually restraining the party or person enjoined from the commission or continuance of the act or acts or confirming the preliminary mandatory injunction.’

xxx xxx xxx

A writ of preliminary injunction is generally based solely on initial and incomplete evidence. The evidence submitted during the hearing on an application for a writ of preliminary injunction is not conclusive or complete for only a sampling is needed to give the trial court an idea of the justification for the preliminary injunction pending the decision of the case on the merits. As such, the findings of fact and opinion of a court when issuing the writ of preliminary injunction are interlocutory in nature and made even before the trial on the merits is commenced or terminated. There are vital facts that have yet to be presented during the trial which may not be obtained or presented during the hearing on the application for the injunctive writ. The trial court needs to

conduct substantial proceedings in order to put the main controversy to rest. It does not necessarily proceed that when a writ of preliminary injunction is issued, a final injunction will follow. In this case, however, the Court of Appeals dismissed the main action for damages and injunction after evaluating the incomplete and selective evidence presented during the hearing held for the ancillary remedy of preliminary injunction, notwithstanding that there still remained for the resolution of the trial court the issue of whether or not the petitioner is entitled to the damages prayed for as well as the final injunction.

xxx xxx xxx

The trial court did not commit any act that was diametrically opposed to the time-honored legal principles. The issuance of the questioned writ of preliminary injunction was well-supported by sufficient evidence presented by the petitioner during the hearing held for that purpose. The trial courts evaluation of the evidence presented by both contending parties led the said court to hold that justice and equity would be better served if the *status quo* is preserved until a final determination of the merits of the pending case for damages and injunction is laid down. We find nothing whimsical, arbitrary, or capricious in the trial courts ruling.”

27. Further, in the case of **Joaquin Asuncion vs. Hon. Gervacio, Jr.**<sup>6</sup>, the Supreme Court summarized the requisites for the issuance of preliminary injunctive relief:

“The plaintiff/petitioner must establish the following requisites for preliminary injunctive relief: (a) the invasion of the right sought to be protected is material and substantial; (b) the right of the complainant is clear and unmistakable; (c) there is urgent and paramount necessity for the writ to prevent serious damage.”

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<sup>6</sup> G.R. No. 115741, 9 March 1999.

28. It is respectfully submitted that all the requisites for the issuance of a preliminary injunction are present in this case. *First*, any sale of the Lapu-Lapu 69kV GIS Feeder 1 and the Muelle-Osmena Wharf lines will certainly result in material and substantial invasion of the right of PHINMA Energy considering that it PB103 is already connected to the said lines and the it has made substantial investment in the project. *Second*, the right of PHINMA Energy as a connected generator is clear and unmistakable. In good faith, PHINMA Energy applied with and followed the procedures set out in connecting to the grid. It has complied with all the requirements of the Grid/Transmission System in order for PB103 to be connected as a generator and Ancillary Services provider. The sale of the Lapu-Lapu 69kV GIS Feeder 1 and the Muelle-Osmena Wharf lines will put waste all of PHINMA Energy's investments and will definitely have adverse effect on the viability of the PB103 project. *Third*, considering the claim of MECO, there is certainly urgent and paramount necessity for the issuance of the cease and desist order in its favor, enjoining Transco from proceeding with the sale and turn-over of the Lapu-Lapu 69kV GIS Feeder 1 and the Muelle-Osmena Wharf lines.
29. Based on the foregoing, a cease and desist order must be issued against TransCo in order to protect the rights of and prevent serious and irreparable injury to PHINMA Energy.

#### **PRAYER**

WHEREFORE, it is respectfully prayed that this Honorable Commission:

1. Upon filing of the Petition issue a Cease and Desist Order enjoining TransCo from proceeding with the sale and turn-over of the Lapu-Lapu 69kV GIS Feeder 1 and the Muelle-Osmena Wharf lines to Mactan Electric Company or to any other entity;
2. After hearing on the merits, issue a decision **(1)** finding that the Lapu-Lapu 69kV GIS Feeder 1 and the Muelle-Osmena Wharf lines actually

perform transmission functions, and (2) reclassifying the Lapu-Lapu 69kV GIS Feeder 1 and the Muelle-Osmena Wharf lines as “transmission assets” and not qualified for sale by TransCo as “subtransmission assets”.

Other reliefs just and equitable under the premises are likewise prayed for.

The Commission has set the said Petition for initial hearing for the determination of compliance with the jurisdictional requirements, expository presentation, Pre-Trial Conference, and presentation of evidence on **16 August 2017 (Wednesday) 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.**

All persons who have an interest in the subject matter of the proceeding may become a party by filing, at least five (5) days prior to the initial hearing and subject to the requirements in the ERC's Rules of Practice and Procedure, a verified petition with the Commission giving the docket number and title of the proceeding and stating: (1) the petitioner's name and 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 (3) a statement of the relief desired.

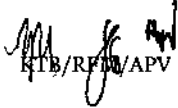
All other persons who may want their views known to the Commission with respect to the subject matter of the proceeding may file their opposition to the Petition or comment thereon at any stage of the proceeding before the Applicants conclude the presentation of their evidence. No particular form of opposition or comment is required, but the document, letter or writing should contain the name and address of such person and a concise statement of the opposition or comment and the grounds relied upon.

All such persons who wish to have a copy of the Petition may request the Petitioner, prior to the date of the initial hearing, that they be furnished with a copy of the Petition. The Petitioner is hereby directed to furnish all those making a request with copies of the Petition and its attachments, subject to reimbursement of reasonable photocopying costs. Any such person may likewise examine the Petition and other pertinent records filed with the Commission during the standard office hours.

WITNESS, the Honorable Commissioners **ALFREDO J. NON**, **GLORIA VICTORIA C. YAP-TARUC**, and **GERONIMO D. STA. ANA**, Energy Regulatory Commission, this 6<sup>th</sup> day of June 2017 in Pasig City.

  
Handwritten signature of Josefina Patricia A. Magpale-Asirit.

**JOSEFINA PATRICIA A. MAGPALE-ASIRIT**  
*Commissioner*

  
Handwritten initials and names: MJB/RFM/APV