

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

**IN THE MATTER OF THE  
APPLICATION FOR  
AUTHORITY TO DEVELOP,  
OWN, OPERATE AND  
MAINTAIN DEDICATED  
POINT TO POINT LIMITED  
FACILITIES TO CONNECT  
TO THE TRANSMISSION  
SYSTEM OF NATIONAL  
GRID CORPORATION OF  
THE PHILIPPINES (NGCP),  
WITH PRAYER FOR  
PROVISIONAL AUTHORITY,**

**ERC CASE NO. 2015-100 MC**

**ASIAN GREENENERGY  
CORPORATION,**

**Applicant.**

X-----X

**D O C K E T E D**

Date: SEP 14 2017

By: 

**O R D E R**

Before the Commission for resolution is the *Motion to Withdraw Application* filed on 29 November 2016 by applicant Asian Greenenergy Corporation (AGEC). In the said Motion, AGEC alleged that, viz:

xxx after reviewing and analyzing further the feasibility of developing, owning, operating, and maintaining dedicated point-to-point limited facilities, it has determined and decided that it is in the best of interest of the Solar Plant Project to discontinue the Project and that prudence and sound business judgment compel AGEC to immediately cease pursuing the Project.

On 20 June 2017, applicant filed a *Second Urgent Motion to Resolve* (The Motion to Withdraw Application) and in furtherance to its 29 November 2016 Motion, stated the following reasons, to wit:

4. AGEC respectfully submits that there should be no issue in granting the Motion. The immediate resolution of the Motion is but proper considering that AGEC's solar power plant with a capacity of approximately 10.5 MWp or 8.16 MWac (the "Power Plant") is an Embedded Generator.

- 4.1 Paragraph 4 of the Petition states that the Power Plant is located in Kibawe, Bukidnon, which is within the franchise area of First Bukidnon Electric Cooperative, Inc. ("FIBECO") and "[p]ower generated from the solar plant shall be delivered both to FIBECO and to the grid.
- 4.2 AGEC, however, wishes to withdraw the Application and no longer connect to the Transmission System of the National Grid Corporation of the Philippines ("NGCP"). Accordingly, the Power Plant will only deliver power generated to FIBECO.
- 4.3 Since AGEC will no longer connect to the Grid, by definition the Power Plant is an Embedded Generator. Under the Philippine Grid Code ("Grid Code"), Embedded Generators "refer to Generating Units that are indirectly connected to the Grid through the Distribution Utilities' system or industrial Generation Facilities that are Synchronized with the Grid".

### **FACTS**

On 02 December 2015, AGEC filed an application seeking the Commission's authority to develop, own, operate, and maintain dedicated point-to-point limited transmission facilities to connect to the transmission system of the National Grid Corporation of the Philippines (NGCP), with prayer for the issuance of provisional authority.

On 25 January 2016, the Commission issued an Order and Notice of Public Hearing setting the case for initial hearing on 24 February 2016. Thereafter, applicant filed its Pre-trial Brief on 19 February 2016.

At the 24 February 2016 hearing held at the ERC Hearing Room, 15<sup>th</sup> Floor, Pacific Center Building, San Miguel Avenue, Ortigas, Pasig City, AGEC, through counsels, appeared. Atty. Allan C. Gaviola entered his appearance as counsel for Intervenor Bukidnon Sub-Transmission Corporation (BSTC). BSTC filed its Petition for Intervention and Pre-trial Brief on even date. The Commission, after determining applicant's compliance with the jurisdictional requirements, declared it to have complied the same whose documents were marked as Exhibits "A" to "L", inclusive, and "Q" to "S", inclusive. Thereafter, the expository presentation, Pre-trial Conference, and evidentiary hearing ensued.

Both AGEC and BSTC manifested that they will file a written joint manifestation regarding the following matters:

1. AGEC will connect to the grid through the existing subtransmission asset owned by BSTC;
2. The said connection is for a non-extendible interim period of one (1) year; and
3. AGEC and BSTC will execute an Interim Connection Agreement.

On 07 April 2016, AGEC and BSTC filed a Joint Manifestation expressing that the National Grid Corporation of the Philippines (NGCP) has given its consent to the interim connection provided that the same shall be for a non-extendible period of one (1) year. It was also manifested that no action for reclassification shall be commenced by NGCP within the same period. As such, BSTC will no longer actively participate in the instant case.

On 14 April 2016, AGEC filed its Formal Offer of Evidence (FOE) and Manifestation stating that it would submit additional documents in compliance to the directives given by the Commission during the 24 February 2016 hearing.

On 29 November 2016, AGEC filed the instant Motion To Withdraw Application.

On 20 December 2016, AGEC filed a Manifestation and Urgent Motion to Resolve (the Motion to Withdraw Application).

On 20 June 2017, AGEC filed a Second Urgent Motion to Resolve (the Motion to Withdraw Application), further elaborating its reasons for the withdrawal of the application stated earlier.

Meanwhile, on 09 December 2015, AGEC filed an application for the issuance of a Certificate of Compliance Feed-In-Tariff Eligible (COC-FIT) for its 10.49 MWp DC Solar Power Plant located in Barangay Labuagon, Kibawe, Bukidnon. The said solar plant commenced commercial operation on 13 March 2016 based on the Certificate of Endorsement (COE) issued by the Department of Energy (DOE).

The Commission granted AGEC Provisional Authority to Operate (PAO) the said 10.49 MWp DC Solar Power Plant on 14 July 2016, pending approval of the instant application. On 23 November 2016, AGEC and First Bukidnon Electric Cooperative, Inc. (FIBECO)

entered into a Connection Service Agreement<sup>1</sup> that would enable AGECE to convey its generated power to FIBECO, as well as receive power from the latter without the need for dedicated point-to-point limited facilities.

Hence, this Motion.

### **ISSUE**

The issue for the Commission's consideration is whether AGECE's Motion to Withdraw application should be granted.

### **DISCUSSION**

Applicant's Motion to Withdraw Application is granted.

Section 4, Rule 7 of the Commission's Rules of Practice and Procedure provide that a party desiring to withdraw its application may do so by filing a motion to withdraw, to wit:

Section 4. *Withdrawal.* – A party desiring to withdraw an application, petition, or complaint filed with the Commission shall file a motion to withdraw such application, petition, or complaint stating therein the reasons for withdrawal. Such motion will be granted or denied by the Commission as a matter of discretion.

Pursuant to the above-quoted rule, applicant AGECE may withdraw its application, provided, that it states its reason therefor in the motion to withdraw. However, the grant or denial thereof is subject to the sound discretion of the Commission.

In its Motion to Withdraw, AGECE stated that "after reviewing and analyzing further the feasibility of developing, owning, operating, and maintaining dedicated point-to-point limited facilities (the "Project"), AGECE has determined and decided that it is in the best interest of the Solar Plant Project to discontinue the Project."

Further, AGECE elaborated its reasons for the withdrawal of the application in its Second Urgent Motion to Resolve the Motion to Withdraw Application, to wit:

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<sup>1</sup> Attached as Annex "B" to the 29 November 2016 letter of Puno Law (AGECE's counsel) to Chairman Jose Vicente B. Salazar and Atty. Debora Anastacia Layugan, MOS Director of ERC, regarding AGECE's request to update the PAO issued to it.

4. AGEC respectfully submits that there should be no issue in granting the Motion. The immediate resolution of the Motion is but proper considering that AGEC's solar power plant with a capacity of approximately 10.5 MWp or 8.16 MWac (the "Power Plant") is an Embedded Generator.
  - 4.1 Paragraph 4 of the Petition states that the Power Plant is located in Kibawe, Bukidnon, which is within the franchise area of First Bukidnon Electric Cooperative, Inc. ("FIBECO") and "[p]ower generated from the solar plant shall be delivered both to FIBECO and to the grid".
  - 4.2 AGEC, however, wishes to withdraw the Application and no longer connect to the Transmission System of the National Grid Corporation of the Philippines ("NGCP"). Accordingly, the Power Plant will only deliver power generated to FIBECO.
  - 4.3 Since AGEC will no longer connect to the Grid, by definition the Power Plant is an Embedded Generator. Under the Philippine Grid Code ("Grid Code"), Embedded Generators "refer (*sic*) to Generating Units that are indirectly connected to the Grid through the Distribution Utilities' system or industrial Generation Facilities that are Synchronized with the Grid."

To further elaborate, the Electric Power Industry Reform Act of 2001 (EPIRA)<sup>2</sup>, as a general rule, provides that *no person, company or entity other than the National Transmission Corporation (hereinafter, TRANSCO) shall own transmission facilities, including point-to-point limited transmission facilities.* TRANSCO's electric transmission functions are currently undertaken and managed by the NGCP pursuant to a concession contract and a Legislative Franchise granted in Republic Act No. 9511 (R.A. 9511).<sup>3</sup>

As provided in Section 9 of the EPIRA, a generation company, in this case AGEC, may, develop and own or operate dedicated point-to-point limited transmission facilities, provided that the same conforms with the Transmission Development Plan (TDP) of TRANSCO and subject to prior authorization by the Commission.<sup>4</sup>

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<sup>2</sup> Section 8, par. 10, EPIRA.

<sup>3</sup> Republic Act No. 9511 (R.A. 9511) or "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 Backbone System of Interconnected Transmission Lines, Substations and Related Facilities, and For Other Purposes". It has the responsibility to operate, manage, and maintain the nationwide Grid of the Republic of the Philippines, for a term of fifty (50) years.

<sup>4</sup> Section 9, par. (f), and last par., EPIRA.

However, AGEC opts to discontinue the project subject of this application as said project is not feasible. It alleged that its Solar Power Plant is an Embedded Generator of the host distribution utility FIBECO. An Embedded Generator refers to *Generating Units that are indirectly connected to the Grid through the Distribution Utilities' system* or industrial Generation Facilities that are Synchronized with the Grid.<sup>5</sup> Technically, an Embedded Generator not only delivers power to a distribution utility but receives power as well from and through the same. Thus, under Section 23 of the EPIRA<sup>6</sup>, FIBECO has the obligation to provide the whole connection facility needed to connect the said Power Plant.

WHEREFORE, premises considered, the Commission hereby GRANTS Asian Greenenergy Corporation's (AGEC) Motion to Withdraw Application. Thus, this application docketed as ERC Case No. 2015-100 MC is withdrawn.

Meanwhile, AGEC and FIBECO are hereby directed to submit a report to the Commission on the status of their connection agreement within a period of fifteen (15) days from receipt hereof.

**SO ORDERED.**

Pasig City, 18 July 2017.

**JOSE VICENTE B. SALAZAR\***  
*Chairman and CEO*

  
**ALFREDO J. NON**  
*Commissioner*

  
**GLORIA VICTORIA C. YAP TARUC**  
*Commissioner*

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

  
**GERONIMO D. STA. ANA**  
*Commissioner*

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\* The Chairman was placed on preventive suspension as per Order of the Office of the President (OP-DC Case No. 17-D-094) dated 02 May 2017 and received on 04 May 2017.

<sup>5</sup> Chapter 1, Phil. Grid Code, 2016 Edition.

<sup>6</sup> SEC. 23. Functions of Distribution Utilities. - A distribution utility shall have the obligation to provide distribution services and connections to its system for any end-user within its franchise area consistent with the distribution code.

**ERC CASE NO. 2015-100 MC**  
**ORDER / 18 JULY 2017**  
**PAGE 7 OF 7**

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