

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



IN THE MATTER OF THE APPLICATION FOR AUTHORITY TO DEVELOP AND OWN OR OPERATE DEDICATED POINT TO POINT LIMITED FACILITIES TO CONNECT THE 650 MW COMBINED CYCLE GAS-FIRED POWER PLANT TO THE NEW PAGBILAO SUBSTATION OF NATIONAL GRID CORPORATION OF THE PHILIPPINES, WITH PRAYER FOR PROVISIONAL AUTHORITY,

ERC CASE NO. 2016-039 MC

ENERGY WORLD POWER OPERATIONS PHILIPPINES, INC. (EWPOPI),

Applicant.

X - - - - - X

D O C K E T E D
Date: OCT 26 2017
By: [Signature]

DECISION

Before the Commission for resolution is Energy World Power Operations Philippines, Inc.'s (EWPOPI) *Application* filed on 15 December 2016, which was amended on 20 February 2017, seeking the Commission's approval for authority to develop and own or operate dedicated point to point limited facilities, to connect the 650 MW combined cycle gas-fired power plant to the New Pagbilao Substation of the National Grid Corporation of the Philippines (NGCP), with prayer for a provisional authority.

In the said *Application*, as amended, EWPOPI alleged the following:

1. Applicant ENERGY WORLD POWER OPERATIONS PHILIPPINES, INC. herein referred as "EWPOPI" a wholly owned subsidiary of Energy World Corporation, Limited, herein referred as "EWC" and is a corporation organized and

existing under the laws of Republic of the Philippines with principal address at 10th Floor, Ramon Magsaysay Centre, Roxas Boulevard, Ermita, Malate, City of Manila, Philippines;

2. EWPOPI may be served with decisions, orders, notices, documents, and other pleadings and processes of this Honorable Commission at the above address;

NATURE OF THE APPLICATION

3. EWPOPI seeks the consideration and approval of this Honorable Commission of its application for authority to develop, ownership, or, operation of interconnection facilities which shall connect EWPOPI's 650MW Combined Cycle Gas-Fired Power Plant to the New Pagbilao Substation of the National Grid Corporation of the Philippines ("NGCP") pursuant to R.A. 9136, or the Electric Power Industry Reform Act of 2001 (the EPIRA Law) and other pertinent rules and regulations;

4. Section 9 of the EPIRA Law provides:

"Section 9. Functions and Responsibilities

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: xxx."

5. Moreover, section 2.9.2 of the Distribution Services and Open Access Rules (DSOAR) allows a generation company to undertake this project with prior authorization of this Honorable Commission, thus:

"A generation company may develop and own or operate dedicated point-to-point limited facilities 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"

STATEMENT OF FACTS

6. The applicant is constructing and developing a 650 MW Combined Cycle Gas-Fired Power Station and LNG Hub Terminal at Barangay Ibabang Polo, Grande Island, Municipality of Pagbilao, Province of Quezon, Philippines;

7. To dispatch power to be generated by the power plant, EWPOPI will be constructing a dedicated point to point limited facilities to connect the 650 MW Combined Cycle Gas-Fired Power Plant to the New Pagbilao Substation of National Grid Corporation of the Philippines;

8. The Applicant received from the Secretary of the Department of Energy of the Republic of the Philippines a permit for the development, construction and operation of a Liquefied Natural Gas Hub Terminal and Regasification Facility (LNG Hub Terminal);

9. EWPOPI was granted an Environmental Compliance Certificate (ECC) by the Department of Environmental and Natural Resources, Environmental Management Bureau(DENR)-EMB);

10. EWC received a Certificate of Endorsement from the Secretary of the Department of Energy of the Republic of the Philippines for the 650 MW Combined Cycle Gas-Fired Power Station to be built adjacent to the Pagbilao LNG Hub Terminal;

11. EWPOPI's project is consistent with the Power Development Plan (PDP) of the government pursuant to the provisions of the EPIRA Law and is entitled to all the rights and privileges consistent with the existing laws and the PDP by virtue of the DOE Certificate of Endorsement;

12. EWPOPI's original plan for its transmission line arrangements involved constructing an approximately 500 meter transmission line to cut-in to an existing 230kV Pagbilao-Tayabas transmission line (currently owned by NGCP);

13. However, notwithstanding that NGCP is mandated to encourage power producers to export their power on a first-come first serve basis, NGCP advised that Team Energy was unwilling to allow EWPOPI to connect into the 230kV line because they claimed it may interfere with or disrupt their ability to export power from the Pagbilao Plant;

14. EWPOPI, on the other hand, is not amenable to this observation since it is possible to introduce technical solutions to address this concern;

15. Thus, EWPOPI was required to develop its own transmission line to connect to the Naga-Tayabas Line based on upgrading an existing 69kV line. The length of the line needed to connect the switchyard to the tapping point is approximately 12kilometers, and the construction of the point-to-point facility, including civil and electromechanical works had yet to be started;

16. EWPOPI had already completed its System Impact Study (SIS). Based on the SIS, the entry of the 650MW Combined Cycle Gas-Fired Power Plant to the Luzon Grid is technically feasible. Further, an approval from NGCP of the said SIS was subsequently received;

17. EWPOPI undertakes to execute the transmission reinforcements necessary to prevent any possible adverse effects of its entry upon the grid, and to further comply with the conditions set forth in the said approval;

18. Subsequently, EWPOPI engaged a third party consultant to conduct Facility Study. Following its submission to NGCP, EWPOPI received a letter from NGCP approving the Facility Study;

19. It is on this basis that NGCP and EWPOPI had executed a Connection Agreement;

20. EWPOPI, at present is initiating negotiations to execute the Metering Service Agreement and Transmission Service Agreement with the NGCP;

21. Under the Connection Agreement issued to EWPOPI by NGCP it proposed there will be a "cut-in" connection to Naga-Tayabas Line for the Phase I (200MW). This has been approved by NGCP as reflected in their review and approval letter to EWC, to quote:

"The Interim scheme for the first 1x200MW Energy World Plant to be connected to Luzon through cut-in along Naga-Tayabas 230kV Line, would not result in overloading of the Tayabas"

22. As highlighted in the System Impact Study (SIS), for Phase II (400MW) this can be done thru a bus-in connection, to quote:

"with 2x200MW units of Energy World Plant, the implementation of New Pagbilao substation is needed. This substation will bus-in to the Naga-Tayabas 230kV line and the 14km."

23. For the Phase III (650MW), which is essentially the Steam Turbine, EWC's Grid Study states that it will connect it to the New Pagbilao Substation;

24. At present, EWPOPI had secured and will secure the necessary permits, licenses and authority from other regulatory agencies;

25. Moreover, EWPOPI recognizes after discussion with a representative of National Grid Corporation of the Philippines (NGCP), that NGCP, pursuant to RA 9511, will be the one to operate and maintain the subject line;

26. In support of the Application, the following documents and/or information are attached thereto as annexes and made integral part thereof:

DOCUMENTS/INFORMATION	ANNEX
Certificate of Registration Issued by the Securities and Exchange Commission	A
Certificate of Endorsement	B
Compliance of Documentary Requirements Required by the Regulatory Operations Service (Standards and Compliance Monitoring Division)	C
Environmental Compliance Certificate	D
Transmission Option for EWPOPI	E
Review of the Third Party System Impact Study (SIS) for the 3X200 MW EWC Combined-Cycle Power Plant Project	F
Approval of the Facilities Study by the NGCP	G
Connection Agreement between NGCP and EWPOPI	H

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

27. EWPOPI repleads the foregoing allegations in support of its prayer for the immediate issuance of provisional authority anchored on the following grounds:

The DOE has a long term plan in place to develop the Philippines' power industry to include a greater reliance on natural gas. According to a report presented by the DOE at the 27 May 2014 LNG Conference, the Philippines as of 2012 was generating 72, 922 GWh with approximately 26.9% of that coming from natural gas. Under the DOE preferred "low carbon scenario" they are forecasting a need for 147,111 GWh in 2030 with 34.3% of that coming from natural gas. Natural Gas. The represents a growth of ~150% of power generation coming from Natural gas or over 4,20MW of new Natural gas power generation based on their estimates. To avoid debilitating power outages in Luzon which will certainly inconvenience consumers and which shall indeed adversely affect investment, it is important to ensure that generation facilities are able to distribute sufficient power to meet the demand as it arises, thus, the purpose of EWPOPI in this application;

28. The development of dedicated point-to-point transmission facilities is a prerequisite to testing and commissioning, and eventually, the commercial operation of the gas-fired power plant;

29. Further, said Gas-Fired Power Plant is the most feasible solution to address the increasing demand of power supply and at the same time, a comparatively cleaner burning fuel to lessen the impact on the environment;

30. Moreover, it is in line with the policy of the State to grant provisional authority as in the case of the EWPOPI to develop and own or operate the dedicated point-to-point facility in order for it to connect to the South Luzon Grid so it could commence commercial operations the soonest possible time;

31. It bears stressing that pursuant to Rule 14, Section 3 of the Rule of Practice and Procedure, the Honorable Commission may issue a provisional authority pending approval on the Application, to wit:

Section 3. Action on the Motion. - Motions for provisional authority or interim relief may be acted upon with or without hearing. The Commission shall act on the motion on the basis of the allegations of the application or petition and supporting documents and other evidences that applicant or petitioner has submitted and the comments or opposition filed by any interested person, if there be any. (Emphasis supplied)

32. We respectfully submit that there is therefore a sufficient basis for the issuance of a provisional authority pending the issuance of a final decision on the merits of this Application.

P R A Y E R

WHEREFORE, premises considered, EWPOPI most respectfully prays of this Honorable Commission:

1. Pending hearing, ISSUE an Order provisionally approving the authority to develop and own or operate dedicated point to point limited facilities to connect the 650 MW Combined Cycle Gas-Fired Power Plant to the New Pagbilao Substation of National Grid Corporation of the Philippines;
2. After due notice and hearing, ISSUE a Decision approving the Application and permanently authorizing the development and ownership, or, operation of a dedicated point to point limited facilities.

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

The Commission, having found the said *Application* to be sufficient in substance with the required fees having been paid, issued an *Order* and a *Notice of Public Hearing*, both dated 25 January 2017, setting the case for initial hearing on 28 February 2017.

On 21 February 2017, a *Notice of Withdrawal of Appearance* dated 20 February 2017 was filed by applicant's counsel-on-record, Atty. Kristine R. Marallag-Ave. On even date, an *Entry of Appearance With Motion To Reset Hearing of the Case and With Motion For Leave to File Amended Application* dated 20 February 2017 was filed by applicant EWPOPI through its new counsel, Atty. Leoncio H. Superio.

Finding the said motions to be meritorious, the Commission issued an *Order* dated 24 February 2017 granting the same and cancelling the hearing set on 28 February 2017. On even date, Team Energy Corporation (TEC) filed a *Manifestation*, together with its *Petition for Intervention and Pre-trial Brief*.

On 27 February 2017, another *Order* and a *Notice of Public Hearing* were issued by the Commission setting anew the case for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on 21 March 2017.

In the same *Order*, EWPOPI was directed to cause the publication of the *Notice of Public Hearing*, at its own expense, once (1x) in a newspaper of general circulation in the Philippines, with the date of publication to be made not later than ten (10) days before the date of the scheduled initial hearing.

The Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress were furnished with copies of the *Order* and the *Notice of Public Hearing*, and were requested to have their respective duly authorized representatives present at the initial hearing.

Likewise, the Offices of the Provincial Governors, the City and Municipal Mayors, and the Local Government Unit (LGU) legislative bodies within the affected area were furnished with copies of the *Order* and *Notice of Public Hearing* for the appropriate posting thereof on their respective bulletin boards.

Applicant EWPOPI filed on 6 March 2017 its *Comment/Opposition to the Petition for Intervention of Team Energy Corporation* dated 1 March 2017.

On 16 March 2017, Ancheta & Associates filed its *Entry of Appearance as Collaborating Counsel* for EWPOPI. On even date, Applicant EWPOPI filed its *Pre-trial Brief* dated 15 March 2017, to present Mr. Brian J. Allen as witness.

An ocular inspection of the subject facility was held on 17 March 2017.

On 21 March 2017, EWPOPI filed an *Ex Parte Compliance with the Jurisdictional Requirements* dated 15 March 2017 and a *Supplemental Opposition to the Petition for Intervention dated 23 February 2017* dated 21 March 2017.

During the 21 March 2017 hearing, EWPOPI and TEC appeared through their respective counsels. EWPOPI submitted its compliance with the jurisdictional requirements of the Commission, duly marked as Exhibits "A" and series. The expository presentation was delivered by Mr. Brian J. Allen, EWPOPI's Executive Director. The printed copy of the expository presentation was marked as Exhibit "L" and was offered to form part of the testimony of the witness. TEC was the only Intervenor that was admitted in the instant case.

Mr. Allen was presented as Applicant's witness and was made to identify his Judicial Affidavit and the signature therein which were marked as Exhibits "M" and "M-1", respectively. The Commission, as well as Intervenor TEC, propounded clarificatory questions which the witness addressed. The Applicant was directed to submit additional documents for the evaluation of its Application.

On 05 April 2017, EWPOPI filed its *Formal Offer of Exhibits*, while Intervenor TEC filed on 17 April 2017 a *Manifestation* reiterating its support for the instant application, subject to the qualification that EWPOPI will not in any way connect to the Pagbilao-Tayabas line.

Having found the exhibits contained in Applicant's *Formal Offer of Exhibits* to be relevant and material in the evaluation of this case, the Commission issued an *Order* dated 15 June 2017, admitting the exhibits and declaring the case submitted for resolution.

ISSUES

The issues for the Commission's resolution are: (1) whether EWPOPI should be given authority to develop and own or operate dedicated point to point limited facilities, to connect the 650 MW combined cycle gas-fired power plant to the New Pagbilao Substation of the NGCP; and (2) whether EWPOPI's prayer for certain documents to be treated confidential be granted.

COMMISSION'S RULING

The Commission grants Applicant EWPOPI the authority to develop and own a dedicated point-to-point limited facility to connect its 650 MW Combined Cycle Gas-Fired Power Plant (CCGPP) to the Luzon Grid, subject to certain conditions.

On the prayer for confidential treatment of information, the Commission partially grants the same.

DISCUSSION

EWPOPI is a corporation organized and existing under the laws of the Republic of the Philippines. It is currently constructing and developing a 650 MW CCGPP and a Liquefied Natural Gas Hub Terminal at Barangay Ibabang Polo, Grande Island, Municipality of Pagbilao, Province of Quezon, Philippines.

EWPOPI's power project is consistent with the Power Development Plant (PDP) of the government pursuant to the provisions of the Electric Power Industry Reform Act (EPIRA) and it is entitled to all the rights and privileges consistent with the existing laws and the PDP by virtue of the DOE Certificate of Endorsement No. 2015-01-007 dated 2 February 2015.

Project Description

In order to dispatch the capacity to be generated by the CCGPP, the applicant deems it necessary, feasible and cost-effective to connect the said plant to the Luzon Grid through dedicated point-to-point limited facility.

It will be connected to the New Pagbilao Substation of the NGCP, approximately 14 kilometers in length from the power plant to the connection point.

To dispatch its power to the grid, EWPOPI will develop a dedicated point-to-point limited facility which consists of the following:

- Substation;
- 14 kilometer line;
- Metering Facilities;
- Protection and Grounding System; and
- Telecommunication Facilities.

Need for the Project

As stated in the *Application* and as manifested during the hearing, the dedicated point-to-point limited facility will be utilized by EWPOPI to connect and deliver its generated power to the NGCP's Transmission System.

Project Rationale

The dedicated point-to-point limited facility is necessary for the power plant to deliver its generated power to the grid through the transmission system of NGCP.

Result of the System Impact Study (SIS)

On November 2013, EWPOPI submitted its SIS for the 3x200 MW EWPOPI Combined-Cycle Power Plant to determine the impact of the proposed project to the operating performance of the Luzon Grid. Technical analyses conducted include load flow, N-1 contingency analysis, short circuit and transient stability simulations. All analyses were performed in accordance with the requirements of the PGC and the current transmission planning criteria of the NGCP.

On May 2014, NGCP approved the SIS submitted by EWPOPI, stating that the conclusion in the SIS submitted by EWPOPI provides an acceptable assessment of the impact of the proposed connection of 3 x 200 MW EWPOPI Plant to the Luzon Grid.

On 25 November 2016, NGCP confirmed that the May 2014 SIS Review Report is still consistent with NGCP's recommended connection scheme and that the required transmission facilities and grid reinforcement are still relevant and consistent with NGCP's Transmission Development Plan.

NGCP likewise reviewed and approved the submitted Facility Study of EWPOPI for the 600 MW Combined Cycle Power Plant on 26 November 2015.

Option/Alternative Considered

EWC's original plan for its transmission line arrangements involved constructing an approximately 500 meter transmission line to cut-in to an existing 230kV Pagbilao transmission line (currently owned by NGCP). This 230kV transmission line has a capacity of approximately 1200-1300MW. Team Energy (Pagbilao Coal Power Station) is currently using approximately 700MW, leaving spare capacity of approximately 400-500MW. However, notwithstanding that NGCP is mandated to encourage power producers to export their power on a first-come first serve basis, NGCP advised that Team Energy was unwilling to allow EWC to connect into the 230kV line because they claimed it may interfere with or disrupt their ability to export power from the Pagbilao Plant.

Confidentiality of Information

Applicant EWPOPI prayed for the confidential treatment of information contained in the following documents:

Marking	Nature of Document	Applicant's Legal Basis
Exhibits E-1 to E-18	Submissions in compliance with ERC documentary requirements for authority to develop and own or operate a limited point-to-point transmission facilities (attached in the Application as Annex C-1 to C-18)	<ul style="list-style-type: none"> • Constitute confidential business information under R.A. No. 10667 (Philippine Competition Act) as they relate to, among other things, Applicant's operations.
Exhibit H	Transmission Options for EWPOPI	<ul style="list-style-type: none"> • The various drawings and specifications are protected under Sec. 33 of R.A. No. 9266 (Architecture Act of 2004).
Exhibit I	National Grid Corporation of the Philippines' (NGCP) Review of the	

	Third Party System Impact Study	<ul style="list-style-type: none"> • Copyright and other intellectual property rights under R.A. No. 8293 (Intellectual Property Code of the Phils). • Actual and valuable proprietary interest to protect (not generally available to the public). • With commercial value (expenses were incurred by Applicant in their preparation). • Undue disclosure can be maliciously used by other entities for personal gain and interest to the damage and prejudice of Applicant.
Exhibit J	NGCP's Review of the Facilities Study of Energy World Corp, the parent company of EWPOPI, for the cut-in interconnection of its power plant project in Pagbilao, Quezon along Tayabas-Naga 230 kV Line 1	
Exhibit K	Connection Agreement Between NGCP and EWPOPI	
Exhibit L	Expository Presentation	
Exhibit N	230 kV Transmission Line Single Line Diagram (SLD) for First (Interim)	
Exhibit N-1	230 kV Transmission Line Single Line Diagram (SLD) for Final	

The Commission's Rules of Practice and Procedure (RPP) allows the request for confidential treatment of information under Rule 4.¹ To determine whether or not to accord confidential treatment to information, the Commission may review the information claimed to be confidential.²

In the case of *Air Philippines Corporation vs. Pennswell, Inc.*³, the Supreme Court affirmed Pennswell's "right to guard its trade secrets, manufacturing formulas, marketing strategies, and other confidential programs and information against public disclosure on the ground that such information can be illegally and unfairly utilized by business competitors who, through their access to Pennswell's business secrets, may use the same for their own private gain, to the irreparable prejudice of the latter."

In the same case, *trade secret* was defined, 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.⁴ The definition also extends to a secret formula or process not

¹ A party to any proceeding before the Commission may request that information about that party in the Commission's possession not be disclosed. xxx

² Section 2, Rule 4, ERC Rules of Practice and Procedure.

³ G.R. No. 172835, 13 December 2007.

⁴ *Ibid.*, citing BLACKS LAW DICTIONARY 1494 (1991), 6TH ed.

patented, but known only to certain individuals using it in compounding some article of trade having a commercial value.⁵ 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 opportunity to obtain an advantage over competitors who do not possess the information.⁶ 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.⁷ It is indubitable that trade secrets constitute proprietary rights. The inventor, discoverer, or possessor of a trade secret or similar innovation has rights therein which may be treated as property, and ordinarily an injunction will be granted to prevent the disclosure of the trade secret by one who obtained the information "in confidence" or through a "confidential relationship."⁸ American jurisprudence has utilized the following factors⁹ to determine if an information is a trade secret, *to wit*:

- (1) the extent to which the information is known outside of the employer's business;
- (2) the extent to which the information is known by employees and others involved in the business;
- (3) the extent of measures taken by the employer to guard the secrecy of the information;
- (4) the value of the information to the employer and to competitors;
- (5) the amount of effort or money expended by the company in developing the information; and

⁵ *Ibid.*, citing *Id.*, citing *Palin Mfg. Co., Inc. v. Water Technology, Inc.*, 103 Ill.App.3d 926, 59 Ill.Dec. 553, 431

⁶ *Ibid.*, citing AMJUR EMPLOYMENT 178, citing *Saunders v. Florence Enameling Co., Inc.*, 540 So. 2d 651 (Ala. 1988); *Air Products and Chemicals, Inc. v. Johnson*, 296 Pa. Super. 405, 442 A.2d 1114 (1982). The foregoing citation also expounded that trade secrets need not be technical in nature. Market-related information such as information on current and future projects, as well as potential future opportunities for a firm, may constitute a trade secret., citing *Air Products and Chemicals, Inc. v. Johnson*, 296 Pa. Super. 405, 442 A.2d 1114 (1982)

⁷ *Ibid.*, citing *Id.*, citing *Saunders v. Florence Enameling Co., Inc.*, 540 So. 2d 651 (Ala. 1988); *Air Products and Chemicals, Inc. v. Johnson*, 296 Pa. Super. 405, 442 A.2d 1114 (1982). A former employee of an insurance company, who routinely received information regarding the company's customer list and policy termination dates while serving as vice-president, was barred from disclosing that information, even though the company had partially disclosed the customer list in attempts to secure new clients. *Alexander & Alexander, Inc. v. Drayton*, 378 F. Supp. 824 (E.D. Pa. 1974), *aff'd*, 505 F.2d 729 (3d Cir. 1974)

⁸ *Ibid.*, citing 9 A.L.R.3d 665, citing Am Jur, Injunctions (Rev ed 72). The Restatement of the Law of Torts 757, emphasizes that liability for the disclosure of a trade secret learned under conditions giving no privilege of disclosure or use is not based on the mere copying or use but on the improper means by which the information was procured.

⁹ *Ibid.*, citing *Id.*, as adopted from the Uniform Trade Secrets Act which is intended to provide states with a legal framework for improved trade-secret protection.

- (6) the extent to which the information could be easily or readily obtained through an independent source.¹⁰

After perusing the information sought to be declared confidential, the following are deemed to be proprietary rights of Applicant EWPOPI which must be kept confidential:

- *Options/Alternatives (Exhibit E-2)*
- *Project financial and economic cost analysis (Exhibit E-5)*
- *Conceptual engineering design and drawings (Exhibit E-6)*
- *Project cost estimates based on submitted engineering design and bill of materials (Exhibit E-7)*
- *Gantt chart (Exhibit E-8)*
- *Proof of technical capability (Exhibit E-14)*
- *Personnel responsible for the design (Exhibit E-15)*
- *Transmission Options (Exhibit H)*

These documents partake of plans, business models, processes, or drawings belonging to Applicant EWPOPI with proprietary value that constitute trade secrets. Disclosing the said information would hamper healthy competition between EWPOPI and other similar generation companies, and as such are proper subject of confidential treatment.

The information in these documents are being used in its business which gives the owner an opportunity to obtain an advantage over competitors who do not possess the information. Moreover, the data and information in the said documents are known only to the Applicant and to whom it is necessary to confide it. Being trade secrets of the Applicant, the data and information must be accorded confidential treatment.

As alleged, these documents are also protected under Section 33 of Republic Act No. 9266¹¹ or “The Architecture Act of 2004”, to wit:

*Section 33. Ownership of Plans, Specifications and
other Contract Documents*

¹⁰ *Ibid.*, citing *Id.*

¹¹ An Act Providing for a More Responsive and Comprehensive Regulation for the Registration, Licensing and Practice of Architecture, Repealing for the Purpose Republic Act No. 545, as Amended, Otherwise Known as “An Act to Regulate the Practice of Architecture in the Philippines,” and for Other Purposes.

Drawings and specifications and other contract documents duly signed, stamped or sealed, as instruments of service, are the intellectual property and documents of the architect, whether the object for which they are made is executed or not. It shall be unlawful for any person to duplicate or to make copies of said documents for use in the repetition of and for other projects or buildings, whether executed partly or in whole, without the written consent of architect or author of said documents.

Further, the following agreements entered into by EWPOPI have non-disclosure implications which should be properly covered by the rules on confidential treatment of information:

- *Technical Analysis and Grid Impact Study and Facility Study (Exhibit E-4)*
- *NGCP's Review of the Third Party System Impact Study (Exhibit I)*
- *NGCP's Review of the Facilities Study of Applicant's parent company Energy World Corp. (Exhibit J)*
- *Connection Agreement between NGCP and EWPOPI (Exhibit K)*

The *Copy of COC (Exhibit E-11)* prayed for by Applicant EWPOPI to be treated confidential was actually a copy of its application for COC filed before this Commission. Since the same contains personal information of confidential nature of Applicant, it should also be granted confidentiality in the instant case.

On the other hand, Section 2, Rule 4 of the Commission's RPP provides for grounds when the request for confidential treatment may be denied, as follows:

The Commission may deny the request for confidential treatment of information on grounds such as, but not limited to the following:

- (a) The party requesting confidential treatment of information has no actual, valuable proprietary interest to protect with respect to the information sought to be treated as confidential.
- (b) The information is, at the time of the request, generally available to the public by means other than through a breach of any confidentiality obligation with respect to such information.

- (c) The information is, at the time of the request, available to or already in the possession of the Commission on a non-confidential basis from a source that, to the knowledge of the Commission, has lawfully acquired such information on a non-confidential basis.

The *Description of the project (Exhibit E-1)* and *Transmission Line Single Line Diagram for the first (interim) and final (Exhibits N and N-1)* cannot be the subject of confidential treatment as the information contained therein do not have any valuable proprietary interest to warrant treatment of confidentiality. Likewise, the documents described as *Proof of project's consistency with the TDP (Exhibit E-3)* cannot be the subject of confidential treatment as these were lifted from various Transmission Development Plans of the NGCP which are available to the general public, downloadable through their website, while the *Expository Presentation (Exhibit L)* was already made available to the public by Applicant EWPOPI when the same was presented during the public hearing for the instant case on 21 March 2017.

The *Key Management Officials (Exhibit E-12)*, *Corporate or partnership documents (Exhibit E-13)*, and the *Financial statements of applicant and principal owners of the business (Exhibits E-17 and E-18)* are documents that form part of the general information sheet regularly submitted by Applicant before the Securities and Exchange Commission (SEC), in compliance with the government agency's reportorial requirements.¹² Thus, the same are not proper subjects of confidentiality treatment prayed for.

Pursuant to Section 19 (b), Rule 132 of the Rules of Court,¹³ documents acknowledged before a notary public are considered public documents. The following cannot be treated confidential in the instant Application because these documents were acknowledged before a notary public; thus, public documents and any information therein is generally available to the public:

- *Secretary's certificate (Exhibit E-9)*
- *Sworn statement (Exhibit E-10)*
- *Statement of Compliance and Compliance Plan to the PGC (Exhibit E-16)*

¹² Available at <http://www.sec.gov.ph/reportorial-requirements/corporations-with-primary-licenses-2/>.

¹³ Section 19 (b), Rule 132 of the Rules of Court provides: "For the purpose of their presentation evidence, documents are either public or private. Public documents are xxx (b) Documents acknowledge before a notary public except last wills and testaments; xxx

Technical Configuration

In order for EWPOPI to dispatch its generated power to the grid, it should connect its power plant to the Luzon Grid. By default, NGCP is mandated by law to connect generation companies, distribution utilities and suppliers requiring transmission services. However, Section 9(f) of the Electric Power Industry Reform Act of 2001 (EPIRA), gives the generation company the option to develop, own and operate their dedicated point-to-point limited facilities, to wit:

“x x x. 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: X x x.

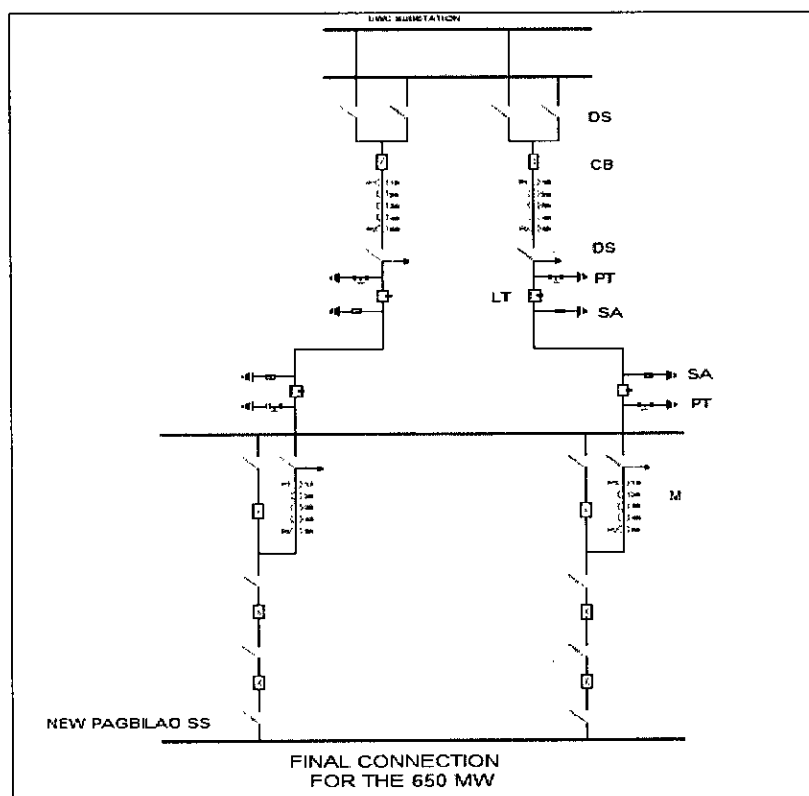
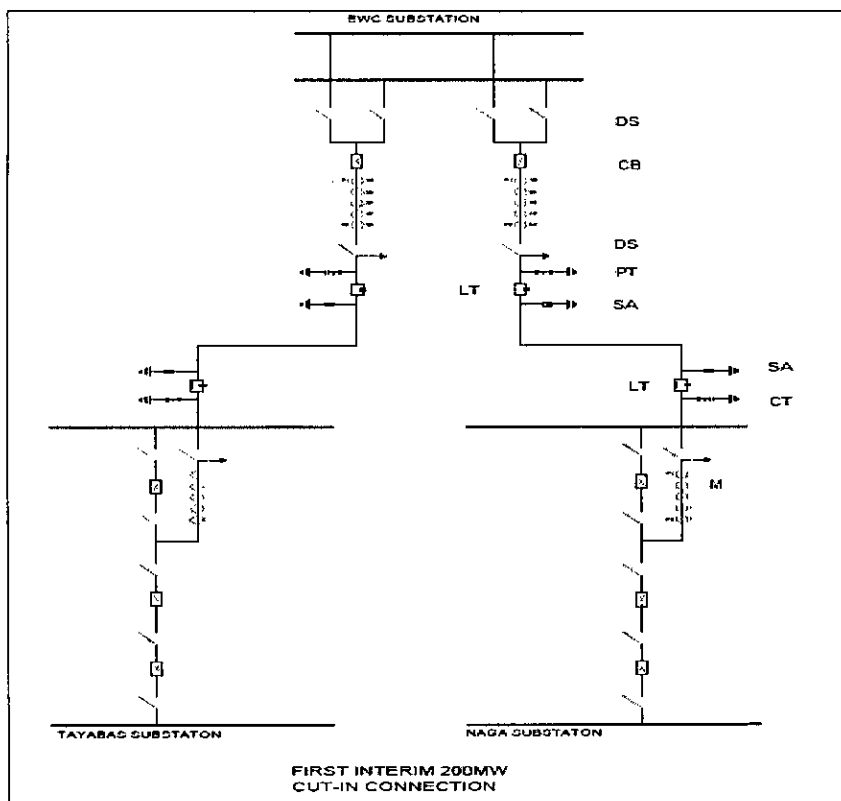
Hence, the application.

The proposed connection scheme is consistent with the provisions of PGC and should comply with the requirements relating to the connection point provided in the same code, which states:

- GCR 4.6.1.1 The Distribution Utility's or other Grid User's Equipment shall be connected to the Grid at Voltage level(s) agreed to by the Transmission Network Provider and the Distribution Utility (or other Grid User) based on Grid Impact Studies.*
- GCR 4.6.1.2 All substations shall be controlled by Circuit Breakers that are capable of interrupting the maximum short circuit current at the point of connection.*
- GCR 4.6.1.3 Disconnect switches shall also be provided and arranged to isolate the Circuit Breaker for maintenance purposes.*
- a. Connections to the Grid above 69 kV shall at least be provided with surge arrester, disconnect switches and Circuit Breaker of appropriate rating at the Connection Point;*

The single line diagram below illustrates EWPOPI's compliance with the abovementioned PGC provisions.

Single Line Diagram



The proposed 3x200 MW CCGPP of EWPOPI will connect to the Luzon Grid through NGCP's New Pagbilao Substation. Initially however, since the New Pagbilao Substation is yet to be constructed, the proposed project shall be connected through an interim connection. As proposed by NGCP, the interim connection consists of cutting-in along Naga-Tayabas 500 kV line, which is presently energized at 230 kV. The interim connection will be utilized until the New Pagbilao Substation is completed. EWPOPI shall construct a 14-km, 4x795 MCM ACSR 230 kV line with a capacity of 1,200 MW from the connection point to the power plant. Three step-up transformers each rated at 245 MVA 18/230 kV will be used to satisfy the requirements of NGCP and PGC's provisions.

Based on the single line diagram, the revenue meters are located near the connection point, compliant with Section 9.2.1 of the Philippine Grid Code (PGC), to wit:

Section 9.2.1.1 The metering point between the Grid and User System shall be at the Connection Point

Lastly, the same diagram shows that the proposed project is to be used solely by the Applicant and no other user is connected, in compliance with Rule 5 Section 5a(i) of the Implementing Rules and Regulations of the Electric Power Industry Act of 2001 to wit:

xxx. 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.

Technical and Financial Capability

EWPOPI manifested during the 21 March 2017 hearing that it intends to secure the services of NGCP for the operation and maintenance of the subject facilities.

EWPOPI claims that it has the financial capability to undertake the development and construction of the dedicated point-to-point limited line. Its financial capability will be assessed in the application of EWPOPI for Certificate of Compliance (COC), ensuring that the Applicant is compliant with the financial qualifications set forth in the Financial Guidelines for Generation Companies.

Project Cost

The cost of the dedicated point-to-point limited facility of EWPOPI amounts to USD13,835,218 or PhP694,389,591.42 at PhP50.19 to USD1.00 exchange rate.

It is worthy to note that the estimated project cost is only for the purpose of computing the applicable permit fee (based on the total project cost evaluated, disregarding the functions and classification of each facility) and not for rate making purposes, considering that this is not the actual cost or the Optimized Depreciated Replacement Cost (ODRC). It should also be noted that the assessment was made under the conditions presented as evidence and may vary if relevant circumstances change.

It should also be emphasized that the aforementioned amounts are not necessarily the fair market value that should be used when the subject assets are actually transferred to NGCP/Transco.

Prescribed Fees

Permit fee for the authority to construct the subject project is prescribed under Commonwealth Act No. 146, as amended, for the reimbursement of the expenses of the Commission in evaluating the case based on its total project cost, computed as:

$$\begin{aligned} \text{Permit Fee} &= \frac{\text{Total Project Cost} \times 0.75}{100} \\ &= \frac{694,389,591.42 \times 0.75}{100} \\ \text{Permit Fee} &= \text{PhP5,207,921.94} \end{aligned}$$

WHEREFORE, the foregoing premises considered, Energy World Power Operations Philippines, Inc. (EWPOPI) is hereby **AUTHORIZED** to develop and own a dedicated point-to-point limited facility to connect its 650 MW Combined Cycle Gas-Fired Power Plant (CCGPP) to the Luzon Grid, subject to the following conditions:

- The National Grid Corporation of the Philippines (NGCP) shall operate and maintain the subject dedicated point-to-point limited facility subject to applicable charges;

- The subject facility shall be developed and constructed in accordance with the System Impact Study (SIS) and Facility Study (FS) requirements so as not to result in the degradation of NGCP's transmission system;
- The dedicated point-to-point limited facility shall be used solely by the generating facility; and
- Any portion of the dedicated point-to-point limited facilities required for competitive purposes or to connect any other user, ownership of the same shall be transferred to TransCo/NGCP at a fair market price but subject to optimization.

Relative thereto, EWPOPI shall be required to pay the permit fee amounting to **Five Million Two Hundred Seven Thousand Nine Hundred Twenty-One and 94/100 Pesos (PhP5,207,921.94)**, computed based on Section 40 (g) of Commonwealth Act No. 146 and the Revised Schedule of ERC Fees and Charges.

Accordingly, the prayer of Applicant EWPOPI for confidential treatment of the following documents is hereby GRANTED:

- Options/Alternatives (Exhibit E-2);
- Technical Analysis and Grid Impact Study and Facility Study (Exhibit E-4);
- Project financial and economic cost analysis (Exhibit E-5);
- Conceptual engineering design and drawings (Exhibit E-6);
- Project cost estimates based on submitted engineering design and bill of materials (Exhibit E-7);
- Gantt chart (Exhibit E-8);
- Copy of COC (Exhibit E-11);
- Proof of technical capability (Exhibit E-14);
- Personnel responsible for the design (Exhibit E-15);
- Transmission Options (Exhibit H);
- NGCP's Review of the Third Party System Impact Study (Exhibit I);
- NGCP's Review of the Facilities Study of Applicant's parent company Energy World Corp. (Exhibit J); and
- Connection Agreement between NGCP and EWPOPI (Exhibit K).

However, the following documents are DENIED treatment of confidentiality:

- Description of the project (Exhibit E-1);
- Proof of project's consistency with the TDP (Exhibit E-3);
- Secretary's certificate (Exhibit E-9);
- Sworn statement (Exhibit E-10);
- Key management officials (Exhibit E-12);
- Corporate or partnership documents (Exhibit E-13);
- Statement of Compliance and Compliance Plan to the PGC (Exhibit E-16);
- Financial statements of applicant and principal owners of the business (Exhibits E-17 and E-18);
- Expository Presentation (Exhibit L); and
- Transmission Line Single Line Diagram for the first (interim) and final (Exhibits N and N-1).

SO ORDERED.

Pasig City, 06 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

LS:  apv

ROS:  fgld

y

UC

* The Chairman was placed on preventive suspension as per Order of the Office of the President (OP-DC Case No. 17-D-094) dated 2 May 2017 and received on 04 May 2017.

UC

Copy Furnished:

1. **Atty. Leoncio H. Superio**
Counsel for Applicant EWPOPI
The Law Firm of L.H Superio and Associates
Unit 2807, 28th Floor Cityland Pasong Tamo Tower
2210 Chino Roces Avenue, Makati City
2. **Ancheta & Associates**
Collaborating Counsel for Applicant EWPOPI
Suite 2404 Entrata Urban Complex
2609 Civic Drive, Filinvest Corporate City
Alabang, Muntinlupa City 1781
3. **Energy World Power Operations Philippines, Inc. (EWPOPI)**
Applicant
10th Floor, Ramon Magsaysay Centre
Roxas Boulevard, Ermita, Manila
4. **Puyat Jacinto & Santos**
Counsel for Intervenor Team Energy Corporation (TEC)
10th Floor, 8 Rockwell
Hidalgo corner Plaza Drive
Rockwell Center, Makati City 1200
5. **Team Energy Corporation**
Intervenor
25th Floor W Fifth Avenue Building
Bonifacio Global City, Taguig City
6. **Office of the Solicitor General**
134 Amorsolo Street, Legaspi Village
Makati City, Metro Manila
7. **Commission on Audit**
Commonwealth Avenue
Quezon City, Metro Manila
8. **Senate Committee on Energy**
GSIS Building, Roxas Boulevard
Pasay City, Metro Manila
9. **House Committee on Energy**
Batasan Hills
Quezon City, Metro Manila
10. **President**
Philippine Chamber of Commerce and Industry (PCCI)
McKinley Hill, Fort Bonifacio
Taguig
11. **Office of the City Mayor**
City of Manila
12. **Office of the LGU Legislative Body**
City of Manila

13. **Office of the Governor**
Province of Quezon
14. **Office of the LGU Legislative Body**
Province of Quezon
15. **National Grid Corporation of the Philippines**
Quezon Avenue corner BIR Road
Diliman, Quezon City
16. **Regulatory Operations Service (ROS)**
Energy Regulatory Commission
17th Floor, Pacific Center Building
San Miguel Avenue, Pasig City