

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



**IN THE MATTER OF THE
APPLICATION FOR
APPROVAL OF THE POWER
SUPPLY AGREEMENT
(PSA) FOR THE SUPPLY OF
POWER TO ILIGAN LIGHT
AND POWER, INC. (ILPI),
WITH PRAYER FOR
PROVISIONAL
AUTHORITY,**

ERC CASE NO. 2011-029 RC

**ILIGAN LIGHT AND
POWER, INC. (ILPI) AND
MAPALAD ENERGY
GENERATING
CORPORATION (MEGC),
Applicants.**

X-----X

D O C K E T E D
Date: **FEB 22 2018**
By: _____

ORDER

Before the Commission for resolution is the *Motion for Reconsideration* (Motion) dated 17 February 2017 filed by Intervenor Uriel Borja on 22 February 2017.

In its Motion, Intervenor Borja seeks, among others, for the reversal of the Commission's Order dated 18 January 2017 and subsequently issue a Subpoena Ad Testificandum to Mr. Ronald Zaragoza.

ANTECEDENTS

In the Order dated 18 January 2017, the Commission denied Intervenor Borja's Request for the Issuance of Subpoena Ad Testificandum to Mr. Ronald Zaragoza (Zaragoza) and ruled that the intended testimony of the witness, Mr. Zaragoza, who was a part of the team that inspected the two (2) 7.5 MW Sulzer Engines in Japan, could have been asked by the Intervenor from Mapalad Energy

Generating Corporation's (MEGC) witness, Engr. Lorimer T. Abejuela (Engr. Abejuela), the Vice President for Operations of MEGC.

Hence, Intervenor Borja filed the instant Motion. Intervenor Borja contended that Mr. Zaragoza's testimony is necessary to establish the condition of the power plant when MEGC purchased the same from Chase Power and that the cross-examination of Engr. Abejuela was limited to questions contained in his Judicial Affidavit, which serves as his direct testimony.

ISSUE

The issue for the Commission's resolution is whether or not the Commission should grant Intervenor Uriel Borja's Motion for Reconsideration.

THE COMMISSION'S RULING

The Commission, during its deliberation on 24 October 2017, denies the Motion for Reconsideration filed by Intervenor Uriel Borja.

DISCUSSION

Section 7 of Rule 18 of the Commission Rules of Practice and Procedures (RPP) provides:

Section 7. Cross-examination. - Cross-examination of the witness presenting such written testimony shall proceed and terminate at the hearing at which it is authenticated by the witness, unless the Commission or presiding officer for good cause shall otherwise direct. **In the cross-examination of witnesses, only relevant, pertinent and material questions necessary to enlighten the Commission on the issues shall be allowed.** (Emphasis supplied.)

The RPP provides ample opportunity for the cross-examination of a witness on matters stated in the direct examination, or connected therewith, with sufficient fullness and freedom to test his accuracy and truthfulness and freedom from interest or bias, or the reverse, and to elicit all important facts bearing upon the issue.

In this regard, the issuance of a *subpoena ad testificandum* to compel another person to testify on the same facts would be redundant with what the cross-examination could have served if conducted properly and effectively.

According to Intervenor Borja, Mr. Zaragoza's testimony is necessary to establish the condition of the power plant when MEGC purchased the same from Chase Power. The same subject matter was already covered by the testimony of Engr. Abejuela and would have been addressed during his cross-examination.

Therefore, the issuance of another *subpoena ad testificandum* to compel Mr. Zaragoza to testify on the same matters would be superfluous. Hence, the Motion of Intervenor Borja is hereby denied.

Nonetheless, the Commission recognizes Intervenor Borja's right to cross-examine the witness. In the broader interest of justice and liberal construction of the rules, the Commission is empowered to exempt itself from the rules and apply the suitable procedure to secure a just and determination of the case, pursuant to Section 3, Rule 1 of the RPP, to wit:

Section 3. General Powers of the Commission under these Rules. - The Commission may issue general or specific procedural directions at any time, including before or during any proceeding.

The Commission may also exempt itself from these rules in the broader interest of justice and apply such suitable procedure that shall secure the just and expeditious determination of the matters in issue.
(Emphasis and underscoring supplied.)

Accordingly, the Commission allows Intervenor Borja the last opportunity to thresh out all the issues pertaining to the condition of the power plant prior to MEGC's acquisition of the same through the cross-examination of Engr. Abejuela for this purpose.

IN VIEW OF THE FOREGOING, the *Motion for Reconsideration* of Intervenor Uriel Borja is hereby **DENIED**. However, in the broader interest of justice and the liberal construction of the rule, Intervenor Borja is given the last opportunity to cross-examine Engr. Lorimer Abejuela on matters related to the condition of the power plant.

ACCORDINGLY, another hearing is set on 22 March 2018 (Thursday) at two o'clock in the afternoon (2:00 P.M.) at the ERC Hearing Room, 15th Floor, Pacific Center Building, San Miguel Avenue, Pasig City.

Relative thereto, the witness Engr. Lorimer Abejuela is hereby recalled to the witness stand. Engr. Abuela is hereby directed to appear on the scheduled hearing for purposes of the cross-examination by Intervenor Borja.

Intervenor Borja is hereby reminded that his failure to appear on the scheduled hearing shall be considered a waiver of his right to cross-examine the witness.


SO ORDERED.

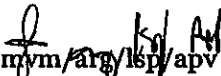
Pasig City, 24 October 2017.


ALFREDO J. NON
Commissioner


GLORIA VICTORIA C. YAP TARUC
Commissioner


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner


GERONIMO D. STA. ANA
Commissioner

LS: 
m/m/arg/lsp/apv

ERC CASE NO. 2011-029 RC
ORDER/ 24 OCTOBER 2017
PAGE 5 of 5

Copy Furnished:

1. Atty. Manuel Torres and Atty. Miguel Mathay
Counsel for Applicants ILPI and MEGC
Quiason Makalintal Barot Torres Ibarra & Sison
21/F, Robinsons Equitable Tower
4 ADB Ave., cor. Poveda St.,
Ortigas Center, Pasig City
2. Baterina Baterina Casals Lozada & Tiblani
Counsel for Intervenor Uriel Borja
Unit 1904, Jollibee Plaza Bldg., F. Ortigas Jr. Ave.
Ortigas Center, Pasig City
3. Iligan Light and Power Inc. (ILPI)
Applicant
Bro. Raymond, Jeffrey Road,
Pala-o, Iligan City
4. Mapalad Energy Generation Corporation (MEGC)
Applicant
Sitio Mapalad, Dalipuga, Iligan City
5. Atty. Eulalio Gaité
Attorney- Iligan City
City Legal Office
City Hall- Buhanginan Hill
Pala-o, Iligan City
6. Office of the City Mayor
Iligan City
7. Dra. Melchie Ambalong
LAPOCOF
c/o GAD Bldg. Brgy. Hall, Bagong Silang, Iligan City