

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



**IN THE MATTER OF THE
APPROVAL FOR THE
RECLASSIFICATION OF THE
CADIZ-SAN CARLOS 69KV
LINE INTO TRANSMISSION
ASSET,**

ERC CASE NO. 2014-033 MC

**NATIONAL GRID
CORPORATION OF THE
PHILIPPINES (NGCP),**

Applicant.

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DOCKETED
Date: APR 19 2018
By: [Signature]

DECISION

Before the Commission for resolution is the *Application* dated 02 May 2014 (Application) filed on 12 May 2014 by National Grid Corporation of the Philippines (NGCP) for the approval for the reclassification of the Cadiz-San Carlos 69kV Line into transmission asset.

In its *Application*, NGCP alleged the following:

1. NGCP is a corporation created and existing under the laws of the Philippines, with principal office address at NGCP Building, Quezon Avenue corner BIR Road, Diliman, Quezon City, where it may be served with notices, orders, resolutions and other issuances of this Honorable Commission through its Office of the General Counsel.
2. Pursuant to Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), NGCP is authorized and responsible for the planning, construction and centralized operation and maintenance of its high-voltage transmission facilities, including grid interconnections and ancillary services, as well as the operation and maintenance of the subtransmission assets until their disposal to qualified distribution utilities.

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3. Among the subtransmission assets operated and maintained by NGCP is the Cadiz-San Carlos 69kV line.
4. It should be noted that the Honorable Commission approved the sale of Cadiz-San Carlos 69 kV Line to VMC Rural Electric Service Cooperative (VRESCO) in its Decision dated October 18, 2010 in ERC Case No. 2009-095 MC. However, NGCP continues to operate and maintain the said line pending the consummation of the sale between the National Transmission Corporation (TRANSCO) and VRESCO.
5. The Cadiz-San Carlos 69 kV Line presently serves one (1) load customer, which is VRESCO while there are two (2) generators who signified their intention to put up power plants and tap to the Cadiz-San Carlos 69kV Line.
6. The San Carlos Biopower, Inc. (SCBI) is presently constructing its 18 MW San Carlos Biomass Power Plant. The power plant will connect at the Cadiz-San Carlos 69 kV line. The proposed power plant, which will be located at San Carlos Economic Zone in Barangay Palampas, San Carlos City, Negros Occidental, was expected to be operational in 2013, but the date was moved to the end of 2014. A System Impact Study (SIS) was undertaken by SCBI and the result of such study was reviewed and the proposed connection scheme was approved by NGCP.
7. In addition, the San Carlos Solar Energy, Inc. (SACASOL) will develop a 19.8 MW Solar Plant which will also connect to the Cadiz-San Carlos 69 kV Line. The proposed power plant, which will be located in San Carlos City, Negros Occidental, is expected to be commissioned by first quarter of 2014 and will deliver power to Negros via Cadiz Substation. An SIS was also undertaken by SACASOL and the result of such study was reviewed and the proposed connection scheme was approved NGCP.
8. A detailed Single Line Diagram showing the Cadiz-San Carlos 69 kV Line and the metering points of the load and generators are attached to the application as **Annex "A"**.
9. As can be seen from the attached diagram, the Cadiz-San Carlos 69 kV line is already performing transmission function taking into account the connection of both load customer and generators to the same line.
10. This situation is covered by the *"Guidelines to the Sale and Transfer of TRANSCO's Subtransmission Assets and the Franchising of Qualified Consortium"* promulgated by the Commission on October 17, 2003. Article 2 Section III of the said guidelines provides:

"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 its concessionaire, **which allow the transmission of electricity to a grid from one or more directly connected generators, shall be classified as transmission assets.**”

(Emphasis supplied)

11. In accordance therewith, the Cadiz-San Carlos 69 kV Line should be classified as a transmission asset.
12. This is supported by the following resolutions of the Commission:
 - a. Section 2.0 of Resolution No. 16 defined Connection Assets as “those assets that are put in place primarily to connect a Customer/s to the Grid and used for purposed of Transmission Connection Services for the conveyance of electricity 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 Customers;”
 - b. Likewise, Section 4.2 of the same resolution provides that “a generation company may develop and own or operate a 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.”
13. Corollarily, any asset which is not solely used by either a load customer or generator should be classified as transmission asset.
14. This is in consonance with several pronouncements of this Commission:
 - a. In ERC Case No. 2010-032 MC entitled “*In the Matter of the Petition for Approval of the Reclassification of the National Transmission Corporation Subtransmission Asset to Full Transmission Asset Serving the Dingle-Passi Lines in Iloilo,*”¹ the ERC ruled as follows:

“Section 2, Article III of the Guidelines to the Sale and Transfer of the TRANSCO’s Subtransmission Assets and the Franchising of Qualified Consortium 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:

¹ Decision dated 01 December 2010.

“a) Directly Connected Generators

Lines, power transforms 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.

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“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.

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“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 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 CASA’s plant is connected shall be reclassified as transmission asset.”

- b. In ERC Case No. 2010-156 RC entitled “In the Matter of the Approval of the Electric Power Purchase Agreement between Cebu 1 Electric Cooperative, Inc. and Cebu Energy Development Corporation,”² ERC Case No. 2010-100 RC entitled “In the Matter of the Approval of the Electric Purchase Agreement between Mactan Electric Company, inc. and Cebu Energy Development Corporation,”³ and ERC Case No. 2010-095 entitled “In the Matter of the Approval of the Electric Power Purchase Agreement between Bohol 1 Electric Cooperative, Inc. and Cebu Energy Development Corporation,”⁴ the ERC ruled as follows:

“However, the Sangi to Talavera 138 kV, 5.1-kilometer Double Circuit Transmission Line does not qualify as a dedicated point-to-point limited facility considering that the same line is not solely used to connect CEDC’s plant to the grid (NGCP Substation) but also used to transmit to VECO through the 138 kV CEDC-Colon Line and another line to CEBECO III and Balamban Enerzone Corporation. Xxx

² ERC Decision dated 01 August 2011.

³ ERC Decision dated 03 October 2011.

⁴ ERC Decision dated 26 September 2011.

“The Commission believes that the 5.1 kilometer Sangi to Talavera Double Circuit 138 kV Transmission Line should be owned, operated and maintained by the NGCP. Thus, the cost of the said line should be reimbursed by NGCP to CEDC and should not be recovered through the generation rate for the following reasons:

“a. there was no approval from the Commission for the implementation or construction of the said line;

“b. The EPIRA provides that a generation company is only allowed to own or operate dedicated point-to-point limited transmission facilities 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 Commission; and

“c. On the basis of the definitions provided under the Commission’s Resolution No. 41, Series of 2006, the 5.1-kilometer Sangi to Talavera Double Circuit 138 kV Transmission Line is considered as a transmission asset that should be owned by TRANSCO/NGCP.”

- c. In ERC Case No. 2009-180 RC entitled “*In the Matter of the Application for Approval of the Maximum Allowable Revenue for the Third Regulatory Period (2011-2015) of the National Grid Corporation of the Philippines During the Regulatory Reset Process for the Third Regulatory Period in Accordance with the Alternative Form of rate Setting Methodology under the Rules in Setting Transmission Wheeling Rates,*”⁵ the ERC ruled:

“The La-Trinidad-Calot 69 kV line is classified as Transmission asset since during off-peak hours, a generator connected to that line delivers power to the grid.”

15. Considering that the Cadiz-San Carlos 69 kV Line will be used by a load customer in drawing power from the grid, and also by generators in delivering power to the grid, this line performs transmission functions. It is thus imperative that the subject asset be reclassified to transmission asset.

PRAYER

WHEREFORE, premises considered, it is respectfully prayed that the instant Petition be GRANTED and the Cadiz-San Carlos 69 kV Line be reclassified as Transmission Asset.

NGCP prays for other equitable relief.

⁵ ERC Order dated 06 July 2011.

Having found said *Application* to be sufficient in form and in substance, the Commission issued an Order and a Notice of Public Hearing, both dated 19 May 2014, setting the case for initial hearing on 26 June 2014.

On 20 June 2014, Northern Negros Electric Cooperative, Inc. (NONECO), which was formerly known as VMC Electric Cooperative, Inc. (VRESCO), filed a *Petition for Intervention* dated 16 June 2014.

On 24 June 2014, NGCP filed its *Pre-Trial Brief* with attached Judicial Affidavit of Engr. Medel M. Usona and *Compliance with Jurisdictional Requirements* dated 11 June 2014.

During the 26 June 2014 hearing, NGCP and the Intervenor NONECO appeared.

Likewise, during the said hearing, NGCP filed its proofs of compliance with the Commission's posting and publication of notice requirements, which were duly marked as Exhibits "A" to "I". Finding the said submissions compliant with the order dated 19 May 2014, the Commission declared that it acquired jurisdiction over the instant case.

On 07 July 2014, NONECO filed a *Comment/Opposition (Re: NGCP's Application for the Reclassification of the Cadiz-San Carlos 69 kV Line into Transmission Asset)* dated 04 July 2014. On even date, NGCP filed a *Comment* dated 03 July 2014.

On 24 July 2014, NONECO filed a *Reply (to: NGCP's Comment dated July 3, 2014)* dated 23 July 2014.

On 23 March 2015, NGCP filed a *Motion to Set Case for Hearing* dated 29 March 2015.

On 18 December 2015, the Commission issued an *Order* admitting NONECO as in Intervenor in the instant *Application*. Likewise, the Commission set the case for the continuation of the hearing for pre-trial conference and evidentiary hearing on 22 January 2016.

On 18 January 2016, NGCP filed the *Judicial Affidavit of Engr. Edmund N. Asuncion* dated 15 January 2016.

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On 19 January 2016, the National Transmission Corporation (TRANSCO) filed a *Comment/Opposition (on NGCP's Application for Reclassification)* dated 12 January 2016.

On 11 March 2016, Manila Electric Company (MERALCO) filed a *Petition for Intervention (with Entry of Appearance)* dated 11 March 2016.

On 22 March 2016, the Commission issued an *Order* taking note of MERALCO's Petition for Intervention and directing NGCP to file its comment thereon.

On 30 March 2016, NGCP filed an *Opposition (re: MERALCO's Petition for Intervention)* dated 30 March 2016.

On 04 April 2016, MERALCO filed a *Reply (to NGCP's Opposition dated 30 March 2016)* dated 04 April 2016.

On 12 April 2016, the Commission issued an *Order* denying MERALCO's Petition for Intervention. Instead, the Petition was treated as an Opposition to the Application.

On 15 April 2016, MERALCO filed its *Supplemental Opposition with Motion* dated of even date.

On 19 April 2016, NONECO filed its *Pre-Trial Brief* dated 11 April 2016.

On 28 April 2016, TRANSCO filed a *Petition for Intervention* dated 22 April 2016.

On 23 May 2016, NONECO filed the *Judicial Affidavit of Atty. Danilo A. Danico* and the *Judicial Affidavit of Engr. Paulino G. Almedilla*, both dated 20 May 2016.

On 01 June 2016, TRANSCO filed a *Compliance* dated 30 May 2016 with attached *Judicial Affidavit of Mr. Noel Miranda*.

On 01 July 2016, NGCP filed its *Formal Offer of Evidence* dated 23 June 2016.

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On 11 July 2016, MERALCO filed a *Position Paper* dated 11 July 2016.

On 19 July 2016, NGCP filed a *Memorandum* dated 18 July 2016.

On 20 July 2016, NGCP filed a *Reply (re: MERALCO's Position Paper)* dated 20 July 2016.

On 03 August 2016, NONECO filed its *Formal Offer of Exhibits* dated 04 July 2016.

On 22 December 2016, TRANSCO filed its *Formal Offer of Evidence* dated 22 December 2016.

The Commission notes the Formal Offer of Evidence filed by NGCP, TRANSCO and NONECO.

Having found the exhibits contained in their respective Formal Offer of Evidence relevant and material in the final resolution of this case, the Commission hereby admitted the same.

ISSUE

The issue to be resolved in the instant case is whether the Commission should approve NGCP's reclassification of the Cadiz-san Carlos 69 kV line into transmission asset.

COMMISSION'S RULING

On 28 February 2017, the Commission deliberated and decided to approve the instant *Application*. However, due to supervening events⁶, the Decision could no longer be promulgated without undergoing reconfirmation by the Commission *En Banc*. Thus, the Commission resolved to reconfirm the Decision on 26 March 2018.

⁶ 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.

DISCUSSION

Section 9 (f), paragraph 3 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA) provides that:

“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; Provided, further, that in the event that such assets are required for competitive purposes, ownership of the same shall be transferred to the TRANSCO at a fair market price.” xxx

Likewise, Rule 5, Section 5 of the Implementing Rules and Regulations of the EPIRA provides 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:

(i) 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;

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(b) In the event that such assets are required for competitive purposes, ownership of the same shall be transferred to the TRANSCO at a fair market price. In case of disagreement on the fair market price, the ERC shall determine the fair market value of such asset, either directly or through such dispute resolution mechanisms as ERC may specify.

On 18 October 2010, the Commission issued a Decision in ERC

Case No. 2009-095 MC⁷ approving the sale of subject asset in the amount of PhP53,331,725.98. The amount approved is applicable only on that year, considering that the Connection Charge/Residual Subtransmission Charge (CC/RSTC) being paid by VRESCO (now NONECO) after the approval included depreciation cost equally proportioned with the subject asset standard asset life.

At the time the sale of the subject asset was approved, only VRESCO (now NONECO), as load customer, is directly connected to it. There was no generator connected to the subject asset until 07 May 2014, when the solar power plant for the Phase 1 project of San Carlos Solar Power, Inc. (SACASOL) was connected.

Subsequently, on 12 May 2014, NGCP filed the instant case for the reclassification of the Cadiz-San Carlos 69 kV line into transmission asset.

Prior to the connection of Phase 1 of SACASOL's solar power plant to the subject asset, VRESCO (now NONECO) did not make an initial payment to TRANSCO for the sale of the subject asset. Consequently, TRANSCO did not yet turn-over the asset to VRESCO (now NONECO).

On 12 September 2014, NONECO effected payment for two (2) monthly amortizations plus interest and 12% VAT, or a total amount of PhP803,740.76.

Consequently, on 14 November 2014, TRANSCO issued in favor of VRESCO (now NONECO) a *Deed of Transfer of Possession*.

The Commission finds that the actions made by TRANSCO and VRESCO (now NONECO) indicated bad faith. TRANSCO should have held in abeyance the acceptance of the down payment done by NONECO. TRANSCO accepted the down payment without considering the depreciation of the subject asset from 2010 to 2014. Likewise, notwithstanding the pending reclassification, VRESCO (now NONECO) still made the first down payment to TRANSCO. Further, it took VRESCO (now NONECO) four (4) years to initiate the first payment from the time the sale of the subtransmission asset was approved by the Commission in ERC Case No. 2009-095 MC⁸.

⁷ In the Matter of the Application for the Approval of the Sale of Various Subtransmission Lines/Assets of the National Transmission Corporation (TRANSCO) to VMC Rural Electric Service Coperative Inc., (VRESCO) as Covered by a Lease of Purchase Agreement

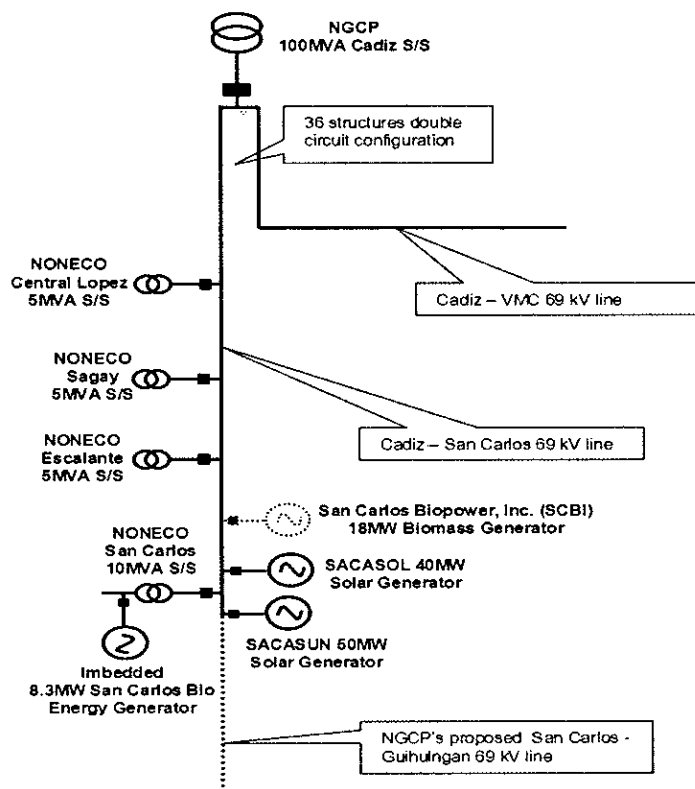
⁸ Ibid.

Moreover, the said asset should have been depreciated further to 2014 since part of the CC/RSTC is depreciation cost. NONECO should have also negotiated further for better terms and conditions for the benefit of its consumers who will ultimately shoulder the cost.

On several hearings, both Intervenors TRANSCO and NONECO were directed to submit an explanation on why they respectively accepted the down payment and effected the payment despite the pending case. However, no compliance was submitted.

As shown in the Single Line Diagram (SLD) (Figure 1) below, and as manifested by Applicant NGCP, the Cadiz-San Carlos 69 kV Line is already performing transmission function due to the connection of both load customer and generators.

Figure 1



NGCP reiterated that any asset which is not solely used by either a load customer or generator should be classified as transmission asset.

As verified during the ocular inspection, the Cadiz-San Carlos 69 kV Line directly connects a load, VRESCO (now NONECO), the solar power generator plant of SACASOL and subsequently that of San Carlos Sun Power, Inc. (SACASUN).

Accordingly, based on the single line diagram in Figure 1, the subject asset does not fall anymore under the category of subtransmission as defined in Section 4, Rule 6 of the Implementing Rules and Regulations (IRR) of EPIRA, which provides, to wit:

Section 4. Separation Between Transmission and Subtransmission.

The ERC shall set the standards of the transmission voltages and other factors that shall distinguish transmission assets from Subtransmission Assets. Towards this end, ERC shall issue appropriate guidelines to distinguish between these categories of assets according to voltage level and function. The ERC shall take into account the objective of allowing nondiscriminatory Open Access to the transmission and Subtransmission Systems.

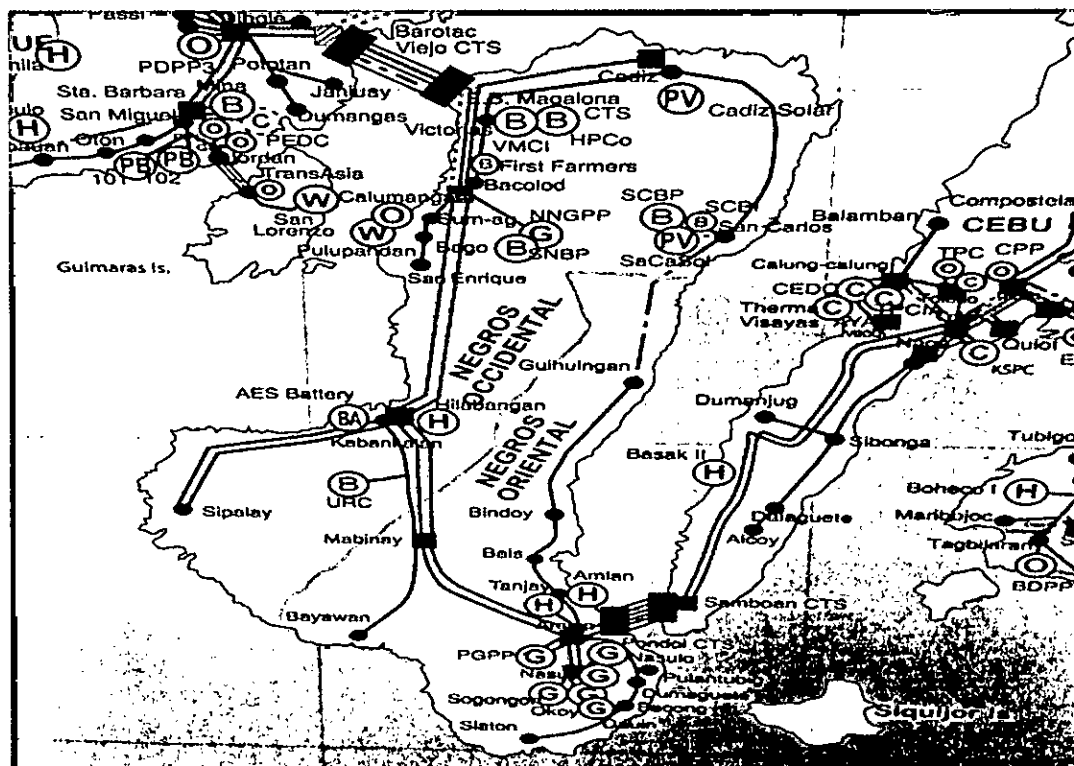
The technical and functional criteria to be considered in distinguishing transmission assets from Subtransmission Assets shall include, but not limited to:

- (a) Subtransmission Assets are normally in close proximity to retail customers;
- (b) Subtransmission Assets are primarily radial in character;
- (c) Power flows into Subtransmission Assets; it rarely, if ever, flows out;
- (d) When power enters Subtransmission Assets, it is not reconsigned or transported on to some other market;
- (e) Power entering Subtransmission Assets is consumed in a comparatively restricted geographic area;
- (f) Meters are based at the interface of transmission and Subtransmission Assets to measure flows into the Subtransmission Assets; and
- (g) Subtransmission Assets will be of reduced voltage.

The Commission also established that the Cadiz-VMC 69 kV line and Cadiz-San Carlos 69 kV line shares 36 structures originating from NGCP's Cadiz Substation. These double circuit lines were constructed and energized in 2005. The steel poles are owned by VRESCO (now NONECO) but the line hardware/conductors are

owned by TRANSCO/NGCP. On the other hand, the Cadiz-VMC 69 kV line (a line parallel to the subject asset) is formerly owned by TRANSCO. However in 2008, VRESCO (now NONECO) took over the operations and maintenance of the same pursuant to the Decision dated 27 February 2008 under ERC Case No. 2006-149 MC⁹.

Further, in ERC Case No. No. 2009-180 RC¹⁰, the Commission likewise approved the on-going project of NGCP, the Guihulngan-San Carlos 69 kV line, which would interconnect the northern part (San Carlos) to the southern part (Guihulngan/Amlan) completing the transmission loop of Negros Island. This project would also augment the limited capacity of the Cadiz-San Carlos 69 kV line. Upon completion of the aforementioned project, these sub-transmission assets would cease to be radial in character, as shown in the picture below:



Accordingly, since the Cadiz-VMC 69 kV line and the Cadiz-San Carlos 69 kV line share thirty (36) structures from NGCP's Cadiz Substation, the Commission hereby directs NGCP to construct separate structures to be utilized by the Cadiz-San Carlos 69 kV line

⁹ In The Matter of the Application for Approval of the Sale of Various Sub-Transmission Lines/Assets within the Franchise Area of VMC Rural Electric Service Electric Cooperative, Inc. (VRESCO).

¹⁰ In the Matter of the Application for the Approval of the Maximum Annual Revenue for the Third Regulatory Period (2011 to 2015) of the National Grid Corporation of the Philippines (NGCP) During the Regulatory Reset Process for the Third Regulatory Period in Accordance with the Alternative Form of Rate Setting Methodology Under the Rules in Setting the Transmission Wheeling Rates (RTWR).

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to avoid operational problems, or for NGCP to enter into a Memorandum of Agreement for the rental of NONECO's steel poles.

WHEREFORE, the foregoing premises considered, the reclassification of the Cadiz-San Carlos 69 kV kV line from Subtransmission Asset into Transmission Asset is hereby **APPROVED**.

ACCORDINGLY, the Decision of the Commission in ERC Case No. 2009-095 MC¹¹, approving the sale of the Cadiz-San Carlos 69 kV line, is **MODIFIED**.

SO ORDERED.

Pasig City, 26 March 2018.

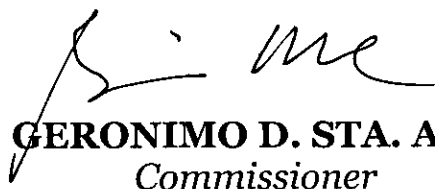

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Chairperson and CEO




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Commissioner


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Commissioner


GERONIMO D. STA. ANA
Commissioner

LS: M/M/LS/APV

ROS: REGR/LLG/FCBD

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¹¹ In the Matter of the Application for the Approval of the Sale of Various Subtransmission Lines/Assets of the National Transmission Corporation (TRANSCO) to VMC Rural Electric Service Cooperative Inc., (VRESCO) as Covered by a Lease of Purchase Agreement

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