

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



IN THE MATTER OF THE APPLICATION FOR THE APPROVAL OF THE SALE OF VARIOUS SUB-TRANSMISSION LINES/ASSETS OF THE NATIONAL TRANSMISSION CORPORATION (TRANSCO) TO ZAMBOANGA CITY ELECTRIC COOPERATIVE, INC. (ZAMCELCO), AS COVERED BY A LEASE PURCHASE AGREEMENT DATED NOVEMBER 19, 2013

ERC CASE NO. 2014-174 RC

NATIONAL TRANSMISSION CORPORATION (TRANSCO) AND ZAMBOANGA CITY ELECTRIC COOPERATIVE, INC. (ZAMCELCO),

Applicants.

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DOCKETED
Date: FEB 05 2015
By: *[Signature]*

ORDER

On December 1, 2014, the National Transmission Corporation (TRANSCO) and the Zamboanga City Electric Cooperative, Inc. (ZAMCELCO) filed a joint application for approval of the sale of various sub-transmission lines/assets of TRANSCO to ZAMCELCO as covered by Lease Purchase Agreement (LPA) dated November 19, 2013.

In the said application, TRANSCO and ZAMCELCO alleged, among others, the following:

1. TRANSCO is a government-owned-and-controlled corporation duly created by virtue of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), with principal office address at the TRANSCO Main Building, Quezon Avenue corner BIR Road, Diliman, Quezon City;
2. ZAMCELCO is a qualified distribution utility (DU) organized as a cooperative under Philippine the laws, with principal office address in Maria Clara L. Lobregat Highway, Putik, Zamboanga City, Philippines;
3. By virtue of Section 8 of EPIRA, TRANSCO assumed the electrical transmission functions of the National Power Corporation (NPC) and its authority and responsibility for the planning, construction and centralized operation and maintenance of the high voltage transmission facilities, including grid interconnections and ancillary services. The EPIRA also mandates the segregation of the transmission and sub-transmission functions and assets for transparency and disposal;
4. Section 8 of the EPIRA and Rule 6, Section 8 (e) of the EPIRA's Implementing Rules and Regulations (IRR) likewise provide that TRANSCO shall negotiate with, and thereafter transfer, its sub-transmission assets (STAs) and facilities to qualified DUs connected to such sub-transmission facilities;
5. Pursuant thereto, the Commission promulgated on October 17, 2003 the "*Guidelines to the Sale and Transfer of the TRANSCO's Sub-transmission Assets and the Franchising of Qualified Consortiums*" (*ERC Guidelines*), as amended by Resolution No. 3, Series of 2005 (March 17, 2005) which set forth, among others, the standards to distinguish TRANSCO's transmission assets from its STAs and establish the approval process prior to the final sale and transfer thereof;
6. Consistent with the Commission's Guidelines, TRANSCO has adopted its own *Guidelines on the Sale of Sub-transmission Assets (TRANSCO Guidelines)* [attached to the application as Annex "A"] as approved by TRANSCO Board Resolution No. TC-2003-067 dated November 28, 2003

[attached to the application as Annex "B"], as further amended by TRANSCO Board Resolution No. TC-2004-009 dated March 16, 2004 [attached to the application as Annex "C"];

7. On July 16, 2011, the Commission issued Resolution No. 15, Series of 2011 entitled, "*A Resolution Adopting the Amended Rules for the Approval of the Sale and Transfer of TRANSCO's Sub-transmission Assets and the Acquisition by Qualified Consortiums*";
8. In accordance with the aforesaid Guidelines, TRANSCO has evaluated and established that the following assets, meet the criteria for sub-transmission assets:
 - (a) Putik Lateral 69 kV Line;
 - (b) Recodo Lateral 69 kV Line;
 - (c) Zamboanga-Tumaga 69 kV;
 - (d) Pitogo-Tumaga 69 kV line;
 - (e) Pitogo-Tulungatung 69 kV line; and,
 - (f) Pitogo-San Jose Gusu 69 kV line.

Attached to the application as Annexes "D," "E" and "F," respectively, are copies of the Report that the assets for sale meet the criteria for sub-transmission assets, the List of sub-transmission assets for sale to ZAMCELCO, and the Single line diagram;

9. Pursuant to the aforesaid Guidelines, TRANSCO has evaluated and established that ZAMCELCO meets the technical and financial requirements to purchase, operate, maintain, upgrade and expand the subject assets. Copies of the Technical and Financial Qualification Evaluations conducted by TRANSCO, as well as the description of the franchise area being served by the subject assets are attached to the application as Annexes "G", "H", and "I", and the Audited Financial Statements of ZAMCELCO as of December 31, 2005 (Annex "J");
10. The ZAMCELCO Board of Directors issued Board Resolution No. 113, Series of 2013 (attached to the application as Annex "K") entitled "*A Resolution Approving the Acquisition of the Sub-transmission Assets Offered for Sale by the National Transmission Corporation (TRANSCO) to the ZAMCELCO and*

Authorizing General Manager, Mr. Sherwin C. Manada and Board President Mr. Omar A. Sahi to Negotiate and to Enter Into

A Lease Purchase Agreement (LPA) in Connection with the Acquisition of the TRANSCO's 69 kV Sub-transmission Assets";

11. Corollary to the above, they concluded a Lease Purchase Agreement dated November 19, 2013 (attached to the application as Annex "L"), covering the subject STAs amounting to Eighty Five Million Four Hundred Sixty Two Thousand Ninety Seven and 80/100, **(Php85,462,097.80)**, net of adjustments and deductions, which ZAMCELCO shall pay in Two Hundred Forty (240) equal monthly installments;
12. The said purchase price is fair and reasonable as it represents the disposal value of the subject STAs based on potential revenue which, pursuant to the Commission's Guidelines, is deemed to be the Current Sound Value thereof A copy of the Asset Valuation Computation is attached to the application as Annex "M";
13. On September 30, 2013, the Bureau of Internal Revenue (BIR) issued Revenue Memorandum Circular No. 66-2013 [Annex "N"] which had the effect of revoking TRANSCO's exemption from the payment of twelve percent value-added tax (12% VAT) on the divestment of sub-transmission assets, which exemption was previously granted under BIR Ruling No. 11-07 dated May 31, 2007;
14. On February 7, 2007, the BIR issued Revenue Regulation No. 04-2007 [Annex "O"] which stated, among others, that the 12% VAT shall also be imposed on the interest rate over the amortized amount of the STAs;
15. With the aforesaid BIR issuances, TRANSCO is constrained to demand from ZAMCELCO a 12% VAT, not only on the contract price of the assets, but also on the interest rate over the amortized amount thereof. This is set forth under Section 3 of the aforesaid LPA;

16. ZAMCELCO is the only qualified DU which is directly connected to the subject STAs, and it has the following connected customers:
- (a) Permex Producer and Export Corporation;
 - (b) Zamboanga Ecozone and Freeport Authority;
 - (c) Oriental Tin Can and Metal Sheet Manufacturing Company;
 - (d) Interco Manufacturing Corporation; and
 - (e) Bigfish Foods Corporation.
17. Moreover, they submitted the following additional documents in support of their Joint Application:
- (a) Draft Deed of Absolute Sale (attached to the application as Annex "Q");
 - (b) Third Party Appraisal Report (attached to the application as Annex "R");
 - (c) Schedule of Payments (attached to the application as Annex "S"); and
 - (d) ZAMCELCO Board Resolution No. 60, Series of 2014 (attached to the application as Annex "T") approving the filing of the instant Joint Application with TRANSCO, and designating ZAMCELCO Board President and ZAMCELCO General Manager as its official representatives.
18. The proposed sale has satisfied all of the requirements and criteria set by the EPIRA and its IRR, as well as the Commission's *and TRANSCO Guidelines on the Sale of the Sub-transmission Assets*;
19. The approval by the Commission of the instant joint application shall pave the way for the attainment of a reformed electricity industry under the EPIRA, towards a competitive regime/cost of electricity through open access and customer choice of supplier of electricity, which would

ultimately best serve the interest of the consuming public;
and

20. They pray that after due notice and hearing, judgment be rendered approving the sale of TRANSCO's sub-transmission assets to ZAMCELCO under the terms set forth in the LPA dated November 19, 2013.

Finding the said application sufficient in form and in substance with the required fees having been paid, the same is hereby set for initial hearing, expository presentation, pre-trial conference and evidentiary hearing on **March 24, 2015 (Tuesday) at ten'oclock in the morning (10:00 A.M.) at the ERC Mindanao Field Office, Mintrade Building, Monteverde Avenue corner Sales St., Davao City (in view of the current peace and order situation in Mindanao).**

TRANSCO and ZAMCELCO are hereby directed to cause the publication of the attached Notice of Public Hearing, at their own expense, twice (2x) for two (2) successive weeks in two (2) newspapers of general circulation in the Philippines, with the date of the last publication to be made not later than ten (10) days before the date of the scheduled initial hearing. They are also directed to inform the consumers within the franchise area of ZAMCELCO, by any other means available and appropriate, of the filing of the instant application, their reasons therefor, and of the scheduled hearing thereon.

Let copies of the application, this Order and the attached Notice of Public Hearing be furnished the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress. They are hereby requested, if they so desire, to send their duly authorized representatives at the scheduled hearing.

Likewise, let copies of this Order and the attached Notice of Public Hearing be furnished the Offices of the Governor of Zamboanga and the Mayors of Quezon City and Zamboanga City within the franchise area of ZAMCELCO for the appropriate posting thereof on their respective bulletin boards.

TRANSCO and ZAMCELCO are directed to furnish all those making requests therefor with copies of the application and its attachments, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing and pre-trial conference, TRANSCO and ZAMCELCO must submit to the Commission their respective written Compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidences on the actual posting and publication of the Notice of Public Hearing consisting of certifications issued to that effect, signed by the afore-mentioned Governor and Mayors or their duly authorized representatives, bearing the seals of their offices, and the affidavit of the Editors or Business Managers of the newspapers where the said Notice of Public Hearing were published together with the complete issues of the said newspapers, and such other proofs of compliance with the requirements of the Commission.

TRANSCO, ZAMCELCO and all interested parties are directed to submit, at least five (5) days before the date of initial hearing and pre-trial conference, their respective Pre-trial Briefs containing, among others:

- a) a summary of admitted facts and proposed stipulation of facts;
- b) the issues to be tried or resolved;
- c) the documents or exhibits to be presented, stating the purposes and proposed markings thereof; and
- d) the number and names of the witnesses, with their written testimonies in an individual affidavit form, to be attached to the Pre-trial Brief.

Failure of TRANSCO and ZAMCELCO to submit the required Pre-trial Brief and Judicial Affidavits of their witnesses within the prescribed period shall be a ground for cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from said date of cancellation.

As part of the pre-trial conference, TRANSCO and ZAMCELCO must also be prepared to make an expository presentation of their application, aided by whatever communication medium that they may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties,

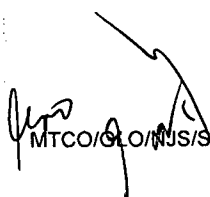
what the application is all about and the reasons and justifications being cited in support thereof.

SO ORDERED.

Pasig City, January 26, 2015.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ZENAIDA G. CRUZ-DUCUT
Chairperson *pw 4*



Copy Furnished:

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5. **Commission on Audit**
Commonwealth Avenue
Quezon City – 1121
6. **Senate Committee on Energy**
GSIS Building, Roxas Boulevard
Pasay City – 1300
7. **House of Representatives Committee on Energy**
Batasan Hills, Quezon City – 1126
8. **Office of the City Mayor**
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9. **MR. ROBERTO G. VALERIO**
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