

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City



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

Petitioner,

-versus-

ERC CASE NO. 2017-006DR

**NATIONAL GRID
CORPORATION OF THE
PHILIPPINES (NGCP),
NATIONAL TRANSMISSION
CORPORATION (TRANSCO),
and GRID MANAGEMENT
COMMITTEE (GMC),**

Respondents.

X-----X

D O C K E T E D
Date: OCT 19 2017
By: [Signature]

NOTICE OF PUBLIC HEARING

On 5 September 2017, Petitioner, Energy World Power Operations Philippines, Inc. (EWPOPI) filed the above-captioned petition for dispute resolution against National Grid Corporation of the Philippines (NGCP), National Transmission Corporation (TRANSCO) and Grid Management Committee.

In the said Petition, EWPOPI alleges the following:

1. Petitioner **ENERGY WORLD POWER OPERATIONS PHILIPPINES, INC. (EWPOPI)** is a corporation organized and existing under Philippine laws, with principal office at the 10th Floor, Ramon Magsaysay Centre, Roxas Boulevard, Ermita, Manila. It may be served with official processes and papers through the undersigned counsel at its address below.

2. Respondent **NATIONAL GRID CORPORATION OF THE PHILIPPINES (NGCP)** is a private corporation organized and existing under Philippine laws. It has principal office at NGCP Building, Quezon Avenue corner BIR Road, Diliman, Quezon City, where it may be served with official processes and papers.

3. Respondent NATIONAL TRANSMISSION CORP-ORATION (TRANSCO) is a government agency created under Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA). It has principal office at Power Center, Quezon Avenue corner BIR Road, Diliman, Quezon City, where it may be served with official processes and papers.

4. Respondent GRID MANAGEMENT COMMITTEE (GMC) is a non-stock, non-profit private organization organized and existing under Philippine laws. It has principal office at the 20th Floor, Pacific Center Building, San Miguel Avenue, Ortigas Center, Pasig City, where it may be served with official processes and papers.

5. This petition is filed under Section 1 of Rule 20(F) of the *Rules of Practice and Procedure* of the Honorable Commission:

Section 1. Inquiry of the Commission. – The Commission may *motu proprio* initiate an action or inquiry against any person or entity when so required by law, national or public interest, and/or in its exercise of any of the powers and functions vested upon it by Republic Act No. 9136 or any other law enforced and administered by it.

6. An inquiry under Rule 20(F) on the matters subject of this petition, which materially affect the electric power industry and concern public interest, will help the parties resolve the issues in a non-adversarial manner.

7. *In the alternative*, EWPOPI files this petition under subsection (v) of Section 43 of the EPIRA, in relation to subsections (a), (l), (m), (s), and (u) thereof:

Section 43. Functions of the ERC. - The ERC shall promote competition, encourage market development, ensure customer choice and discourage/penalize abuse of market power in the restructured electricity industry. Towards this end, it shall be responsible for the following key functions in the restructured industry:

(a) Enforce the implementing rules and regulations of this Act;

xxx

(l) Monitor and take remedial measures to penalize abuse of market power, cartelization, and anti-competitive or discriminatory behavior by any electric power industry participant;

(m) Impose fines or penalties for any non-compliance with or breach of this Act, the IRR of this Act and the rules and regulations which it promulgates or administers;

xxx

(s) In the exercise of its investigative and quasi-judicial powers, act on any complaint by or against any participant or player in the energy sector for violations of any laws, rules and regulations governing the same, including the rules on cross-ownership, anti-competitive practices and other acts of abuse of market positions by any participant or player in the energy sector, as may be provided by law, and require any person or entity to submit any report or data relative to any investigation or hearing conducted in accordance with this Act;

xxx

(u) Perform such other regulatory functions as are appropriate in order to ensure the successful restructuring and modernization of the electric power industry xxx

xxx

(v) The ERC shall have the original and exclusive jurisdiction xxx over all cases involving disputes between and among participants or players in the energy sector.
xxx

8. EWPOPI respectfully submits the following matters for inquiry by the Honorable Commission under Rule 20(F) of the *Rules of Practice and Procedure*:

- (a) THE EXERCISE OF NGCP'S RIGHT OF EMINENT DOMAIN FOR RIGHT-OF-WAY (ROW) ACQUISITION IN CASE A GENERATION COMPANY DEVELOPS DEDICATED POINT-TO-POINT LIMITED TRANSMISSION FACILITIES UNDER SECTION 9 OF THE EPIRA.
- (b) THE TIMETABLE FOR NGCP'S COMPLETION OF THE NEW PAGBILAO SUBSTATION AND FACTORS THAT MAY EXPEDITE SUCH COMPLETION.
- (c) LIMITATIONS ON NGCP IN WITHHOLDING CONSENT TO THE CONNECTION OF A GENERATION COMPANY TO THE FACILITIES OF TRANSCO AND NGCP.
- (d) LIMITATIONS ON NGCP IN WITHHOLDING MATERIAL INFORMATION, INCLUDING BUT NOT LIMITED TO TRANSMISSION BASE CASE DATA.

9. *In the alternative*, EWPOPI submits the following issues under subsection (v) of Section 43 of the EPIRA, in relation to subsections (a), (l), (m), (s), and (u) thereof:

- (a) WHETHER NGCP SHOULD BE RESPONSIBLE FOR THE ACQUISITION OF A RIGHT-OF-WAY (ROW) FOR THE PROPOSED FACILITIES.
- (b) WHETHER THE NEW PAGBILAO SUBSTATION SHOULD BE COMPLETED AS SOON AS POSSIBLE.
- (c) WHETHER NGCP CAN WITHHOLD ITS CONSENT TO THE CONNECTION OF THE SUBJECT POWER PLANT TO THE FACILITIES OF TRANSCO AND NGCP.
- (d) WHETHER NGCP CAN WITHHOLD MATERIAL INFORMATION NECESSARY FOR THE COMPLETION OF THE PROPOSED FACILITIES.

10. Under R.A. No. 9511, NGCP was granted the exclusive right to operate and maintain the transmission system in the country.

11. Section 4 of R.A. No. 9511 also grants NGCP the right of eminent domain with a corresponding right to “acquire such private property as is actually necessary for the realization of the purposes for which [its] franchise is granted.”

12. Section 8 of the EPIRA provides that “no person, company or entity other than TRANSCO shall own any transmission facilities.” The only exception is under Section 9 of the law which provides that “a generation company may develop and own or operate dedicated point-to-point limited transmission facilities that are consistent with the TDP.”

13. TRANSCO is the owner of the transmission assets being operated and maintained by NGCP under a concession agreement, and TRANSCO has a key mandate to protect national government’s interest by ensuring NGCP’s compliance with the terms and conditions of the concession agreement and the policies of the Department of Energy (DOE). TRANSCO is therefore an indispensable party in the requested inquiry or in the resolution of the issues being submitted herein; hence, it is impleaded as a respondent.

14. The GMC, on the other hand, was created by this Honorable Commission to perform the following functions, among other things, under GM 2.2.1, Chapter 2 of the Philippine Grid Code (2016 Edition): (a) monitor the implementation of the Philippine Grid Code; (b) monitor, evaluate, and make recommendations on Grid planning and Grid operations; (c) review and recommend standards, procedures, and requirements for Grid connection, operation, maintenance, and development; and (d) manage queries on the application and/or interpretation in any provisions of the Philippine Grid Code; etc. GMC is also an indispensable party in the requested inquiry or in the resolution of the issues being submitted herein; hence, it is impleaded as a respondent.

15. EWPOPI has a pending application (ERC Case No. 2016-039MC) to develop and own dedicated point-to-

point limited facilities (the "*Proposed Facilities*"), which will be operated by the NGCP, to connect the 650 MW LNG gas-fired power plant (the "*Power Plant*") to the New Pagbilao Substation of NGCP. The Honorable Commission is requested to take judicial or official notice of the proceedings in and the records of ERC Case No. 2016-039MC.

16. EWPOPI was constrained to initiate ERC Case No. 2016-039MC even if there is already an existing Pagbilao-Tayabas 230kV transmission line which is only a few meters away from the Power Plant. It was originally intended that the Power Plant utilize the spare capacity on the existing Pagbilao-Tayabas 230kV transmission line for the export of power. This, however, was not supported or granted by NGCP due to the opposition of Team Energy Corporation (TEC), which owns the neighboring Pagbilao Coal Power Plant.

17. While R.A. No. 9511 gives NGCP the monopoly to operate and maintain the transmission system in the county coupled with the right of eminent domain, NGCP fails to provide the necessary transmission facilities or at least facilitate the immediate completion of the Proposed Facilities, which require the acquisition of a 12-kilometer ROW.

18. Worse, NGCP has deferred the construction of the New Pagbilao Substation. Consequently, the operation of the Power Plant, including the Proposed Facilities, will also be delayed.

19. NGCP has also been unduly withholding material information and delaying actions on crucial matters.

20. EWPOPI and NGCP have had numerous meetings and correspondences to discuss the interim connection of the first phase (200MW) of the Power Plant to the Pagbilao-Tayabas 230kV transmission line.

21. Despite EWPOPI's repeated follow-ups with NGCP, however, the latter unduly withheld material information necessary for the conduct of the System Impact Study (SIS) and Facility Study for the interim connection. It was only after the insistence of the DOE

that NGCP finally provided the Offer of Service to start the SIS.

22. There were also various site visits in 2017 arranged by TRANSCO and attended by NGCP, which confirmed that there is an available space in the switchyard of TEC for the proposed Tie-Line from EWC to TEC's substation. NGCP undertook to provide a report; but again, despite repeated follow-ups from EWPOPI, NGCP failed to timely provide the report. It was only after the insistence of the DOE that such report was eventually provided by NGCP.

23. The above-described omissions, inactions, or delayed actions of NGCP are violations of its legislative franchise, and they constitute abuse of market power and anti-competitive or discriminatory behavior against EWPOPI.

24. EWPOPI, therefore, respectfully submits that the Honorable Commission should inquire into these matters under Rule 20(F) of its *Rules of Practice and Procedure*, or resolve the issues under subsection (v) of Section 43 of the EPIRA, in relation to subsections (a), (l), (m), (s), and (u) thereof, with the end result that the Power Plant will be expeditiously connected to the facilities of TRANSCO and NGCP at the least possible cost.

RELIEF

PETITIONER prays that the Honorable Commission:

- (1) initiate an inquiry on the above matters, or in the alternative, direct (a) NGCP to exercise its right of eminent domain for the ROW acquisition for the Proposed Facilities, (b) NGCP to act with reasonable dispatch on EWPOPI's requests for assistance, information, reports, studies, or actions, and (c) TRANSCO and NGCP to expeditiously connect the Power Plant to their facilities at the least possible cost;

- (2) direct GMC to assist the Honorable Commission on the inquiry requested or on the issues submitted;
- (3) immediately set the petition for conference or hearing, and
- (4) grant other equitable relief.

Muntinlupa City for Pasig City, August 28, 2017.

The Commission has set the said Petition for initial hearing for the determination of compliance with the jurisdictional requirements, expository presentation, Pre-Trial Conference, and presentation of evidence on **13 November 2017 (Monday) at ten o'clock in the morning (10:00 A.M.) at the ERC Hearing Room, 15th Floor, Pacific Center Building, San Miguel Avenue, Pasig City.**

All persons who have an interest in the subject matter of the proceeding may become a party by filing, at least five (5) days prior to the initial hearing and subject to the requirements in the ERC's Rules of Practice and Procedure, a verified petition with the Commission giving the docket number and title of the proceeding and stating: (1) the petitioner's name and address; (2) the nature of petitioner's interest in the subject matter of the proceeding, and the way and manner in which such interest is affected by the issues involved in the proceeding; and (3) a statement of the relief desired.

All other persons who may want their views known to the Commission with respect to the subject matter of the proceeding may file their opposition to the Petition or comment thereon at any stage of the proceeding before the Petitioner concludes the presentation of its evidence. No particular form of opposition or comment is required, but the document, letter or writing should contain the name and address of such person and a concise statement of the opposition or comment and the grounds relied upon.

All such persons who wish to have a copy of the Petition may request the Petitioner, prior to the date of the initial hearing, that they be furnished with a copy of the Petition. The Petitioner is hereby directed to furnish all those making a request with copies of the Petition and its attachments, subject to reimbursement of reasonable photocopying costs. Any such person may likewise examine the Petition and other pertinent records filed with the Commission during the standard office hours.

WITNESS, the Honorable Commissioners **ALFREDO J. NON**, **GLORIA VICTORIA C. YAP-TARUC**, and **GERONIMO D. STA. ANA**, Energy Regulatory Commission, this 6th day of October 2017 in Pasig City.


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner


KTB/RFM/APV