

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



**IN THE MATTER OF THE
APPLICATION FOR
FRANCHISE AND
CERTIFICATE OF PUBLIC
CONVENIENCE AND
NECESSITY FOR THE
OPERATION OF THE
BINCUNGAN-MADAUM 69
KV LINE**

ERC CASE NO. 2015-110 MC

**DAVAO LIGHT AND POWER
COMPANY, INC. (DLPC)
AND DAVAO DEL NORTE
ELECTRIC COOPERATIVE,
INC. (DANECO),**

Applicants.

X-----X

D O C K E T E D
Date: **APR 25 2018**
By: _____

NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 28 December 2015, an *Application* dated 14 December 2015 was filed by Davao Light and Power Company, Inc. (DLPC) and Davao del Norte Electric Cooperative, Inc. (DANECO) for the issuance of franchise and Certificate of Public Convenience and Necessity (CPCN) for the operation of the Bincungan-Madaum 69 kV line.

DLPC and DANECO alleged the following in their *Application*:

THE APPLICANT

1. DLPC is a corporation duly organized and existing under the laws of the Philippines, with office address on C. Bangoy, Sr. Street, Davao City. It has an exclusive franchise from the Congress of the Philippines under Republic Act No. 8960 to operate electric light and power services in Davao City, Panabo City, and the Municipalities of Carmen, Dujali, and Sto. Tomas in Davao del Norte.

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2. DANECO is a non-stock, non-profit electric cooperative duly organized and existing under the laws of the Philippines, with office address at Km. 100 National Highway, Montevista, Compostela Valley, Province. It has an exclusive franchise from the National Electrification Commission (NEC) to operate an electric light and power distribution service in all municipalities of the Province of Compostela Valley, namely: Monkayo, Montevista, Nabunturan, Mawab, Compostela, New Bataan, Maragusan, Maco, Mabini, Pantukan and Laak, and in the city of Tagum and Island Garden City of Samal (IGACOS) and municipalities of the Province of Davao del Norte, namely: Asuncion, Kapalong, Talaingod, New Corella and San Isidro.
3. DLPC and DANECO may be served with the orders, notices and other legal processes of the Honorable Commission through their respective counsels at the address indicated hereafter.
4. On November 21, 2011, DLPC and DANECO (hereinafter, collectively referred to as the "Consortium") entered into a Consortium Agreement for the joint acquisition and operation of the Bincungan-Madaum 69kV line, being the distribution utilities directly connected thereto. The Bincungan-Madaum 69 kV line (the "Subtransmission Asset") is a subtransmission asset of the National Transmission Corporation (TRANSCO), presently the subject of a Contract to Sell between the Consortium and TRANSCO (the "Contract to Sell"). The purchase price of the Subtransmission Asset is PhP 4,705,032.28, exclusive of Value Added Tax. A copy of the Contract to Sell is attached as Annex "A", while the description and electrical diagram of the Subtransmission Asset is attached as Annex "B" hereof.
5. DLPC and DANECO entered into the Consortium Agreement pursuant to Section 8 of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001 (EPIRA), which provides in part:

The take over by a distribution utility of any subtransmission asset shall not cause a diminution of service and quality to the end-users. Where there are two or more connected distribution utilities, the consortium or juridical entity shall be formed by and composed of all of them and thereafter shall be granted a franchise to operate the subtransmission asset by the ERC.
6. The Parties' respective share in the Purchase Price of the Submission asset shall be borne by them in proportion to their ownership interest in the following proportion:

DANECO	80%
<u>DLPC</u>	<u>20%</u>

TOTAL

100%

A copy of the Consortium Agreement of DLPC and DANECO is attached as Annex "C" hereof.

7. For the purpose of operating the Subtransmission Asset following the approval of the Honorable Commission of the Contract to Sell, the Consortium, by way of the instant Application, respectfully requests for the issuance of a franchise and Certificate of Public Convenience and Necessity (CPCN). Each of DLPC and DANECO possesses the qualifications for the issuance of a CPCN, as prescribed in Resolution No. 5, Series of 2008 (the "CPCN Resolution"),¹ thus:
- a) Filipino citizenship or corporations, co-partnerships, associations or joint-stock companies constituted and organized under the laws of the Philippines: Provided, that sixty (60) per centum of the stock or paid up capital of any such corporation, co-partnership, association or joint stock company must belong entirely to citizens of the Philippines;
 - b) Technical capability;
 - c) Financial capability; and
 - d) Franchise for operating and maintaining a transmission or distribution system issued by the Congress of the Philippines, or the ERC pursuant to Section 8 of the Act.

Citizenship and Franchise

8. DLPC is a Filipino corporation, more than sixty percent (60%) of its shares being owned and/or controlled by Aboitiz Power Corporation, a publicly listed corporation. DANECO is likewise a Filipino organization, being a non-stock, non-profit electric cooperative with more than 60% of its membership being Filipino citizens.
9. DLPC is the grantee of a franchise to operate a distribution system, extended by Congress through Republic Act No. 8960. On the other hand, DANECO is the grantee of a franchise extended by the NEC. A copy of Republic Act No. 8960 is attached as Annex "D" hereof, while a copy of the Certificate of Franchise issued by the National Electrification Commission (NEC) in favor of DANECO is attached as Annex "E" hereof.

Technical Capability

10. The Consortium possesses the technical capabilities to operate the Subtransmission Assets as supported by the

¹ "A Resolution Adopting the Rules to Govern the Issuance of Certificate of Public Convenience and Necessity (CPCN) to Entities Engaged in the Transmission and Distribution of Electricity".

attached copy of the result of the evaluation of TRANSCO of the technical capability of the Applicants. A copy of the TRANSCO technical evaluation is attached as Annex "F" hereof.

Financial Capability

11. The Consortium is financially capable of sustaining the operation of the Subtransmission Asset as supported by the attached copy of the result of the evaluation of TRANSCO of the financial capability of the Applicants. A copy of the results of the evaluation by TRANSCO of the financial capability of the Applicants is attached as Annex "G" hereof.

Policy on Existing and Future End-User Connections

12. The Consortium shall adhere to the provisions of applicable laws, rules and regulations with respect to end-user connections. Currently, there are no end-users connected to the Subtransmission Asset.
13. Should any end-users be connected to the Subtransmission Asset in the future, they shall be considered customers of DLPC or DANECO, as the case may be, depending on the geographical location of the connection point, whether in the franchise area of DLPC and DANECO.

The policy is set out in more detail in Annex "H" hereof.

14. Given the foregoing, the Consortium believes that it has established its expertise and resources to adequately and reliably serve the present and future electricity requirements of the customers of each of DLPC and DANECO with the operation of the Subtransmission Asset. Hence, having complied with the requirements of applicable rules including the STA Guidelines and the CPCN Resolution, the issuance of the CPCN to the Consortium is warranted under the circumstances. Such issuance will ultimately redound to the benefit of the end-users in terms of continuous, reliable and efficient services.
15. In further support of the Application, the Consortium submits the following documents in compliance with Resolution No. 5, Series of 2008:

Annex	Nature of Document
"I" to "I-1"	DLPC and DANECO Board Resolutions authorizing the Consortium Agreement and the acquisition of the Subtransmission Asset
"J" to "J-1"	General Information Sheet of DLPC and List of Management officers of DANECO
"K" to "K-1"	Lists of DLPC and DANECO technical officers responsible for the design, installation, maintenance and repair of equipment of the Subtransmission Asset
"L" to "L-1"	DLPC and DANECO Distribution Development Plans (DDP) containing information on the power supply in the franchise area and contracted demand and energy
"M" to "M-1"	DLPC and DANECO Franchise Area Description

P R A Y E R

WHEREFORE, the foregoing considered, it is respectfully prayed that the Honorable Commission issue to the Consortium of Davao Light and Power Company, Inc. and Davao del Norte Electric Cooperative, Inc. the franchise and CPCN to operate the Bincungan-Madaum 69 kV line.

Other reliefs, just and equitable are likewise prayed for.

The Commission has initially set the *Application* for the determination of compliance with jurisdictional requirements, expository presentation, Pre-Trial Conference, and presentation of evidence on 24 April 2018.

On 19 April 2018, Applicants DLPC and DANECO filed a *Motion to Reset the 24 April 2018 Hearing* (Motion) due to the lack of material time to fully comply with the jurisdictional requirements as directed by the Commission.

Accordingly, the instant *Application* is set anew for determination of compliance with the jurisdictional requirements, Expository Presentation, Pre-Trial Conference, and presentation of evidence on **29 May 2018 (Tuesday) at nine o'clock in the morning (9:00 A.M.) at the ERC Hearing Room, 15th Floor, Pacific Center Building, San Miguel Avenue, Pasig City.**

All persons who have interest in the subject matter of the instant case may become a party by filing with the Commission a verified Petition to Intervene at least five (5) days prior to the initial hearing and subject to the requirements under Rule 9 of the 2006 Rules of Practice and Procedure, indicating therein the docket number and title of the case and stating the following:

- i. The petitioner's name and address;
- ii. 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
- iii. 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 case may file their Opposition or Comment thereon at any stage of the proceeding

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before Applicants rest their case, subject to the requirements under Rule 9 of the 2006 ERC Rules of Practice and Procedure. No particular form of Opposition or Comment is required, but the document, letter, or writing should contain the following:

- 1) The name and address of such person;
- 2) A concise statement of the Opposition or Comment;
and
- 3) The grounds relied upon.

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

WITNESS, the Honorable Chairperson and CEO **AGNES VST DEVANADERA**, and Honorable Commissioners **ALFREDO J. NON**, **GLORIA VICTORIA C. YAP-TARUC**, and **GERONIMO D. STA. ANA**, Energy Regulatory Commission, this 20th day of April 2018 in Pasig City.


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Oversight Commissioner for Legal

LS: 
LS: MFM/ARC/APV