

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 THE MACTAN LOAD-END SUBSTATION OF THE NATIONAL TRANSMISSION CORPORATION (TransCo) TO MACTAN ELECTRIC COMPANY, INC. (MECO), AS COVERED BY A CONTRACT TO SELL DATED 23 DECEMBER 2015,

ERC CASE NO. 2016-206 RC

**NATIONAL TRANSMISSION CORPORATION (TransCo)
AND MACTAN ELECTRIC COMPANY, INC. (MECO),
Applicants.**

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D O C K E T E D
Date: MAR 01 2017
By: [Signature]

ORDER

On 28 December 2016, National Transmission Corporation (TransCo) and Mactan Electric Company, Inc. (MECO) filed a *Joint Application* dated 13 December 2016 (Joint Application) seeking the Commission's approval of the sale of the Mactan Load-End Substation.

TransCo and MECO alleged the following in their *Joint Application*:

1. TransCo is a government-owned-and-controlled corporation created and existing by virtue of R.A 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 cor. BIR Rd., Diliman, Quezon City. It may be served with pleadings, notices, orders and other documents through its undersigned counsel.
2. MECO is a private distribution utility (DU), organized and existing under the laws of the Republic of the Philippines with principal office

address in Sangi Rd., Pajo, Lapu-lapu, Cebu City, Philippines. It may be served with pleadings, notices, orders and other documents through its undersigned counsel.

3. By virtue of Section 8 of the EPIRA, TransCo assumed the electrical transmission functions of the National Power Corporation (NPC) and it was authorized and made to assume the responsibility of NPC for the planning, construction and centralized operation and maintenance of high voltage transmission facilities, including grid interconnections and ancillary services.
4. Section 8 of the EPIRA and Rule 6, Section 8 (e) of the EPIRA-Implementing Rules and Regulations (IRR) also mandate the segregation of the transmission and sub-transmission functions and assets for transparency and disposal, and authorize TransCo to negotiate for, and to transfer such sub-transmission assets and facilities to qualified distribution utility/ies (DUs) and Philippine Economic Zone Authority (PEZA)-authorized entities.
5. Pursuant thereto, this Honorable Commission promulgated the "*Guidelines to the Sale and Transfer of the TransCo's Sub-transmission Assets and the Franchising of Qualified Consortiums*" (ERC Guidelines) dated 17 October 2003.
6. Consistent with the ERC Guidelines, TransCo has adopted its own Guidelines on the Sale of Sub-transmission Assets (TransCo Guidelines) [Annex "A"], as approved via TransCo Board Resolution No. TC-2003-067 dated 28 November 2003 [Annex "A-1"], as further amended by TransCo Board Resolution No. TC-2004-009 dated 16 March 2004 [Annex "A-2"].
7. On 06 July 2011, this Honorable Commission issued Resolution No. 15, Series of 2011 entitled "*A Resolution Adopting TransCo's Sub-transmission Assets and the Acquisition by Qualified Consortiums.*"
8. In accordance with the ERC Guidelines, and based on its thorough evaluation, TransCo has determined that the Mactan Load-end Substation is a sub-transmission asset. Copies of the Report on the nature of the asset, List of asset/s for sale to MECO and the Electrical diagram are attached as Annexes "B", "C" and "D," respectively.
9. MECO possesses the technical and financial qualifications to acquire, operate, maintain, expand and upgrade the subject asset, as evidenced by its Audited Income Statement as of 31 December 2013 [Annex "E"], as well as the Technical [Annex "F"] and Financial Qualification Evaluations [Annex "G"] conducted by TransCo.
10. On 05 November 2015, the MECO Board of Directors passed a *Board Resolution* approving the proposed acquisition by MECO of TransCo's Mactan Load-end Substation, as well as the designation of the MECO Board *Chairperson* (Eusebio Tanco), MECO *President* (Dennis Villareal) and MECO *Treasurer* (Douglas Lu Ym) as authorized representative/s of MECO in the execution of the *Contract to Sell*. The same is evidenced by the *Secretary's Certificate* dated 16 February 2016 [Annex "H"], duly signed by M. Alfredo Alex S. Cruz (*Secretary*) and Ms. Ma. Luz L. Caminero (*Assistant Secretary*).
11. On 23 December 2015, TransCo and MECO concluded a *Contract to Sell* [Annex "I"] covering the Mactan Load-end Sub-station

THOUSAND SEVEN HUNDRED TWENTY ONE AND 86/100, Philippine currency (PhP8,530,721.86), inclusive of the 12% value-added tax, net of adjustments and deductions, subject to further adjustments for any major capital improvements.

12. Said amount is based on the Sinclair Knight Merz (SKM) 2008 rolled forward valuation [Annex "J"] pursuant to *ERC Resolution No. 01, Series of 2009*, as amended.
13. MECO is the only distribution utility connected to, and utilizing the Mactan Load-end Substation and there are no existing directly connected customers thereto, as shown in the attached Annex "K".
14. TransCo and MECO also respectfully submit the *Description of the Franchise Area Being Served* [Annex "L"] and *Draft Deed of Absolute Sale* [Annex "M"] as part of the requirements provided in the *ERC Guidelines*.
15. The proposed sale has satisfied all of the requirements and criteria set by the EPIRA and its IRR, as well as the *ERC and TransCo Guidelines on the Sale of Sub-transmission Assets*.
16. The approval by this Honorable Commission of the instant *Joint Application* shall pave the way for the attainment of a reformed electricity industry under the EPIRA, which would ultimately best serve the interest of the consuming public.

PRAYER

WHEREFORE, it is most respectfully prayed of this Honorable Commission that, after due notice and hearing, a **DECISION** be rendered **APPROVING** the instant *Joint Application* pertaining to the sale of TransCo's Mactan Load-end Substation in favor of Mactan Electric Company, Inc. under the terms provided in the *Contract to Sell* dated **23 December 2015**.

Applicants also pray for other just and equitable reliefs.

Finding the said *Joint Application* sufficient in substance with the required fees having been paid, the same is hereby set for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on **30 March 2017 (Thursday) at ten o'clock in the morning (10:00 A.M.)**, at MECO's principal office at **Sangi Road, Pajo, Lapu-lapu, Cebu City**.

Accordingly, TransCo and MECO are hereby directed to:

- 1) Cause the publication of the attached Notice of Public Hearing in two (2) newspapers of nationwide circulation in the Philippines at their own expense, twice (2x) within two (2) successive weeks, the dates of publication not being less than seven (7) days apart and the date of the last

publication to be made not later than ten (10) days before the date of the scheduled initial hearing;

- 2) Furnish the Offices of the Provincial Governor, the City Mayors, and the Local Government Unit (LGU) legislative bodies within the affected franchise area with copies of this Order and the attached Notice of Public Hearing for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within the affected franchise area of the filing of the *Joint Application*, its reasons therefor, and of the scheduled hearing thereon, by any other means available and appropriate;
- 4) Furnish the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress with copies of the *Joint Application*, and this Order and the attached Notice of Public Hearing. They are hereby requested, if they so desire to send their duly authorized representatives at the scheduled hearing; and
- 5) Furnish all those making requests with copies of the *Joint Application* and its attachments, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing, Applicants must submit to the Commission their written compliance with the aforementioned jurisdictional requirements attaching therewith, methodically arranged and duly marked the following:

- 1) The evidence of publication of the attached Notice of Public Hearing consisting of affidavits of the Editors or Business Managers of the newspapers where the said Notice of Public Hearing was published, and the complete issues of the said newspapers;
- 2) The evidence of actual posting of this Order and the attached Notice of Public Hearing consisting of certifications issued to that effect, signed by the aforementioned Governor, Mayors, and LGU legislative bodies or their duly authorized representatives, bearing the seals of their offices;

- 3) The evidence of the means employed by Applicants to inform the consumers within the affected franchise area of the filing of the *Joint Application*, its reasons therefor, and of the scheduled hearing thereon;
- 4) The evidence of receipt of copies of the *Joint Application*, and this Order and the attached Notice of Public Hearing by the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress;
- 5) The evidence of receipt of copies of the *Joint Application* and its attachments by all those making requests therefor, if any; and
- 6) Such other proofs of compliance with the requirements of the Commission.

Applicants and all interested parties are also required 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:

- 1) A summary of admitted facts and proposed stipulation of facts;
- 2) The issues to be tried or resolved;
- 3) The documents or exhibits to be presented, stating the purposes and proposed markings therefor; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-trial Brief.

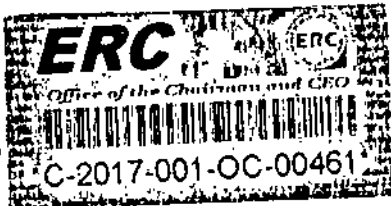
Failure of Applicants to submit the required Pre-Trial Brief and Judicial Affidavits of their witnesses within the prescribed period shall be a ground for cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from the said date of cancellation.

TransCo and MECO must also be prepared to make an expository presentation of the instant *Joint 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 *Joint Application* is all about and the reasons and justifications being cited in support thereof.

SO ORDERED.

Pasig City, 17 February 2017.



FOR AND BY AUTHORITY
OF THE COMMISSION:

JOSE VICENTE B. SALAZAR
Chairman and CEO

LS: JHH/LSV/CVB/APV

Copy Furnished:

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Alabang, Muntinlupa City
3. Mactan Electric Company, Inc.
Applicant
Sangi Rd., Pajo, Lapu-lapu, Cebu City, Cebu
4. Office of the Mayor
Quezon City
5. Office of the Local Government Unit (LGU) legislative body
Quezon City
6. Office of the Mayor
Cebu City
7. Office of the LGU legislative body
Cebu City
8. Office of the Governor
Province of Cebu
9. Office of the LGU legislative body
Province of Cebu
10. Office of the Solicitor General
134 Amorsolo Street, Legaspi Village, Makati City
11. Commission on Audit
Commonwealth Avenue, Quezon City

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12. Senate Committee on Energy
GSIS Bldg. Roxas Blvd., Pasay City
13. House Committee on Energy
Batasan Hills, Quezon City
14. Philippine Chamber of Commerce and Industry (PCCI)
3rd Floor, Chamber and Industry Plaza (CIP), 1030 Campus Avenue corner Park Avenue,
McKinley Town Center, Fort Bonifacio, Taguig City
15. Regulatory Operations Service
17th Floor Pacific Center, San Miguel Avenue, Pasig City