

Republic of the Philippines
ENERGY REGULATORY COMMISSION
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
PAMPANGA III ELECTRIC
COOPERATIVE, INC. (PELCO
III), AS COVERED BY A
CONTRACT TO SELL DATED
19 OCTOBER 2021**

ERC Case No. 2021-111 RC

**NATIONAL TRANSMISSION
CORPORATION (TransCo)
AND PAMPANGA III
ELECTRIC COOPERATIVE,
INC. (PELCO III),**

Promulgated:
January 27, 2022

Applicants.

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ORDER

On 31 December 2021, National Transmission Corporation (TransCo) and Pampanga III Electric Cooperative, Inc. (PELCO III) filed their *Joint Application* dated 22 November 2021, for the approval of the sale of various sub-transmission lines or assets of TransCo to PELCO III, as covered by a Contract to Sell dated 19 October 2021.

The pertinent portions in the said *Joint Application* are hereunder quoted, as follows:

1. TransCo is a government-owned and controlled corporation (GOCC) 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 corner BIR Road, Diliman, Quezon City, Philippines.
2. PELCO III is an electric cooperative (EC) duly organized and existing under the laws of the Republic of the Philippines, with

principal office address in Sampaloc, Apalit, Pampanga, Philippines. It holds an exclusive franchise from the National Electrification Commission to operate an electric light and power distribution service in certain municipalities of the province of Pampanga, namely: Apalit, Macabebe, Masantol, San Simon, Sto. Tomas and Minalin.

3. By virtue of Section 8 of the *EPIRA*, TransCo assumed the electrical transmission functions of the National Power Corporation, and the responsibility of the latter 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's 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 (STAs) and facilities to qualified distribution utilities (DUs), electric cooperatives (ECs) and Consortia.
5. Pursuant thereto, this Honorable Commission promulgated the "*Guidelines on the Sale and Transfer of the TransCo's Sub-transmission Assets and the Franchising of Qualified Consortiums*" (*ERC Guidelines*) dated 17 October 2003, as amended by *ERC Resolution No. 3, Series of 2005* dated 17 March 2005 which set forth, among others, the standards to distinguish TransCo's transmission assets from its sub-transmission assets and establish the approval process prior to the final sale and transfer of sub-transmission assets to qualified DUs.
6. Consistent with the *ERC Guidelines*, TransCo adopted its own *Guidelines on the Sale of Sub-transmission Assets (TransCo Guidelines)* (Annex "A") as approved by *TransCo Board Resolution No. TC-2003-067* dated 28 November 2003 (Annex "B"), as further amended by *TransCo Board Resolution No. TC-2004-009* dated 16 March 2004 (Annex "C").
7. On 16 July 2011, this Honorable 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 *ERC Guidelines*, and based on a thorough evaluation conducted by TransCo, it was determined that the following assets are indeed sub-transmission assets:
 - a. Mexico-SKK20 Line;
 - b. SKK20-CIGI Line;

- c. CIGI-Apalit (PELCO III) Line;
- d. Mexico-PELCO III (PAO) Line;
- e. PAO-INGASCO Line;
- f. INGASCO-MIC 2nd Line;
- g. MIC 2nd-UPPC Line;
- h. PELCO III-UPPC Line;
- i. Mexico-SKK40 Line; and,
- j. Mexico-Milwaukee Line.

Moreover, PELCO III is the only qualified DU that is connected thereto.

Copies of the *Report* regarding the nature of the assets, *List of STAs for Sale to PELCO III* and the *Single Line Diagram* are attached as Annexes “D”, “E” and “F,” respectively.

- 9. On 21 October 2020, the PELCO III Board of Directors issued *Board Resolution No. 79a Series of 2020* (Annex “G”), for the acquisition of the aforesaid lines by PELCO III, and the authorization of Board President, Engineer Lamberto M. Canlas and/or PELCO III General Manager, Maria Elizabeth D. Urbano, to sign all documents related to the acquisition for an on behalf of PELCO III.
- 10. On 19 October 2021, TransCo and PELCO III concluded a *Contract to Sell* (Annex “H”) covering the sale of the subject sub-transmission assets for the amount of ONE HUNDRED THIRTEEN MILLION NINE HUNDRED EIGHTEEN THOUSAND NINE HUNDRED SEVENTY-SIX PESOS AND SIXTY-FOUR CENTAVOS (PHP 113,918,976.64), based on the rolled-forward values of the SKM Valuation (Annex “I”) for the second regulatory period, and inclusive of the twelve percent value-added tax (12% VAT).
- 11. Based on a careful evaluation conducted by TransCo, PELCO III meets all technical criteria set forth under Article IV of the *ERC Guidelines* in acquiring, operating, maintaining, upgrading and expanding the subject sub-transmission assets.
- 12. However, PELCO III failed to meet the Debt Ratio and Average Collection Period under the same *ERC Guidelines*, ratios that TransCo, thru its Management Committee and Board of Directors, decided to waive, on account of the nature of the divestment, which is via an outright sale/*Contract to Sell*, as opposed to a *Lease Purchase Agreement*. Attached as Annex “J” is a copy of the *Secretary’s Certificate* dated 01 October 2021, attesting to the truth hereof and in compliance with Section 2, Article IV of the *ERC Guidelines*.
- 13. Considering the two (2) failed financial ratios, PELCO III sourced financing from San Miguel Corporation (SMC) with payment to TransCo to be made either in cash or Manager’s Check for the acquisition of the subject sub-transmission assets. Attached as Annex “K” is a copy of PELCO III General

Manager Maria Elizabeth D. Urbano's *Letter* dated 02 November 2021, on PELCO III's commitment to avail of financing from SMC.

14. In support of the above allegations, Applicants also hereby jointly submit the following relevant documents:
 - a. *Financial Qualification Evaluation* of PELCO III (Annex "L");
 - b. *Technical Qualification Evaluation* of PELCO III (Annex "M");
 - c. *Audited Financial Statements* of PELCO III as of 31 December 2019 and 31 December 2020 (Annex "N");
 - d. *Draft Deed of Absolute Sale* (Annex "O");
 - e. Franchise Description (Annex "P");
 - f. Franchise Certificate; (Annex "Q"); and
 - g. List of Connected DUs and Directly Connected Entities (Annex "R") with their corresponding contact details
15. The proposed sale has satisfied all the requirements and criteria set by the *EPIRA* and its *IRR*, as well as the ERC and TransCo's *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 interests of the consuming public.

PRAYER

WHEREFORE, premises considered, the National Transmission Corporation (TransCo) and Pampanga III Electric Cooperative, Inc. (PELCO III) most respectfully pray of this Honorable Commission that after due notice and hearing, a *Decision* be rendered APPROVING the sale of TransCo's subject sub-transmission assets for ONE HUNDRED THIRTEEN MILLION NINE HUNDRED EIGHTEEN THOUSAND NINE HUNDRED SEVENTY-SIX PESOS AND SIXTY-FOUR CENTAVOS (PHP 113,918,976.64), in favor of PELCO III under the terms provided in the *Contract to Sell* dated 19 October 2021.

Applicants also pray for other just and equitable relief.

Finding the *Joint Application* to be sufficient in form with the required fees having been paid, the Commission hereby sets the same for the determination of compliance with the jurisdictional requirements, expository presentation, pre-trial conference, and presentation of evidence on the following dates and online platform for

the conduct thereof, pursuant to Resolution No. 09, Series of 2020,¹ dated 24 September 2020, and Resolution No. 01, Series of 2021, dated 17 December 2020 (ERC Revised Rules of Practice and Procedure):²

Date	Platform	Activity
03 March 2022 (Thursday) at two o'clock in the afternoon (2:00 P.M.)	Microsoft Teams Application	Determination of compliance with jurisdictional requirements and Expository Presentation
10 March 2022 (Thursday) at two o'clock in the afternoon (2:00 P.M.)		Pre-trial Conference and Presentation of Evidence

Accordingly, Applicants are hereby directed to host the virtual hearings at **PELCO III's Principal Office in Sampaloc, Apalit, Pampanga**, as the designated venue for the conduct thereof, and ensure that the same is open to the public and the community quarantine guidelines are observed at all times. Moreover, Applicants shall guarantee that, during the conduct of the expository presentation, the participation of the public shall not be impaired.

RELATIVE THERETO, TransCo and PELCO III are hereby directed to:

- 1) Cause the publication of the attached *Notice of Virtual 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 virtual hearing;
- 2) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing* the Offices of the Mayors, Governors, and the Local Government Unit (LGU) legislative bodies within PELCO III's franchise area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within PELCO III's franchise area, by any other means available and appropriate, of the filing

¹ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission;

² A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

of the *Joint Application*, the reasons therefor, and of the scheduled virtual hearings thereon;

- 4) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing*, 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 and attend the scheduled hearings; and
- 5) Furnish with copies of the *Joint Application* and its attachments all those making requests thereof, subject to the resolution of the prayer for confidential treatment of information, if any, and reimbursement of reasonable photocopying costs.³

Within five (5) calendar days prior to the date of the initial virtual hearing, Applicants must submit to the Commission via electronic mail (e-mail) at docket@erc.ph, copy furnish the Legal Service through legal@erc.ph, the scanned copies of 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 Virtual Hearing* consisting of affidavit of the Editors or Business Managers of the newspapers where the said *Notice of Virtual 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 Virtual Hearing* consisting of certifications issued to that effect, signed by the aforementioned Mayors, Governors, and LGU legislative bodies or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by TransCo and PELCO III to inform the consumers within the affected franchise area of the filing of the *Joint Application*, the reasons therefor, and of the scheduled hearings thereon;
- 4) The evidence of receipt of copies of this *Order* and the attached *Notice of Virtual Hearing* by the OSG, the COA, and the Committees on Energy of both Houses of Congress;

³ For the e-mail address of the Applicants, please see page 10.

- 5) The evidence of receipt of copies of the *Joint Application* and its attachments, except those covered by motion for confidential treatment of information, by all those making requests therefor, if any; and
- 6) Such other proof of compliance with the requirements of the Commission.

Moreover, TransCo and PELCO III are hereby required to post on their bulletin boards, the scanned copies of the foregoing jurisdictional requirements, together with the newspaper publications and certifications issued by the concerned Offices of the Mayors, Governors, and Local Legislative Bodies, and to submit proof of their posting thereof.

PELCO III, TransCo and all interested parties are also required to submit via e-mail at docket@erc.ph, copy furnish the Legal Service through legal@erc.ph, at least five (5) calendar days before the date of the scheduled virtual 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, which should also be attached to the Pre-trial Brief; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-trial Brief.

TransCo and PELCO III must ensure that all the documents or exhibits proposed to be presented have already been duly submitted to the Commission at least five (5) calendar days before the date of the scheduled initial virtual hearing and Pre-trial Conference pursuant to the preceding paragraph.

Failure of TransCo and PELCO III to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearings, and the resetting of which shall be six (6) months from the said date of cancellation.

TransCo and PELCO III 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, the nature of the *Joint Application* with relevant information and pertinent details substantiating the reasons and justifications being cited in support thereof.

TransCo and PELCO III are hereby directed to file a copy of their expository presentation via e-mail at doCKET@erc.ph, copy furnish the Legal Service through legal@erc.ph, at least five (5) calendar days prior to the scheduled virtual hearing. TransCo and PELCO III shall also be required, upon the request of any stakeholder, to provide an advance copy of their expository presentation, at least five (5) calendar days prior to the scheduled virtual hearing.

Any interested stakeholder may submit its comments and/or clarifications at least one (1) calendar day prior to the scheduled virtual hearing, via e-mail at doCKET@erc.ph, copy furnish the Legal Service through legal@erc.ph. The Commission shall give priority to the stakeholders who have duly submitted their respective comments and/or clarifications, to discuss the same and propound questions during the course of the expository presentation.

TransCo and PELCO III are hereby directed to submit, either through personal service, registered or ordinary mail/private courier, one (1) set of the original or certified true hard/printed copy/ies of their Jurisdictional Compliance, Expository Presentation, Pre-trial Brief, and Judicial Affidavit/s of witness/es, within five (5) working days from the date that the same were electronically submitted, as reflected in the acknowledgment receipt e-mail sent by the Commission. Similarly, all interested parties who filed their Petition for Intervention or Opposition are required to submit the hard/printed copy thereof within the same period through any of the available modes of service.

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Finally, Applicants, including their authorized representative/s and witness/es, are hereby directed to provide the Commission, through legal.virtualhearings@erc.ph, their respective e-mail addresses upon receipt of this *Order*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearings.

SO ORDERED.

Pasig City, 13 January 2022.

FOR AND BY AUTHORITY
OF THE COMMISSION:



AGNES VST DEVANADERA
Chairperson and CEO


LS: KMS/ARG/MCCG

ERC

Office of the Chairperson



AVSTD-2022-01-510-0064

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Copy Furnished:

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2. National Transmission Corporation (TransCo)
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5. Commission on Audit
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6. Senate Committee on Energy
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7. House Committee on Energy
Batasan Hills, Quezon City
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8. Office of the President of PCCI
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
secretariat@philippinechamber.com
9. Office of the Provincial Governor
Province of Pampanga
10. Office of the Sangguniang Panlalawigan
Province of Pampanga
11. Office of the Mayor
Apalit, Pampanga
12. Office of the LGU Legislative Body
Apalit, Pampanga
13. Office of the Mayor
Macabebe, Pampanga
14. Office of the LGU Legislative Body
Macabebe, Pampanga
15. Office of the Mayor
Masantol, Pampanga
16. Office of the LGU Legislative Body
Masantol, Pampanga
17. Office of the Mayor
San Simon, Pampanga

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18. Office of the LGU Legislative Body
San Simon, Pampanga
19. Office of the Mayor
Sto. Tomas, Pampanga
20. Office of the LGU Legislative Body
Sto. Tomas, Pampanga
21. Office of the Mayor
Minalin, Pampanga
22. Office of the LGU Legislative Body
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23. Regulatory Operations Service (ROS)
17th Floor, Pacific Center Building, San Miguel Avenue, Ortigas Center 1600, Pasig City