

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

**IN THE MATTER OF THE
APPLICATION FOR
AUTHORITY TO DEVELOP,
OWN AND/OR OPERATE
DEDICATED POINT-TO-
POINT LIMITED
TRANSMISSION
FACILITIES TO CONNECT
THE 17 MW TIWI
GEOTHERMAL BINARY
POWER PROJECT TO THE
LUZON GRID VIA THE 69
KV TIWI-C SUBSTATION OF
THE NATIONAL GRID
CORPORATION OF THE
PHILIPPINES, WITH
PRAYER FOR
PROVISIONAL AUTHORITY
AND/OR INTERIM RELIEF
AND CONFIDENTIAL
TREATMENT OF
INFORMATION**

ERC CASE NO. 2022-031 MC

AP RENEWABLES, INC.,

Applicant.

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Promulgated:
December 22, 2022

ORDER

On 09 December 2022, AP Renewables Inc. (APRI) filed an *Application* dated 23 November 2022, seeking the Commission's approval of its authority to develop, own and/or operate the dedicated point-to-point limited transmission facilities to connect its 17 MW Tiwi Geothermal Binary Power Project to the Luzon Grid via the 69 kV Tiwi-C Substation of the National Grid Corporation of the Philippines (NGCP), with prayer for provisional authority and/or interim relief and confidential treatment of information.

The pertinent allegations in the *Application* are hereunder quoted:

THE APPLICANT

1. APRI is a private corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at NAC Tower, 32nd Street, Bonifacio Global City, Taguig City. It may be served with orders, notices, and other processes of this Honorable Commission through the undersigned counsel.

NATURE OF THE APPLICATION

2. The instant Application is being filed pursuant to Section 9 of the Electric Power Industry Reform Act of 2001 (“EPIRA”), which states that:

“xxx A generation company may develop and own or operate dedicated point-to-point limited transmission line facilities that are consistent with the TDP; Provided, That such facilities are required only for the purpose of connecting to the transmission system, and are used solely for the purpose of connecting to the transmission system, and are used solely by the generating facilities, subject to prior authorization by the ERC xxx”

3. This Application is similarly being filed pursuant to Section 5 (a) of the Implementing Rules and Regulations of the EPIRA, which states that:

“Section 5. Dedicated Point-to-Point Limited Transmission Facility of a Generation Company. (a) Subject to prior authorization from ERC, TRANSCO, or its Buyer or Concessionaire may allow a Generation Company to develop, own and/or operate dedicated point-to-point limited transmission facilities: Provided, That:

- 1) Such dedicated point-to-point limited transmission facilities are required only for the purpose of connecting to the Grid which will be used solely by the Generation Facility, and are not used to serve End-users or Suppliers directly;
 - 2) The facilities are included and consistent with the TDP as certified by TRANSCO or its Buyer or Concessionaire; and
 - 3) Any other documents that may be required by the ERC.
4. APRI proposes to develop, own, and/or operate interconnection facilities to connect its 17 MW Tiwi Geothermal Binary Power Plant (Tiwi Binary Plant) Project to the Luzon Grid via the 69kV Tiwi-C Substation of the National Grid Corporation of the Philippines (“NGCP”) (“Dedicated Facility Project”).

STATEMENT OF FACTS

5. APRI is duly registered to, among others, carry on the business of operating, developing and managing geothermal generating facilities and related assets.
6. To connect the Tiwi Binary Plant to the Luzon Grid, APRI shall develop and construct the Dedicated Facility Project, a dedicated point-to-point limited connection facility to be used solely by the

Tiwi Binary Plant for its dispatch and connection to the 69kV Tiwi-C Substation owned and operated by NGCP. Said facilities are necessary to test, commission and dispatch the capacity of the Tiwi Binary Plant and shall be exclusively utilized by APRI.

7. The Tiwi Binary Plant will be connected through an estimated 0.37 km single circuit transmission line, having a primary voltage of 69kV and secondary voltage of 13.8kV, to the 69kV Tiwi-C Substation of the NGCP. This connection will allow movement of power from the Tiwi Binary Plant to the Luzon Grid. APRI studied its options and found that such direct connection is the sole viable option to connect the Tiwi Binary Plant project to the Luzon Grid due to its proximity.
8. The estimated cost of the construction of the Dedicated Facility Project is Eighty Three Million Five Hundred Sixteen Thousand Five Hundred Twenty-Two Pesos and 36/100 (PhP 83,516,522.36), with the following components:

Dedicated Facility Project	Amount
Substation Cost	38,807,942.37
Transmission Line Cost	3,037,276.56
Connection Point Cost	41,671,303.43
TOTAL ESTIMATED COST	83,516,522.36

9. Based on the System Impact Study (“SIS”) Report prepared by NGCP to determine the technical feasibility of the Dedicated Facility Project and the impact of connecting the Tiwi Binary Plant to the Luzon Grid, it was found that the connection of the Tiwi Binary Plant to the Luzon Grid is technically feasible.
10. APRI also engaged MN Electro Industrial Supply and Services, Inc. to conduct the Facilities Study to ensure that the equipment to be installed will satisfy the recommendation of the SIS, and that the Dedicated Facility Project complies with the provisions of the Philippine Grid Code.
11. NGCP and APRI are currently in the process of finalizing the terms of their Connection Agreement for the interconnection of the Tiwi Binary Plant to the Luzon Grid through the Dedicated Facility Project.
12. The Tiwi Binary Plant is included in the formulation of NGCP’s Transmission Development Plan (TDP), in relation thereto, NGCP has issued a Certification in favor of APRI.
13. Moreover, the Department of Energy (DOE) issued a Certificate of Endorsement certifying that APRI’s Application to develop, own and operate a dedicated point-to-point limited transmission facilities to connect its Tiwi Binary Plant to the grid is consistent with the provisions of Section 9 of the EPIRA.
14. Upon completion of the Dedicated Facility Project and the commercial operation of the Tiwi Binary Plant, APRI intends to operate and maintain the Dedicated Facility Project.

15. As of date, APRI has secured or is in the process of securing the necessary permits, licenses, and authority from the appropriate regulatory agencies for the Dedicated Facility Project.
16. In light of the foregoing, APRI respectfully seeks the confirmation and approval of the Honorable Commission that the Dedicated Facility Project is the most viable option for the connection of the Tiwi Binary Plant to the Luzon Grid.
17. The following documents are herewith submitted in support of the instant Application:

Annex	Documents
A	APRI's Amended Articles of Incorporation
B	APRI's Amended By-laws
C	APRI's General Information Sheet
D	APRI's Secretary's Certificate dated 10 June 2022
E	Sworn Statement dated 15 June 2022
F*	Project Description (TGP Binary Power Plant Point to Point Application)
G*	Relevant Dates of the project
H*	Gantt Chart (TGP Binary Project SS/TL/CP)
I*	Single Line Diagram of the Dedicated Facility Project
J*	Conceptual Drawings and Design
K and K-1	APRI's Environmental Compliance Certificate (ECC) Transfer of Ownership of ECC No. 0109-642-203 dated 28 September 2009; and ECC Amendment dated 25 July 2019
L*	Detailed Project Cost
M*	System Impact Study (SIS) dated March 2022
M-1*	SIS Final Review Report dated 19 April 2022
N*	Facilities Study dated May 2022
O*	NGCP's Facilities Study Report dated 23 June 2022
P	NGCP's Certification dated 27 June 2022 (Re: NGCP and APRI's Connection Agreement)
Q and series	Contractors' Profile <ul style="list-style-type: none"> ● Hansei Corporation ● Hefty Power Systems Corporation ● Power Dimension, Inc.

Annex	Documents
	<ul style="list-style-type: none"> • Southern J. Power Electricity, Inc.
R	DOE Certificate of Endorsement DOE-EPIMB-ERC-P2P No. 2022-07-11
S	DOE Certificate of Additional Investment No. RE-GEMD2002-05-012 dated 20 May 2022
T	DOE Certificate of Confirmation of Commerciality No. RE-GEMD 2022-05-009 dated 20 May 2022
U	NGCP Certification dated 5 August 2022
V	Demand-Supply Scenario (Power Development Plan 2020-2040)
W	Affidavit of Compliance with the Philippine Grid Code and the Philippine Distribution Code dated 15 June 2022
X	Geothermal Renewable Energy Operating Contract for Tiwi Geothermal Complexes (GREOC No. 2009-10-006)
Y	Judicial Affidavit of Mr. Rene Astorga.

**Subject to a Motion for Confidential Treatment of Information*

**ALLEGATIONS IN SUPPORT OF THE PRAYER FOR
PROVISIONAL AUTHORITY OR INTERIM RELIEF**

18. Section 2 (a) of the Renewable Energy Act of 2008 (“RE Act”) mandates that it is the policy of the State to “accelerate the exploration and development of renewable energy resource such as, but not limited to, biomass, solar, wind, hydro, geothermal and ocean energy sources, including hybrid systems, to achieve energy self-reliance, through the adoption of sustainable energy development strategies to reduce the country’s exposure to price fluctuations in the international markets, the effects of which spiral down to almost all sectors of the economy”.
19. Further, Section 6, Chapter III of the RE Act mandates that the stakeholders in the electric power industry contribute to the growth of the renewable energy industry of the country.
20. APRI’s construction of the Tiwi Binary Plant is in furtherance of the RE Act and consistent with the implementation of the Renewable Portfolio Standards by the DOE. In order to fulfill such a mandate, permits must be secured, and construction and commissioning must be accomplished immediately.
21. APRI needs to immediately test, commission, and dispatch electricity from the Tiwi Binary Plant upon its completion to contribute to the rising demand growth, and avoid unnecessary delays that can lead to opportunity costs. Thus, it is necessary for APRI’s Tiwi Binary Plant to be connected to the grid, through the Dedicated Facility Project, at the earliest possible opportunity.

A copy of the Affidavit executed by APRI's authorized representative in support of the prayer for issuance of provisional authority is hereto attached and made an integral part hereof as Annex "Y".

22. Considering the foregoing, APRI submits that there is clear and sufficient basis for the issuance of a provisional authority or interim relief for the development, ownership and operation of the Dedicated Facility Project by APRI to connect the Tiwi Binary Plant to the Luzon Grid, pending the Honorable Commission's issuance of a final decision on the instant Application.

**ALLEGATIONS IN SUPPORT OF THE CONFIDENTIAL
TREATMENT OF INFORMATION**

23. Under Rule 4 of the Honorable Commission's Rules of Practice and Procedure, a party to any proceeding before the Honorable Commission may request that certain information not be disclosed and be treated as confidential. In this regard, APRI prays for the confidential treatment of Annexes "F", "G", "H", "I", "J", "L", "M", "M-1", "N" and "O" and the information contained therein and to not disclose the same except to the necessary officers and staff of the Honorable Commission.
24. APRI respectfully manifests that Annexes "F", "G", "H", "I", "J", "L", "M", "M-1", "N" and "O" of the instant *Application* contain valuable, non-public information, and data and insight, and should be treated as confidential. These confidential documents contain privileged and sensitive information, if unduly disclosed, will seriously prejudice APRI's competitiveness. It is therefore submitted that Annexes Annexes (*sic*) "F", "G", "H", "I", "J", "L", "M", "M-1", "N" and "O" fall within the bounds of proprietary trade secrets which are confidential and are entitled to protection under the Constitution, statutes, and rules and regulations of this Honorable Commission.
25. Considering that APRI has actual and valuable proprietary interest to protect with respect to such information, Annexes "F", "G", "H", "I", "J", "L", "M", "M-1", "N" and "O" fall within the bounds of "trade secrets", which are entitled to protection under the Constitution, statutes, and rules and regulations of this Honorable Commission.
26. In the case of *Air Philippines Corporation vs. Pennswell, Inc.*,¹ the Supreme Court defined "trade secrets" and explained as follows:

"A trade secret is defined as a plan or process, tool, mechanism or compound known only to its owner and those of his employees to whom it is necessary to confide it. The definition also extends to a secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade

¹ 564 Phil. 774 (2007), G.R. No. 172835.

having a commercial value. A trade secret may consist of any **formula, pattern, device, or compilation of information that: (1) is used in one's business; and (2) gives the employer an opportunity to obtain an advantage over competitors who do not possess the information.** Generally, a trade secret is a **process or device intended for continuous use in the operation of the business**, for example, a machine or formula, but can be a price list or catalogue or specialized customer list. **It is indubitable that trade secrets constitute proprietary rights.** (*Emphasis supplied.*)

27. Clearly, the Honorable Commission recognizes the importance of treating trade secrets as confidential in order to ensure the competitiveness of the generation sector. The information in Annexes "F", "G", "H", "I", "J", "L", "M", "M-1", "N" and "O" therefore falls within the definition of a trade secret as defined by jurisprudence, merits the confidential treatment provided for under Rule 4 of the ERC Rules of Practice and Procedure.
28. In view of the foregoing, APRI respectfully requests that the documents attached as Annexes "F", "G", "H", "I", "J", "L", "M", "M-1", "N" and "O" be marked and treated as confidential and privileged, and not be disclosed to persons other than the necessary officers and staff of this Honorable Commission.
29. Accordingly, APRI respectfully submits the instant Application for the Honorable Commission's urgent and utmost consideration.

PRAYER

WHEREFORE, premises considered, Applicant AP RENEWABLES, INC. (APRI) respectfully prays that the Honorable Commission:

1. Issue an Order granting provisional authority or interim relief for the implementation of the development, ownership and operation of the Dedicated Facility Project by APRI to connect the Tiwi Binary Plant to the Luzon Grid;
2. Issue an Order treating Annexes "F", "G", "H", "I", "J", "L", "M", "M-1", "N" and "O" and the information contained therein as confidential information within the purview of Rule 4 of the ERC Rules of Practice and Procedure and prescribing the guidelines for the protection thereof; and
3. After hearing on the merits, a Decision be rendered approving the instant Application.

Other just and equitable relief are likewise prayed for.

Finding the said *Application* to be sufficient in form with the required fees having been paid, the Commission hereby sets the same for determination of compliance with the jurisdictional requirements,

expository presentation, Pre-trial Conference, and presentation of evidence on the following dates and online platforms for the conduct thereof pursuant to Resolution No. 09, Series of 2020² and Resolution No. 01, Series of 2021³ (ERC Revised Rules of Practice and Procedure):

Date	Platform	Activity
15 February 2023 (Wednesday) at two o'clock in the afternoon (2:00 PM)	Microsoft Teams or Zoom Application	Determination of compliance with jurisdictional requirements and expository presentation
22 February 2023 (Wednesday) at two o'clock in the afternoon (2:00 PM)		Pre-Trial Conference and Presentation of Evidence

RELATIVE THERETO, APRI is hereby directed to:

- 1) Cause the publication of the attached *Notice of Virtual Hearing* once (1x) in a newspaper of nationwide circulation in the Philippines at its own expense, at least ten (10) days before the date of the scheduled initial hearing;
- 2) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing* the Offices of the Provincial Governor, the City and Municipal Mayors, and the Local Government Unit (LGU) legislative bodies of the areas affected by the project for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within the affected areas, by any other means available and appropriate, of the filing of the *Application*, its 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

² A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

³ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

- 5) Furnish with copies of the *Application* and its attachments, except those subject of a motion for confidential treatment of information, all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

Within five (5) calendar days prior to the date of the virtual hearings, APRI 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 its 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 Editor or Business Manager of the newspaper where the said *Notice of Virtual Hearing* was published, and the complete issue of the said newspaper;
- 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 Governor, Mayors and LGU legislative bodies or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by APRI to inform the consumers within the affected area of the filing of the *Application*, its 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;
- 5) The evidence of receipt of copies of the *Application* and its attachments, except those subject of a motion for confidential treatment of information, by all those making requests therefor; and
- 6) Such other proofs of compliance with the requirements of the Commission.

Moreover, APRI is hereby required to post on its bulletin boards, the scanned copies of the foregoing jurisdictional requirements, together with the newspaper publication and certifications issued by

the concerned Offices of the Governor, Mayors and Local Legislative Bodies, and to submit proof of its posting thereof.

APRI 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.

APRI 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 APRI to comply with the above requirements 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.

APRI must also be prepared to make an expository presentation of the instant *Application*, aided by whatever communication medium that it 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 *Application* with relevant information and pertinent details substantiating the reasons and justifications being cited in support thereof.

APRI is hereby directed to file a copy of its 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. APRI shall also be required, upon the request of any stakeholder, to provide an advance copy of its 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.


APRI is 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 its 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.

Finally, APRI, including its authorized representative/s and witness/es, are hereby directed to provide the Commission, thru legal.virtualhearings@erc.ph, with 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 hearing.

SO ORDERED.

Pasig City, 22 December 2022.

FOR AND BY AUTHORITY
OF THE COMMISSION:


FLORESINDA G. BALDO-DIGAL
Oversight Commissioner
For the Legal Service


LS: SQD/LSP/MCCG

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Copy Furnished:

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