

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 137.480 MWac CALATRAVA SOLAR POWER PROJECT TO THE VISAYAS GRID VIA THE 230KV CALATRAVA 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. 2024-014 MC

**ABOITIZ SOLAR POWER, INC.
(ASPI),**

Applicant.

x-----x

Promulgated:
April 16, 2024

ORDER

On 15 March 2024, Aboitiz Solar Power, Inc. (ASPI) filed, through the Energy Virtual One-Stop Shop (EVOSS) portal, an *Application (with Prayer for Provisional Authority or Interim Relief and Confidential Treatment of Information)* dated 12 March 2024 (Application), seeking the Commission's approval of its authority to develop, own and/or operate dedicated point-to-point limited transmission facilities to connect the 137.480 MWAC Calatrava Solar Power Project to the Visayas grid via the 230kV Calatrava Substation of the National Grid Corporation of the Philippines, with prayer for the issuance of provisional authority and/or interim relief and motion for confidential treatment of information.

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

THE APPLICANT

1. ASPI, formerly Hedcor Itogon, Inc., 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. ASPI proposes to develop, own, and/or operate interconnection facilities (“Dedicated Facility Project”) to connect its 137.480 MWac Calatrava Power Plant (“Calatrava SPP”) project to the Visayas Grid via the 230kV Calatrava Substation of the National Grid Corporation of the Philippines (“NGCP”).

STATEMENT OF FACTS

5. ASPI is duly registered to, among others, carry on the business of owning, developing, constructing, operating, repairing, and maintaining solar power plant systems, renewable and indigenous power generation plants, and other types of power generation and/or converting stations.
6. To connect the Calatrava SPP to the Visayas Grid, ASPI shall develop and construct the Dedicated Facility Project, a dedicated point-to-point limited connection facility to be used solely by the Calatrava SPP for its dispatch and connection to the 230kV Calatrava Substation owned and operated by NGCP. Said facilities are necessary to test, commission, and dispatch the capacity of the Calatrava SPP and shall be exclusively utilized by ASPI.
7. The Calatrava SPP will be connected through double circuit transmission line approximately 500m in length,¹ having a primary voltage of 230kV and secondary voltage of 34.5kV, to the 230kV Calatrava Substation of the NGCP. The connection of the Dedicated Facility Project to the Calatrava Substation will allow movement of power from the Calatrava SPP to the Visayas Grid. ASPI studied its options (i.e, Calatrava Substation, and Cadiz Substation) and found that such direct connection to the Calatrava Substation is the best option to connect the Calatrava SPP project to the Visayas Grid due to its proximity.
8. The estimated cost of the construction of the Dedicated Facility Project is Three Hundred Ninety Million Six Hundred Fifty One Thousand Two Hundred Twenty and 14/100 Pesos (**PhP 390,651,220.14**), with the following components:

Components	Cost (PhP)
Substation and its associated accessories	305,311,994.44
Switchyard and its associated accessories	46,207,611.80
Transmission Line/s and its associated accessories	39,131,613.90
TOTAL ESTIMATED COST	390,651,220.14

¹ Based on the Facilities Study dated November 2023. The actual length may be subject to change during construction.

The estimated cost will still vary depending on the final cost from the Engineering, Procurement and Construction (EPC) contractor.

9. On 4 July 2022, NGCP offered its service to conduct the System Impact Study (SIS) for the proposed connection of ASPI's 137.480 MWac Calatrava SPP to the Visayas Grid via the 230kV Calatrava Substation.
10. Based on the System Impact Study ("SIS") and SIS Review Report prepared by NGCP to determine the technical feasibility of the Dedicated Facility Project and the impact of connecting the Calatrava SPP to the Visayas Grid, the connection of the Calatrava SPP to the Visayas Grid was found to be technically feasible, subject to conditions.
11. ASPI also engaged MN Electro Industrial Supply and Services Inc. to conduct the Interconnection Facilities Study Report ("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.
12. NGCP and ASPI are currently in the process of finalizing the terms of their Connection Agreement for the interconnection of the Calatrava SPP to the VisayasGrid (*sic*) through the Dedicated Facility Project.
13. Likewise, ASPI and DOE have entered into a Solar Energy Operating Contract for ASPI's development and utilization of solar energy resource within Calatrava, Negros Occidental.
14. Upon completion of the Dedicated Facility Project and the commercial operation of the Calatrava SPP, ASPI intends to operate and maintain the Dedicated Facility Project.
15. As of date, ASPI 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, ASPI 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 Calatrava SPP to the Visayas Grid.
17. The following documents are herewith submitted in support of the instant Application:

Annex	Documents
A*	Calatrava SPP Point to Point Application Project Description (<i>Confidential</i>)

B	NGCP's Certification dated 16 January 2024 Re: Transmission Development Plan
C*	NGCP Offer of Service dated 4 July 2022 (<i>Confidential</i>)
C-1*	System Impact Study (<i>Confidential</i>)
C-2	System Impact Review Report dated 6 October 2023
C-3*	Facilities Study (<i>Confidential</i>)
C-4*	Facilities Study Report (<i>Confidential</i>)
D	Single Line Diagram of the Dedicated Facility Project
E*	Conceptual Engineering Design and Drawings (<i>Confidential</i>)
F	Point to Point Relevant Dates
G	Demand-Supply Scenario (Power Development Plan 2020-2040)
H	ASPI's Secretary's Certificate dated 24 January 2023
I	Sworn Statement of Mr. Miguel Robillo dated 24 January 2023
J	DENR Environmental Compliance Certificate ECC-RO6-22-0100
K	DOE Certificate of Registration No. SEOC 2022-04-621
L	Solar Energy Operating Contract (SEOC No. 2022-04-621)
M	DOE Certificate of Endorsement DOE-EPIMB-ERC-P2P No. 2023-01-003
N	ASPI's Amended Articles of Incorporation
O	ASPI's Amended By-Laws
P	ASPI's Latest (2023) General Information Sheet
Q	Affidavit of Compliance with the Philippine Grid Code and the Philippine Distribution Code dated 24 January 2023
R	Judicial Affidavit of Mr. Danny Caro

****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. ASPI's construction of the Calatrava SPP 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. ASPI needs to immediately test, commission, and dispatch the Calatrava SPP upon its completion to avoid unnecessary delays that can lead to opportunity costs and contribute to the rising demand growth. Thus, it is necessary for ASPI's Calatrava SPP to be connected to the grid, through the Dedicated Facility Project, at the earliest possible opportunity.

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

22. Considering the foregoing, ASPI submits that there is clear and sufficient basis for the issuance of a provisional authority for the development, ownership, and operation of the Dedicated Facility Project by ASPI to connect the Calatrava SPP to the Visayas 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, ASPI prays for the confidential treatment of **Annexes "A", "C", "C-1", "C-3", "C-4", and "E"**, and the information contained therein and to not disclose the same except to the officers and staff of the Honorable Commission.
24. ASPI respectfully manifests that **Annexes "A", "C", "C-1", "C-3", "C-4", and "E"** 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 ASPI's competitiveness. It is therefore submitted that **Annexes "A", "C", "C-1", "C-3", "C-4", and "E"** 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 ASPI has actual and valuable proprietary interest to protect with respect to such information, **Annexes "A", "C", "C-1", "C-3", "C-4", and "E"** 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.*,² 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 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 "A", "C", "C-1", "C-3", "C-4", and "E"** 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. Further, the treatment of the information contained in **Annexes "A", "C", "C-1", "C-3", "C-4", and "E"** as confidential information is consistent with the Honorable Commission's *Matrix of Confidential and Non-Confidential*

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

Document and Information (as of 13 November 2023) (“Matrix”). In the *Matrix*, commissioned studies, and documents reflecting management/business strategy should be treated with confidentiality because they have proprietary value that constitute trade secrets. Therefore, as described above, since the information in the subject document falls in this category, **Annexes “A”, “C”, “C-1”, “C-3”, “C-4”, and “E”** should likewise be treated with confidentiality.

29. In view of the foregoing, ASPI respectfully requests that the documents attached as **Annexes “A”, “C”, “C-1”, “C-3”, “C-4”, and “E”** 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.
30. Accordingly, ASPI respectfully submits the instant Application for the Honorable Commission’s urgent and utmost consideration.

PRAYER

WHEREFORE, premises considered, Applicant **ABOITIZ SOLAR POWER, INC. (“ASPI”)** respectfully prays that the Honorable Commission:

1. Issue an Order granting provisional authority for the implementation of the development, ownership, and operation of the Dedicated Facility Project by ASPI to connect the Calatrava SPP to the Visayas Grid;
2. Issue an Order treating **Annexes “A”, “C”, “C-1”, “C-3”, “C-4”, and “E”** 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 and with the required fees having been paid, the Commission hereby sets the same for hearing for determination of compliance with the jurisdictional requirements, expository presentation, and Pre-Trial Conference³ on

³ In the Commission’s *Advisory* dated 26 July 2023, the Commission adopted the Summary Proceedings in accordance with Rule 17 of the Commission’s Revised Rules of Practice and Procedure (ERC Revised RPP) in the filing, processing and evaluation of the applications for authority to develop and own or operate dedicated point-point limited transmission facilities, in the following instances: (1) Applications without intervenors, or uncontested applications; and (2) Applications with intervenors, provided all parties have agreed to subject the application to summary proceedings. Under the said summary proceedings and in accordance with Rule 17 of the ERC Revised RPP, the Applicant’s presentation of evidence is through the submission and offering of the affidavits of its witnesses and other pieces of evidence within the time allowed by the Commission.

23 May 2024 (Thursday) at two o'clock in the afternoon (2:00 P.M.), through MS Teams Application as the online platform for the conduct thereof, pursuant to Resolution No. 09, Series of 2020⁴ and Resolution No. 01, Series of 2021 (ERC Revised Rules of Practice and Procedure).⁵

RELATIVE THERETO, Applicant ASPI 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, with the date of publication to be made not later than 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 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 area, by any other means available and appropriate, of the filing of the *Application*, its reasons therefor, and of the scheduled virtual hearing 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 *Application* and its attachments, except those subject of a motion for confidential treatment of information, all those making requests therefor, subject reimbursement of reasonable photocopying costs.

⁴ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

⁵ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

Within ten (10) calendar days prior to the date of the initial virtual hearing, Applicant ASPI must submit to the Commission through the EVOSS portal and 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 the 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 Governors, Mayors and LGU legislative bodies or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by Applicant ASPI 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, if any; and
- 6) Such other proofs of compliance with the requirements of the Commission.

Moreover, Applicant ASPI 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 Office of the Provincial Governor, Mayors, and Local Legislative Bodies, and to submit proof of posting thereof.

Applicant ASPI 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.

Applicant ASPI 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 Applicant ASPI to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearing.

Applicant ASPI 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.

Applicant ASPI is hereby directed to file a copy of its Expository Presentation via e-mail at doCKET@erc.ph, and copy furnish the Legal Service through legal@erc.ph, **at least five (5) calendar days** prior to the scheduled virtual hearing. Applicant ASPI 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.

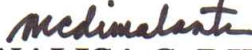
Applicant ASPI is further directed to submit, through personal service, registered mail, or ordinary mail/private courier, one (1) set of the original or certified true hard copies of its Jurisdictional Compliance, Expository Presentation, Pre-Trial Brief, and Judicial Affidavits of witnesses, **within 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.

Finally, Applicant ASPI, including its authorized representatives and witnesses, is hereby directed to provide the Commission, thru legal.virtualhearings@erc.ph, their e-mail addresses upon receipt of this *Order*. The Commission will send the access link to the aforementioned hearing platform **within five (5) working days** prior to the scheduled hearing.

SO ORDERED.

Pasig City, 16 April 2024.

FOR AND BY AUTHORITY
OF THE COMMISSION:


MONALISA C. DIMALANTA
Chairperson and CEO


LS: KACF/MCC/KTF

ERC
Office of the Chairperson and CEO



MCD2024-016210

ERC CASE NO. 2024-014 MC
ORDER/ 16 APRIL 2024
PAGE 13 OF 13

COPY FURNISHED:

1. Atty. Niña Dianne R. Santiago
Counsels for Applicant
16th Floor, NAC Tower,
32nd St., Bonifacio Global City, Taguig City
Telephone No. 8886- 2800 loc.11282
regulatory.legal@aboitiz.com
nina.santiago@aboitiz.com
2. Aboitiz Solar Power, Inc (ASPI)
Applicant
NAC Tower, 32nd Street,
Bonifacio Global City, Taguig City
3. Office of the City Mayor
Taguig City
4. Office of the Local Government Unit (LGU) Legislative Body
Taguig City
5. Office of the Municipal Mayor
Municipality of Calatrava, Negros Occidental
6. Office of the Local Government Unit (LGU) Legislative Body
Municipality of Calatrava, Negros Occidental
7. Office of the Provincial Governor
Province of Negros Occidental
8. Office of the Local Government Unit (LGU) Legislative Body
Province of Negros Occidental
9. Office of the Solicitor General (OSG)
134 Amorsolo Street, Legaspi Village, Makati City
docket@osg.gov.ph
10. Commission on Audit (COA)
Commonwealth Avenue, Quezon City
citizensdesk@coa.gov.ph
11. Senate Committee on Energy
GSIS Bldg. Roxas Blvd., Pasay City
senateenergycommittee@gmail.com
12. House Committee on Energy
Batasan Hills, Quezon City
committee.energy@house.gov.ph
13. National Grid Corporation of the Philippines (NGCP)
NGCP Building, Quezon Avenue cor. BIR Road
Diliman, Quezon City
litigation®ulatory@ngcp.ph; corpcom@ngcp.com.ph
14. Regulatory Operations Service
Energy Regulatory Commission
14th Floor, Exquadra Tower, 1 Jade Drive, Ortigas Center, Pasig City
ros@erc.ph