

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 40 MW KIBUNGAN 2
HYDROELECTRIC POWER
PROJECT TO THE
BACNOTAN SUBSTATION
OF THE NATIONAL GRID
CORPORATION OF THE
PHILIPPINES, WITH
PRAYER FOR
PROVISIONAL
AUTHORITY OR INTERIM
RELIEF AND
CONFIDENTIAL
TREATMENT OF
INFORMATION**

ERC CASE NO. 2022-020 MC

**HEDCOR BENGUET, INC.
(HBI),**

Applicant.

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Promulgated:

August 26, 2022

NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 15 August 2022, HEDCOR Benguet, Inc. (HBI) filed an *Application* dated 13 July 2022, seeking the Commission's authority to develop, own, and/or operate dedicated point-to-point limited transmission facilities to connect the 40 MW Kibungan 2 Hydroelectric Power Project to the Bacnotan Substation of the National Grid Corporation of the Philippines (NGCP), with prayer for provisional authority or interim relief and confidential treatment of information.

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

THE APPLICANT

1. HBI is a company duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at Aboitiz Corporate Center, Gov. Manuel A. Cuenco Avenue, Kasambangan, Cebu 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:

“. . . 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. . .”

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. HBI is proposing to develop, own, and/or operate interconnection facilities (“Dedicated Facility Project”) to connect the proposed 40 MW Kibungan 2 Hydroelectric Power Project (“Kibungan 2 HEPP”), located in the municipality of Kibungan, Benguet, to the Luzon Grid via the 69kV transmission line to the Bacnotan Substation of the National Grid Corporation of the Philippines (“NGCP”).

STATEMENT OF FACTS

5. HBI is duly registered to 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 Kibungan 2 HEPP to the Luzon Grid, HBI shall develop and construct the Dedicated Facility Project, a dedicated point-to-point limited connection facility to be used solely by the Kibungan 2 HEPP for its dispatch and connection to the Bacnotan Substation owned and operated by NGCP. Said facilities are necessary to test, commission and dispatch the capacity of the Kibungan 2 HEPP and shall be exclusively utilized by HBI.
7. The Kibungan 2 HEPP will be connected through a 24.9km 69kV transmission line and will utilize 1 x 556.5 mcm ACSR conductor to connect to the Bacnotan Substation of the NGCP.
8. The estimated cost of the construction of the Dedicated Facility Project is **PhP 255,788,985.58**, with the following components:

Substation Cost	Amount (PHP)
1. Supply of Imported Materials	20,388,256.04
2. Supply of Local Materials	21,261,098.87
3. Installation Works	6,225,698.75
4. Hauling Works	1,490,000.00
5. Civil Supply and Installation	11,160,289.30
Total Substation Cost	60,525,342.96
Transmission Line Cost	Amount (PHP)
1. Supply of Imported Materials	74,240,943.00
2. Supply of Local Materials	51,930,484.0
3. Installation Works	47,730,642.00
4. Hauling Works	10,530,000.00
5. Civil Supply and Installation	10,831,573.62
Total Transmission Line Cost	195,263,642.62
TOTAL ESTIMATED COST	255,788,985.58

The final estimated cost will depend on the Engineering Procurement and Construction (EPC) contractor that will be engaged by HBI.

9. 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 Kibungan 2 HEPP to the Luzon Grid, the connection of the Kibungan 2 HEPP to the Luzon Grid was found to be technically feasible, subject to conditions.
10. HBI 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.
11. NGCP and HBI are currently in the process of finalizing the terms of their Connection Agreement for the interconnection of the Kibungan 2 HEPP to the Luzon Grid through the Dedicated Facility Project.
12. The Kibungan 2 HEPP is included in NGCP’s 2021-2040 Transmission Development Plan (TDP) consultation draft.
13. Upon completion of the Dedicated Facility Project and the commercial operation of the Kibungan 2 HEPP, HBI intends to operate and maintain the Dedicated Facility Project.
14. As of date, HBI 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.
15. The following documents are herewith submitted in support of the instant Application:

Annex	Documents
*A	Project Description (Confidential)
B	2020-2040 NGCP Transmission Development Plan (Consultation Draft)
*C	System Impact Study (Confidential)
*C-1	System Impact Final Review Report (Confidential)
*D	Facility Study Report (Confidential)
*D-1	Facility Study Review Report (Confidential)
*E	Detailed Single Line Diagram (Confidential)
*F	Conceptual Engineering Design and Drawings (Confidential)

*G	Gantt Chart Schedule of Proposed Project (Confidential)
*G-1	Point-to-Point Relevant Dates (Confidential)
H	Demand-Supply Scenario (Power Development Plan 2017-2040)
I	Certification from NGCP (Re: Connection Agreement)
J	Secretary Certificate dated 12 October 2021
K	Sworn Statement dated 8 March 2022
L	DENR Certificate of Non-Coverage CNC-OL-R01-2021-11-02388
M	DOE Certificate of Registration
N	Hydropower Service Contract
O	DOE Certificate of Confirmation of Commerciality
P	DOE Certificate of Endorsement
Q	Amended Articles of Incorporation
Q-1	Amended By-Laws
Q-2	General Information Sheet
R	Affidavit of Compliance with PGC and PDC
S	Judicial Affidavit of Oscar Opena

****Subject of the Motion for Confidential Treatment of information***

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

16. 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”.
17. Further, the RE Act mandates that intermittent renewable energy resources, such as Hydropower electric plant, shall enjoy the benefit of priority dispatch.
18. HBI’s construction of the Kibungan 2 HEPP is in furtherance of the RE Act. In order to fulfill such a mandate, permits must be secured, and construction and commissioning must be accomplished immediately.
19. HBI needs to immediately test, commission, and dispatch the Kibungan 2 HEPP upon its completion. This is in order to avoid unnecessary delays which can

lead to opportunity costs and contribute to the rising demand growth. Thus, it is necessary for the Kibungan 2 HEPP to be connected to the grid, through the Dedicated Facility Project, at the soonest possible opportunity.

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

20. Considering the foregoing, HBI 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 HBI to connect the Kibungan 2 HEPP 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**

21. 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, HBI prays for the confidential treatment of **Annexes "A, C, D, E, F, G, and G-1"** and the information contained therein and to not disclose the same except to the officers and staff of the Honorable Commission.
22. HBI respectfully manifests that **Annexes "A, C, D, E, F, G, and G-1"** 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 HBI's competitiveness. It is therefore submitted that **Annexes "A, C, D, E, F, G, and G-1"** 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.
23. Considering that HBI has actual and valuable proprietary interest to protect with respect to such information, **Annexes "A, C, D, E, F, G, and G-1"** fall within the bounds of "trade secrets", which are entitled to protection under the Constitution, statutes, and rules and regulations of this Honorable Commission.

24. 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 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.)

25. 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, D, E, F, G, and G-1”** 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.
26. In view of the foregoing, HBI respectfully requests that the documents attached as **Annexes “A, C, D, E, F, G, and G-1”** 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.
27. Accordingly, HBI respectfully submits the instant Application for the Honorable Commission’s urgent and utmost consideration.

PRAYER

WHEREFORE, premises considered, Applicant **HEDCOR BENGUET, INC.** (“HBI”) 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 HBI to connect the

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

Kibungan 2 Hydroelectric Power Plant to the Luzon Grid;

2. ISSUE an Order treating **Annexes “A, C, D, E, F, G, and G-1”** 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.

The Commission has set the instant *Application* for hearing 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 09, Series of 2020,² dated 24 September 2020, and Resolution No. 01, Series of 2021, dated 17 December 2020 (ERC Revised Rules of Practice and Procedure):³

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

Any interested stakeholder may submit its comments and/or clarifications at least one (1) calendar day prior to the scheduled virtual hearing, via electronic mail (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.

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.

Moreover, all persons who have an interest in the subject matter of the instant case may become a party by filing with the Commission via e-mail at docket@erc.ph, copy furnish the Legal Service through legal@erc.ph, a verified Petition to Intervene at least five (5) calendar days prior to the date of the initial virtual hearing and subject to the requirements under Rule 9 of the ERC Revised Rules of Practice and Procedure, indicating therein the docket number and title of the case and stating the following:

- 1) The petitioner's name, mailing address, and e-mail address;
- 2) 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
- 3) A statement of the relief desired.

Likewise, all other persons who may want their views known to the Commission with respect to the subject matter of the case may file through e-mail at docket@erc.ph, copy furnish the Legal Service through legal@erc.ph, their Opposition or Comment thereon at least five (5) calendar days prior to the initial virtual hearing and subject to the requirements under Rule 9 of the ERC Revised 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, mailing address, and e-mail address of such person;
- 2) A concise statement of the Opposition or Comment; and
- 3) The grounds relied upon.

Any of the persons mentioned in the preceding paragraphs may access the copy of the *Application* on the Commission's official website at www.erc.gov.ph.

Finally, all interested persons may be allowed to join the scheduled virtual hearings by providing the Commission, thru legal.virtualhearings@erc.ph, with their respective e-mail addresses and indicating therein the case number of the instant *Application*. The

Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearings.

WITNESS, the Honorable Chairperson and CEO **MONALISA C. DIMALANTA**, Commissioners **ALEXIS M. LUMBATAN**, **CATHERINE P. MACEDA**, and **MARKO ROMEO L. FUENTES**, Energy Regulatory Commission, this 26th day of August 2022 in Pasig City.

FOR AND BY AUTHORITY
OF THE COMMISSION:


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


LS: NMK/ARG/MCCG