

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

ORDER

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

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

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 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.

Finding the said *Application* to be sufficient in form with the required fees having been paid, the same is hereby set 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

RELATIVE THERETO, HBI 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 Governors, the City and 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;

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.

- 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 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 *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 initial virtual hearing, Applicant 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 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 the Applicant to inform the consumers within the affected areas of the filing of the *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, 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, HBI 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 Provincial Governors, Mayors, and Local Legislative Bodies, and to submit proof of posting thereof.

Applicant and all interested parties are also required to submit to the Commission 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.

(This space was intentionally left blank)

Applicant 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 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.

HBI 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.

HBI 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. HBI 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.


HBI 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 mode of service.

Finally, HBI, 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 hearings.

SO ORDERED.

Pasig City, 26 August 2022.

FOR AND BY AUTHORITY
OF THE COMMISSION:


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


LS: NMK/ARG/MCCG

Copy furnished:

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7. Office of the Municipal Mayor
Bacnotan, La Union
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Santol, La Union
11. Office of the Municipal Mayor
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14. Office of the LGU legislative body
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