

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

**IN THE MATTER OF THE
APPLICATION FOR THE
ISSUANCE OF A CERTIFICATE
OF PUBLIC CONVENIENCE
AND NECESSITY (CPCN),
WITH PRAYER FOR A
PROVISIONAL AUTHORITY**

ERC CASE NO. 2022-015 MC

**SHIN CLARK POWER
CORPORATION (SCPC),**
Applicant.

Promulgated:
July 20, 2022

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ORDER

On 30 June 2022, Shin Clark Power Corporation (SCPC) filed an *Application* dated 02 June 2022, seeking the Commission’s approval of its application for the issuance of a Certificate of Public Convenience and Necessity (CPCN), with prayer for a provisional authority.

The pertinent allegations of the *Application* are hereunder quoted as follows:

1. SCPC is a joint venture corporation between the Bases Conversion and Development Authority (“BCDA”) and Shin Clark Power Holdings, Inc. (“SCPFI”) with principal office address at NCC Substation, Botolan-Clark Airport Road, New Clark City, Aranguren, Capas, Tarlac. It may be served with notices and other processes of this Honorable Commission through its undersigned counsel at the address indicated herein.
 - 1.1. BCDA is a government instrumentality vested with corporate powers and created by virtue of Republic Act No. 7227, as amended, with principal office address at the 2nd Floor, Bonifacio Technology Center, 31st Street corner 2nd Avenue, Bonifacio Global City, Taguig, Metro Manila.
 - 1.2. SCPFI is a consortium established by and between Manila Electric Company, Marubeni Corporation, The Kansai Electric Power Co., Inc. and Chubu Electric Power Co., Inc., with principal office address at 3F

Technical Services Building, Ortigas Avenue, Barangay Ugong, Pasig City.

- 1.3. SCPHI holds 90% of the shares in SCPC while BCDA holds 10% thereof.
2. On 16 May 2018, the BCDA released an Invitation to Bid for the Selection of the Joint Venture Partner for the development of electric power distribution system in New Clark City. After the conduct of a competitive selection process, on 18 January 2019, the BCDA Joint Venture Selection Committee (JVSC) issued the Notice of Award to the Meralco Marubeni Consortium as the winning Private Sector Participant (PSP).
3. On 3 April 2019, the BCDA and the MERALCO Marubeni consortium entered into a Joint Venture Agreement (JVA) for the financing, design and engineering, construction, development and operation and maintenance of the electric power distribution system in New Clark City. The MERALCO Marubeni consortium was then incorporated into SCPHI.
4. On 22 August 2019, President Rodrigo R. Duterte signed Republic Act No. 11420 (RA 11420), which granted onto the BCDA and its assignees the franchise to construct, install, establish, operate, lease, own, manage and maintain for commercial purposes and in the public interest, distribution systems for the conveyance of electric power in selected areas covered under Republic Act No. 7227, as amended. The franchise covered New Clark City.¹
5. Section 14 of RA 11420 expressly recognizes the JVA as follows:

“SEC. 14. Sale, Lease, Transfer, Grant of Usufruct, or Assignment of Franchise.— The grantee shall not sell, lease, transfer, grant the usufruct of, nor assign this franchise or the rights and privileges acquired thereunder to any person, firm, company, corporation, or other commercial or legal entity, nor merge with any other corporation or entity, nor shall transfer the controlling interest of the grantee, whether as a whole or in part, and whether simultaneously or contemporaneously, to any such person, firm, company, corporation or entity without the prior approval of the Congress of the Philippines. For purposes of this Act, the rights and privileges hereby granted to the grantee shall be enjoyed by the joint venture corporation to be established by the grantee and the consortium of Manila Electric Company, Marubeni Corporation, Kansai Electric Power Co., Inc.,

¹ Sec. 1 of Republic Act No. 11420 enumerates the areas covered under BCDA’s franchise, to wit: (a) John Hay (Baguio City); (b) Wallace Air Station (Poro Point La Union); (c) O’Donnel Transmitter Station (Capas, Tarlac); and (d) portion of the Clark Special Economic Zone (CSEZ) covering the New Clark City (Tarlac),

and Chubu Electric Power Co., Inc., pursuant to the Joint Venture Agreement dated 3 April 2019 which was awarded after the conduct of a competitive selection process. Said joint venture corporation established by the grantee shall be subject to the same conditions, terms, restrictions, and limitations of this Act.” (Emphasis and underscoring supplied).

6. Under the JVA, subject to the issuance of the Governance Commission for Government-Owned or Controlled Corporation (GCG) endorsement and approval of the Philippine Competition Commission (PCC), BCDA and SCHI shall establish and incorporate a Joint Venture Corporation (JVC) with the primary purpose of developing, constructing, owning, operating and maintaining the distribution system within New Clark City. As such, Applicant SCPC was incorporated on 10 May 2022.
7. In view of the foregoing, this application is being filed before this Honorable Commission for the issuance of a Certificate of Public Convenience and Necessity (CPCN) as provided under Section 3 of RA 11420² and Section 43(q) of Republic Act No. 9136 (“RA 9136”).³
8. During the term of this CPCN and the franchise, Applicant shall ensure that it shall meet all the technical and financial standards provided in the Philippine Grid Code (“PGC”) and Philippine Distribution Code (“PDC”) and it will comply with all conditions the Honorable Commission may impose.
9. SCPC is financially and technically capable of operating and maintaining the existing distribution system for the conveyance of electric power exclusively within BCDA’s franchise area, promoting economic growth of New Clark City in the process. In addition thereto, New Clark City is being developed to serve investors and locators, which are mainly multinational companies whose products and services cater to the requirements of the local and foreign market.
10. In support of its Application and in compliance with ERC Resolution No. 05, Series of 2008, SCPC hereby submit the following documents:

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² Section 3 of RA 11420 – The grantee shall secure from the ERC the necessary certificate of public convenience and necessity and other appropriate permits and licenses for the construction and operation of its electrical distribution system.

³ Section 43 (q) of RA 9136 – Act on applications for or modifications of certificates of public convenience and/or necessity, licenses or permits of franchised electric utilities in accordance with law and revoke, review and modify such certificates, licenses or permits in appropriate cases, such as in cases of violations of the Grid Code, Distribution Code and other rules and regulations issued by the ERC in accordance with law;

ANNEX	DOCUMENT
General Documents	
“A”	Copy of Legislative Franchise under Republic Act No. 11420
“B”	List of Key Management Officials
“C”	Certificate of Incorporation of SCPC Articles of Incorporation of SCPC By-Laws of SCPC
“D”	Franchise Area Coverage Map
“E”	Proposed Utility Practices and Procedures
“F”	Proposed Interim Tariff Showing all Rates, Deposits and Charges
Technical Documents/Information	
“G”	List of the names of personnel responsible for the design, installation, maintenance, and repair of the SCPC distribution system
“H”	Information regarding the proposed power supply for the franchise service area
“I”	Single Line Diagram of SCPC Distribution System
“J”	Discussion on compliance with the technical requirements of the Philippine Grid Code (PGC) and Philippine Distribution Code (PDC)
“K”	Discussion on negotiations with telephone and/or cable telephone utilities on the joint use of pole lines
“L”	Electric Distribution System Business Plan for the next five (5) years
“M”	Indicative Organizational structure of SCPC
Financial Information	
“N”	Copies of the latest available balance sheet and income statement of the principal stockholder of SCPC
“O”	Discussion on Financial Status and Calculated five (5) years forecasted financial indicators/ratios, together with explanation, as provided in the PDC

11. In order to further substantiate its financial and technical capacity and in support of its prayer for provisional authority, Applicant offers the Judicial Affidavit of Mr. Rolando M. Cagampan, General Manager, attached as Annex “P” hereof, to prove SCPC’s (a) financial capacity to operate and maintain the proposed distribution system; (b) proposed practices and procedures; and (c) technical expertise, capability and resources to distribute electric power within New Clark City.

12. Considering the existing and potential investments and projects in New Clark City, there is an unquestionable need for the issuance of a Provisional Authority or Interim Relief to the applicants, in order to enable it to operate and maintain the distribution system in the franchise area without delay or interruption for the benefit of the locators in the area.

PRAYER

WHEREFORE, premises considered, it is respectfully prayed that the Honorable Commission order the issuance of a Certificate of Public Convenience and Necessity to the applicant to operate and maintain the distribution system for the conveyance of electric power to its end-users within New Clark City.

Pending final approval, it is respectfully prayed that a provisional authority or interim relief be granted.

Other reliefs, just and equitable under the premises, 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 2020⁴ dated 24 September 2020 and Resolution No. 01, Series of 2021 dated 17 December 2020 (ERC Revised Rules of Practice and Procedure):⁵

Date	Platform	Activity
25 August 2022 (Thursday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Teams	Determination of compliance with the jurisdictional requirements and expository presentation
01 September 2022 (Thursday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Teams	Pre-trial Conference and presentation of evidence

RELATIVE THERETO, SCPC 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;

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.

- 2) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing* the Offices of the Provincial Governor, the Mayors and the Local Government Unit (LGU) legislative bodies within SCPC's franchise area for the appropriate posting thereof on its respective bulletin boards;
- 3) Inform the consumers within franchise area of SCPC, 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 hearing; and
- 5) Furnish with copies of the *Application* and its attachments all those making requests therefor, subject to the resolution of the prayer for confidential treatment, if any, and reimbursement of reasonable photocopying costs.⁶

Within five (5) calendar days before the date of the virtual hearing, SCPC 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,

⁶ For the e-mail address of the applicant through its counsel, please see page 10.

Mayors and LGU legislative bodies or their duly authorized representatives, bearing the seals of their offices;

- 3) The evidence of other means employed by SCPC to inform the consumers within the affected franchise area of the filing of the *Application*, its reasons therefor, and of the scheduled hearing 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 by all those making requests therefor, if any; and
- 6) Such other proof of compliance with the requirements of the Commission.

Moreover, SCPC is hereby required to post on its bulletin boards, the scanned copies of the foregoing jurisdictional requirements, together with the newspaper publications and certifications issued by the concerned Offices of the Governor, Mayor, and Local Legislative Bodies, and to submit proof of its posting thereof.

SCPC 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.

SCPC 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 SCPC 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.

SCPC 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.

SCPC 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. SCPC 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 expository presentation.

SCPC 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, SCPC, 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, 20 July 2022.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ALEXIS M. LUMBATAN
Commissioner


LS: CNR/LSP/MCCG

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Copy Furnished:

1. Shin Clark Power Corporation (SCPC)
Applicant
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Aranguren, Capas, Tarlac
Email address: gqrblawoffices@gmail.com
2. Quial Ginez Beltran & Yu Law Office
Thru: Attys. Winston M. Ginez, Ailene B. Barbara-Cayaco, and
Ma. Agatha Grace U. Corpus
Counsels for SCPC
10L, Burgundy Corporate Tower,
252 Sen. Gil Puyat Avenue, 1200 Makati City
Email address: gqrblawoffices@gmail.com
3. Office of the Solicitor General (OSG)
134 Amorsolo Street, Legaspi Village, Makati City
Email address: docket@osg.gov.ph
4. Commission on Audit (COA)
Commonwealth Avenue, Quezon City
Email address: citizensdesk@coa.gov.ph
5. Senate Committee on Energy
GSIS Building, Roxas Boulevard, Pasay City
Email address: senateenergycommittee@gmail.com
6. House Committee on Energy
Batasan Hills, Quezon City
Email address: committee.energy@house.gov.ph
7. Regulatory Operations Service (ROS)
Energy Regulatory Commission
17th Floor Pacific Center Building, San Miguel Avenue, Pasig City
8. Office of the Municipal Mayor
Capas, Tarlac
9. Office of the Sangguniang Bayan
Capas, Tarlac
10. Office of the Municipal Mayor
Bamban, Tarlac
11. Office of the Sangguniang Bayan
Bamban, Tarlac
12. Office of the Governor
Province of Tarlac
13. Office of the Sangguniang Panlalawigan
Province of Tarlac