

Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City



**IN THE MATTER OF THE
APPLICATION FOR THE
ADOPTION OF THE SAME
BILLING METHODOLOGY
USING COINCIDENT PEAK
DEMAND (CPD), AS
APPROVED FOR SKK STEEL
CORPORATION,
STRONGHOLD STEEL
CORPORATION AND MELTERS
STEEL CORPORATION, WITH
PRAYER FOR PROVISIONAL
AUTHORITY OR INTERIM
RELIEF**

**REAL STEEL CORPORATION
(RSC),**

Applicant,

-versus-

ERC CASE NO. 2019-008 MC

**NATIONAL GRID
CORPORATION OF THE
PHILIPPINES (NGCP),**

Respondent.

X-----X

Promulgated:

MAY 23 2019

ORDER

On 15 April 2019, Real Steel Corporation (RSC) filed an *Application* for the adoption of the same Billing Methodology using coincident peak demand (CPD), as approved for SKK Steel Corporation and Melters Steel Corporation, with prayer for provisional authority or interim relief.

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

1. RSC is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at 08 Quezon Road, San Isidro, San Simon, Pampanga. It is engaged in the business of manufacturing, wholesaling, trading, importation of steel, and other steel metal products. Copies of its Certificate of Incorporation, Articles of Incorporation, By-Laws, and General Information Sheet for 2018 are hereto attached as Annexes "A" to "A-3", respectively, to form integral parts hereof;
2. RSC may be served with orders, notices and other legal processes of this Honorable Commission through the undersigned Firm at its address indicated hereunder;
3. Meanwhile, Respondent National Grid Corporation of the Philippines (NGCP) is a corporation created and existing under the laws of the Philippines, with principal office address at NGCP Building, Quezon Avenue corner BIR Road, Diliman, Quezon City where it may be served with orders, notices and other legal processes of this Honorable Commission. It is the concessionaire which assumed the power transmission functions of the National Transmission Corporation (TRANSCO) pursuant to Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA);
4. By and pursuant to *Sections 43 (f) and (h)* of the EPIRA, its Implementing Rules and Regulations, and other pertinent guidelines and rules, RSC submits the instant *Application* to the Honorable Commission for its due consideration and approval of RSC's adoption of the same billing methodology using Coincident Peak Demand (CPD), as approved for SKK Steel Corporation¹, Stronghold Steel Corporation² and Melters Steel Corporation³;

I. STATEMENT OF FACTS

5. Iron and steel industry in the Philippines is a vital component in nation-building. It has a vast contribution in achieving the country's inclusive economic growth and sustainable development. The industry contributes to the construction of infrastructure, power generation and distribution, transportation facilities and vehicles, manufacturing machinery, and equipment - which are all vital industries for the nation's long-term growth⁴;

¹ ERC Case No. 2004-479. "In the Matter of the Application for Approval of the Preferential Rate of 20% Lower than the Prevailing Rate of NPC and TRANSCO to Applicant, with Prayer for Provisional Authority";

² ERC Case No. 2005-230. "Petition for Approval of Preferential Rate of 20% Lower than the Prevailing Average Rate of the NPC and TRANSCO, with Prayer for Provisional Authority";

³ ERC Case No. 2008-062 MC. "In the Matter of the Application for the Adoption of the Same Billing Methodology Approved for SKK Steel Corporation and Stronghold Steel Corporation by the National Transmission Corporation, with Prayer for Provisional Authority";

⁴ Securing the Future of Philippine Industries. <http://industry.gov.ph/industry/iron-and-steel/>;

6. By 2030, the iron and steel industry aims to manufacture world-class products as a majority producer of high quality and safe steel products for domestic users by supplying 70% of the tonnage of required apparent steel consumption. To achieve this goal, the implementation of measures that would bring down the costs of importing raw materials and losses of revenue, reduce electricity and logistics costs, among others, to make the industry more attractive for local and foreign investors, are necessary⁵;
7. RSC files the instant *Application* to seek the Honorable Commission's approval in allowing RSC to use a billing methodology based on Coincident Peak Demand (CPD) in the calculation of its transmission charges. This will reduce its power costs and bring down its costs of production to effectively ensure its competitiveness in the market. Copy of its Board Resolution, for filing of the *Application*, designation of representative to sign the *Verification and Certificate of Non-Forum Shopping*; and engaging the services of Diccion Law Firm to represent RSC, is hereto attached as Annex "B" as an integral part hereof;
8. The Honorable Commission has approved a similar billing methodology for SKK Steel Corporation in its Decision in ERC Case No. 2004-479 MC dated 05 October 2005, stating that there should be no discrimination in case TRANSCO's other customers are found deserving of the same privilege granted to SKK;
9. Subsequently, the Honorable Commission also granted Stronghold Steel Corporation (SSC) the same billing methodology with TRANSCO, in its Decision in ERC Case No. 2005-230 dated 04 July 2007 allowing transmission charges to be calculated based on the actual demand coincident with the Luzon System Peak Demand. SSC's payment of transmission charges to NGCP, as TRANSCO's concessionaire, on the basis of CPD of the Luzon System Peak Demand was confirmed in the Decision in ERC Case No. 2011-060 MC⁶ dated 26 November 2012;
10. Finally, in its Decision in ERC Case No. 2008-062 MC dated 26 November 2012, Melters Steel Corporation (MSC) was allowed to adopt the same billing methodology approved for SKK and SSC, directing NGCP to use MSC's actual demand coincident with the Luzon System Peak demand as its billing determinant in the calculation of its transmission charges;
11. RSC's steel plant is located in San Simon, Pampanga, where SKK and MSC are also located. The Honorable Commission has already established that demand for transmission capacity continuously increases in the area of San Simon,

⁵ Ibid;

⁶ In the Matter of the Petition for Dispute Resolution Relative to the Billing Determinant Arrangement of Stronghold Steel Corporation and National Transmission Corporation, with Prayer for Issuance of a Cease and Desist/Status Quo Order;

Pampanga, where big industries, majority of which are steel companies, operate 24-hours a day. Their major operations during the Luzon Peak pose risks on transmission, and outages also affect the bulk of electricity end-users⁷;

12. RSC's manufacturing plant uses induction furnaces, which consume a very substantial amount of electric power when producing steel billets. The capacity with which it utilizes power greatly affects the stability of the transmission lines or grid to which it is connected. With big volumes of power drawn from the system if operated during the peak hours of Luzon Grid, it adds burden to the entire system during this period;
13. Currently, RSC directly sources its power requirements through the transmission system of the NGCP by virtue of a Transmission Service Agreement (TSA) executed on _____ and Metering Service Agreement (MSA) executed on _____. Copy of its TSA and MSA are hereto attached as Annexes "D" and "E" to form integral parts hereof;
14. The TSA took effect on 26 December 2018 and will be valid until 25 December 2023, unless terminated earlier. Under the TSA, RSC currently pays NGCP applicable charges in accordance with the OATS Rules and the Philippine Grid Code (PGC). As provided in the OATS Rules, NGCP is using Non-Coincident Peak Demand as its billing determinant as shown by the billings provided by NGCP;
15. As shown in the NGCP's 2018 Billing Statement, RSC's Billing Determinant are as follows:

MONTH (2018)	BILLING DETERMINANT (in kW)
<i>January</i>	<i>29,508</i>
<i>February</i>	<i>30,504</i>
<i>March</i>	<i>31,571</i>
<i>April</i>	<i>32,861</i>
<i>May</i>	<i>32,822</i>
<i>June</i>	<i>33,692</i>
<i>July</i>	<i>34,007</i>
<i>August</i>	<i>34,719</i>
<i>September</i>	<i>35,178</i>
<i>October</i>	<i>35,251</i>
<i>November</i>	<i>35,389</i>
<i>December</i>	<i>35,738</i>

Copies of the NGCP January to December 2018 Billing Statements are hereto attached as Annexes "C" to "C-11" to form integral parts hereof;

⁷ ERC Case No. 2008-062 MC, Decision, Page 12 and ERC Case No. 2011-060 MC, Decision, Page 15;

16. RSC is operating during peak and off-peak hours of the grid and is spending considerable amount of money for its continuous operation under the current scheme. When granted the authority to use the same billing methodology based on CPD, RSC will migrate its full operations during off-peak hours and less during peak hours, similar to the aforesaid steel corporations which were granted preferential rate by the Honorable Commission, so as not to jeopardize transmission capacities that are critically needed by other transmission customers;

II. LEGAL BASIS

17. Section 7 of the EPIRA provides that the “transmission of electric power shall be a regulated common electricity carrier business, subject to the rate making powers of the ERC”;
18. Accordingly, under Section 43 (f) and (h) of the EPIRA, the Honorable Commission is empowered to establish and enforce a methodology for setting transmission and distribution wheeling rates and to review and approve the changes in the terms and conditions of service of NGCP or any distribution utility, to wit:

“Sec. 43 (f) In the public interest, establish and enforce a methodology for setting transmission and distribution wheeling rates and retail rates for the captive market of a distribution utility, taking into account all relevant considerations, including the efficiency or inefficiency of the regulated entities. The rates must be such as to allow the recovery of just and reasonable costs and a reasonable return on rate base (RORB) to enable the entity to operate viably. The rate-setting methodology so adopted and applied must ensure a reasonable price of electricity. The rates prescribed shall be non-discriminatory. xxx

Sec. 43 (h) Review and approve any changes on the terms and conditions of service of the TRANSCO or any distribution utility;”

19. The Supreme Court in Republic of the Philippines, represented by Energy Regulatory Board vs. Manila Electric Company⁸, provided that:

“The regulation of rates to be charged by public utilities is founded upon the police powers of the State and statutes prescribing rules for the control and regulation of public utilities are a valid

⁸ GR No. 141314, 15 November 2002;

exercise thereof. When private property is used for a public purpose and is affected with public interest, it ceases to be juris privati only and becomes subject to regulation. The regulation is to promote the common good. Submission to regulation may be withdrawn by the owner by discontinuing use; but as long as use of the property is continued, the same is subject to public regulation.”

(Emphasis supplied)

20. The Supreme Court in the same case, declared that while the State has the duty to protect the public against arbitrary and excessive rates it does not have the right to prescribe rates which are so low depriving the public utility of a reasonable return of investment, to wit:

“In regulating rates charged by public utilities, the State protects the public against arbitrary and excessive rates while maintaining the efficiency and quality of services rendered. However, the power to regulate rates does not give the State the right to prescribe rates which are so low as to deprive the public utility of a reasonable return on investment. Thus, the rates prescribed by the State must be one that yields a fair return on the public utility upon the value of the property performing the service and one that is reasonable to the public for the services rendered. The fixing of just and reasonable rates involves a balancing of the investor and the consumer interests.”

Emphasis supplied.

III. COMPLIANCE WITH PRE-FILING REQUIREMENTS

21. Applicant manifests compliance with the pre-filing requirements mandated under the *Implementing Rules and Regulations of the EPIRA* and *Rule 6 of the ERC Rules of Practice and Procedure*, to be established by the following:
- 21.1 Certifications acknowledging receipt of the *Application* with annexes to be issued by the Legislative Bodies of the Quezon City, Municipalities of San Simon, and the Province of Pampanga, to be appended as Annexes “F”, “F-1”, and “F-2”, respectively;
- 21.2 Notarized Affidavit of Publication stating that the *Application* was published in a newspaper of nationwide circulation, to be appended herein as Annex “G”; and

21.3 Complete newspaper issue where the *Application* was published, to be appended herein as Annex "H-1", and the relevant page thereof where the *Application* appears, as Annex "H-2";

22. Applicant reserves its right to submit other documents, either in the course of the hearing or as may be required by this Honorable Commission.

IV. PRAYER FOR PROVISIONAL AUTHORITY OR INTERIM RELIEF

23. All the foregoing allegations are re-pleaded by reference in support of herein *Prayer* for the issuance of Provisional Authority or Interim Relief to implement the subject billing methodology;

24. RSC prays for the issuance of a Provisional Authority or Interim Relief prior to final decision pursuant to *Rule 15* of the *ERC Rules of Practice and Procedure*, to wit:

"Section 3. Action on the Motion. – Motions for provisional authority or interim relief may be acted upon with or without hearing. The Commission shall act on the motion on the basis of the allegations of the application or petition and supporting documents and other evidences that applicant or petitioner has submitted and the comments or opposition filed by any interested person, if there be any."

25. Under the current billing arrangement using NCPD, RSC has higher costs of electricity, resulting in higher production costs as compared to its competitors in the industry. This threatens the continuous operations and viability of RSC, considering that other manufacturing companies were able to avail of preferential billing methodologies that effectively brought down their production costs;

26. Hence, in recognition of the contribution of steel industries to the country's economic development and to promote global competitiveness of the country's steel industry, RSC prays that the Honorable Commission direct NGCP to adopt the same billing methodology granted to steel corporations SSK, SSC, and MSC;

27. In light of the foregoing and in recognition of the fact that a substantial amount of time is customarily needed to evaluate the documents submitted to support the approval of herein *Application*, Applicant RSC seeks the kind consideration of the Honorable Commission to approve the instant *Application*, immediately, albeit, provisionally, at the soonest opportune time.

PRAYER

WHEREFORE, premises considered, the following are most respectfully prayed for of the Honorable Commission:

- (a) Pending hearing on the merits, **DULY ISSUE** a Provisional Authority or Interim Relief directing NGCP to adopt the same billing methodology using Coincident Peak Demand approved for SKK Steel Corporation and Stronghold Steel Corporation, and Melters Steel Corporation as applied; and
- (b) After due notice and hearing, direct NGCP to use RSC's actual demand coincident with the Luzon System Peak Demand as its billing determinant in the calculation of its transmission charges.

Other reliefs as may be just and equitable under the premises are, likewise, most respectfully prayed for.

Finding the said *Application* to be sufficient in form and substance, with the required fees having been paid, the same is hereby set for determination of compliance with the jurisdictional requirements, expository presentation, pre-trial conference, and presentation of evidence on **18 June 2019 (Tuesday) at ten o'clock in the morning (10:00 A.M.) at the ERC Hearing Room, 15th Floor, Pacific Center Building, San Miguel Avenue, Pasig City.**

RSC is hereby directed to: (1) cause the publication of the attached *Notice of Public Hearing* at its own expense, once in a newspaper of nationwide circulation, at least ten (10) days before the scheduled hearing; and (2) furnish with copies of this *Order* and the attached *Notice of Public 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 at the scheduled hearings.

Moreover, pursuant to Section 6, Rule 5 of the ERC Rules of Practice and Procedure, NGCP is hereby directed to file its comment on the *Application* within fifteen (15) days from receipt of this *Order*.

On the date of the initial hearing, RSC must submit to the Commission its written Compliance with the foregoing requirements attaching therewith the following: (1) the affidavit of the Editor or Business Manager of the newspaper where the said *Notice of Public Hearing* was published, together with the complete issue of the said

newspaper; and (2) the evidence of receipt of copies of this *Order* and the attached *Notice of Public Hearing* by the OSG, COA, and the Committees on Energy of both Houses of Congress.

RSC and NGCP, as well as all interested parties are directed to submit, at least five (5) days before the date of initial hearing and pre-trial conference, their respective Pre-trial Briefs containing, among others:

- a. A summary of admitted facts and proposed stipulation of facts;
- b. The issues to be tried or resolved;
- c. The documents or exhibits to be presented, stating the purposes and proposed markings therefore; and
- d. The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form, to be attached to the Pre-trial Brief.

Failure of RSC to submit the required Pre-trial Brief and Judicial Affidavits of its witnesses 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 said date of cancellation.

As part of the pre-trial conference, RSC must also be prepared to make an expository presentation of the instant *Application*, aided by whatever communication medium it may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the other concerned parties, the nature of the *Application* with relevant information and pertinent details substantiating the reasons and justifications being cited in support thereof.

Pasig City, 16 May 2019.

FOR AND BY AUTHORITY
OF THE COMMISSION:

JOSEFINA PATRICIA A. MAGPALE-ASIRIT

Commissioner

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Copy Furnished:

1. Diccion Law Firm
By: Atty. Mary Ann C. Diccion, Atty. Anna Tricia P. Evangelista and
Atty. Joshua James R. Reyes
Counsel for Applicant RSC
Unit 1708 Jollibee Plaza Building
F. Ortigas Jr. Road, Ortigas Center, Pasig City
2. Real Steel Corporation (RSC)
Applicant
08 Quezon Road, San Isidro,
San Simon, Pampanga
3. National Grid Corporation of the Philippines (NGCP)
Respondent
NGCP Building,
Quezon Avenue cor. BIR Road, Diliman, Quezon City
4. The Office of the Solicitor General (OSG)
234 Amorsolo Street, Legaspi Village, Makati City
Metro Manila
5. The Commission on Audit (COA)
Don Mariano Marcos Avenue
Diliman, Quezon City, Metro Manila
6. The Committee on Energy
Senate of the Philippines
GSIS Building, Roxas Blvd., Pasay City, Metro Manila
7. The Committee on Energy
House of Representatives
Batasan Hills, Quezon City
8. Office of the President of PCCI
Philippine Chamber of Commerce and Industry (PCCI)
3rd Floor, Chamber and Industry Plaza (CIP)
9. Regulatory Operations Service (ROS)
Energy Regulatory Commission
17th Floor, Pacific Center, San Miguel Avenue, Pasig City