

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



IN RE: PETITION FOR DIRECT  
CONNECTION OF ELECTRIC  
POWER WITH THE NATIONAL  
POWER CORPORATION AND/OR  
THE NATIONAL TRANSMISSION  
CORPORATION

ERC CASE NO. 2006-156 MC

TECHNOLOGY LIVELIHOOD AND  
RESOURCE CENTER (TLRC),  
Petitioner.

X-----X

**D O C K E T E D**  
Date: MAY 27 2009  
By: [Signature]

**DECISION**

Before this Commission for resolution are the "Petition" and "Supplemental Petition" filed on December 8, 2006 and May 21, 2007, respectively, by Technology Livelihood and Resource Center (TLRC), now known as Technology Resource Center, for direct connection with the National Power Corporation (NPC) through the transmission system of the National Transmission Corporation (TRANSCO), now the National Grid Corporation of the Philippines (NGCP).

In the said petitions, TLRC alleged, among others, that:

1. It is a government-owned and controlled corporation (GOCC) created under Presidential Decree 1097 (Creating and Establishing the Technology Resource Center, Defining Its Powers, Functions and Responsibilities, and for Other Purposes) with office address at ELT Center, 103 Jose Abad Santos St., corner Lopez Jaena St., Little Baguio, San Juan, Metro Manila;
2. Among its mandates are: a) to hasten and enhance social and economic progress in the country through self-reliance by rationalizing and systematizing research and development efforts in the light of knowledge already available; b) to harness indigenous resources and technologies in search for improved effectiveness

- and efficiency of technical activities in the production and service sectors; and c) to manage and administer the technology centers, more specifically the industrial facilities in Region III located in the Provinces of Tarlac, Zambales, Pampanga and Bataan;
3. One of the industrial facilities it manages and administers is the Mabalacat Technocenter located at Barangay Paralayunan, Mabalacat, Pampanga which has an area of 22.3 hectares. The said Technocenter has an existing training center and thirty-three (33) factory buildings which are almost fully occupied by various locators/lessees;
  4. At present, the distribution of electric power in the aforesaid industrial facility is being handled by Pampanga II Electric Cooperative, Incorporated (PELCO II);
  5. Under the management of PELCO II, the industrial facility has experienced frequent power interruptions beginning 1999 up to the present. These brownouts badly affected the marketability of the site resulting to unsuccessful government employment generation efforts;
  6. The incessant power interruptions are likewise adversely affecting the businesses of the locators occupying the premises of the said industrial facility as collateral damage is suffered in addition to low business outputs. The continuous brownouts are transforming from worse to worst instead of being abated and the harsh effects thereof could lead to further serious financial losses of locators or even result to total cessation of business operations;
  7. In order to address this serious predicament, the Technocenter should be provided with a stable power supply which is vital to the daily operations of these locators/lessees that could be satisfied by NPC whose electric power supply is incomparably stable than PELCO II;
  8. Confronted with this predicament, it is constrained to take the initiative in applying for an open access or direct connection of electric power system, which shall cover the aforesaid area containing the Mabalacat Technocenter. This will properly facilitate an open, uninterrupted and non-discriminatory distribution of electric power to all the locators/end-users with the paramount objective of helping maintain and increase economic activity in the area which in turn has the concomitant effect of providing employment opportunities to thousands of people thereat;
  9. These petitions for grant of direct connection find support under Republic Act No. 6395, the NPC Charter, as amended, which provides:

*"Sec. 3. Powers and General Functions of the Corporation. – The powers, functions, rights and activities of the Corporation shall be the following:*



x x x.

"g. x x x; to sell electric power in bulk to: **1) industrial enterprises, 2) city, municipal or provincial system and other government institutions,** 3) electric cooperatives, 4) franchise holders, and 5) real estate subdivisions; *Provided, That* the sale of power in bulk to industrial enterprises and real estate subdivisions may be undertaken by the Corporation when the power requirement of such enterprises or real estate subdivisions is not less than 100 kilowatts; x x x." (Emphasis Provided)

10. In 2001, Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" or the EPIRA, was enacted into law. The EPIRA affirmed the policy of the State, among others:
  - a. To ensure the quality, reliability, security and affordability of the supply of electric power;
  - b. To ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market;
  - c. To protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power;
  - d. To ensure consumer protection and enhance the competitive operation of the electricity market;
  - e. To encourage the efficient use of energy and other modalities of demand side management;
  - f. To promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry; and
  - g. To promote, preserve competition and people empowerment.
  
11. Pursuant to the EPIRA, the Department of Energy (DOE), in consultation with appropriate government agencies, and with approval of the Joint Congressional Power Commission (JCPC), issued and promulgated Rules and Regulations to implement the provisions of the EPIRA. The Implementing Rules and Regulations (IRR) provide in part, as follows:
  - a. It shall be prohibited for energy participants to engage in anti-competitive behavior and other unfair trade practices. Thus, any contract, combination or conspiracy which unreasonably



restricts competition in any market for electricity or any conduct that constitutes an abuse of market power or an attempted monopolization of any market for electricity shall be prohibited;

- b. Electric power industry participants shall not use their market power to condition the sale of one product or service on the purchase of another product or service. No distribution utility shall make access to its distribution system contingent upon the purchase of generator, metering, billing or other services; and
  - c. Open and non-discriminatory access to the transmission system shall apply to distribution utilities and end users in contestable areas.
12. With this in mind, it considers the Mabalacat Technocenter belonging to: **a) industrial enterprises; and b) city, municipal or provincial systems and other government institutions** making it a qualified petitioner;
  13. More so, it was shown on record that the average electric power of consumption of the Mabalacat Technocenter is more or less 1,000 kW which is more than the 100 kW requirement provided in the NPC Charter;
  14. Irrefragably, with the foregoing, NPC and NGCP have the clear positive legal duty under the EPIRA and its Implementing Rules and Regulations (IRR) to provide direct power supply and connection to its Mabalacat Technocenter; and
  15. As its petitions are imbued with public interest, it prays that after due notice and hearing, an Order be issued compelling NPC and NGCP to cause the needed direct connection.

Having found said petitions sufficient in form and in substance with the required fees having been paid, an Order and a Notice of Public Hearing, both dated September 24, 2007, were issued setting the same for initial hearing and pre-trial conference on October 23, 2007.

In the same Order, TLRC was directed to cause the publication of the Notice of Public Hearing, at its own expense, once (1x) in a newspaper of general circulation in the Philippines, at least ten (10) days before the scheduled date of initial hearing.

The bottom of the page features several handwritten signatures and initials in black ink. From left to right, there is a small circular mark, a signature that appears to be 'S', another signature that looks like 'B', a larger signature that is difficult to decipher, and a signature that appears to be 'me'.

The Office of the Solicitor General (OSG), the Commission on Audit (COA) and the Committees on Energy of both Houses of Congress were furnished with copies of the Order and the Notice of Public Hearing and were requested to have their respective duly authorized representatives present at the initial hearing.

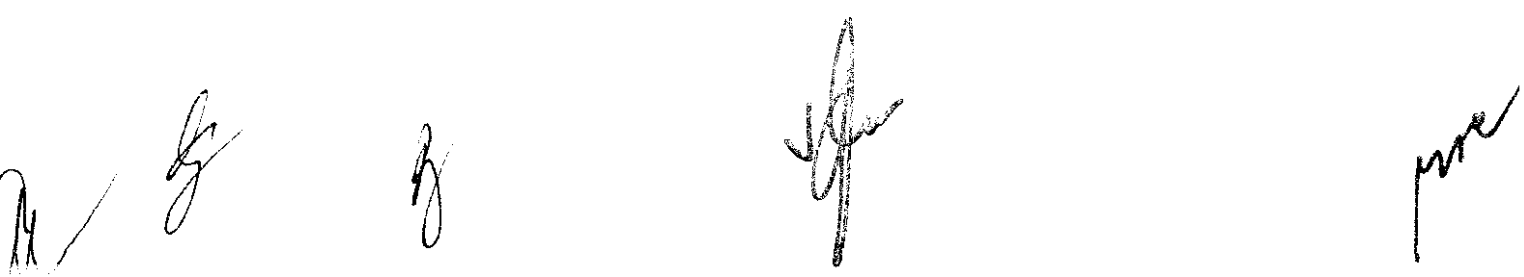
In the same Order, TLRC was further directed to furnish PELCO II, NPC and NGCP with copies of its petition and supplemental petition, within five (5) days from receipt thereof. On the other hand, PELCO II, NPC and NGCP were directed to file their respective comments on the said petitions, within ten (10) days from receipt thereof.

On October 17, 2007, NPC filed its "Comment" and "Pre-Trial Brief".

During the October 23, 2007 initial hearing of this case, only TLRC and NGCP appeared.

In the said hearing, TLRC presented its proofs of compliance with the Commission's posting and publication of notice requirements which were duly marked as Exhibits "A" to "L", inclusive. Thereafter, TLRC manifested, among others, that on October 9, 2007, it furnished PELCO II with copies of its petitions. It, thus, moved that PELCO II be declared in default and to have waived its right to submit its comment on the said petitions and its pre-trial brief.

On November 7, 2007, the Commission issued an Order directing PELCO II to submit, on or before November 16, 2007, its comment on the motion to



declare it in default and to have waived its right to submit its comment on the petitions and pre-trial brief.

On November 19, 2007, PELCO II and NGCP filed their respective "Pre-Trial Briefs" and "Comments".

On even date, the Commission conducted a pre-trial conference. In the said conference, PELCO II manifested that the instant petitions should be dismissed for failure of TLRC to publish the Notice of Public Hearing twice (2x) for two (2) successive weeks in two (2) newspapers of general circulation in the Philippines. It further manifested that direct connection involves two (2) issues, the technical capability of the franchise holder, and the appropriate rates to be imposed, which should require the approval of the Commission. The Commission directed PELCO II to file a formal motion to dismiss the instant petitions based on its allegations, within ten (10) days from said date of hearing. TLRC, NPC and NGCP were, likewise, directed to file their respective comments, within fifteen (15) days from receipt thereof.

TLRC reiterated its prior manifestation that PELCO II should be declared in default on the ground that its pre-trial brief was filed beyond the reglementary period provided for under the ERC Rules of Practice and Procedure. However, the counsel for PELCO II manifested that his service was secured just recently, and hence, he barely had the time to prepare the necessary documents. The Commission ruled to proceed with the pre-trial conference.

At the continuation of the hearing on December 4, 2007, PELCO II moved that its motion to dismiss be admitted. TLRC manifested that it be given a period

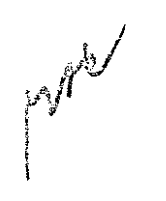
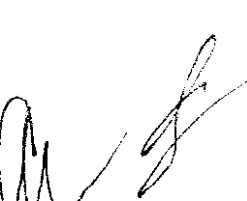


of fifteen (15) days from said date of hearing within which to file its comment thereon.

In the same hearing, TLRC presented its lone witness, Ms. Lauren Teena D. Velasquez, its General Manager for Technology Utilization and Commercialization Services Group, who testified, among others, on the frequent power interruptions beginning 1999 to present, the collective electric consumption of the Mabalacat Technocenter and the effects of incessant power interruptions to its locators/lessees and their respective businesses. In the course of her direct examination, the witness identified various documents in support of the petitions. Said documents were duly marked as exhibits.

During the cross-examination conducted by PELCO II, it was disclosed that the Mabalacat Technocenter maintains five (5) offices in the area. Collectively, the Technocenter's average electric consumption is approximately 1,498,766 kWh per month, which is more than the required 100 kW provided for in the NPC Charter. However, on a per office basis, it appears that the said Technocenter does not meet the minimum consumption requirement of at least 100 kW per month.

PELCO II, thus, manifested that it would file a second motion to dismiss based on the foregoing arguments. Thereafter, it filed its "Motion to Dismiss" praying that the Order dated September 24, 2007 be set aside and a new Order be issued requiring TLRC to publish the Notice of Public Hearing at least twice (2x) for two (2) successive weeks in two (2) newspapers of general circulation in the Philippines and that pending compliance with the said jurisdictional requirements, the foregoing petitions be dismissed.




On January 10, 2008, TLRC filed its "Comment (To the Motion to Dismiss)".

During the January 22, 2008 hearing, Ms. Velasquez was recalled to the witness stand for TLRC's and PELCO II's respective re-direct and re-cross examinations. The witness was, likewise, required to address the clarificatory questions propounded by the Commission.

At the continuation of the hearing on February 12, 2008, NGCP and NPC presented their respective witnesses, namely: Mr. Giovanni R.A. Galang, NGCP's Manager for Transmission and Planning Services Department, Corporate Planning Group, who testified on the effects of direct connection to its Maximum Allowable Revenue (MAR) and on the compliance of TLRC with the Revised Rules, Terms and Conditions for the Provision of Open Access Transmission Service (OATS Rules) and the Rules on Charging for Transmission Connection Assets and Subtransmission Assets (Connection Charging Policy); and Mr. Jeciel B. Campos, NPC's Marketing and Commercial Relations Officer, who testified on the requirements and benefits of direct connection.

The witnesses were lengthily cross-examined by TLRC and PELCO II and were asked clarificatory questions by the Commission.

On February 22, 2008, PELCO II filed its "Comment [To Comment (To Motion to Dismiss)]".



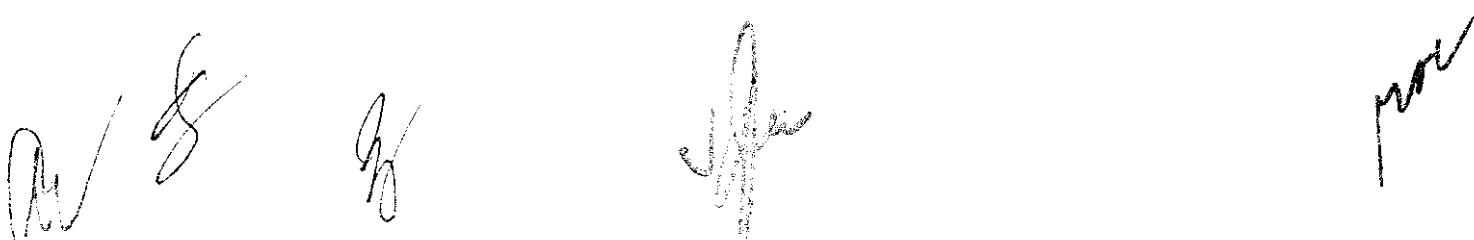
On February 26, 2008, PELCO II presented its first witness, Engr. Augusto L. Ocampo, its Engineering Manager, who testified, among others, on the power requirements of TLRC, the reasons for the alleged power interruptions, and the necessity of the power interruptions in 2006. He identified various documents in support of PELCO II's vehement opposition to the instant petitions. Said documents were duly marked as exhibits. He was also lengthily cross-examined by TLRC. On the same date, PELCO filed its "Motion to Admit Motion to Dismiss" attaching therewith its "Motion to Dismiss".

On March 10, 2008, TLRC continued its cross-examination on Engr. Ocampo. Thereafter, PELCO II presented its second witness, Ms. Janet M. Quiazon, its Finance Manager, who testified on PELCO II's financial capability to provide the power requirements of TLRC. She identified various documents which were duly marked as exhibits. Likewise, she was lengthily cross-examined by TLRC and required to address the clarificatory questions propounded by the Commission.

Thereafter, PELCO II moved that an ocular inspection be conducted in order for the Commission to properly evaluate the instant petitions.

The parties were then directed by the Commission to submit their respective memoranda within thirty (30) days from said date of hearing. They were further directed to submit their respective formal offers of evidence within fifteen (15) days from the submissions of said memoranda.

In lieu of the submissions of formal offers of evidence, NPC and NGCP both manifested that they would file their respective comments.



On April 17, 2008, TLRC filed its "Memorandum for the Petitioner". Then, on May 8, 2008, it filed its "Formal Offer of Evidence (For the Petitioner)".

On the other hand, on May 27, 2008, PELCO II filed its "Formal Offer of Evidence".

Both formal offers of evidence are hereby admitted for being relevant and material to the final resolution of the case.

On June 6, 2008, PELCO II filed its "Memorandum".

On January 29 and 30, 2009, the Commission conducted an ocular inspection on the premises of TLRC and on the assets of PELCO II subject of the instant petitions.

## DISCUSSION

TLRC is a government-owned and controlled corporation (GOCC) created under Presidential Decree 1097. It is mandated, among others, to hasten and enhance social and economic progress in the country through self-reliance by rationalizing and systematizing research and development efforts in the light of knowledge already available, to harness indigenous resources and technologies in search for improved effectiveness and efficiency of technical activities in the production and service sectors, and to manage and administer the technology centers, more specifically the industrial facilities in Region III located in the Provinces of Tarlac, Zambales, Pampanga and Bataan.



One of the industrial facilities it manages and administers is the Mabalacat Technocenter located at Barangay Paralayunan, Mabalacat, Pampanga. It has a training center and thirty-three (33) factory buildings built within 22.3 hectares of land occupied by various locators/lessees.

The frequent power interruption in the area badly affects the marketability of the site resulting to unsuccessful government employment generation efforts and it has adversely affected the businesses of the locators occupying the premises of the said industrial facility as collateral damage is suffered in addition to low business outputs. The harsh effects thereof could lead to further serious financial losses of locators or even result to total cessation of business operations.

Based on the evidence presented by TLRC, it is apparent that it filed the instant petitions primarily for the locators/lessees in the Mabalacat Technocenter to directly source their power requirements from the NPC. However, such locators/lessees were never impleaded as co-petitioners. TLRC, likewise, failed to allege and prove that the said locators/lessees have expressly authorized it to file the foregoing petitions on their behalf.

Jurisprudence provides that no man shall be affected by any proceeding to which he is a stranger, and strangers to a case are not bound by judgment rendered by the court. (*Galicia vs. Manlriquez Vda. de Mindo*, 521 SCRA 85)

While the Commission is cognizant of the fact that there may be instances where an end-user's power requirement cannot be reliably provided by the



existing distribution system of a franchised distribution utility (DU), it is constrained to dismiss the instant petitions based on the afore-cited reasons.

**WHEREFORE**, in view of the foregoing, the "Petition" and "Supplemental Petition" both filed by Technology Livelihood and Resource Center (TLRC), now known as Technology Resource Center, for direct connection with the National Power Corporation (NPC) through the transmission system of the National Transmission Corporation (TRANSCO), now the National Grid Corporation of the Philippines (NGCP) is hereby **DENIED** for lack of merit, without prejudice to the filing of the appropriate petitions by the locators/lessees in the Mabalacat Technocenter.

**SO ORDERED.**


Pasig City, May 4, 2009.

  
ZENAIDA G. CRUZ-DUCUT  
Chairperson

  
RAUF A. TAN  
Commissioner

  
ALEJANDRO Z. BARIN  
Commissioner

  
MARIA TERESA A.R. CASTAÑEDA  
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JOSE C. REYES  
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Copy Furnished:

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