

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



IN THE MATTER OF THE PETITION
FOR THE APPROVAL OF DIRECT
CONNECTION WITH THE NATIONAL
POWER CORPORATION (NPC) AND
THE NATIONAL TRANSMISSION
CORPORATION (TRANSCO), WITH
PRAYER FOR PROVISIONAL
AUTHORITY AND ISSUANCE OF A
TEMPORARY MANDATORY ORDER
AND/OR A WRIT OF PRELIMINARY
INJUNCTION

PHILIPPINE RESINS INDUSTRIES,
INC. (PRII),

Petitioner,

- versus -

ERC CASE NO. 2007-115 MC

NATIONAL POWER CORPORATION
(NPC), NATIONAL TRANSMISSION
CORPORATION (TRANSCO) AND
PENINSULA ELECTRIC
COOPERATIVE, INC. (PENELCO),
Respondents.

X ----- X

D O C K E T E D
Date: APR 03 2009
By: [Signature]

DECISION

Before this Commission for resolution is the petition filed on January 31, 2007 by Philippine Resins Industries, Inc. (PRII) for direct connection with the National Power Corporation (NPC) and the National Transmission Corporation (TRANSCO), with prayer for provisional authority and issuance of a temporary mandatory order and/or a writ of preliminary injunction.

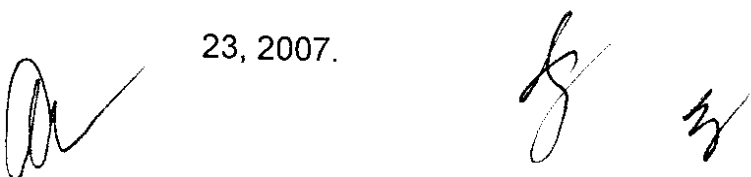
In the said petition, PRII alleged, among others, the following:

1. It is engaged in the business manufacturing, importing, exporting, buying, selling and otherwise dealing in, at wholesale, such as: industrial, chemicals polyvinyl chloride and other resins, chlor-alkali chemicals and other products derived therefrom, and any and all equipment, materials, supplies used or employed in or related to the manufacture of such finished products;

[Handwritten signatures]

4. Mobilize, upgrade and disseminate knowledge and technologies for productivity.”
10. In order to achieve a stable power supply at the least possible cost in accordance with law and government policy, it should and intends to directly connect to NPC through TRANSCO's 230 kV transmission line;
11. It wrote PENELCO and requested for a Waiver to allow NPC to supply its power requirements through the 230 kV line of TRANSCO but PENELCO failed to respond;
12. NPC and TRANSCO have the clear positive legal duty under Republic Act No. 6395 (R.A. 6395), Republic Act No. 9136 (R.A. 9136) and its Implementing Rules and Regulations (IRR) to provide direct power supply and connection to its plant located at Mariveles, Bataan;
13. The policy reference to the franchise holder, PENELCO in this case, is premised on the condition that such franchise holder must, at the outset, be capable and willing to match the reliability and rates of NPC;
14. Thus, the pivotal issue to be resolved in this case is whether or not PENELCO is willing or able to match the rate and the reliability of NPC. Should PENELCO be both unable and unwilling, the direct connection necessarily and legally must ensue;
15. For purposes of comparison, the effective Time-of-Use (TOU) rate being charged by NPC as approved by the Commission in Luzon is PhP3.886/kWh, while PENELCO presently charged an estimated average of PhP7.0/kWh. Despite its high rates, PENELCO cannot maintain and provide sufficient supply of power;
16. As a major player in a power-intensive industry, it requires a stable power supply at the least cost;
17. It prays that a temporary mandatory order and/or a writ of preliminary mandatory injunction be issued by the Commission directing NPC to provide its plant located at Mariveles, Bataan, with direct supply of electric power through the transmission lines of TRANSCO effective until the Decision in this case attains finality; and
18. After trial on the merits, a judgment be rendered declaring that it is entitled as a matter of law to secure direct connection from NPC and TRANSCO.

Having found said petition sufficient in form and in substance with the required fees having been paid, an Order and a Notice of Public Hearing, both dated February 2, 2007, were issued setting the same for hearing on February 23, 2007.

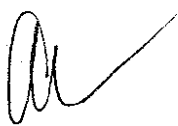


2. It operates its plant at the PNOG Alternative Fuels Corporation (PAFC) Industrial Park, Batangas II, Mariveles, Bataan, within the franchise area of Peninsula Electric Cooperative, Inc. (PENELCO);
3. The operation of its plant requires a substantial amount of electric power, twenty four (24) hours a day and seven (7) days a week. Consequently, its expenses for energy consumption are substantial;
4. At present, it sources its electric power requirements from its own generating plant;
5. As a Board of Investment (BOI) registered corporation, it embarked on a power reduction strategy, improvement of the quality of its products and expansion project in order to:
 - a. Achieve the highest quality of its products so as to increase export volumes and the country's Gross Domestic Product (GDP);
 - b. Utilize advanced technologies geared towards producing high quality products with lower operating cost; and
 - c. Expand its operation to increase employment and accommodate the increase in production.
6. In order to sustain this, however, the operation of its plant requires a reliable supply of power. Any power interruption during its operation would result in serious damage to its business considering the long stoppage of production and damage to its equipment;
7. Its annual operating expense for the operation of its generating set amounts PhP180,301,019.00. To recover these costs, it is constrained to adjust the prices of its products which is detrimental to its business, to the export industry and ultimately to the economy. Unless some drastic measure is undertaken, the country's premier export business might lose its competitiveness among the neighboring countries who can offer lower prices;
8. The demand of its products is increasing substantially, and it is facing stiff competition with active competitors who can offer lower prices. A stable power supply at the least possible cost is imperative;
9. This matter was addressed by President Gloria Macapagal-Arroyo herself in her 2006 State of the Nation Address in order to accelerate the development and improvement of the national economy. According to the President, the Philippines must be globally competitive. In order to achieve this, the Philippines should invest in following comprehensive strategies for global competitiveness:
 - "1. Make food plentiful and affordable to keep our labor cost globally competitive.
 2. **Reduce the cost of electricity to make our factories regionally competitive.**
 3. Modernize infrastructure at least cost to efficiently transport goods and people.

In the same Order, PRIL 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 five (5) days before the scheduled date of initial hearing.

On January 10, 2008, the Commission conducted an ocular inspection on the electrical facilities of PRIL, PENELCO and TRANSCO subject of the instant petition. The said ocular inspection disclosed the following information:

- a. In the event that PRIL is authorized to source its power requirements from NPC, PRIL shall construct its own power substation to be served by one of the 50 MVA, 230 kV/13.8 kV power transformers operated by Team Energy Corporation (TEC, formerly Mirant Philippines, now a subsidiary of Japan's Marubeni Corporation). The 50 MVA is located inside the Philippine National Oil Corporation-Alternative Fuels Corporation (PNOC-AFC) industrial park which was built primarily to serve and provide a stable power supply to all the petrochemical locators of the industrial park;
- b. Team Energy's 50 MVA power transformer is connected to the Grid (230 kV) via the 2x6 circuit-kilometer, three-phase, single wire per phase, #795 Aluminum Conductor Steel Reinforce (ACSR) transmission lines supported by steel poles routed along the national highway which terminates at the NPC switchyard located at Limay, Bataan. The said power substation is reliable in terms of power supply continuity because of the N-1 contingency provision;
- c. PRIL intends to construct its own outdoor power substation and the corresponding power lines. Initially, PRIL will be constructing a 5 MVA



transformer which shall be upgraded to 10 MVA to accommodate its additional power requirements for the expansion of its plant output capacity.

The proposed substation will be connected to the 50 MVA substation via the 1.3 circuit-km, 336.4 ACSR, 13.8 kV three phase lines; and

- d. The 230 kV of TRANSCO has the N-1 provision that guarantees the power system reliability.

On various dates, the Commission conducted several hearings where PRII presented its proofs of compliance with the Commission's publication of notice requirements as well as its evidence.

On August 21, 2008, PRII filed its "Formal Offer of Evidence" which is hereby admitted for being material and relevant in the final resolution of this case.

On September 11, 2008, PENELCO filed its "Comment (on: Formal Offer of Evidence for the Petitioner, dated August 14, 2008)".

In the meantime, the Commission noted the "Petition for Certiorari" filed by PENELCO before the Court of Appeals (CA) assailing the Orders of the Commission dated February 27, 2008 and April 9, 2008 which allowed PRII to present additional witnesses. On October 23, 2008, the CA issued a "Decision" denying the said "Petition for Certiorari".

In their effort to settle the instant case in terms mutually beneficial to both of them, PRII and PENELCO filed a "Joint Motion for Approval of Compromise Agreement" attaching therewith a copy of the "Waiver Agreement for Direct Connection" duly signed by the parties.

DISCUSSION

Section 23 of R.A. 9136 provides that:

"Sec. 23. Functions of Distribution Utilities – A distribution utility shall have the obligation to provide distribution services and connections to its system for any end-user within its franchise area consistent with the distribution code. Any entity engaged therein shall provide open and non-discriminatory access to its distribution system to all users."

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). Thus, such end-user may be allowed to source its power requirements directly from NPC through the regulated transmission service of TRANSCO.

It must be noted that PRII's petition for direct connection finds its basis in Section 3 (g) of R.A. 6395, as amended, which provides that:

"Sec. 3. Power 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 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;** Provided, finally, That no restriction shall apply to sale of power in bulk to enterprises registered with the Board of Investments; x x x" (Underscoring supplied)

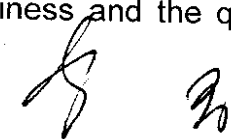
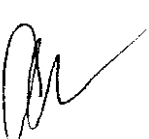
PRII is a large end-user of electricity in the Municipality of Mariveles, Bataan. It is engaged in the business of manufacturing, importing, exporting, buying and selling industrial chemicals such as polyvinyl chloride and other resins, chlor-alkali chemicals and other products derived therefrom.

It was established that PRII is qualified to directly source its power requirements from NPC through TRANSCO being an industrial enterprise duly registered with the BOI which consumes a minimum energy of not lower than 2.5 MW a year.

Based on the ocular inspection, it was found that PRII needs to be connected to the 230 kV of TRANSCO considering the critical nature of its operation which requires the maximum level of power supply reliability. It requires a minimum energy of not lower than 2.5 MW per year on a 24-hrs/day operation, seven (7) days a week. The available 69 kV line of PENELCO is not sufficient to serve its power requirements.

The unreliability in the supply of power as well as its high costs are considered by PRII as major disincentives in its business operation. Being a power intensive industry, it requires a continuous supply of electricity at a reasonable cost in order to meet the demands of its customer. Any power interruption during its operation would result serious damage to its business considering the long stoppage of production and damage to its equipment. The frequent, sudden and unexpected power interruptions would affect the required quality of its production. A stable and reliable power supply at the least possible cost to PRII is crucial and indispensable to its business.

The Commission recognizes and fully agrees with the contention of PHI that the viability of its business and the quality of its products depend on the



efficiency, affordability and reliability of the electric power supply. It is, thus, inevitable to approve the instant petition given the nature and the impact of its business on the Philippine economy.

WHEREFORE, the foregoing premises considered, the petition for direct connection with the National Power Corporation (NPC) and the National Transmission Corporation (TRANSCO) filed by Philippine Resins Industries, Inc. (PRII) on January 31, 2007 is hereby **APPROVED**.

SO ORDERED.


Pasig City, March 30, 2009.


ZENAIDA G. CRUZ-DUCUT
Chairperson

(On Official Travel)
RAUF A. TAN
Commissioner


MARIA TERESA A.R. CASTAÑEDA
Commissioner


ALEJANDRO Z. BARIN
Commissioner


I dissent. Pl refer to transcript of Commission deliberations.
JOSE C. REYES
Commissioner

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