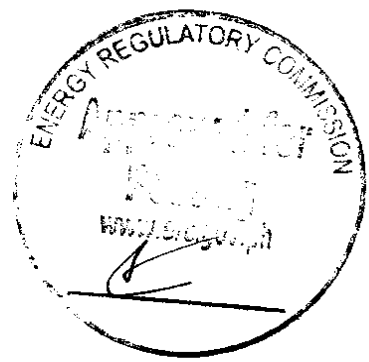


Republic of the Philippines  
**ENERGY REGULATORY COMMISSION**  
San Miguel Avenue, Pasig City



IN THE MATTER OF THE PETITION  
FOR DIRECT CONNECTION WITH THE  
NATIONAL POWER CORPORATION  
(NPC) THROUGH THE  
TRANSMISSION SYSTEM OF THE  
NATIONAL TRANSMISSION  
CORPORATION (TRANSCO)

GOLDEN PORTALS INDUSTRIES, INC.  
Petitioner,

- versus -

ERC CASE NO.2007-242 MC

PANAY ELECTRIC COMPANY, INC.  
(PECO), NATIONAL POWER  
CORPORATION (NPC) and  
NATIONAL TRANSMISSION  
CORPORATION (TRANSCO),  
Respondents.

X-----X

**D O C K E T E D**

Date: JUN 15 2007

By: [Signature]

**DECISION**

Before this Commission for resolution is the petition filed by Golden Portals Industries, Inc. (GPII) on April 16, 2007 for direct connection with the National Power Corporation (NPC) through the National Transmission Corporation (TRANSCO).

On April 17, 2007, GPII filed its "Amended Petition" alleging, among others, the following:

1. It is an industrial corporation duly organized and existing under Philippines laws;

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2. It is engaged in the business of buying, selling, exporting and manufacturing of plastic woven bags, fishing nets, plastic liners, polyurethane foams and twines;
3. It operates its factory in Barangay La Paz, Iloilo City, which is within the franchise area of Panay Electric Company, Inc. (PECO);
4. The operation of its factory requires a substantial amount of electric power, twenty-four (24) hours a day, seven (7) days a week;
5. Due to PECO's inability to guarantee a continuous power supply as well as the high cost of power, it is constrained to generate its own power requirements for its factory using three (3) large diesel generators;
6. While it receives minimal electric supply from PECO mainly for emergencies or back-up purposes, its electricity bills from PECO ranges from PhP200,000.00 to PhP500,000.00;
7. For its diesel consumption, it consumes a monthly average of 100,000 liters equivalent to PhP3,000,000.00 to PhP4,000,000.00;
8. A comparison of the rates being imposed by PECO and the Time of Use (TOU) rates of the National Power Corporation (NPC) would show a substantial disparity in that NPC rate is far lower than that of PECO;
9. Its diesel generator could not supply all its electricity requirements. Thus, its plant suffers from limited operation and consumes only a monthly average of 850 kW;
10. It should be emphasized that frequent electric fluctuations and outages adversely affect its production processes and result to extensive waste materials, loss of long working hours as well as loss of business opportunities; and
11. It prays that it be allowed to source its power requirements directly from NPC through TRANSCO's transmission system.

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 June 25, 2007, were issued setting the same for hearing on July 30, 2007.

GPIL 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

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Philippines, with the date of the last publication to be made not later than ten (10) days before the scheduled date of initial hearing.

In the same Order, the Commission directed NPC, TRANSCO and PECO to file their respective comments on the instant petition as well as their Pre-trial Briefs.

During the July 30, 2007 initial hearing, GPII, PECO, NPC and TRANSCO appeared.

At the said hearing, GPII presented its proofs of compliance with the Commission's publication of notice requirement which were duly marked as Exhibits "A" to "E", inclusive.

In the meantime, the Commission noted the following submissions made by the parties:

1. The "Pre-Trial Brief" filed by GPII on July 19, 2007;
2. The "Comment/Opposition to the Amended Petition" and the "Pre-trial Brief" both filed by PECO on July 30, 2007;
3. The "Comment" and the "Pre-Trial Brief" filed by TRANSCO on July 30, 2007;
4. The "Manifestation and Motion" filed by NPC on July 31, 2007;
5. The "Reply (To: Respondent PECO's Comment/Opposition)" filed by GPII on August 14, 2007; and
6. The "Comment (of Respondent National Power Corporation)" and the "Pre-trial Brief" both filed by NPC on August 16, 2007.

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At the September 14, 2007 hearing, the Commission conducted the pre-trial hearing where the parties stipulated on the facts and issues relative to the instant petition.

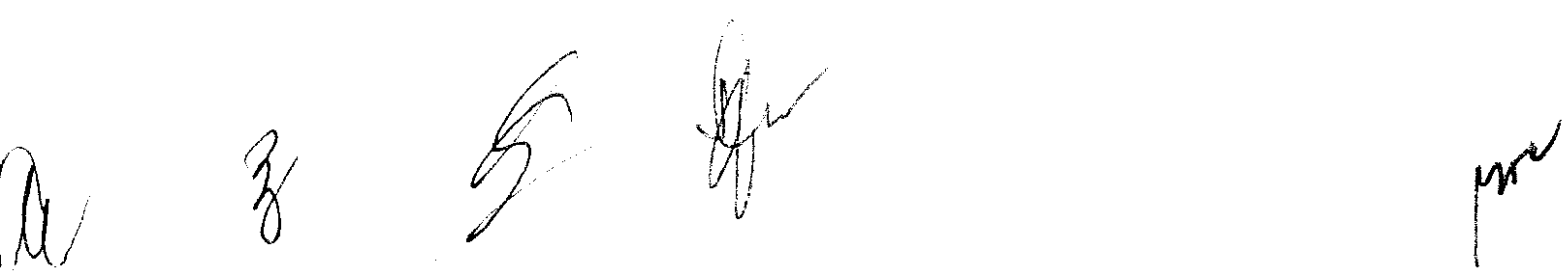
At the continuation of the hearing on November 8, 2007 and December 6, 2008, GPII presented the following witnesses who testified in support of the instant petition: a) Mr. Julian Juantong, its Assistant Corporate Secretary; and b) Engr. Ernesto S. Piodos, its expert witness. In the course thereof, additional documents were presented and marked as Exhibits "F" to "GG-26", inclusive.

The direct examinations having been terminated, NPC and TRANSCO conducted their respective cross-examinations on the said witnesses. GPII was then directed to file its formal offer of evidence. In compliance therewith, GPII filed its "Formal Offer of Evidence" on December 18, 2007.

During the hearings on January 21, 2008 and February 26, 2008, TRANSCO and NPC presented their respective witnesses, namely:

1. Engr. Giovanni Galang, TRANSCO's Transmission and Planning Services Department Manager; and
2. Mr. Reynaldo M. Regis, NPC's Marketing Sales Officer – A for the Visayas Region.

In the meantime, noting the continuous absence of PECO, the Commission granted the motion of GPII made during the March 26, 2008 hearing that should PECO fail to appear at the next scheduled hearing hereof, it would be declared to have waived its right to present its evidence.

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On June 6, 2008, NPC filed its "Formal Offer of Exhibits".

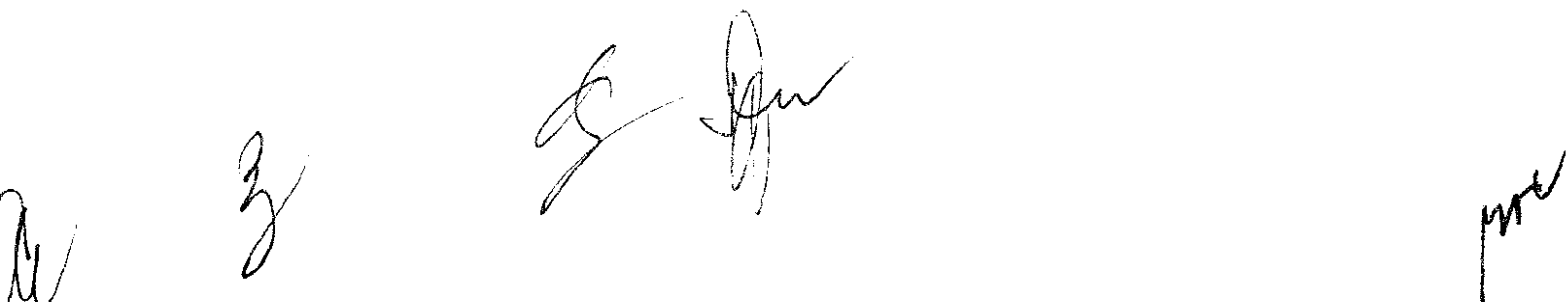
During the May 29, 2008 hearing, PECO presented its sole witness, Engr. Randy Pastolero, its Special Assistant to the President and Chief Executive Officer, who testified relative to the reliability of PECO's distribution system. The direct examination on the said witness having been terminated, GPII conducted its cross-examination.

At the August 28, 2008 hearing, TRANSCO conducted its cross-examination on PECO's witness. Thereafter, the Commission directed PECO to submit its formal offer of evidence within ten (10) days from the said date of hearing, while GPII, NPC and TRANSCO were directed to file their respective comments thereon, if they so desire.

On October 13, 2008, the Commission conducted an ocular inspection on the electrical facilities of GPII and PECO. In the course thereof, the parties discussed the possibility of settling this case amicably.

On January 5, 2009, PECO filed its "Offer of Exhibits".

The respective "Formal Offers of Exhibits" filed by GPII, PECO and NPC are hereby admitted for being relevant and material in the resolution of this case.

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## DISCUSSION

Section 23 of Republic Act No. 9136 (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 pursuant to the Commission's Resolution entitled "Resolution Summarizing the Applicable Legal Principles and Policies of the Energy Regulatory Commission on End-User Connections."

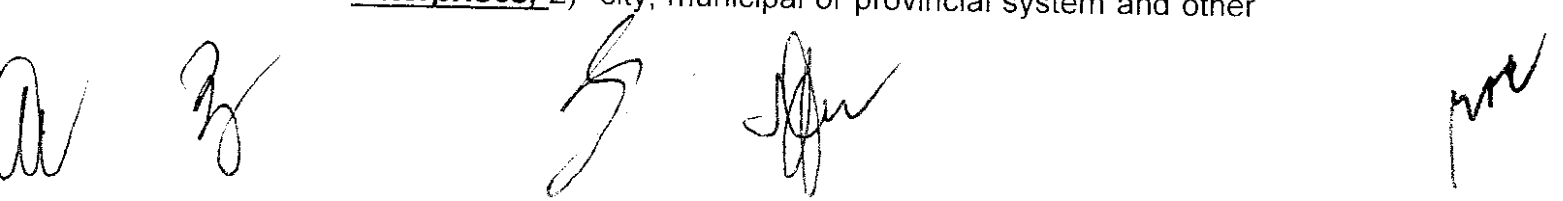
GPII is a large end-user of electricity engaged in the business of buying, selling, exporting and manufacturing of plastic woven bags, fishing nets, plastic liners, polyurethane foams and twines.

It must be noted that GPII's petition for direct connection finds its basis in Section 3 (g) of Republic Act No. 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)

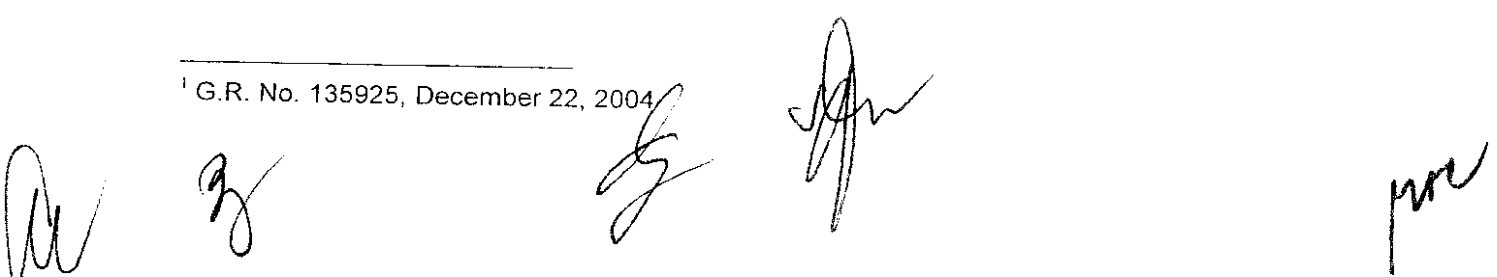
In resolving petitions for direct connection, the Commission is guided by the rules enunciated in several decisions of the Supreme Court. In the case of BATELEC II vs. Energy Industry Administration Bureau (EIAB), et. al<sup>1</sup>, the Supreme Court held that:

“In other words, the Court, in Cañares, disposed that the policy of preference to the franchise holder is premised on the condition that such franchise holder must in the first place be capable of supplying adequately the power requirements of the BOI-registered customer and that such capability must first be ascertained through a hearing in due course. In the same vein, this Court, in National Power Corporation v. Hon. Court of Appeals and Cagayan Electric Power and Light Co., Inc. resonated that if after hearing (or an opportunity for such hearing) it is established that the affected franchise holder is incapable or unwilling to match the reliability and rates of NPC, then a direct connection with NPC may be granted.”

A cursory reading of the aforesaid Decision reveals that the Supreme Court upholds the authority of NPC to sell power in bulk directly to an end-user provided that: 1) any affected utility franchise holder is afforded an opportunity to be heard; and 2) from such hearing, it was established that said franchise holder is incapable or unwilling to match the reliability and rates of NPC.

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<sup>1</sup> G.R. No. 135925, December 22, 2004

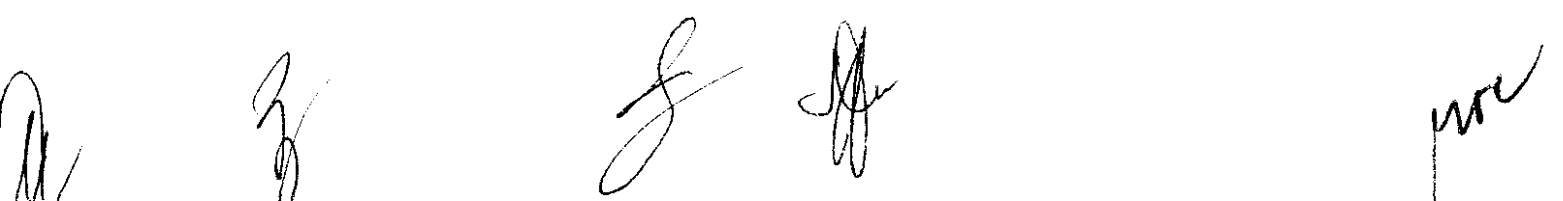


During the ocular inspection conducted by the Commission on October 13, 2008, it was found that PECO has an existing 69 kV connections with TRANSCO and Panay Power Corporation (PPC) and a 15 MVA power substation located in front of the GPII manufacturing plant. Its distribution system was configured in such a way that it is capable of sourcing its power requirements from NPC and PPC through TRANSCO's transmission facilities.

It is significant to note that in a letter dated September 17, 2007, NPC manifested that it has limited and retained its 15 MW contracted demand with PECO due to the following:

- “1. Current transformer limitation at TRANSCO's Sta. Barbara substation allows only 15 MW transfer to PECO.
2. Under normal condition where all major generating units of NPC are operational, its capacity is barely enough to meet current contract demands including associated ancillary services. Hence, maintenance or shutdown of one big unit will already reduce the required reserve to a critical level and may necessitate load curtailment in some areas just to maintain electric power system stability.
3. During off-peak (about 000H – 0700H) where there is supposedly sufficient reserve in the CNP grid, the Negros-Panay Submarine Cable is already loaded to full capacity (i.e. 85 MW) and any additional load may force NPC to operate its expensive diesel units in Panay to avoid overloading of the cable. Aside from their prohibitive production costs, diesel units are not designed for base load operation.”

A cursory reading of the aforesaid letter reveals the technical constraints which prohibit NPC from increasing its power supply to PECO, particularly its limited capacity which is barely enough to meet the current demand of the Cebu-Negros-Panay Grid. Thus, GPII's reliance on NPC's supply of power cannot be sustained considering its limited capacity to supply the CNP Grid. PECO's existing 69 kV connections with TRANSCO and PPC makes it




technically capable of serving the power requirements of GPII. To ensure power stability and reliability, PECO manifested its intention to upgrade its substation from 15 MVA to 50 MVA. These are clear indications that PECO is financially and technically capable to provide the power requirements of GPII.

On the basis of the foregoing, the Commission finds no cogent reason to allow GPII to source its entire power requirement from NPC through TRANSCO.

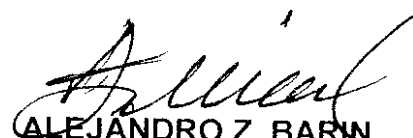
**WHEREFORE**, the foregoing premises considered, the petition filed by Golden Portals Industries, Inc. (GPII) for direct connection with the National Power Corporation (NPC) through the regulated transmission lines of the National Transmission Corporation (TRANSCO) is hereby **DENIED** for lack of merit.

**SO ORDERED.**

Pasig City, May 25, 2009.

  
ZENAIDA G. CRUZ-DUCUT  
Chairperson

  
RAUF A. TAN  
Commissioner

  
ALEJANDRO Z. BARIN  
Commissioner

  
MARIA TERESA A.R. CASTAÑEDA  
Commissioner

  
JOSE C. REYES  
Commissioner

Copy Furnished:

- 1) **Atty. Jonievie P. Ramos-Gabriel**  
c/o Kapunan Imperial Paguiton & Bongolan  
Counsel for Petitioner  
5<sup>th</sup> Floor, Greenrich Mansion  
Pearl Drive, cor Lourdes Road  
Ortigas Center, Pasig City
- 2) **The General Manager**  
Panay Electric Cooperative, Inc. (PECO)  
Manfred's Bldg., Gen. Luna St. Iloilo City
- 3) **NATIONAL POWER CORPORATION (NPC)**  
Legal Department  
4<sup>th</sup> Floor, NPC Building  
Quezon Avenue cor. Agham Road  
Diliman, Quezon City
- 4) **NATIONAL TRANSMISSION CORPORATION (TRANSCO)**  
Legal Department  
Quezon Avenue cor. Agham Road  
Diliman, Quezon City