

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



**IN THE MATTER OF THE PETITION FOR  
THE REDUCTION OF CONTRACT  
DEMAND FROM 18,135KW TO 12,000KW  
WITH THE NATIONAL TRANSMISSION  
CORPORATION (TRANSCO), WITH  
PRAYER FOR ISSUANCE OF  
PROVISIONAL AUTHORITY**

**ERC CASE NO. 2008-035 MC**

**STRONGHOLD STEEL CORPORATION  
(SSC),**

**Petitioner,**

**- versus -**

**NATIONAL TRANSMISSION  
CORPORATION (TRANSCO),**

**Respondent.**

**x-----x**

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

Date: OCT 14 2008

By: [Signature]

**DECISION**

Before the Commission for resolution is the petition filed on February 14, 2008 by Stronghold Steel Corporation (SSC) for the reduction of Contract Demand from 18,135 kW to 12,000 kW with the National Transmission Corporation (TRANSCO), with prayer for issuance of provisional authority.

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 18, 2008, were issued setting the same for hearing on March 4, 2008.

In the same Order, SSC was directed to cause the publication of the Notice of Public Hearing, at its own expense, once (1x) in a newspaper of

*[Three handwritten signatures]*

general circulation in the Philippines, at least five (5) days before the scheduled date of initial hearing.

During the March 4, 2008, SSC and TRANSCO appeared.

At the said hearing, SSC presented its proofs of compliance with the Commission's publication requirement marked as Exhibits "A" to "B", inclusive.

At the continuation of the hearing on March 17, 2008, the Commission conducted the pre-trial hearing where all the parties were directed to make stipulation of the facts and the issues relative to the instant petition. Accordingly, the following were the stipulations made by the parties:

I. Stipulation of Facts

1. SSC is a corporation organized and existing by virtue of the laws of the Republic of the Philippines with principal office address at 165 Pascual Street, Baesa, Quezon City.
2. TRANSCO is a corporation duly organized and existing under the laws of the Republic of the Philippines with principal office address at the Power Center, Quezon Avenue corner BIR Road, Diliman, Quezon City.
3. Pursuant to the Revised Rules, Terms and Conditions for the Provision of Open Access Transmission Service (2006 Revised OATS Rules), TRANSCO has adopted and utilized for billing purposes, the methodology of billing determinant of all its customers based on the aggregate non-coincident peak demand (NCPD) of the customers' metering point.
4. On April 18, 2005, SSC filed with the Commission its Petition for Preferential Rates from NPC and TRANSCO 20% Lower than the current Grid Rate (ERC Case No. 2005-230 MC) praying that it be given a preferential rate of twenty percent (20%) lower than the average prevailing rate of TRANSCO.
5. The Commission, during the preliminary conference for ERC Case No. 2005-230 MC, requested the parties to explore ways of resolving the matter and the possibility of granting SSC the same billing arrangement granted to SKK Steel Corporation pursuant to the Order dated October 5, 2005 in ERC Case No. 2004-479, wherein the Commission approved the shifting of SKK's Non-coincident Peak Demand (NCPD) to that of coincident Peak Demand (CPD) with Luzon's System Peak.



6. The Commission, in its Order dated October 5, 2005 in ERC Case No. 2005-230 MC, further directed TRANSCO not to discriminate its other customers from enjoying the privileges granted to SKK Steel Corporation, to wit: "no discrimination should be practiced in case its other customers are found deserving of the same privilege granted to SKK."
7. Pursuant to the directive of the Commission, a Memorandum of Agreement (MOA) was entered into between petitioner and respondent on June 29, 2007 wherein SSC, as an exception to the billing methodology under the 2006 Revised OATS Rule, was to be billed based on its actual demand coincident with the system peak demand.
8. The said MOA was approved by the Commission on July 4, 2007 in its Decision in ERC Case No. 2005-230 MC.
9. In the said MOA, a Billing Determinant Demand of 18,135 kW will be used as the basis in the computation of transmission cost, regardless of any billing determinant.
10. On February 8, 2008, SSC sent TRANSCO a letter requesting for the downward adjustment of the nominated billing determinant demand from 18,135 kW to 12,000 kW.
11. SSC's consumption for the period July 2007 to January 2008 only averaged at 4,214 kW.
12. SSC is engaged in the business of steel manufacturing.
13. The monthly generation peak of SSC in its Petition is based on its consumption for the period July 2007 to January 2008, or barely seven (7) months since the approval of the MOA dated June 29, 2007.
14. During the eight (8) month period since the approval of the MOA, the actual consumption of SSC viz-a-viz the coincident peak are as follows:

Summary of Billing Determinants (July 2007 to January 2008 Billing Periods)	
Billing Period	Coincident (kW)
July 2007	5,250
August 2007	13,118
September 2007	3,640
October 2007	770
November 2007	2,660
December 2007	910
January 2008	3,150
February 2008	15,778

15. To date, no amendment has yet been introduced on the MOA dated June 29, 2007.
16. The Decision of the Commission in ERC Case No. 2005-230 MC is already final and executory.

II. Issues to be Resolved

a. SSC

1. Whether or not the Nominated Billing Determinant Demand of 18,135 kW under the MOA dated June 29, 2007 between SSC and TRANSCO is unreasonable in light of the actual demand of petitioner.
2. Whether or not the Nominated Billing Determinant Demand from 18,135 kW should be adjusted to a more reasonable level of 12,000 kW.

b. TRANSCO

1. Whether or not the filing of the instant petition, which was made barely six (6) months after the approval of the MOA dated June 29, 2007, maybe denied due course for being premature.
2. Whether or not the Commission could validly amend or cancel the MOA executed between SSC and TRANSCO, and which have become the basis of a final and executory judgment of the Commission.
3. Whether or not SSC has presented sufficient factual and legal basis in its petition entitling it the relief it prayed for before the Commission.

Thereafter, TRANSCO moved to suspend the proceedings of this case pending resolution of the first and second issues it raised to the Commission. SCC and TRANSCO were then directed to file their respective position papers on the said issues.

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

1. The "Pre-Trial Brief" and "Submission" filed by SSC on February 28, 2008 and March 2, 2008, respectively;
2. The "Pre-Trial Brief" and "Memorandum" filed by TRANSCO on March 17 and 28, 2008, respectively; and
3. The "Position Paper" filed by SSC on March 27, 2008.

On April 9, 2008, the Commission issued an Order denying the motion to dismiss filed by TRANSCO.



During the hearing on April 14, 2008, SSC presented its witness, Mr. Henry Go, Vice-President and General Manager, who testified in support of the petition particularly on the following matters:

1. The operation of SSC;
2. The SSC's production cycle;
3. The amount of electricity consumed by SSC in its operation;
4. The MOA executed by TRANSCO and SSC; and
5. SSC's Billing Determinant Demand (BDD).

In the course of his testimony, additional documents were presented and marked as Exhibits "C" to "H", inclusive.

The direct examination having been terminated, TRANSCO conducted its cross-examination on the said witness.

At the continuation of the hearing on May 6, 2008, TRANSCO presented its witness, Ms. Cynthia Manrique, Manager of the Tariff Design and Administration Division (TDAD), who testified relative to the discount extended by TRANSCO to SSC. In the course thereof, additional documents were presented and marked as Exhibits "1" to "4", inclusive.

The direct examination having been terminated, SSC conducted its cross-examination on the said witness.

After SSC and TRANSCO concluded the presentation of their respective evidences, the Commission directed the parties to file their respective formal offer of evidence and memoranda.

In compliance therewith, the parties made the following submissions:

1. The "Formal Offer of Evidence" filed by TRANSCO on May 21, 2008;
2. The "Objection/Comments (Respondent's Formal Offer of Evidence dated 16 May 2008)" and the "Memorandum" filed by SSC on May 20 and 23, 2008, respectively; and
3. The "Memorandum" filed by TRANSCO on June 4, 2008.

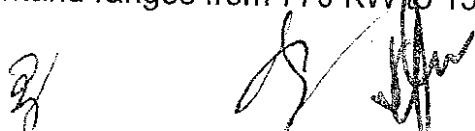
The Commission found the formal offers of evidence filed by SSC and TRANSCO material and relevant in the final resolution of this case.

### DISCUSSION

On July 4, 2007, the Commission issued a Decision in ERC Case No. 2005-230 MC approving the MOA executed by and between SSC and TRANSCO on June 29, 2007.

During the lifetime of the MOA, SSC filed the instant petition praying for the adjustment of the nominated BDD from 18,135kW to 12,000kW. In the said petition, SSC alleged, among others, the following:

1. It is being billed by TRANSCO at a special billing determinant of Coincident System Peak Demand;
2. Based on its Monthly Generation Peak for the period July 2007 to February 2008 coincident with the system peak, its total coincident demand ranges from 770 KW to 15,778 KW; and



3. The request to change the contracted transmission capacity to a more realistic level was based on its actual demand consumption during the system peak with no deviations made on the operating regime of the manufacturing plant.

In the course of the proceedings of this case, it was established that SSC's nominal billing determinant demand of 18,135 KW was adopted to prevent it from intentionally changing its operating schedules leading to an abrupt reduction in its actual demand during system peak to the prejudice of TRANSCO. However, the nominal billing determinant demand at its current level is allegedly deemed excessive as it is over and beyond the actual consumption of SSC. In the preceding months after the MOA took effect, SSC's actual consumption averaged only to 4,214 KW which is 23.24% of the nominal billing determinant of 18,135 KW. Thus, it is obligated to pay the rate corresponding to 18,135 kW billing determinant regardless of its actual consumption.

SSC further claims that it is similarly situated with SKK Steel Corporation (SKK) which was granted a preferential rate by virtue of the Commission's Decision dated December 10, 2007. Thus, the privileges accorded by the Commission to SKK should likewise be given to SSC.

On the other hand, TRANSCO in its opposition alleged, among others, the following:

1. The non-coincident peak demand (NCPD) is the basis in determining the contract levels of SSC. For all its regular customers, the highest demand for the last twelve (12) month consumption using NCPD shall serve as the contracted levels. It is therefore appropriate and necessary that before a new billing scheme may be adjusted to SSC, the same must only be adopted after a period of 12 months has elapsed and an evaluation made if there is really a need to lower the contracted demand;
2. Because of the special billing arrangement granted to SSC, its minimum billing determinant level of 18,135 is very much below

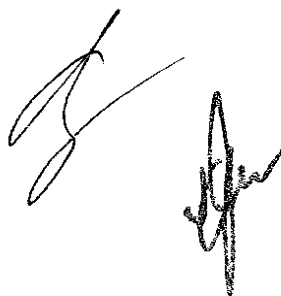
compared to its average maximum non-coincident demand for the last 8 months amounting to 26,324 kW;

3. Prior to the filing of the petition, SSC has been enjoying a discount of up to nineteen percent (19%) or an average of PhP800,000.00 a month;
4. During the eight (8) month period since the approval of the MOA, the actual consumption of SSC vis-à-vis the coincident peak is gradually increasing; and
5. SSC has not even made in the petition allegations of circumstances that would prove that it is similarly situated with that of SKK Steel Corporation entitling it to the same relief given to SKK.

It must be noted that the aforesaid MOA between SSC and TRANSCO accorded the former a discount of 36.8% as approved by the Commission in its Decision dated July 4, 2007. It should be recalled that what triggered SSC's request for the revision of its billing determinant is the Commission's Decision dated December 10, 2007 in ERC Case No. 2007-452 MC. In the said Decision, the Commission granted SKK's petition and directed TRANSCO to decrease SKK's minimum billing determinant from 17 MW to 12 MW or equivalent to 36.8% discount given to SSC.

In granting special discount to its customers, TRANSCO must ensure non-discrimination in the event that other customers are found deserving of the same privilege granted to SKK and SSC.

Upon review of the evidences presented by the parties, the Commission believes that both SSC and SKK were accorded the same benefits relative to their respective discount levels granted by TRANSCO.



**A. Derivation of Minimum Contracted Demand**

In order to determine whether TRANSCO treated SKK and SSC equally, the Commission considered and evaluated, among others, the bases of TRANSCO in setting the minimum contracted demand, to wit:

**For SKK**

Billing Period	Actual Billing Determinant Demand(BDD), kW	Load Billing Determinant (LBD), kW	LBD less 10%, kW
December 2003	19,509	18,918	17,026
January 2004	19,254	19,048	17,143
February 2004	18,554	19,125	17,213
March 2004	17,785	19,079	17,171
April 2004	18,319	19,063	17,157
May 2004	18,683	18,982	17,084
June 2004	19,282	18,982	17,084
July 2004	20,080	19,007	17,106
August 2004	19,485	18,988	17,089
September 2004	18,590	18,954	17,059
October 2004	18,651	18,959	17,063
November 2004	20,660	19,071	17,164

From the above, TRANSCO used SKK's Lowest Load Billing Determinant (LBD), which is the rolling average non-coincident peak for the month (with applicable adjustment), for the last twelve (12) months particularly from December 2003 to November 2004 billing periods.

The contract demand was set by getting the lowest LBD (derived from non-coincident demand data) reduced further by ten percent (10%) resulting to 17 MW.

**For SSC**

Customer	Actual BDD	Discounted BDD (kW)	Discount Ratio
SKK	27,726	17,522	36.8%
SSC	28,694	18,135	36.8%

TRANSCO determined the appropriate minimum contract level of SSC with reference to the SKK's discount ratio based on the present impact of the special billing arrangement for SKK. Using the November 2006 billing period, SKK is already enjoying a 36.80% reduction of its billing determinant (kW).

With the computed discount ratio of 36.80%, TRANSCO applied the same discount ratio to SSC. The computation resulted to a contract demand level of 18,135MW for SSC. The discounted ratio for SKK was arrived by using the formula:

$$\text{Discount Ratio} = 1 - [\text{Discounted BDD (kW)} \div \text{Actual BDD (kW)}]$$

**B. Availed Discount before and after MOA**

In comparing the minimum contracted demand of SSC and SKK, it can be gleaned that the discount given to SKK is 10% of the lowest LBD or about 8% of the average actual billing determinant (from December 2003 to November 2004) compared to the discount given to SSC which is 36.80% of the Billing Determinant Demand.

However, it is significant to note that the 36.80% discount granted to SSC was based on the discount availed by SKK reckoned from the full impact of its special billing arrangement (Billing Determinant Demand) for the billing month of November 2006.

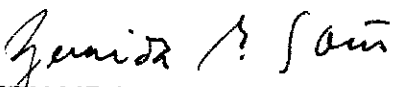
The 17 MW previously granted to SKK by TRANSCO was based on the former's Load Billing Determinant (with an average of 19,000 kW) and not the 27,726 kW as used in the above comparison.

In the case of SSC, the 28,694kW was attained by SSC even before the execution of its MOA with TRANSCO. Hence, it was already given an outright 36.80% discount, which could further increase considering the flexibility to change its operation upon implementation of the MOA.

**WHEREFORE**, the foregoing premises considered, the petition filed by Stronghold Steel Corporation (SSC) for the reduction of Contract Demand from 18,135kW to 12,000kW with the National Transmission Corporation (TRANSCO) is hereby **DENIED**.

SO ORDERED.

Pasig City, September 22, 2008.

  
**ZENAIDA G. CRUZ-DUCUT**  
Chairperson

(Took No Part)  
**RAUF A. TAN**  
Commissioner

  
**ALEJANDRO Z. BARIN**  
Commissioner

(On Official Travel)  
**MARIA TERESA A.R. CASTAÑEDA**  
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