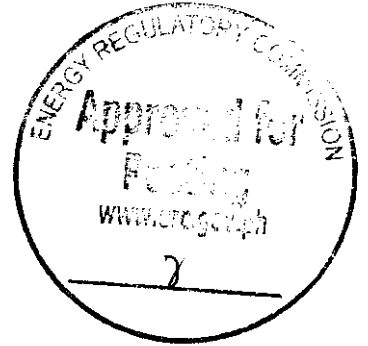


Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City



IN THE MATTER OF THE PETITION
FOR DIRECT CONNECTION WITH
THE NATIONAL POWER
CORPORATION (NPC) AND THE
NATIONAL TRANSMISSION
CORPORATION (TRANSCO) WITH
PRAYER FOR PROVISIONAL
AUTHORITY AND ISSUANCE OF
TEMPORARY MANDATORY ORDER

ERC CASE NO. 2008-084 MC

**CURRIMAO ALUMINUM
CORPORATION (CAC),**
Petitioner,

- versus -

**NATIONAL POWER CORPORATION
(NPC), NATIONAL TRANSMISSION
CORPORATION (TRANSCO) and
PAMPANGA III ELECTRIC
COOPERATIVE, INC. (PELCO III),**
Respondents.

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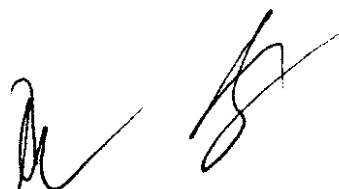
DECISION

Before this Commission for resolution is the petition filed on September 11, 2008 by Currimao Aluminum Corporation (CAC) 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.

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

- a. It is engaged in the business of manufacturing, importing, selling and otherwise dealing with the production of local and imported aluminum products and other similar products with the use of updated aluminum facilities for aluminum extrusion, powder coating and anodizing using European-made machineries and technology;

- b. Its manufacturing plant is located within the franchise area of Pampanga III Electric Cooperative, Inc. (PELCO III);
- c. The operation of its plant in San Simon, Pampanga, requires a substantial amount of continuous and uninterrupted power supply, twenty four (24) hours a day and seven (7) days a week. Consequently, its expenses for energy consumption are substantial;
- d. In order to maintain its business viability and provide better service to its customers, the operation of its manufacturing plant requires a steady and reliable supply of electric power. Any interruption would result in serious damage not only to its operations but also to its customers relying on the sufficient supply of aluminum products. Thus, a stable and reliable power supply at the least possible cost is imperative;
- e. Having been engaged in the business for several years, it relied on continuous supply of electricity for its product quality improvement. It utilized technologies aimed towards increasing production to meet the demands of its customers;
- f. The large load end-user of electricity located within the franchise area of PELCO III such as SKK Steel Corporation, Stronghold Steel Corporation and Melters Steel Corporation were all directly connected to NPC through the transmission line of TRANSCO;
- g. To ensure that it will have sufficient and reliable supply of power, it inquired from PELCO III if it can provide continuous and uninterrupted power supply to its manufacturing plant;
- h. In response thereto, PELCO III issued Resolution No. 28-2006, entitled "Resolution Granting Waiver to Currimao Aluminum Corporation for Direct Connection to the National Power Corporation (NAPOCOR)", stating, among others, that "PELCO III could not supply the power requirements of Currimao Aluminum Corporation at the moment because it is undergoing rehabilitation to make it viable";
- i. By virtue of the said Resolution, a "Waiver Agreement for Direct Connection" was executed by it and PELCO III on May 16, 2006 expressly authorizing and allowing it to directly source its power requirements from NPC through TRANSCO;
- j. Its business is essential in the Municipality of San Simon, Pampanga. Any power interruption during its operation would result to serious damage to its business considering the long stoppage of production and damage to its equipment and thus, prejudicial to its customers. Furthermore, it has several employees and invested millions of pesos for its manufacturing facilities. Thus, a stable and reliable power supply at the least possible cost is crucial and indispensable to its business;
- k. It prays that a provisional authority be issued directing NPC to provide its plant with direct supply of electric power through the transmission lines of TRANSCO effective until decision in this case attains finality; and



- I. After trial on the merits, a judgment be rendered declaring that it is entitled as a matter of law to secure direct connection power supply and connection from respondents NPC and TRANSCO and that the injunction be made permanent.

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 September 15, 2008, were issued setting the same for hearing on September 26, 2008.

In the same Order, CAC 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.

During the September 26, 2008 hearing, CAC, PELCO III, NPC and TRANSCO appeared.

At the said hearing, CAC presented its proofs of compliance with the Commission's publication requirement which were duly marked as Exhibits "A" to "B", inclusive. Considering that the Waiver Agreement executed by the parties had already expired upon the operation of the Wholesale Electricity Spot Market (WESM), CAC and PELCO III discussed the terms and conditions for the extension and amendment of the said agreement. CAC and PELCO III moved that they be given sufficient time to discuss the amendments of the said agreement. Said motion was granted.



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On October 29, 2008, the Commission conducted an ocular inspection on the plant sites and electrical facilities of CAC, PELCO III and TRANSCO subject of the instant petition.

At the continuation of the hearing on February 2, 2009, CAC presented its witness, Mr. Steven Go, its President, who testified in support of the application and the due execution of the "Amended Waiver Agreement for Direct Connection." Thereafter, PELCO III presented its witness, Ms. Magdalena C. Bondoc, its General Manager, who testified relative to her authority to sign the said "Amended Waiver Agreement."

The direct examinations having been terminated, the Commission propounded clarificatory questions on the said witnesses, particularly, on the present status of the distribution system of PELCO III and the reliability of connecting the electrical facilities of CAC to TRANSCO.

Considering that TRANSCO and NPC have waived their rights to present evidence, CAC and PELCO III made an oral formal offer of evidence.

The respective formal offers of evidence made by CAC and PELCO III are hereby admitted for being relevant and material in the resolution of this case.

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

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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 No. 48, series of 2006, entitled “Resolution Summarizing the Applicable Legal Principles and Policies of the Energy Regulatory Commission on End-User Connections.”

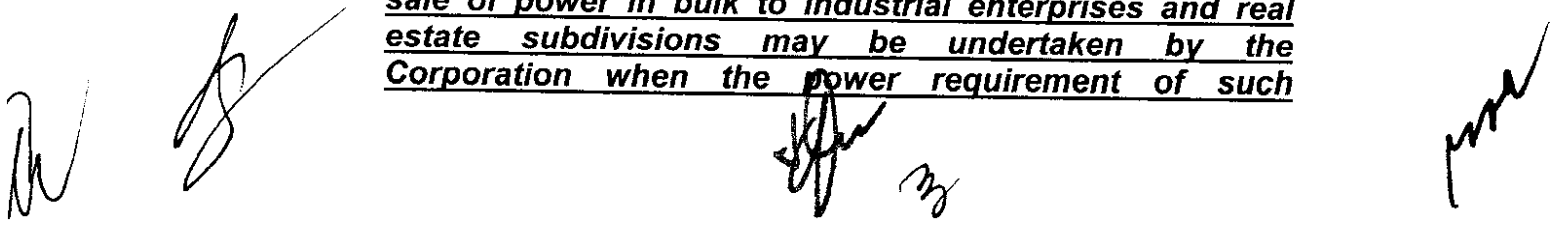
CAC is a large end-user of electricity in the Municipality of San Simon, Pampanga. It is engaged in the business of manufacturing, importing, selling and production of local and imported aluminum products and other similar products with the use of updated aluminum facilities for aluminum extrusion, powder coating and anodizing using European-made machineries and technology.

It must be noted that CAC’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)

The unreliability in the supply of power as well as its high costs are considered by CAC 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 customers.

It was established that CAC is qualified to directly source its power requirements from NPC through TRANSCO being an industrial enterprise consuming more than 100 kilowatts.

PELCO III has an existing 10 MVA power substation located about two (2) kilometers from the plant of CAC. In the ocular inspection conducted by the Commission on October 29, 2008, it was disclosed that PELCO III's power substation which supplies power to three (3) municipalities is already 93% loaded. Thus, the Commission finds that PELCO III's existing facilities will not be able to supply the power requirements of CAC. Any sudden and unexpected interruption will result in serious damage not only to CAC's operation but also to residential consumers and other industries relying on the continuous and steady supply of power.

PELCO III recognized the fact that it did not have sufficient distribution facilities to support the load requirements of CAC.¹ As a result, CAC has caused, at its own expense, the construction of 10 MVA power substation and 69 kV sub-transmission line from its own plant to TRANSCO's tapping point to improve the delivery of electric power.

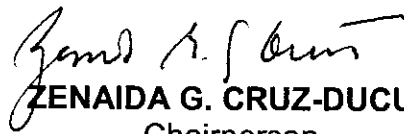
The Commission concurs with CAC that any power interruption during its operation would result to serious damage to its business and equipment. The frequent, sudden and unexpected power interruptions would also affect the required quality of its production. Thus, a stable and reliable power supply at the least possible cost to CAC is crucial and indispensable to its business.

The Commission also recognizes and fully agrees with the contention of CAC that the viability of its business and the quality of its service to its clients 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 the 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 Currimao Aluminum Corporation (CAC) on September 11, 2008 is hereby **APPROVED**.

SO ORDERED.

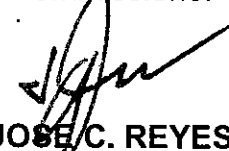
Pasig City, February 16, 2009.


ZENAIDA G. CRUZ-DUCUT
Chairperson


RAUF A. TAN
Commissioner


ALEJANDRO Z. BARIN
Commissioner


MARIA TERESA A.R. CASTAÑEDA
Commissioner


JOSE C. REYES
Commissioner

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5. **National Transmission Corporation (TRANSCO)**
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