

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

FORMOSA CERAMIC TILES
MANUFACTURING CORPORATION,
Petitioner,

- versus -

ERC CASE NO. 2008-102 MC


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

Respondents.

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DOCKETED

Date: MAR 17 2008

By: 

DECISION

Before this Commission for resolution is the petition filed by Formosa Ceramic Tiles Manufacturing Corporation (FCTMC) on November 25, 2008 for direct connection with the National Power Corporation (NPC) and the National Transmission Corporation (TRANSCO), with prayer for provisional authority.

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

- a. It is engaged in the business of manufacturing goods such as glazed and homogenous wall and floor ceramic tiles. Its plant is located at Quezon Road, San Isidro, San Simon, Pampanga, within the franchise area of Pampanga III Electric Cooperative, Inc (PELCO III);

- b. Its manufacturing plant operation requires substantial amount of continuous and uninterrupted power supply, twenty four (24) hours a day and seven (7) days a week. Hence, its energy consumption is humongous (extraordinarily large) operation as evidenced by photocopies of its kWh energy consumptions from 2006 to 2008;
- c. To achieve and maintain the quality of its products and the targeted schedule of production, the operation of its manufacturing plant requires a steady, continuous and reliable supply of electric power. Any electric interruption impairs the quality of the products, dislocates production schedules and more perniciously, causes serious damage to the equipment and facilities;
- d. The equipment and facilities installed for the production of high quality tiles and ceramics to meet the demands of customers depend on the uninterrupted and stable supply of power required;
- e. At present, it sources its power requirements from PELCO III. However, and for several years now, it experienced and recorded several power interruptions from PELCO III to the detriment of its business;
- f. In view of PELCO III's failure and/or inability to provide the electricity needed by large scale end-users located within its franchise area, many have already sourced their power requirements directly from NPC through the transmission line of TRANSCO. The unabated inability or failure of PELCO III to provide sufficient power supply has also seriously affected the smooth and productive operation of its manufacturing plant. Its plans for expansion, acquisition of additional equipment and/or facilities and marketing cannot be utilized and/or implemented unless there is an assurance of continuous and steady supply of power;
- g. As early as May 16, 2005, it already complained to PELCO III that when the power supply was resumed at 6:30 p.m., after the power interruption of May 12, 2005, the electricity that entered the factory was reversed and caused heavy damage to its equipment. The said incident caused by PELCO III resulted to an estimated damage, specially in the Kiln Section, of about One Million Pesos (PhP1,000,000.00). It requested PELCO III for the payment of the said amount. However, PELCO III failed or refused to address its complaint, nor to discuss how the damage suffered shall be compensated;
- h. Notwithstanding its complaint on its failure or inability to supply steady and uninterrupted power required for the operation of its manufacturing plant, PELCO III failed and refused, and still fails and refuses, to comply in violation of its obligations. Until and unless it secures the stable and continuous power supply needed in its operation, it will suffer great and irreparable damage in its business and spell or trigger the progression or retrogression, if not stoppage of the viable operation of the company. Accordingly, it has no recourse but to source its entire power requirements from NPC through the transmission lines of TRANSCO in order to secure a stable and continuous power supply, at least possible cost;

- i. The NPC is authorized and empowered to sell power in bulk directly to end-users pursuant to Republic Act No. 6395 (R.A. 6395), otherwise known as an "Act Revising the Charter of the National Power Corporation";
- j. The instant petition is allowed, encouraged and anchored on R.A. 6395 and Republic Act No. 9136 (R.A. 9136), otherwise known as the Electric Power Industry Reform Act of 2001 or the EPIRA;
- k. With the global economic and financial meltdown the country is facing and will continue to face, it is constrained to avail all means to ensure its economic survival, such as sourcing directly its power requirements from NPC to guarantee steady and uninterrupted supply of power and enhance the viability of its operation via the Time-Of-Use (TOU) retail rates offered by NPC as approved by the Commission. It must pursue avenues to reduce its electric billing to lower production cost for its products to be competitive in the highly contentious market;
- l. Consistent with the policy of government as articulated in the State of the Nation Address of President Gloria Macapagal-Arroyo to accelerate the development and improvement of the national economy, the Philippines must be globally competitive and to be world-class, by investing in the following comprehensive strategies for global competitiveness:
 - "i. Make food plentiful and affordable to keep out our labor cost globally competitive.
 - ii. Reduce the cost of electricity to make our factories regionally competitive.
 - iii. Modernize infrastructure at least cost to efficiently transport goods and people.
 - iv. Mobilize, upgrade and disseminate knowledge and technologies for productivity."
- m. Based on the foregoing government policy, NPC and TRANSCO have the clear positive legal duties under R.A. 6395, EPIRA and its Implementing Rules and Regulations (IRR) to provide direct power supply and connection to it, in the face of the lamentable service and experiences with PELCO III;
- n. Law and jurisprudence entitle it a clear and legal right to demand NPC and TRANSCO to perform and comply with their mandated legal right to provide direct power supply and connection;
- o. Under the regime of free trade and fair competition as espoused by the EPIRA, the customer's choice is paramount, as illustrated in the case of NPC vs. CA (279 SCRA 506, 531 [1997]) and fortified in the case of Batangas II Electric Cooperative, Inc. (BATELEC II) vs. Energy Industry Administration Bureau, Puyat Steel Corporation and NPC, G.R. No. 135925, December 22, 2004;

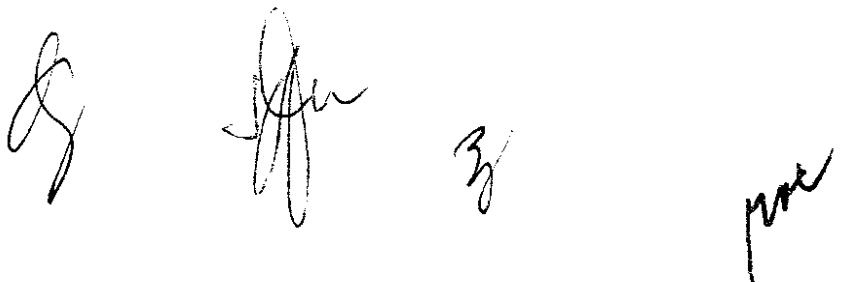


- p. Since PELCO III has repeatedly demonstrated its failure to provide sufficient, continuous and reliable supply of power, direct connection with NPC and TRANSCO is its only alternative;
- q. The Commission, in its various Orders authorizing direct connection, recognizes that the viability of the business and the quality of service to clients depend on the efficiency, affordability, reliability and interruption of electric power supply;
- r. It has the financial and technical capabilities to install and maintain the substation and sub-transmission lines needed/required to pursue its petition;
- s. 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 the Decision in this case attains finality; and
- t. 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 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 November 27, 2008, were issued setting the same for hearing on December 15, 2008.

In the same Order, FCTMC 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 December 10, 2008, FCTMC, PELCO III, NPC and TRANSCO filed their respective "Pre-trial Briefs". On the same date, PELCO III and NPC filed their respective "Comments" on the instant petition.



Handwritten signatures of the parties involved in the case, including FCTMC, PELCO III, NPC, and TRANSCO.

During the December 15, 2008 initial hearing, FCTMC, PELCO III, NPC and TRANSCO appeared.

At the said hearing, FCTMC presented its proofs of compliance with the Commission's publication of notice requirements which were duly marked as Exhibits "A" to "C", inclusive. Thereafter, PELCO III interposed its objection to the submission made by FCTMC for its alleged failure to comply with the Commission's publication requirements that the Notice of Public Hearing should be published twice (2x) for two (2) successive weeks in two (2) newspapers of general circulation in the Philippines. Acting thereon, the Commission ruled that FCTMC has fully complied with its publication of notice requirements. PELCO III, then, moved that it be allowed to file its "Motion for Reconsideration". Said motion was granted.

On December 16, 2008, TRANSCO filed its "Comment".

On December 18, 2008, PELCO III filed its "Motion for Reconsideration".

On January 12, 2009, the Commission conducted a pre-trial conference where the parties stipulated on the facts and issues to be resolved in this petition.

At the continuation of the hearing on January 26, 2009, FCTMC and PELCO III discussed the possibility of an amicable settlement. NPC and TRANSCO did not interpose their objection thereto.

On January 28, 2009, the Commission issued an Order denying the "Motion for Reconsideration" filed by PELCO III.



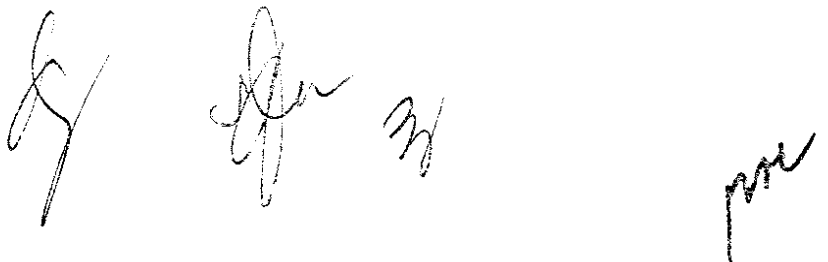
On February 6, 2009, the Commission conducted an ocular inspection on the plant sites and electrical facilities of FCTMC, PELCO III and TRANSCO.

During the February 9, 2009 hearing, FCTMC filed its proposed compromise agreement. For its part, PELCO III moved that it be given sufficient time to study said proposal.

At the February 16, 2009 hearing, only FCTMC and PELCO III appeared. FCTMC presented its witness, Mr. Ramon Chua, its Officer-In-Charge for Operation and Manufacturing Division, who testified in support of the petition. In the course thereof, FCTMC presented additional documents which were duly marked as Exhibits "D" to "J", inclusive.

The direct examination having been terminated, the Commission propounded clarificatory questions on the said witness, particularly, on the present status of the distribution system of PELCO III and the reliability of connecting to the transmission facilities of TRANSCO. Subsequently, FCTMC made an oral formal offer of evidence.

On the other hand, PELCO III presented its lone witness, Ms. Magdalena C. Bondoc, its General Manager, who testified relative to its negotiation with FCTMC for the settlement of this case. In the course thereof, several documents were presented and duly marked as Exhibits "1" to "2-B", inclusive. The direct examination having been terminated, the Commission propounded clarificatory questions on the said witness. PELCO III, likewise, made an oral formal offer of evidence.



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Considering that NPC and TRANSCO have already waived their rights to present their witnesses, the respective formal offers of evidence made by FCTMC and PELCO III are hereby admitted for being relevant and material in the final 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 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."

FCTMC is a large end-user of electricity in the Municipality of San Isidro, Pampanga. It is engaged in the business of manufacturing, producing and selling goods such as glazed and homogenous wall and floor ceramic tiles. It requires substantial amount of continuous and uninterrupted power supply, twenty four (24) hours a day and seven (7) days a week.



It must be noted that FCTMC'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 FCTMC as major disincentives in its business operation. Being a power intensive industry, it requires a continuous and stable supply of electricity at a reasonable cost in order to meet the demand of its customers. Its equipment and facilities, installed for the production of high quality tiles and ceramics, depend on the uninterrupted and stable supply of power.

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

The ocular inspection conducted by the Commission on February 6, 2009 disclosed that FCTMC has 1-1.5 MVA and 1-2.5 MVA power transformers with back-up generator rated at 300 KVA. It draws power from PELCO III through its


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10 MVA PAU Substation. Its entire manufacturing plant has a connected load of 2.53 MW plus a proposed additional load of approximately 0.30 MW.

On the other hand, PELCO III has an existing 10 MVA substation with a rated voltage of 69/13.2 kV, through feeder 22ST10. The highest registered load of PAU substation when FCTMC registered its highest load of 1.27 MW was at 4.35 MW. However, record of this case disclosed that FCTMC has experienced frequent power interruptions and unreliable power supply from PELCO III which caused severe damage to its products and equipment. PELCO III has acknowledged the fact that it cannot provide a stable and reliable power supply to FCTMC.

Further, it was disclosed that there are five (5) large load industrial customers directly connected to the transmission facilities of TRANSCO located within the franchise area of PELCO III, namely: SKK Steel Corporation (SSC), Stronghold Steel Corporation, Consolidated Industrial Gas Inc. (CIGI), INGASCO Inc., and Currimao Aluminum Corporation (CAC).

Based on the evidence presented by FCTMC, the production of ceramic tiles is a process by which mixed materials are exposed to varying temperatures, from cold to warm to intense heat. Any sudden power fluctuation will: a) affect and impair the quality and processing of ceramic tiles; b) cause glaze defects during the interaction of the clay body and the glaze; and c) cause damage to the production machineries.



With the stiff competition in ceramic tiles industry, where quality is one of the paramount considerations, the continuous and reliable power supply at the least possible cost is crucial to FCTMC's manufacturing process.

The Commission concurs with FCTMC that any power interruption during its operation will result to serious damage to its business. The frequent, sudden and unexpected power interruptions will seriously affect the required quality of its production.

The Commission also recognizes and fully agrees with the contention of FCTMC 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 filed by Formosa Ceramic Tiles Manufacturing Corporation (FCTMC) on November 25, 2008 with the National Power Corporation (NPC) and the National Transmission Corporation (TRANSCO) is hereby **APPROVED** subject to the conditions set forth under ERC Resolution No. 48, Series of 2006, to wit:

- a. The construction of the needed sub-transmission assets may be undertaken by FCTMC or funded by TRANSCO. Such assets shall ultimately become the property of the franchised DU or PELCO III in this case, if qualified, or, in its absence, of TRANSCO and treated as Contribution in Aid of Construction (CIAC), until such time that these assets can be transferred to PELCO III;
- b. If TRANSCO finances the assets, FCTMC shall pay the charges related to such assets to TRANSCO. TRANSCO shall treat such assets as CIAC and shall transfer the said assets to PELCO III within a reasonable period of time;



- c. If PELCO III, in its behalf, funds and constructs the assets, FCTMC shall pay the charge related to such assets and the other applicable charges for services availed from PELCO III and other non-by-passable charges authorized by law; and
- d. If FCTMC puts up the assets, the same shall be transferred to PELCO III and such assets shall be treated as CIAC. Should PELCO III be not qualified, the said assets shall be transferred to TRANSCO and similarly, the assets shall be treated as CIAC and shall not form part of TRANSCO's Regulatory Asset Base. In the latter case, TRANSCO shall transfer the asset to PELCO III within a reasonable period of time. FCTMC shall pay the applicable charges for operating and maintenance expenses and, in any case, it shall be liable to pay the applicable charges for services availed from FCTMC and other non-by-passable charges authorized by law.

SO ORDERED.

Pasig City, March 9, 2009.


ZENAIDA G. CRUZ-DUCUT
Chairperson


RAUF A. TAN
Commissioner


ALEJANDRO Z. BARIN
Commissioner


MARIA TERESA A.R. CASTAÑEDA
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