

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



**IN THE MATTER OF THE PETITION
FOR DISPUTE RESOLUTION**

**NORTHWIND POWER
DEVELOPMENT CORPORATION
(NORTHWIND),**

Petitioner,

-versus-

ERC CASE NO. 2008-107 MC

**ILOCOS NORTE ELECTRIC
COOPERATIVE, INCORPORATED
(INEC),**

Respondent.

x ----- x

D O C K E T E D
Date: **JAN 25 2010**
By: 

ORDER

On July 20, 2009, Northwind Power Development Corporation (NORTHWIND) filed an "*Urgent Motion for the Provisional Grant of the Reliefs Prayed for*" praying that pending hearing, an Order be issued by the Commission directing Ilocos Norte Electric Cooperative, Inc. (INEC):

1. To pay it immediately the unpaid amount of Php5,117,042.36 covering the May 2009 and June 2009 billings in view of the following: a) the failure of INEC to provide any justification under the Electricity Sales Agreement (ESA) executed by and between them for reducing the payment of NORTHWIND's monthly invoice; and b) INEC's method of calculating NORTHWIND's effective rate was based purely on the actual charges of the National Power Corporation (NPC) and the National Grid Corporation of the Philippines (NGCP) to INEC which completely disregarded the provision of the ESA, as amended, stating that "NORTHWIND's effective rate is as if NPC was supplying one hundred percent (100%) of INEC's demand and NORTHWIND was not generating electricity";
2. With regard to the billing issues which are not among the disputes involved in the instant petition such as the Power Delivery Service (PDS)-based reduction, to pay under protest the amounts corresponding to such



new billing issues in order to maintain the *status quo* of the existing disputes before the Commission, thus, INEC shall not make any further reduction from NORTHWIND's monthly invoice; and

3. To acknowledge and respect the right of NORTHWIND to disconnect the Burgos Substation of INEC in the event of further failure to pay INEC's share of NGCP's billing to NORTHWIND.

In the said urgent motion, NORTHWIND alleged, among others, that:

1. For the billing period ending on May 25, 2009, it billed INEC the amount of PhP29.293 Million but INEC paid only the amount of PhP23.422 Million. There was a difference or shortfall of PhP5.871 Million. Out of the said shortfall, it presupposes that the amount of PhP3.282 Million relates to the disputes raised in the instant petition, namely: a) Power Act Reduction; b) excess energy based on hourly demand of INEC; and c) exclusion of the Connection Charge from NORTHWIND effective rate. Thus, the amount of PhP2.589 Million remains unaccounted for;
2. For the said May 2009 billing, INEC paid the amount of PhP846,000.00 under protest relating to the dispute on the exclusion of Connection Charge from NORTHWIND effective rate. However, for the June 2009 billing in the amount of PhP17.309 Million, INEC intended to pay only the amount of PhP15.376 Million. Thus, for May 2009 and June 2009 billings, the unpaid amounts are PhP3.436 Million and PhP1.681 Million, respectively, for a total of PhP5.117 Million;
3. There is no provision in the ESA which would support the unilateral and unjustified act of INEC in computing NORTHWIND effective rate based purely on the actual charges of NPC and NGCP to INEC or unpaid PDS-based reduction and disregarding the provision of the ESA stating that "NORTHWIND's effective rate is as if NPC was supplying one hundred percent (100%) of INEC's demand and NORTHWIND was not generating electricity";
4. The relevant factor for computing NORTHWIND's effective rate is the Load Billing Determinant which reflects the total demand of INEC. Said Load Billing Determinant and NORTHWIND effective rate should not be affected by the change in the format of the NGCP bill to INEC. Said change in the NGCP bill could not be characterized as a change in law or circumstance which would justify the change in the basis for computing NORTHWIND's effective rate. The latest bill of NGCP merely implements the ERC Order on PDS with finality. While it is no longer in the format of consolidated bill which sets out the PDS charges on NORTHWIND delivery of electricity, it still provides the substantive basis for computing NORTHWIND effective rate, i.e. billing determinant;
5. While it acknowledges that the matter of payment under protest is one (1) of the issues raised in the instant petition, the provision in the ESA is the contract between the parties and as such, it is INEC which has the burden of demonstrating that it is not obliged to follow the provision. The unpaid PDS-based reduction raised by INEC should be treated differently from

the disputes involved in the instant petition where payment has already been withheld and accumulated. In the instant urgent motion, the disputed billings should be paid under protest; and

6. It could no longer afford any further reduction in its revenues. The unpaid PDS-based reduction for two (2) months is already in the amount of PhP5.117 Million in addition to the past due receivables relating to the disputed amounts involved in the instant petition which now exceeds PhP50 Million.

On August 3, 2009, INEC filed an "*Opposition to Urgent Motion for the Provisional Grant of the Reliefs Prayed for*" alleging, among others, that:

1. The urgent motion of NORTHWIND which sought to collect from INEC pending resolution of the instant petition the amount of PhP5.117 Million representing the reduction of the PDS Charges from NORTHWIND effective rate has no legal basis for the following reasons:
 - a. The non-payment by INEC of PhP2.589 Million is based on the fact that the latest NGCP billing had removed and no longer includes PDS as part of NGCP's transmission charges. *Section 2.1 of the Memorandum of Clarification (MOC)* refers to the total transmission charges of the National Transmission Corporation (TRANSCO) to INEC as a component of NORTHWIND's effective rate. Thus, the transmission charges which are actually set forth in the NGCP bill are the total transmission charges of TRANSCO as referred to in Section 2.1 of the MOC and accordingly, should be used as the basis in the computation of NORTHWIND's effective rate;
 - b. The non-inclusion by INEC of the PDS Charges in the computation of NORTHWIND's effective rate is a new billing issue as admitted by NORTHWIND in its letter dated June 29, 2009 and cannot be litigated as part of the instant petition. Perforce, the payment of PhP5.117 Million cannot be granted in the instant urgent motion. This being a new billing issue, there is a need to conduct a hearing on said issue which would require the filing of an appropriate petition. Giving due course to the urgent motion would, in effect, re-open the instant petition which has already been submitted for resolution of the Commission;
 - c. This new issue does not involve a mere change in the format of the NGCP bill but would entail INEC's consumers to pay for transmission charges which are no longer charged by NGCP. Otherwise stated, INEC and its consumers will be made to pay transmission charges which would be more than the actual charges being charged by NGCP;
 - d. The allegation of NORTHWIND that INEC should pay any disputed amount under protest is untenable because the issue as to whether or not INEC is obliged to pay the disputed amounts to NORTHWIND

under the ESA is precisely one of the issues involved in the instant petition;

- e. Contrary to the claim of NORTHWIND that it has not cited any provision in the ESA for disputing the amount of PhP2.589 Million, it cited, in its Letter to NORTHWIND dated July 13, 2009, Section 2.1 of the MOC as basis for its non-payment. Thus, since the PDS Charges no longer form part of the actual NGCP transmission charges, as set forth in the NGCP billings for the months of May 2009 and June 2009, said charges should not be included in the computation of NORTHWIND's effective rate;
- f. As regards the allegation of NORTHWIND that it has not paid its share in the NGCP billings to NORTHWIND for station service which includes the electrical consumption of INEC delivered to its 10 MVA Burgos Substation, INEC had already paid the following as its share in the NGCP billings: a) PhP666,339.68 for the April 26 to May 25, 2009 billing period; b) PhP6,974,551.69 for June 2009; and c) PhP931,413.68 for the May 26 to June 25, 2009 billing period;
- g. INEC assures that it will continue to pay its corresponding share in the NGCP bill for the transmission charges for power delivered to both NORTHWIND's station service use and INEC's Burgos Substation in the meantime that the segregation of the corresponding shares of INEC and NORTHWIND in the NGCP billings is not decided by the Commission; and
- h. It prays that NORTHWIND's urgent motion be denied for utter lack of merit.

Considering that the issues raised in the said urgent motion of NORTHWIND are distinct from the issues pending for resolution, the Commission deems it proper to enjoin the parties to refrain from performing acts which may exacerbate the present situation. Accordingly, so as not to render nugatory whatever action the Commission shall take thereon, the parties are hereby directed to observe the **STATUS QUO ANTE** the conditions prevailing at the time the parties filed their respective "Formal Offers of Evidence" until such time that the Commission has resolved the matter.

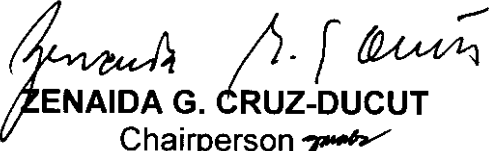



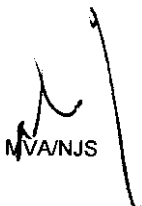
Accordingly, INEC is directed to refrain from imputing further deductions from the monthly invoices of NORTHWIND other than the deductions already submitted for resolution by this Commission.

SO ORDERED.

Pasig City, January 19, 2010.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ZENAIDA G. CRUZ-DUCUT
Chairperson 


MVA/NJS

Copy Furnished:

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