

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



IN THE MATTER OF THE APPLICATION FOR APPROVAL OF THE MAXIMUM ANNUAL REVENUE FOR THE THIRD REGULATORY PERIOD (2011 TO 2015) OF THE NATIONAL GRID CORPORATION OF THE PHILIPPINES (NGCP) DURING THE REGULATORY RESET PROCESS FOR THE THIRD REGULATORY PERIOD IN ACCORDANCE WITH THE ALTERNATIVE FORM OF RATE SETTING METHODOLOGY UNDER THE RULES IN SETTING THE TRANSMISSION WHEELING RATES (RTWR)

ERC CASE NO. 2009-180 RC

NATIONAL GRID CORPORATION OF THE PHILIPPINES (NGCP),

Applicant.

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DOCKETED

Date: MAR 10 2010

By: 

ORDER

Before this Commission for resolution are the "Compliance With Motion to Treat Information as Confidential" filed on January 25, 2010 and February 5, 2010 and "Compliance With Motion for Treatment of Information as Confidential" filed on February 10, 2010 by the National Grid Corporation of the Philippines (NGCP) praying for the confidential treatment of the following information and documents:

1. Computer Study Files (PSS/E files) (Planning PSS/E files that cover the time period addressed by the Transmission Development Plan [TDP]);
2. Line diagrams of the transmission network as at the valuation date and/or the application date;
3. Equipment unit rates for recently completed capital projects which includes typical substation and transmission line developments;

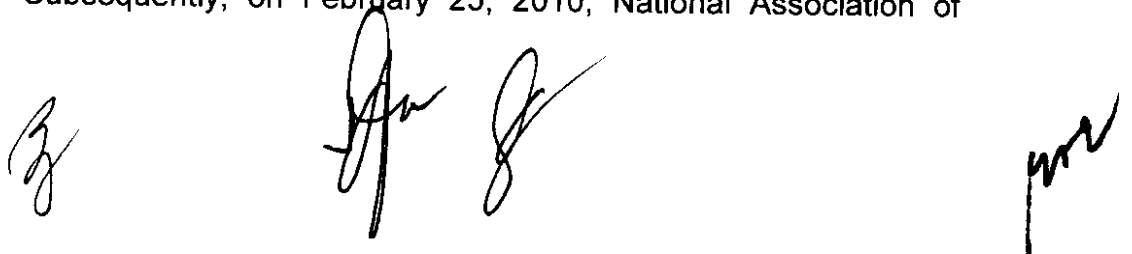


4. List of data required to perform market simulation studies for 2006, 2010 and 2015:
 - a. Grid data including nodes, transmission lines and connections for a model;
 - b. Transmission line standing data for thermal capacity, resistance and reactance for each transmission line;
 - c. De-rate percentage for transmission line capacity; and
 - d. Allocation of aggregate load to nodal load;
5. Concession Agreement with the National Transmission Corporation (TRANSCO);
6. Full tax adjustment spreadsheet referenced in Sections 4.5.2 and 4.6.4 of Annex A of the instant application; and
7. Full analyses supporting the derivation of the Construction Work-in-Progress (CWIP) factors in the PriceWaterhouseCoopers (PWC) Report.

NGCP alleged, among others, that it has business and proprietary interests over the information under items 1, 3, 5, 6 and 7, the disclosure of the foregoing would allegedly diminish their respective commercial values.

NGCP further alleged that disclosure of information under items 2 and 4 may be utilized to identify which portions or components of the transmission system are critical in nature such that damage to the same will severely affect the system. Thus, its disclosure to the public poses imminent risk to national security.

On February 22, 2010, Philippine Associated Smelting and Refining Corporation (PASAR) filed an "Opposition to Motion to Treat Information as Confidential". Subsequently, on February 25, 2010, National Association of

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Electricity Consumers for Reforms, Incorporated (NASECORE) filed an "Omnibus Opposition (To NGCP's Request for Confidentiality of Documents)"

DISCUSSION

The NGCP prayed for confidential treatment of the foregoing information on grounds of business and proprietary interests and national security.

Section 2 (Action by the Commission on the Request), Rule 4 (Confidential Information) of the ERC Rules of Practice provides that the Commission may deny the request for confidential treatment of information on grounds, such as, but not limited to the following:

- a. The party requesting confidential treatment of information has no actual, valuable proprietary interest to protect with respect to the information sought to be treated as confidential;
- b. The information is, at the time of the request, generally available to the public by means other than through a breach of any confidentiality obligation with respect to such information; and
- c. The information is, at the time of the request, available to or already in the possession of the Commission on a non-confidential basis from a source that, to the knowledge of the Commission, has lawfully acquired such information on a non-confidential basis.

It is worth mentioning that NGCP is the sole entity engaged in the transmission business, thereby akin to have monopoly insofar as transmission services in the electric industry is concerned. It does not have any competitor in the market. Thus, the Commission finds no merit in the contention of NGCP that it has business and proprietary interests over these information.

Anent the prayer of NGCP to treat items 2 and 4 as confidential, it bears stressing that the line diagrams of the transmission network are readily available



for public viewing at the Office of the Distribution Management Committee (DMC) and Grid Management Committee (GMC). The DMC and GMC are in possession of said information even before NGCP took over the operations of TRANSCO.

However, the Commission agrees as to the sensitivity of the information contained in the submitted grid data which identified nodes, transmission lines and connections for a model and the transmission line standing data for thermal capacity, resistance and reactance for each transmission line. The Commission agrees with NGCP that disclosure of the said information poses imminent risk to national security, particularly if the same are in possession of lawless elements of society. Hence, the Commission deems it necessary to treat the foregoing information as confidential in nature.

WHEREFORE, the foregoing premises considered, the Commission hereby **RESOLVES** to:

1. **DENY** the request of NGCP to treat the following information as confidential:
 - a. Computer Study Files (PSS/E files) (Planning PSS/E files that cover the time period addressed by the TDP;
 - b. Equipment unit rates for recently completed capital projects which includes typical substation and transmission line developments;
 - c. De-rate percentage for transmission line capacity, the allocation of aggregate load to nodal load;
 - d. Concession Agreement;
 - e. Full tax adjustment spreadsheet referenced in Sections 4.5.2 and 4.6.4 of Annex A of the instant application;
 - f. Full analyses supporting the derivation of the CWIP factors in the PWC Report;
 - g. Line diagrams of the transmission network as at the valuation date and/or the application date;



- h. De-rate percentage for transmission line capacity; and
 - i. Allocation of aggregate load to nodal load.
2. **DIRECT** NGCP to furnish all intervenors with copies of the foregoing information within five (5) days from receipt hereof;
 3. **GRANT** the request of NGCP to treat the grid data including nodes, transmission lines and connections for a model and transmission line standing data for thermal capacity, resistance and reactance for each transmission line as confidential information;
 4. **DIRECT** all intervenors, should they desire to obtain copies of the subject information, to:
 - a. Designate an authorized person, attorney or representative who shall execute individual undertakings or protective agreements with NGCP under oath swearing to maintain the confidentiality of the said document and information and non-disclosure thereof until otherwise directed by the Commission; and
 - b. Furnish each member of the Commission and NGCP three (3) original copies of the said sworn undertaking, within five (5) days from receipt thereof; and
 5. **DIRECT** NGCP to correspondingly furnish certified true copies of the subject confidential information, within five (5) days from receipt of their individual notarized undertakings/protective agreements as specified in this Order.

Accordingly, should the intervenors fail to execute and submit the said notarized undertakings/protective agreements, they shall be deemed to have waived their respective rights to be served copies of the confidential documents and to further comment or raise any contest thereon.

The party who waives its right to receive copies of the confidential documents shall, likewise, be excluded from being served any comment or pleading thereon by the other parties who undertake or agree to be bound by the confidentiality treatment enunciated therein.

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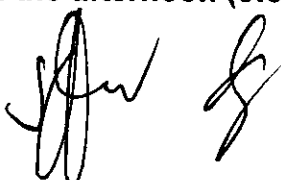
Information which is the subject of the undertaking, protective agreement or a protective order herein shall be provided only to the Commission's staff in charge of the case. The parties of record or their attorneys or representatives, if the parties are juridical entities, after agreeing to be bound by the terms of the protective order or agreement, shall be allowed access to such confidential information.

Any person, party, attorney or representative of a party, or member of the Commission staff who violates the procedures of the Commission for protecting information; fails to obey a protective order issued by the Commission; violates the terms or conditions of a protective agreement; or violates any other prohibition of the disclosure of information designated as confidential, shall be subject to the imposition of administrative fines and penalties, without prejudice to whatever other remedies of the party in whose favor the protective order was issued.

The foregoing confidential information shall remain to be as such until NGCP files its application for approval of its maximum annual revenue for the fourth regulatory period (2016-2020) during the regulatory reset process for the fourth regulatory period in accordance with the alternative form of rate setting methodology under the Rules in Setting the Transmission Wheeling Rates (RTWR), unless otherwise ordered by the Commission to be disclosed to the public.

In the meantime, the Commission hereby sets the continuation of the hearing of the instant application at the **ERC Hearing Room, 15th Floor, Pacific Center Building, San Miguel Avenue, Pasig City** on the following dates:

- a. **March 24, 2010 (Wednesday) at nine o'clock in the morning (9:00 AM) to five o'clock in the afternoon (5:00 PM);**




- b. **March 25, 2010 (Thursday) at two o'clock in the afternoon (2:00 PM) to five o'clock in the afternoon (5:00 PM);**
- c. **March 26, 2010 (Friday) at nine o'clock in the morning (9:00 AM) to twelve o'clock noon (12:00 NN);**
- d. **April 6, 2010 (Tuesday) at nine o'clock in the morning (9:00 AM) to five o'clock in the afternoon (5:00 PM);**
- e. **April 7, 2010 (Wednesday) at nine o'clock in the morning (9:00 AM) to five o'clock in the afternoon (5:00 PM); and**
- f. **April 8, 2010 (Thursday) at nine o'clock in the morning (9:00 AM) to five o'clock in the afternoon (5:00 PM).**

Finally, intervenors Engr. Antonio Urera and Mr. William Espiritu are hereby **DIRECTED** to appear on March 24, 2010 to conduct their respective cross-examinations on the witnesses presented by NGCP. Failure on their part to appear on said date shall constitute waiver of their rights to cross-examine the said witnesses.

SO ORDERED.

Pasig City, March 2, 2010.


ZENAIDA G. CRUZ-DUCUT
Chairperson *gmat*


RAUF A. TAN
Commissioner

(Took No Part)
MARIA TERESA A.R. CASTAÑEDA
Commissioner


ALEJANDRO Z. BARIN
Commissioner


JOSE C. REYES
Commissioner

Copy Furnished:

1. National Grid Corporation of the Philippines (NGCP)
Quezon Avenue corner BIR Road,
Diliman, Quezon City
2. National Transmission Corporation (TRANSCO)
Power Center, Quezon Avenue corner BIR Road,
Diliman, Quezon City
3. Distribution Management Committee (DMC) and Grid Management Committee (GMC)
20th Floor, Pacific Center Building,
San Miguel Avenue, Pasig City
4. National Association of Electricity Consumers for Reforms, Incorporated (NASECORE)
No. 10, 680 Quirino Avenue, Bayside Court Compound,
1700 Tambo, Parañaque City
5. Manila Electric Company (MERALCO)
Lopez Building, MERALCO Compound,
Ortigas Avenue, Pasig City
6. Federation of Village Association (FOVA)
Don Jesus Boulevard, Alabang Hills, Village, Muntinlupa City
7. Engr. Antonio Urera
107 Anjou St., Sta. Rosa Village II,
Sta. Rosa City, Laguna
8. Mr. William Espiritu
214 B. Jupiter St., Aeropark Subdivision,
Don Bosco, Parañaque City
9. National Association of Electricity Consumers for Reforms, Inc.– Davao Chapter
(NASECORE-Davao)
Attn: Ms. Myrna Papas-Valdez
5th Floor, Landco Corporation Center,
J.P. Laurel Avenue, Davao City
10. Davao Light and Power Company, Incorporated (DLPC)
C. Bangoy Sr. St., Davao City
11. National Association of Electricity Consumers for Reforms, Inc.– Cebu Chapter
(NASECORE-Cebu)
Attn: Mr. Vicente Gambito
c/o Mr. Pete Ilagan
No. 10, 680 Quirino Avenue, Bayside Court Compound,
1700 Tambo, Parañaque City

Atty. Edison John A. Arriola
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12. Philippine Associated Smelting and Refining Corporation (PASAR)
Leyte Industrial Development Estate (LIDE), Isabel, Leyte
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37th Floor, Philamlife Tower, Paseo de Roxas, 8767, Makati City

Atty. Dionisio A. Tejero
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Ortigas Center, Pasig City