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

IN THE MATTER OF THE APPLICATION FOR APPROVAL OF ANCILLARY SERVICES PROCUREMENT AGREEMENT (ASPA)

CAGAYAN ELECTRIC POWER AND LIGHT COMPANY, INCORPORATED (CEPALCO) AND MINDANAO ENERGY SYSTEMS, INCORPORATED (MINERGY),
Applicants,

- versus - **ERC CASE NO. 2011-054 RC**

NATIONAL GRID CORPORATION OF THE PHILIPPINES (NGCP),
Respondent.
X- -X

DOCKETED
Date: JAN 04 2012
By: .....

ORDER

Before the Commission for resolution is the "Motion to Dismiss" filed on June 14, 2011 by the National Grid Corporation of the Philippines (NGCP) praying that the instant application be immediately dismissed with prejudice for utter lack of merit.

In the said motion, NGCP alleged, among others, that:

1. There is no methodology for the recovery of the cost of ancillary before Cagayan Electric Power and Light Company, Incorporated (CEPALCO) and Mindanao Energy Systems, Incorporated (MINERGY) can enter into an Ancillary Services Procurement Agreement (ASPA);

1.1. For the recovery mechanism under the ASPA, it is a fact that there is no methodology approved by the Commission. Without the said methodology, CEPALCO has no legal and regulatory basis to enter into an ASPA with MINERGY, with the cost of such ancillary service to be collected from its customers.

1.2. The Commission has already unbundled CEPALCO's rates in ERC Case No. 2001-892 through a Decision dated May 19, 2004. By reason of the unbundling of rates, a peso-value is placed for each component which the consumers are going to pay to CEPALCO.

1.3. Ancillary services costs/charges directly incurred from its ancillary service provider like MINERGY are not one of those approved charges that CEPALCO may collect from its customers.

2. MINERGY's proposed power plant must first be constructed and tested before it can accredit such as capable of providing Dispatchable Reserve.

2.1. It is clear from the instant application that CEPALCO and MINERGY are invoking the provisions of the OATS Rules and the Ancillary Services-Cost Recovery Mechanism (AS-CRM). However, under the OATS Rules, before the System Operator (SO) authorizes the ASPA, certain requirements and conditions must first be complied, particularly for a transmission customer seeking approval of the ASPA to prove that it is able to provide on its own or from a third party the ancillary services. Module D8 of the OATS Rules states:

"D8. Alternative Ancillary Services Arrangements.

D8.1. When Allowed. Where the Transmission Customer is able to provide its own Ancillary Services, or contracts with a third party to provide Ancillary Services, it may apply to the System Operator to have that arrangement authorized as an Alternative Ancillary Services Arrangement.

D8.2. Requirements. A Transmission Customer seeking an Alternative Ancillary Services Arrangement shall:

(a) Provide such information as requested by the System Operator, acting reasonably; and

(b) Shall test their Equipment to the satisfaction of the System Operator, acting reasonably, and provide the test results to the System Operator, as required by the System Operator.

x x x.

D8.3. Conditions. The System Operator shall authorise an arrangement as an Alternative Ancillary Services Arrangement if:

(a) The proposed arrangement complies with the technical requirements for that Ancillary Service as set out in Ancillary Services Procurement Plan."

2.2. Also, Section 6.10.2.7 of the Philippine Grid Code (PGC) provides that: "The Ancillary Service acceptability test shall determine the committed services in terms of parameters quantity or volume, timeliness, and other operational requirements. Generators providing Ancillary services shall conduct the test or define the committed service. However, monitoring by the Grid Owner of Ancillary Services performance in response to Power System-derived inputs shall also be carried out".

2.3. Further, the ASPP provides that a back-up reserve provider (Dispatchable Reserve) must be certified by NGCP only after undergoing the test of its equipment, to wit:

"4.3.3.1. Provider must be certified by TransCo as BUR Provider after undergoing accreditation process."

2.4. Thus, based on the abovementioned provisions, the implementation of an ASPA can only be done upon its issuance of the authority. However, before it can issue such authority, a transmission customer must comply with the following requirements and conditions, among others, namely:

a. Provide NGCP all information it requested; and

b. The generating plant must undergo an accreditation test.

2.5. As mentioned earlier, MINERGY has not yet constructed the generating plant which will allegedly provide CEPALCO Dispatchable Reserve. Thus, there is nothing to test or accredit. Without such accreditation, it, by the Commission's issuances, is proscribed from authorizing the ASPA between CEPALCO and MINERGY.

3. The Commission failed to acquire jurisdiction over the case.

3.1. In the Order dated April 4, 2011, the Commission directed CEPALCO and MINERGY to furnish both the Order and Notice of Public Hearing to the Offices of the City Mayor of Cagayan de Oro, the Municipal Mayors of Jasaan, Tagaloan, Villanueva and Provincial Governor of Misamis Oriental. However, based on these documents only the Notice of

Public Hearing was furnished to the said Local Government Units (LGUs) for posting in their bulletin boards.

3.2. Based on Exhibits B-1 to B-4, CEPALCO and MINERGY failed to furnish the said Order to the said LGUs.

3.3. Posting of said Order is vital requisite in order for the Commission to acquire jurisdiction. The posting requirement is mandatory and without the proof of posting of the said Order in the bulletin boards of the said LGUs, the Commission failed to acquire jurisdiction over the subject matter of the case.

4. The issuances of the Commission clearly provide the requisites before it can authorize the ASPA.

4.1. Lastly, in filing the application, CEPALCO and MINERGY seek the Commission's directive that will compel NGCP to authorize the ASPA. The application is for a dispute resolution and not a rule-making case to provide transmission customers the methodology to recover procured ancillary services.

4.2. It is its position that the Commission cannot compel it to authorize the ASPA. The OATS Rules, in relation to the PGC and ASPP, clearly mention that those basic requirements must first be complied with before it can issue such authorization.

On July 1, 2011, CEPALCO and MINERGY filed their "Opposition to Motion to Dismiss" praying that the motion to dismiss filed by NGCP be denied for lack of merit.

On July 21, 2011, Therma Marine, Incorporated (TMI) filed its "Comment (To: NGCP's Motion to Dismiss)" praying that the motion to dismiss filed by NGCP be granted and the instant application be dismissed for failure of CEPALCO and MINERGY to comply with the conditions precedent laid down in the OATS Rules.

DISCUSSION

There is no methodology for the recovery of the cost of ancillary before CEPALCO and MINERGY can enter into an ASPA

A perusal of the instant application disclosed that Item 3 of Schedule 3 (Page 14 of 17) of the ASPA executed by and between CEPALCO and MINERGY expressly provides for the Cost Recovery Mechanics, to wit:

> *"Schedule 3: Ancillary Service Charge, Rate Escalation and Cost Recovery Mechanics*
>
> *x x x.*
>
> *3. Cost Recovery Mechanics*
>
> *Cost of Ancillary Services is a pass-through cost. CEPALCO shall recover the Fixed Charges through the Transmission Charges.*
>
> *The variable energy charge shall be included as part of CEPALCO's Generation Cost recoverable through the Generation Charge.*
>
> *Schedule 4 contains sample computations."*

From the foregoing, the ASPA between CEPALCO and MINERGY has clearly provided the required cost methodology for ancillary services.

The Commission failed to acquire jurisdiction over the case

NGCP contended that CEPALCO and MINERGY failed to furnish the concerned LGUs with copies of the Order dated April 4, 2011. Posting of the said Order in the respective bulleting boards of these LGUs is a vital requisite in order for the Commission to acquire jurisdiction. The posting requirement is mandatory and without proof of such posting, the Commission failed to acquire jurisdiction over the subject matter of the case.

It is worth reiterating that during the May 11, 2011 initial hearing, the Commission ruled that CEPALCO and MINERGY had sufficiently complied with its jurisdictional requirements as set forth in the Order dated April 4, 2011.

The Commission further elaborated that it also furnished the Offices of the City Mayor of Cagayan de Oro City, the Municipal Mayors of Jasaan, Tagoloan and Villanueva and the Provincial Governor of Misamis Oriental with copies of the Order and Notice of Public Hearing both dated April 4, 2011, as evidenced by the registry receipts.

Furthermore, it bears stressing that jurisdiction over the subject matter is conferred upon by law. Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 or the EPIRA clearly defines the jurisdiction, powers and functions of the Commission to which, the instant application falls squarely within its ambit.

MINERGY's proposed power plant must first be constructed and tested before NGCP can accredit such as capable of providing Dispatchable Reserve and the issuances of the Commission clearly provide the requisites before NGCP can authorize the ASPA

As regards the issues of whether or not: a) MINERGY's proposed power plant must first be constructed and tested before NGCP can accredit such as capable of providing Dispatchable Reserve; and b) the issuances of the Commission clearly provide the requisites before NGCP can authorize the ASPA, it bears stressing that NGCP's arguments deal with the very substance and merit of the application which should be properly addressed in the resolution of the case.

A thorough review of the arguments presented by NGCP in its motion revealed that there are no cogent nor compelling reasons to dismiss the instant application.

WHEREFORE, the foregoing premises considered, the "Motion to Dismiss" filed on June 14, 2011 by the National Grid Corporation of the Philippines (NGCP) is hereby **DENIED** for lack of merit.

The continuation of the hearing is set on **January 24, 2012 (Tuesday) at ten o'clock in the morning (10:00 A.M.) at the ERC Hearing Room, 15th Floor, Pacific Center Building, San Miguel Avenue, Pasig City** for NGCP and Therma Marine, Incorporated's (TMI) presentation of evidence.

SO ORDERED.

Pasig City, January 2, 2012.

FOR AND BY AUTHORITY
OF THE COMMISSION:

MARIA TERESA A.R. CASTAÑEDA
Commissioner

Copy Furnished:

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2. Cagayan Electric Power and Light Company, Inc. (CEPALCO)
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3. Mindanao Energy Systems, Inc. (MINERGY)
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4. National Grid Corporation of the Philippines (NGCP)
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7. Commission on Audit (COA)
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8. Senate Committee on Energy
   GSIS Bldg., Roxas Blvd., Pasay City
   Metro Manila

9. House Committee on Energy
   Batasan Hills, Quezon City, Metro Manila

10. Office of the City Mayor
    Cagayan de Oro City, Misamis Oriental

11. Office of the Municipal Mayor
    Jasaan, Misamis Oriental

12. Office of the Municipal Mayor
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13. Office of the Municipal Mayor
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15. Philippine Chamber of Commerce and Industry (PCCI)
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