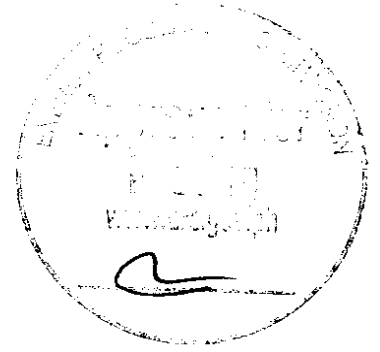


Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City



IN THE MATTER OF THE
APPLICATION FOR THE APPROVAL
OF THE POWER SALES AGREEMENT,
AS AMENDED, AMONG SOUTH
COTABATO II ELECTRIC
COOPERATIVE, INC. (SOCOTECO II),
CONAL HOLDINGS CORPORATION
AND SARANGANI ENERGY
CORPORATION

ERC CASE NO. 2011-138 RC

SOUTH COTABATO II ELECTRIC
COOPERATIVE, INC. (SOCOTECO II)
AND SARANGANI ENERGY
CORPORATION (SEC),

Applicants.

x-----x

DOCKETED
Date: JAN 19 2012
By: *WV*

ORDER

Before this Commission for resolution is the "*Petition for Intervention*" filed on December 15, 2011 by the National Grid Corporation of the Philippines (NGCP).

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

1. In the Power Supply Agreement (PSA), Sarangani Energy Corporation (SEC), as the Conal Holdings Corporation's (CHC) project company, shall supply South Cotabato II Electric Cooperative, Inc.'s (SOCOTECO II) baseload electric power requirements up to the Contracted Capacity of 70 MW and the Dispatchable Energy as indicated in the Amended Power Supply Agreement (PSA) for the period of twenty-five (25) years. Thus, there is an uncontracted capacity of 50 MW from SEC Power Plant;
2. However, upon perusal of the application, there is no information on how SEC intends to use said uncontracted capacity and how it intends to deliver the same to prospective off-takers. It may not be remiss to state that the Commission has already issued Resolutions relevant to this issue, in particular, Resolution No. 15, Series of 2011 and Resolution No. 16, Series of 2011;

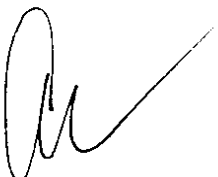
3. Considering that SEC Power Plant plans to directly connect to SOCOTECO II's facilities as an embedded generator, the contracted capacity will not pass through the high-voltage transmission lines of NGCP, thereby, causing a dramatic decrease of power demand in the Mindanao area. This will prejudice the rest of the transmission customers in Mindanao. The decrease of power demand in Mindanao caused by the embedded generator will result to instability in the transmission system;
4. Considering that it is the sole regulated transmission provider and operator in the nationwide electric grid, there is a necessity for it to participate in the instant case as Intervenor to determine whether the proposed PSA would not invade its exclusive mandate and if such PSA is not prejudicial to the whole transmission system; and
5. It behooves upon the Commission to allow its intervention and participation in the instant application. Its participation would not delay the proceeding and would not broaden the issues involved therein.

Record of the instant application disclosed that in the *Notice of Public Hearing* issued by the Commission setting it for initial hearing, it was stated that to become a party thereto, a verified petition for intervention should be filed at least five (5) days prior to the initial hearing.

Sections 1 and 2 of Rule 9 of the Commission's Rules of Practice and Procedure (Rules) require that:

"Section 1. Intervention. - Any person having an interest in the subject matter of any hearing or investigation pending before the Commission may become a party thereto by filing a verified petition with the Commission giving the docket number and title of the proceeding and stating: (1) the petitioner's name and address; (2) the nature of petitioner's interest in the subject matter of the proceeding, and the way and manner in which such interest is affected by the issues involved in the proceeding; and (3) a statement of the relief desired.

Section 2. Filing of Petitions to Intervene. - Petitions under this rule shall be served on the original parties and filed with the Commission not less than five (5) days prior to the time the proceeding is called for hearing, unless the notice of hearing fixes the time for filing such petitions, in which case such notice shall govern. A petition, which for good cause shown was not filed within the time herein limited, may be presented to and allowed or denied by the Commission or the presiding officer at the time the proceeding is called for hearing."



The Commission is inclined to deny the petition for intervention of NGCP since it failed to show any good cause or justifiable reason for not filing it within the prescribed period. Moreover, the Commission has already issued an Order of general default in the instant application.

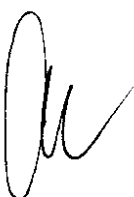
It must be emphasized that the application and the Notice of Public Hearing were both published in newspapers of local circulation in Tacurong City, Province of Sultan Kudarat and in Central Mindanao, and in newspapers of general circulation in the Philippines. Thus, there had been sufficient notice to the whole world that such application is now pending before the Commission. As enunciated in the case of *Ricardo L. Santillano v. People of the Philippines*¹:

*“There have been exceptional cases where we have set aside procedural defects to correct a patent injustice. **To justify a relaxation of the Rules, however, there should be an effort on the party invoking liberality to at least explain its failure to comply with the Rules. Jurisprudence holds that the utter disregard of the Rules cannot be justified by harking to substantial justice and the policy of liberal construction of the Rules.** Technical rules of procedure are not meant to frustrate the ends of justice. Rather, they serve to effect the proper and orderly disposition of cases, and thus, effectively prevent the clogging of court dockets.” (Emphasis supplied)*

A liberal application of the Commission's Rules is not warranted under the circumstances and cannot be invoked in all instances under the semblance of justice, fair play and equity. As held in the case of *Marcelino Domingo v. Court of Appeals, et al*², “liberal application of procedural rules is allowed only when two (2) requisites are present: (1) there is plausible explanation for the non-compliance; and (2) the outright dismissal would defeat the administration of justice.”

¹ G.R. Nos. 175045-46, March 3, 2010

² G.R. No. 169122, February 2, 2010



Considering that NGCP has filed and intervened in a number of applications previously filed with the Commission, it is expected by this time to know and strictly adhere to its rules and not rely on its liberality at all times.

“Time and again the Court has stressed that the rules of procedure must be faithfully complied with and should not be discarded with the mere expediency of claiming substantial merit. As a corollary, rules prescribing the time for doing specific acts or for taking certain proceedings are considered absolutely indispensable to prevent needless delays and to orderly and promptly discharge judicial business. By their very nature, these rules are regarded as mandatory.”³

Thus, NGCP's *“Petition for Intervention”* shall be treated as its Opposition in the instant application.

SO ORDERED.

Pasig City, January 2, 2012.

FOR AND BY AUTHORITY
OF THE COMMISSION:


MARIA TERESA A.R. CASTAÑEDA
Commissioner


MVA/MFAS/NJS

³ Cynthia S. Bolos v. Danilo T. Bolos, G.R. No. 186400, October 20, 2010

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