

April 21, 2003

Energy Regulatory Commission

Pacific Center Building

San Miguel Avenue

Ortigas Center, Pasig City

Facsimile No: 634-8641, 631-7287, and 631-5879

Attention: **Edgar F. Samonte**
Officer-in-Charge, Market Operations Service

Subject: **ERC Case No. 2002-253: Proposed Rules, Terms and
Conditions for Open Access Transmission Service (OATS)**

Gentlemen:

We thank the Commission for giving us the opportunity to comment on the proposed “Rules, Terms and Conditions for Open Access Transmission Service (OATS)” and to participate in the public consultation scheduled thereon. Hereunder are the comments of Dagupan Electric Corporation (DECORP).

Contract for the Supply of Electricity

Our existing 10-year Contract for the Supply of Electricity with the National Power Corporation (NPC) will last until August 25, 2010. Will “Annex A, Rules on Transmission of Electricity” of the said Contract continue to be enforced for the duration of our Contract, or will it be replaced with the approved OATS? We are aware of the provision in our Contract that the Supply Service, Transmission Service and Sub-transmission Service are separate and distinct, and NPC is allowed to assign, sell, transfer or subcontract all or any part of its rights or obligations under our Contract in the event of restructuring of the electric industry.

Direct Connections

It is the intention of R.A. 9136 to eventually discontinue Direct Connection Services to End-users. As provided for in Sec. 8 of R.A. 9136 and in Rule 6 Sec. 4 of its IRR, “the sub-transmission functions and assets shall be segregated from the transmission functions ... TRANSCO shall negotiate with and thereafter transfer such functions, assets and associated liabilities to the qualified distribution utility.” Moreover, Rule 7 Sec. 4 of the IRR states, “any existing End-user within the Franchise Area of a Distribution Utility that is connected to TRANSCO facilities shall be served by the franchised Distribution Utility upon acquisition of the sub-transmission facilities.” And Rule 5 Sec. 5 of the IRR states, “TRANSCO or its Buyer or Concessionaire may allow a Generation Company to develop, own and/or operate dedicated point-to-point limited transmission facilities provided, that such ... are not used to serve End-users or Suppliers directly.”

Therefore, we suggest revisions to some of the Defined Terms and Interpretation, and related provisions, as follows:

“Connected Transmission Customer: Any Transmission Customer with Facilities physically connected to the Grid at one or more Points of Connection. For the

avoidance of doubt, this includes Generating Companies, Distribution Utilities, and End-users who have not yet been transferred to the Distribution Utilities.”

“Direct Connect Customer: Any person or entity drawing Electricity directly off the Grid for its own consumption, prior to the transfer of such person or entity to the Distribution Utilities. Such entities or persons, and this definition, will cease to exist when all have been transferred to the Distribution Utilities.”

Relation of OATS Rules, Grid Code and WESM Rules

The Philippine Grid Code establishes the basic rules, requirements, procedures and standards that govern the operation, maintenance and development of the high voltage backbone Transmission System in the Philippines. On the other hand, the WESM Rules establishes the basic rules, requirements and procedures that govern the operation of the Philippine electricity market.

The OATS Rules should have a similar statement or foreword that the OATS is limited to specifying the relationship of the Transmission Service Provider (TSP) and its customers, where the actions to be required are not covered in the Grid Code and WESM Rules. Provisions in the draft OATS, which are not in the Grid Code or WESM Rules, but belongs to the Grid Code or WESM Rules, should be submitted to the Grid Management Committee or the WESM Technical Working Group for inclusion in the Grid Code or WESM Rules, respectively. Should there be conflict between specific provisions, the Grid Code or WESM Rules should prevail over the OATS Rules.

Billing Determinant

Please be guided of the latest Notice of Judgment and Decision of the Court of Appeals, Special Third Division dated March 3, 2003, denying the Petition for Review filed by NPC, and accordingly dismissed for lack of merit. The case (C.A. - G.R. SP No. 50782, National Power Corporation vs. PEPOA) originated from NPC's imposition of penalties for electricity consumption below and over the contracted demand and energy limit based on its Rules on the Sale of Electricity, specifically Rules 5 and 6. The decision, in effect, reiterates that the collection of penalties by NPC is unlawful, not having been authorized by the then Energy Regulatory Board (now Energy Regulatory Commission), and considering further that the Cease and Desist Order issued by the then ERB was now permanent.

DECORP hopes that the Commission will consider the foregoing concerns and we look forward to actively participating in the public consultation scheduled on May 12 to 14, 2003.

Very truly yours,

Dagupan Electric Corporation

Dave Andrew F. Opiso
Corporate Staff Engineer

Noted by:

Angelique Maxime L. Llames
Manager – Finance and External Relations