

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

**IN THE MATTER OF THE SETTING OF THE
MAXIMUM ALLOWABLE REVENUE MAR
FOR CALENDAR YEAR 2006 IN
ACCORDANCE WITH THE ALTERNATIVE
FORM OF RATE SETTING METHODOLOGY
FOR THE NATIONAL TRANSMISSION
CORPORATION (TRANSCO) AND ANY
FUTURE CONCESSIONAIRE THEREOF**

ERC CASE NO. 2005-047RC

**NATIONAL TRANSMISSION CORPORATION
(TransCo),**

Applicant.

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DUCKETED

Date: 5/4/06

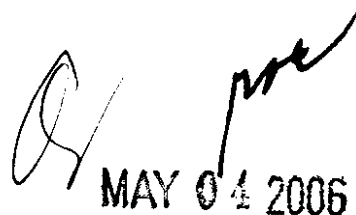
By: 

ORDER

For resolution before the Commission is the "*Motion for Reconsideration and Clarification (Re: Order of the Honorable Commission dated March 3, 2006)*" filed by applicant National Transmission Corporation (TRANSCO) on March 24, 2006.

In the said motion, TransCo moved for the reconsideration and clarification of the abovementioned Order on the following grounds:

- I. The calculated under recovery in revenues is only 4.87% of the allowed MAR for 2005 and not 5.1%;
- II. TransCo intends to recover the maximum revenue that it can be allowed without breaching the side constraint limit;
- III. TransCo requests clarification from the Honorable Commission regarding the calculation of the indicative rates for the power delivery services charges;
- IV. Considering that the TWRG allows the recovery of differential amount that even exceeds the 5% limit, TransCo requests that it be allowed to recover the entire revenue shortfall amounting to P1,452.2 Million (inclusive of carrying cost);
- V. There appears a typographical error in the dispositive portion of the Order of the Honorable Commission particularly in the first and second paragraphs.



MAY 04 2006

COMMISSION'S DISCUSSIONS AND RULINGS

A. TransCo's Under-Recovery

In its Order dated March 3, 2006, the Commission noted that the under recovery in revenues was 5.1% of the allowed Maximum Allowable Revenue (MAR) for 2005. TransCo claimed that the calculated under recovery is only 4.87% and not 5.1%.

The subject Order for reconsideration used the "actual" revenues ending September 30, 2005 of PhP25,767.8 million as the reference point for the calculation of the 5.1%. The Commission is convinced that the percentage under-recovery is best measured against the approved MAR cap of PhP27,085.7 million for this period. Thus, it agrees with TransCo's recalculated number of 4.87%.

The following table shows the Commission's original calculation and the recalculation of the average under-recovery of the MAR allowed for CY2005:

	Under-recovery (PhP million)	MAR CY 2005 (PhP million)	Under- recovery (%)
Order March 3, 2006	(1,317.9)	25,767.8	5.11%
Motion for Reconsideration	(1,317.9)	27,085.7	4.87%

B. TransCo's Effective Revenue Cap

As described in the Commission Order of March 3, 2006, the allowed revenue cap of PhP30,672.2 million for CY 2006 cannot be met without breaching the side constraints imposed in s.6.4.1 of the TWRG. An estimate of the achievable revenue cap without breaching the side constraints can be made and for the Commission Order of March 3, 2006 this estimated revenue cap was PhP28,338 million. TransCo alleged that the same is potentially wrong and should be clarified. Per TransCo's current estimate said revenue cap stands at PhP29,545 million.

The Commission reviewed its initial analysis on forecast data for CY2006 and found that the data it used in its initial analysis was inaccurate in some respects, to wit:

1. The actual revenue used to arrive at the effective revenue cap (based on the requirement to not breach the CPI and volume adjusted side constraints) was for 12 months to September 30, 2004, instead of the actual revenue filed by TransCo for 12 months to September 30, 2005.
2. The indicative average charge for the Luzon & Visayas customer segment for 2006 was incorrectly calculated using the total forecast revenues (including PDS, SO and MSP service revenues), instead of just the PDS forecast revenues. The indicative average charges shown in the Order were higher than those calculated correctly.
3. The indicative average charge for the Mindanao customer segment for 2006 was incorrectly calculated using the not grossed-up forecast billing determinant, instead of the grossed-up forecast billing determinant, as has been done in previous calculations.
4. The average prices for the MSP service were derived from 2005 data and differed from those used by TransCo for 2006.

Using the correct data forecast for CY2006, the updated estimate of the achievable revenue cap for CY2006 is PhP29,472.97 million as shown in the calculation attached hereto and made an integral part of this Order as Annex "A" .

C. Indicative Power Delivery Service (PDS) Charges

On the basis of the revised effective revenue cap, the Commission revised the indicative PDS charges as shown in the following table (where for this calculation these charges are assumed to apply on average for the whole of the CY 2006 and the billing determinant is as forecast by TransCo):

Power Delivery Service Rate (P/kW)			
	Indicative 2006	Indicative Pegged *	Average % Change
Luzon	264.90	242.58	9.2%
Visayas	264.90	242.58	9.2%
Mindanao	249.73	227.53	9.8%

* Note: Pegged rate fixed at Dec 2004 level



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D. Side Constraints

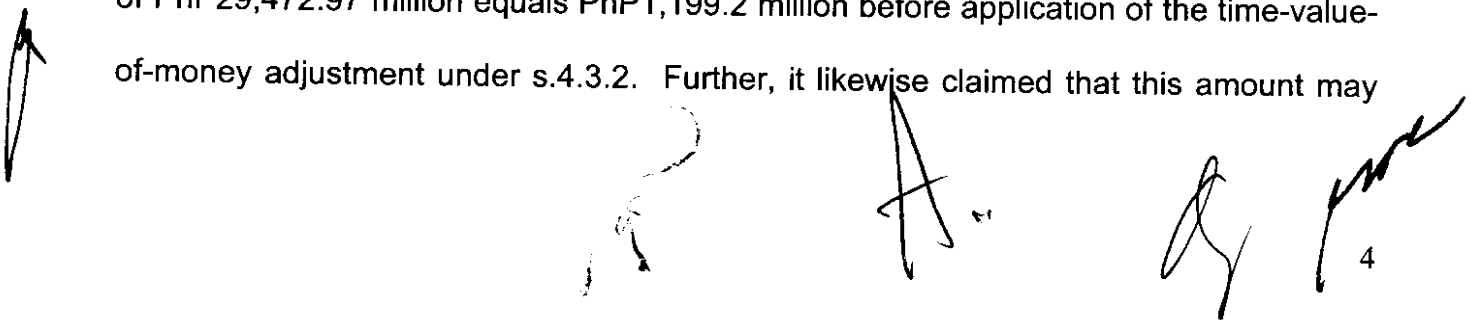
The abovementioned indicative rates resulted from a calculation showing the following side constraint outcomes:

Customer Segment	Total Amount Billed in 12 Month Period to Dec 30,2005 (PhPm)	Total Amount Forecast in 12 Month Period to Dec 30,2006 (PhPm)	Calculated Side Constraint Outcome CY2006	Maximum Allowed Side Constraint CY2006
Luzon - Visayas	22,271.01	25,405.81	1.1408	1.1440
Mindanao	3,560.20	4,067.16	1.1424	1.1424
Philippines	25,831.21	29,472.97	1.1410	1.1438

The Commission noted that the calculation of the estimated cap and the two side constraints require a multi-dimensional optimization routine for solution. Further, there is possibly more than one solution to this multi-dimensional problem and that an exact solution may not be achievable. The Commission likewise verified the calculation technique used by TransCo and the table above represents a solution which is close to optimal without breaching the side constraints. Note that the forecast revenue from Luzon – Visayas customer segment is slightly less than that allowed by the calculated side constraint, and a similar result applies to the total revenues.

Apart from the clarification of the average change in indicative rates and the overall revenue cap to use for the initial part of CY2006 so that the side constraints are not breached, TransCo has requested that the Commission approve its breach of the side constraints so that it can recover the allowed MAR cap for CY2006 of PhP30,672.2 million.

TransCo expressed concern that the current projected shortfall of the allowed revenue cap of PhP30,672.2 million less the effective cap based on the side constraints of PhP29,472.97 million equals PhP1,199.2 million before application of the time-value-of-money adjustment under s.4.3.2. Further, it likewise claimed that this amount may



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not be fully recoverable at the transition from the First to the Second Regulatory Period. Sections 4.3.3 and 4.3.4 of the TWRG limit the under-recovery pass through for the transition between the First Regulatory Period to the Second Regulatory Period to 5% of the previous year's MAR, unless the reasons for the short-fall were outside of TransCo's control. TransCo is concerned that unless it is allowed to breach the side constraints now (the first part of the CY2006), it may not be able to fully recover its revenue shortfall during transition to the Second Regulatory Period during the last part of CY2006. TransCo even went as far as contending that on account of the pegging of its rates as well as the lapse of nearly a year to issue its Order resolving TransCo's motion for reconsideration in a related case, the Commission has placed TransCo in a situation where it cannot recover the revenue it is entitled to under the TWRG without breaching the side constraints. TransCo argued that to try and enforce the side constraints in these circumstances would be unjust and unreasonable and may be ultra vires.

The Commission believes there is no sufficient evidence at this time to justify an approval of the breach of the side constraints as defined in the s.6.4.1 of the TRWG for the following reasons:

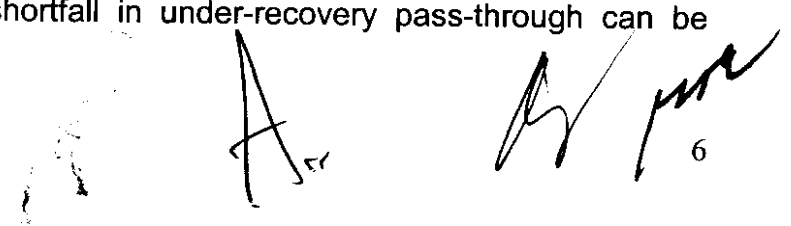
- The side constraints are related to the MAR approved by the Commission for the First Regulatory Period defined in the TWRG, which has been subject to considerable Public Consultation prior to its promulgation. These provisions now apply to the initial part of CY2006 under the new time frames set in the ERC's Issues Paper for the First Regulatory Reset, which were also subject to Public Consultation.
- Changes to the CPI and volume adjusted side constraint settings within s.6.4.1 of the TWRG have been subject to additional Public Hearing during the current regulatory reset for the Second Regulatory Period. While there have been submissions on amendments to the TWRG during the current reset process, any changes to the TWRG will need to follow the finalization of the MAR for the CY2006 using the current form of the TWRG. Any new settings within the TWRG relating to rate adjustment would then become active for Third Regulatory Period.
- Until the Commission finalizes the MAR for CY2006 under the reset provision for the Second Regulatory Period (scheduled at present for end April 2006), it is uncertain that TransCo will under-recover its MAR for the full CY2006 period. This is because the final MAR for CY2006 has not been determined. As such more rapid changes to rates in the early part of CY2006 may not be warranted.

The foregoing premises considered, the Commission will not allow a breach of the side constraints for the initial part of CY2006.

As to TransCo's contention that to try and enforce the side constraints in these circumstances would be unjust and unreasonable and may be ultra vires. The contention is without merit.

An ultra vires act is one outside the scope of the powers conferred upon a corporation by the legislature. An act is ultra vires in the strictest sense when it is beyond the scope of the powers granted by law to an entity, so that it is not the power of the entity to perform it under any circumstances or for any purpose. The act of enforcing the side constraints provision of the TWRG is well within the general rate fixing powers of the Commission sanctioned under the EPIRA. Moreover, the fact that it took some time for the Commission to resolve TransCo's motion for reconsideration in the OATS case is likewise of no moment. Decisions of administrative agencies are not rendered void or even considered ultra vires even if issued beyond the period prescribed by law for its rendition.

Further, to consider the decision of the Commission on enforcing the side constraint at this juncture as "unjust and unreasonable" is still premature. The fact of TransCo having under-recovery of the MAR at the transition from the First to the Second Regulatory Period has not been established. Currently, this transition is scheduled to occur at July 31, 2006, assuming the Commission is able to decide on a MAR for the first year of the Second Regulatory Period at the scheduled date of April 30, 2006. It is only once all the facts of the new MAR, the revenue collections and billing determinant outcomes up to May 31, 2006, and the forecast billing determinant for the remainder of CY2006 are known that the issue of over-recovery or under-recovery, and the isolation of any shortfall in under-recovery pass-through can be



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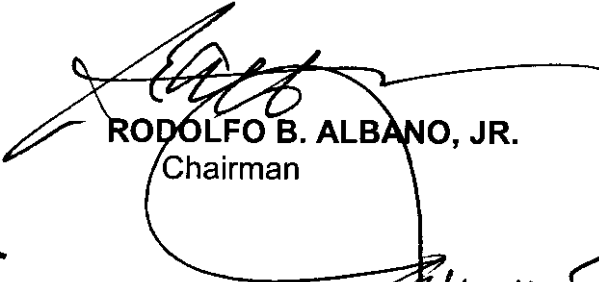
determined. Thus, the Commission is not in any position to make a decision on pass-through of any shortfall in under-recovery until approximately July 15, 2006.


Finally, the Commission clarifies that the phrase "commencing January 1, 2005" should read "commencing January 1, 2006".


WHEREFORE, the foregoing premises considered, TransCo's motion for reconsideration is hereby **GRANTED** subject to the modifications discussed above.


SO ORDERED.


Pasig City, April 25, 2006.


RODOLFO B. ALBANO, JR.
Chairman


OLIVER B. BUTALID
Commissioner


JESUS N. ALCORDO
Commissioner


RAUF A. TAN
Commissioner


ALEJANDRO Z. BARIN
Commissioner

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Commonwealth Avenue
Quezon City - 0880
4. **Senate Committee on Energy**
GSIS Building, Roxas Boulevard
Pasay City - 1300
5. **House Committee on Energy**
Batasan Hills, Quezon City – 1126
6. **Department on Energy (DOE)**
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9. **Philippine Rural Electric Cooperative Association (PHILRECA)**
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10. **Philippine Electric Plant Owners Association**
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ANNEX A

Assumptions	CPI	Generator Cap	STC Delta	FCI	ACI	Load Ratio	Adjustment	Load Cap	PDC Delta	FCI	ACI	Load Ratio	Adjustment	Avg
L	7.880%	Grossed	2.000%	79,003,341	76,303,627	1.0354	1.1377	UnGrossed	2.000%	76,649,041	74,029,779	1.0354	1.1377	1.1642
V	7.880%	Grossed	2.000%	11,295,389	10,423,903	1.0836	1.1907	UnGrossed	2.000%	10,880,849	10,041,346	1.0836	1.1907	
M	7.880%	Grossed	2.000%	15,232,368	14,651,072	1.0397	1.1424	UnGrossed	2.000%	14,569,779	14,013,751	1.0397	1.1424	
Total	7.880%	Grossed	2.000%	105,531,118	101,378,603	1.0410	1.1438	UnGrossed	2.000%	102,099,669	98,084,876	1.0409	1.1438	
Demand (Grossed Up, MW)	Jan-06	Feb-06	Mar-06	Apr-06	May-06	Jun-06	Jul-06	Aug-06	Sep-06	Oct-06	Nov-06	Dec-06		
L	8,488	8,511	8,571	8,572	8,593	8,659	8,672	8,704	8,736	8,788	8,805	8,836	79,934.71	
V	922	928	938	945	953	961	966	972	977	982	988	994	11,522.38	
M	1,251	1,258	1,265	1,272	1,281	1,289	1,297	1,304	1,311	1,320	1,328	1,298	15,474.46	
													106,931.56	
Demand (Not Grossed Up, MW)														
2.980% L	6,295	6,317	6,375	6,376	6,396	6,461	6,473	6,504	6,535	6,586	6,602	6,633	77,552.66	
3.870% V	888	894	901	910	918	925	930	936	941	946	951	958	11,099.51	
4.350% M	1,196	1,204	1,210	1,217	1,226	1,233	1,240	1,247	1,254	1,262	1,270	1,242	14,801.32	
													103,453.49	
Allowed Total Revenues (00 Cap Check (000 Peso)	29,472,967.333	29,472,967.333	0	Button 4										
Loads (Revenue Allocation)														Average Charge Rate (peso/kW)
L	1,844,294	1,844,586	1,845,356	1,845,364	1,845,633	1,846,487	1,846,658	1,847,066	1,847,472	1,848,148	1,848,357	1,848,765	22,158,185	277.20
V	270,125	270,208	270,311	270,431	270,542	270,641	270,710	270,786	270,860	270,926	271,001	271,085	3,247,627	281.65
M	338,420	338,520	338,605	338,700	338,822	338,929	339,022	339,119	339,217	339,325	339,436	339,043	4,067,156	262.83
													29,472,967	
Revenue Components														
Loads (Revenue Allocation)														
PDS	100.0%				Revenue Recovery	2,340,921								
L	1,761,016	1,761,016	1,761,016	1,761,016	1,761,016	1,761,016	1,761,016	1,761,016	1,761,016	1,761,016	1,761,016	1,761,016	21,132,192	264.37
V	257,865	257,865	257,865	257,865	257,865	257,865	257,865	257,865	257,865	257,865	257,865	257,865	3,094,380	268.55
M	322,040	322,040	322,040	322,040	322,040	322,040	322,040	322,040	322,040	322,040	322,040	322,040	3,866,480	249.73
													28,091,052	
Loads (Revenue Allocation)														
SO	100.0%													
12.50 L	81,102	81,386	82,136	82,144	82,406	83,237	83,404	83,801	84,197	84,855	85,059	85,456	999,184	12.68
V	11,523	11,601	11,698	11,810	11,915	12,007	12,073	12,144	12,213	12,275	12,346	12,425	144,030	12.98
M	15,632	15,728	15,810	15,900	16,016	16,118	16,207	16,300	16,393	16,497	16,602	16,227	193,431	13.07
													1,336,644	
Loads (Revenue Allocation)														
SM	100.0%													
0.335383031 L	2,176	2,184	2,204	2,204	2,211	2,233	2,238	2,248	2,259	2,277	2,282	2,293	26,808.7	0.35
0.799982462 V	737	742	749	756	763	768	773	777	782	786	790	795	9,217.7	0.83
0.597416746 M	747	752	756	760	765	770	775	779	783	788	793	776	9,244.7	0.82
													45,271	

A. J. [Signature]