

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City



**IN THE MATTER OF THE
PETITION FOR DISPUTE
RESOLUTION WITH
MOTION FOR THE
ISSUANCE OF CEASE AND
DESIST ORDER,**

**ASIAN GREEN ENERGY
CORPORATION**

Petitioner,

-versus-

ERC CASE NO. 2017-001DR

**NATIONAL GRID
CORPORATION OF THE
PHILIPPINES (NGCP),**

Respondent.

D O C K E T E D

Date: AUG 29 2017

By: M

ORDER

During the initial hearing of the above-captioned case on 17 May 2017, the Petitioner requested another hearing for the presentation of additional witnesses. The request was granted and Petitioner was directed to submit the judicial affidavit of the witnesses to be presented. Accordingly, the instant case was set for another hearing on 15 June 2017 for the presentation of Petitioner's additional witnesses.

Following the directive given on the 17 May 2017 hearing, Petitioner submitted the judicial affidavit of Mr. Japhet P. Nermal and Chairman Jose M. Layug of the National Renewable Energy Board (NREB), on 9 June 2017 and 14 June 2017, respectively.

On 15 June 2017, Petitioner presented Mr. Japhet P. Nermal and Chairman Jose M. Layug as witnesses. Mr. Japhet P. Nermal's testimony was offered to prove the following: (1) that Respondent's imposition of Ancillary Services Charge on 10.49 MWp Bukidnon Solar Energy Plant, which is an embedded generation plant, has no basis; (2) to illustrate how First Bukidnon electric Cooperative, Inc. (FIBECO) is being billed by NGCP insofar as Ancillary Services Charge is concerned; (3) to prove that the peak demand of FIBECO is non-coincident with the maximum output of (Asian Green Energy Corporation) AGEC's Plant; (4) to prove that the entry of AGEC's Plant as an embedded generator in the Distribution System of

FIBECO did not change the Peak Demand of FIBECO and does not necessitate Ancillary Services; (5) to prove other matters relevant to the petition.

Petitioner conducted its direct examination on Mr. Japhet P. Nermal. Upon the termination of the direct examination, Respondent conducted its cross-examination of the said witness.

Petitioner also presented another witness Chairman Jose M. Layug whose testimony was offered to prove that the System Operator Charge and Ancillary Services Charge were never contemplated under the computation of the FIT rates. Petitioner objected to the offer of testimony of Chairman Jose M. Layug's testimony on the ground that the reasonableness of the FIT rate is not one of the issues stipulated during the pre-trial conference.

The Hearing Officer, Atty. Krisha T. Buela allowed the direct examination of Chairman Jose M. Layug without prejudice to the resolution of Respondent's opposition thereto. Respondent was further directed to reduce its opposition into a written manifestation.

On 30 June 2017, Respondent filed its "*Comment/Opposition (To the Offer of Testimony of Chairman Jose M. Layug, Jr.)*". In the said *Comment/Opposition*, Respondent argued that exemption from paying transmission charges are not among the incentives given to a renewable energy (RE) developer pursuant to Republic Act No. 9513, otherwise known as the Renewable Energy Act. Respondent, therefore, concluded that any testimony which attempts to interpret the existence of such exemption is not proper to be taken up in the instant petition for dispute resolution. Furthermore, Respondent also asseverated during the 15 June 2017 hearing, the purpose of Chairman Jose M. Layug's testimony was not among the issues raised during the Pre-trial conference.

In response to the Respondent's *Comment/Opposition*, Petitioner filed its "*Reply (to the Comment/Opposition dated 29 June 2017)*" on 18 July 2017. Petitioner argued that "the issue whether the System Operator Charge and Ancillary Services charge were contemplated under the computation of the FIT rates is well within the issue of whether Respondent has basis to charge the same"¹. In relation thereto, Petitioner argued that Chairman Jose M. Layug's testimony is relevant and material to the main issue of the petition which is the legal basis and the propriety of Respondent's System Operator Charge and Ancillary Services Charge.

After considering the positions of the parties, the Commission resolves to allow the testimony of Chairman Jose M. Layug.

¹ Petitioner's *Reply (to the Comment/Opposition dated 29 June 2017)*, Par. 1 (a)

It should be noted that one of the main issues of the instant petition is the propriety of Respondent's charges. The same issue was presented during the Pre-trial Conference and concurred to by Respondent.

Essentially, Petitioner wanted to prove that Respondent's charges are invalid and have no basis. In proving that supposition, Petitioner claimed that it is not obligated to pay the System Operator Charge and Ancillary Services Charge because such charges were not considered in the computation of the FIT rates. The FIT rates being the sole source of Petitioner's income, Petitioner concluded that it cannot be held liable for charges beyond the FIT rate.

On the other hand, the position taken by the Respondent in assailing the offer of Chairman Jose M. Layug's testimony is a replication of its counter argument stated in its "*Comment /Opposition (to AGEC's Petition)*". Hence, in opposing the testimony, Respondent is asking the Commission to resolve the main issue in the instant case base on its merits. The said resolution is not proper at this stage of the proceedings.

The premise on which Petitioner would like to prove its case shall be subjected to the appreciation of the evidence to be presented to the Commission in the evaluation of the instant petition once the same is submitted for resolution.

ACCORDINGLY, the prayer of Respondent in its "*Comment/Opposition (To the Offer of Testimony of Chairman Jose M. Layug, Jr.)*" for the striking out of Chairman Jose M. Layug's testimony is hereby **DENIED**.

SO ORDERED.

Pasig City, 26 July 2017

FOR AND BY AUTHORITY
OF THE COMMISSION:


JOSEFINA PATRICIA A. MAGPALE-ASIRIT

Commissioner


KTB/RFM/APV

Copy furnished:

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