

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



**IN THE MATTER OF THE
APPLICATION FOR
APPROVAL OF THE FEED-
IN TARIFF ALLOWANCE
FOR CALENDAR YEAR 2017
PURSUANT TO THE
GUIDELINES FOR THE
COLLECTION OF THE FEED-
IN TARIFF ALLOWANCE
AND DISBURSEMENT OF
THE FEED-IN TARIFF
ALLOWANCE FUND, WITH
PRAYER FOR PROVISIONAL
AUTHORITY,**

ERC CASE NO. 2016-192 RC

**NATIONAL TRANSMISSION
CORPORATION (TRANSCO),
Applicant.
X-----X**

D O C K E T E D
Date: SEP. 22 2017
By: [Signature]

ORDER

For the Commission's consideration is the issue of whether or not there would be legal implications in allowing the proposed amendments to the Judicial Affidavit of Applicant National Transmission Corporation's (Applicant TransCo) witness. Such issue arose from the manifestation made by Atty. Mario Victorio Dimagiba, representing Laban Konsumer, Inc., during the 13 July 2017 hearing of the instant Application.

THE FACTUAL AND PROCEDURAL ANTECEDENTS

On 01 December 2016, Applicant TransCo filed its *Application* dated 28 November 2016, for approval of the Feed-In Tariff Allowance (FIT-All) for calendar year 2017 (Application), in its capacity as FIT-All Fund Administrator. As the FIT-All Fund Administrator, Applicant TransCo is legally mandated to make an annual determination of the FIT-All Rate and file the necessary application before the Commission.

As alleged in its Application, Applicant TransCo proposed a FIT-All Rate of PhP/kWh 0.2291 for CY 2017, using the following formula¹:

$$\text{FIT-All} = \frac{\text{FD} + \text{WCA} + \text{AA} + \text{DA}}{\text{FNS}}$$

Where,

DESCRIPTION	
FIT-All	is the Feed-in Tariff Allowance to be implemented in Year _{t+1} in PhP/kWh, as provided for in the FIT Rules and the Guidelines.
FD	is the estimated Total FIT Differential required for Year _{t+1} in PhP, and as further described in Section 1.4.1 of the Guidelines.
WCA	is the estimated Working Capital Allowance required for Year _{t+1} in PhP, and as further described in Section 1.4.2 of the Guidelines.
AA	is the Administration Allowance to be implemented in Year _{t+1} in PhP, and as further described in Section 1.4.3 of the Guidelines.
DA	is the Disbursement Allowance to be implemented in Year _{t+1} in PhP, and as further described in Section 1.4.3 of the Guidelines.
FNS	is the Forecast National Sales, in kWh, to be applied for Year _{t+1} and as further described in Section 1.4.4.2 of the Guidelines.
T	is the year the application for setting the FIT-All is filed with the ERC.
t+1	is the year following t

In the same Application, Applicant TransCo discussed each of the components in the above formula and its computed data FIT-All rate. Table 16² of the Application showed the 2017 FIT-All Rate at different categories of FIT-eligible/-candidate Renewable Energy (RE) Projects. The categories used in the Application were the following:

- (a) with Certificate of Endorsement (COE) from the Department of Energy (DOE);
- (b) with Nomination; and
- (c) all FIT-eligible RE projects listed with DOE (Full DOE List).

¹ Allegation No. 17, page 5 of the Application. FD stands for FIT Differential; WCA for Working Capital Allowance; AA for Administration Allowance; DA for Disbursement Allowance; and FNS for Forecast National Sales.

² Allegation No. 80, page 19 of the Application.

Table 16. Incremental Movement of the 2017 FIT-All for Different RE Plant/Project Categories (as of November 15, 2016)

	With Billings As of Nov 5, 2016 Payment Date	With COE		With Nomination		Full DOE List	
		Increase/ (Decrease)	Total	Increase/ (Decrease)	Total	Increase/ (Decrease)	Total
MW	789.05	309.71	1,098.76	8.00	1,106.76	101.47	1,208.22
MWH	2,168,062	529,982	2,698,044	30,130	2,728,174	332,304	3,060,478
FIT-ALL Rate, P/kWh							
FD	0.1528	0.0542	0.2070	0.0016	0.2086	0.0130	0.2217
2017 FD	0.1068	0.0522	0.1590	0.0015	0.1605	0.0130	0.1736
2016 Under Recover	0.0460	0.0020	0.0480	0.0001	0.0481	0.0000	0.0481
WCA	0.0157	0.0045	0.0202	0.0001	0.0203	0.0060	0.0263
AA	0.0001	0.0000	0.0001	0.0000	0.0001	0.0000	0.0001
DA	0.00001	0.0000	0.00001	0.0000	0.00001	0.0000	0.00001
FIT-ALL Rate, P/kWh	0.1686	0.0587	0.2273	0.0018	0.2291	0.0190	0.2481

COE-Certificate of Endorsement issued by the DOE

Nomination-issued by the DOE when it has validated that the RE Plant has reached 80% electro-mechanical completion

The table above shows the computed FIT-All Rate per category as follows:

- With COE - PhP/kWh 0.2273
- With Nomination - PhP/kWh 0.2291
- Full DOE List - PhP/kWh 0.2481

Given the said computations, Applicant TransCo, in its Application, prayed for the resulting FIT-All Rate under the category "With Nomination" at PhP/kWh 0.2291.

In support of its allegations in the Application, including its prayer for provisional authority, Applicant TransCo submitted the Judicial Affidavit of Ms. Dinna O. Dizon, Manager of the Compliance Monitoring Department (CMD) of Applicant TransCo (Ms. Dizon) dated 25 November 2016 (*Judicial Affidavit*).³ The said Judicial Affidavit was attached to the Application as Annex "V" and made an integral part thereof.

In the Judicial Affidavit of Ms. Dizon, the formula used by Applicant TransCo in calculating the final FIT-ALL Rate being applied for was shown and discussed.

More specifically, in Question No. 65 on page 22 of the Judicial Affidavit, the derivation of the resulting FIT-All Rate for CY 2017 using the full DOE list was asked of Applicant TransCo's witness. Consequently, the witness replied as follows:

³ Allegation No. 87, page 19 of the Application.

65. What is the resulting FIT-All rate for 2017 based on the values of the components discussed?

A: Based on the formula and components discussed above, TRANSCO computed a FIT-All rate of PhP/kWh 0.2481.

Table 13. Summary of 2017 FIT-All Rate Computation

COMPONENTS	Amount (Php)	Rate (P/kWh)	Share
FD	16,488,421,820	0.2217	89.36%
2017 FD	12,911,610,701	0.1736	69.97%
2016 FD Under Recovery	3,576,811,119	0.0481	19.38%
WCA	1,957,387,200	0.0263	10.61%
AA	5,060,572	0.0001	0.03%
DA	1,095,368	0.0000	0.01%
Total FNS, kWh	18,451,964,961 74,375,251,500	0.2481	
FIT-All, Php/kWh			

Further, in Question No. 67, the categories considered and the result of the analysis were asked and responded to in this manner:

67. What were the categories you considered and what was the result of your analysis?

A: TransCo categorized the projected FIT-eligible projects, with cut-off of 15 November 2016, as: 1) those that are already being paid the FIT as of November 5, 2016 Payment Date and thus are already FIT-eligible; 2) those with FIT Certificate of Compliance (FIT COC) issued by the ERC granting FIT eligibility but are still completing some requirements with the FIT-All Fund Administrator; 3) those with Certificate of Endorsement for FIT-eligibility from the DOE; 4) those which have been nominated for FIT-eligibility by the DOE, i.e., project has attained 80% electromechanical completion; and, 5) all the other plants in the DOE List earlier mentioned. The FIT-All for each category was computed using the formula and methodology as discussed earlier and the result is as follows:

Table 14. Incremental Movement of the 2017 FIT-All for Different RE Plant/Project Categories

	With Billings As of Nov 5, 2016 Payment Date	With COE		With Nomination		Full DOE List	
		Increase/ (Decrease)	Total	Increase/ (Decrease)	Total	Increase/ (Decrease)	Total
MW	789.05	309.71	1,098.76	8.00	1,106.76	101.47	1,208.22
MWH	2,168,062	529,982	2,698,044	30,130	2,728,174	332,304	3,060,478
FIT-All Rate, P/kWh							
FD	0.1528	0.0542	0.2070	0.0016	0.2086	0.0130	0.2217
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2016 Under Recove	0.0460	0.0020	0.0480	0.0001	0.0481	0.0000	0.0481
WCA	0.0157	0.0045	0.0202	0.0001	0.0203	0.0060	0.0263
AA	0.0001	0.0000	0.0001	0.0000	0.0001	0.0000	0.0001
DA	0.00001	0.0000	0.00001	0.0000	0.00001	0.0000	0.00001
FIT-ALL Rate, P/kWh	0.1686	0.0587	0.2273	0.0018	0.2291	0.0190	0.2481

COE-Certificate of Endorsement issued by the DOE

Nomination-issued by the DOE when it has validated that the RE Plant has reached 80% electro-mechanical completion

On 26 April 2017, the Commission issued an Order setting the instant Application for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference and presentation of evidence.

Thereafter, on 15 May 2017, the initial hearing for the instant Application was conducted at the ERC Hearing Room, 15th Floor, Pacific Center Building, San Miguel Avenue, Pasig City. Applicant TransCo was determined to have substantially complied with the Commission's jurisdictional requirements pursuant to the Order dated 26 April 2017. Thereafter, Applicant TransCo delivered its expository presentation.

Subsequently, on 19 May 2017, the continuation of the hearing was conducted at the ERC Visayas Field Office located in St. Mary's Drive, Banilad, Cebu City. During the said hearing, Applicant TransCo delivered its expository presentation in the Visayas Region, in accordance with the Commission's rules.

Accordingly, on 12 July 2017, Applicant TransCo delivered its expository presentation at the ERC Mindanao Field Office, Mintrade Bldg., Monteverde Ave. cor. Sales St., Davao City.

On 19 July 2017, the Pre-trial Conference and Evidentiary Hearing were conducted at the ERC Hearing Room in Pasig City.

During the 19 July 2017 hearing, while its witness Ms. Dizon was under direct examination, Applicant TransCo manifested that there were proposed corrections and amendments to the Judicial Affidavit. According to Ms. Dizon, and relative to Table 13 under Question No. 65 and Table 14 under Question No. 67 of the Judicial Affidavit, the adjusted FIT rates were applied to RE projects based on the date of their eligibility to FIT, which is the Commercial Operation Date. Due to inadvertence, the data used to generate Tables 13 and 14 of the Judicial Affidavit failed to take into account the RE Projects which have been granted their COEs from the DOE but have yet to bill Applicant TransCo for their entitlement. The inclusion of several additional FIT-eligible RE projects would have the effect of modifying the FIT-All rate of PhP/kWh 0.2291 to PhP/kWh 0.2319, a variance of PhP/kWh 0.0028.

The Transcript of Stenographic Notes (TSN) of the said hearing reads:

Witness: (MS. DINNA O. DIZON)

We would like to, in relation to my Judicial Affidavit actually, we would like to request that if we be allowed to submit some changes. Actually, just this week, just last Monday we looked at our excel worksheet again. We revisited the excel worksheet and it seem that there was a link or the linking of data. There are areas where supposedly the adjusted FIT Rate should have been used, but inadvertently these were not linked correctly to the file. So, we wish actually to submit a revised Table 13 under paragraph 6, or question No. 65 of JA which basically changes the final number, the 0.2481 centavos that will be revised, as well as Table 14, of Question No. 67 where we show the incremental changes. Basically what happened was instead of the adjusted FIT rate applied to all according to the dates entry we were only able only to apply the adjusted FIT rates to those REs already billing. But those under only with Certificate of Endorsement or with nomination from the DOE and the others in the DOE list we failed to link the adjusted FIT Rate. In short our result under Table 13 of Question No. 65 shows only adjusted FIT Rates for RE Developers already billing. And if we be allowed to submit the new numbers, if what we discuss during the expository presentation should be adopted. That is where even if the REs are not yet billing, even if they are only under the category with Certificate of Endorsement or with nomination, or the others in the DOE list that we can apply the adjusted FIT rates. I have with me the revised Table 13 and instead of 0.2481 the new number will be 0.2523 centavos.

(Emphasis supplied)

In response to Applicant TransCo's manifestation, Intervenor Atty. Dimagiba asserted that the proposed recalculation of the FIT-All rates essentially amends the Application. Therefore, according to him, there is a need to postpone the presentation of the witness and revisit the Application to check if there is a need to file an amended application.

The Commission thereafter inquired with Applicant TransCo whether or not the proposed amendment to the Judicial Affidavit would have any legal implication in the merits of the instant Application. Thereafter, the Commission agreed to put on record that the proposed corrections and amendments, as manifested by Applicant TransCo, be incorporated and adopted provisionally.

In the same hearing, Applicant TransCo was directed to furnish all the parties and intervenors with a copy of the amended Judicial Affidavit. The Presiding Officer reiterated that the corrections were only allowed in the meantime, until the Commission resolves the issue of whether or not there would be legal implications in allowing the proposed corrections to the witness' Judicial Affidavit. Moreover, Applicant TransCo was directed to prepare an expository presentation showing the proposed recalibrated rates.

As a result, the Commission suspended the proceedings and directed Applicant TransCo to present the proposed amendment in the Judicial Affidavit in the next hearing which was scheduled on 08 August 2017.

During the 08 August 2017 hearing, the same witness, Ms. Dizon, gave an expository presentation of the proposed changes in the Judicial Affidavit and its resulting effect on the rates prayed for in the Application. Changes shown were the following:

Item	As filed	Recalibrated
Slide 14: FIT Rate Used, P/kWh	a. Adjusted FIT Rate was applied for those already billing/with payment as of Nov 5, 2016 b. Unadjusted FIT Rate applied for those categorized "with COE", "with Nomination" and "others in the DOE List"	Adjusted FIT Rate applied based on REs date of Commercial Operation for FIT
Slide 17: FIT Differential	Php16,488,421,820.26	Php16,767,768,942.26

Slide 18: 2018 Forecast Annual Payout (for WCA determination)	Php26,150,441,295.00	Php26,412,481,440.00
Slide 19: Factor Rate (for WCA determination)	7.4309%	7.4923%
Slide 21: Working Capital Allowance (WCA)	Php1,957,387,200.00	Php1,993,075,945.00
Slide 23: Disbursement Allowance	Php1,095,368.36	Php1,099,937.55
Slide 24: 2017 FIT-All Rate Application	P/kWh0.2481	P/kWh0.2523
Slide 25: Incremental Movement of the 2017 FIT-All for Different RE Plant/Project Categories Up to With Nomination	P/kWh0.2291	P/kWh 0.2319

Intervenor Atty. Dimagiba reiterated his continuing manifestation on the proposed amendments inquiring into the substance of the amendment in the Judicial Affidavit. Part of his oral manifestation is reproduced below:

Atty. Dimagiba:

I'll stand now because I want to put this on record. In the last hearing.. I raised a jurisdictional issue. Its okay if the alternative prayer will bring down the amount that ERC will approve then your filing and your compliance is in order. That's why when Engr. Mallillin raised an issue in the pre-trial whether the FIT-ALL can be reduced we join him. But assuming

*your numbers are correct which ERC will validate your numbers being the regulator. **But my position here when the Rules of Practice and Procedure of ERC I think you have to comply to notice and jurisdiction and publication.** Well, your lawyers are here just to give an analogy, if I file a case for collection of money the sum that I will file is a fixed amount, I can claim interest which will base on the fixed amount. In the course of the proceeding, if my evidence does not conform to my pleading, meaning I will be asking for more, the rules of court which is by application supplementary here would require me to amend my pleading, with the permission of the court. Hindi puwede iyong basta basta, so, your evidence conform to your application. But in the Civil Case walang publication doon. I mean hindi iyon public interest, commercial issues 'yon. **But this is a public interest case and that is the requirement of notice and publication.** That's the logic of the notice and publication.*

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(Emphasis supplied)

In light of this manifestation by Atty. Dimagiba, the filing of the Formal Offer of Evidence was deferred until the issue on the correction of the Judicial Affidavit is resolved by the Commission.

Likewise, the Commission directed all parties, including Applicant TransCo, who would like to make their comments known, to submit their position papers addressing the issue of Applicant TransCo's request for admission of the proposed amendments to its witness' Judicial Affidavit. Parties were given until 14 August 2017 to file their respective position papers.

On 14 August 2017, Applicant TransCo filed *Applicant's Position Paper*. In its position paper, Applicant TransCo opines that the additional testimony of Ms. Dizon is part of her direct testimony, and thus, may be admitted in evidence because it does not contradict the other relevant and substantial statements in her Judicial Affidavit. Applicant TransCo also asserts that the parties were given ample opportunity to propound questions and cross-examine the witness during the expository presentations delivered in Luzon, Visayas and Mindanao, in compliance with the requirements of due process. Lastly, it is the Applicant TransCo's position that the additional testimony was presented merely to support the Application and not to supplant it, and as such, its inadmissibility cannot be regarded as a jurisdictional defect.

Likewise, on 14 August 2017, Intervenor Confederation of Solar Developers of the Philippines, Inc. (CSDP) filed its position paper wherein it insists that the proposed changes do not constitute an amendment to the Application because the said updated recalibrated rates are covered by Applicant's general prayer.

Similarly, on 14 August 2017, PHINMA Renewable Energy Corporation (PHINMA) filed its *Comment* to the issue arising out of the proposed corrections of Ms. Dizon to her Judicial Affidavit. PHINMA posits that the proposed amendments to the Judicial Affidavit should be allowed for it was simply a result of mere inadvertent errors in computation. Further, PHINMA argues that the FIT-All is a merely a mechanism to collect the FIT granted to eligible RE Generators. As such, it cannot at all times be calculated with mathematical precision, and thus, as long as the formula in the FIT Rules was strictly implemented by Applicant TransCo, the proposed corrections should be admitted.

Intervenors Davao Light and Power Company, Inc. (DLPC), Visayan Electric Company, Inc. (VECO) and Wind Energy Developers Association of the Philippines (WEDAP) filed their respective Manifestations on 14, 16 and 18 August 2018 stating that they have no comment on the aforementioned issue.

THE COMMISSION'S RULING

The Commission resolves to deny the request of Applicant TransCo for the admission of the corrections to the witness' Judicial Affidavit. The proposed changes or corrections in the Judicial Affidavit of Ms. Dizon, particularly in Questions 65 and 67 thereof, will substantially alter the rate applied for in the Application, hence, the same cannot be admitted.

In determining the substantial nature of the changes proposed by Applicant TransCo, the Commission considered the table below showing the difference between the FIT-All rates prayed for in the original Application vis-à-vis the proposed recalibrated FIT-All rates:

(left intentionally blank)

Item	As filed	Recalibrated
Slide 14: FIT Rate Used, P/kWh	c. Adjusted FIT Rate was applied for those already billing/with payment as of Nov 5, 2016 d. Unadjusted FIT Rate applied for those categorized "with COE", "with Nomination" and "others in the DOE List"	Adjusted FIT Rate applied based on REs date of Commercial Operation for FIT
Slide 17: FIT Differential	Php16,488,421,820.26	Php16,767,768,942.26
Slide 18: 2018 Forecast Annual Payout (for WCA determination)	Php26,150,441,295.00	Php26,412,481,440.00
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Slide 21: Working Capital Allowance (WCA)	Php1,957,387,200.00	Php1,993,075,945.00
Slide 23: Disbursement Allowance	Php1,095,368.36	Php1,099,937.55
Slide 24: 2017 FIT-All Rate Application	P/kWho.2481	P/kWho.2523
Slide 25: Incremental Movement of the 2017 FIT-All for Different RE Plant/Project Categories Up to With Nomination	P/kWho.2291	P/kWh 0.2319

As may be gleaned from above, the specific items affected by the changes proposed by Applicant (FIT Rate Used, FIT Differential [FD], Working Capital Allowance [WCA], and Disbursement Allowance [DA]) are most of components in the formula used by Applicant TransCo in arriving at the FIT All Rate applied for:

$$\text{FIT-All} = \frac{\text{FD} + \text{WCA} + \text{AA} + \text{DA}}{\text{FNS}}$$

Thus, the rate for the category, "Up to with Nomination", increased from P/kWh0.2291 to P/kWh0.2319. To reiterate, the effect of modifying the FIT-All rate computation in the Judicial Affidavit of the Applicant TransCo's witness would lead to an increase of PhP/kWh 0.0028.

Further, the admission of the corrections on the witness' Judicial Affidavit would, in effect, be a substantial amendment to the relief sought in the Application. In which case, any substantial amendment of the Application would require compliance with the notice and publication requirements of the Commission, in accordance with the 2006 ERC Rules of Practice and Procedure (2006 RPP) and requirements of due process.

It is clear that the changes in the Judicial Affidavit being referred to are not mere errors in computation as they go into the very essence of the Application, which is the rate being applied for. It is also worthy of note that the Judicial Affidavit of Ms. Dizon, appended as "Annex V" to the Application, was made an integral part thereof. Hence, the contents of the Judicial Affidavit are deemed read into the allegations contained in the Application.

Considering Applicant TransCo's allegation that the Judicial Affidavit is made an integral part of the Application, then it must follow, that any amendment to the Judicial Affidavit will substantially modify the Application. As a consequence, the provision in Section 1, Rule 7 of the 2006 RPP shall apply, *viz*:

Before a pleading can be amended or supplemented, the pleader shall file a motion for leave attaching therewith the proposed amended or supplemental pleading. Except as provided in the following section, such leave to amend will be allowed or denied by the Commission as a matter of discretion.

If the amendment will substantially enlarge or modify an application or petition, the Commission, after granting leave, shall require applicant or petitioner to comply with the requirements in Rule 6, if the application or petition is covered by said rule, and to republish the notice of hearing on the amended application or petition. (Emphasis supplied.)

The instant case is a rate application directly affecting the consumers, since the FIT-All is a uniform charge billed to all on-grid electricity consumers. Thus, the Application is covered by Rule 6⁴ of the 2006 RPP which requires compliance with the pre-filing requirements of notice to LGU Legislative Body where it principally operates and publication. Additionally, republication of the notice of hearing on the amended application is also required under Rule 7.

In the case of *Freedom from Debt Coalition, et. al v. Energy Regulatory Commission and MERALCO*⁵, the Supreme Court ruled on the importance of the publication requirement in rate applications filed before the Commission to protect consumers, in this wise:

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Obviously, the new requirements are aimed at protecting the consumers and diminishing the disparity or imbalance between the utility and the consumers. **The publication requirement gives them enhanced opportunity to consciously weigh the application in terms of the**

⁴ Section 1. *Rate Applications and Other Applications or Petitions for Relief Affecting the Consumers.* – Among the applications or petitions that directly affect the electricity rates chargeable to the end users or directly affect the consumers are applications for a general change in rate schedules or revision of rates and applications for approval of a power supply contract between a distribution utility and power producer.

The Commission may consider other applications and petitions as falling under this category of applications/petitions and thus direct compliance with the pre-filing requirements in Section 2 of this rule.

Section 2. *Pre-filing Requirements for Rate Applications and Other Applications/Petitions for Relief Affecting the Consumers.* – Before the Commission shall accept and docket rate applications and other applications or petitions for relief affecting the consumers, the applicant or petitioner must comply with the following requirements:

(a) The applicant or petitioner must furnish the Local Government Unit (LGU) Legislative Body (and not the Office of the Mayor) of the city or municipality where it principally operates, a copy of the application or petition, and not a mere notice of application/petition, with all its annexes and accompanying documents. If such principal place of operation is a component city or a municipality, the applicant or petitioner shall likewise furnish the LGU Legislative Body of the province of which such component city or municipality is part.

(b) The applicant or petitioners must cause the publication of the entire application or petition, excluding its annexes, and not a mere notice of filing or notice of application or petition, in a newspaper of general circulation within its franchise area or area where it principally operates.

⁵ G.R. No. 161113, 15 June 2004.

additional financial burden which the proposed rate increase entails and the basis for the application. With the publication of the application itself, the consumers would right from the start be equipped with the needed information to determine for themselves whether to contest the application or not and if they so decide, to take the needed further steps to repulse the application. On the other hand, the imposition on the ERC to consider the comments of the customers and the LGUs concerned extends the comforting assurance that their interest will be taken into account. Indeed, the requirements address the right of the consuming public to due process and at the same advance the cause of people empowerment which is also a policy goal of the EPIRA along with consumer protection.

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The publication and comment requirements, like the 30-day period also imposed in Section 4(e), Rule 3 of the IRR, are in keeping with some of the avowed policies of the EPIRA. These are to protect the public interest *vis-à-vis* the rates and services of electric utilities and other providers of electric power,⁹⁸ to ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability for greater operational and economic efficiency, to enhance the competitiveness of Philippine products in the global market,⁹⁹ and to balance the interests of the consumers and the public utilities providing electric power through the fair and non-discriminatory treatment of the two sectors.¹⁰⁰

Clearly, therefore, although the new requirements are procedural in character, they represent significant reforms in public utility regulation as they engender substantial benefits to the consumers. It is in this light that the new requirements should be appreciated and their observance enforced. (Emphasis supplied)

The publication requirement is not a mere procedural prerequisite for jurisdictional purposes. Being a rate case, the FIT-All Application will directly affect the electricity consumers owing to the general change in the FIT-All charge. Due process requires that the consuming public be apprised of the true rate being applied for.

Accordingly, the Commission sees no compelling reason to relax the provisions of the 2006 RPP and the relevant laws, rules and resolutions governing FIT⁶, and allow admission of proposed amendments to the Judicial Affidavit.

The Commission, guided by the principles of R.A. 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA), resolves to uphold the strict implementation of FIT Rules, consistent with jurisprudence on Universal Charge (UC).

Section 7 of Republic Act. No. 9513, otherwise known as the *Renewable Energy Act of 2008* (RE Law), established the Feed-In Tariff System with the aim of accelerating and encouraging the development of emerging renewable energy resources. ERC Resolution No. 16, Series of 2010, specifically Section 2.5 thereof, provides that a Feed-In Tariff Allowance or FIT-All would be imposed as a uniform charge on all electricity consumers who are supplied with electricity through the distribution or transmission network.

The imposition of the FIT-All is akin to the imposition of the UC, as both are uniform charges that are passed on and collected from end-users on a monthly basis. By the same token, both impositions are rooted in the policy of the EPIRA to promote a major restructuring of the electricity sector.

In *Gerochi v. Department of Energy*⁷, the Supreme Court had occasion to rule that the imposition of the UC does not amount to an exercise of the State's power of taxation. Instead, it is a financial burden placed on the shoulders of the consuming public in the exercise of police power, and thus, made in furtherance of public interest. It was ruled that such exaction is implemented by the State in order to protect, foster, promote public welfare.⁸ Being imbued with public interest, there would be no reason to excuse the strict implementation of all applicable rules and regulations governing the imposition of the FIT – whether substantive or procedural.

⁶ The relevant laws and resolutions regarding the FIT are as follows:

1. R.A. No. 9513 entitled "An Act Promoting the Development, Utilization and Commercialization of Renewable Energy Resources and for other purposes" (RE Law);
2. ERC Resolution No. 16, Series of 2010 entitled *Resolution Adopting the Feed-in Tariff Rules (FIT Rules)*; and
3. ERC Resolution No. 15, Series of 2012 issued on 19 November 2012 entitled *Resolution Adopting the Position of the Commission on the Issues Paper Published on 02 April 2012 and the Corresponding Amendments to the Feed-In Tariff Rules*.

⁷ G.R. No. 159796, 17 July 2007.

⁸ *Id.*

When public interest is to be compromised, the Commission's rules and resolutions should be strictly observed to protect consumer interest. The public should be informed of the actual FIT-All Rate applied for because this is an additional financial burden to all on-grid consumers. This is notwithstanding the fact that Applicant TransCo included in its Application an alternative prayer, which reads:

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- f. After due notice and hearing, a permanent approval for Applicant TransCo be granted to implement the FIT-All Rate for 2017 of **PhP/kWh 0.2291**, computed for RE Projects with at least nomination from DOE for eligibility under the FIT system, **OR IN THE ALTERNATIVE**, such other amount as may be found by the Commission to be consistent with the FIT-All Guidelines and on the basis of new and updated information not heretofore available to the Applicant at the time of the filing of the present application.

Applicant TransCo's alternative prayer, as stated in its Application, only contemplates a situation wherein new and updated information not available at the time of filing may be considered by the Commission in its computation of the FIT-All rate for CY 2017. The data required to arrive at the adjusted rate for the FIT-eligible RE projects categorized as "with COE", "with Nomination" and "others in the DOE List" were already available at the time the Application was filed. The reason for the amendments sought is mere inadvertence and not the unavailability of the information at the time of the filing of the Application.

Thus, the Commission finds no justifiable reason to allow the proposed amendments to the Judicial Affidavit despite Applicant TransCo's alternative prayer inasmuch as such changes and corrections are based on information that was already available to Applicant TransCo at the time it filed the instant Application.

WHEREFORE, the request of Applicant National Transmission Corporation (TransCo) for the admission of proposed corrections and amendments to Questions No. 65 and 67 of its witness' Judicial Affidavit dated 25 November 2016 is hereby **DENIED**. However, the Commission takes note of the proposed recalibrated FIT-All rates for CY 2017 proffered by the witness for the purpose of evaluating Applicant TransCo's newly filed application for the approval of the FIT-All rate for CY 2018.⁹

⁹ Filed on 30 August 2017.

IN VIEW OF THE FOREGOING, Applicant TransCo is hereby directed to **SUBMIT** its Formal Offer of Evidence within fifteen (15) days from receipt of this Order. Consequently, all admitted Intervenor are hereby given ten (10) days from receipt of Applicant's Formal Offer of Evidence to **SUBMIT** their respective comments thereto.

FURTHER, Intervenor Confederation of Solar Developers of the Philippines, Inc. (CSDP) is hereby directed to **SUBMIT** its Formal Offer of Evidence within fifteen (15) days from receipt hereof. Accordingly, Applicant TransCo and all other parties, should they so desire, are hereby given ten (10) days from receipt of CSDP's Formal Offer of Evidence to **SUBMIT** their respective comments thereto.

FINALLY, the next hearing in this case for the presentation of other admitted Intervenor's witnesses is hereby set on **28 September 2017 (Thursday) 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.**

SO ORDERED.

Pasig City, 05 September 2017.

FOR AND BY THE AUTHORITY
OF THE COMMISSION:



JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Oversight Commissioner for Legal

LS: MCC/HH/ARG/APV MOS: SOM/DTL

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