

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



IN THE MATTER OF THE
PETITION FOR RULE
CHANGES IN ERC'S RATE-
MAKING METHODOLOGIES
AND THE MANNER OF
CONTRACTING BILATERAL
GENERATION CONTRACTS,
SUBMITTING THE SAME TO
OPEN, COMPETITIVE BIDDING
TO PROTECT CONSUMERS

ERC CASE NO. 2014-006 RM

MATUWID NA SINGIL SA
KURYENTE CONSUMER
ALLIANCE, INCORPORATED
(MSK) AND OTHER
CONCERNED GROUPS UNDER
THE UMBRELLA PHP3
MOVEMENT (PHP3) AND
INDIVIDUALS IN METRO
MANILA AND THE
PHILIPPINES,

Petitioners.

X ----- X

DOCKETED
Date: FEB 26 2015
By: *[Signature]*

ORDER

On December 16, 2014, Matuwid na Singil sa Kuryente Consumer Alliance, Incorporated (MSK) and Concerned Groups under the Umbrella PhP3 Movement (PHP3) and individuals in Metro Manila and the Philippines filed a petition for rule changes in the Commission's rate-making methodologies and the manner of contracting bilateral generation contracts, submitting the same to open, competitive bidding to protect consumers.

In the said petition, MSK and PHP3 alleged, among others, that:

The Parties

1. MSK is a non-stock/non-profit non-governmental organization (NGO) duly organized and existing under the laws of the Republic of the Philippines, with office address at Unit 327, Eagle Court Condominium, No. 26 Matalino Road, Barangay Central, Quezon City. It has been formed by concerned Manila Electric Company (MERALCO) consumers who have deep knowledge of the electric power industry privatization and deregulation and the inner workings of the industry. It seeks to enlighten the public and policy makers on the specific rules and practices that have been causing abusive power costs. It is represented herein by its Executive Director, Ms. Evelyn Viray-Jallorina, who is duly authorized to file the instant petition;
2. PHP3 and individuals in Metro Manila and the Philippines are Filipino consumers who are being punished by the high costs of power and have decided to band together with MSK to speak as one voice in order to fight for consumer rights and be recognized in their call for fair and reasonable electric charges;
3. The Energy Regulatory Commission has been created under Executive Order No. 172, as amended, as an independent, quasi-judicial regulatory body tasked to promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the electricity industry;

Background

4. Electricity costs to residential and commercial consumers in the Philippines are among the highest in the world. It is an undue burden to the hardworking Filipino consumers and commercial establishments – making the country globally uncompetitive in manufacturing, call center and

business processing outsourcing (BPO) sectors, among others. It also denies the Filipinos of their gainful employment opportunities and tax generation for the Philippine Government to fund public services, including education;

5. MSK has determined in its research that MERALCO's rate of PhP12.34/kWh can be reduced by PhP3.00/kWh by rationalizing each cost component including the rate-making methodologies used by the Commission, the manner of contracting for bilateral generation contracts, the rules of the Wholesale Electricity Spot Market (WESM) and government taxes. About fifty percent (50%) or PhP1.50 of this reduction can be achieved from generation charge alone;
6. MSK's research and studies show, that:

6.1 Self-Negotiated Generation Power Supply Contracts

A major reason for this atrociously high electricity rates is the **generation charge** specially in MERALCO's service area where the controlling stockholders of the public service utility has been allowed, in the absence of a regulatory rule mandating otherwise, to self-negotiate the long term power supply agreements with their own sister and affiliated generation companies. They arbitrarily determine among themselves the rates and terms that will be passed on to the captive Filipino consumers, who are denied the benefit of competition;

6.2 Closed and Monopolized Generation Sector

The generation market is being increasingly dominated and monopolized by the sister companies and affiliates of those who control the distribution utilities and their favored generation companies. This harmful monopoly and anti-competitive situation prevents true competition and closes the generation sector to the entry of truly independent power generation companies under

genuinely competitive rules, thus denying the captive electricity consumers the benefits of competitive rates, technologies, and more investments for the power supply in the country;

6.3 Achievable Generation Rates in the Market

As of July 2014 the average generation rate of MERALCO was PhP5.66 per kilowatt/hour. For the months of July to November 2014, its buying prices from non-affiliated generation companies using coal ran from PhP3.31 to PhP4.33 per kilowatt/hour. From an evidently favored coal independent power producer (IPP), it was PhP4.21 to PhP4.60. For natural gas plants using Malampaya Gas, the sister companies with sweetheart self-negotiated contracts ranged from PhP5.16 to PhP5.91. This reached PhP9.99 in December 2013. On the other hand, non-affiliated natural gas generator, the rate only ranged from PhP4.54 to PhP4.80 per kilowatt/hour for the same months. This is a disadvantageous price differential of PhP13.6 to PhP23.1;

It is evident that lower rates can be achieved from truly independent suppliers specially if the contracting is subjected to open competitive bidding and MERALCO's average generation charge can be lowered to PhP4.00 per kilowatt hour instead of the PhP5.66 per kilowatt hour in July 2014;

6.4 MERALCO's Duty as a Public Service Utility Franchise Holder

MERALCO, as the franchise electric distribution utility in the National Capital Region (NCR) that serve sixty-two percent (62%) of the energy needs of the country, has an obligation to provide satisfactory service and sufficient and affordable power rates. It is required by the Electric Power Industry Reform Act or the EPIRA to provide power "in the least cost manner";

It therefore has a duty to undertake all efforts to deliver these obligations to the public in its franchised area;

6.5 Power of the Commission to Mandate Competitive Open Bidding for Bilateral Power Supply Contracts

The applicable law, the EPIRA, under Section 45(b) allowed distribution utilities to contract up to fifty percent (50%) of their power requirements to an affiliated generation company. It is silent on how the power supply will be contracted. It did not specify negotiation. It is silent on whether competitive bidding would be required;

6.6 The Commission however is mandated to promote the public interest, to assure sufficient power supply and lower rates and create a competitive market. Section 45 chastises anti-competitive behavior and market domination;

6.7 The Commission therefore has the authority and the obligation to pass a Resolution, in the interest of the public, to open the power generation market, discourage market concentration, and require competitive bidding for the award of bilateral power generation supply contracts; and

Prayer

7. Thus, they pray that after due notice and hearing, the Commission:

7.1 Urgently issues a Resolution mandating an open, competitive bidding of all bilateral generation power supply contracts of MERALCO and all distribution utilities that are intended to serve the power requirements of the captive consumers, especially, residential and commercial;

- 7.2 Immediately issue an Order for distribution utilities to submit a list of their generation projects intended for delivery by June 2016 and subject these new projects to bidding for delivery after that; and
- 7.3 Subject power generation projects of affiliated generators to strict review and participation of the consumer groups.

Finding the said petition to be sufficient in form and in substance with the required fees having been paid, the same is hereby set for public consultation on **March 23, 2015 (Monday) at two o'clock in the afternoon (2:00 P.M.) at the ERC Hearing Room, 15th Floor, Pacific Center Building, San Miguel Avenue, Pasig City.**

The Commission shall cause the posting of the attached Notice of Proposed Rule-Making as well as copies of the instant petition and all its annexes¹ at its official website at www.erc.gov.ph.

All interested parties are hereby directed to submit their comments on the petition on or before March 16, 2015.

MSK and PHP3 are hereby directed to cause the publication of the attached Notice of Proposed Rule-Making, at their own expense, once (1x) in a newspaper of general circulation in the Philippines, with the date of the last publication to be made not later than two (2) weeks before the date of the scheduled public consultation.

MSK and PHP3 are directed to furnish all those making requests therefor with copies of the instant petition, subject to reimbursement of reasonable photocopying costs.

On the date of the public consultation, MSK and PHP3 must submit to the Commission their written Compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidences on the actual publication of the Notice of Proposed Rule-Making consisting of an affidavit of the Editor or Business Manager of the newspaper where the said Notice of Proposed Rule-Making was published together with the complete issue of the said newspaper, and such other proofs of compliance with the requirements of the Commission.

¹ Annex "C" – MERALCO's Purchases for July, August and September 2014

MSK and PHP3 must also be prepared to make an expository presentation of their petition, aided by whatever communication medium that they may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties, what the petition is all about and the reasons and justifications being cited in support thereof.

SO ORDERED.

Pasig City, February 23, 2015.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ZENAIDA G. CRUZ-DUCUT
Chairperson *re 4*

Copy Furnished:

- 1. Matuwid na Singil sa Kuryente Consumer Alliance, Incorporated (MSK)**
Unit 327, Eagle Court Condominium, No. 26 Matalino Road,
Barangay Central, Quezon City.

- 2. Concerned Groups under the Umbrella PhP3 Movement (PHP3)**
c/o MSK
Unit 327, Eagle Court Condominium, No. 26 Matalino Road,
Barangay Central, Quezon City

- 3. Office of the Solicitor General**
134 Amorsolo Street, Legaspi Village, City of Makati 1229

- 4. Commission on Audit**
Commonwealth Avenue, Quezon City 1121

- 5. Senate Committee on Energy**
GSIS Building, Roxas Boulevard, Pasay City 1300

- 6. House of Representatives Committee on Energy**
Batasan Hills, Quezon City 1126

- 7. Philippine Chamber of Commerce and Industry (PCCI)**
3rd Floor, Chamber and Industry Plaza (CIP),
1030 Campus Avenue corner Park Avenue,
McKinley Town Center, Fort Bonifacio, Taguig City

- 8. All Distribution Utilities**

- 9. All Independent Power Producers**