

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City



**IN THE MATTER OF THE
APPLICATION FOR
APPROVAL OF THE
ANCILLARY SERVICES
PROCUREMENT
AGREEMENT BETWEEN THE
NATIONAL GRID
CORPORATION OF THE
PHILIPPINES AND SMCGP
PHILIPPINES ENERGY
STORAGE CO. LTD. (FOR
REGULATING RESERVE),
WITH PRAYER FOR THE
ISSUANCE OF PROVISIONAL
AUTHORITY**

ERC CASE NO. 2021-056 RC

**NATIONAL GRID
CORPORATION OF THE
PHILIPPINES (NGCP) and
SMCGP PHILIPPINES
ENERGY STORAGE CO. LTD.
(SPESCL),**

Applicants.

X- ----- X

Promulgated:

January 13, 2022

ORDER

Before the Commission for resolution are the *Petition for Intervention* filed by the National Association of Electricity Consumers for Reforms, Inc. (NASECORE) on 19 August 2021, the *Petitions to Intervene* filed by the Visayan Electric Company, Inc. (VECO) and the SN Aboitiz Power-Magat, Inc. (SNAP-MI) both on 03 September 2021, and the *Petition for Intervention* filed by Atty. Edison John A. Arriola (Atty. Arriola) on 13 September 2021.

FACTUAL ANTECEDENTS

On 19 July 2021, the National Grid Corporation of the Philippines (NGCP) and SMCGP Philippines Energy Storage Co. Ltd. (SPESCL) filed an *Application* dated 18 June 2021, seeking the Commission's approval of their Ancillary Services Procurement Agreement (ASPA), in the form of regulating reserve, with prayer for the issuance of a provisional authority.

On 10 August 2021, the Commission issued an *Order* and a *Notice of Virtual Hearing* both dated 27 July 2021, setting the instant *Application* for the determination of compliance with the jurisdictional requirements and expository presentation on 10 September 2021, and pre-trial conference and presentation of evidence on 17 September 2021, through virtual hearings.

On 19 August 2021, NASECORE filed a *Petition for Intervention* dated 16 August 2021. It alleged that it is an organization whose objective is to promote, advance, and protect the interest of the ordinary electric consumers. NASECORE has allegedly a number of members who are consumers of co-Applicant NGCP, their respective place of abode being located within the franchise area of the latter who will be affected by the instant *Application* if ever approved by the Commission. NASECORE further alleged that it is an intervenor in the previous ASPA applications of the NGCP.

On 24 August 2021, co-Applicant SPESCL filed an *Ex-Parte Motion for Extension of Time to File Opposition*, to the *Petition for Intervention* filed by NASECORE.

On 26 August 2021, NGCP filed its *Comment/Opposition (to the Petition for Intervention of NASECORE)*.

On 31 August 2021, co-Applicant SPESCL filed an *Opposition (Re. Petition for Intervention dated 16 August 2021)* to NASECORE's *Intervention*.

On 03 September 2021, Applicants NGCP and SPESCL filed their joint *Compliance with the Jurisdictional Requirements*,¹ joint *Pre-Trial Brief*, and the copies of the *Judicial Affidavits* of their respective witnesses.

¹ With attached documents marked as Exhibits "A" to "F", inclusive of its sub-markings.

On even date, VECO filed its *Petition to Intervene*. VECO alleged that the approval of the instant *Application* on NGCP's recovery of the cost of the Ancillary Services under the subject ASPA will directly affect it and its consumers.²

Also on even date, SNAP-MI³ filed its *Petition to Intervene*. It alleged that it is not only a power generation company which is located in Luzon, but also provides ancillary services to NGCP as a regulating reserve service provider, to ensure the reliability of the Luzon and Visayas Grids, as both Grids are interconnected. As such, it alleged that the approval of the instant *Application* will directly affect the reliability of the Luzon and the Visayas Grids and the ancillary services being provided by SNAP-MI to NGCP.⁴

On 06 September 2021, SNAP-MI filed its *Pre-Trial Brief* and the *Judicial Affidavit* of its witness.

On 08 September 2021, NGCP filed a *Motion for Extension of Time to File Opposition (to the Petition for Intervention of SNAP-MI and Visayan Electric)*.

On even date, SPESCL simultaneously filed an *Opposition (Re. Visayan Electric Company, Inc. Petition to Intervene dated 1 September 2021)* and an *Opposition (Re. Petition to Intervene of SN Aboitiz Power-Magat, Inc., dated 2 September 2021)*.

On 10 September 2021, VECO filed its *Pre-Trial Brief*.

During the 10 September 2021 hearing, Applicants NGCP and SPESCL, as well as NASECORE, VECO, SNAP-MI, and Atty. Arriola, appeared. Representatives from MINERGY, AC Energy, National Transmission Corporation (TransCo), and the Department of Energy (DOE) entered their respective appearances as observers. Prior to the determination of the jurisdictional compliance of Applicants, Atty. Arriola informed the Commission that he is a consumer from Cebu City and is appearing as an intervenor in this case, and manifested his intention to file a petition for intervention.

Upon acquisition of jurisdiction over the instant case, Applicants conducted the expository presentation. In the course

² Paragraph no. 6, *Petition to Intervene*.

³ It owns and operates the Magat Hydroelectric Power Plant located at Ramon, Isabela and Alfonso Lista, Ifugao (Magat HEPP).

⁴ Paragraph no. 6, *Petition to Intervene*.

thereof, NASECORE, SNAP-MI, VECO, Atty. Arriola, and the Commission asked clarificatory questions.

Due to the lack of time, the conduct of the clarificatory questions on the expository presentation was suspended and was scheduled to continue on 17 September 2021.

On 13 September 2021, Atty. Arriola filed a *Petition for Intervention* dated 10 September 2021.

On the 17 September 2021 hearing, the Applicants, NASECORE, SNAP-MI, VECO and Atty. Arriola appeared. Observers TransCo, MINERGY, and AC Energy likewise appeared. NASECORE, VECO, Atty. Arriola, and the Commission continued with their respective clarificatory questions.

Due to time constraints, the Commission has set another hearing on 01 October 2021, for the continuation and completion of the expository presentation.

On 17 September 2021, NGCP filed a *Consolidated Comment/Opposition (to the Petitions to Intervene Filed by VECO, SNAP-MI and Mr. Arriola)*.

On 20 September 2021, SPESCL filed an *Opposition (Re. Petition for Intervention dated 10 September 2021)* to the *Petition for Intervention* of Atty. Arriola.

On 21 September 2021, VECO filed a *Consolidated Reply to SPESCL's Opposition dated 08 September 2021 and NGCP's Consolidated Comment/Opposition dated 17 September 2021*.

At the 01 October 2021 hearing, the Applicants, NASECORE, SNAP-MI, VECO and Atty. Arriola appeared. NASECORE, SNAP-MI, VECO, Atty. Arriola, and the Commission continued with their respective clarificatory questions. After the completion of the expository presentation, the Commission adjourned the hearing until the pending petitions for intervention are resolved.

On 06 October and 18 October 2021, SPESCL filed a *Rejoinder (Re. Visayan Electric Company Inc. Consolidated Reply dated 21 September 2021)* and a *Reply (Re: Visayan Electric Company Inc.'s Opposition dated 30 September 2021)*, respectively.

On 28 October 2021, NGCP filed its *Compliance (to the Order of the Honorable Commission on 01 October 2021)*.

ISSUE

The issue to be resolved by the Commission is whether or not the subject *Petitions for Intervention* filed by NASECORE and Atty. Arriola, and the *Petitions to Intervene* filed by VECO and SNAP-MI, should be granted.

THE COMMISSION'S RULING

The Commission resolves to GRANT the subject *Petition for Intervention* filed by NASECORE and the *Petitions to Intervene* filed by VECO and SNAP-MI.

The Commission, however, resolves to DENY the *Petition for Intervention* filed by Atty. Arriola and the same is hereby treated as an Opposition to the instant *Application*.

DISCUSSION

The Commission will simultaneously discuss herein the *Petitions for Intervention* of NASECORE and Atty. Arriola, and the *Petitions to Intervene* of VECO and SNAP-MI.

- I. The *Petition for Intervention* filed by NASECORE and the *Petitions to Intervene* filed by VECO and SNAP-MI, comply with Section 1, Rule 9 of the Commission's Revised Rules of Practice and Procedure,⁵ but not the *Petition for Intervention* filed by Atty. Arriola.**

Section 1, Rule 9 of the Commission's Revised Rules of Practice and Procedure (Revised RPP), provides, *thus*:

⁵ Resolution No. 01, Series of 2021, dated 17 December 2020 entitled, "A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission."

Section 1. Intervention. - Any person having a **direct and substantial interest** in the subject matter of any hearing or investigation pending before the Commission, may become a party thereto by filing a verified petition to intervene with the Commission, indicating the docket number and title of the proceeding and stating: (1) the petitioner's name, address and e-mail address; (2) the nature of petitioner's interest in the subject matter of the proceeding, and the way and manner in which such interest is affected by the issues involved in the proceeding; and (3) a statement of the relief sought.

A petition to intervene filed by any person on behalf of an organization, association or entity, should be accompanied by a special power of attorney or a **secretary's certificate**, authorizing such person to file the same and represent the said organization, association or entity in the proceedings before the Commission. (Emphasis supplied.)

Guided by the foregoing provision, the Commission perused the allegations made by NASECORE, Atty. Arriola, VECO and SNAP-MI in their respective *Petitions for Intervention* and *Petitions to Intervene*, and the comments made by the Applicants thereto. Likewise, the Commission looked into the due execution of their respective Secretary's Certificates attached in their respective Petitions.

Based on the allegations of NASECORE in its *Petition for Intervention*, it has a number of members who are consumers of co-Applicant NGCP, their respective place of abode being located within the franchise area of the latter who will be affected by the instant *Application* if ever approved by the Commission. In addition, it is allegedly an intervenor in the previous ASPA applications of the NGCP, which the Commission confirms.⁶

As for VECO, it alleged that it and its end-consumers being NGCP's Visayas customers, will be affected by the approval of the instant *Application*.

⁶ ERC Case No. 2017-075RC, entitled, *In the Matter of the Joint Application for Approval of the Ancillary Services Procurement Agreement Between the National Grid Corporation of the Philippines and Therma Marine, Inc. (for Mobile 1), and Approval of the Incidental Energy Supply Agreement Template, with Prayer for Issuance of Provisional Authority, National Grid Corporation of the Philippines and Therma Marine, Inc., Applicants.*

ERC Case No. 2017-076RC, entitled, *In the Matter of the Joint Application for Approval of the Ancillary Services Procurement Agreement Between the National Grid Corporation of the Philippines and Therma Marine, Inc. (for Mobile 2), and Approval of the Incidental Energy Supply Agreement Template, with Prayer for Issuance of Provisional Authority, National Grid Corporation of the Philippines and Therma Marine, Inc., Applicants.*

For SNAP-MI, a generation company located in Luzon, it also provides ancillary services to the NGCP as a regulating reserve service provider to ensure the reliability of the Luzon and Visayas Grids. As such, it alleged that the approval of the instant *Application* will directly affect the reliability of the Luzon and the Visayas Grids, as both Grids are interconnected, and the ancillary services being provided by SNAP-MI to NGCP.

The Commission finds the *Petition for Intervention* filed by NASECORE, and the *Petitions to Intervene* filed by VECO and SNAP-MI, to be in order and has complied with the foregoing requirements of the Commission in filing a petition for intervention.

On the other hand, Atty. Arriola failed to show that he possesses a direct and substantial interest in the subject matter of this proceedings.

In Atty. Arriola's *Petition for Intervention*, he alleged that as an electricity consumer, he will be affected by the instant *Application*, if ever the same is approved by the Commission.⁷ To support his claim, he attached copies of the billing statements for the periods July to September 2021 from One Oasis Cebu Condominium Corporation, which included charges for association dues, parking dues, penalty charges, and electrical charges.

However, an examination of his *Petition for Intervention* would reveal that his allegations are merely sweeping statements of personal circumstances. The Commission agrees with the Applicants that the Billing Statements attached to the said *Petition* did not explain how Atty. Arriola will be affected by the instant *Application*. Thus, Atty. Arriola's petition failed to present that he has a direct and substantial interest in this proceedings, as he did not clearly alleged how he will be affected by it.

The interest contemplated under the law must be actual, substantial, material, direct and immediate, and not simply contingent or expectant. In the words of the High Court:⁸

xxx It must be of such direct and immediate character that the intervenor will either gain or lose by direct legal operation and effect of the judgment. Otherwise, if persons not parties to the action were allowed to

⁷ Paragraph no. 1, *Petition for Intervention*.

⁸ *Mactan-Cebu International Airport Authority v. Heirs of Estanislao Miñoza*, G.R. No. 186045, Peralta, J.

intervene, proceedings would become unnecessarily complicated, expensive and interminable. xxx

Moreover, it bears stressing that administrative bodies exercising quasi-judicial powers, such as this Commission, are not strictly bound by the technical niceties of law and procedure and the rules obtaining in courts of law. They are unfettered by the rigidity of certain procedural requirements.⁹ Thus, there is nothing in the applicable laws or rules that would prevent this Commission from taking a liberal treatment in admitting the Petitions for Intervention filed by NASECORE, VECO, and SNAP-MI.

In view of the allegations contained in their respective Petitions and given the foregoing provisions of law, the Commission finds NASECORE, VECO, and SNAP-MI having substantial interests over the resolution of the instant case, and such Petitions do not delay the proceedings or broaden the issues at hand.

Thus, in consideration of the foregoing, NASECORE, VECO, and SNAP-MI are hereby granted the status of Intervenors in the instant case.

However, the *Petition for Intervention* filed by Atty. Arriola failed to show such requirement as discussed herein, thus, he cannot be admitted as an intervenor in the instant case.

II. The *Petition for Intervention* filed by NASECORE and the *Petitions to Intervene* filed by VECO and SNAP-MI, complied with the requirements under Sections 2 and 3, Rule 9 of the Commission's Revised RPP.

Section 2 and 3, Rule 9 of the Revised RPP govern the filing of petitions to intervene, *viz*:

Section 2. *Filing of Petitions to Intervene and Comment thereon.*- Petitions under this Rule shall be served on the parties and filed with the Commission **not less than five (5) days prior to the scheduled initial hearing** xxx (Emphasis supplied.)

⁹ Samalio *v.* CA, G.R. No. 140079 (31 March 2005).

Section 3. *Grant of Leave to Intervene.* – If a verified petition to intervene shows that the petitioner has a direct and substantial interest in the subject of the proceeding, or any part of it, and the intervention would not unduly broaden the issues, the Commission may grant leave for the petitioner to intervene or otherwise to appear in the proceeding with respect to the matters set forth in the petition and subject to such reasonable conditions as may be prescribed by the Commission.

xxx

In the instant case, NASECORE, VECO, and SNAP-MI, timely filed their respective Petitions, as the same were filed on 19 August 2021 and 03 September 2021, respectively, or at least five (5) days before the date of the scheduled initial hearing on 10 September 2021.

On the other hand, Atty. Arriola's *Petition for Intervention* was only filed on 13 September 2021, or three (3) days after the date of the scheduled initial hearing. It must be noted, however, that Atty. Arriola appeared during the initial hearing on 10 September 2021 and manifested his intention to file a petition to intervene in the case.

Section 2, Rule 9 of the Revised RPP also allows a person who appears during the initial hearing to participate as such, pending the filing of a verified petition to intervene, subject to the standing that will be accorded to the said petitioner by the Commission pursuant to Sections 1 and 3 of the same Rule as discussed above, *to wit*:

Section 2. *Filing of Petitions to Intervene and Comment thereon.*- xxx

Any person who appeared during the initial hearing and expressed an intention to intervene, may also be allowed to participate as an intervenor, provided that the said person files a verified petition to intervene in accordance with Section 1 hereof, within a non-extendible period of fifteen (15) days from the date of the said hearing; otherwise, said person shall be treated as an oppositor.

xxx

The Commission may accord standing to any person as an intervenor only upon the resolution granting the said verified petition to intervene and admitting the intervenor as party to a particular case.

Although the Commission has allowed Atty. Arriola to file his petition even beyond the period allowed in the Revised RPP, the petitioner failed to show his direct and substantial interest in the

case, as discussed earlier. Thus, the Commission cannot grant him the intervenor status.

III. NASECORE, VECO, and SNAP-MI, as admitted Intervenors, are entitled to be served copies of all the documents filed in the instant case.

Section 1, Rule 10 of the Revised RPP provides:

Section 1. Service Upon Parties. – Subject to the provisions of Rule 4 of these Rules, a **copy of all pleadings and documents filed in any proceeding before the Commission shall be served upon all other parties.** If a party appears after the original documents have been filed, a copy of all pleadings and documents previously filed shall be furnished to such party upon its request.

In this regard, considering that NASECORE, VECO, and SNAP-MI are admitted by the Commission as Intervenors in the instant case, they are entitled to be served copies of all the documents filed, as well as all the annexes attached to the *Application*.

IV. The Commission hereby treats the *Petition for Intervention* filed by Atty. Arriola as an Opposition.

Accordingly, in view of Atty. Arriola's failure to show that he possesses a direct and substantial interest in the subject matter of this proceedings, the said *Petition for Intervention* is hereby treated as an Opposition to the instant *Application*. Thus, it is governed by Section 6, Rule 9 of the Revised RPP, which provides:

Section 6. Effect of Filing of Opposition or Comment. – An opposition or comment is intended solely to alert the Commission and the parties to a proceeding of the fact and nature of the objections to or comments on an application, petition, or any other proposed Commission action, and does not become an evidence in the proceeding. The filing of an opposition or comment does not make the person who filed the said opposition or comment a party to the proceedings, unless accorded the status of an intervenor by the Commission pursuant to this Rule.

WHEREFORE, the *Petition for Intervention* filed by the National Association of Electricity Consumers for Reforms, Inc. (NASECORE) on 19 August 2021 and the *Petitions to Intervene* both filed by the Visayan Electric Company, Inc. (VECO) and the SN Aboitiz Power-Magat, Inc. (SNAP-MI) on 03 September 2021, are hereby **GRANTED**. On the other hand, the *Petition for Intervention* filed by Atty. Edison John A. Arriola, is hereby **DENIED**, and the same is hereby treated as an Opposition.

RELATIVE THERETO, the conduct of the pre-trial conference and presentation of evidence are scheduled on the following dates and online platform, pursuant to Resolution No. 09, Series of 2020,¹⁰ dated 24 September 2020, and Resolution No. 01, Series of 2021, dated 17 December 2020 (Revised RPP):¹¹

Date	Platform	Activity
28 January 2022 (Friday) at two o'clock in the afternoon (2:00 P.M.)	Microsoft Teams	Pre-trial Conference
04 February 2022 (Friday) at two o'clock in the afternoon (2:00 P.M.)	Microsoft Teams	Presentation of Evidence

ACCORDINGLY, upon receipt of this *Order*, Applicants NGCP and SPESCL, are hereby **DIRECTED** to furnish all the aforementioned admitted Intervenors, via electronic mail (e-mail), copy furnish the Commission at docket@erc.ph and records@erc.ph, and the Legal Service at legal@erc.ph, all the annexes and documents attached to the *Application*, the copy of the expository presentation, Pre-trial Brief, Judicial Affidavit/s of their witness/es, and such other filings previously made, not later than five (5) days before the scheduled hearing and Pre-trial Conference.

On the other hand, Intervenors NASECORE, VECO, and SNAP-MI are hereby **DIRECTED** to submit via e-mail at docket@erc.ph and records@erc.ph, copy furnish the Legal Service through legal@erc.ph, not later than five (5) days before the scheduled hearing and Pre-trial Conference, their respective Pre-Trial Briefs and

¹⁰ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

¹¹ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

the Judicial Affidavits of their respective witnesses, copy furnish the Applicants.

Furthermore, the parties are hereby reminded that pursuant to the Commission's Revised RPP, failure of any party to attend or be represented during the pre-trial conference without good cause shown shall constitute a waiver of any objection to any agreement reached or to any order or ruling made as a result of the conference.¹²

Finally, Applicants NGCP and SPESCL, and Intervenors NASECORE, VECO, and SNAP-MI, including their authorized representative/s and witness/es, are hereby directed to provide the Commission, thru legal.virtualhearings@erc.ph, with their respective e-mail addresses upon receipt of this *Order*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearings.

SO ORDERED.

Pasig City, 11 January 2022.

FOR AND BY AUTHORITY
OF THE COMMISSION:



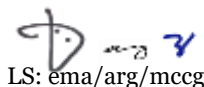
AGNES YST DEVANADERA
Chairperson and CEO

ERC

Office of the Chairperson



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¹² *Ibid.* § Section 4, Rule 16.

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