

**REPUBLIC OF THE PHILIPPINES
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City**

**IN THE MATTER OF THE PETITION
FOR THE AMENDMENT OF ERC
RESOLUTION NO. 16 OR THE
"RESOLUTION ADOPTING
AMENDED RULES ON THE
DEFINITION AND BOUNDARIES OF
CONNECTION ASSETS FOR
CUSTOMERS OF TRANSMISSION
PROVIDERS",**

2012-006 RM
ERC Case No. _____

**PHILIPPINE INDEPENDENT POWER
PRODUCERS ASSOCIATION, INC.
(PIPPA),**

Petitioners.

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PETITION TO INITIATE RULE-MAKING

PETITIONER, by counsel, to the Honorable Commission respectfully state:

1. Petitioner Philippine Independent Power Producers Association, Inc. (PIPPA) is a domestic corporation existing under and by virtue of the laws of the Republic of the Philippines, with its principal office at the Ground Floor, Benpres Building, Meralco Avenue corner Exchange Road, Ortigas Centre, Pasig City. It is an association composed of 24 independent power producers presently supplying more than 86.7% (11,868.4MW) of the national installed generating capacity. Through the years, PIPPA has emerged as the forum and principal institutional advocate of the

common interests and concerns of the private companies engaged in the power generation sector of the electric power industry.

2. On July 6, 2011, the Energy Regulatory Commission (“ERC”) issued Resolution No. 16 Series of 2011, entitled the "*Resolution Adopting Amended Rules on the Definition and Boundaries of Connection Assets for Customers of Transmission Providers*" (hereinafter referred to as “Resolution No. 16”). A copy of Resolution No. 16 is attached as Annex “A”

3. On November 28, 2011, PIPPA submitted a Position Paper to the Grid Management Committee (GMC) of the ERC, for the purpose of amending said Resolution based on the following issues:

- i) There was no proper consultation conducted by the Energy Regulatory Commission (ERC) on Resolution No. 16;
- ii) Plant switchyards are part of the Generation Facility and not Transmission Facilities; and
- iii) Resolution No. 16 is not applicable to assets owned by Generation Facilities.

A copy of the PIPPA Position Paper dated November 28, 2011, is attached and made an integral part of this Petition as Annex “B”.

4. On December 5, 2011, PIPPA submitted to the GMC a Supplemental Position Paper which focused on the inapplicability and invalidity of Diagram 4 of Annex C (the "*Published Diagram*") of Resolution No. 16.

4.1. The Published Diagram oversteps the purpose of Resolution No. 16, which was not intended to cover generation facilities and assets ("GenCo Assets") owned by generation companies (each, a "GenCo"), but only transmission assets or assets already owned or operated by the National Transmission Corporation or "TransCo" as of the date of the resolution's issuance.

4.1.1. This is evident from, among other provisions, the Third to Sixth Whereas Clauses of Resolution No. 16, which respectively cites Resolution No. 1, Series of 2009 ("Resolution No. 1")¹ and Resolution No. 18, Series of 2009 which clarified Resolution No. 1 ("Resolution No. 18"). However, neither of these resolutions concerned GenCos or GenCo Assets. Rather, they concern the disposition of TransCo's subtransmission assets to qualified distribution utilities or qualified consortiums duly authorized by the Philippine Economic Zone Authority to operate within the economic zones. Indeed, Resolution No. 1 was issued to "amend *** the Guidelines to the Sale and Transfer of TransCo's Subtransmission Assets and the Franchising of Qualified

¹ Entitled "A Resolution Adopting the Amendments to the Guidelines to the Sale and Transfer of TransCo's Sub-transmission Assets and the Franchising of Qualified Consortiums".

Consortiums” (the “SubTransmission Guidelines”).² Resolution No. 1 amended Article II, Section 1 of the SubTransmission Guidelines to say, among other things, that these guidelines would apply to “TransCo”, “Buyer or Concessionaire of TransCo” (i.e., NGCP), and “Qualified Distribution Utility or Qualified Consortium or entities duly authorized by Philippine Economic Zone Authority (PEZA) to operate within the Ecozones that intend to or shall acquire and assume responsibility for operating, maintaining, upgrading, and expanding a Subtransmission Asset of the TransCo or its Buyer or Concessionaire.”³

4.1.2. The Fifth and Sixth Whereas Clauses of Resolution No. 16 goes on to explain that the ERC had “received inquiries from different stakeholders as regards its existing policy on the treatment of connection assets” and therefore “deems it necessary to issue a Resolution amending the existing Rules as well as consolidating all its issuances pertaining to Open Access Transmission Tariffs and Service (OATS) and related subtransmission guidelines.”

2 Resolution No. 1, Annex A, p. 1.

3 Id.

4.1.3. Section 8 closes the entire Resolution No. 16 by stating that “this Rules (sic) shall apply only to all prospective projects that have not yet been approved by the Commission for both Transmission Provider and Distribution Utilities.”

4.1.4. Accordingly, the Published Diagram oversteps the purpose of Resolution No. 16 when it seemingly “reclassified” GenCo Assets such as switchyards and related facilities that connect a generation unit to the Grid into transmission assets to be owned by TransCo/NGCP if a load customer of NGCP (e.g., a distribution utility) also happens to be connected to that generation unit through these switchyards and related facilities.

4.2. The Published Diagram is inconsistent with the definition of Connection Assets for Generation Customers in Section 4.2 of Resolution No. 16.

4.2.1. Section 4.2 of Resolution No. 16 states:

“4.2 Connection Assets for Generation Customers of Transmission Provider

Connection Assets for Generation Customers of Transmission Provider include those assets from the last Single Mechanical Connection of a User System or Equipment of a Generator, at its Connection Point, to the last Single

Mechanical Connection which is not shared with another **Generator** within the Grid.

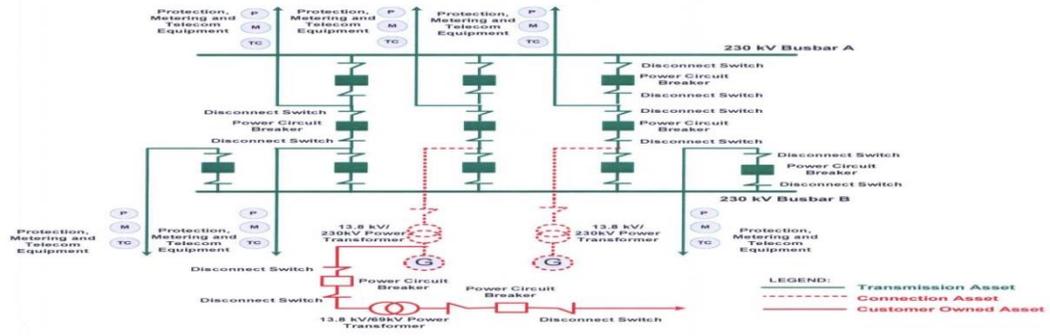
The specific assets which are owned by any Generation Company and the Connection Assets which meet these boundary conditions are shown in Annex C.

A generation company may develop and own or operate a dedicated point-to-point limited facilities provided, that such facilities are required only for the purpose of connecting to the transmission system, and are used solely by the generating facility, subject to prior authorization by the ERC.” (Underscoring and emphasis supplied)

4.2.2. Thus, applying Section 4.2 of Resolution No. 16, a GenCo can construct, own and operate connection assets such as switchyards and their related facilities from its generation units up to the last mechanical connection to the Grid provided that the GenCo does not share these switchyard facilities with another GenCo.

4.2.3. This proposition is supported by the draft Diagram 4 in Annex C of the draft of Resolution No. 16 (the “Draft Diagram” and “Draft Resolution”, respectively).

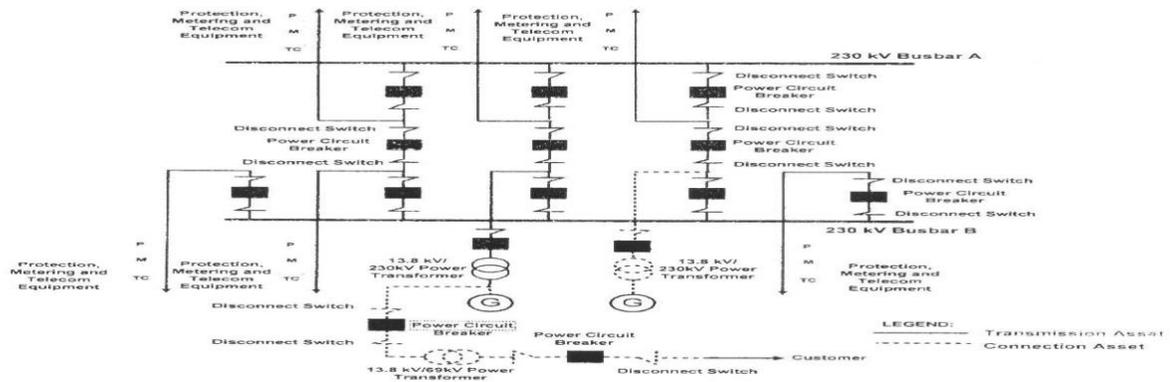
Diagram 4: Asset Boundary for Switchyards using the 1 ½ Circuit Breaker scheme for NPC-Generating Plants



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4.2.4. However, when Resolution No. 16 was finally published, the illustration in Diagram 4 of its Annex C (i.e., the Published Diagram) was different from the illustration in the Draft Diagram. The Published Diagram instead shows:

Diagram 4: Asset Boundary for Switchyards using the 1 ½ Circuit Breaker scheme for Generation Customers



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4.2.5. Contrary to Section 4.2 of the Resolution No. 16 which the Published Diagram was merely meant to illustrate, and in marked difference from the Draft Diagram as well as the diagrams that accompanied Resolutions Nos. 25 and 41, the Published Diagram seemingly classifies connection assets such as switchyard facilities as transmission assets to be owned and operated by NGCP if another customer of NGCP happens to be connected to those facilities, even if that other customer is merely a load customer of NGCP and is not itself a GenCo.

4.3. The Published Diagram was wrong in seemingly characterizing a generation company's switch yard facilities as transmission assets since these switch yard facilities are in fact integral parts of a generation facility;

4.3.1. The Published Diagram seemingly characterizes a GenCo's switchyard facilities as transmission assets to be owned and operated by NGCP as part of the Grid. This is incorrect because switchyard facilities are in fact integral parts of a generation facility, which is why the GenCos caused their construction as part of their generation plant facilities in the first place.

4.3.2. It is standard and accepted practice in the energy industry worldwide that a generation plant would have, as an integral part thereof, its own switchyard facilities. These switchyard facilities protect the generation units of the generation plant. They serve as the first line of defense of a generation plant against damage from frequency excursions, power surges, voltage swings and system instability. That is why a generation plant's switchyard facilities are typically located within the enclosed compound of the generation plant.

4.3.2.1. In this connection, it bears noting that, under Section 4.4.3.2 of the Philippine Grid Code, as amended (the "Amended Grid Code"), which prescribes the "requirements for Large Generators"⁴: "The Generator shall be responsible for protecting its Generating Units against damage for frequency excursions outside the range of 57.6 Hz and 62.4 Hz. The Generator shall decide whether or not to disconnect its Generating Unit from the Grid." This can only be effectively exercised by the GenCo if it owns the circuit breakers in its switchyard.

⁴ Section 1.6 of the Amended Grid Code defines a "Large Generator" as a "Generation Company whose generating facility at the Connection Point has an aggregate capacity in excess of 20 MW."

4.3.2.2. Furthermore, Section 4.4.9.1 of the Amended Grid Code also prescribes the “requirements for Large Generators” and provides that: “The protection of Generating Units and Equipment and their connection to the Grid shall be designed, coordinated, and tested to achieve the desired level of speed, sensitivity, and selectivity in fault clearing and to minimize the impact of faults on the Grid.”

4.3.2.3. All these responsibilities can only be undertaken by the GenCo if it has control and ownership of the protective equipment and devices found in its switchyard. Consequently, a generation plant’s switchyard facilities are part of the “User System” of the generation plant and thus does not form part of the transmission facilities.

4.3.3. Furthermore, the ERC’s Subtransmission Guidelines, as amended, provides that “*Transmission Assets*” shall refer to the **grid-wide electrical infrastructure through which electricity flows in large quantities between generators or generating plants consisting of several units or blocks of generators and the many more dispersed load centers.** Transmission Assets are typically characterized as long distance lines, high capacity switching and

transformation stations, high degree of meshing of lines, stations that provide path diversity, and sophisticated protection schemes that ensure security against grid-wide disturbances.” (Underscoring and emphasis supplied.)

4.3.3.1. Thus, under the Subtransmission Guidelines, an asset can only be considered as a transmission asset if it is an “infrastructure through which electricity flows in large quantities between generators or generating plants consisting of several units or blocks of generators and the many more dispersed load centers” (underscoring and emphasis supplied). An asset cannot be considered a transmission asset simply because it also happens to connect one generation plant to the Grid and to a distribution utility or other load customer of NGCP. It can only be considered a transmission asset where another generation plant is also connected to the Grid through that asset. This is consistent with Section 4.2 of Resolution No. 16, which provides that “Connection Assets for Generation Customers of Transmission Provider include those assets from the last Single Mechanical Connection of a User System or Equipment of a Generator, at its Connection Point, to the last

Single Mechanical Connection which is not shared with another Generator within the Grid.”

4.3.4. Moreover, under Section 5.4.4.1 of the Amended Grid Code, a “User System” or a “System owned or operated by a User of the Grid or Distribution System”⁵ such as a GenCo shall consist of, among other facilities and equipment, the following:

- (a) Equipment (e.g. Generating Units, **power transformers**, and **Circuit Breakers**);
- (b) Electrical circuits (e.g., overhead lines and underground cables);
- (c) **Substation bus arrangements**;
- (d) Grounding arrangements;
- (e) Phasing arrangements; and
- (f) **Switching Facilities**. (Emphasis supplied)

4.3.5. As well, Section 5.5.1.2 of the Amended Grid Code indicates that step-up transformers would be part of the generating plants. This is also evident from Section 4.4.10.1 of the Amended Grid Code, which specifies that, for “Large Generators”, “if the Generator’s equipment are connected to the Grid at a voltage that is equal to or greater than 115kV, the high-voltage side of the transformer shall be connected in Wye, with the neutral available for connection to the ground.” Furthermore, Section 4.4 of the

5 Amended Grid Code, Section 1.6.

Amended Grid Code specifies that, for “Large Generators”, “the Connection Point shall be controlled by a circuit breaker that is capable of interrupting the maximum short circuit current at the point of connection.” Since these step-up transformers and circuit breakers are located inside the switchyard of a generation plant, it is evident that a switchyard is part of a GenCo’s User System.

4.3.6. In addition, NGCP does not need a GenCo’s switchyard facilities to ensure the safe and reliable operation of the Grid because a GenCo’s switchyard facilities only connect its generation plant to the Grid and to any End-User⁶ directly connected to its plant, such that if anything were to happen to the switchyard facilities, this would only affect the plant and the directly-connected End-User’s ability to obtain energy directly from the plant. It will not even affect the directly-connected End-User’s ability to obtain energy from the Grid through another line. In other words, any damage to the switchyard facilities will only have minimal effect on the Grid, if at all.

4.3.6.1. In this connection, Section 2.0 of Resolution

No. 16 defines Connection Assets as “those assets that are

⁶ Section 1.6 of the Amended Grid Code defines an “End-User” as a “person or entity that requires the supply and delivery of electricity for its own use.”

put in place primarily to connect a Customer/s to the Grid and used for purposes of Transmission Connection System for the conveyance of electricity which if taken out of the System, will only affect the Customer connected to it and will have minimal effect on the Grid, or other connected Customers.” This is consistent with Resolutions Nos. 25 and 41 under which the GenCos have caused the construction of their existing generation plants, including the switchyard facilities of these plants.

4.3.7. Neither does NGCP need a GenCo’s switchyard facilities for “competitive purposes” if the GenCo does not share those facilities with another GenCo in the first place, because the former does not thereby control the ability of the latter to supply energy to the Grid. The latter is certainly still able to supply energy to the Grid through its own switchyard or through some other connection to the Grid.

4.3.8. Accordingly, the Published Diagram was wrong in seemingly characterizing a GenCo’s switchyard facilities as transmission assets when these switchyard facilities are in fact integral parts of a generation facility.

4.4. The Published Diagram is detrimental to the public interest as it will unnecessarily lead to an increase in electricity rates to be paid by End-Users.

4.4.1. The Published Diagram negates the benefits to distribution utilities and other load customers of the National Grid Corporation of the Philippines ("NGCP") of directly connecting to a generation facility that also supplies electricity to the Grid, to the detriment of the public.

4.4.1.1. A generation plant typically only has one set of switchyard facilities from which all energy produced by its generation units are transmitted to the Grid or to a customer of the GenCo that is directly connected to the plant. Thus, there is no other alternative by which a distribution utility or other load customer of NGCP can directly connect to a generation plant of this size except through the same switchyard facilities through which the GenCo also transmits energy from its generation units to the Grid.

4.4.1.2. Accordingly, by classifying a generation plant's switchyard facilities as transmission assets to be owned and operated by NGCP just because another

customer of NGCP happens to be connected to the plant through to those facilities -- even if that customer is just a load customer and is not itself a GenCo, and even if that load customer does not take energy from the Grid through those facilities but through some other connection to the Grid -- the Published Diagram effectively prevents distribution utilities and other load customers of NGCP from directly connecting to a generation plant that also supplies electricity to the Grid.

4.4.1.3. This is detrimental to End-Users, including to End-Users located within a distribution utility's franchise area because, by directly connecting to a generation plant, a distribution utility is able to obtain energy without having to pay "Power Delivery Services Charges" ("PDS charges"). Directly connecting to a generation plant gives a significant benefit to the distribution utility and its customers because, if the distribution facility were to obtain energy through the Grid, it would have to pay NGCP PDS charges", and then turn around and recover these from the customers in its franchise area. This would not be the case if the distribution utility were directly connected to the generation plant

through the latter's switchyard facilities, even if the generation plant was also connected to the Grid through the same facilities. NGCP's PDS charges for October 2011 were ₱344.1890/kW in Luzon, ₱289.1838/kW in the Visayas and ₱305.5546/kW in Mindanao.

4.4.1.4. This arrangement was allowed under the set-up before the Published Diagram was issued. This set-up benefits the GenCos, the distribution utilities and, most especially, the End-Users, because electricity is delivered to the End-Users at the least cost to them -- because the distribution utilities would not have to pay NGCP PDS charges, and would not have to turn around and recover these from their customers in their franchise area in connection with the electricity they consume.

4.4.1.5. The Published Diagram negates these benefits because distribution utilities wishing to directly connect to a generation plant would now have no choice but to connect to the plant through switchyard facilities which could now be considered transmission facilities to be owned and operated by NGCP. To be sure, if all GenCo owned switchyard facilities would be owned and operated by

NGCP, any distribution utility wishing to obtain energy from a generation plant would have to obtain energy “through the Grid” and pay NGCP PDS charges even if the generation plant is located within the distribution utility’s franchise area.

4.4.2. The Published Diagram discourages the construction of new generation facilities with large generating capacities, to the detriment of the public.

4.4.2.1. Depriving generation plants of their own switchyard facilities seriously impairs the GenCo’s ability to properly operate and maintain their generation plant. The functions and significance of switchyard facilities vis-à-vis the generation plants which these are part of are discussed in more detail in the discussion above.

4.4.2.2. Depriving generation plants of the ability to directly connect to distribution utilities without having to go through the Grid seriously affects the feasibility of constructing and operating any generation plant, especially a generation plant capable of generating at least 100 MW of energy.

4.4.2.3. To begin with, local governments would allow the construction of a generation plant within their jurisdiction only if the construction and operation of the generation plant would bring more advantages (i.e., benefits) than disadvantages to them and their constituents. The ability of the distribution utility (frequently, an electric cooperative) to directly connect to the generation plant and thereby obtain energy without having to pay “Power Delivery Services Charges” is one of the most tangible benefits to a local government for allowing the construction and operation of a generation plant in their jurisdiction, because this means the distribution utility would not have to turn around and collect these charges from their customers. Thus, preventing distribution utilities from directly connecting to a generation plant would serve as a disincentive to local governments from allowing the construction and operation of a generation plant within their jurisdiction.

4.4.2.4. Furthermore, constructing a generation plant of this size requires substantial capital the financing of which requires assurances in the form of signed

commitments from distribution utilities and other End-Users that they would purchase electricity from the plant once it begins operation.

4.4.2.5. In this regard, it bears noting that larger generation plants typically have better economies of scale compared to smaller generation plants, which means larger plants usually produce cheaper power, as measured in dollars/pesos per kilowatt capacity. It also bears noting that it is not feasible to construct a large generating plant without any connection to the Grid, because distribution utilities can usually take far less energy than the plant is capable of generating. A number of generating plants under construction now are capable of generating more than 100MW of energy. However, there are very few distribution utilities that can fully absorb 100MW of energy.

4.4.3. Discouraging the construction of new generation facilities with large generating capacities is detrimental to the public interest because newer generation facilities are needed to supply the country's present and future development requirements. Indeed, there is a shortage of supply of energy as it

is. Furthermore, the more energy produced, the cheaper the cost of electricity to consumers.

4.5 The Published Diagram was issued without proper consultation with all affected parties.

Timeline of Events	Date	No. of Days
Posting of Notice	June 6, 2011	
Comments Due	June 15, 2011	9 days
Public Hearing	June 23, 2011	8 days
Approval by ERC	July 6, 2011	13 days
Total No. of Days		30 days

4.5.1. The above Timeline of Events show that Resolution No. 16 was approved within a month from the time notice of it was first posted in the ERC website, and within two weeks from the one public hearing that was conducted at the ERC's main office. With all due respect to the ERC, this was too hasty, especially for a resolution with consequences that would affect not just industry participants but also End-Users.

4.5.2. The notice in the ERC website states that notice was posted on June 6, 2011. It should be stressed at this point that the notice was published only in the ERC website and no publication was made outside of the website. The limited publication prevented full dissemination of the issues among those that would

be affected by Resolution No. 16. Moreover, as stated in the notice, comments were to be submitted in nine days, or on June 15, 2011, while the hearing on the proposal was set on June 23, 2011. It is important to note is that the hearing was conducted only in the ERC's offices in Pasig.

4.5.3. Due to the implications of Resolution No. 16, public consultation should have been made in areas where distribution utilities and other End-Users are directly connected to generation plants also connected to the Grid, including in Visayas and Mindanao. Indeed, limiting the limiting the consultation at the ERC's main office in Pasig prevented full discussion among all concerned parties.

A copy of the PIPPA Supplemental Position Paper dated December 5, 2011, is attached and made an integral part of this Petition as Annex "C".

5. On 18 January 2012, PIPPA was informed that the GMC finds it necessary, if not imperative, to refer the position papers submitted by PIPPA to the Energy Regulatory Commission (ERC) in recognition of the "authority having jurisdiction".

6. On March 28, 2012, PIPPA formally submitted to the Honorable Commission its Position Papers on ERC Resolution No. 16. In summary, PIPPA raised the following issues: (i) The consultation conducted by the Energy Regulatory Commission (ERC) on Resolution No. 16 was not sufficient for its purpose; (ii) Plant switchyards are part of the Generation Facility, and not Transmission Facilities; (iii) Resolution No. 16 is not applicable to assets owned by Generation Facilities; and (iv) Diagram 4 of its Annex C (the "Published Diagram") is not proper for a variety of reasons.

A copy of the PIPPA Letter to the ERC dated March 28, 2012, is attached and made an integral part of this Petition as Annex "D".

7. Petitioner adopts the arguments in its Position Paper dated November 28, 2011, its Supplemental Position Paper dated December 5, 2011, and its Letter to the ERC dated March 28, 2012, as grounds for the allowance of this Petition.

8. Using in part ERC Resolution No. 16, Series of 2011 as legal basis, the National Grid Corporation of the Philippines ("NGCP") filed with this Honorable Commission on September 22, 2011, two cases: (i) ERC Case No. 2011-133-RC, entitled *"Application for the Approval of the Capital Expenditure for the Acquisition of the Cebu Energy Development Corporation (CEDC) Assets pursuant to Section 9 of Republic Act No. 9136, with Prayer for Provisional Authority"*; and (ii)

ERC Case No. 2011-134-RC, entitled *“Application for the Approval of the Capital Expenditure for the Acquisition of the Panay Energy Development Corporation (PEDC) Assets pursuant to Section 9 of Republic Act No. 9136, with Prayer for Provisional Authority.”*

9. The issues raised by PIPPA regarding Resolution No. 16 may be rendered moot and academic in view of NGCP’s Applications.

9.1. It should be noted that Resolution No. 16 is the latest Resolution of the Commission defining the boundaries of connection assets for Generation Customers of the Transmission Provider, which NGCP is at present;

9.2. Moreover, these are the first cases wherein the said Resolution may find application. As such, any or both of the cases would set a precedent as to interpretation and application of Resolution No. 16.

9.3. Given that the said cases would serve as a precedent to the interpretation of the Resolution, it is necessary for the stakeholders of the electric power industry to participate at the earliest opportunity lest it be held in estoppel from questioning the principles that may be laid by the Commission in the interpretation of Resolution No. 16.

10. Given the foregoing, it is clear that any decision, order, ruling or resolution in the instant case will definitely affect PIPPA and its members who are all generating companies. Thus, it is necessary for PIPPA to seek the repeal or amendment of the offending provisions of Resolution No. 16.

10.1. For this matter, during the hearing of ERC Case No. 2011-133-RC on June 14, 2012, PIPPA requested the Honorable Commission - which granted the request - to consider the Position Paper submitted by PIPPA to the ERC on March 28, 2012, as its Opposition to the NGCP Application.

11. Moreover, Rule 21, Section 2, of the Rules of Practice and Procedure of this Honorable Commission pertinently provides:

“Section 2. Petition to Initiate Rule-making. Interested persons may petition the Commission to adopt, amend, or repeal a rule by filing a petition to initiate rule-making. The petition must contain the name and address of the petitioner, the specific rule or action requested, the reasons for the rule or action requested, and facts showing that the petitioner has a substantial interest in the rule or action requested.”

For the reasons stated above, Petitioners are constrained to resort to the procedure laid down in the aforesaid rule.

PRAYER

WHEREFORE, it is most respectfully prayed that Diagram 4 of Annex C of Resolution No. 16 (the "Published Diagram") be replaced with the original draft Diagram (the "Draft Diagram") and to incorporate such provisions as may be necessary or convenient to exclude connection assets such as switchyard facilities from being classified as transmission assets.

Other relief just and equitable under the premises are likewise prayed for.

RESPECTFULLY SUBMITTED.

Mandaluyong City for Pasig City, 09 July 2012.

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