

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

IN THE MATTER OF THE PETITION
FOR DIRECT CONNECTION WITH
THE NATIONAL POWER
CORPORATION (NPC) AND THE
NATIONAL TRANSMISSION
CORPORATION (TRANSCO), WITH
PRAYER FOR PROVISIONAL
AUTHORITY

RJS COMMODITIES, INC.
(RJS)
Petitioner,

ERC CASE NO. 2008-042 MC

- versus -

NUEVA ECIJA II ELECTRIC
COOPERATIVE, INC. - AREA I
(NEECO II-Area I), NATIONAL
POWER CORPORATION (NPC) AND
NATIONAL TRANSMISSION
CORPORATION (TRANSCO) (now
the NATIONAL GRID
CORPORATION OF THE
PHILIPPINES [NGCP]),
Respondents.

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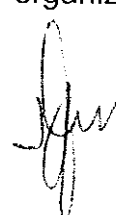
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DECISION

Before the Commission for resolution is the petition filed by RJS Commodities Inc. (RJS) on March 18, 2008 for direct connection with the National Power Corporation (NPC) through the National Transmission Corporation (TRANSCO, now the National Grid Corporation of the Philippines [NGCP]), with prayer for provisional authority.

In its petition, RJS alleged, among others, that:

1. It is a domestic corporation duly organized and existing under the Philippine laws;



2. It is engaged in the business of buying, selling of rice and manufacturing of agricultural products;
3. It operates its plant at Bacal II, Talavera, Nueva Ecija, which is within the franchise area of Nueva Ecija II – Area I Electric Cooperative, Inc. (NEECO II- Area 1);
4. It intends to construct a 3.5 MVA substation which shall be connected to the 69 kV line of TRANSCO. The capacity of the substation and connection to the 69 kV line shall be in consonance with its load requirements of 1,000 kW demand at 350,000 kWh/month;
5. The operation of its plant requires a substantial amount of continuous and uninterrupted power supply;
6. To maintain its business viability and to provide better service to its customers, its operation requires a steady and reliable supply of electric power. Any interruption would result in serious damage not only to its operations but also to the customers relying on the steady supply of its products;
7. To avert any power interruption from NEECO II- Area I, it is compelled to source its entire power requirements from NPC through the transmission line of TRANSCO in order to achieve a stable power supply at the least possible cost, subject to the approval by the Commission. If it would be connected to the NPC, it could avail of the benefits of the Time-Of-Use (TOU) retail rates.
8. For purposes of comparison, the effective TOU rates for Luzon being offered by the NPC as approved by the Commission is PhP4.3184/kWh as of February 2008 while NEECO II- Area I charges its industrial customers an average of PhP7.26kWh as of December 2007. Despite the high rates being charged by NEECO II- Area I, it cannot maintain and provide sufficient supply of power;
9. It has the financial and technical capabilities to construct and maintain the substation and sub-transmission lines that may be installed within its vicinity; and
10. It prays that a judgment be rendered authorizing it to source its power requirements directly from NPC through TRANSCO.

Having found said petition sufficient in form and in substance, with the required fees having been paid, an Order and a Notice of Public Hearing, both dated April 4, 2008, were issued setting the same for hearing on May 15, 2008.



RJS was directed to cause the publication of the Notice of Public Hearing, at its 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 ten (10) days before the scheduled date of initial hearing.

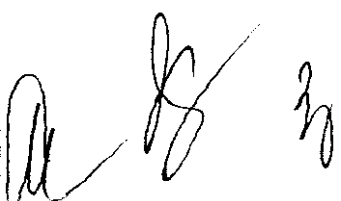
In the same Order, the Commission directed NPC, TRANSCO and NEECO II - Area I to file their respective comments on the instant petition as well as their pre-trial briefs.

During the initial hearing on May 15, 2008, RJS presented its proofs of compliance with the Commission's publication of notice requirements which were duly marked as Exhibits "A" to "B-1", inclusive.

On the same date, NEECO II - Area I filed its "Comment/Answer to the Petition of RJS Commodities, Inc." praying that: a) its answer with counterclaim be admitted and that the petition be denied for being prejudicial to the interest of its consumers; and b) RJS be required to pay royalty fees for the infringement of its franchise.

On various dates, NPC and TRANSCO filed their respective "Comments" on the petition and their pre-trial briefs.

At the continuation of the hearing on August 13, 2008, RJS presented its witness, Engr. Jimwell C. Capillo, its Technical Consultant, who testified in support of the petition. In the course thereof, RJS presented several documents which were marked as exhibits. The direct examination having been terminated, NEECO II - Area I conducted its cross examination on the said witness.



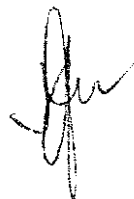
During the hearings on October 14, 2008 and January 29, 2009, NEECO II - Area I presented the following witnesses who testified in support of its opposition to the instant petition: a) Engr. Nelson De la Cruz, its OIC-Chief of Revenue Production Division (RPD); and b) Engr. Regino T. Lagasca, its Technical Services Department (TSD) Manager.

Thereafter, TRANSCO moved that the NGCP be impleaded in this case since it has taken over its transmission business operation. Said motion was granted. TRANSCO was directed to inform NGCP to appear at the subsequent hearings of this case as respondent.

On various dates, the Commission conducted several hearings where RJS conducted its cross examinations on the witnesses presented by NEECO II - Area I. The Commission also propounded clarificatory questions on the said witnesses.

On April 3, 2009, the Commission conducted an ocular inspection on the electrical facilities of RJS and NEECO II - Area I.

At the March 18, 2009 hearing, NGCP presented its witness, Engr. Jose M. Bautista, its Branch Head for the NE-Aurora, D3 North Luzon Operations and Maintenance, who testified relative to the causes of the power outages as alleged by NEECO II - Area I and explained that the pre-scheduled outages were done for purposes of conducting repairs and maintenance on its transmission system. Thereafter, NEECO II - Area I conducted its cross examination on the said witness. All the parties were then directed to file their respective formal offers of exhibits.



In the meantime, the Commission noted the following submissions made by the parties:

- a) The "Formal Offer of Exhibits" filed by NPC on March 25, 2009;
- b) The "Formal Offer of Evidence" filed by NEECO II - Area I on March 27, 2009;
- c) The "Formal Offer of Evidence" filed by NGCP on March 30, 2009;
- d) The "Formal Offer of Exhibits" filed by RJS on June 10, 2009; and
- e) The "Respondent's Comments to the Petitioner's Formal Offer of Evidence" filed by NEECO II-Area I on June 30, 2009.

The respective formal offers of exhibits filed by RJS, NPC, NGCP and NEECO II - Area I are hereby admitted for being relevant and material in the resolution of this case.

DISCUSSION

Section 23 of Republic Act No. 9136 (R.A. 9136) provides that:

"Sec. 23. Functions of Distribution Utilities – A distribution utility shall have the obligation to provide distribution services and connections to its system for any end-user within its franchise area consistent with the distribution code. Any entity engaged therein shall provide open and non-discriminatory access to its distribution system to all users."



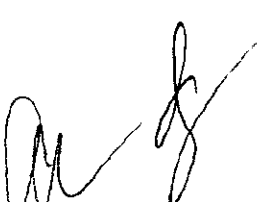
The Commission is cognizant of the fact that there may be instances where an end-user's power requirement cannot be reliably provided by the existing distribution system of a franchised distribution utility (DU). Thus, such end-user may be allowed to source its power requirements directly from NPC through the regulated transmission service of NGCP pursuant to the Commission's Resolution entitled "Resolution Summarizing the Applicable Legal Principles and Policies of the Energy Regulatory Commission on End-User Connections."

RJS is a large end-user of electricity engaged in the business of buying, selling of rice and manufacturing of agricultural products. Its petition for direct connection finds basis in Section 3 (g) of Republic Act No. 6395, as amended, which provides that:

"Sec. 3. Power and General Functions of the Corporation – The powers, functions, rights and activities of the Corporation shall be the following:

x x x

g. x x x x; to sell electric power in bulk to: **1) industrial enterprises, 2) city, municipal or provincial system and other government institutions, 3) electric cooperatives, 4) franchise holders, and 5) real estate subdivisions; Provided, That the sale of power in bulk to industrial enterprises and real estate subdivisions may be undertaken by the Corporation when the power requirement of such enterprises or real estate subdivisions is not less than 100 kilowatts;** Provided, finally, That no restriction shall apply to sale of power in bulk to enterprises registered with the Board of Investments; x x x (Underscoring supplied)






In resolving petitions for direct connection, the Commission is guided by the rules enunciated in several decisions of the Supreme Court. In the case of BATELEC II vs. Energy Industry Administration Bureau (EIAB), et. al (*G.R. No. 135925, December 22, 2004*), the Supreme Court held that:

"In other words, the Court, in *Cañares*, disposed that the policy of preference to the franchise holder is premised on the condition that such franchise holder must in the first place be capable of supplying adequately the power requirements of the BOI-registered customer and that such capability must first be ascertained through a hearing in due course. In the same vein, this Court, in *National Power Corporation v. Hon. Court of Appeals and Cagayan Electric Power and Light Co., Inc.* resonated that if after hearing (or an opportunity for such hearing) it is established that the affected franchise holder is incapable or unwilling to match the reliability and rates of NPC, then a direct connection with NPC may be granted."

A cursory reading of the aforesaid Decision reveals that the Supreme Court upholds the authority of NPC to sell power in bulk directly to an end-user provided that: 1) any affected utility franchise holder is afforded an opportunity to be heard; and 2) from such hearing, it was established that said franchise holder is incapable or unwilling to match the reliability and rates of NPC.

During the ocular inspection conducted by the Commission on the electrical facilities of RJS and NEECO II - Area I, it was established that, at present, RJS is being served by the NEECO II - Area I Muñoz Substation which is about seventy percent (70%) loaded. The power transformer of this substation has a limited loading capacity. With the 2.5 MW power requirement of RJS, the Muñoz Substation will be critically loaded and thus, will increase the risk of power outages particularly during the peak period. Further, NEECO II - Area I does not have a 69 kV line to accommodate the power requirements of RJS. Its



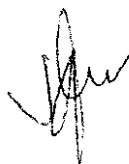
distribution lines have to be upgraded to provide reliable power distribution to minimize power outages.

With reference to the submitted interruption report by NEECO II – Area I covering the period October 2007 to September 2008, it was disclosed that the cumulative hours of interruption for its Muñoz Substation registered at 58.52 hours while NGCP has registered only 1.583 cumulative hours for its feeder serving the above-mentioned power substation. These are clear indications that NEECO II – Area 1 is incapable of providing the power requirements of RJS.

As manifested by RJS, it will provide its own connection facilities and 3.5 MVA power substation to connect directly to NGCP's 69 kV line.

WHEREFORE, the foregoing premises considered, the petition filed by RJS Commodities, Inc. (RJS) to directly connect with the National Power Corporation (NPC) through the regulated transmission lines of the National Transmission Corporation (TRANSCO, now the National Grid Corporation of the Philippines [NGCP]) is hereby **APPROVED** subject to the conditions set forth under ERC Resolution No. 48, Series of 2006, to wit:

- a. The construction of the needed sub-transmission assets may be undertaken by RJS or NEECO II – Area I, or funded by TRANSCO (NGCP). Such assets shall ultimately become the property of the franchised DU or NEECO II – Area I in this case, if qualified, or, in its absence, of TRANSCO (NGCP) and treated as Contribution in Aid of Construction (CIAC), until such time that these assets can be transferred to NEECO II– Area I;
- b. If TRANSCO (NGCP) finances the assets, RJS shall pay the charges related to such assets to TRANSCO (NGCP). TRANSCO (NGCP) shall treat such assets as CIAC and shall transfer the said assets to NEECO II– Area I within a reasonable period of time;




- c. If NEECO II– Area I, in its behalf, funds and constructs the assets, RJS shall pay the charge related to such assets and the other applicable charges for services availed from NEECO II – Area I and other non-bypassable charges authorized by law; and

- d. If RJS puts up the assets, the same shall be transferred to NEECO II– Area I and such assets shall be treated as CIAC and shall not form part of its Regulatory Asset Base. Should NEECO II – Area I be not qualified, the said assets shall be transferred to TRANSCO (NGCP) and similarly, the assets shall be treated as CIAC and shall not form part of TRANSCO's (NGCP's) Regulatory Asset Base. In the latter case, TRANSCO (NGCP) shall transfer the asset to NEECO II – Area I within a reasonable period of time. RJS shall pay the applicable charges for operating and maintenance expenses and, in any case, it shall be liable to pay the applicable charges for services availed from NEECO II – Area I and other non-bypassable charges authorized by law.

SO ORDERED.

Pasig City, July 13, 2009.


ZENAIDA G. CRUZ-DUCUT
Chairperson *grate*


RAUF A. TAN
Commissioner


ALEJANDRO Z. BARIN
Commissioner


MARIA TERESA A.R. CASTAÑEDA
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