

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



**IN THE MATTER OF THE PETITION
FOR APPROVAL OF INTERIM OPEN
ACCESS IN THE LUZON AND
VISAYAS GRIDS**

ERC CASE NO. 2008-026 RC

**PHILIPPINE INDEPENDENT POWER
PRODUCERS ASSOCIATION
(PIPPA), MANILA ELECTRIC
COMPANY (MERALCO), VISAYAN
ELECTRIC COMPANY (VECO),
CLARK ELECTRIC DISTRIBUTION
CORP. (CEDC), DAVAO LIGHT &
POWER CO., INC. (DLPC),
CAGAYAN ELECTRIC POWER AND
LIGHT COMPANY (CEPALCO), SAN
FERNANDO ELECTRIC LIGHT &
POWER CO. (SFELAPCO) and
PANAY ELECTRIC COMPANY, INC.
(PECO),**

Petitioners.

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DOCKETED
Date: **DEC 04 2008**
By: *br*

DECISION

Before this Commission for resolution is the Petition filed by the Philippine Independent Power Producers Association (PIPPA), Manila Electric Company (MERALCO), Visayan Electric Company, Inc. (VECO), Clark Electric Distribution Corp. (CEDC), Davao Light & Power Co., Inc. (DLPC), Cagayan Electric Power and Light Company (CEPALCO), San Fernando Electric Light & Power Co. (SFELAPCO), and Panay Electric Company, Inc. (PECO) for approval of the Interim Open Access (IOA) in the Luzon and Visayas Grids and its implementation in accordance with the proposed "Terms of Reference of the

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Interim Implementation of Open Access” (TOR) adopted by the Semiconductor and Electronics Industries in the Philippines, Inc. (SEIPI), National Competitiveness Council (NCC), Philippine Chamber of Commerce and Industry (PCCI), Federation of Philippine Industries (FPI), Philippine Exporters Confederation, Inc., The American Chamber of Commerce of the Philippines, Inc. (AMCHAM), The Canadian Chamber of Commerce of the Philippines, Inc. (CanCham), European Chamber of Commerce of the Philippines, Inc. (ECCP), Japanese Chamber of Commerce & Industry of the Philippines, Inc., Korean Chamber of Commerce of the Philippines, Inc., PIPPA, SN Aboitiz Power Magat Incorporated (SNAP), First Gen Hydro Power Corporation, PNOG Energy Development Corporation, First Gen Corporation, MERALCO, CEDC, VECO, DLPC, CEPALCO, PECO, AES Philippines, Confederation of Garment Exporters of the Philippines (CONGEP), Textile Mills Association of the Philippines (TMAP), and Garment Business Association of the Philippines (GBAP).

In the said Petition, Petitioners alleged, among others, that:

1. They are among the signatories of the TOR who have expressed willingness to voluntarily implement retail competition and open access notwithstanding the non-fulfillment of all pre-conditions imposed under Section 31 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), *to wit*:

“SEC. 31. *Retail Competition and Open Access.* – Any law to the contrary notwithstanding, retail competition and open access on distribution wires shall be implemented not later than three (3) years upon the effectivity of this Act, subject to the following conditions:

- (a) Establishment of the wholesale electricity spot market;
- (b) Approval of unbundled transmission and distribution wheeling charges;
- (c) Initial implementation of the cross subsidy removal scheme;

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- (d) Privatization of at least seventy (70%) percent of the total capacity of generating assets of NPC in Luzon and Visayas; and
- (e) Transfer of the management and control of at least seventy percent (70%) of the total energy output of power plants under contract with NPC to the IPP Administrators.

Upon the initial implementation of open access, the ERC shall allow all electricity end-users with a monthly average peak demand of at least one megawatt (1MW) for the preceding twelve (12) months to be the contestable market. Two (2) years thereafter, the threshold level for the contestable market shall be reduced to seven hundred fifty kilowatts (750kW). At this level, aggregators shall be allowed to supply electricity to end-users whose aggregate demand within a contiguous area is at least seven hundred fifty kilowatts (750kW). Subsequently and every year thereafter, the ERC shall evaluate the performance of the market. On the basis of such evaluation, it shall gradually reduce threshold level until it reaches the household demand level. In the case of electric cooperatives, retail competition and open access shall be implemented not earlier than five (5) years upon the effectivity of this act.”

- 2. The TOR was developed in consultation with various electricity industry participants;
- 3. The purposes and objectives under the TOR, as stated in its preamble, are as follows:

“Proposal to amend the Electric Power Industry Reform Act (EPIRA) were (*sic*) filed in both houses of Congress with the view to (*sic*) accelerating retail competition and open access by lowering the required privatization threshold and removing the requirement for the TRANSCO concessionaire to secure a Congressional franchise. Such efforts were opposed by power industry participants and other significant sectors in the Philippine business community. While it was conceded that the intentions underlying the foregoing legislative initiatives are indeed commendable, serious apprehensions were expressed that introducing basic legislative changes at this point in time when the positive results of the EPIRA’s reforms are beginning to take shape may only negate the momentum that has already been achieved. Moreover, the tedious and potentially disruptive process of amending the EPIRA may create considerable uncertainty among present and prospective investors which could slow down the privatization process that has picked up speed in the last 18 months, erode the gains of the last few years, and create an impression that the Philippine power sector is not serious about reforms after all.

In the meantime, industrial and other large power consumers have requested that the implementation of retail competition and



open access be accelerated within the framework of the EPIRA. In response to the clamor, the option to directly choose the power supplier that can give the most reliable service at the most competitive rates was granted, initially, to large power consumers. The DOE continues to address this concern by continuing to explore other initiatives that will enable a greater number of consumers the same opportunity of choice.

During the Energy Summit held in January 2008, President Arroyo emphasized the need to take action and introduce the early implementation of open access to mitigate the high cost of electricity which is affecting Philippine competitiveness in the world market and hurting the country's ability to attract more business. In this regard, she urged that industry players, particularly private generation companies and distribution utilities, should cooperate to find solutions to implement accelerated open access.

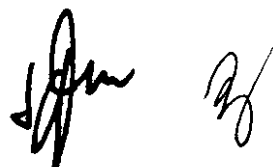
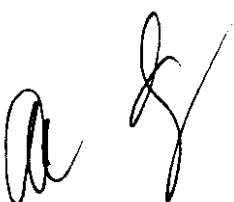
In answer to this call, a number of electricity industry participants have expressed their willingness to voluntarily implement retail competition and open access notwithstanding the non-fulfillment of the pre-conditions imposed under Section 31 of the EPIRA. There is an emerging view that open access can be implemented early and still be consistent with the policy intent of EPIRA. Mitigating measures and other similar safety nets will, however, have to be established before Interim Open Access can be implemented, to ensure that there is a level-playing field with sufficient participants in a truly competitive market where no dominant player/s can enjoy undue advantage."

4. They endorse the IOA in the Luzon and Visayas Grids on the ground of public interest and in response to the call of the government that interim open access is envisioned to provide lower cost of power;
5. The Petition was filed pursuant to Section 43(t) of the EPIRA, *to wit*:

"SEC. 43. *Functions of the ERC.* –The ERC shall promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry. In appropriate cases, the ERC is authorized to issue cease and desist order after due notice and hearing. Towards this end, it shall be responsible for the following key functions in the restructured industry:

x x x

(t) "(P)erform such other regulatory functions as are appropriate and necessary in order to ensure the successful restructuring and modernization of the electric power industry."



6. Among the provisions of the TOR that are proposed to apply during the implementation of the IOA are the following:

A. Eligible Contestable Customers

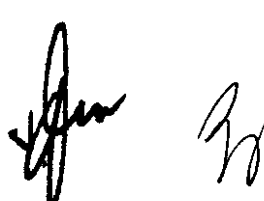
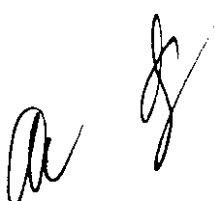
1. Upon the commencement of Interim Open Access and retail competition, Eligible Contestable Customers with a monthly average peak demand of at least one megawatt (1MW) for the preceding 12 months may now be allowed by its distribution utilities to choose to purchase its electricity requirements among the Eligible Generation Companies and retail supply companies.
2. Six months thereafter, the threshold level for the contestable customers shall be reduced to seven hundred fifty kilowatts (750kW).

B. Distribution Utilities [and Electric Cooperatives]

3. Upon effectivity of Interim Open Access and retail competition, all Distribution Utility [Electric Cooperative] franchise holders shall immediately notify all its Eligible Contestable Customers that Interim Open access and retail competition has become effective pursuant to an Energy Regulatory Commission (ERC) resolution and that all Eligible Contestable Customers shall now have the freedom to choose their electricity supplier from among the Eligible Generation Assets and retail supply companies.
4. Each Eligible Generation Companies or retail supply company, Eligible Contestable Customer will enter into an energy wheeling agreement with the appropriate Distribution Utility/Electric Cooperative and/or Transco.

C. Eligible Generation Companies

5. All generation companies, including those that acquired the privatized National Power Corporation (NPC) Generation Assets, or their related groups, that are within the mandated market cap, i.e., owning, operating or controlling 30% or less of the installed generating capacity in a grid and/or 25% or less of the national installed capacity pursuant to Section 45 of EPIRA, will be allowed to voluntarily sell or contract directly with Eligible Contestable Customers.
6. For this purpose, all NPC Generation Assets and NPC-IPP Contracts shall be attributable to NPC, including those that may have been assigned or in anyway transferred to Power Sector Assets and Liabilities Management Corporation (PSALM) pursuant to EPIRA.



7. All Eligible Generation Companies must secure the appropriate Supplier license from the ERC before it can participate in Interim Open Access.

D. Role of NPC

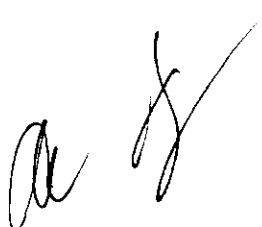
8. NPC will continue to sell power into the Wholesale Electricity Spot Market (WESM), Distribution Utilities, Electric Cooperatives, and SPUG areas.
9. Once the privatization thresholds required under Section 31 of the EPIRA have been fully satisfied, NPC may participate up to the extent of its remaining capacity.

E. Transition Supply Contracts

10. All existing Transition Supply Contract (TSC) will remain valid.
11. The Implementation of Interim Open Access, being a temporary measure, will not in anyway shorten the life or effectivity of any or all existing TSCs.
12. NPC will continue to serve its existing TSCs until they are transferred to the winning bidders in the privatization of the remaining NPC Generation Assets.
13. If a Distribution Utility and/or Electric Cooperative loses a contestable customer as a result of a bilateral contract entered by a Privatized NPC Generation Asset as a result of Interim Open Access, the TSC contracted volume will be reduced in an amount equal to the load contracted by the contestable customer without any penalty to the Distribution Utility.
14. NPC electricity rate will remain under ERC regulation.

F. Implementing Agency

15. The ERC has the authority to prescribe the qualifications for the participation in the retail or contestable market under Section 31 of EPIRA.
16. The ERC has the authority under Sections 43 and 45 of the EPIRA to promulgate rules and regulations to ensure and promote competition, encourage market development and customer choice and discourage abuse of market power.
17. ERC shall establish the guiding principles for the early implementation of Interim Open Access and retail competition. Interim Open Access shall take immediate effect upon publication of the appropriate ERC resolution.



G. Effectivity and Scope

18. A Petition for Interim Open Access will be filed with the ERC with the endorsement of all participating Eligible Generation Companies, and participating Distribution Utilities/Electric Cooperatives.
19. Interim Open Access shall take effect only upon the transfer of the operation of the Calaca and Masinloc Privatized NPC Generation Assets to the private generation companies concerned.
20. Full privatization of NPC generation assets and IPP contracts shall be completed "not later than eight (8) years from the effectivity of the "EPIRA" or by 2009, pursuant to Sec. 47(1) of EPIRA. Thus, Interim Open Access will be implemented until the earlier of June 30, 2010 or upon the occurrence of the effectivity of retail competition and open access as declared by ERC accordance with Section 31 of EPIRA.
21. Interim Open Access shall be implemented only in the Luzon and Visayas Grids."

Having found said Petition to be sufficient in form and in substance with the required fees having been paid, an Order and a Notice of Public Hearing, both dated May 26, 2008, were issued setting the same for jurisdictional hearings, expository presentation, pre-trial conference, and evidentiary hearings on the following dates and venues:

DATE	PARTICULARS	GRID	VENUE
June 16, 2008	Jurisdictional Hearing, Expository Presentation, and Pre-trial Conference	Luzon	ERC Hearing Room, 15 th Floor Pacific Center Building, San Miguel Avenue, Pasig City
June 17, 2008	Evidentiary Hearings		
June 23, 2008			
June 24, 2008			
June 25, 2008			
July 17, 2008			
July 18, 2008			

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July 3, 2008	Jurisdictional Hearing, Expository Presentation, and Pre-trial Conference	Visayas	ERC Field Office, Ground Floor, Machay Building, Gorordo Avenue, Cebu City
July 4, 2008 July 22, 2008 July 23, 2008	Evidentiary Hearings		

Petitioners were directed to cause the publication of the Notice of Public Hearing, at their own expense, twice (2x) for two (2) successive weeks in two (2) newspapers 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. They were also directed to inform the consumers within their respective franchise areas, by any other means available and appropriate, of the filing of the instant Petition, its reasons therefor, and of the scheduled hearing thereon.

The Office of the Solicitor General (OSG), the Commission on Audit (COA) and the Committees on Energy of both Houses of Congress were furnished with copies of the Order and the Notice of Public Hearing and were requested to have their respective duly authorized representatives present at the aforesaid initial hearing.

On May 27, 2008, the Commission issued an Order directing the NPC, PSALM, DOE, Philippine Economic Zone Authority (PEZA), National Electrification Administration (NEA), Philippine Electricity Market Corporation (PEMC), National Transmission Corporation (TRANSCO), Private Electric Power

Owners Association (PEPOA), Philippine Rural Electric Cooperatives Association, Inc. (PHILRECA), GN Power Ltd. Co., GN Power Mariveles Coal Plant Ltd. Co. (GMCP), Aboitiz Energy Solutions, Inc. (AESI), Trans-Asia Oil and Energy Development Corp. (TA Oil), First Gen Energy Solutions, Inc. (First Gen), Cabanatuan Electric Corporation (CelCor), PCCI, Cebu Chamber of Commerce, Inc. (CCCI), National Association of Electricity Consumers for Reforms (NASECORE), SEIPI, Freedom from Debt Coalition (FDC) and all directly connected customers to file their respective comments on the Petition.

PROCEEDINGS AND SUBMISSIONS
PECULIAR TO THE LUZON GRID:

On June 11, 2008, the Commission received: **(a)** the "Petition for Intervention" filed by Masinloc Power Partners Co., Ltd. (AES Philippines), praying for its admission as Intervenor based on its interest as the new owner and operator of the Masinloc Thermal Power Plant, as a signatory to the TOR, and potential investor in the privatization of NPC generating assets and transfer of management and control of total energy output power plants from the NPC to the Independent Power Producers Administrator (IPPA); **(b)** the "Motion for Intervention, Compliance and Motion for Production of Documents" of NASECORE, opposing the instant Petition for violation of the pre-conditions provided under Section 31 of the EPIRA, and praying for leave to intervene; and **(c)** the Pre-trial Brief filed by Petitioners.

On June 12, 2008, **(a)** PSALM filed its "Petition to Intervene" evincing therein its support for the purpose and intent of the Petition but opposing, however, its exclusion along with NPC from participating in the IOA; and **(b)**




PEMC filed its "Comments", supporting the *early implementation of the open access provided the pertinent regulatory and policy framework are in place* with the following suggestions:

- (1) The IOA should be comprehensive;
- (2) The NPC should be allowed to participate;
- (3) It should ensure implementation transparency and easy access to information by Contestable Customers; and
- (4) It should ensure that power supply contracts and transmission supply contracts (TSC) are consistent with the requirements of trading in the retail market, OATS Rules and WESM.

On June 13, 2008, the Commission received a letter from PEZA dated June 12, 2008 stating that it neither supports nor opposes the Petition. It manifested, however, that it already approved two (2) guidelines to implement open access within the economic zone.

During the June 16, 2008, initial hearing for the Luzon Grid, the following entered their appearances:

PARTY	CAPACITY	COUNSEL/ REPRESENTATIVES
PIPPA, MERALCO, VECO, CEDC, DLPC, CEPALCO, SFELAPCO, PECO	Petitioners	Puno and Puno Law Office
AES Philippines	Intervenor	Puyat Jacinto Santos Law Office
NASECORE	Intervenor	Mr. Pete Ilagan
PSALM	Intervenor	Atty. David Ocampo

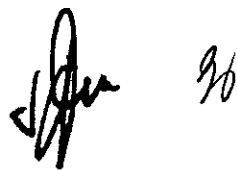
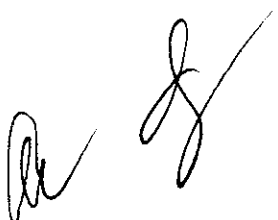


NPC	Intervenor	Atty. Mark Actub
Engr. Mallillin	Intervenor	Engr. Mallillin

Thereafter, NASECORE moved for the suspension of the hearing assailing the Commission's jurisdiction over the subject matter of the instant Petition. The Commission noted the motion and directed the Petitioners to proceed with the presentation of jurisdictional requirements and the expository presentation. Petitioners presented their proofs of compliance with the Commission's jurisdictional and publication of notice requirements, which were duly marked as Exhibits "A (Luzon Grid)" to "K-19 (Luzon Grid)", inclusive. Petitioners thereafter conducted their expository presentation on the Petition. The Commission acknowledged and provisionally admitted the interventions of the afore-named parties pending the filing of comments thereon by Petitioners.

On even date, the Commission received: **(a)** the "Petition for Intervention (with Motion to Admit Petition for Intervention)" of NPC which is posited on the possible gain or loss the denial or approval of the IOA may cause it. The following proposals were made:

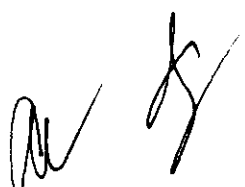
- (1) The Commission should ensure that under the IOA, the contestable market will be granted even more competitive rates and better electrical service than they are currently enjoying;
- (2) The DOE should be given a greater and more active role in the implementation and monitoring of the IOA pursuant to the provisions of the EPIRA;
- (3) The Commission should consider the potential unfavorable financial impact on NPC of the probable reduction in the contract volumes under the TSCs with Distribution Utilities (DUs);



- (4) The DOE and PSALM must be consulted to prevent potential reduction of the NPC TSC volumes that may affect ongoing privatization;
- (5) NPC should no longer be designated as DWS provider of customers that would participate in the IOA and full risk should be borne by the participating private generation companies; and
- (6) Private generators should share in the responsibility of being generators of last resort and as suppliers of ancillary service to the Grid;

(b) "Motion to Participate as Intervenor" filed by Engr. Robert Mallillin, praying to be recognized as an Intervenor and be furnished copies of the Petition and its annexes; (c) Engr. Mallillin's "Pre-trial Brief"; (d) the unverified "Intervention" of PEPOA containing general and specific comments, as follows:

- (1) A Contestable Customer can only be allowed to enter into a Bilateral Power Supply Contract with an ERC-licensed Retail Electricity Supplier (RES);
- (2) A DU need not obtain a RES license to be able to enter into a Bilateral Supply Contract with a Contestable Customer provided the latter is located within the franchise area of the DU;
- (3) A Contestable Customer which refuses to enter into a Bilateral Power Supply Contract with a RES shall continue to be served by the franchised DU under regulated rates as the franchised DU is deemed the default supplier pursuant to pertinent ERC resolutions;
- (4) The Contestable Customer or its RES must be a direct member of the WESM to enable the Contestable Customer to settle its imbalances at WESM prices;
- (5) If the Contestable Customer or the RES is an indirect member of the WESM, its imbalances shall be settled through the direct WESM member through which the contestable or its RES makes the WESM purchases and the direct WESM member shall account for the entire volume of energy (i.e. contracted and imbalances) of the Contestable Customer;
- (6) ERC-approved distribution, supply and metering charges of the franchised DU shall be the basis of the distribution



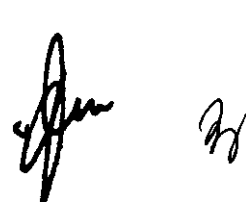
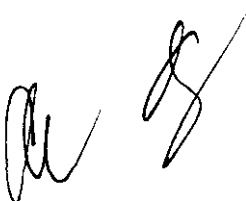
wheeling charges. There should be no need for a particular DU to apply for the approval of the distribution wheeling charges for purposes of the IOA;

- (7) Angeles Electric Corp. (AEC) and Tarlac Electric Inc. (TEI) do not object to the proposed IOA provided NPC is enjoined to deduct a corresponding volume of demand and energy from the TSC of the franchised DU;
- (8) Cabanatuan Electric Corp. (CelCor) opines that the IOA should only be made available to Petitioners and not to the DUs that did not join in as Petitioners; and
- (9) In case the franchised DU will incur stranded contract costs by reason of the implementation of the IOA, the franchised DU must be allowed to charge stranded contract costs to the Contestable Customer that contracts with a RES and shall be incorporated into the Distribution Wheeling Agreement between the franchised DU and the Contestable Customer or its RES;

(e) Petitioners' "Opposition (To NASECORE's Motion for Intervention, Compliance and Motion of production of Documents dated 11 June 2008)" on grounds of : (1) absence of direct and substantial interest in the subject matter of the proceedings; and (2) unduly broadening the issues involved.

On June 17, 2008, the Commission received the letters dated June 11, 2008 and June 16, 2008 of Mr. Rober Birosel and EmPOWER Consumers, respectively. Mr. Birosel opposes the Petition on the following grounds:

- (1) The TOR is not approved by small electricity consumers;
- (2) The conditions under the EPIRA have not been completely fulfilled;
- (3) The Petition renders nugatory the efforts to amend the EPIRA by Congress;
- (4) Petitioners have not presented "mitigating measures and other similar safety nets to ensure a level playing field with sufficient participants in a truly competitive market where no



dominant player can enjoy undue advantage” over small consumers and businesses; and


- (5) The Commission is not specifically mandated by the EPIRA to approve the IOA.

On the other hand, EmPOWER Consumers raised the following clarificatory questions:

- (1) What will be the effect of open access in the MERALCO franchise area and the electric cooperatives on the captive residential market?;
- (2) What are the simulated residential rates that will result once open access is provided for industrial and commercial users?;
- (3) What will be the effect of open access on the employees of electric distribution utilities?;
- (4) Will there be retrenchment as a result of the lost business of industrial and commercial users?;
- (5) What will be the impact on the safety and reliability of power provision?; and
- (6) What are the simulated rates for industrial and commercial users once open access occurs?

On even date, the NPC filed its “Petition for Intervention (with Motion to Admit Petition for Intervention).”

On June 18, 2008, the Commission issued an Order on the matters taken up during the June 16, 2008 initial hearing and pre-trial conference for the Luzon Grid. The following were the issues submitted for resolution:

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I. Legal Issues:

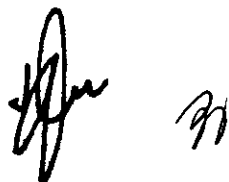
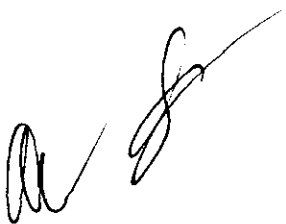
1. *Whether or not the implementation of the Interim Open Access, following the proposed terms of reference, would be in accordance with R.A. No. 9136 otherwise known as the Electric Power Industry Reform Act of 2001*
2. *Whether or not the proposed terms of reference can modify any approved contract of the Commission, inasmuch as transition supply contracts have already been approved by the Commission*

II. Administrative issues:

3. *Who shall be the eligible participants to the interim Open Access?*
4. *In which Grid may the Interim Open Access apply?*
5. *Will participation in the Interim Open Access be voluntary or compulsory?*
6. *What operative act will be required for participation in the Interim Open Access?*
7. *Are the prospective eligible participants prepared for Interim Open Access?*
8. *Are the basic technical framework (e.g. complete metering facilities, updated data base, WESM Requirements, ERC Compliances and other necessary preparations) already in place or completed prior to the effectivity of the Interim Open Access?*
9. *Is the basic competitive framework in place, specifically the existence of a level playing field among the participants?"*

The Commission directed the parties to file their respective position papers on the two (2) afore-quoted legal issues.

On June 20, 2008, (a) Engr. Mallillin filed his "Comments and Manifestation" relative to the eligibility of participants, grid coverage, technical framework and compliance, competitive framework, impact on captive market, policy of the law and other proposed measures; and (b) Petitioners filed their



“Position Paper” on the afore-stated legal issues in compliance with the Commission’s directive.

At the continuation of the hearing on June 23, 2008, NASECORE moved for the suspension of the proceedings pending resolution of its motion challenging the Commission’s jurisdiction over the subject matter. The Commission noted NASECORE’s continuing objection but, pending resolution thereof, allowed the presentation of Petitioners’ first witness. Petitioners presented Mr. Ernesto Pantangco, President and Chief Executive Officer of Bauang Private Power Corporation, Director and Executive Vice President of Philippine National Oil Company (PNOC), Senior Vice-President of First Gen, and incumbent President of PIPPA, who testified in support of the Petition. During his direct examination, Mr. Pantangco was made to identify his judicial affidavit dated June 19, 2008. The same was marked as Exhibit “M”. At the termination of the direct examination, the Intervenors conducted their respective cross-examinations.

On even date, the Commission received: **(a)** the “Motion for Intervention” of the Federation of Village Association (FOVA); **(b)** the “Motion for Intervention and Compliance” of the Federation of Las Piñas Village Association (FOLPVA); **(c)** the “Consolidated Reply and Opposition” filed by Petitioners on PSALM and NPC’s proposal to participate in the IOA, AES Philippines’ proposed measures and safeguards, PEPOA’s comments on the voluntary and transitional nature of the IOA; **(d)** the “Position Paper” of PSALM on the aforementioned legal issues; **(e)** the “Compliance” of NASECORE addressing the prevailing legal issue; **(f)** the Petitioners’ “Compliance” to the Commission’s directive to furnish the



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Intervenors with copies of their expository presentation; and (g) the amended "Judicial Affidavit" of Mr. Pantangco.

On June 24, 2008, the Commission issued an Order admitting the interventions of MERALCO, AES Philippines, NASECORE, PSALM, NPC, FOVA, FOLPVA and Engr. Mallillin and denying NASECORE's motion to suspend and/or dismiss the Petition for lack of merit.

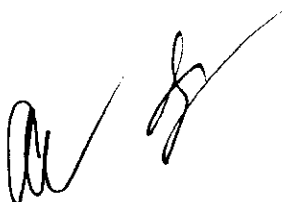
On even date, Mr. Birosel filed another letter-opposition to the IOA arguing *inter alia* its adverse effect on electric cooperatives.

During the continuation of the cross-examination of Mr. Pantangco on June 25, 2008, copies of the Order dated June 24, 2008 were furnished to all parties of record.

On even date, the Commission received a facsimile copy of the letter from FOLPVA explaining that it could not attend the scheduled hearing; and AES Philippines' "Position Paper and Reply to Petitioners' Position Paper" on the prevailing legal issues, which alleged *inter alia*, that the IOA "*cannot and should not modify existing TSCs without the agreement of the contracting parties.*"

On June 30, 2008, the Commission received a letter from SEIPI expressing its support for the approval of the Petition.

Subsequently, on July 3, 2008, the Commission received the letter of Federation of Philippine Industries, Inc., dated July 2, 2008 likewise expressing its support for the approval of the Petition.



On July 8, 2008, the Commission issued an Order allowing certain preparatory acts by particular parties, as follows:

1. *All suppliers, duly licensed by the Commission, may market their business, provided that the sourcing of supply is limited to the eligible companies defined and identified under the proposed TOR; and*
2. *MERALCO may put up the necessary metering facilities pursuant to the provisions of the Commission's Rules for Contestability but only within its franchise area.*

On July 17, 2008, the Intervenors continued their respective cross-examinations on Mr. Pantangco. Thereafter, the Commission propounded clarificatory questions on the said witness. Petitioners were then directed to submit to the Commission and to furnish the Intervenors at least five (5) days prior to the presentation of their second witness the latter's judicial affidavit. The next hearing was set on July 18, 2008.

At the continuation of the hearing on July 18, 2008, the Commission granted NASECORE's motion to defer its cross-examination on Mr. Pantangco until the next hearing on July 21, 2008.

On July 21, 2008, NASECORE and the other Intervenors continued and concluded their respective cross-examinations on Mr. Pantangco. Thereafter, the witness was excused. Another hearing was set on August 4, 2008 for the presentation of Petitioners' second witness.

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On July 25, 2008, Petitioners filed an "Urgent Ex-Parte Motion for Extension of Time" to submit its reply to the queries given by the Commission during the July 17, 2008 hearing.

On July 31, 2008, Petitioners submitted the Judicial Affidavit of their second witness, Mr. Redentor Marquez.

PROCEEDINGS AND SUBMISSIONS
PECULIAR TO THE VISAYAS GRID:

On June 11, 2008, AES Philippines filed its "Petition for Intervention" for the Visayas Grid.

On June 26, 2008, PSALM filed its "Manifestation" of intention to participate in the Visayas Grid hearings as an Intervenor.

On June 27, 2008, Petitioners filed their "Pre-trial Brief" for the Visayas Grid, attaching therewith the Judicial Affidavits of their witnesses, Mr. Juan Antonio Bernad and Mr. Ernesto Pantangco.

On June 30, 2008, PHILRECA filed its "Petition for Intervention" for the Visayas Grid which assailed the Petition for having violated Section 31 of the EPIRA. On even date, AES Philippines filed its "Manifestation (with Petition for Intervention for the Visayas Hearings)."

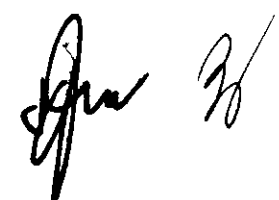
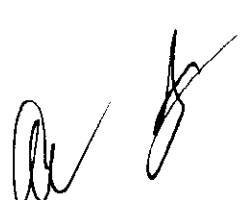
On July 1, 2008, NPC filed its "Manifestation" of interest to be likewise admitted as Intervenor in the case relative to the Visayas Grid.

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During the July 3, 2008, initial hearing for the Visayas Grid, the following entered their appearances:

PARTY	CAPACITY	COUNSEL
PIPPA, MERALCO, VECO, CEDC, DLPC, CEPALCO, SFELAPCO, PECO	Petitioners	Puno and Puno Law Office
AES Philippines	Intervenor	Puyat Jacinto Santos Law Office
PSALM	Intervenor	Atty. David Ocampo
NPC	Intervenor	Atty. Mark Actub
PHILRECA	Intervenor	De Chavez Bugayong Sagayo Law Office

Thereafter, PHILRECA moved for the dismissal of the instant Petition on the ground that the preconditions enumerated under Section 31 of the EPIRA have not been completely realized. The Commission noted the same. Petitioners then proceeded with the presentation of proofs of their compliance with the jurisdictional and publication of notice requirements, which were duly marked as Exhibits "A (Visayas Grid)" to "T-1 (Visayas Grid)" inclusive. Subsequently, the Petitioners conducted an expository presentation on the Petition followed by a Pre-trial Conference. As agreed upon by the parties, the Commission adopted the same issues raised during the June 16, 2008 hearing. In addition, the following issues were raised:



- “1. *Whether the IOA can be implemented in the Visayas Grid despite absence of WESM therein;*
2. *Whether the excess capacity of eligible generation companies is sufficient to supply the requirements of eligible contestable customers; and*
3. *Whether transmission constraints occur in the Visayas Grid and whether this will impede the implementation of the IOA in the Visayas Grid.”*


At the termination of the pre-trial conference, Petitioners presented the following witnesses who both testified in support of the Petition: (1) Mr. Pantangco and Mr. Juan Antonio Bernad, Regulatory Compliance Officer of VECO. In the course of their direct examinations, Mr. Pantangco and Mr. Bernad were made to identify their judicial affidavits which were duly marked as Exhibits “M (Visayas Grid)” and “N (Visayas Grid)”, respectively. Thereafter, the Intervenors conducted their respective cross-examinations on the said witnesses. The Commission set the next hearing on July 31, 2008 at the same venue.

On July 8, 2008, the Commission issued an Order directing, among others, the Petitioners to submit on or before July 30, 2008 their reply to the following queries and points for clarification, or compliance therewith, as follows:

“1. Eligible Contestable Customers

As proposed in the Terms of Reference (TOR), ‘end-users with an average peak demand of at least 1MW for the preceding 12 months may choose among the eligible generation companies and retail supply companies’.

Under the current rules promulgated by the Commission, however, upon implementation of Open Access, all eligible end-users shall automatically form part of the contestable market, subject to the Rules on Contestability. The Petitioners have not provided the process of determining the eligibility of an end-user, except for the notification by the corresponding distribution utility. However, the Rules for

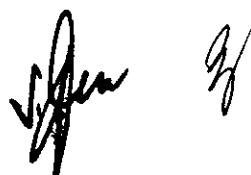


Contestability issued by the Commission provide in detail the process of determining end-user eligibility. Thus, the Petitioners should indicate to the Commission if their intention is for the same Rules on Contestability to apply during Interim Open Access. Otherwise, the Petitioners are directed to provide details on the following:

- a. The Petition must indicate how eligibility of an Interim Open Access end-user is determined, i.e. whether a certification is still to be secured with the Commission, or if not, the process of confirming compliance by the end-user with the eligibility requirements;
- b. The Petition must indicate whether or not the intention is to allow only end-users with a twelve (12)-month operational/historical consumption to participate in the scheme. The Petition must consider the following circumstances and the manner of resolving the same:
 - i. A newly connected end-user with a large load (e.g. 3 MW) but without a 12-month operational or historical consumption; or a newly connected end-user with a forecasted average peak demand of just 1MW;
 - ii. A potential Interim Open Access customer with multiple meters in a single premise being allowed to consolidate its demand into one utility meter; and whether aggregation is allowed; and
 - iii. A potential contestable customer with multiple sources such as embedded generating facilities with aggregate average monthly peak demand of 1MW and above but where its utility meter registers a consumption of less than 1 MW;
- c. The Petition must also indicate the treatment of customers directly connected to the grid who are within the threshold but whose supply requirements are covered by unexpired contracts with the NPC; and
- d. The Petition must contain the specific process to be undertaken in case of occurrence of any Supplier of Last Resort (SoLR) event and the mechanism for the provision for supply for such Interim Open Access customer in the absence of such SOLR.

2. Distribution Utilities

Based on the TOR, all Distribution Utilities (DUs) will immediately notify all eligible contestable customers that Interim Open Access is in effect. Regarding this, the



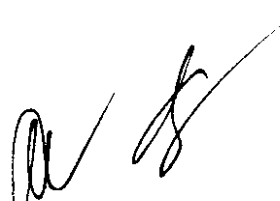
following should be addressed or incorporated in the Petition:

- a. Whether or not this is limited to the DUs that are signatories to the Petition to the exclusion of all other potential eligible customers whose DUs are non-participants;
- b. The proposed process for involvement of non-Petitioner DUs whose customers may seek to participate in Interim Open Access and the mechanism to ensure that all eligible customers are properly notified;
- c. The metering requirements that should be in place and the estimated period for installation of the facilities; provision of metering facilities at the start of Interim Open Access and the financial implications, i.e. whether the cost of metering is to be borne initially by the DU or directly by the Interim Open Access Customer;
- d. The billing scheme proposed to be adopted under Interim Open Access and the process of interaction among the players for settlement and billing; and
- e. Whether or not an entity should be responsible for the central administration and dissemination of customer information, including meter reading data, among participants in the Interim Open Access and, specifically for the Visayas grid, the process of dissemination of meter reading data among the parties, in the absence of a central registration body.

3. Eligible Generation Companies/Retail Supply Companies

The TOR states that all generating companies, including those that acquired the privatized NPC generating assets, or their related groups are allowed to voluntarily sell or contract directly with eligible Contestable Customers. In relation to this, the Petition should indicate or incorporate the following:

- a. Clarification on whether or not privatized IPP contracts are included as Eligible Generating Companies as this is not so stated in the TOR;
- b. The total excess capacity in the Visayas grid which should be available for Interim Open Access customers;
- c. Whether or not a licensed Supplier other than an Eligible Generating Company can participate in the Interim Open Access and the rationale for the exclusion under the



TOR, if such is the case, of the licensed Suppliers who are not qualified as Eligible Generating Companies;

- d. The timeframe for filing of licenses for approval by these Eligible Generating Companies including compliance with the Business Separation Guidelines; and
- e. Whether or not the provision for Local Retail Electricity Suppliers (RES) applies despite the mechanism being voluntary in nature.

4. Transition Supply Contracts

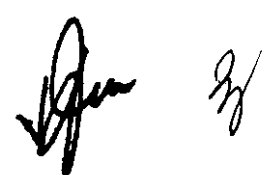
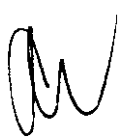
It is proposed in the Petition that all existing Transition Supply Contracts (TSCs) will remain valid and the implementation of Interim Open Access will not shorten the life or effectivity of any or all existing TSCs. The TSC contracted volume will only be reduced if the contestable customer of any DU entered into a contract with the privatized NPC Generation Companies. Without prejudice to the ruling of the Commission on the legal question arising from this issue, the Petitioners are directed to provide the following:

- a. The detailed mechanism for the reduction of TSC volume once a DU loses a particular customer to Interim Open Access; and
- b. The conditions obtaining for reduction of TSC volume should an Interim Open Access customer enter into a retail supply contract with a generation company other than privatized NPC Generation Companies.

5. Energy Imbalance/ Losses/Ancillary Services

There is nothing in the Petition which deals with energy imbalances procurement and/or system loss recovery. In view of this, the Petition should provide the following:

- a. The details and responsibility on the procurement, accounting, settlement, and the applicable rate for energy imbalances caused by eligible Interim Open Access customers;
- b. The mechanism for procurement of energy for systems loss for the Interim Open Access customers, which should be clear as to what entity shall procure for system loss – either the DU will procure and provide such service or the allowance for system loss will form part of the RES



energy procurement for its respective eligible contestable customers; and

- c. The scheme on accounting for line losses, imbalances and ancillary services for trading and contracting in the retail market and in the Wholesale Electricity Spot Market (WESM).”

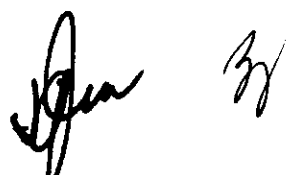
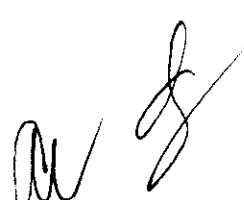
On July 17, 2008, PHILRECA filed its “Motion to Dismiss” the Petition relative to the Visayas Grid “for lack of basis and for being premature, the Petitioners having admitted that the requirements to declare Retail Competition and Open Access on distribution wires have yet to be fulfilled.”

On July 21, 2008, Petitioners filed their “Reply” to the Order dated July 8, 2008.

Subsequently, on July 22, 2008, the Commission issued a *Subpoena Ad Testificantum* for Mr. Mario R. Pangilinan, Executive Vice-President of PEMC to testify, as *Amicus Curae*, on the following matters:

1. WESM administrative requirements for IOA; and
2. Potential Issues on:
 - a. Metering provision and data dissemination;
 - b. Accounting for imbalances and line losses and the settlement mechanism for such; and
 - c. Other WESM-related issues.

On July 25, 2008, the Commission issued an Order directing Petitioners to file their reply or comment on the motion to dismiss filed by PHILRECA.



On July 28, 2008, Petitioners filed their "Opposition" to the said motion.

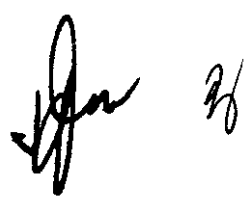
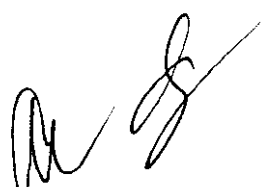
On July 30, 2008, AES Philippines filed its "Comment (to Petitioners' Reply to the Honorable Commission's Queries and/or Points for Clarification)." On even date, PSALM filed its "Compliance (re: Order dated July 8, 2008)".

On same date, the Commission issued an Order granting the "Urgent Ex-Parte Motion for Extension of Time to Submit Reply to the Commission's Queries" filed by the Petitioners.

At the continuation of the hearing on July 31, 2008, Mr. Bernad was recalled to the witness stand for re-direct and re-cross examinations by the Petitioners and Intervenors, respectively. Thereafter, the Commission propounded clarificatory questions on said witness. Petitioners were then directed to file a consolidated Formal Offer of Evidence (FOE) for both Luzon and Visayas Grids. All parties were informed that the succeeding hearings for both Grids would be consolidated and held in the ERC main office in Pasig City.

**PROCEEDINGS AND SUBMISSIONS
COMMON TO THE PETITION FOR
LUZON AND VISAYAS GRIDS:**

During the August 4, 2008 hearing, Petitioners presented their second witness, Mr. Redentor Marquez, Vice-President and Head of Customer Relations Management Office of MERALCO, who, likewise testified in support of the Petition. In the course of his direct examination, Mr. Marquez was made to identify his judicial affidavit which was duly marked as Exhibit "N (for Luzon



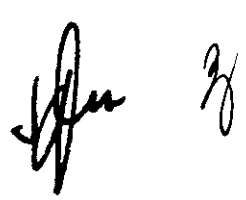
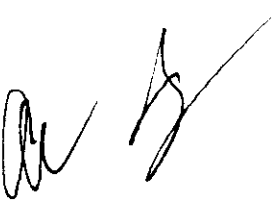
Grid)." At the termination of his direct examination, NASECORE, FOVA and Engr. Mallillin conducted their respective cross-examinations. The next hearing was set on August 11, 2008.

On even date, NASECORE filed a "Manifestation and Motion" proposing the establishment of a "benchmark generation rate" pegged at PhP3.80/kWh prior to the implementation of the IOA in order to determine during its implementation whether or not there would be increases in the generation rates. Likewise, Petitioners filed a "Supplemental Reply" to the Commission's queries and/or points of clarifications, for both the Luzon and Visayas Grids, on issues relating to eligible contestable customers, distribution utilities, eligible generation companies, retail supply companies, transition supply contracts, and energy imbalance/losses/ancillary services.

On August 6, 2008, the Commission issued an Order directing, among others, the parties to submit their respective supplemental position papers on the legal issues relating to the modification of approved TSCs on or before August 11, 2008.

On August 8, 2008, the Commission received from the Petitioners their motion for extension of time to submit their "Framework of Protocol Agreement with TRANSCO (Visayas Grid)".

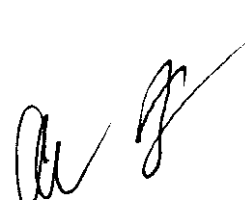
At the continuation of the hearing on August 11, 2008, Mr. Pangilinan was called to the witness stand and clarified some points relative to the IOA and WESM pursuant to the *Subpoena Ad Testificantum* issued on July 22, 2008. The Commission permitted the parties to conduct clarificatory queries on Mr.



Pangilinan. Thereafter, the Petitioners moved that they be granted a period of five (5) days within which to submit their written interrogatories for Mr. Pangilinan and an equal period for the latter to submit his written reply thereto. The same were granted. The Petitioners were then directed to file their FOE on or before August 21, 2008, and the Intervenors were given a period of ten (10) days from receipt thereof, within which to file their respective comments thereon.

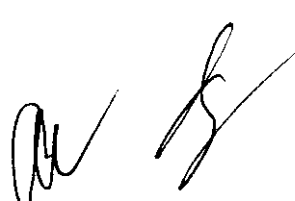
On even date, AES Philippines filed its "Comment" on Petitioners' "Supplemental Reply to the Commission's Queries and/or Points for Clarification (Luzon and Visayas Grids)," which substantially embodies the following proposals:

1. The notice by DUs to the Contestable Customers should be in the form of a template duly approved by the Commission;
2. Directly Connected Customers are eligible customers;
3. NPC should be allowed to continue supplying to directly Connected Customers notwithstanding their right to source their power supply from IOU participating generating companies or RES;
4. Business Separation Guidelines should be implemented to prevent unfair advantage;
5. IOA should not result in the modification of existing TSCs without agreement of the contracting parties;
6. Should TRANSCO be disallowed to provide transmission and ancillary services, the RES should not be mandated to contract directly with distribution utilities for said services;
7. Proposed procedure in avoiding reduction in TSC:
 - 7.1. The customer and its RES shall submit a notice to the DU concerned of the customer's intent to participate in the IOA.
 - 7.2. The distribution utility shall compute for such customer's historical monthly energy consumption for the past twelve (12) months or, if the historical load information available on the customer concerned is for a period of less than



twelve (12) months, the monthly average of such consumption. The monthly average, shall if possible, be broken down according to consumption by month or by wet and dry seasons if monthly consumption data are not available. The formula to be used in attaining the historical monthly energy and monthly average consumption broken down into seasons shall be in accordance with existing ERC regulation on such matters.

- 7.3. The distribution utility concerned will subsequently notify its counterpart generating company under the TSC of the name of the customer that has switched to a different supplier under the IOA, its monthly energy requirements and the corresponding energy that will be reduced under such TSC.
 - 7.4. Upon giving such notice, the contract energy under the particular TSC shall be deemed to have been amended to the extent of the amount of energy that is lost from the customer switching and indicated in the notice under paragraph 7.3 without the Commission requiring approval anew for such amendment in the TSC.
 - 7.5. AES Philippines further suggests that the contracting parties to the TSCs may also be allowed to waive their other rights under the assigned TSCs, which may be affected by the reduction in the contracted volume of the TSCs as a result of the IOA.
8. The following ERC Resolutions should be made to apply for IOA:
- 8.1 ERC Resolution No. 02, Series of 2008 entitled "A Resolution Adopting the Rules for Contestability";
 - 8.2 ERC Resolution No. 25, Series of 2007 entitled "A Resolution Adopting the Rules on Rate Filing by the Supplier of Last Resort";
 - 8.3 ERC Resolution No. 26, Series of 2007 entitled "A Resolution Adopting the Rules on Customer Switching (RCS)";
 - 8.4 ERC Resolution No. 03, Series of 2007 entitled "A Resolution Indicating the Timeline for Full Retail Competition and Open Access in Luzon";
 - 8.5 ERC Resolution No. 49, Series of 2006 entitled "A Resolution Amending the Business Separation Guidelines (BSG)";
 - 8.6 ERC Resolution No. 45, Series of 2006 entitled "Resolution Adopting the Competition Rules and Complaint Procedures";




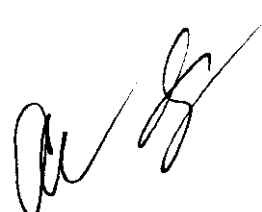
- 8.7 ERC Resolution No. 35, Series of 2006 entitled "A Resolution Adopting the Rules for the Supplier of Last Resort (SOLR)";
- 8.8 ERC Resolution No. 31, Series of 2006 entitled "A Resolution Adopting the Code of Conduct for Competitive Retail Market Participants"; and
- 8.9 ERC Resolution No. 1, Series of 2006 adopting the Distribution Services and Open Access Rules (DSOAR).

Likewise, Petitioners filed their "Supplemental Position Paper (Regarding TSCs)" which contains the following proposals:

1. TSC stipulation used by MERALCO should be:

"Sec. 5.3 MERALCO shall also be allowed to reduce its monthly contracted energy by serving a written notice to NPC at least 10 and 60 days prior to the effectivity of such reduction. Such reduction in contract energy shall be allowed to MERALCO and reflected as a corresponding reduction in the monthly contracted energy by an equivalent quantity of energy as a result of any of the following:

(a) upon open access, a transfer by a MERALCO customer to NPC or to any other supplier; x x x"
2. The acceptance and incorporation of the reduction stipulation by the participants in the IOA is a precondition/ requirement;
3. Should the TSC volume be reduced, NPC shall have the discretion where to apply the reduction among its IPPs and Generation Assets;
4. The reduction in TSC volume should not apply to privatized NPC Generation Assets that will not join the IOA;
5. NPC Generation Asset may only sell its uncontracted capacity under the IOA to customers of DUs that voluntarily agreed to participate in the IOA and to the reduction of volume stipulation/condition;
6. IPPs which assumed NPC-EC TSCs may participate in the IOA if the EC allows. It may also sell its uncontracted capacity outside the franchise area of the former to customers of ECs that have consented to join; and



7. IPPs supplying the EC under a TSC should also waive the right to be paid a buy-out fee for the reduction in the TSC volume unless it is one of those events where the EC is allowed to reduce its Contract Energy without the application of the buy-out provision.

and "Urgent Ex-Parte Motion for Extension of Time" to answer the queries of the Commission relative to the testimony of Mr. Marquez.

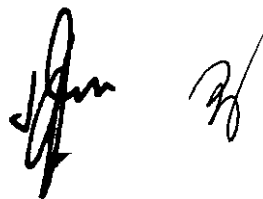
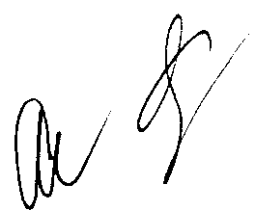
On August 13, 2008, the Petitioners filed another motion for extension of time to submit their questions for Mr. Pangilinan.

Subsequently, on August 14, 2008, Coral Bay Nickel Corporation (CBNC) filed a "Manifestation" to inform the Commission that it is no longer an Independent Power Producer (IPP) but a Self-Generating Facility (SGF). On even date, Petitioners filed a motion for extension of time to submit its framework of protocol agreement with TRANSCO for the Visayas Grid.

On August 15, 2008, Petitioners filed their "Compliance (Questions for Mr. Mario Pangilinan)".

On August 19, 2008, Mr. Pangilinan filed a motion for extension of time to submit his answers to Petitioners' clarificatory questions.

On August 21, 2008, Petitioners filed their "Formal Offer of Evidence (Luzon and Visayas Grids)" and "Compliance (to the Order of the Commission dated 6 August 2008)".


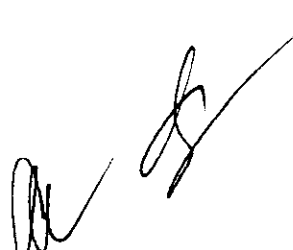


On August 28, 2008, the following documents were filed: **(a)** the Judicial Affidavit of Mr. Mario Pangilinan of PEMC; **(b)** the letter of Emerald Energy dated August 27, 2008, which expresses its support for the Petition; and **(c)** the "Urgent Ex-Parte Motion for Extension of Time to Submit Framework of Protocol Agreements with TRANSCO and Petition' Memorandum" filed by the Petitioners.

On August 29, 2008, the Commission issued an Order directing, among others, the parties to submit their respective Memoranda within twenty (20) days or until September 1, 2008, and declaring that after the submission of all Memoranda, the case shall be deemed submitted for resolution.

On September 5, 2008, Petitioners filed their Memorandum, which is summarized hereunder, as follows:

- I. Objective:
 - A. Restructuring and deregulation of the electric power industry; and
 - B. Privatization of the NPC assets and IPP contracts.
- II. Arguments:
 1. The TOR is consistent with the EPIRA;
 2. The IOA is not prohibited by the EPIRA;
 3. Participation in the IOA is voluntary;
 4. The IOA is transitional in nature;
 5. The TOR is not intended to amend or modify ERC-approved contracts; and
 6. Exclusion of NPC and PSALM for level playing field by the participants.

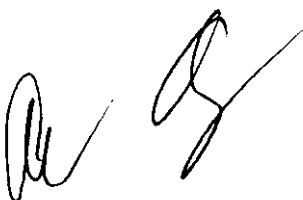


III. Details of the Implementation:

- (1) The IOA only covers customers of the participating DUs and ECs;
- (2) "Customer" – "any person or entity requiring the supply and delivery of electricity for its own use"/ "end-user";
- (3) "Contestable Customer" – "an End-user who has a choice of a supplier of electricity from a generation company or a retail electricity supplier which is eligible to participate in the IOA";
- (4) "Eligible Contestable Customer" – "a Contestable Customer who possesses all the qualifications for eligibility to participate in the IOA, as determined in accordance with the guidelines issued by ERC";
- (5) The eligibility of a customer shall be based on the monthly average peak demand registered in a simple utility meter;
- (6) The qualifications for eligibility:
 - (a) The Customer has increased its demand and registered a historical monthly average peak demand of one (1) MW for the preceding twelve (12) months prior to Effective Date;
 - (b) Six (6) months after Effective Date, or any time after 6 months, it has been a Customer for at least 12 months whose monthly average peak demand is at least 750 kW for the preceding 12 months;
 - (c) Has been in operation for less than 12 months as of Effective Date, or as of any time after Effective Date, but has a forecasted monthly peak demand of 3MW and above; and
 - (d) It has been a Customer for less than 12 months as of Effective Date, or as of any time after Effective Date, but has a forecasted monthly average peak demand of one (1) MW and below three (3) MW and has had a historical monthly peak demand of at least one (1) MW for 3 consecutive months.
- (7) After the commencement of IOA, the following end-users may become Eligible Contestable Customers:
 - (a) An existing End-User in the Captive Market that has increased its demand and registered a historical monthly average peak demand on one (1) MW for the preceding 12 months;
 - (b) A newly connected End-User whose forecasted monthly peak demand is 3 MW and above; and

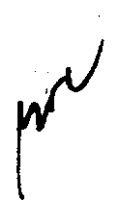
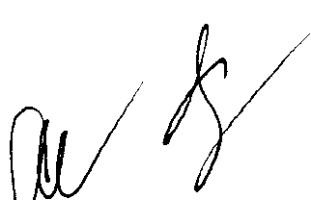


- (c) A newly connected End-User whose forecasted monthly average peak demand is 1 MW but below 3 MW provided that it has registered historical monthly peak demand of at least 1 MW for 3 consecutive months.
- (8) A newly connected End-User is one that has been in operation for less than 12 months upon the IOA date;
- (9) The retail power supply agreement shall provide replacement power in the event that the generation capacity of the Eligible Generation Company or RES becomes unavailable, and shall designate the supplier of last resort;
- (10) The Eligible Generation Company or RES shall assume full responsibility for the continued supply of all power requirements of the Eligible Contestable Customer;
- (11) In the Visayas Grid, the DU shall be the Local RES and RES for IOA. It will provide other services to give effect to the supply agreement;
- (12) MERALCO shall provide advance written notice to NPC of the reduction in TSC volumes as a result of the transfer of Eligible Contestable Customer to an Eligible Generating Company or RES;
- (13) The DU will have the right or prerogative to reduce the TSC volume if it loses a customer as a result of IOA;
- (14) If a portion of the DU-NPC TSC has been assigned to a privatized NPC Generation Asset, the latter if it decides to join the IOA should accept the terms of the TOR which includes the reduction of the TSC volume whenever the DU loses a customer. The reduction shall be in the proportion of the volume allocated to the entire contract energy under the TSC;
- (15) It may market outside the franchise area of the DU provided that the location falls within the franchise area of a participating DU or EC;
- (16) If the EC declines to join the IOA, its IPP cannot join as well;
- (17) Said IPP may however sell its uncontracted capacity to others within the franchise area of an IOA-participating DU or EC;
- (18) The participating IPP which is supplying the EC under a TSC should be required to waive the right to be paid a buy-out fee for the reduction in TSC volume unless it is one of those events where the EC is allowed to reduce its



Contract Energy without the application of the buy-out provision;

- (19) For purposes of computing distribution system losses, all energy "wheeled" through the distribution system should be treated as energy input regardless of source. Consumption of end-users, regardless of supplier, connected to the distribution system shall be treated as energy sales, except those related to pilferage;
- (20) The system loss charges should be based on blended purchased power costs of the DU;
- (21) The computation of spot and imbalance energy sourced from the WESM shall be in accordance with WESM Rules;
- (22) Spot and imbalance energy sourced from the WESM shall be in accordance with WESM Rules;
- (23) Spot and imbalance energy of the captive market should be net of the aggregate metered energy quantity of the Eligible Contestable Customers;
- (24) The RES should provide distribution utility of its Ex-Ante Quantity Energy per hour for each MTN for DU's validation of WESM charges;
- (25) If the WESM defaults, the generator contracted or affiliated with the RES should be responsible for the physical scheduling, bidding, dispatch of the generator and declaration of the BCQ with the WESM in accordance with the market's timetable;
- (26) The Line Rental associated with the bilateral contract quantity transactions of the Contestable Customer shall be computed based on the nodal price difference between its assigned MTN and the bilateral contract generator node;
- (27) There shall be a single billing scheme;
- (28) The DU will be charging the same lifeline subsidy rate for both captive and contestable non-lifeline customers;
- (29) The DU will undertake the functions of a central registration body in Visayas while it shall be the ERC in Luzon;
- (30) No aggregation shall be allowed during the IOA; and
- (31) Other details are subject to contractual agreement by the parties and prevailing WESM, TRANSCO and ERC Rules.



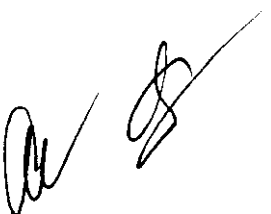
On September 8, 2008, NPC filed its "Comment (On the Legal Issues of Reduction of TSC Volumes)", stating, among others, that:

1. Reduction of TSC volume is allowed under the EPIRA Open Access only;
2. The TSC/CSEE provision on the exemption from the Buy-out provision states only 2 grounds:
 - (a) Reduction was caused by the transfer by a consumer of its power and energy source from Customer to Supplier (ex. direct connection); and
 - (b) Expected reduction in the Contracted Energy by the Customer with the Supplier caused or initiated by the industrial customers of the Customer, provided that the expected reduction is neither due to self-generation nor transfer to another power Supplier
3. The IOA is not the Open Access under the EPIRA, and cannot affect existing contracts which is protected by the constitutional provision against impairment of contracts; and
4. The Civil Code states that contracts must bind both parties and compliance cannot be left to the will of one of them.

On September 17, 2008, PSALM filed its "Manifestation" that it was adopting its "Petition to Intervene" and "Position Paper" as its Memorandum.

On September 19, 2008, FOVA filed its "Memorandum", which substantially states that:

1. The uncontracted capacities of NPC and PSALM will not be dominant;
2. The exclusion of NPC and PSALM will deprive Eligible Contestable Customers of potential lower power rates;
3. MERALCO's captive consumers will be left to shoulder the payment of increased unconsumed electric power of MERALCO's IPPs once it loses some of its contestable consumers, causing the increase of generation rates; and



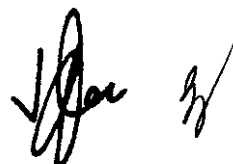
4. The establishment of a cap in generation rate will be a more effective measure for the captive market of MERALCO.

On October 8, 2008, the Commission issued an Order denying PHILRECA's motion to dismiss for lack of merit, the argument therein being a mere rehash of the same arguments made by NASECORE in its previous motion to dismiss in the Luzon Grid, which was denied by the Commission in the Order dated June 24, 2008.

DISCUSSION

The salient features of the proposed framework contained in the instant Petition are as follows:

- a. Eligible Generating Companies shall be all generating companies, including those that acquired the privatized NPC generating assets that are within the mandated cap;
- b. Eligible Contestable Customers are customers with a monthly average peak demand of at least one megawatt (1 MW);
- c. The threshold level of one megawatt (1 MW) shall be reduced to seven hundred fifty kilowatts (750kW) six months after the IOA is implemented;
- d. All existing TSCs will remain valid. If a Distribution Utility (DU) loses a contestable customer as a result of a bilateral contract entered by a Privatized NPC Generation Asset, the TSC contracted volume will be



reduced in an amount equal to the load contracts, without any penalty to the DU; and

- e. IOA will be implemented until (the earlier of) June 30, 2010 or upon the occurrence of the effectivity of Retail Competition and Open Access.

The Commission is cognizant of the fact that the proposed supply scheme embodied in the instant Petition is in response to the clamour from large end-users to accelerate the implementation of the Retail Competition and Open Access within the framework of the EPIRA, and is intended to provide these end-users the option to directly choose the power supplier that can provide them the most reliable service at reasonable price levels.

After careful scrutiny of the terms and conditions of the proposed scheme, the Commission finds that Petitioners are not soliciting or demanding open access at the retail or distribution level. Consistent with the voluntary nature of the proposed scheme, the choice of whether or not to participate in the IOA is left to the DU and its eligible customers. In this regard, the DUs must give their express consent or voluntarily choose to participate. This is not the case in open access wherein the customers of DUs consuming at least one (1) MW automatically become part of the contestable market. It is on the basis of this finding that the Commission is compelled to reconsider the proposed name of the intended scheme as the adoption of the term 'Interim Open Access' (IOA) may not be appropriate and may only lead to confusion in the industry.

The Commission acknowledges that there are a number of programs or supply schemes currently implemented in the industry such as the "One Day



Power Sales" (ODPS), "Customer Choice Program" (CCP), and direct connection with the NPC. These programs are likewise voluntary in nature and are applicable principally to the large and industrial customers.

The Commission is of the opinion that the terms of the instant Petition for IOA are quite similar to the aforementioned schemes/programs, which have already been tried and tested in the market. It is in this wise that the Commission finds cogent need to incorporate improvements or positive changes that would resultantly modify the model into one that is better attuned to the policies and goals embodied in the EPIRA.

The Commission deems it imperative therefore to refer to the resulting scheme/program that it is approving under a different nomenclature, to avoid confusion, to emphasize that not all the features of the proposed scheme were adopted, and more importantly, to provide an apt description of what it really is.

Considering that the primary and ultimate goal of the IOA is to provide the large end-users additional options for power supply, the Commission would instead refer to the supply scheme that it is approving herein as the "Power Supply Option Program" (PSOP) for the industry.

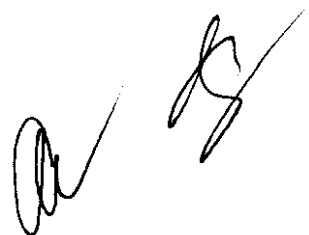
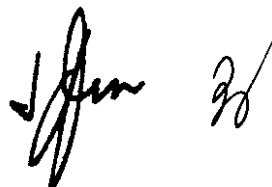
Based on the foregoing, it is necessary to distinguish and disassociate the PSOP from actual Open Access and Retail Competition referred to under Section 31 of the EPIRA to avert a potential misconception or a muddled appreciation of the latter once the same is implemented.



As far as the Commission is concerned, the PSOP is akin to the existing arrangements and programs already existing and being implemented in the industry. In general, it is a set of contractual relations between the new players in the market and the end-users, with the affected DU consenting thereto.

The Commission's evaluation and due consideration of the Petition, the proposed TOR, the oral and documentary evidence adduced, and other submissions relative to the mechanics of the proposed implementation resulted in the following basic framework of the PSOP:

- a. PSOP Customers shall consist of end-users with a monthly average peak demand of at least one megawatt (1 MW) for the past twelve (12) months prior to the implementation of the Program;
- b. The threshold level of one megawatt (1 MW) shall be retained throughout the duration of the implementation of PSOP;
- c. Eligible Suppliers (ES) shall be generating companies, including those that acquired the privatized NPC generating assets, that are within the mandated cap and the licensed Retail Electricity Suppliers (RES);
- d. All existing Transition Supply Contracts (TSCs) will remain valid. If a DU shall lose a contestable customer as a result of

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PSOP, the TSC contracted volume may be reduced, in accordance with the provisions of the TSC; and

- e. The PSOP and all transactions related thereto shall automatically terminate upon the commencement of retail competition and open access under Section 31 of the EPIRA.

THE PARTIES TO THE PROGRAM

A. PSOP CUSTOMERS

In the Petition, a scheme was proposed where eligible customers with an average peak demand of at least one (1) MW may contract with a supplier of their choice, and, six (6) months thereafter the same shall be expanded to include end-users with at least 750 KW peak demand.

The names or terms used in the Petition pertaining to "Contestable Customer" and "Contestable Market" shall be referred to herein as "**PSOP Customers**" consistent with the aforementioned adoption of PSOP. While the "Contestable Customers" and "Contestable Market" are by law compelled to be such under the Open Access and Retail Competition referred to under Section 31 of the EPIRA, the same is not the case under the PSOP, on the basis of the voluntary nature of the scheme/program.

Under the PSOP, the Commission shall allow end-users with a monthly average peak demand of at least one (1) MegaWatt (MW) for the preceding twelve (12) months the option to participate in the scheme/program as PSOP

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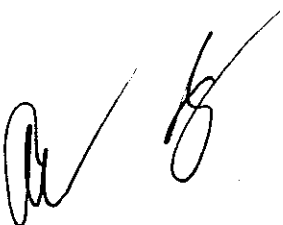
customers. Aggregation of end-users shall not be allowed. The Commission notes that this threshold level is equivalent to the initial levels which qualified the customers to the ODPS and CCP. The Commission deems it appropriate to keep the threshold level to the afore-stated level under the PSOP so as not to complicate its implementation and further distinguish the PSOP from the actual Open Access and Retail Competition.

Relative thereto, the Commission shall issue to PSOP Customers certifications that shall serve as authority for their eligibility to participate in the Program. To facilitate the participation of potential PSOP Customers, the DUs shall inform their customers of their eligibility to participate in the Program. The contents and format of such notice shall be provided by the Commission, and shall be sent out by the DUs to its customers. The template shall provide that no other communication or any form of marketing agenda should be attached or incorporated to the notice to afford an equal playing field to the RES which are not affiliated with any Eligible DU.

B. POWER SUPPLIERS

On the other hand, suppliers of electricity under the PSOP shall be referred to as "**Eligible Suppliers**".

At this juncture, the Commission takes note of the fact that it has already issued licenses to some power suppliers which intend to provide said supply during actual Open Access and Retail Competition. The Commission finds that the same holders of licenses should be allowed to sell under the PSOP inasmuch



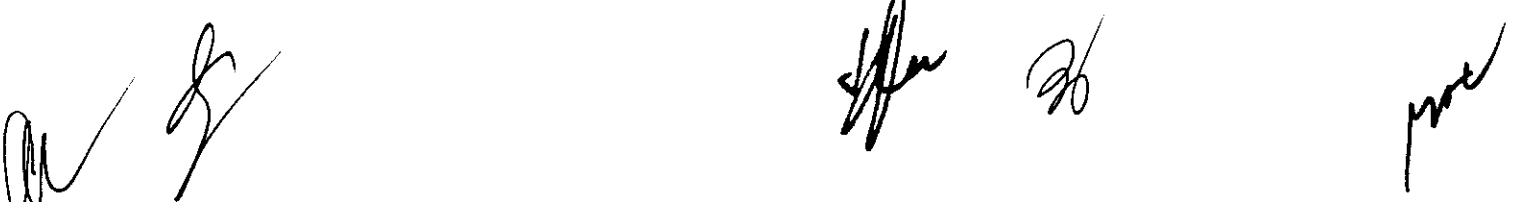
as there is no compelling reason to exclude the other licensees by virtue of their not being generating companies.

In this regard, the Commission admits the proposal in the Petition that Eligible Generation Companies (GenCos) comprising of all generation companies, including those that acquired the privatized NPC generation assets, or their related groups, that are within the mandated market cap, (i.e., owning, operating or controlling 30% or less of the installed capacity pursuant to Section 45 of the EPIRA) would be allowed to supply electricity to potential end-users or specifically to PSOP Customers under the PSOP. The Commission further approves their proposal to require said GenCos to secure the appropriate Supplier's license from the Commission prior to participation in the PSOP.

In addition to the foregoing and in order to increase the power supply available in the market, the Commission deems it sound to also consider the following as eligible suppliers:

- (1) IPP Administrators with respect to the uncontracted energy output of NPC-IPP contracts; and
- (2) NPC upon compliance with the market share limitation as provided in Section 45 of the Act.

On the basis of the testimonies of the witnesses, it was revealed that Petitioners posed no objection to the inclusion of NPC/PSALM as eligible generation companies, provided that they meet the criteria stated under Section 45(a) of the EPIRA, *to wit:*



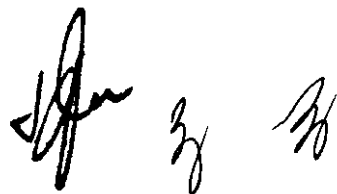
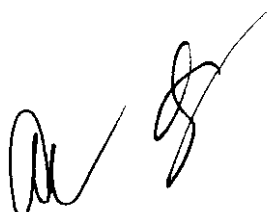
"Section 45. Cross Ownership, Market Power Abuse
and Anti-Competitive Behavior- x x x

- (a) No company or related group can own, operate or control more than thirty percent (30%) of the installed generating capacity of a grid and/or twenty-five percent (25%) of the national installed generating capacity. "Related group" includes a person's business interests, including its subsidiaries, affiliates, directors or officers or any of their relatives by consanguinity or affinity, legitimate or common law, within the fourth civil degree; x x x"

Also, in the course of the hearings, Petitioners offered no objection to the inclusion of the privatized Independent Power Producer (IPP) contracts as part of the supply available in its proposed scheme.

The proposed exclusion of the NPC as a direct supplier to the PSOP Customers in the Petition was intended to eliminate or at least minimize the possibility of having a non-competitive retail market given NPC's current dominant position. As pointed out by Petitioners, their desire is to have a level playing field in the market where no dominant supplier would have an edge over its competitors on the basis of its position and other benefits granted to it by law. On the other hand, however, the Commission recognizes that the exclusion of NPC would limit the supply option of customers.

Nevertheless, NPC will still be allowed to continue similar programs such as permitting direct connections of the bulk power customers to the grid, and CCP, wherein NPC directly supplies the power requirements of MERALCO's large industrial and commercial customers at NPC approved TOU rates.



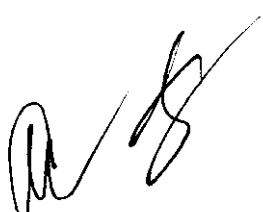
After considering the arguments of the parties relative to this issue, the Commission deems it sound to allow NPC to continue selling its capacity at the wholesale level either through the WESM or through TSCs and be permitted to participate in the said scheme only upon compliance with the market share limitation provided under Section 45 of the EPIRA.

The generation companies who will participate as Eligible Suppliers shall likewise be required to submit to the Commission data indicating the total contracted capacity as certified by the counter-party thereto and the total uncontracted capacity of each plant, so that measures could be undertaken to ensure that only the uncontracted capacity will be sold in the PSOP.

C. DISTRIBUTION UTILITIES

The Petitioners propose that participation in the IOA should be voluntary on the part of the DUs. The Commission fully agrees with this proposal. The Commission must, however, require a clear and concrete affirmative act on the part of the DU to express its desire to participate voluntarily. After all, this scheme/program would constitute a waiver on the part of the DU to serve certain customers located within its respective franchise area.

With the voluntary nature of the participation, it is clear that the Program is not open access at the retail level. Bearing this in mind, DUs, which are not part of the Petition or signatories to the TOR, but are willing to participate in the said program, may opt to do so after securing authorization from the Commission. The DUs which took part in the Petition and are signatories to its TOR are automatically authorized to participate in the Program.




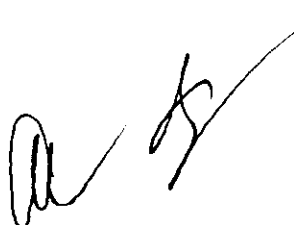
With the foregoing consideration, MERALCO, being a signatory to the Petition and TOR, automatically qualifies as an Eligible DU in the Program.

TRANSITION SUPPLY CONTRACTS (TSCs)

Another issue at hand is the resulting amendments to existing contracts between the parties, more particularly the TSCs between NPC and several DUs, brought about by the implementation of the Program.

The proposal provides that the TSC volume may be reduced without the corresponding penalty or buy-out fee paid by the DU, should the reduction be caused by the transfer of a customer to a Privatized NPC Generation Asset. As a background, all TSCs between the NPC and DUs contain a buy-out provision, wherein the DU is subject to the buy-out or pre-termination fee if it reduces its contracted volume or pre-terminates the TSC. However, the TSC with MERALCO provides that reduction shall be allowed as a result of the transfer by a MERALCO customer to NPC or to any other supplier, upon open access.

NPC invokes that the reduction of TSC volume may be allowed due to closure of industries within the DU's franchise area or availment by a contestable customer in actual Open Access and Retail Competition. It further argues that given that the Program is voluntary in nature, the DU which voluntarily avails cannot unilaterally reduce the TSC volume as stipulated in its contract with NPC without the concurrence of the latter. Further, AES Philippines suggests that the Program should not result in the modification of existing TSCs without the



agreement of the contracting parties as this will result in the impairment of contractual obligations.

The Commission agrees with the foregoing arguments raised. The TSC is a valid, bilateral contract between the parties and is entitled to protection under rule on the sanctity and inviolability of contracts. Considering that the PSOP is not among the grounds where reduction is allowed without penalty, express consent of the contracting parties is required. Thus, any reduction in TSC quantities should be in accordance with the provisions of the contract or as otherwise agreed upon by the parties.

The resolution of the administrative issues requires a set of detailed procedures. The importance of having an established set of rules that would define and outline with particularity the structure of the PSOP should be underscored. Thus, in addition to or in order to further lay down the details of the foregoing features of the PSOP approved by the Commission, a set of rules for this Program will be promulgated by this Commission, after due proceedings, to be known as **“The Rules for the Power Supply Option Program”** (The Rules). These Rules shall contain an exhaustive list of issues and rules for the effective implementation of the PSOP.

It is also necessary for the Commission to underscore that the implementation of the PSOP shall not affect the rates imposed on the existing captive and non-PSOP customers of the DU. Thus, the Rules shall contain in detail the accounting for, among others, imbalances, line rentals and other market-related issues.



To allow all market participants sufficient time for preparation and to ensure the availability of sufficient capacity for the PSOP, its implementation shall commence from the transfer of the operation of the Calaca privatized NPC Generation Assets, as proposed in the TOR.

Petitioners suggested that the implementation of their proposed scheme be in both the Luzon and Visayas Grids. However, in the course of the hearings for the Visayas Grid and based on the parties' submissions, it was revealed that the scheme being proposed in Visayas would be a variation of the original proposal owing to the tight supply condition in the said region. Specifically, Petitioners proposed that the capacity in Visayas will be sourced from existing generation companies that are not fully utilized such as some self generation or back up capacity that may opt to participate. In addition, unlike in Luzon, the WESM is not yet operating in the Visayas.

In the light of these significant differences, the Commission is of the view that the PSOP shall initially be implemented in Luzon only and shall cease to be operational upon commencement of the actual Open Access and Retail Competition. Once the Commission declares actual Open Access and Retail Competition, the PSOP and all contracts and transactions related to said Program shall automatically terminate.

OTHER RELEVANT ISSUES FOR IMPLEMENTATION OF THE PROGRAM:

On the billing scheme, the proposal is to adopt the single billing policy. Under this scheme, the Eligible Supplier contracts with other service providers,

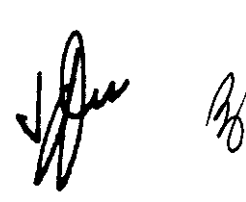
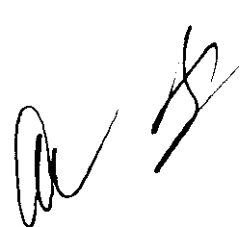
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such as the DU for Distribution Wheeling Service (DWS), TRANSCO for transmission and ancillary services, Market Operator for WESM transactions.

To simplify the billing process, the Commission resolves to adopt the single billing policy which should be undertaken by the participating Eligible Supplier. In this case, the Eligible Supplier shall be responsible for entering into a service agreement with the Eligible DU for distribution and transmission wheeling and other services needed on behalf of its customers. Thus, PSOP Customers are to receive only one (1) bill for every month of billing period.

The Petitioners propose that the DUs act as the default metering service provider for the IOA and that metering services shall be performed in accordance with the requirements of the WESM Rules and Distribution Code. AES Philippines suggests that by the start of the proposed scheme, the eligible customers should have completely installed time-of-use metering facilities capable of measuring energy use and demand in a fashion consistent with the WESM energy intervals, and distribution and transmission demand charge intervals. The cost of the metering facility shall initially be borne by the participating Eligible DU. However, the customer or its supplier shall have the right to own advanced metering equipment and select its own contractor/vendor provided that it meets the Commission's requirements and standards.

To ensure fair competition, the Commission hereby adopts the afore-stated proposals. The Eligible DU should be the rightful entity to act as the sole metering service provider for the PSOP. The Eligible DUs shall provide metering-related services to PSOP Customers within their respective franchise areas. Metering service shall include provision of meter, installation, maintenance,



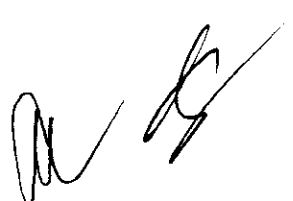
repair, calibration with the supervision of the Commission personnel, and meter reading including data transfer to authorized Eligible Supplier. The time-of-use meters synchronized with the WESM settlement intervals shall be installed by the Eligible DU before the start of the PSOP.

The Petitioners propose that a Central Registration Body (CRB) be put in place and that the CRB should be responsible for the registration of customer data and act as the clearing house for the reconciliation of all energy transactions and clearing of the settlement transactions between the service providers and the customers.

The Commission resolves that, in the absence of the necessary infrastructure on the part of the CRB to act as such, the Eligible DU shall act as the meter data provider throughout the Program. During the implementation of the PSOP, Eligible DUs shall disseminate the meter reading data to authorized Eligible Suppliers for billing purposes. The Eligible DUs shall continue with the regular meter reading schedules for the PSOP Customers and provide the meter reading data of each PSOP Customer to its respective Eligible Suppliers. Details of said transactions shall be provided in the Rules.

The Petitioners propose that lifeline subsidies and other subsidy recovery mechanisms should still be charged to PSOP Customers to minimize any effect on the remaining customers.

As earlier stated, the implementation of the PSOP shall not in any way adversely affect the non-participating customers of the concerned DU. Since the proposed supply scheme is a temporary measure, the Commission agrees that



the DU should still be allowed to recover pass-through costs incurred while still providing retail electricity service to all end-users in its franchise area. Thus, lifeline subsidies shall still be borne by PSOP Customers. Moreover, the recovery of generation and other costs that have been deferred and not yet collected from end-users who participate in the PSOP shall be allowed. The DU shall be allowed to fully recover the same and any unrecovered pass-through costs before the commencement of the PSOP shall be charged to all end-users in its franchise area, subject to confirmation, validation and monitoring of the Commission.

The Commission directed the Petitioners to provide the process to be undertaken in case of occurrence of any last resort supply event and the mechanism for the provision of supply in the absence of a Supplier of Last Resort (SoLR). In compliance therewith, Petitioners manifest that MERALCO, for the Luzon Grid, is willing to supply the PSOP Customers at the occurrence of a last resort supply event subject to the flexibility of its TSC and to its ability to adjust the TSC volume upwards upon the return of the PSOP Customer to the DU. The Petitioners likewise propose that the agreement between the Eligible Supplier and the customer should include provisions on replacement of power for the customer in case of the occurrence of any of the last resort supply events. The Eligible Supplier should assume the responsibility of providing uninterrupted service to its customers.

NPC likewise submitted its concern that it should no longer be designated as a Default Wholesale Supplier of customers that would participate in the proposed scheme. The full risk of providing the supply requirements of the

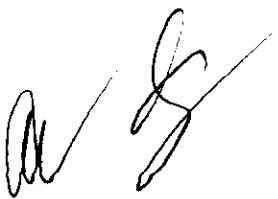
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participating customers should be borne by the participating private generation companies.

The participating Eligible Supplier has the responsibility of ensuring continuous supply of power to PSOP Customers, hence, there should be a default mechanism in place in the event that the Eligible Supplier fails to provide the power requirements of its PSOP Customer. The Commission considers that the Eligible DU within its franchise area is the most logical entity that should provide such services. As default provider, the DU has the option to procure its power requirement from WESM and/or through power supply contracts. Proper accounting should be incorporated in the submission of rates for the confirmation of power cost for the remaining customers. The default supply rates shall be the prevailing WESM energy prices.

The Petitioners propose a "causer pays" principle to be adopted to address the energy imbalance, line rentals, and other WESM related issues. Depending on the contractual arrangement of the Eligible Supplier with the PSOP Customer, the Eligible Supplier shall manage the total energy requirement of the customer including the bilateral contract energy it contracted to supply, contract energy from suppliers, and spot and imbalance energy sourced from WESM. The computation of spot and imbalance energy shall be in accordance with WESM Rules. The CRB shall be responsible for the reconciliation and separation of spot and imbalance energy.

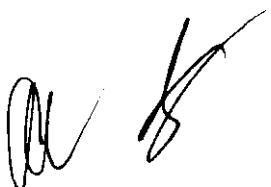
AES Philippines manifests that until the eligible customer switches from the DU to the Eligible Supplier, the concerned Eligible DU shall continue to be responsible for the procurement of energy imbalances and energy for system



loss, including the accounting and settlement at the applicable rates of this procurement. Once the customer switches to the Eligible Supplier, the latter shall be responsible for the said functions. Also, whoever is procuring energy for the account of the customer shall likewise be responsible for accounting of line losses, procuring for energy imbalances and ancillary services for trading and contracting in the retail market and in the WESM.

Addressing the issue of energy imbalances caused by a PSOP Customer and ensuring that these are accounted for to avoid cross-subsidies between the remaining customers of the DU, as the electricity rates differ between these customers, the Commission agrees that the Eligible Supplier is the rightful entity to manage the total energy requirement of its PSOP Customer, including the bilateral contract energy it contracted to supply, contract energy from suppliers and spot and imbalance energy sourced from WESM. Since there is no CRB yet to handle the reconciliation and separation of spot and imbalance energy sourced by the PSOP Customers, it is proposed that a third party entity be designated as the accounting agent. However, in the absence of agreement among the stakeholders, and subject to the Rules to be promulgated, the Commission meantime designates the Eligible DU to undertake the accounting and settling of energy imbalances and line rental fees. The Eligible DU shall be allowed to charge a fee for the provision of the service of accounting and settlement of imbalances. This shall cover the expenses incurred in the provision of this service that include billing, collection, and settlement.

PSALM proposes that participating DUs should be required to conduct an information dissemination campaign in order to instill awareness of customers' privilege to choose Eligible Suppliers. Further, to ensure that the potential



eligible customers are properly and accurately informed, AES Philippines suggested that DUs use a template letter duly approved by the Commission.

The Commission intends to launch a massive information campaign on the PSOP. The Commission thus seeks partnership with all stakeholders, particularly the Eligible Suppliers, to conduct consumer education program to inform the qualified PSOP Customers of the benefits and the features of the PSOP. The Eligible DUs are directed to extend their cooperation to bring to fruition this supply scheme approved by the Commission. Prior to entering in a PSOP contract, the Eligible Supplier shall likewise conduct a customer orientation to explain to the PSOP Customers the nature and the provisions of the PSOP supply contract.

WHEREFORE, foregoing premises considered, the Petition filed by the Philippine Independent Power Producers Association (PIPPA), Manila Electric Company (MERALCO), Visayan Electric Company, Inc. (VECO), Clark Electric Distribution Corp. (CEDC), Davao Light & Power Co. Inc. (DLPC), Cagayan Electric Power and Light Company (CEPALCO), San Fernando Electric Light & Power Co. (SFELAPCO), and Panay Electric Company, Inc. (PECO), for approval of the Interim Open Access (IOA) in the Luzon and Visayas Grids is hereby **APPROVED** with the following modifications:

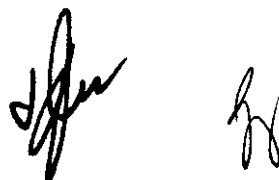
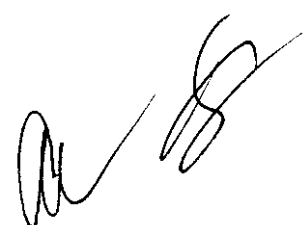
1. In lieu of the Interim Open Access (IOA), the approved scheme/program shall be referred to as the Power Supply Option Program (PSOP);
2. The participants to the PSOP shall be referred to as "Eligible Suppliers" and "Eligible Customers";



3. The Distribution Utilities (DUs) shall act as the Default Supplier and be accountable for the Accounting and Settlement of Imbalances; and
4. The PSOP shall initially be implemented within the Luzon Grid.

Accordingly, the PSOP shall be implemented, subject to the following conditions:

1. The implementation of the PSOP shall commence from the transfer of the operation of the Calaca Privatized NPC Generation Assets;
2. The PSOP shall cease to be operational upon commencement of actual Open Access and Retail Competition;
3. The PSOP and all contracts and transactions related thereto shall automatically terminate once actual Open Access and Retail Competition is declared by the Commission; and
4. The PSOP shall be strictly implemented in accordance with the Program Rules that shall be promulgated and adopted by the Commission.

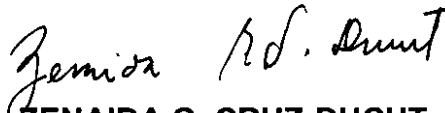


Relative thereto, the Eligible Suppliers are hereby directed to submit, within thirty (30) days from receipt hereof, data indicating the total contracted capacity of each plant, if any and its total uncontracted capacity.

The generation companies who will participate as Eligible Suppliers are likewise hereby directed to submit the data indicating the total contracted capacity as certified by the counter-party thereto and the total uncontracted capacity of each plant.

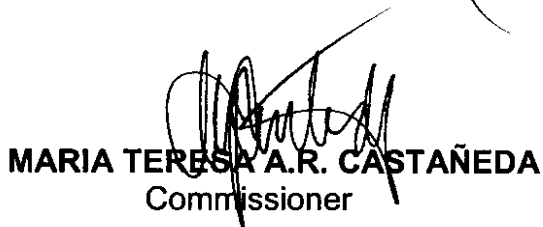
SO ORDERED.

Pasig City, November 10, 2008.


ZENAIDA G. CRUZ-DUCUT
Chairperson


RAUF A. TAN
Commissioner


ALEJANDRO Z. BARIN
Commissioner


MARIA TERESA A.R. CASTAÑEDA
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