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ENERGY REGULATORY COMMISSION
Pacific Center, San Miguel Avenue
Ortigas Center, Pasig City



TO : **JOSE VICENTE B. SALAZAR**
Chairman

ALFREDO S. NON
Commissioner/Officer-in-charge

GLORIA VICTORIA C. YAP - TARUC
Commissioner

JOSEFINA PATRICIA M. ASIRIT
Commissioner

GERONIMO D. STA. ANA
Commissioner

THRU : **NELSON G. CANLAS**
Chief Energy Regulation Officer
Investigation and Enforcement Division for
Distribution Utilities

RE: UNREASONABLE TRANSMISSION RATES RESULTING TO
EXCESSIVE PROFITS

Dear Honorable Commissioners:

Greetings!

The undersigned Executive Director writes in behalf of the NATIONAL ASSOCIATION OF ELECTRICITY CONSUMERS FOR REFORMS, INC. ("NASECORE"), regarding the unreasonable transmission rates resulting to excessive

profits enjoyed by the National Grid Corporation of the Philippines (NGCP) from its consumers.

At the outset, may we refer you to the case of *Republic vs. Meralco*¹, where the Honorable Supreme Court adopted as part of its ruling the following discussion:

"In his famous dissenting opinion in the 1923 case of Southwestern Bell Tel. Co. v. Public Service Commission, Mr. Justice Brandeis wrote:

'The thing devoted by the investor to the public use is not specific property, tangible and intangible, but capital embarked in an enterprise. Upon the capital so invested, the Federal Constitution guarantees to the utility the opportunity to earn a fair return... The Constitution does not guarantee to the utility the opportunity to earn a return on the value of all items of property used by the utility, or of any of them.

The investor agrees, by embarking capital in a utility, that its charges to the public shall be reasonable. His company is the substitute for the State in the performance of the public service, thus becoming a public servant. The compensation which the Constitution guarantees an opportunity to earn is the reasonable cost of conducting the business.'

While the power to fix rates is a legislative function, whether exercised by the legislature itself or delegated through an administrative agency, a determination of whether the rates so fixed are reasonable and just is a purely judicial question and is subject to the review of the courts."
(Italics, emphasis and underscoring supplied)

The NGCP having been given the franchise per Republic Act 9511, to operate the National Transmission Corporation's transmission system, has effectively agreed to embark on an endeavor which is inherently a public service. The NGCP, thus, conducts its business as a public servant in the performance of a public service which is basically the transmission of electricity through the grid, coming from generation utilities and delivering to distribution utilities.

Agreeing to act as a public servant, the NGCP therefore submitted itself to government regulation which has for its primordial purpose the safeguarding of public policy and the promotion of general welfare of the electricity consuming public.

It is in the light of the above-stated nature of NGCP's business that NASECORE invokes the jurisdiction of this Honorable Commission, as the sole regulator of the

¹ G.R. No. 141314, November 15, 2002.

electricity industry in the country, for it to inquire and verify whether the Return on Equity realized by it **is within the 12% rate ceiling allowed by law**. Anything in excess is undeniably an unjustified burden which must be promptly and immediately returned to all electricity consumers.

Records will show that in 2009, NGCP, Power Sector Assets and Liabilities Management (PSALM) Corporation, and National Transmission Corporation of the Philippines (TransCo) entered into a Concession Agreement (CA). Under the CA, NGCP shall pay PSALM the sum of USD3.95B net of VAT (P45.00 to 1.00 USD) as Concession Fee. By virtue of the Concession Agreement, NGCP took over TransCo's business after paying 25% of the Concession Fee.

Based on our examination of NGCP's Audited Financial Statements (AFS), it showed that from years 2009 to 2015, NGCP posted an average Return on Equity (ROE) or profit of 43.6% which is way above and contrary to the 12% rate of return set by the Supreme Court in the above cited case of *Republic vs. Meralco*. The summary of NGCP's net income and ROEs are shown below:

(in billion pesos)

YEAR	2009	2010	2011	2012	2013	2014	2015	AVE
CAPITAL STOCK	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.00
DEP FOR FUTURE STOCK SUB/APIIC	44.8	44.8	44.8	44.8	44.8	44.8	44.8	44.84
TOTAL EQUITY (Actual Investment/Capital Infused)	46.84	46.84	46.84	46.84	46.84	46.84	46.84	46.84
NET INCOME	15.5	19.4	21.6	20.8	21.2	22.1	22.5	20.44
RETURN ON EQUITY	33.1%	41.4%	46.1%	44.3%	45.3%	47.1%	48.0%	43.6%

Under Section 43 (f) of the EPIRA, it expressly provides that *"In the public interest, establish and enforce a methodology for setting transmission and distribution wheeling rates and retail rates for the captive market of distribution utility, taking into account all relevant considerations, including the efficiency or inefficiency of the regulated entities. The rates must be such as to allow the recovery of just and reasonable costs and a reasonable return on rate base (RORB) to enable the entity to operate viably. xxx."*

Blatantly, NASECORE is of the position that the current transmission rate granted by this Honorable Commission to NGCP is nothing but based on mere speculation, inherently whimsical, arbitrary, and capricious, to say the least.

This is clearly in violation of the pronouncement of the Supreme Court in the above-quoted case of *Republic of the Philippines v. Manila Electric Company*² where the Supreme Court explicitly stated that:

"In determining the just and reasonable rates to be charged by a public utility, three major factors are considered by the regulating agency: a) rate of return; b) rate base and c) the return itself or the computed revenue to be earned by the public utility based on the rate of return and rate base. The rate of return is a judgment percentage which, if multiplied with the rate base, provides a fair return on the public utility for the use of its property for service to the public."

² *supra*.

The rate of return of a public utility is not prescribed by statute but by administrative and judicial pronouncements. This Court has consistently adopted a 12% rate of return for public utilities. (Italics and underscoring supplied)

Such speculative, whimsical, arbitrary, and capricious transmission rate fixing indispensably, but maliciously and feloniously, allowed NGCP to realize an unjustified gross revenue within the short period of 2009 to 2015 of P310.713 billion, and with a **Net Income of P143.1 billion or an average net income of P20.44 billion a year over the same period. This also shows an average return of 46.3% per year.**

By judicial *fiat*, the allowable rate on the return on equity of NGCP is no more than twelve percent (12%) or P5.6 billion per year, reckoned from its equity (capital infused/actual investment) of P46.84 billion.

(in billion pesos)

YEAR	2009	2010	2011	2012	2013	2014	2015
CAPITAL STOCK	2.00	2.00	2.00	2.00	2.00	2.00	2.00
DEPOSIT FOR FUTURE STOCK							
SUBSCRIPTION/APIC	44.84	44.84	44.84	44.84	44.84	44.84	44.84
TOTAL	46.84	46.84	46.84	46.84	46.84	46.84	46.84

Over a 7-year period with an average annual equity of P46.84 billion, at 12% return, it gave NGCP a net income of P39.34 billion or P5.6 billion per year.

In effect, the excess profit of NGCP which amounts to P103.76 billion over a period of seven (7) years (P143.1 billion - P39.34 billion) is 34.3% (46.3%-12%) way higher than the 12% ceiling allowed by law.

For the Honorable Commission to continuously allow such unconscionable and scandalous transmission rate, charged to the electricity consuming public which results to excessive profit as explained above, would mean a clear abandonment of its duty and mandate under the law to the extreme prejudice of the electricity consumers.

In view of the foregoing, it is respectfully prayed of this Honorable Commission that:

1. An extensive COA audit of the NGCP's return on equity or profits be immediately conducted and concluded with dispatch and;
2. If warranted by its findings, to outrightly order NGCP to refund all excessive profits realized from its collections from the electricity consuming public, plus the legal interest it is entitled.

In the public interest, the Commission's prompt and most favorable action on the matter is most respectfully anticipated.

Respectfully yours,



**ATTY. RAFAEL ANTONIO M.
ACEBEDO**
Executive Director

CC: **Hon. Alfonso G. Cusi**
Secretary, Department of Energy
Energy Center, Rizal Drive, Bonifacio Global City
Taguig City