



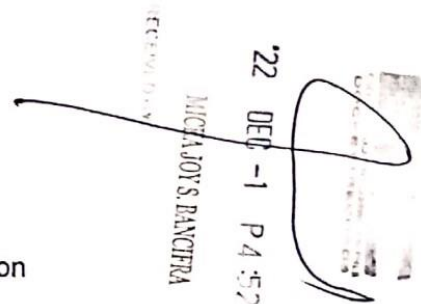
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01 December 2022

THE HONORABLE COMMISSIONERS
The Energy Regulatory Commission
Pacific Center Building
San Miguel Avenue, Ortigas Center
Pasig City 1600

Attention: **MONALISA C. DIMALANTA**, Chairperson

Subject: **REQUEST FOR COPY OF THE CONFIRMATION OF THE EFFECTIVITY OF THE AMENDMENT TO SECTION 4 (e), RULE III OF THE IMPLEMENTING RULES AND REGULATIONS OF R.A. 9136 (EPIRA)**



Dear Chairperson Dimalanta,

In paragraph 1, page 3 of your letter dated 17 October 2022 addressed to the undersigned, you wrote as follows:

"In the case of Reso 16-2009, DUs are allowed to adjust generation rate on a monthly basis following a formula provided for by the ERC. The adjustment shall be subject to post confirmation process. It should be noted that Reso 16-2009 is based largely on the amended Section 4 (e), Rule III of the EPIRA IRR, to wit:

xxx xxx xxx

"This Section 4 (e) shall not apply to those applications or petitions already filed as of 26 December 2001 in compliance Section 36 of the Act.

This Section 4 (e) shall not apply to Generation Rate Adjustment Mechanism (GRAM), Incremental Currency Exchange Recovery Adjustment (ICERA), Transmission Rate Adjustment Mechanism, Transmission True-up Mechanism, System Loss Rate Adjustment Mechanism, Lifeline Rate Recovery Mechanism, Cross-Subsidy Mechanism, Local Franchise Tax Recovery Mechanism, Business Tax Recovery Mechanism, Automatic Generation Rate Adjustment Mechanism, VAT Recovery Mechanism, Incremental Generation Cost Adjustment Mechanism, and Recovery of

"The fear of the Lord is the beginning of wisdom and knowledge of the Holy One is understanding". (Proverbs 9:10)

Deferred Accounting Adjustment for Fuel Cost and Power Producers by NPC and NPC-SPUG, provided that, such adjustments shall be subject to subsequent verification by the ERC to avoid over/under recovery of charges.” (Emphasis yours)

In a footnote you mentioned that the amendment was “adopted by the Joint Congressional Power Committee (now known as the Joint Congressional Energy Committee during its hearing last 21 June 2007.”

We sought to obtain an official copy of the aforementioned amendment but could not find it in the Department of Energy website, nor from the Senate Archives.

To our surprise, we obtained a Certification from the Senate Legislative Records and Archives Service dated November 29, 2022 to the effect that:

*“ The Senate Archives which is repository of official documents of the Senate does **not** have a copy of the requested resolution ‘Copy of the Resolution of the Joint Congressional Energy Committee, 21 June 2007 (or thereabouts) Adopting an Amendment to Sec. 4 (E) Rule 3 of the Implementing Rules and Regulations of Republic Act 9136 (EPIRA).*

The Senate Archives has a copy **only** of the Transcript of Committee Meeting (TCM) pertaining to the discussion on the proposed Section 4 (E) Rule 3 of the Implementing Rules and Regulations of Republic Act 9136 (EPIRA) as attached.”

What we can establish is that the amendment was adopted by the Joint Congressional Energy Committee on 21 June 2007 but we do not have proof whether such amendment was published.

May we therefore inquire whether, based on your official records, the amendment to Section 4 (e) Rule 3 of the IRR of the EPIRA was published and if so, may we be furnished a copy?

If it turns out that the amendment was never published and therefore never took effect, then this has serious repercussions, foremost of which is the invalidity of all resolutions and issuances of the Energy Regulatory Commission regarding all automatic rate adjustment mechanisms in favor of power suppliers, NGCP and distribution utilities that enabled them to sidestep the notice and hearing requirements of the EPIRA, giving rise to runaway energy prices that have driven our people to desperate straits.

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This is also in contravention of the Supreme Court En Banc's landmark decision in *NASECORE vs. ERC* (G.R. No. 163935, February 2, 2006) pronouncing such publication not only a statutory but a constitutional requirement.

We will appreciate your usual expeditious action on our request.

Thank you.

Very truly yours,



PETE L. ILAGAN
President

Copy furnished:

His Excellency, President Ferdinand R. Marcos, Jr.
Hon. Juan Miguel F. Zubiri, Senate President
Hon. Ferdinand Martin G. Romualdez, Speaker of the House
Hon. Raffy T. Tulfo, Chairman-Senate Committee on Energy
Hon. Lord Allan Jay Velasco, Chairman- House Committee on Energy

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