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RET. COMM. ALFREDO J. NON

Subject : Opposition to ERC Resolution No. 23, s.2025

Dear **Atty. Ople and Ret. Comm. Non:**

This refers to your letter dated 30 January 2026 expressing your opposition to ERC Resolution No. 23, s. 2025, particularly, regarding the adoption of a confirmation and true-up process for addressing the Lapsed Periods of private distribution utilities (PDUs).

I. THERE IS A VALID RATE FOR THE TRUE-UP

ERC Resolution No. 23, s.2025 was promulgated to address existing regulatory gaps arising from unresolved resets under prior versions of the RDWR. In the interest of continuity, the Commission must ensure the orderly regulation of rates despite pending legal issues and incomplete resets across several entry groups.

The last approved PBR-based rates for each PDU remain **valid and enforceable** until superseded by a subsequent Commission decision or by Court order. These rates, whether provisional or final, function as the applicable benchmark for calculating over/under recovery during the Lapsed Period.

The confirmation step verifies the rate previously authorized, and the true-up step ensures that any discrepancy between actual collections and allowable revenues is corrected prospectively.

II. THE ERC'S REGULATORY AUTHORITY

The Commission respectfully disagrees that the submission of PDUs' respective AWAT applications abdicates ERC's Regulatory Authority.

Under the confirmation and true-up process, PDUs are required to submit their AWAT computations for ERC review and approval. The Commission retains full authority to evaluate, modify, or deny such submissions based on technical validation and regulatory standards. This process does not delegate rate-setting power to the utilities. Instead, it provides a structured means for ERC to determine the appropriate

adjustments during periods when a full regulatory reset cannot be completed due to ongoing legal or regulatory constraints.

Accordingly, the ERC remains the final arbiter of rates.

III. THE CONFIRMATION AND TRUE-UP MECHANISM DOES NOT VIOLATE THE LEAST-COST MANDATE OF EPIRA

Furthermore, ERC Resolution No. 23, s.2025 was issued specifically to uphold EPIRA's least-cost standard in Sec. 43(f). To wit,

In the public interest, establish and enforce a methodology for setting transmission and distribution wheeling rates and retail rates for the captive market of a 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. The ERC may adopt alternative forms of internationally-accepted rate-setting methodology as it may deem appropriate. **The rate-setting methodology so adopted and applied must ensure a reasonable price of electricity.** The rates prescribed shall be non-discriminatory. To achieve this objective and to ensure the complete removal of cross subsidies, the cap on the recoverable rate of system losses prescribed in Section 10 of Republic Act No. 7832, is hereby amended and shall be replaced by caps which shall be determined by the ERC based on load density, sales mix, cost of service, delivery voltage and other technical considerations it may promulgate. The ERC shall determine such form or rate-setting methodology, which shall promote efficiency. (Emphasis supplied)

Given unresolved issues from earlier resets and the Supreme Court's ongoing review of ERC Case No. 2020-043 RC, the Commission adopted a mechanism that would prevent further regulatory vacuum, ensure consumers are neither overcharged nor undercharged, and avoid retroactive ratemaking during legally uncertain periods.

The confirmation and true-up process ensures that allowable revenues correspond to actual costs, while remaining grounded in a cost-of-service approach. This mechanism ensures that only rates previously authorized by the Commission can serve as the benchmark, while aligning actual collections with allowable revenues.

The Commission is also mindful of legal limitations on retroactive ratemaking. Engaging in a purely ex-post recalculation of all costs for lapsed years — when no finalized revenue requirements were issued — risks creating outcomes that judicial precedents regard as retroactive. The confirmation and true-up process, by contrast:

1. protects consumers from excessive rates;
2. ensures regulated entities recover allowable revenues; and
3. maintains regulatory continuity until each Entry Group commences its new First Regulatory Period.

This approach ensures adherence to both statutory standards and jurisprudential constraints. Once the First Regulatory Period begins, the Commission

will conduct comprehensive determinations based on updated cost submissions, performance data, and the Building Blocks methodology under the RRDWR.

IV. PROPOSED COURSE OF ACTION

The Commission acknowledges your position. However, applying a full ex-post cost-of-service evaluation for all PDUs covering up to a decade of lapsed periods would cause substantial delays and risk introducing additional retroactive ratemaking concerns.

The true-up mechanism under Resolution No. 23, s.2025 is a transitional measure that allows the completion of the regulatory result under the RRDWR while stabilizing the regulatory environment. The Commission retains the authority to conduct full rate reviews under the RRDWR once entry groups begin their new Regulatory Periods.

Please be assured that the Commission has taken note of all the issues and legal arguments raised in your submission. These concerns will form part of the record in ongoing internal evaluations and in the implementation of the RRDWR. Finally, any future refinements to the AWAT confirmation and true-up framework will consider stakeholder submissions, including yours.

The ERC remains steadfast in its commitment to ensuring that electricity rates are fair and transparent. We thank you for your continuing participation in the regulatory process and welcome further engagement as we implement the RRDWR and address the Lapsed Periods.

Very truly yours,


FRANCIS SATURNINO C. JUAN
Chairperson and CEO