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February 15, 2010

HON. ZENAIDA C. DUCUT
Chairperson, Energy Regulatory Commission
Pacific Center Bldg. San Miguel Avenue
Pasig City

**Re: Request for Temporary Amendment/Suspension
of Certain Provisions of ERC Resolution No. 16 Series of 2008**

Dear Chairperson Ducut,

Greetings!

We write to bring to the urgent attention of the Honorable Commission a problematic situation that may be brought about by the implementation of certain provisions in ERC Resolution No 16, Series of 2008.

As the Honorable Commission knows, the Luzon, Visayas and Mindanao Grids are currently experiencing critical power levels due to various factors such as plant outages, lack of fuel in some plants and the *El Nino* weather pattern which has severely affected the availability of the hydroelectric plants in the Luzon and Mindanao grids. This situation may have adverse consequences on the electricity end users of Distribution Utilities (DUs) that have active Transition Supply Contracts (TSC) with the National Power Corporation (NPC) but which are about to expire.

We are concerned particularly about the implementation of Section 3 of the said Resolution which reads:

“3. In no case shall the TSC contract period be extended from the expiration of the original term of the TSC which has been assigned and transferred, unless expressly allowed by the Commission by virtue of the pendency of the approval of a new bilateral power supply contract between the parties. The negotiations leading to and filing for the approval of the new bilateral power supply contract shall be consistent with provisions of the Commission-approved

"Guidelines for the Recovery of Costs of the Generation Component of the Distribution Utilities' Rates" (The "Guidelines")."

Based on the foregoing Section of Resolution 16, Series of 2008, a distribution utility whose TSC is about to expire must sign up for a bilateral contract to replace its TSC.

However, given the current tightness in supply, these Distribution Utilities may have limited choices as to whom it will sign such long term bilateral contracts. And in such a situation, generators with available or excess capacities may raise or increase their contract prices since there is a lack of power supply and the representative prices in the spot market are increasing. This will push the distribution utilities to a situation where they will be forced to sign up with whatever bilateral contracts are available just to avoid being subject to the escalating prices in the spot market or the high prices of the supplier of last resort.

Simply put, in this situation, distribution utilities may have no choice but to accept whatever bilateral terms and prices are being offered to them by limited available generators since they are no longer allowed to extend their TSC and must follow the aforementioned ERC resolution.

As a result, distribution utilities will not be in a position to supply electricity at the least cost manner to its captive market to protect the interests of the electricity end consumers as the law mandates.

This situation is further complicated by the fact that in the coming months our country will be holding its first fully automated national elections and stakeholders in the power industry, especially the DUs, are expected to do its best in ensuring an adequate and reliable supply of electricity so that the elections in their localities will not be hampered. Thus, concerned distribution utilities are now under added pressure to sign bilateral contracts in this limited supply situation in order to secure the power supply for the elections.

We are certain that the Honorable Commission did not intend such an unjust situation to arise with the implementation of the subject resolution.

It is against this backdrop that we are respectfully but urgently asking the Honorable Commission to exercise its prerogative as the regulator of all electric industry participants and amend section 3 of ERC Resolution No. 16, Series of 2008.

We ask that the said section be amended such that the TSC of distribution utilities which are still valid but are about to expire should be mandatorily extended up to at least 30 June 2010.

We believe that this extension of the TSC should be sufficient in order for the current power supply situation to normalize and thus afford the distribution utilities the opportunity to consider potential power suppliers other than generators with current available capacities. Further, the extension we seek will be after the elections and thus the security of the availability and supply of power for the automated polls will also be thereby assured.

We trust that the Honorable Commission will promptly consider our request and, in the best interest of the public, act favorably thereon. As the Commission itself correctly stated in ERC Case No. 2006-080RC:

“A cursory reading of the EPIRA would reveal that the Commission is possessed with broad and expansive powers and is not restricted to the authority granted to it by Sections 43 and 45. No less than the EPIRA affirms the State policies of ensuring ‘the quality, reliability, security and affordability of the supply of electric power, establishing a strong and purely independent regulatory body and system to ensure consumer protection and enhance the competitive operation of the electricity market, and the protection of the public interest as it is affected by the rates and services of electric utilities and other providers of electric power. xxxxx

..... The act of the Commission is consistent with the demands of public interest where at all times, public welfare and the interests of consumers remain to be of paramount importance.”

It is in the spirit of the foregoing pronouncements that we ask the Honorable Commission to amend Section 3 of ERC Resolution No. 16, Series of 2008 and order the mandatory extension of all existing NPC TSC's which have been assigned to successor generating companies up to at least 30 June 2010. Such an extension is undoubtedly consistent with the mandate of the Honorable Commission to protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power.

Thank you very much.

Very truly yours,

PETE L. ILAGAN
President