



National Association of Electricity Consumers for Reforms, Inc. (NASECORE)

No. 10 Bayside Court Compound, 680 Quirino Ave., Tambo,

Parañaque City 1700 Philippines

Phone No.: +63.2.8530731

TeleFax No.: +63.2.8530732

<http://www.nasecore.org>

eMail: nasecore2003@yahoo.com

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HON. ZENAIDA CRUZ-DUCUT

Chairperson, Energy Regulatory Commission

16th Floor, Pacific Center Bldg.

San Miguel Ave., Pasig City

Greetings!

This refers to our letter dated March 30, 2010 (addressed to you as Chairperson of the Commission) requesting the immediate investigation of extraordinary price spikes at WESM.

Pending results of the investigation, we also urged the Commission to order MERALCO's immediate refund of the P0.9114/kWh increase in its generation charge.

While we were favored with a reply through your letter dated March 31, 2010 (Received on April 08, 2010) informing that the Commission has initiated its investigation to determine with certainty whether or not there were indeed irregularities committed by any WESM participant, no definitive action was taken on our refund request.

In view thereof, we wrote on April 16, 2010 a follow up letter reiterating our request for a refund and to recall MERALCO's P0.9114/kwh increase in generation charges for the month of March 2010 pending results of the ERC investigation of the WESM participants.

In that same letter, we urged ERC to exercise its "*motu proprio*" powers under the EPIRA to audit the books and records of MERALCO and other private distribution utilities to ensure that all their revenues are solely used in their operation of distributing electricity in order to allay the growing suspicion in the minds of consumers that these rate increases may have been used to finance the run of candidates favored by power utility operators.

Further, for the same objective, we urged ERC to immediately conduct a review of the MERALCO-IPP contracts and hold public consultations thereon.

On **April 22, 2010**, we received a letter/reply dated April 19, 2010 acknowledging receipt of our letter of **April 16, 2010** and informing that ERC is still in the process of conducting its investigation of the participants' behavior in the WESM in February 2010, with the assurance that NASECORE will be informed of the results as soon as the same is completed.

Our principal and other concerns such as the need for ERC to audit the books and records of MERALCO and the other private distribution utilities and for the conduct of public consultations thereon not being addressed by your afore cited letter, we wrote anew on **April 26, 2010** reiterating our request for the recall of the generation charge increase of 0.9114/kWh for the month of March and P0.93/kWh for the month of April 2010.

In that same letter, we also requested the Commission to look into the dispatch level of the IPPs of MERALCO on the basis of their "take or pay" agreement covered by the 83% minimum economic quantity in order to determine the cause of the huge monthly adjustment in their generation rates.

Further, in order for us to have a complete and comprehensive grasp of the extraordinary adjustments in MERALCO's rates, we also requested to be furnished their monthly reportorial compliances particularly on generation, from July 2007 to March 2010.

Not favored with a reply even beyond the 15-day period, we wrote another follow up letter dated May 11, 2010.

On May 19, 2010 we received a letter dated May 14, 2010 signed by ERC Executive Director Francis Saturnino C. Juan, acknowledging the reiteration of our request to recall the MERALCO increase in its generation charge for the months of March and April 2010 pending conclusion of ERC's alleged investigation and our request to be furnished with MERALCO's monthly reportorial submissions to ERC from February to April 2010.

However, our **request** for the audit of the books and records of MERALCO and other private distribution utilities to ensure that all their revenues are solely used in their operation of distributing electricity in order to allay the growing suspicion in the minds of the consumers that these rate increases may have been used to finance the candidacy of favored candidates of power utility operators; our **request** for ERC to look into the dispatch level of the IPPs of MERALCO on the basis of their "take or pay" agreement covered by the 83% minimum economic quantity in order to determine the cause of the huge monthly adjustment in their generation rates; our **request** for ERC to immediately conduct a review of the MERALCO-IPP contracts and our request for the holding of public consultations on the matter -- all these were not addressed at all!

Further, the reply directed that whatever relief we were seeking should be addressed to the Commission and not to the Commission's Chairperson and that this could be done through the filing of an appropriate petition in accordance with the ERC Rules of Practice and Procedures.

Frankly, we were taken aback by this latest piece of advice as this was not mentioned at all in ERC's earlier letters to NASECORE dated March 31 and April 19, 2010.

At this point, we would like to remind the Commission that our request was anchored on the following ERC mandates:

Section 41. "To handle consumer complaints and ensure adequate promotion of consumer interests";

Section 43 (k). " To monitor and take measures in accordance with the [the EPIRA] to penalize abuse of market power, cartelization, and anti-competitive or discriminatory behavior by any electric power industry participant." and;

Section 43 (o). " Monitor the activities in the generation and supply of the electric power industry with the end in view of promoting free market competition and ensuring that the allocation or pass through of bulk purchase cost by distributors is transparent, non-discriminatory and that any existing subsidiaries shall be divided pro-rata among all retail suppliers by any electric power industry participant."

Accordingly, ERC can initiate the conduct of a public hearing in the exercise of its investigative and quasi-judicial powers under Section 43 (r) of the EPIRA and NASECORE was looking upon these ERC powers when it made the requests in all those letters cited above.

Thus, we view the ERC advise as a violation of its mandate as it is clearly an abdication of its obligation to the consumers it is mandated to protect by ensuring that the rates charged by the utilities to the consumers have been determined by the Regulator as just and reasonable. We also view this as ERC's way of discouraging consumers from pursuing their efforts to protect themselves from rates that are unjust and unreasonable and of giving undue advantage to the utilities because a formal petition would require money for lawyers and for the filing fees. It is unfortunate that NASECORE does not have the financial resources that the Commission and the utilities have.

To date, after almost nine months since we made the request for the recall of the increase in the generation charge of MERALCO for the months of March and April 2010, we have not received nor heard of the completion of ERC's investigation into the controversial WESM price spike.

This only validates NASECORE's observation of the Commission's dishonesty in dealing with the consumers and gross negligence in the performance of its obligations.

Should the Commission fail to act on our requests manifested in our letters dated April 16 and April 26, 2010, we will be compelled to seek relief by filing the appropriate complaint with the appropriate agency.

We look forward to the Commission's most favorable response.

Very truly yours,

PETE L. ILAGAN
President