

Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City

**IN THE MATTER OF THE
APPLICATION FOR THE APPROVAL
OF THE UNBUNDLED RATES
PURSUANT TO THE PROVISION OF
REPUBLIC ACT NO. 9136**

ERC CASE NO. 2001-900

**MANILA ELECTRIC COMPANY,
INC. (MERALCO),**

Applicant.

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MANIFESTATION WITH MOTION
(Re: COA REPORT No. 2009-01)

The **NATIONAL ASSOCIATION OF ELECTRICITY CONSUMERS FOR REFORMS, INC. (NASECORE)** most respectfully states:

1. On February 15, 2010, this Honorable Commission directed all interveners in the instant case to submit their respective comments on the Commission on Audit (COA) "Report No. 2009-01 Rate Audit Unbundled Charges of MERALCO FOR Calendar Years 2004 to 2007 within fifteen (15) days from receipt thereof.
2. NASECORE filed a Motion for Extension of Time to File Comment dated 22 March 2010 and it has until 01 April 2010 to file that Comment, which was a holiday thus, it filed its Comment on April 5, 2010, the next working day.
3. In its *Order* dated 20 April 2010, this Honorable Commission notified the interveners in the instant case that a hearing is set on My 14, 2010 at ten o'clock in the morning (10:00 A.M.) at the ERC Hearing Room, 15th Floor, Pacific Center Building, San Miguel Avenue, Pasig City. Additionally, the *Order* indicated that should Manila Electric Company Inc. ("MERALCO") desire to submit a reply to Mr. Lualhati and NASECORE's comments, it should do so within fifteen (15) days from receipt thereof. MERALCO was never directed to make any reply. It is therefore misleading for MERALCO to allege that it filed its reply in compliance with this Honorable Commission's *Order*.
4. While NASECORE feared that filing a comment to the COA Report would be a Pandora's box, it did so as Intervener in the captioned case in compliance

with this Honorable Commission's *Order*. In its *Comment (Re: The COA Report No. 2009-01 on the Rate Audit of Unbundled Charges of Meralco)* dated 31 March 2010, NASECORE prayed among others that MERALCO be directed by this Honorable Commission to refund "immediately in cash the ₱12.98 Billion (based on historical cost and at 12% rate of return) which MERALCO over collected in 2004 and 2007 [to] be taken from the Cash and Stock dividends declared by MERALCO." NASECORE understands that, with the COA Report, the only true issue is the procedure of the refund.

5. Thus, in its *Motion for Early Resolution with Supplemental Comment (Re: COA Report No. 2009-01)* dated 10 May 2010, NASECORE indicated that "while public consultation is ongoing, the amount conclusively determined by COA to be an overcharge should be **returned to the lawful owners** of the same – the electricity consumers." NASECORE believes that delaying the implementation of the refund of P12.98 Billion that COA conclusively found to have been unreasonably charged to consumers by requiring or allowing parties to the instant case to file pleadings upon pleadings can only be construed as a deliberate ploy to **relitigate** what has already been decided by the Supreme Court. This cannot be countenanced. In fact, **there is nothing more left for this Honorable Commission to do but to adopt the COA Report.**
6. NASECORE's fear that the instant case may just end up being relitigated is not without basis. From the very start, MERALCO was already being given undue advantage when NASECORE's various requests for updates on the Supreme Court's directive for COA assistance on the review of MERALCO's books were met with deliberate evasion and scorn from this Honorable Commission.
7. MERALCO enjoys undue advantage even in the pleadings that it is allowed to file. While MERALCO was not directed to file its comments to the COA Report, it was **given the discretion** of filing a reply to interveners' comments. Subsequently, this Honorable Commission would likewise give MERALCO the discretion to file its comments to the COA Report. This Honorable Commission has effectively allowed MERALCO, with its vast resources, the opportunity to controvert the comments of Interveners without first making it file its comments to the COA Report. This is contrary to the basic tenets of fair play.
8. In a letter dated 12 May 2010, NASECORE highlighted that the issue is this Honorable Commission's appreciation of the COA Report and **not** MERALCO's *Reply* dated 10 May 2010. Thus, during the hearing scheduled

by this Honorable Commission on 14 May 2010, NASECORE requested that MERALCO's *Reply* be expunged from the records. However, instead of having the *Reply* expunged, this Honorable Commission still ended up granting MERALCO's request that it be allowed to file comments to the COA Report. To show some semblance of fair play, this Honorable Commission allowed NASECORE the opportunity to file its own reply to the comments that will be filed by MERALCO. NASECORE finds this gesture insufficient. This Honorable Commission should have the MERALCO's *Reply* expunged and deny MERALCO's prayer therein that it be allowed to file comments to the COA Report.

9. At the very least, this Honorable Commission should already direct MERALCO to affect the refund. Immediate refund of ₱12.98 billion to the consumers is paramount! Besides, as early as August of last year, ERC already formed some judgment over the COA Report, albeit in draft form, but just decided to withhold the same. On the other hand, as early as May 2009, the management of MERALCO had already met with the COA Team for conferences to discuss the former's comments and issues on the draft audit report. In fact, MERALCO's comments on the same were already incorporated in the final COA Report.
10. While consultation with the interveners in the instant case is laudable, the same should not be used to delay this Honorable Commission's implementation of the COA Report. MERALCO has over-profitd long enough! NASECORE reiterates that this Honorable Commission should direct MERALCO to produce the amount of P12.98 billion plus legal interest from the time it collected the overcharges within thirty (30) days, which amount should be put in an escrow account.

P R A Y E R

WHEREFORE, it is most respectfully prayed that this Honorable Commission direct the expunction of MERALCO's *Reply* dated 10 May 2010 and consequently the denial of its prayer therein reserving its right to file comments to the COA Report. This Honorable Commission should also direct MERALCO to refund its P12.98 billion overcharge within thirty (30) days and have the same placed in an escrow account.

NASECORE prays for other reliefs just and reasonable in the premises.

Respectfully submitted.

Paranaque City for Pasig City, 17 May 2010.

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