

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 (MERALCO),
Applicant,

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C O M M E N T
(Re: THE COA REPORT No. 2009-01 ON THE RATE
AUDIT OF UNBUNDLED CHARGES OF MERALCO)

The National Association of Electricity Consumers for Reforms, Inc. (NASECORE) most respectfully states:

On 15 February 2010, this Honorable Commission (ERC) issued an Order directing all interveners, NASECORE included, to submit their Comment within fifteen (15) days from receipt thereof relative to the Commission on Audit (COA) Report No. 2009-01 on the Rate Audit of Unbundled Charges;

Under NASECORE'S Motion for Extension of Time to File Comment dated 22 March 2010, it has until 01 April 2010 to file that Comment, which is holiday. In accordance with law, this Comment is filed the next working day, April 5.

PREFATORY

On 26 June 2001 the Electric Power Industry Reform Act also known as R.A. 9136 or EPIRA Law was enacted to ensure that it would translate to a lower cost of electricity as well as the good quality and reliable supply of electric power. Years after, several amendatory bills have been submitted by legislators from both houses citing the following reasons and observations in their explanatory notes:

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"Nevertheless, the passage of EPIRA law were attended with an increase in electric bills, confusion in the implementation and enforcement of the provisions of the law which eventually caused a haphazard market behavior in the electric power industry

The EPIRA Law, which was originally intended to reduce the electricity cost and lift the burden of the consumers was not met and evidently became anti-poor, anti-people, benefiting only a selected number of power generators and distributors".

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"From 1998 to 2002, the electric bills of end-users for the same usage tripled, increasing by 201%. xxx

It is no coincidence therefore, that the passage of the EPIRA was accompanied by increases in electric bills."

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In the Fourteenth (14th) Congress new amendatory bills to the EPIRA were filed stating that:

"xxx It resulted in electricity cost that is burdensome on the part of consumers. At the same time, the issues the law originally intended to resolve were not properly addressed"

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"Six (6) years after its enactment, the promise of the EPIRA is now popularly known as a broken promise, with the never-ending spiraling cost of power and electricity"

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"Today, power consumers suffer under the ever-increasing cost of electricity. Now, in the House of Representatives, the very same proponents of R.A. 9136 are presently pushing for the amendment of the EPIRA law due to the continuous and rapid rise in the price of power, which may reach unmanageable"

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"After the Electric Power Industry Reform Act (EPIRA) was passed into law, every electric consumer became optimistic that the cost of power will go down in a manageable level. Five years have passed since its enactment into law, and yet, charges made by distribution companies continue to escalate"

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Common among all these amendatory bills was the objective to lessen the hardship and burden on all hapless and captive electricity consumers stemming from the high cost of power.

Regrettably, the public is not well informed of the recent two ERC Orders involving both the National Power Corporation (Napocor) provisional rate increase and the TWO (2) Manila Electric Corporation (MERALCO) rate increase under the Performance Based Regulation (PBR) rate setting methodology within a span of eight (8) months. These three (3) whammys will have a great impact on the budget of every household which definitely will make life more difficult for all energy consumers at a time when the country just experienced natural calamities like the typhoon ONdoy and Pepeng and the country is now experiencing the El Nino phenomenon and the world is reeling from a global financial crisis.

Any increase in the prices of gasoline, rice and pandesal is readily felt and therefore people immediately react and protest. However, the aforementioned increases of NAPOCOR and MERALCO rates did not meet any whimper or protest from the public.

Why?

The pricing of electricity is quite complicated not only to ordinary people but also to those who even have high level of education and expertise. Thus, MERALCO purposely makes it more enigmatic by proposing a knotty formula to fix the rate of electricity which is a Gordian knot in itself that only MERALCO can undo. And, a casual inspection of the monthly bills sent by MERALCO characterized by many unfamiliar charges would readily discourage one to understand the reason for the increase.

MERALCO'S modus operandi is compounded and becomes effective because ERC lacks transparency in fully explaining the true impact of the rate increase it granted, presumably in order to avoid resistance by the public. Needless to stress, ERC should be always candid and forthright to the public about their decisions on rate increases because of their profound repercussion on consumers' life. What is more, ERC tends to highlight more the good effect of the rate increase to MERALCO in terms of its improved financial resources (which improvement almost always goes to the pockets of MERALCO owners),

without regard to its injurious effect on consumers in terms of higher, unjust and unreasonable electricity bills.

It has been observed that whenever there is an increase, the explanation of the ERC, MERALCO and NAPOCOR (which are naturally self serving) are the ones given full and prominent media coverage; in contrast, the reactions of various consumer groups are either completely ignored or given a scanty or sketchy report.

Before the aforesaid twin increases by NAPOCOR and MERALCO, the Philippines was already known to have the highest cost of electricity in Asia second only to Japan. After these increases, it is not far fetched that the country will have the highest cost of electricity, second to none, in this part of the world.

Upon these premises, this Comment is respectfully submitted.

THE COA AUDIT REPORT No. 2009-01

The anticipated COA Audit Report No. 2009-01 was transmitted ultimately to ERC on 12 November 2009. This audit report evolved from two (2) ERC Cases, to wit:

1) ERC Case No. 2001-646 (redocketed from ERB Case No. 2000-57) which was an "Application for Approval of Revision of Rate Schedules and Appraisal of Properties with Prayer for Provisional Authority" filed by MERALCO on April 14, 2000, which would result in an increase in its basic charge of about Php0.30/kWh.

(2) ERC Case No. 2001-900, MERALCO applied for the unbundling of its rate in accordance with RA 9136 (EPIRA) of 2001. In April 2001, ERC approved the application.

The final unbundled rates of MERALCO were contained in ERC Order dated May 30, 2003, which included an overall increase of P0.17 per kwh over its bundled rates as of February 2003 levels, after giving effect to the reduction of rates ordered by the Supreme Court in April 2003. Of the actual increase, P0.0835 goes to generation and transmission charges while the balance of

P0.0856 will cover increase in related charges (distribution, supply and metering). The tariff increase was implemented in June 2003.

The ERC Order was challenged in the Court of Appeals (CA) due to the absence of audit by the COA. On the basis thereof, the CA annulled the ERC Order, which was elevated by MERALCO and ERC to the Supreme Court.

The Decision dated December 6, 2006 of the Supreme Court in the consolidated cases G.R. No. 166769 and G.R. No. 166818 upheld the ERC Decision. The High Court provisionally approved the increases applied for by MERALCO, subject to the condition, however, that such rate increases are found to be "reasonable and justified" after a COA audit consistent with the fundamental principle of social justice so emphatically expressed by the late President Mag-saysay in his statement: "He who has less in life should have more in law."

The High Court then directed the ERC "to seek the assistance of COA in conducting a complete audit on the books, records and accounts of MERALCO to see to it that the rate increases that MERALCO has asked for are reasonable and justified."

Undoubtedly, the High Court intended the provisionally approved rate to be "reasonable and justified", which can be shown only after the COA audit.

What distressed NASECORE, however, was the deafening silence of ERC after receiving the Decision of the Supreme Court.

NASECORE thus wrote ERC 5 letters (June 6 and August 7, 2007 and May 23, June 20, and July 6, 2008) to follow up ERC's request to COA to conduct the audit. ERC did not respond except to only one, the June 20, 2008 letter. ERC's June 23, 2008 reply scolded NASECORE for being tenacious in pushing for the COA audit. The ERC reply, however, NEVER mentioned its lame and useless Order dated January 6, 2007 supposedly to request the audit, but, to which the COA itself did not give due course since the copy furnished to COA was "a matter of procedure" and "It would have been a useless exercise for the COA to conduct a rate audit for rates that were no longer current/applicable. ERC did

not request for rate audit of MERALCO covering subsequent and recent adjustments." (COA letter dated June 6, 2008)

NASECORE was baffled by ERC's scolding!

NASECORE later, however, came into possession of a letter dated August 6, 2008 of MERALCO to ERC, which could possibly explain ERC's scolding. MERALCO's August 6 letter was a resistance to the COA audit in so many and roundabout words. MERALCO blamed NASECORE for requesting ERC to request the COA to conduct the audit.

NASECORE recognizes MERALCO'S gigantic economic and political power. ERC may have been intimidated by that power.

Undaunted, NASECORE pushed on with its crusade for the conduct of the COA audit.

Praise the Lord! NASECORE later found out that MERALCO in the end relented. Thus, on August 29, 2008, NASECORE wrote ERC to express its gladness that MERALCO finally yielded to such audit.

On 12 November 2009, the much awaited audit was transmitted eventually to ERC Chairperson Zenaida C. Ducut by COA Director Susan P. Garcia. The audit was clearly intended to establish whether:

- * the implementation of approved distribution rates resulted in a fair return; and
- * the recovery of generation costs have been revenue neutral to MERALCO.

The COA audit team discovered that MERALCO made a killing, so to speak, during the test years 2004 and 2007. The completed COA Audit Report of MERALCO revealed excess revenues of P8.552 billion and P4.375 billion in test last years 2004 and 2007 or a total of P12.98 billion (based on historical costs and at 12% rate of return). In conclusion COA explains on page 4 of the report how the said amount was arrived at viz:

"The excess/deficiency in distribution revenues were determined after considering the following factors in establishing

MERALCO's revenue requirements:

* Certain operating expenses amounting to P3.479 billion and P2.916 billion for CYs 2004 and 2007, respectively, were not considered recoverable from the consumers as these were not reasonable and necessary in the delivery of distribution services. These include, among others, employee pension and other benefits.

* Certain property and equipment amounting to P3.701 billion and P3.586 billion for CYs 2004 and 2007, respectively, were not considered by the team as part of the rate base as these were not used and useful in the distribution operation during the test period, among others."

It should be noted that COA did not conduct an audit of MERALCO's books of accounts for CYs 1987 to 2003, 2005, 2006 and 2008.

Moreover, COA had discovered that the rate of return granted to MERALCO in 2003 was 15.5%, which is 3.5% higher than the 12% reasonable rate established by administrative and judicial pronouncements, and which is consistently adopted by the Supreme Court.

In light of the aforesaid COA Audit Report, which revealed excess revenues of P8.552 billion in CY 2004, MERALCO was not after all entitled to an increase in 2003. In other words, ERC should have even ordered a reduction in MERALCO's rate rather than grant an increase of P0.0865/kWh on May 30, 2003 since according to the said COA Audit Report, MERALCO generated excessive revenues based on this increase.

Thus, having granted a rate increase instead of a rate reduction, ERC should now order MERALCO to immediately refund P15.430.820 Billion based on MERALCO'S Audited Financial Statements for CYs 2003 to 2009. This amount is arrived at by adding MERALCO sales in kWh for the same period and multiplying the total electricity sold by P0.0865 which amounts to P15.430.820 Billion to be refunded. A computation thereof is ANNEX "A" hereof.

As if to add insult to the P15.430.829 Billion injury of the consumers, ERC granted MERALCO anew another rate increase on December 14, 2009 in ERC

Case No. 2009-057RC amounting to P0.269 per kilowatt-hour (equivalent to 22% increase) in utter disregard of the aforesaid COA Audit Report which was transmitted to ERC as early as November 12, 2009.

This is in addition to an earlier increase of P0.257 per kilowatt-hour granted to MERALCO on May 29, 2008 under ERC Case Nos. 2008-004RC and 2008-018RC which was implemented in May 2009.

On February 24, 2010, several newspapers thus reported that the profits of MERALCO surged to 169% last year (2009), mainly due to the PBR scheme, viz: "The company's core net income which excludes one time exceptional charges, grew by 169% to P7 billion from P2.8 billion in 2008. MERALCO has a policy of distributing half of core profits as dividend". It went further to say that:

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"MERALCO said that this was "attributable" mainly to slightly higher volume of energy sold and to an adjustment in distribution rates" implemented in May last year. The P0.257/kWh hike in distribution charges came a month after the utility was allowed by the Energy Regulatory Commission to adopt the Performance Based Regulation (PBR) scheme, retiring the eight-decade old return on rate base scheme.

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"Manuel M. Lopez, company chairman said, 2009 saw outstanding results in profits, cash flows, debt profile and operating efficiency.

A newspaper clipping of Business World February 24, 2010 issue is attached marked as ANNEX "B".

One does not need to be a genius to conclude that since according to the said COA Audit Report the May 2003 ERC-approved average distribution rate generated excessive revenues to MERALCO, then, any rate increases in 2008 and 2009 are UNJUST, OPPRESSIVE, ILLEGAL and UNACCEPTABLE.

Moreover, on March 22, 2010, MERALCO disclosed to the Philippine Stock Exchange that its Board of Directors approved the declaration of a cash dividend equivalent to P3.15/share to all its common stockholders of record as of April 21, 2010 and payable on May 11, 2010. According to the report, MERALCO has P1.13 billion outstanding common shares which has a total par value of P11.3

billion. Hence, the total amount of the cash dividend to be paid to MERALCO stockholders is P3,559,500,000.00 equivalent to 31.5% which is way beyond the reasonable 12% rate of return established both by administrative and judicial pronouncements and consistently adopted by the Supreme Court.

Attached is a clipping of the March 23, 2010 issue of the Phil. Daily Inquirer as ANNEX "C".

NASECORE'S study of MERALCO's financial statements shows that MERALCO'S undue profits and the customer deposits were used to acquire additional plant and equipment. And, these acquisitions as well as the increase in appraisal of these plant and equipment are made part of MERALCO's rate base purposely to bloat its rate base. This is a "no no" because it is contrary to the declared policy of the EPIRA which is to ensure the affordability and reasonableness of the prices of electricity as well as to protect public interest and ensure consumer protection. The clear mandate in Section 43(f) of EPIRA states that the "rate setting methodology so adopted must ensure a reasonable price of electricity." Thus, the same Section 43(f) merely allows recovery of MERALCO'S "just and reasonable costs" in its operations.

Verily, undue profits, customer deposits and the plant and equipment acquisitions using its undue profits as well as the increase in their appraisal are not "just and reasonable costs" in the operation of MERALCO. Ergo, they should not be part of the rate base because Section 43(f) of RA 9136 (EPIRA) states, inter alia, that "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."

But, having inflated the total cost/value of MERALCO'S assets, the basis for the return of MERALCO'S asset or rate base will naturally be swollen, making the return on investment of the MERALCO owner-investors unreasonably higher and, as a consequence, resulting to a higher rate per kilowatt-hour. In reality, MERALCO consumers are being swindled by merely magnifying the rate

base which is one of the reasons for MERALCO's unbridled profits. In addition, consumers are also being defrauded because these deposits and the resulting excess profits are not recorded as CONSUMER EQUITY.

Thus, the resulting ratio between the actual capital of the MERALCO owner-investor (Php441M) and the capital sourced from the consumers (P31,976M), is $(441M/31,796)$ or 1:72.5. In sum, for every one (Php1.00) peso capital of the owner-investor, the capital sourced from the consumers is Php Seventy-Two Pesos and Fifty Centavos (P72.50).

This 1:72.5 ratio is the result of ERC's practice of taking into account the amounts of the loan and the appraisal increases on the historical value of all MERALCO assets which bloats the rate base in the rate-setting under RORB methodology, translating to unwarranted high rate and compounded by MERALCO's paid appraisal company which can not be considered independent.

As shown in the calculations above, only 1.36% $(441/31,976)$ of the total cost of the plant and equipment of MERALCO, should be considered as MERALCO's investment entitled to a return. In other words, from the total rate base of MERALCO, only 1.36% of the said rate base should be considered for the account of MERALCO and the rest which is 98.64% of the rate base should be for the account of the consumers.

The submission is consistent with the teaching of the Supreme Court in Republic vs. Meralco, 391 SCRA 700, to wit:

"In determining the just and reasonable rates to be charged by a public utility, three major factors are considered by the regulating agency: a) rate of return; b) rate base and c) the return itself or the computed revenue to be earned by the public utility based on the rate of return and rate base. The rate of return is a judgment percentage which, if multiplied with the rate base, provides a fair return on the public utility for the use of its property for service to the public. The rate of return of a public utility is not prescribed by state but by administrative and judicial pronouncements. This Court has consistently adopted a 12% rate of return for public utilities. The rate base, on the other hand, is an evaluation of the property devoted by the utility to the public service or the value of invested capital or property which the utility is entitled to a return. (Republic vs. Meralco, 391 SCRA 700).

NASECORE humbly submits that 98.64% of the rate base should be recognized and recorded in MERALCO's book of accounts as Consumer Equity and that same percentage of MERALCO's net profit should likewise be credited as Consumers Equity.

Further, NASECORE urges ERC to order on its own or "motu proprio" the immediate disgorgement of MERALCO's excess profits by authority of Section 45 of EPIRA. The immediate disgorgement of MERALCO's excess profits, it is respectfully submitted, should also be consistently with the teaching in *Vicente Josefa vs. Shandung Trading Corp.* G.R. NO. 150903, December 8, 2003.

NASECORE prepared a tabulation of the income of the MERALCO investors for the last 21 years starting 1987 based on the amount of its invested capital. A copy of the Tabulation is attached marked ANNEX "D".

As shown in the Tabulation, specifically under the paid-up capital or capital invested column, MERALCO'S paid-up capital amounted to Php Two Hundred Eighty-Three Million and Nine Hundred Thirty Thousand Pesos (P283,930,000.00) only from 1987-1989 while its declared stock dividends from 1988-1990 amounted to Php Two Hundred Eighty-Nine Million and Seven Hundred Twenty-Thousand Pesos (P289,720,000.00). This shows that as early as 1990, MERALCO had already recovered entirely its investments made from 1987-1989 which normally should have been recovered in at least ten (10) years.

Moreover, if we add the stock dividend declared in 1991 in the amount of P286.83M to the P289.72M total stock dividend declared from 1988-1990, we can see that MERALCO had realized a return of P576.55M or 203% ($P576.55 / P283.93$) in four (4) years alone. And if we are to add all the stock dividends from 1988 to 2007 in the amount of P10.553 billion, we can see that MERALCO had realized a return of 2,390% in 21 years or an average yearly return of 113% as against the allowable maximum return of only 12% a year.

Therefore, if these stock dividends were to be traded at the Philippine Stock Exchange at the current market price of P180 per share, these stock dividends would amount to $(P10.553B / P10 \text{ par value per share} = P1.0553B \times P180)$ Php

One Hundred Eighty Nine Billion (P189B).

And if we are to consider just the cash dividends declared and paid to the owner-investors of MERALCO from 1992-2007 which amounted to a total of P11.5B, it will show that the owner-investors of MERALCO had already realized a return of 2,793% in 21 years or an average yearly return of 133% as against the allowable maximum return of 12%.

This return of P11.5 billion in the form of cash dividends from 1992-2007 or 133% per year is far way beyond the 12% maximum allowable return per year, meaning the owner-investors have already received their profits from their respective investments, and have already recovered their original investments. Thus, NASECORE repeatedly mentions P441.6 million to highlight the fact that it is the only total paid-up capital of the owner-investors of MERALCO.

These exclude the accumulated undistributed income of P 17.232B as of December 31, 2007 which gave the owner-investors of MERALCO a return of 3,902% in 21 years or an average yearly return of 185%. All in all, the owner-investors of MERALCO earned a total of Php Thirty Nine Billion Two Hundred Eighty-Five Million Pesos (P39,285,000.00) from a total paid up capital of Php Four Hundred Forty-One Million Six Hundred Thousand Pesos (P441.6M) only thus, giving the owner-investors of MERALCO a staggering return of 8,896% on their capital in a span of 21 years or an average yearly return of 423.6% as against the maximum allowable yearly return of only 12%, without considering the current price of MERALCO stocks with a par value of P10 per share to P180 per share at the stock exchange this time thus, giving the owner-investors of MERALCO a mind-boggling windfall of (P170/P10) 1,700%.

WHERE THEN IS RATE REGULATION HERE?

THERE IS NONE... ABSOLUTELY NONE!!!!

For the above reasons, NASECORE cannot agree to the restrictive and myopic understanding of MERALCO of the RORB methodology which excludes and ignores the very definition thereof by the Supreme Court in Republic vs.

Meralco, supra.

Clearly, as defined in Republic vs. Meralco, supra, RORB refers to three major factors, namely:

- a.) rate of return,
- b.) rate base,
- c.) the return itself, which respondent MERALCO refuses to acknowledge in order to hide its excessive rates and profits.

As to the rate of return, the Supreme Court has consistently adopted a 12% rate of return for all public utilities. NASECORE'S computation shows that MERALCO earned a return of 8,896% in a span of 21 years or an average yearly return of 423.6%. If we deduct the 12% from this, the excess return will be 411.6%. Clearly, the rate of return of MERALCO is a lot higher than what the Supreme Court prescribes as the reasonable return for the capital invested by the owner-investors of MERALCO.

As to the rate base, logic dictates that the actual capital invested by the owner-investor in MERALCO or the value of its acquired assets devoted to public service represent the rate base upon which the return is applied. In this case, only P441.6 million was the total paid up capital of the MERALCO owner-investors from 1987-2007, in light of the cash dividends already received by the MERALCO owner-investors. Therefore, MERALCO's share in the rate base should only be equivalent to P441.6 million or 1.36%.

And, as to the return itself, MERALCO realized and earned an average yearly return of 423% or a whopping P 1.87 billion, instead of only P52.992 million a year (P441.6 x 12%). MERALCO's return of 423% is even a lot higher than the yield in the "five-six" business, which gives a return of 240% a year.

These returns are REPREHENSIBLE, REVOLTING, and INFURIATING as they are far beyond the maximum allowable return on capital for regulated utilities like MERALCO. These returns show lack of consumer protection which can only be described as a REGULATORY FAILURE, to say the least, or a

REGULATORY CAPTURE, at most!

By reason of the rates granted using the RORB methodology, the investors were able to earn a total of Eight Thousand Eight Hundred Ninety-Six (8,896%) percent return on their capital from 1987 to 2007, while the consumers who could not do anything are being burdened by incessant and exorbitant rate increases because MERALCO is a monopoly (since it is the only public utility in Metro Manila and in neighboring provinces) the scale, therefore, is indubitably not balanced. Ergo, the rates of MERALCO are unreasonable and unjust. Indubitably, this is the reason why the price of electricity in the Philippines is so high, second to Japan in the whole of Asia.

This REGULATORY FAILURE, at least, or this REGULATORY CAPTURE, at most, allowed MERALCO to develop the habit of overcharging its defenseless consumers. MERALCO continually overcharges its oppressed consumers at every turn and each opportunity it can find.

What is criminal is that ERC allows MERALCO to do it with impunity!!! Thus, the operation of MERALCO, a regulated entity, which is non-profit in nature has become more profitable than a regular corporation which is profit oriented and not regulated. No wonder the giant profit oriented companies like San Miguel Brewery (SMB) and Philippine Long Distance Co., Inc. (PLDT) raced to own and take control of the obviously voracious MERALCO annual profits based on its own Audited Financial Statements, which is clearly very much more than the 12% allowed by jurisprudence.

And, MERALCO has not even fully refunded the Billions it over collected in the past. It is thus not be entitled to any rate increase until it has fully refunded or paid the Billions it over collected and has paid the current over collection of P12.98 billion (based on historical costs and at 12% rate of return) as shown in the Conclusion of the COA Audit Report No. 2009-01 (see page 4).

It stands to reason, therefore, that the final unbundled rates of MERALCO, contained in ERC Order dated May 30, 2003 which included an overall increase of P0.17 per kwh should be reconsidered and set aside and that the rate of MERALCO be reverted to its bundled rates as of February 2003 levels.

ERC should at once hold in abeyance any increase of MERALCO's rates until after ERC conducts another complete audit of MERALCO's books,

records and accounts for the years 1987 to 2003, 2004 to 2006 and 2008 to the present to see to it that the rate increases are reasonable and justified .

ERC should also revisit MERALCO'S rate increases granted under the PBR. The First ERC Case No. 2008-004RC filed on January 11, 2008; Second, ERC Case No. 2008-018RC filed April 1, 2008 where the ERC issued a consolidate Decision dated May 29, 2008 and final Order on April 13, 2008; and the Third ERC Case No. 2009-057RC filed on August 7, 2009 where ERC issued a Decision on December 14, 2009 where ERC fast tracked, if ERC did not railroad, the approval of another rate increase of MERALCO'S distribution rate to give MERALCO a monthly additional income of a gargantuan Php600 Million.

Obviously, under the PBR issuances, MERALCO was given the authority to fry anew its defenseless consumers in their own lard, so to speak, despite the fact that MERALCO was not entitled to any increase since it was earning annually from 1986 to 2009 in excess of the 12% allowed by jurisprudence.

In the face of all the foregoing, to ignore the COA recommendation is to disobey ERC's mandate "to protect consumers" against exorbitant and oppressive price of electricity and "to ensure a reasonable price of electricity".

And, granting additional increases to MERALCO now would be criminal considering that MERALCO has not refunded completely the Billions it over collected or even accounted up to the present how much has already been refunded and how much is the balance to be refunded.

What is aggravating is that, instead of directing MERALCO to put in new and fresh cash capital to pay back the Billions of its over collection, the ERC saddled anew the pitiful consumers and granted MERALCO another increase of Php0.91/kwh a few days ago for generation charge. This is too much!

Our volunteer lawyers opine that the convergence of the foregoing circumstances and the man-made rotating power outages now experienced by consumers as well the current rate increases have the makings of a wholesale plunder.

"SHAPE UP or SHIP OUT" the oppressed consumers now growl at ERC!!!

MERALCO must now be required to submit to ERC, copy furnished to all interveners, NASECORE included, within 15 days from notice the list of all of all the names of the consumers referred to in the following refund orders, to wit:

(1) Php. 2.8 Billion refund for meter deposit covering the period 1986-2006;

2) Php. 30.12 Billion refund for over charge covering the year 1994;

3) Php. 827 Million refund per the 2006 Supreme Court order covering the period June to August 2004;

4) Php3.9 Billion for over collection of currency exchange for the period covering June- December 2006.

And, ERC must direct MERALCO to indicate therein the amounts already refunded as well as the balances due to the consumers, collating such amounts and adding them to the amounts overcharged in 2004 and 2007.

EPILOGUE

It is clear from page 5 of the COA audit report that the audit team was more than fair to MERALCO in the conduct of the audit. The team forwarded the draft audit report to MERALCO on April 17, 2009 for comments and discussed the issues with management in conferences held in May 2009. Generally, MERALCO claimed that:

* The team should consider all relevant ERC rules, regulations and decisions;

* COA audit includes the determination of whether the actual rate of return is consistent with the parameters of the unbundling decision and not on whether the judgment of the ERC on such matters as the inclusion or exclusion of certain assets and expenses is proper;

* The team should not consider findings under the Performance-Based Rate (PBR) setting methodology in its audit which is based on Return on Rate Base (RORB); and

* Discussions on disallowances of certain costs from WESM, monthly system losses and transmission cost under-recoveries should not be included as these are policy issues still pending

with the ERC.

MERALCO's detailed comments on the issues raised were incorporated in the report, where appropriate.

A copy of the report was also forwarded to ERC on August 4, 2009 for comment. Initially, ERC requested to be allowed to submit its comments until August 30, 2009. In its letter dated August 28, 2009, ERC, however, decided to withhold its comment in order not to pre-empt whatever action it shall take upon the release of the final report.

The COA Audit Team addressed MERALCO'S comments in that the team considered all relevant ERC rules, regulations and decisions in the conduct of the audit. The team likewise, observed the established jurisprudence on RORB methodology. The team's disallowances were anchored on the RORB principles of "used" and "useful" for properties, and prudence and reasonableness in the incurrence of operating expenses which are determined upon evaluation of pertinent documents.

The team also emphasized that it merely used the discussion and findings under the PBR Decision to determine the properties forming part of the rate base which were not relevant, used and useful, during the test years and recorded expenses which are not necessary, documented and justified.

On the other hand, while the current treatment by the ERC of purchases from WESM in excess of 10% of total requirements is still being contested by MERALCO, the team has no alternative but to include the same and adopt ERC's present position on this matter since WESM purchases formed part of 1 recoverable costs.

The COA audit report confirmed that the unbundled MERALCO rate which was provisionally approved is OPPRESSIVE and EXORBITANT. To repeat, the owners-investors in MERALCO made a killing, so to speak. They made REPREHENSIBLE, REVOLTING, and INFURIATING returns on their meager investments at the expense of the defenseless consumers.

The discovery by the COA audit team of MERALCO's OPPRESSIVE and EXORBITANT rate and the REPREHENSIBLE, REVOLTING, and INFURIATING returns on MERALCO'S meager investments are merely the tip of the iceberg.

MERALCO'S over-all abuses will be highlighted by the following:

1. Determination of the amount of the yearly appraisal increases in the valuation of MERALCO's assets from 1987 to 2009;
2. Determination of the total amounts of loans availed of by MERALCO from 1987 to 2009;
3. Determination of the monthly generation charge of the 3 IPP's of MERALCO from 2000 to 2009;
4. Determination of the guarantees which the government paid before and after MERALCO was acquired by the government in 1973;
5. Determination of the amount the Lopezes paid the government when they reacquired MERALCO after EDSA I.

P R A Y E R

WHEREFORE, it is most respectfully prayed of ERC that an Order be immediately issued as follows, to wit:

1. Declaring as overdue the balance of all unrefunded amounts due the consumers under the directives prior to the COA Report No. 2009-01 and to refund them in cash immediately;
2. Refunding immediately in cash the P12.98 billion (based on historical costs and at 12% rate of return) which MERALCO over collected in 2004 and 2007 and should be taken from the Cash and Stock dividends declared by MERALCO;
3. Determining the number of months in 2004 and 2007 that MERALCO collected the overcharges and to penalize MERALCO for those number of months as these represent the number of times it over collected;
4. Requesting COA to audit MERALCO also for the years 1987 to 2003, 2005, 2006, 2008, and 2009 in order to establish that the rate in those years were just and reasonable;
5. Divesting or Disgorging the owners-investors in MERALCO of their excess profits and the imposition of fines and penalties

pursuant EPIRA;

6. Refunding immediately the P15.430.820 Billion per computation thereof contained in ANNEX "A" hereof, less the excess revenues of P8.552 Billion in CY 2004.

7. APPROVING and ADOPTING THE COA AUDIT REPORT No. 2009-01.

8. Finally, direct MERALCO: 1) to revert back to its rate to its bundled rates as of February 2003 levels and 2) to determine and submit in 30 days the following, to wit:

a. the amount of the yearly appraisal increases in the valuation of MERALCO's assets from 1987 to 2009;

b. the total amounts of loans availed of by MERALCO from 1987 to 2009;

c. the monthly generation charge of the 3 IPP's of MERALCO from 2000 to 2009;

d. the guarantees which the government paid before and after MERALCO was acquired by the government in 1973;

e. the amount the Lopezes paid the government when they reacquired MERALCO after EDSA I.

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

Respectfully submitted.

Paranaque City for Pasig City, March 31, 2010.

PETE L. ILAGAN

President

NASECORE

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"The fear of the Lord is the beginning of wisdom" (Proverbs 9:10)

Copy furnished:

Cc: Hon. Juan Ponce Enrile, Senate President

Hon. Prospero Nograles, Speaker- House of Representatives

Hon. Leandro R. Mendoza, Executive Secretary

World Bank

Asian Development Bank
USAID
Philippine Chamber of Commerce
American Chamber of Commerce
European Chamber of Commerce

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