



National Association of Electricity Consumers for Reforms

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HON. FROILAN A. TAMPINCO

President, National Power Corporation

Agham Road Cor. Quezon Ave.

Diliman, Quezon City

Dear President Tampingco,

Greetings!

Today we received a copy of the pre-trial brief filed by the Solicitor General with the Pasig City Regional Trial Court Branch 71, in connection with MERALCO's Petition for the Judicial Declaration of the Validity of a Settlement Agreement that National Power Corp (NPC) entered into with MERALCO. We believe you have your copy of the brief, too.

Apparently, this court action was filed as a consequence of the Energy Regulatory Commission's (ERC) order on September 14, 2009 granting MERALCO's Manifestation and Motion to Suspend Proceedings under ERC Case No. 2004-109.

As a backgrounder, ERC Case no 2004-109 is the Joint Application for the Approval of the Settlement Agreement between MERALCO and NPC on claims and counter-claims arising out of MERALCO's failure to comply with a 10-year Contract for the Supply of Electricity (CSE) where MERALCO committed to purchase pre-determined quantities of electricity, at a pre-agreed price over the life of the 10-year Contract.

NPC, for its part, undertook to supply the quantities required by MERALCO, incurring contractual obligations with its own Independent Power Producers to cover MERALCO's needs. The 10-year CSE, including the claims and counterclaims arising therefrom, is familiar to you personally and to your office as president of NPC, as it was the subject of a complaint at the Office of the Ombudsman (OMB-C-A-05-0568-L; OMB-C--05-0660-L, for violation of RA 7080 and/or RA3019).

Moreover, as early as August 11, 2003 and August 29, 2003, NASECORE brought to the NPC Board's attention, through then chairman and DOE Secretary Isidro Camacho, our serious concern and stern objections to the Settlement Agreement, being unfair and oppressive to MERALCO's captive customers (MERALCO IPPs supplying electricity at an average cost of P4.21 pkwh would be preferred to NPC electricity costing only P2.19 pkwh) and disadvantageous to government and the taxpayers, as NPC would be stuck with undispached/unsold electricity, which we had to pay for under NPC's off-take commitments to its IPP's.

We therefore find it distressing that after NPC invoked and enforced the terms and conditions of the obligations of MERALCO under the 10-year CSE, at the vigorous proddings of consumers, a settlement agreement was entered into, drastically reducing the amount of the government claim. Worst yet, the agreement was unclear as to who would cover the costs of MERALCO's contractual violations.

Consequently, MERALCO tried to pass on this cost to its captive customers, and NPC became complicit in that scheme when it joined MERALCO in its Petition for ERC approval of the Settlement Agreement and authority to collect its corresponding cost from MERALCO's captive customers.

We vehemently opposed this scheme as captive customers cannot be held responsible for MERALCO's corporate decision to renege on its contractual obligations to NPC in order to favor IPPS owned or associated with the Lopez group, which was managing MERALCO at that time.

Our position then, as it is now, is that whoever benefited from the contract violation, should be the one to answer for the damage and injury arising out of that violation.

Moreover, under all known criteria of cost recovery from captive utility customers - prudence, necessity, reasonableness - recovery of penalties arising out of questionable business decisions must not pass.

After the laborious and long recitation of the background to this incipient scam on MERALCO's captive customers, the following questions beg truthful and straightforward answers:

1. What has NPC done to secure, protect and enforce its rights under the 10-year contract for the supply of electricity?
2. How much did NPC pay under its Power Purchase Agreements with its IPPs during the 10-year run of the CSE? What was the financing cost of these IPPs obligations of NPC? How much of it was for unsold electricity? How much of that electricity is attributable to MERALCO's walk-away from the CSE?
3. The original bill to MERALCO under the full terms and conditions of the CSE was for P40 Billion. this was pruned down to P20Billion. Under the Settlement Agreement, this was further pruned down to P14 Billion, and worst, to be recovered from MERALCO's captive customers. What has NPC done to secure, protect, and enforce its collections from MERALCO, under any and all of those amounts?

Considering MERALCO's latest petition in the Pasig City court, NPC should undertake all diligent effort to enforce collection of all principal amounts and penalties under the full terms and conditions of the CSE.

In this regard, we are urging NPC to file the necessary case that will enable it to collect from MERALCO the full amount that it is entitled to under the CSE.

Should NPC fail to file the said case against MERALCO, NPC will be giving MERALCO an undue advantage at the expense of the consumers and we will be compelled to seek legal remedies for the consumers against all who are parties to these transactions, including NPC. Failure to enforce a valid obligation is actionable.

We look forward to your most favorable response in protecting consumers from an unjust additional financial burden and in helping beef up government's meager financial resources by collecting all amounts due government.

Thank you.

Very truly yours,

PETE L. ILAGAN
President

Cc: NPC Board of Directors:
(Mia, please name all the NPC Directors)