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**ZENAIDA G. CRUZ-DUCUT**  
*Chairperson*  
Energy Regulatory Commission  
Pacific Center Building  
San Miguel Avenue  
Ortigas Center, Pasig City

Dear Chairperson Ducut,

Greetings!

This refers to the Performance-Based Regulation rate-setting methodology (PBR), which the Honorable Commission adopted in 2005 and subsequently availed of by several Private Distribution Utilities (DUs) and the National Transmission Company (TransCo) now operated by its concessionaire, the National Grid Corporation of the Philippines (NGCP).

In several decisions rendered by this Honorable Commission on applications under the PBR scheme, it has relied on Section 43(f) of the Electric Power Industry Reform Act (EPIRA) as basis of its authority to adopt PBR supposedly as an internationally accepted rate-setting methodology.

It is undeniable that consumers have been suffering from the increasing *transmission* and *distribution* rates on a yearly basis, since the adoption of the PBR in 2005. Proof is the ERC-granted revenues of TransCo for years 2005-2009 under the PBR scheme:

Year	2006	2007	2008	2009	2010
Case No.	ERC Case No. 2006-047RC (25April2006)	ERC Case No. 2006-061RC (18Dec2006)	ERC Case No. 2007-151RC (5Aug2008)	ERC Case No. 2008-056RC (15Dec2008)	ERC Case No. 2009-160RC (19Jan2010)
Maximum Allowable Revenue PhpMillion	P29,472.97	P33,547.70	P36,113.54	P39,510.98	P44,991.45

The 2005 annual revenue alone of P24.463Billion shows an increase of P5.009 Billion in the 2006 ERC-approved Maximum Allowable Revenue. In fact, in 2005, TransCo made a net income of P16.17 Billion.

Under the PBR scheme, the rates of DUs also periodically increased to the prejudice of consumers. ERC-approved rates for MERALCO for years 2007-2010 will show the yearly increases:

Regulatory Year	2008	2009	2010	2011
Smoothed Maximum Average Price (SMAP) Php/kWh	P1.167	P1.260	P1.361	P1.471

However, in the May 29, 2008 Order of this Honorable Commission, the 2008 and 2009 SMAP were consolidated and a new MAP was approved in the amount of **P1.2280/kWh**.

Similarly, Dagupan Electric Corporation (DECORP) and Cagayan Power and Light Company (CEPALCO) have their share of rate increases under the PBR.

What is perplexing is that ERC formulated and promulgated separate Rules for the determination of (a) transmission wheeling rates and (b) distribution wheeling rates (the "RULES"), each of which would undergo several revisions after the same had been implemented for earlier applicants or "entrants."

Thus, for transmission wheeling rates, the *Transmission Wheeling Rates Guidelines* (TWRG) of May 2003 would become the *Rules for Setting Transmission Wheeling Rates* (RTWR) of September 2009.

For distribution wheeling rates, on the other hand, the *Guidelines on the Methodology for Setting Distribution Wheeling Rates: Privately Owned Distribution Utilities* (DWRG) of December 2004 would later be revised to become the *Rules for Setting Distribution Wheeling Rates for Privately Owned Distribution Utilities Entering Performance Based Regulation: Second and Later Entry Points* (RDWR) of December 2006, which itself has been the subject of revision via the ERC's *Position Paper on the Regulatory Reset for the July 2010 to June 2014 Regulatory Period for the Third Entry Group of Privately Owned Distribution Utilities subject to Performance Based Regulation* of December 2008.

The complexity of the RULES is aggravated by the fact that the same allow the **inclusion of budget forecasts (part of which are capital needed for expansion of services and corporate taxes)**, which are not expenses incurred in the operation of the utility. Yet these budget forecasts are charged to the

consumers' rate payments as if they were just and reasonable costs incurred in the operation of the utility thus, rates are forcibly and unreasonably increased.

The RTWR for one requires the Transmission Utility to file an application for the approval of its proposed **Annual Revenue Requirement for five (5) consecutive years**, which Revenue Requirement becomes the subject of ERC determination/approval. We find this contrary to the mandate of ERC, which is RATE setting not REVENUE setting. Section 43 (f) of the EPIRA provides that *"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"*. [emphasis supplied].

The cited provision is clear that rates are meant to allow RECOVERY of just and reasonable costs and a reasonable return. Only just and reasonable costs incurred in the operations of the utility are subject to recovery through the rate determined by ERC.

Therefore, the approval of annual revenues for five (5) consecutive years instead of rates can only be inconsistent with the EPIRA and patently illegal. We can only find that the adoption of PBR gives undue and clear advantage to the utilities to the prejudice of the consumers, who are the captive market and whom the ERC is mandated to protect.

Similarly, the DWRG/RDWR requires the Distribution Utilities (DUs) to file an application for the approval of its proposed **Annual Revenue Requirement for four (4) consecutive years**, upon which the Maximum Average Price (MAP) is derived. This serves as the RATE which is translated or allocated by the DUs in setting the rate schedule for its distribution, supply and metering charges for each customer class or segment and becomes the subject of ERC determination/approval. Thus, we also find this contrary to the mandate of ERC, which is RATE setting not REVENUE setting.

In order for us to understand and perhaps appreciate such decision by ERC to shift from the Return On Rate Base (RORB) Rate Setting Methodology, may we ask the Honorable Commission the following questions?

1. Is the RORB rate setting methodology unable to meet its objective of fixing the rates such that it will allow recovery of just and reasonable costs and a reasonable return on rate base to enable the entity to operate viably?
2. Is it the position of the ERC that the criteria provided under the EPIRA and recognized by jurisprudence that "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" are no longer applicable under PBR?
3. Was TransCo not operating viably when it availed of the PBR?

4. Were the private distribution utilities not operating viably when they availed of the PBR?
5. What were the inadequacies of RORB vis-à-vis the provision that “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”?
6. Where did ERC first hear or learn of this PBR ?
7. What agency/agencies introduced PBR to the Honorable Commission?
8. What alternative rate setting methodologies did the ERC consider other than the PBR?
9. In what cities/countries is this PBR used? Did the rates in these cities/countries increase when they adopted the PBR?
10. What were the rates before and after PBR?
11. What specific seminar/workshops on PBR did ERC Commissioners and/or Directors attend? Where, when, and how many?
12. Specifically, who were the ERC Commissioners and Directors who attended these seminars/workshops abroad?
13. Who funded the travel and attendance of the Commissioners/ Directors to these seminars/workshops abroad?
14. Who were/are the Foreign Consultants on PBR assigned to assist ERC? Who provided these Consultants?

Relative to the above questions, may we be furnished the following?

1. Copies of all materials secured by the Commissioner/Director from these seminars/workshops on PBR which they attended;
2. Copies of all ERC rules, promulgations, and specific provisions of laws pertaining to the adoption and implementation of this PBR;
3. Copies of the Travel Orders and Vouchers of Travel Allowances of the ERC Commissioners and/or Directors who attended the seminars/workshops on PBR abroad;
4. Copies of the Airline Tickets and Hotel Official Receipts relative to the attendance of these seminars/workshops on PBR;
5. Copies of communications with Energy Regulators in other countries that have adopted this alternative form of rate-setting methodology;
6. Copies of the transcripts of the Commission’s deliberations on the pros and cons of this alternative form of rate-setting methodology, and the ERC Resolution adopting the same before its adoption by the Commission; and
7. Copy of the ERC Resolution allocating and defining the budget for the adoption of this alternative form of rate-setting methodology.

This request is anchored on our desire to have a deeper understanding of PBR which has caused unprecedented and unbridled rise in the cost of our

electricity. With ERC's cooperation and help, we hope that we may be able to participate more intelligently in public hearings on applications under PBR and to determine whether PBR addresses the mandate of ERC to **determine, to fix or set just and reasonable rates.**

We realize that our current request may require some time from this Commission, but we hope that the Commission will also realize that this PBR is inhumanly making the lives of millions of electricity consumers more miserable due to the atrociously high rate of electricity.

We look forward to the Commission's immediate and favorable response.

Thank you and God bless.

Very truly yours,

**PETE L. ILAGAN**  
President

Cc: **Hon. Juan Ponce Enrile, Senate President**  
**Hon. Prospero Nograles, Speaker- House of Representatives**  
**Hon. Leandro R. Mendoza, Executive Secretary**  
**Hon. Gregorio B. Honasan, Chair, Senate Committee on Energy**  
**Hon. Ma. Merceditas N. Gutierrez, Ombudsman**  
**Hon. Jose C. Ibazeta, DOE Secretary**  
**Hon. Mikey M. Arroyo, Chair House Committee on Energy**  
**Ms. Elzadia Washington, Mission Director-USAID**  
**Mr. Bert Hofman, Country Director-World Bank**  
**Mr. Neeraj Jain, Country Director- Asian Development Bank**  
**Mr. Francis C. Chua, Philippine Chamber of Commerce**  
**Mr. Austen Chamberlain, American Chamber of Commerce**  
**Mr. Hubert D' Aboville, European Chamber of Commerce**