

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

**NATIONAL ASSOCIATION OF
ELECTRICITY CONSUMERS FOR
REFORMS, INC.,**

Petitioner,

versus

ERC Case No. _____

HON. SECRETARY OF ENERGY,
Respondent.

x-----x

P E T I T I O N

Petitioner **NATIONAL ASSOCIATION OF ELECTRICITY CONSUMERS FOR REFORMS, INC.** (“**NASECORE**”), by counsel and to this Honorable Commission respectfully states that:

THE PARTIES

1. **NASECORE** is a non-stock/non-profit corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at No. 10 Bayside Court Compound, 680 Quirino Avenue, Tambo, Parañaque City, where it may be served with pleadings and processes of this Honorable Commission. It is an organization with the objective of promoting, advancing, and protecting the interest of ordinary consumers, with members who are consumers of various distribution utilities in Mindanao and throughout the country and who stand to suffer because of the protracted inaction of herein respondent. It is represented herein by its President, **PETRONILO ILAGAN**, who is duly authorized to file this Petition. Attached as **Annex “A”** is a copy of the Secretary’s Certificate authorizing Mr. Ilagan to represent **NASECORE**.
2. Respondent Secretary of Energy (the “Energy Secretary”) is the head of the Department of Energy (the “DOE”), charged with the mandate under Republic Act No. 9136 otherwise known as the Electric Power Industry Reform Act of 2001 (the “EPIRA”) of ensuring the reliability, quality and security of supply of electric power. He may be served with pleadings and processes of this Honorable Commission at the Energy Center, Merritt Road, Fort Bonifacio, Taguig City.

NATURE OF THE PETITION

3. It is pursuant to the failure of the Energy Secretary to comply with his statutory mandate of *ensuring the reliability, quality and security of supply of electric power* that NASECORE, representing its member consumers in Mindanao, comes before this Honorable Commission to seek affirmative relief under the EPIRA, pursuant to Rule 5, Section 4, of the ERC Rules of Practice and Procedure (the “ERC Rules”), which provides:

“By means of a petition, a person, other than an applicant or complainant, petitions the Commission for **affirmative relief** under any statute or other authority delegated to the Commission. It shall state clearly and concisely the petitioner’s grounds of interest in the subject matter, the facts relied upon, and the relief sought, and shall cite by appropriate reference the *statutory provision* or other authority relied upon for relief. If the relief sought affects the rights of other persons, it shall implead all these other persons as respondents and state their complete names and addresses” [emphasis supplied].

4. NASECORE contends that respondent’s failure to comply with his legal duty under the EPIRA, tantamount to a dereliction of duty, has resulted in power outages in Mindanao, leading to no less than a declaration of a state of calamity in the area, and a possible needless invocation of Section 71 of the EPIRA¹ to the detriment of millions of electricity consumers.
5. The resulting damage to electricity consumers, not only for deprivation of steady and reliable electricity but also for the swelling in the electric bill, is *imputable* upon the respondent. Respondent should be made liable for the ill effects of his failure to comply with his legal obligation under the EPIRA.
6. Respondent’s nonfeasance is a *continuing violation* of the *right of the people to electricity* and to be reasonably charged for their consumption,² necessitating redress before this Honorable Commission as regulator of the electric power industry. Respondent’s inaction has undermined and weakened the economic system of the country, akin to nothing less than economic sabotage.³

¹ “Upon the determination of the President of the Philippines of an imminent shortage of the supply of electricity, Congress may authorize, through a joint resolution, the establishment of additional generating capacity under such terms and conditions as it may approve.”

² *Republic vs. Meralco* supra.

³ Under Presidential Decree No. 1404 (Further Amending Article 125 of the Revised Penal Code, As Amended), economic sabotage means “any act or activity which undermines, weakens or renders into disrepute the economic system or viability of the country or tends to bring about such effects to include, but not necessarily limited to, the following offenses: ... price manipulation to the prejudice of the public especially in the sale of prime commodities in violation of price control laws....”

**SUMMARY OF RELEVANT FACTS
AND APPLICABLE LAWS**

7. The EPIRA took effect in June 2001, fifteen (15) days after its publication in two (2) national paper of general circulation. Under the EPIRA amending Section 5 of Republic Act No. 7638 otherwise known as “The Department of Energy Act of 1992” (the “Energy Act”), the DOE shall “ensure the *reliability, quality and security of supply of electric power.*”⁴ Towards this end, the DOE shall “exercise supervision and control over all government activities *relative to energy projects* in order to attain the goals embodied in Section 2 of RA 7638,”⁵ which provides that it is a declared policy of the State “to ensure a *continuous, adequate, and economic supply of energy* with the end view of *achieving self-reliance in the country’s energy requirements*”⁶ [emphasis supplied].
8. Pursuant to its mandate under and for the purpose of implementing the relevant portions of the EPIRA, the DOE issued DOE Circular in 2003 reiterating that all distribution utilities must “take cognizance and assume full responsibility to *forecast, assure and contract* for the **supply of electric power** in their respective franchise areas to meet their obligations as a distribution utility”⁷ [emphasis supplied].
9. The DOE Circular under Section 4 likewise provides that “any distribution utility which fails to comply shall be **immediately recommended by the [DOE]** for *appropriate sanction, fines and/or penalties*, including modification and revocation of certificates of public convenience and/or necessity, license or permits of franchised distribution utilities, **to the ERC.**”
10. As may be gleaned from the DOE Circular, the Energy Secretary already knew by 2003 that its ten-year Power Development Plan indicated “a **critical reserve requirement** in various regions of the country.”⁸
11. Despite the Energy Secretary’s knowledge of the said *critical reserve requirement*, NASECORE was never short on reminding the Energy Secretary of his duties and powers under existing laws.
12. In a letter dated 21 January 2009, NASECORE requested the Energy Secretary for the list of distribution utilities that have complied with the DOE Circular, including the following information, in the hope of giving consumers the opportunity to appreciate DOE’s role in ensuring the reliability and stability of the supply of electricity: (a) contracted capacity in megawatts and cost per

⁴ Section 37(d).

⁵ Section 37(h).

⁶ RA 7638, Section 2(a).

⁷ Section 1.

⁸ See preamble of DOE Circular.

- kilowatt-hour; (b) name of supplier; and (c) period covered by each power supply agreement/contract. Attached as **Annex "B"** is a copy of NASECORE's letter.
13. In a letter dated 25 February 2009, the DOE through its director of the Electric Power Industry Management Bureau transmitted to NASECORE the list of (a) Transition Supply Contacts Status of Luzon DUs with NPC, (b) Transition Supply Contacts Status of Visayas DUs with NPC, (c) Transition Supply Contacts Status of Mindanao DUs with NPC, and (d) Electric Cooperatives with Power Supply Agreement application in the ERC. Attached as **Annex "C"** is a copy of the DOE letter.
 14. Anchoring its request on DOE's duty of ensuring secure, quality, and reliable electricity, NASECORE again wrote the Energy Secretary on 27 January 2010 asking for concrete actions to avoid recurrence of power outages. Attached as **Annex "D"** is a copy of the said letter.
 15. On 15 February 2010, another letter from NASECORE was sent to the Energy Secretary suggesting that the same should use full extent of DOE powers "to cultivate and propel the interest of prospective investors in the construction of the much needed generation plants." It likewise commended the Energy Secretary for his assurance that there would no repetition of the rotating brownouts. Attached as **Annex "E"** is a copy of the letter.
 16. The Energy Secretary's assurance of "no rotating brownouts" turned out to be an empty promise. The rotating brownouts continued throughout the country. Millions of hapless consumers needlessly suffered and are needlessly suffering.
 17. Less than a month after NASECORE's last letter to the Energy Secretary on 12 March 2010, Proclamation No. 2022 was issued, declaring a "State of Calamity in Mindanao in view of the extensive effects of the power crisis in the area" and directing DOE "to take necessary measures to address and resolve [the Mindanao] crisis expeditiously."
 18. Clearly, the Energy Secretary failed to remedy the issue contained in its ten-year Power Development Plan referred to in the DOE Circular that indicated "a *critical reserve requirement* in various regions of the country." Clearly, the Energy Secretary failed to comply with his legal mandate of ensuring the "*reliability, quality and security of supply of electric power.*"

DISCUSSION

19. NASECORE comes before this Honorable Commission, representing its members in Mindanao, to pray that it exercise its broad regulatory powers over the electric power industry and compel respondent to comply with his legal obligation under the EPIRA in order to put an end to the needless suffering of millions of Mindanao consumers whose right to electricity is wantonly violated because of respondent's dereliction of duty and/or utter disregard of the law.
20. In no uncertain terms, Section 6 of Article XII of the Constitution provides that the "use of property bears a *social function*, and all economic agents shall contribute to the common good." Thus, the operation of economic enterprises is "subject to the duty of the State to promote distributive justice and to intervene when the common good so demands." In this regard, any franchise for "the operation of a public utility" shall be "subject to *amendment, alteration or repeal* when the common good so requires."⁹ The Constitution even warns that "acts which circumvent or negate any of the provisions of [Article XII] shall be considered *inimical to the national interest* and subject to criminal and civil sanctions, as may be provided by law" [emphasis supplied].
21. Settled jurisprudence also highlights the social dimension of private property that is used for public purpose by saying that such private property "ceases to be *juris privati* only and becomes subject to regulation. The regulation is to promote the common good. Submission to regulation may be withdrawn by the owner by discontinuing use; but as long as use of the property is continued, the same is subject to public regulation"¹⁰ [emphasis supplied].
22. In *Republic vs. Manila Electric Company*,¹¹ the Honorable Supreme Court through Justice J. Puno emphasized that "the economic rights of the people, especially the poor," ought to be "protected with the same resoluteness as their right to liberty." Understanding very well that the business of electricity is imbued with public interest, the Court recognized nothing less than "the RIGHT of our people TO ELECTRICITY and to be reasonably charged for their consumption" [emphasis supplied].
23. This recognition of the people's **right to electricity** is also given meaning in the EPIRA, which, under Section 2, declares as the policy of the State to: (1) "ensure and accelerate *total electrification* of the country"; (2) "ensure the *quality, reliability, security and affordability of the supply* of electric power"; (3) "*protect the public interest* as it is affected by the rates and services of electric utilities and other providers of electric power"; and (4) "establish a *strong and*

⁹ Art. XII, Section 11.

¹⁰ *Republic vs. Manila Electric Company*, G.R. No. 141314 (15 November 2002).

¹¹ *Id.*

- purely independent regulatory body* and system to ensure consumer protection and enhance the competitive operation of the electricity market” [emphasis supplied].
24. Thus, side by side with the recognized **right to electricity** are the explicit provisions of the EPIRA pointing to the **correlative duty** of the Department of Energy (the “DOE”) to “*ensure the reliability, quality and security of supply of electric power*”¹² fortified by its quasi-legislative¹³ and incidental¹⁴ powers, and the assurance of an independent Energy Regulatory Commission (the “ERC”) with far-reaching **functions** including the imposition of “*finest or penalties for any non-compliance with or breach of [the EPIRA], the IRR of [the EPIRA] and the rules and regulations which it promulgates or administers.*”¹⁵ With its immense responsibility of regulating the electric power industry,¹⁶ the ERC is equipped by the EPIRA with quasi-legislative and quasi-judicial powers, including the power to “REVOKE, review and modify... certificates, licenses or permits in appropriate cases”¹⁷ and to impose administrative SANCTION on any erring government official.¹⁸
25. Proclamation No. 2022 identifies the “*absence of new large generation capacities*” aggravating the power supply situation in Mindanao. The Proclamation itself indicates a *finding of fact* brought about by respondent’s failure to comply with his legal obligation under the EPIRA. The Proclamation itself proves and highlights respondent’s dereliction of duty!
26. A cursory reading of the Proclamation will show that it does not even give the DOE additional powers. In fact, the taking of “necessary measures” can very well be covered by the DOE’s incidental powers¹⁹ in relation to the DOE’s power and function of ensuring the “reliability, quality and security of **supply of electric power.**”²⁰ Surely, the Energy Secretary does not need the national calamity fund for him to comply with the clear mandate of the EPIRA!
27. NASECORE contends that, with or without the Proclamation, the supply of electric power in the country, specifically in Mindanao, will continue to be inadequate until and unless the Energy Secretary comply with his legal obligation under the EPIRA. There can be no justification therefore for the Energy Secretary’s failure to “*ensure the reliability, quality and security of supply*

¹² Section 37 (d).

¹³ Section 37 (p).

¹⁴ Section 37 (q).

¹⁵ Section 43 (l).

¹⁶ Sections 38-46.

¹⁷ Section 43 (p).

¹⁸ Section 46.

¹⁹ Section 37 (q).

²⁰ Section 37 (d).

- of electric power.” There can also be no justification for the distribution utilities’ failure to “supply electricity in the least cost manner.”*
28. Less we forget, the OBLIGATION OF SUPPLYING ELECTRICITY falls on the distribution utilities. On the other hand, the OBLIGATION OF ENSURING RELIABLE, QUALITY AND SECURE ELECTRICITY falls on the office of the Energy Secretary. The failure of distribution utilities *to supply electricity* is thus also the failure of the Energy Secretary *to ensure the reliability, quality and security of electric supply*.
29. In view of the foregoing, the lack of generation capacities in Mindanao can only be attributable to the failure of herein respondent to comply with his obligation under the EPIRA. This *failure to supply reliable, quality and secure electricity* is a dereliction of respondent’s statutory duty under and a violation of the EPIRA.
30. NASECORE maintains that, while there are power outages arising from the inadequate supply of electricity, there will be continuing violation of each affected consumer’s right to electricity. There is therefore a compelling need for this Honorable Commission to step in as regulator of the electric power industry. This Honorable Commission must make true its mandate under the EPIRA of ensuring “the adequate promotion of consumer interests”²¹ and become a true protector of consumer rights. This Honorable Commission must sanction respondent for the power crisis in Mindanao for his failure to comply with the EPIRA²² and for breach thereof.²³
31. The electricity consumers of Mindanao have suffered so much and for far too long to be denied recognition and help.
32. It has been eighteen (18) years since the effectivity of the Energy Act, nine (9) years since the promulgation of the EPIRA, and seven (7) years since the publication into law of the DOE Circular. And yet, the supply of electric power in the country continues to be unreliable, unstable, inadequate, and expensive.
33. There is a need for immediate action now.

PRAYER

WHEREFORE, premises considered, it is respectfully prayed that this Honorable Commission, after due notice and hearing, render judgment directing respondent Secretary of Energy to:

²¹ Section 41.

²² Section 43(e).

²³ Section 43(l).

1. Comply with its legal mandate under the EPIRA of ensuring the reliability, quality and security of supply of electric power;
2. Submit to this Honorable Commission a report on actual measures taken and his planned course of action to resolve the energy crisis in Mindanao; and
3. Immediately recommend to this Honorable Commission the distribution utilities that have failed to comply with their legal obligation under the EPIRA of supplying electricity in the least cost manner for appropriate sanction, fines and/or penalties, including modification and revocation of certificates of public convenience and/or necessity, license or permits of franchised distribution utilities.

Other just and equitable reliefs are likewise prayed for.

Cebu City for Pasig City, 30 March 2010.

**A LAW FIRM
ARRIOLA & ASSOCIATES**

By:

EDISON JOHN A. ARRIOLA
Counsel for Nasecore
University of the Philippines Visayas
Cebu College, TBI Suite 319
Gorordo Avenue, Lahug, Cebu City
Telephone: +63-32-5823475
PTR No. 6416122; Cebu; 03/02/10
IBP O.R. No. 809869; Cebu City; 03/02/10
Attorney's Roll No. 51742
MCLE Compliance No. II-0008092
MCLE Compliance No. III - pending