

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

IN THE MATTER OF THE APPLICATION  
FOR APPROVAL OF THE ANNUAL  
REVENUE REQUIREMENT AND  
PERFORMANCE INCENTIVE SCHEME  
FOR THE THIRD REGULATORY PERIOD  
(2011 TO 2015) IN ACCORDANCE WITH  
THE PROVISIONS OF THE RULES FOR  
SETTING DISTRIBUTION WHEELING  
RATES (RDWR), AS AMENDED,

ERC CASE NO. 2010-069RC

MANILA ELECTRIC COMPANY, INC.  
(MERALCO)

*Applicant.*

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## MANIFESTATION WITH MOTION

Intervenor **NATIONAL ASSOCIATION OF ELECTRICITY CONSUMERS FOR REFORMS, INC. ("NASECORE")**, through its President and to this Honorable Commission, most respectfully states that:

1. The continuing increase in the rate of electricity runs contrary to the declared policy of the EPIRA of ensuring "the quality, reliability, security and *affordability* of the supply of electric power" and the obligation of power utilities of supplying electricity to their captive market "*in the least cost manner.*" NASECORE declares that these oppressive rates of electricity are illegal, unethical, and immoral. The failure of regulators to address these oppressive rates is similarly illegal, unethical, and immoral.

2. NASECORE finds itself in a very disappointing situation as the very technical nature of the proceeding in the instant application deprives consumers of the opportunity to effectively and meaningfully appreciate the instant application, which seeks higher annual revenues for the next four (4) years which translates to higher power distribution rates in the guise of providing efficient service. This is aggravated by the fact that the current annual revenue approved by the Commission plus the increase it seeks under the instant application will all be passed on to the consumers.

**DOCUMENTS TO ESTABLISH  
EXISTENCE AND REASONABLENESS  
OF COSTS**

3. Section 4, Rule 15 of the ERC Rules of Practice and Procedure (the "ERC Rules") provides that "[i]n any proceeding pending before the Commission, the Commission and any party may request such data, studies, works, papers, reports, and information as are reasonably relevant to the proceedings and are permitted by these rules or by law."

4. Section 4, Rule 5 of the ERC Rules does not indicate that only a party to the case may be asked to provide data. Thus, to avoid delays in the production of certain data and consistent with the ERC Rules, NASECORE respectfully requests the Honorable Commission for data that will help NASECORE in its careful evaluation and analysis of the instant application. It is NASECORE's hope that this Honorable Commission will provide the data so requested consistent with its mandate of *protecting consumers* and its function as an *independent* regulatory body. It is NASECORE's understanding that the requested data should be in the possession of the Honorable Commission as regulator of distribution utilities like Meralco.

5. It is because of the great public interest involved, because of the overcharges that have yet to be refunded by Meralco, because of the excessive profits that Meralco continues to enjoy, and because of the very spirit of the EPIRA that NASECORE requests for all documents of Meralco - including but not limited to *invoices, vouchers, official receipts* and *board resolutions* - that have been subjected by the ERC to the universally accepted regulatory criteria on reasonable expenses and assets: (a) that expenses must be necessary, recurring and redounding to the interests of consumers and (b) that assets acquired must be used and useful or in actual service.

6. NASECORE's request for documents is more than reasonably relevant in the proper evaluation of the instant application. In the absence of this exercise of scrutinizing the *invoices, vouchers, official receipts, and board resolutions* as supporting documents for the operating expenses and asset acquisitions, there is no way to establish the *existence* of claimed costs, much less their *justness* and *reasonableness*.

7. This Honorable Commission must readily make available the requested data and/or documents to Intervenors to aid them in their careful evaluation and

analysis of the instant application *to avoid regulatory lag, which creates new costs for the consumers to pay.*

**DOCUMENTS TO ESTABLISH  
CAPITAL INFUSION THAT MAY BE  
THE SUBJECT OF A REASONABLE  
RETURN**

8. Our Supreme Court in *Republic vs. Meralco*<sup>1</sup> was very clear that a utility may earn a fair return only upon the capital so invested. The Supreme Court quoted Mr. Justice Brandeis, who wrote:

"The thing devoted by the investor to the public use is not specific property, tangible and intangible, but capital embarked in an enterprise. **Upon the capital so invested**, the Federal Constitution guarantees to the utility the opportunity to earn a fair return... **The Constitution does not guarantee to the utility the opportunity to earn a return on the value of all items of property used by the utility, or of any of them.**

....

The investor agrees, by embarking capital in a utility, that **its charges to the public shall be reasonable**. His company is the substitute for the State in the performance of the public service, thus becoming a public servant. The compensation which the Constitution guarantees an opportunity to earn is the reasonable cost of conducting the business" [emphasis supplied].

9. Clearly, there can be no determination of a reasonable return unless the actual capital investment is determined. Meralco is not guaranteed "to earn a return on the value of all items of property used" by it.

10. NASECORE thus requests for data on the *actual capital investment/infusion* of Meralco stockholders into Meralco operations from 1987 (when MERALCO's control was given back to the Lopez) up to the year 2009, if any.

11. The total capital investment of Meralco must be its actual and true capital investment infused in the business of electricity distribution, devoid of the following: (a) yearly appraisal increase of its assets; (b) amount of loans used in acquiring new assets; (c) amount of customers' deposit Meralco used as capital; and (d) rate increase granted under ERC Case Nos. 2001-900RC and 2001-646RC, ERC Case No. 2008-004RC and 2008-018RC, and ERC Case No. 2009-057RC.

12. A determination of the actual and true capital investment of Meralco shall allow the *separation of capital from Meralco itself*, and *capital sourced from loans, customer deposits, appraisal increase and rate increases*. Consistent with jurisprudence, *only the capital investment from Meralco should be the subject of a fair return*.

#### LOANS, CUSTOMER DEPOSITS, AND RATE INCREASES AS OTHER "CAPITAL" NOT INFUSED BY MERALCO

13. It is worth noting that *loans* and *customer deposits* used as additional capital for Meralco are guaranteed payment through ERC-approved rates that are charged to and paid by captive customers. In fact, Meralco is not asked for collateral on its loans because consumers are the ones penalized when they do not pay their monthly bill through service disconnection. This makes the business of Meralco truly risk-free.

14. In addition, the combined annual revenue approved by the Honorable Commission for the 1<sup>st</sup> and 2<sup>nd</sup> Regulatory Years under the 2<sup>nd</sup> Regulatory Period in March 2009 gave Meralco a *rate increase of ₱0.257/kWh* which when multiplied by its monthly sales of two billion two hundred fifty million kilowatt-hours (2.25B kWh) would translate to an *additional monthly revenue of ₱578 Million*. Further, the annual revenue approved by the Honorable Commission for the 3<sup>rd</sup> Regulatory Year under the 2<sup>nd</sup> Regulatory Period in April 2010 gave MERALCO another *rate increase of ₱0.269/kWh* which when multiplied by its monthly sales of two billion two hundred fifty million kilowatt-hours (2.25B kWh) would translate to an *additional monthly revenue of ₱605 Million*.

15. These consecutive rate increases in 2009 and 2010 were all purportedly for capital expenditures, meaning for the needed additional capitalization of MERALCO. Clearly, these additional capital requirement of Meralco are *provided by the captive customers* through their monthly payment of their Meralco bills, *under pain of service disconnection* if payment is not made promptly.

16. If these amounts generated from rate increases are not treated separately from the actual capital infused by Meralco, *they will effectively be added to the rate base or capital* of Meralco to the prejudice of consumers who have actually provided said amounts. This means that consumers are even penalized for the payments they have made because a percentage of return will be computed on said payments. Because of

this practice, rates have nowhere to go except upward, contrary to the declared policy of the EPIRA.

17. Thus, for the purpose of determining the actual and true capital investment, the three (3) items cited above must not be treated and recognized as Meralco's capital investment as they are not, as explained above. Otherwise, rates will naturally be unreasonably and unjustly high as they are now.

#### REQUEST FOR OTHER DATA

18. Consistent with its discussion above, NASECORE likewise requests for the following relevant data, needed to better appreciate the instant application and prepare for remedies available to NASECORE as intervenor:

- a. ON EXPENSES WITH SUPPORTING VOUCHERS, INVOICES, OFFICIAL RECEIPTS AND MERALCO BOARD RESOLUTIONS.
  - Actual and True Capital Investment of Meralco from the 1<sup>st</sup> Regulatory Year (2008) of the Second Regulatory Period Up to the Latest Approved Regulatory Year of Said Period;
  - From the Annual Revenues Beginning in 2008, Actual amount Used for Operating Expenditures and Capital Expenditures;
  - Components (i.e., itemized expense accounts) of the Operational Expenses and their Corresponding Values;
  - Annual Total Compensation Package for Each Director of Meralco's Board, including the Chairman of the Board;
  - Annual Total Compensation Package for Each Executive of Meralco, including the President of Meralco;
  - Number of Travels (Local and Abroad) of Each Meralco Officer and Cost for Each Travel, Including Hotel Accommodations and Per Diem; and
  - Other Allowed Expenses.
- b. ON ASSETS ACQUIRED
  - Identification of the Individual Assets Acquired During the 1<sup>st</sup> and 2<sup>nd</sup> Regulatory Years of the 2<sup>nd</sup> Regulatory Period under ERC Case Nos. 2006-004RC and 2006-004RC, and Their Individual Cost;
  - Supporting Documents of Said Asset Acquisitions (e.g., invoices, vouchers, official receipts and board resolutions, approving said asset acquisitions);
  - ERC's Report on its Ocular Inspection to Determine Whether All These Assets Were Used, Useful, and In Actual Service; and
  - Number of Vehicles (With Cost, Make, Model of Each Vehicle, and To

Executive Officers Under the Said Regulatory Years With Supporting Documents of Said Asset Acquisitions (e.g., invoices, vouchers, official receipts and board resolutions, approving said asset acquisitions);

19. In the absence of the aforesaid requested documents, NASECORE believes that this Honorable Commission can have no basis for granting any annual revenue requirement application, which translates to higher electricity rates. NASECORE's request for documents is meant to give life to the process of rate setting, consistent with this Honorable Commission's regulatory duty of promoting the welfare of consumers.

Other reliefs just and equitable are likewise prayed.

Parañaque City for Pasig City, 03 November 2010.

  
**PETE L. ILAGAN**  
President, Nasecore

#### EXPLANATION ON SERVICE BY REGISTERED MAIL

The foregoing pleading is being served upon the other parties by registered mail, personal service not being practicable due to time constraints and lack of office personnel to effect the same.

##### *Copy furnished:*

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R.R.# 1323  
Domestic Airport Post thru  
Nov 3, 2010

**ENGR. SIEGFRIEDO A. VELOSO**  
Federation of Village Association  
Don Jesus Blvd., Alabang Hills Village  
Muntinlupa City

R.R.# 1322  
Domestic Airport Post thru  
Nov 3, 2010

**National Grid Corporation of the Philippines**  
Quezon Avenue, cor BIR Road  
Diliman, Quezon City

R.R.# 1324  
Domestic Airport Post thru  
Nov 3, 2010

**MR. GENARO C. LUALHATI**  
183 Tanguile St., Marikina Heights  
Marikina City

R.R.# 1321  
Domestic Airport Post thru  
Nov 3, 2010

**National Transmission Corporation**  
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Diliman, Quezon City

R.R. No. 1325  
Domestic Airport Post thru