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GUIDELINES IN COMPUTATION OF “RETURN ON INVESTMENT OF OIL COMPANIES”

ERB RESOLUTION NO. 90-08, June 19, 1990

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WHEREAS, Congress enacted Republic Act No. 6952 (approved May 17, 1990) establishing the Petroleum Price Standby Fund (PPSF) and appropriating fund to expand the Oil Price Stabilization Fund (OPSF) in the light of the severe depletion of the OPSF which as of November 30, 1989 had a negative balance of P7.2 Billion;

WHEREAS, the claims of oil companies against the OPSF which will be covered by the PPSF are subject to certain conditions, one of which as prescribed in Section 2 of the said law is that the “return on investment of the oil companies does not exceed 12%”;

WHEREAS, the claims filed by the oil companies for reimbursement from the PPSF are in the nature of “cost recovery”, representing largely the difference between the higher cost of crude oil imported by the oil companies as compared to the reference price of crude on which the domestic price of petroleum products are based;

WHEREAS, being in the nature of cost recovery, reimbursements from the PPSF should not affect the return on investment of the oil companies and payments of their pending claims will merely convert “receivables from OPSF” into cash without any effect on net income or profitability;

WHEREAS, in the implementing rules and regulations issued pursuant to Section 4 of the said statute the determination of compliance with the condition on rate of return was vested with the Board;

NOW, THEREFORE, after due deliberation, the Board has resolved, AS IT HEREBY RESOLVES, to adopt the following guidelines in the computation of “return on investment of the oil companies” to form the basis for determining compliance with the aforestated condition for claims against PPSF:

I. Return on investment is the ratio between adjusted net income after tax over rate base.

a) Rate Base shall mean the sound value of the company’s net assets in service, as may be revalued from time to time, plus two (2) months working capital, where working capital is normalized to recognize actual level of inventories and to include custom’s duties and ad valorem tax;

i)

Actual yearend inventories shall be considered although this may exceed “normal” sixty (60) days level;

ii)

Unlike other public utilities which collect franchise tax monthly from the customers and pay these to government on the 20th of the month following each quarter, oil companies pay custom’s duties upon delivery of crude oil to the refinery and the ad valorem tax upon withdrawal of products from the refinery, i.e., both before the sale of petroleum products.

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b. Assets in service shall mean all physical resources used or useful in the business of importing, refining and marketing of petroleum products;

c. Initially, the Board will accept appraisal of sound value of assets in service as determined by an independent, reputable appraisal company registered for business in the Philippines. The report of appraisal shall include, among other things, (i) a detailed listing of all assets subject of the appraisal and an indication of the function of each in relation to the core business of the oil company; and, (ii) the basis for determining that the said asset is owned by the oil company concerned. Such appraisal report may be relied upon by the Board for a determination of the return on investment of an oil company as required by the statute. However, any certificate of compliance issued on the basis of such appraisal report shall be considered subject to confirmation and verification by the Board. The verification of sound value of assets in service may be conducted by the Board through a public hearing. If findings thereafter shall so justify, any certificate earlier issued may be amended accordingly, and recoveries that would then result in breaching the statutory ceiling shall be ordered returned to the OPSF;

d. Net income shall mean the net income shown as such in the financial statements for the fiscal period concerned, certified by an external independent Certified Public Accountant and which is formally presented to the Board with the representation that the same is identical to the firm's financial statements submitted to the Securities and Exchange Commission and to the Bureau of Internal Revenue covering the same accounting period, any variances being clearly therein identified and explained;

e. For purposes of determining adjusted net income after tax as used herein, the following adjustments shall be made to net income:

- In lieu of depreciation expense based on the acquisition or historical cost, such expense shall be derived from the latest appraisal of the asset in service using the firm's usual depreciation method, subject to such adjustment as the Board may deem necessary for the purposes hereof;

- Gain or loss on sales of fixed assets as well as extraordinary items shall be excluded;

- Non-product related income and expenses, i.e., income/expenses which are not ordinary and necessary in the pursuit of the firm's business of importing, refining and marketing of petroleum products, shall not be recognized as income nor allowed as deductions;

- Interest expense and other financial charges directly associated with the importation of crude oil and other petroleum products shall be considered an operating expense. Correspondingly, income realized on placements or temporary investments of company funds while these funds are not being utilized as working capital shall be included as an item of income;

- Income tax paid, or provision therefor, shall be adjusted, for purposes of this computation, to remove the component thereof attributable to (i) income not related to the core business of petroleum operations or (ii) depreciation expense based on historical cost;

II. Although R.A. 6952 speaks of "return on investment of oil companies" the Board has decided to use the foregoing computation which is more specifically known as "return on rate base" since it is well-defined, clearly understood and long been accepted in this jurisdiction in the regulation of public utilities. In the deliberations on the Bill that was enacted into R.A. 6952 the discussions revealed the concern that oil companies should be subject to limits on their return similar to those applicable to public utilities.

Nevertheless, the Board likewise agreed, as an internal procedure, to verify the rate of return thus determined pursuant to I above, against another standard, i.e., "return on equity". This measure of earnings may be defined as

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the ratio of adjusted net income after tax (as defined above) over equity. “Equity” in financial statements is generally recognized as including the following:

- Paid-in capital;

- Retained earnings;

- Appraisal (or reappraisal) surplus — i.e., the excess of sound value of assets in service as per the latest appraisal/reappraisal over the book value thereof (acquisition cost net of depreciation);

- Treasury stock.

When a computation of rate of return based on investment exceeds 12%, the Board will so qualify its certification issued in connection with condition No. 2 of Section 2 of Republic Act 6952.

III. The Board shall make such other or further adjustments or computations which in its judgment shall lead to a more accurate determination of compliance with condition No. 2 of Section 2 of the statute in order that its purposes may more fully and fairly be realized.

Let copies of this Resolution be furnished the oil companies, the Department of Finance, Department of Budget and Management, Commission on Audit, Office of Energy Affairs and all parties concerned for their information and guidance.

Adopted: 19 June 1990

(SGD.) MARCELO N. FERNANDO
Chairman

(SGD.) ALEJANDRO B. AFURONG
Member

(SGD.) REX V. TANTIONGCO
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