

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



IN THE MATTER OF THE APPLICATION
FOR THE APPROVAL OF THE
PROPOSED NEW BASIC GENERATION
RATES FOR LUZON, VISAYAS AND
MINDANAO GRIDS WITH PRAYER FOR
PROVISIONAL AUTHORITY

ERC CASE NO. 2009-004 RC

NATIONAL POWER CORPORATION
(NPC) AND POWER SECTOR ASSETS
AND LIABILITIES MANAGEMENT
CORPORATION (PSALM),

Applicants.

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DOCKED
Date: MAR 23 2009
By: _____

ORDER

During the March 19, 2009 hearing of this case in Cebu City, the following entered their appearances:

- I. Applicants:
 - a. National Power Corporation (NPC); and
 - b. Power Sector Assets and Liabilities Management Corporation (PSALM).

- II. Intervenors/Oppositors:
 - a. Visayan Electric Company (VECO);
 - b. Leyte II Electric Cooperative, Inc. (LEYECO II);
 - c. Negros Occidental Electric Cooperative, Inc. (NOCECO);
 - d. Region VII Association of Electric Cooperatives;
 - e. Freedom from Debt Coalition (FDC);
 - f. National Association of Electricity Consumers for Reforms (NASECORE);
 - g. An Waray Party List;
 - h. Social Action Center (SAC);
 - i. Consumer Complaint Center (CCC);
 - j. Philippine Associated Smelting and Refining Corporation (PASAR);
 - k. Mactan Export Processing Zone (MEPZ);

- l. Philippine Chamber of Commerce and Industry (PCCI);
- m. Philippine Exporters of Cebu;
- n. Provincial Government of Northern Samar;
- o. City Government of Bacolod;
- p. Mr. Felipe Concepcion of Victory Refrigeration; and
- q. Mr. George Sanchez and Mr. Vladimir Gonzalez as consumers of Central Negros Electric Cooperative, Inc. (CENECO).

At the said hearing, NPC and PSALM presented their proofs of compliance with the Commission's posting and publication of notice requirements which were duly marked as Exhibits "D" to "L", inclusive.

Upon verification of the aforesaid documents, several intervenors/oppositors interposed their respective objections in view of NPC and PSALM's failure to: a) comply with Section 2 (a), Rule 6 and Section 5 of Rule 13 of the Commission's Rules of Practice and Procedure; b) submit the Certificate of Posting issued by the Office of the Mayor of Cebu City; and c) inform the consumers of their intention to increase the generation rates.

In response thereto, NPC and PSALM contended that they have fully complied with the Commission's Rules of Practice and Procedure. They manifested that the Office of the City Mayor of Cebu failed to issue a Certificate of Posting despite receipt of NPC's letter request dated February 3, 2009. Thus, the said NPC letter, which was received by the Office of the City Mayor of Cebu on February 12, 2009, was sufficient compliance with the Commission's jurisdictional requirements.

Acting thereon, the Commission ruled that NPC and PSALM substantially complied with its Rules of Practice and Procedure and provisionally accepted the documents presented by NPC and PSALM. They were then directed to submit

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the Certificate of Posting issued by the Office of the Mayor of Cebu City, within ten (10) days from the said date of hearing.

The parties who manifested their intentions to intervene in this case were provisionally admitted as intervenors subject to the filing of their respective petitions for intervention, within five (5) days from the said date of hearing. Failure of any party to file said petition within the prescribed period shall constrain the Commission to consider them as an oppositor in this case.

In the meantime, NPC and PSALM conducted their expository presentation through their representative, Ms. Lourdes S. Alzona. In the course thereof, the Commission and the intervenors/oppositors propounded clarificatory questions.

The expository presentation having been terminated, the Commission conducted the pre-trial hearing where the parties stipulated on the facts and issues relative to the instant application. Accordingly, the following were the stipulations made by the parties:

I. Stipulation of Facts

- a. NPC is a government-owned and controlled corporation, created and existing under and by virtue of Republic Act No. 6395 (R.A. 6395), as amended (the NPC charter), with principal office address at NPC-Office Building Complex (NPC-OBC), corner Quezon Avenue and BIR Road, Diliman, Quezon City;
- b. PSALM is a government-owned and controlled corporation created by virtue of Republic Act No. 9136 or the "Electric Power Industry Reform Act of 2001" (EPIRA), with principal office address at 7/F Bankmer Building, 6756 Ayala Avenue, Makati City;
- c. NPC was mandated under its Charter, prior to the effectivity of EPIRA, to undertake the development of hydroelectric power generation and the

production of electricity from nuclear, geothermal and other sources of energy in order to attain, among others, the objective of providing an adequate supply of electric power nationwide at a reasonable price;

- d. PSALM is filing the instant application in its capacity as the transferee, owner and administrator of the generating assets of NPC pursuant to Section 49 of the EPIRA;
- e. On June 22, 2004, NPC and PSALM filed an application, docketed as ERC Case No. 2004-178 for the approval of the revised Return on Rate Base (RORB) and Time-of-Use (TOU)-based generation charges for the Luzon, Visayas and Mindanao Grids, based on CY 2002 Audited Financial Statements. On September 3, 2004, the Commission issued an Order provisionally approving an adjustment in their average generation rate per grid and authorizing them to implement the TOU rates subject to an irrevocable option of the customers either to avail or not to avail the approved TOU rates. On April 13, 2005, the Commission issued a Decision approving the final levels of NPC's average rate per grid as well as the final TOU Rate Schedule to be implemented on a mandatory basis to all customers;
- f. The CY 2007 financial statement of NPC and PSALM shall be the basis in calculating the new revenue requirements since it is the most recent and most reflective of NPC's current assets and costs;
- g. The residential consumers are directly affected financially by any rate adjustment like in the instant application;
- h. The financial burden was caused by the customers' incentive schemes, like the PhP0.30/kWh Mandated Rate Reduction (MRR) and Prompt Payment Discount (PPD) which can be alleviated by the increase in Return on Rate Base (RORB); and
- i. The Calaca Power Plant was not successfully privatized.

II. Issues to be Resolved

NPC

Whether or not NPC and PSALM are entitled to the relief prayed for in the instant application, as follows:

1. The proposed new basic generation charge for Luzon, Visayas and Mindanao Grids, as reflected in the TOU Rate Schedule;
2. The adoption of the indexation method to re-value NPC's generation assets in order to adjust the rate base to its current costs;
3. The automatic implementation in the succeeding quarter of the proposed adjusted TOU rates incorporating the approved adjustments

corresponding to NPC's generation assets in Luzon, Visayas and Mindanao Grids privatized in the previous quarter;

4. The methodology for deriving the revised TOU Rate Schedules; and
5. The adjustment of the basic generation charges and its corresponding TOU Rate Schedule once the application for recovery of the costs for the Naga Thermal Diesel/Gas Turbine Power Plants and Mindanao Coal-Fired Power Plant are approved by the Commission.

NASECORE

- a. Whether or not the proposed basic generation charge is reasonable, necessary, prudent and would redound to the interest of all electricity consumers;
- b. Whether or not the privatization of plants as stated in the instant application should result to an increase in basic generation charge;
- c. Whether or not the twelve percent (12%) RORB should be approved by the Commission; and
- d. Whether or not the PhP0.30/kWh MRR and the PPD have an impact on the financial difficulties claimed by NPC and PSALM.

PCCI

- a. Whether or not the proposed new basic generation rates for Luzon, Visayas and Mindanao Grids filed by NPC and PSALM are reflective of the true cost of actual power plants in service;
- b. Whether or not NPC and PSALM took into consideration the ERC-approved heat rate caps in the calculation of their proposed new basic generation rates;
- c. Whether or not the adoption of the indexation method to re-value NPC's generating assets will result to an accurate and fair asset valuation;
- d. Whether or not the methodology used by NPC and PSALM (the peanut-butter approach) in deriving the revised TOU Rate Schedules is fair; and
- e. Whether or not the plant stacking as of 2007 should be used as the basis for the revised TOU Rate Schedule.

FDC

- a. Whether or not the twelve percent (12%) RORB has any factual and legal bases;

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- b. Whether or not the applied rates will reflect the true cost of electricity; and
- c. Whether or not NPC and PSALM could legally recover through a rate increase what had been given as incentives to consumers.

PASAR

- a. Whether or not NPC is entitled to a rate increase in the light of its profitable operation and current world economic recession; and
- b. Whether or not (i) the rate base for the consumers in Leyte-Samar Region should be based on the depreciated value of the NPC's Tongonan Geothermal Power Plant and (ii) consumers in Leyte-Samar Region must not be required to share the rate base and fuel costs of the more expensive and inefficient power plants in the other regions of the Visayas being the host of cheap geothermal power.

VECO

- a. Whether or not the rate adjustment of NPC and PSALM will augment the power supply and address the power shortage in the Visayas.

Meantime, the Commission took judicial notice of the following facts:

- a. The Commission mandated NPC and PSALM to, among others, apply periodically for rate adjustments to consider sale of assets, change in load profile and plant stacking;
- b. On June 3, 2008, NPC filed a revised basic generation rates docketed as ERC Case No. 2008-030 RC, to reflect the impact of the sale, transfer and disposal of its generation assets taking-off from the approved revenue requirements approved by the Commission in its Decision dated April 13, 2005, comprising of the allowable fuel and Independent Power Producer (IPP) costs during CY 2004 and all other allowable fixed generation costs including the authorized eight percent (8%) RORB based on allowable CY 2002 rate base. PSALM filed its manifestation as co-applicant to the case on August 14, 2008;
- c. On December 15, 2008, the Commission rendered its Decision in ERC Case No. 2009-030 RC, dismissing the case and invoking that NPC and PSALM should have used the test year CY 2007 since it is the most recent and most reflective of NPC's current assets and costs. Test years CY 2002 and 2004 were found to be significantly different from CY 2007, thus, not reflective of true cost;
- d. Pursuant to Section 47 of the EPIRA, PSALM is mandated to undertake the total privatization of NPC's generation assets; and

- e. It is hereby declared the policy of the State in Section 2 of the EPIRA:
- "c. To ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market; x x x.
 - (f) To protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power; x x x"

To facilitate the orderly proceedings of this case, the Commission limited the number of intervenors who shall be permitted to cross-examine the witnesses of NPC and PSALM based on the following groupings:

1. Distribution Utilities (DUs)
 - a. VECO
 - b. LEYECO II
 - c. Region VII Association of Electric Cooperatives
 - d. Philippine Rural Electric Cooperatives Association (PHILRECA)
 - e. NOCECO
2. Consumer Groups
 - a. FDC
 - b. NASECORE
 - c. An Waray Party List
 - d. Consumer Complaint Center
3. Industrial Consumers
 - a. PASAR
 - b. MEPZ
 - c. PCCI
 - d. Philippine Exporters of Cebu
4. Local Government Units (LGUs)
 - a. Provincial Government of Northern Samar
 - b. Provincial Government of Negros Occidental

Each group designated one (1) representative who shall conduct the cross-examination of the witnesses.

At the continuation of the hearing on March 20, 2009 at the same venue, NPC and PSALM presented the following witnesses who testified in support of the application:

1. Ms. Lourdes S. Aizona, PSALM's Vice President for Finance;
2. Ms. Luisa A. Esteban, PSALM's Manager of the Universal Levy/Tariff and Financial Valuation Department; and
3. Mr. Alvin P. Diaz, PSALM's Acting Manager of the Financial Services Department.

In the course of their direct examinations, additional documents were presented and marked as exhibits.

PSALM moved that an Order of general default be issued by the Commission for all those who did not intervene in this case. Said motion was granted.

Ms. Aizona was cross-examined by the intervenors. On the other hand, the intervenors reserved their rights to cross-examine Ms. Esteban and Mr. Diaz at a later date due to lack of material time.

The Commission noted that in Ms. Aizona's testimony, she mentioned the effect of the sale, transfer and disposal of NPC's generation assets to the proposed rate adjustment. The sale and transfer of NPC's Panay and Bohol Diesel Power Plants will impact on NPC/PSALM's proposed rate adjustment application of PhP1.3815/kWh for the Visayas Grid by as much as PhP0.3084/kWh due to the removal of the related costs, rate base and other

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revenue requirement components. Thus, the effective increase in the generation rate for the Visayas Grid will be PhP1.0815/kWh.

"If a party, as a witness, deliberately concedes a fact, such concession has the force of a judicial admission. xxx. The rule is that the testimony on the witness stand partakes of the nature of a formal judicial admission when a party testifies clearly and unequivocally to a fact which is peculiarly within his own knowledge."¹

In the Commission's Order dated February 16, 2009, NPC and PSALM were provisionally authorized to implement the new generation rate adjustments, among others, for the Visayas Grid amounting to PhP4.0339/kWh effective on the March 2009 billing period (February 26, 2009 to March 25, 2009) or an equivalent increase of PhP1.1460/kWh. However, taking into account the impact of the sale of NPC's Panay and Bohol Diesel Power Plants, the Commission deems it prudent to modify the said Order insofar as the Visayas Grid is concerned.

WHEREFORE, the foregoing premises considered, the Commission hereby **MODIFIES** the provisional authority it granted to the National Power Corporation (NPC) and the Power Sector Assets and Liabilities Management Corporation (PSALM) pursuant to its Order dated February 16, 2009.

¹ Republic of the Philippines vs. Sandiganbayan, et.al, G.R. 152154, July 15, 2003

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Accordingly, NPC and PSALM are authorized to implement the new generation rate adjustment for the Visayas Grid amounting to PhP3.7255/kWh effective on the March 2009 billing period (February 26, 2009 to March 25, 2009).

In the event the final rate is higher than that provisionally authorized, the resulting additional charges shall be collected by NPC and PSALM from its customers. On the other hand, if the final rate is lower than that provisionally authorized, the amount corresponding to the reduction shall be refunded by NPC and PSALM to its customers.

SO ORDERED.

Pasig City, March 23, 2009.


ZENAIDA G. CRUZ-DUCUT
Chairperson


RAUF A. TAN
Commissioner


ALEJANDRO Z. BARIN
Commissioner


MARIA TERESA A.R. CASTAÑEDA
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VISAYAS GRID

In P/kWh

PERIOD	(JAN-DEC)	
	MON-SAT	SUN/HOL
1:00 AM	2.6158	2.6158
2:00 AM	2.2181	2.2181
3:00 AM	2.2181	2.2181
4:00 AM	2.2181	2.2181
5:00 AM	2.2181	2.2181
6:00 AM	2.2181	2.2181
7:00 AM	2.2181	2.2181
8:00 AM	2.9340	2.2181
9:00 AM	3.4157	2.2181
10:00 AM	3.6322	2.6158
11:00 AM	3.6322	2.9340
12:00 PM	3.6322	2.9340
1:00 PM	3.6322	2.9340
2:00 PM	3.6322	3.0516
3:00 PM	3.6322	2.9340
4:00 PM	3.6322	2.9340
5:00 PM	3.5332	2.9340
6:00 PM	6.4755	3.6322
7:00 PM	6.4755	6.4755
8:00 PM	6.4755	6.4755
9:00 PM	6.4755	3.6322
10:00 PM	3.6322	3.5332
11:00 PM	3.0516	3.0516
12:00 AM	2.9340	2.6158

