

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

NOV 12 P2:56

3038

IN THE MATTER OF THE 16TH
APPLICATION FOR THE
RECOVERY OF THE
INCREMENTAL COSTS ON
FOREIGN CURRENCY
EXCHANGE RATE
FLUCTUATIONS UNDER THE
INCREMENTAL CURRENCY
EXCHANGE RATE ADJUSTMENT
(16TH ICERA), WITH PRAYER FOR
PROVISIONAL AUTHORITY

Received By: _____

ERC CASE NO. 2010-073 RC

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

Applicants.

x-----x

DOCKETED
Date: NOV 10 2010
By: _____

ORDER

On June 25, 2010, the National Power Corporation (NPC) and Power Sector Assets and Liabilities Management Corporation (PSALM) filed an application for recovery of the Incremental Costs on Foreign Currency Exchange Rate Fluctuations under the Incremental Currency Exchange Rate Adjustment (16TH ICERA), with prayer for provisional authority.

In the said application, NPC and PSALM alleged, among others, that:

1. Under Section 3 (g) of the NPC Charter, NPC the authority to sell electric power in bulk to electric cooperatives, private distribution utilities, government owned distribution utilities or local government units which have exclusive franchise to operate a distribution system. Under Section 47 (j) of Republic Act No. 9136 ("Electric Power Industry Reform Act or EPIRA"), NPC may continue to generate and sell electricity from the undisposed generating assets and Independent Power Producer (IPP) contracts of PSALM;

2. NPC is filing the instant application in its capacity as the implementing agency for the unbundled generation rates as stated in the Orders of the Commission dated September 6 and 20, 2002 in ERC Case No. 2001-901, revised generation charges in the Orders dated September 3, 2004 and April 13, 2005 in ERC Case No. 2004-178, provisionally approved generation charges in the Orders dated February 16, 2009 and March 23, 2009 for the Luzon/Mindanao and Visayas Grid, respectively, under ERC Case No. 2009-004 RC, and the provisionally approved deferred charges in ERC Order dated December 15, 2008 under ERC Cases Nos.: 2008-043 RC, 054 RC and the Order dated January 19, 2009 under ERC Case No. 2008-064 RC. Applicant PSALM is filing this Application in its capacity as transferee, owner and administrator of the generating assets of NPC pursuant to Section 49 of the EPIRA;
3. In the Order dated February 24, 2003, the Commission issued and adopted the Implementing Rules for the Recovery of the Incremental Currency Exchange Rate Adjustment (ICERA) providing, among others, the required mechanisms for the recovery/(refund) of the deferred incremental costs/(savings) on foreign currency exchange rate fluctuations and carrying charges;
4. The instant application is being filed consistent with Section 4 (e) Rule 3 of the Implementing Rules and Regulations (IRR), as amended of R.A. No. 9136 dated June 8, 2001;
5. They are filing this instant application pursuant to the Rules for the Automatic Cost Recovery Mechanism approved and adopted by the Commission under Resolution No. 19, Series of 2009, particularly on the Final Filing under the GRAM/ICERA in Article VI Section 2 thereof which provides that an application for recovery of all unfiled and unverified DAA shall be submitted within one hundred-twenty (120) days from effectivity of the Rules, or on or before June 27, 2010;
6. The instant application covers the test period from January 2010 to April 2010. They have fully complied with the ICERA's monthly reportorial requirements, to support the calculated allowable costs covering the test period, as evidence by the submitted reports/compliances duly received by the Commission;
7. They propose to recover/(refund) the Deferred Accounting Adjustments (DAAs), corresponding to additional costs or savings from foreign exchange fluctuations in the settlement of Debt Service (principal repayment portion) and Operating Expense (OPEX), and pertaining to the difference between actual and allowable Capacity and Infrastructure Fees for Build-Operate-Transfer (BOT) plants and the billed amounts under the basic generation charge, as well as the corresponding carrying charges for the billing period July 2009 to December 2009 for the Luzon/ Visayas and Mindanao Grids;
8. Pursuant to the Commission's Order dated November 23, 2005 (approval of 4th ICERA DAA), the proposed 16th ICERA DAA charge is calculated on a per grid basis;

9. On February 16, 2009 and March 23, 2009, the Commission issued an Order granting NPC/PSALM provisional authority (PA) to implement new basic generation rates of **PhP4.3648/kWh** for Luzon, **PhP3.7255/kWh** for the Visayas grid, and **PhP2.8177/kWh** for the Mindanao grid. The PA authorized NPC/PSALM to implement the new base rates corresponding to the revised revenue requirement starting the billing month of March 2009;
10. Based on the components of the new revenue requirement and energy sales in the February 16, 2009 Order, the new base rates for capacity fees were deduced, which then served as the basis in the DAA calculations for the Luzon and Mindanao grids;

As established by the Commission's Order in ERC Case No. 2008-019 RM dated December 14, 2009, and to be consistent with its approvals in the Applicants' previous ICERA applications, PSALM, in calculating its debt service DAA calculation used the BSP FOREX Rate of PhP44.0494/US\$1.00, while the Yen to Peso rate was pegged at PhP0.4096/JPY1.00;

11. For foreign-dominated operating expenses, the DAA calculations considered a new base rate on Calendar Year (CY) 2007 weighted average foreign exchange rate of PhP41.7430/US\$1.00, consistent with the Commission's Order under ERC Case No. 2008-019 RM;
12. In view of the foregoing, they used a base foreign exchange rate of **PhP44.0494** for the US dollar, and **PhP0.4096** for the Japan Yen in the calculation of the debt service DAA;
13. The calculation for the recovery/refund of Capacity and Infrastructure Fees for Bakun Hydroelectric Power Plant and San Roque Multipurpose Project were pegged at PhP3.8299/kWh as follows:

12.1 Bakun Hydro Electric Power Plant:

The capacity fee was calculated based on the Commission's Decision in ERC Case No. 2001-813 dated August 24, 2006, which provides that any amount in excess of the PhP3.8299/kWh, the rate considered by NPC as capacity fee for Bakun in ERC Case No. 2004-178, shall be part of the energy charge and shall be considered allowable cost under the Generation Rate Adjustment Mechanism (GRAM).

It should be noted that the capacity fee component of Bakun in the provisionally approved basic generation charge under ERC Case No. 2009-004, excludes the O & M costs. Any amount in excess of the PhP3.8299 plus the O & M costs were recovered under the GRAM;

12.2 San Roque Multipurpose Project:

The capacity fee for San Roque was calculated based on ERC Case No. 2001-816 which pegged the power purchase power cost of San Roque Multipurpose Project at the effective rate of

the Luzon Grid or the purchased power cost under the agreement whichever is lower. Any amount in excess of the PhP3.8299/kWh, which is the rate considered by NPC as capacity fee for the San Roque Power Plant in ERC Case No. 2004-178, shall be part of the energy charge which shall be considered as allowable cost under the GRAM;

14. The instant application likewise includes the recovery/(refund) of the allowable capacity costs of Kalayaan Unit Nos. 3 and 4 and Mindanao Coal (STEAG), based on the Commission's Decision in ERC Case No. 2007-159 dated November 17, 2008 and ERC Case No. 2001-811 dated February 2, 2009, respectively;
15. On the calculation of the DAA for capacity fees for the test period January 2010 to December 2010 and covering the billing period of November to February 2010, the DAA refers to the difference between the allowable capacity fees and the amounts recovered through the basic generation rates per ERC Case No. 2009-004;
16. This instant application does not include the Capacity Fee and Infrastructure Fee after the effective date of transfer of the contracted capacities under the following IPP contracts to its IPP Administrator (IPPA):

IPP	Effective Date
Pagbilao	October 1, 2009
Sual	November 6, 2009
San Roque HEP	January 26, 2010
Bakun (Luzon Hydro)	February 23 2010

17. The instant application excludes any un-recovered or unrefunded balance from the previous ICERA applications, considering that the same are still pending resolution by the Commission;
18. Considering the foregoing, and pursuant to all the relevant Decisions and Orders issued by the Commission, they calculated the total deferred costs for recovery under the instant application, comprising of deferred debt service, OPEX and capacity fees for BOT plants, and the corresponding carrying charges for the Luzon, Visayas and Mindanao grids covering the test period from January 2010 to April 2010 only. Shown below is the summary of the total deferred FOREX costs as follows:

Total Deferred FOREX Costs, in Pesos

In PhP	LUZON	VISAYAS	MINDANAO
TOTAL DAA	390,198,880	65,608,722	117,277,643

19. The instant application seeks the Commission's approval for the recovery/refund of the above-stated total current deferred FOREX costs for the test period January 2010 to April 2010, through the imposition of the following proposed DAA charges:

Proposed 16th ICERA DAA Charges, P/kWh

In PhP/kWh	LUZON	VISAYAS	MINDANAO
TOTAL DAA	0.0461	0.0326	0.0383

20. In accordance with the Commission's Resolution No. 20, Series of 2005, the Value Added Tax (VAT) to be imposed to consumers will be based on gross receipts or the total amount paid for electricity sold from non-renewable energy portion of the generation mix corresponding to the billing period under recovery/(refund);
21. They likewise seek the approval of the Commission to recover the above-stated deferred costs over the following recovery periods:

Proposed Spread (No. of Months)

Luzon	Visayas	Mindanao
4	4	4

22. As authorized under the Implementing Rules of the ICERA, Applicants utilized the carrying charge interest rates, as shown in the table below:

Allowable Carrying Charge Interest Rates

Billing Period	Prevailing 91-day T-Bill Rate ¹	Authorized Allowance ²	Allowable Rate
January 2010	3.9060%	3.00%	6.9060%
February 2010	3.9280%	3.00%	6.9280%
March 2010	3.8800%	3.00%	6.8800%
April 2010	3.8430%	3.00%	6.8430%

1- Source: *Bangko Sentral ng Pilipinas*

2- As authorized in the ICERA Implementing Rules

23. The proposed ICERA DAA is fair and reasonable as it allows the recovery of deferred costs consistent with the principles of a free and competitive electricity market as provided under R. A. No. 9136;
24. They pray for the issuance of a provisional authority to implement rates for the recovery/refund of the following:
- DAA under this application; and
 - The estimated DAA balances under the 12th to 15th ICERA for Luzon and the 9th to 15th ICERA for the Visayas and Mindanao grids, in order to mitigate the accumulated DAA to customers and improve NPC's financial standing.

25. To date, they are implementing the 11th ICERA charges in Luzon, pending resolution of the 12th to 15th ICERA applications. For the Visayas, they are implementing the 8th ICERA charges, pending resolution by the Commission of the 9th to 15th ICERA Applications. The 8th ICERA DAA for the Mindanao grid was fully recovered/(refunded), hence starting the billing month July 26 to August 25, 2009, no ICERA charges are being imposed to electricity consumers in the Mindanao grid;
26. They further pray unto the Commission that consistent with ERC Case No. 2003-44 adopting the Implementing Rules for the Recovery of Incremental Currency Exchange Recovery Adjustments (ICERA) and Section 4(e) Rule 3 of the IRR, as amended, of RA 9136 or EPIRA, the following deferred costs/(refund), recovery period, and proposed Deferred Accounting Adjustment (DAA) charges covering the current DAA be approved:

PARTICULARS	LUZON	VISAYAS	MINDANAO
TOTAL DAA FOR RECOVERY (in PhP)	390,198,880	65,608,722	117,277,643
TOTAL DAA CHARGE (in PhP/kWh)	0.0461	0.0326	0.0383
PROPOSED RECOVERY PERIOD (months)	4	4	4

27. Finally, they further pray for the issuance of a Provisional Authority for the immediate implementation of the above proposed rates for Luzon, Visayas and Mindanao Grids.

Finding the said application to be sufficient in form and substance with the required fees having been paid, the same is hereby set for jurisdictional hearing, expository presentation, pre-trial conference and evidentiary hearing on the following dates and venues:

Date and Time	Venue	Particulars
Luzon		
December 8, 2010 – Two o'clock in the afternoon (2:00 P.M.)	ERC Hearing Room, 15 th Floor, Pacific Center Building, San Miguel Avenue, Pasig City	Jurisdictional, Expository Presentation, Pre-Trial Conference and Evidentiary Hearings
Visayas		
January 12, 2011 – Two o'clock in the afternoon (2:00 P.M.)	Cebu Field Office, Machay Building, Gorordo Avenue, Lahug, Cebu City	Jurisdictional, Expository Presentation, Pre-Trial Conference and Evidentiary Hearings

Mindanao		
January 19, 2011 – Two o'clock in the afternoon (2:00 P.M.)	Davao Field Office, Mezzanine Floor, Mintrade Building, Monteverde corner Sales Streets, Davao City	Jurisdictional, Expository Presentation, Pre-Trial Conference and Evidentiary Hearings

NPC and PSALM are hereby directed to cause the publication of the attached Notice of Public Hearing, at their own expense, twice (2x) for two (2) successive weeks in two (2) newspapers of general circulation in the Philippines, with the date of the last publication to be made not later than ten (10) days before the scheduled date of initial hearing.

Let copies of the application, this Order, and the attached Notice of Public Hearing be furnished the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress. They are hereby requested, if they so desire, to send their duly authorized representatives at the scheduled hearing.

Likewise, let copies of this Order and the attached Notice of Public Hearing be furnished the Offices of the Mayors of Quezon City, Cebu City, Davao City and Provincial Governors in Luzon, Visayas and Mindanao where NPC principally operates for the appropriate posting thereof on their respective bulletin boards.

NPC and PSALM are hereby directed to furnish all those making requests therefor with copies of the application and its attachments, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing and pre-trial conference, NPC and PSALM must submit to the Commission their written Compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidences on the actual posting and publication of the Notice of Public Hearing consisting of certifications issued to that effect, signed by the afore-mentioned Mayors and Governors or their duly authorized representatives, bearing the seals of their offices, and the affidavits of the Editors or Business Managers of the newspapers where the said Notice of Public Hearing were published together with the complete issue of the said newspaper, and such other proofs of compliance with the requirements of the Commission.

NPC and PSALM and all interested parties are directed to submit, at least five (5) days before the date of initial hearing and pre-trial conference, their respective Pre-Trial Briefs containing, among others:

- (a) A summary of admitted facts and proposed stipulation of facts;
- (b) The issues to be tried or resolved;
- (c) The documents or exhibits to be presented, stating the purposes thereof and proposed markings therefore; and
- (d) The number and names of the witnesses, with their written testimonies in an individual affidavit form, to be attached to the Pre-Trial Brief.


Failure of NPC and PSALM to submit the required Pre-Trial Brief and Judicial Affidavits of their witnesses within the prescribed period shall be a ground for cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from said date of cancellation.

As part of the pre-trial conference, NPC and PSALM must also be prepared to make an expository presentation on their application, aided by whatever communication medium that they may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties, what the application is all about and the reasons and justifications being cited in support of the approval prayed for.

SO ORDERED.

Pasig City, November 8, 2010.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ZENAIDA G. CRUZ-DUCUT
Chairperson
public h/

Copy Furnished:

1. **ATTYS. CECILIO B. GELLADA, JR., ARLENE B. EVANGELIO, CAROLINE V. BALO-ATENCIA, and PIA ZOBEL Z. RUIZ-SAN DIEGO**
Counsels for Applicant PSALM
Power Sector Assets and Liabilities Management Corporation (PSALM)
7TH Floor, Bankmer Building
6756 Ayala Avenue, Makati City
2. **Attys. MELCHOR P. RIDULME, COMIE P. DOROMAL, JULIETA S. BACCUTAN-ESTAMO, and MAY ROSE C. PINTOR**
Counsels for Applicant NPC
National Power Corporation
Quezon Avenue cor. BIR Road
Diliman, Quezon City, Metro Manila
3. **ENGR. SIEGFRIEDO A. VELOSO**
Representative
The Federation of Village Association (FOVA)
Don Jesus Boulevard Alabang Hills Village
Muntinlupa City
4. **MR. PETE L. ILAGAN**
President
National Association of Electricity Consumers for Reforms, Inc.
(NASECORE)
No. 10 Bayside Court Compound, 680 Quirino Avenue
Tambo, Parañaque City
5. **PHILIPPINE ASSOCIATED SMELTING AND REFINING CORPORATION (PASAR)**
Attention: **Attys. DANILO C. PEROLINO, ROVELSON R. VELMONTE**
(Counsels for PASAR), and **DIONISIO A. TEJERO** of **D.A. TEJERO and AMORANTO LAW OFFICES** (collaborating Counsel)
37th Floor, Philamlife Tower, 8767 Paseo de Roxas
Makati City
6. **Commission on Audit**
Commonwealth Avenue
Quezon City 1121
7. **Senate Committee on Energy**
GSIS Building, Roxas Boulevard
Pasay City 1307
8. **House Committee on Energy**
Batasan Hills, Quezon City 1126
9. **National Electrification Administration (NEA)**
Quezon Avenue, Quezon City
Metro Manila
10. **Mr. Edgardo G. Lacson**
President
Philippine Chamber of Commerce and Industry (PCCI)
3rd Floor, ECC Building, Sen. Gil Puyat Avenue
Makati City
11. **The City Mayor**
Quezon City

12. **The City Mayor**
Cebu City
13. **The City Mayor**
Davao City
14. **The Provincial Governor**
Province of Ilocos Sur
15. **The Provincial Governor**
Province of Ilocos Norte
16. **The Provincial Governor**
Province of Cagayan
17. **The Provincial Governor**
Province of Isabela
18. **The Provincial Governor**
Province of Nueva Viscaya
19. **The Provincial Governor**
Province of Abra
20. **The Provincial Governor**
Province of Benguet
21. **The Provincial Governor**
Province of Ifugao
22. **The Provincial Governor**
Province of Kalinga Apayao
23. **The Provincial Governor**
Mountain Province
24. **The Provincial Governor**
Province of Aurora
25. **The Provincial Governor**
Province of Tarlac
26. **The Provincial Governor**
Province of Nueva Ecija
27. **The Provincial Governor**
Province of Pampanga
28. **The Provincial Governor**
Province of Bataan
29. **The Provincial Governor**
Province of Zambales
30. **The Provincial Governor**
Province of Laguna
31. **The Provincial Governor**
Province of Batangas
32. **The Provincial Governor**
Province of Quezon

33. The Provincial Governor
Province of Occidental Mindoro
34. The Provincial Governor
Province of Oriental Mindoro
35. The Provincial Governor
Province of Marinduque
36. The Provincial Governor
Province of Romblon
37. The Provincial Governor
Province of Palawan
38. The Provincial Governor
Province of Camarines Sur
39. The Provincial Governor
Province of Camarines Norte
40. The Provincial Governor
Province of Albay
41. The Provincial Governor
Province of Sorsogon
42. The Provincial Governor
Province of Aklan
43. The Provincial Governor
Province of Antique
44. The Provincial Governor
Province of Capiz
45. The Provincial Governor
Province of Iloilo
46. The Provincial Governor
Province of Bacolod
47. The Provincial Governor
Province of Negros Occidental
48. The Provincial Governor
Province of Negros Oriental
49. The Provincial Governor
Province of Cebu
50. The Provincial Governor
Province of Leyte
51. The Provincial Governor
Province of Samar
52. The Provincial Governor
Province of Zamboanga del Norte
53. The Provincial Governor
Province of Zamboanga del Sur

54. The Provincial Governor
Province of Davao Oriental
55. The Provincial Governor
Province of Davao del Sur
56. The Provincial Governor
Province of Davao del Norte
57. The Provincial Governor
Province of Misamis Occidental
58. The Provincial Governor
Province of Misamis Oriental
59. The Provincial Governor
Province of Bukidnon
60. The Provincial Governor
Province of Lanao del Norte
61. The Provincial Governor
Province of North Cotabato
62. The Provincial Governor
Province of South Cotabato
63. The Provincial Governor
Province of Sultan Kudarat
64. The Provincial Governor
Province of Agusan del Norte
65. The Provincial Governor
Province of Agusan del Sur
66. The Provincial Governor
Province of Surigao del Norte
67. The Provincial Governor
Province of Surigao del Sur