



## NATIONAL POWER CORPORATION

OCS-18 - \_\_\_\_\_

### MEMORANDUM

For : **THE MEMBERS  
NATIONAL POWER BOARD**

From : **THE BOARD REVIEW COMMITTEE**

Subject : **BOARD REVIEW COMMITTEE (BRC) REPORT  
[For the 18 JANUARY 2018 BRC Meeting]**

Date : 25 January 2018

Hereunder are the highlights/salient points of the Board Review Committee (BRC) Meeting held on 18 January 2018, for the reference of the Members of the Board:

#### **I. Call to Order.**

There being a quorum, **Dir. Danielle Marie S. Rieza -Culangen**, Alternate Representative of the DOF Secretary and Chairman of the NP Board, called the meeting to order.

#### **II. Preliminaries and Adoption of the Agenda.**

After the prayer led by the Corporate Secretary, the BRC adopted the Agenda as presented. The Committee also agreed to the suggestion of the NPC President to first take up the updates on the DAMA case considering that the Associate Solicitors from the Office of the Solicitor General (OSG) have already arrived.

The Committee also formally welcomed Assistant Secretary Epimaco V. Densing III who shall now sit in the NP Board as official alternate of the DILG Secretary. The Corporate Secretary also officially acknowledged the presence of OSG lawyers Jacqueline Torio-Guzman and Alexandria Maroto who served as special resource persons for the BRC meeting.

#### **III. Presentation and Discussion.**

- a. **UPDATE on the DAMA Case (NPC-DAMA, et al. vs. NPC, et al., G.R. No. 156208).**
- b. **Legal Opinion of the Office of the Solicitor General (OSG).**
- c. **Letter of Atty. V. V. Orocio for the NPC President dated 8 January 2018.**



Atty. Melchor P. Ridulme (VP/Legal Counsel) first thanked the OSG<sup>1</sup> representatives for joining the meeting. He discussed extensively the background of the case and the issues raised in the 21 November 2017 SC Resolution. He also summarized the letter-opinion of the OSG dated 05 January 2018. Moreover, Atty. M.P. Ridulme informed the BRC that Atty. Victoriano V. Orocio, counsel of the petitioners, already requested for certified true copies of pertinent documents from NPC that shall be used to support the *Petition for Money Claim* to be filed before the COA. He also discussed statistics previously prepared by the NPC-Human Resources Department, which were also submitted to the Supreme Court in 2014.

The following are the highlights of the discussion:

- Dir. D.M.S. Rieza-Culangen requested clarification on the entitlement(s) of employees who were re-hired by NPC or were absorbed by PSALM and TransCo. Atty. M.P. Ridulme read the pertinent portion of the SC decision, viz :

*“Thus, We rule that petitioners who were subsequently rehired by the NPC, (b) absorbed by PSALM or Transco, or (c) transferred or employed by other government agencies, are not entitled to back wages”.*

- Pres. P.J. Benavidez opined that while those who were rehired or absorbed by NPC, TransCo or PSALM are not entitled to backwages, they are nevertheless possibly entitled to salary differential.
- Atty. M.P. Ridulme also clarified the entitlement of the petitioners who were not rehired and those who were considered as “early leavers”. He added that the issues on i.) who are entitled; and ii.) how much, are matters that can be finally resolved by COA.
- The Committee agreed to the suggestion of Pres. P.J. Benavidez that the details on the amount/entitlement shall be discussed in a special executive session/joint meeting between NPC and PSALM. Dir. D.M.S. Rieza-Culangen stated that PSALM and NPC should be consistent in the presentation of figures.
- In summary, the following statements were issued by the OSG Representatives:
  1. The DAMA case already has final and executory judgment;
  2. The government already exhausted all legal remedies;
  3. The Supreme Court already decided the case in favor of the petitioners;

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<sup>1</sup> The Solicitor General is the statutory counsel of NPC in the said Supreme Court case.

4. The petitioners' claim shall be filed before COA; and
  5. In accordance with the doctrine of immutability of judgments, once a judgment becomes final and executory, it can no longer be altered and that no further legal remedy can be availed of in order to attack that judgment.
- Dir. D.M.S. Rieza-Culangen suggested exploring options to stop the running of interest(s).
  - Pres. P.J. Benavidez remarked that NPC/PSALM should explore options on the payment scheme but no computations shall be released [to the employees/petitioners].
  - Dir. L.C. Drapete raised a query on the responsibility of previous officials who did not exercise due diligence [in passing the invalidated Board Resolutions and in effecting the termination of the employees].
  - Dir. D.M.S. Rieza-Culangen suggested that the documents furnished the Supreme Court be given also to PSALM for their own computation.
  - Atty. M.P. Ridulme also raised the request of Atty. V.V. Orocio to furnish him NPC documents that shall be used to support the money claim before the COA
  - The BRC agreed that the Joint NPC/PSALM Board should tackle the potential source of funding.
  - Dir. D.M.S. Rieza-Culangen thanked the OSG lawyers and expressed the Board's gratitude to the Solicitor General for fighting the case.

***BRC Action: The BRC endorsed the above-indicated items for the information of the National Power Board. It also issued the following instructions:***

1. ***A joint NPC-PSALM Board Meeting shall be called to discuss the ramification(s) of the SC Decision (i.e. other liabilities of NPC/PSALM). The attendance to the said special joint Board meeting shall be limited to the Members of the Board and key officials/executives from NPC and PSALM.***
2. ***PSALM shall be directed to identify possible sources of funds.***

3. *While it is COA that will eventually determine the entitlement of DAMA Case beneficiaries, the NPC Management is instructed to make/prepare estimations/computations (e.g. average claim of an employee, total obligation, etc.). The Management must also come up with a "position" on the following: (a) Entitlement of those who were rehired; and; (b) Entitlement of the early leavers;*
4. *Considering that PSALM shall ultimately bear the burden of settling the judgment obligation, NPC must ensure that it (PSALM) is/shall be provided with all necessary documentary references. The computation/estimations of NPC/PSALM should be comparable;*
5. *Regarding the documents requested by Atty. Orcio, the Management was instructed to make a determination, whether those documents can change/modify the computations that shall be used as bases for the petition for money claim before the COA.*

*The BRC did not prohibit the release of the requested documents considering that most of them may be published circulars or guidelines from NPC/DBM.*

*For the 30 January 2018 Board Meeting, the Management was requested to: (a) make a determination/estimation what is the average amount involved in each of the items requested by Atty. Orcio; and (b) make a determination whether those amounts were included in the previous PhP60.2 B demand for payment from the QC Sheriff.*

*(The OSG Representatives left the BRC Meeting.)*

**d. Request for Approval of the Filing of the 17th Incremental Currency Exchange Rate Adjustment (ICERA) covering the Test Period 26 December 2015 to 25 December 2016.**

VP Urbano C. Mendiola, Jr. (Corporate Affairs Group), presented the above-indicated item and discussed the following: a. Reasons for the filing of the petition; b. Legal bases; c. Salient features of the 17th ICERA Petition; d. ICERA DAA Calculation; e. 17th ICERA DAA; f. Proposed 17th ICERA; g.) Simulation on the Financial Impact; and h.) the ideal ERC Approval Timetable.

The following are the highlights of the discussion:

- In response to Dir. L.C. Drapete's query, VP U.C. Mendiola Jr. said that the filing of the instant petition is delayed by one year. He also presented the pending GRAM/ICERA Applications and the historical GRAM/ICERA Applications/Approval.
- Pres. P.J. Benavidez informed the BRC that in view of the issues besetting ERC, particularly the suspension of its commissioners, NPC plants are operating without permits. He added that he already sent a letter to the DOE Secretary about this situation.

**BRC Action** : ***The BRC endorsed for approval/consideration of the NP Board the following recommendations of Management:***

- 1) Approval for the filing of the 17th ICERA covering the test period 26 December 2015 to 25 December 2016;***
- 2) Approval of the proposed recovery period of twelve (12) months to mitigate impact to consumers; and***
- 3) Adoption and implementation of the rate adjustment to the SAGR for Delegated Areas or where New Power Providers (NPPs) operate for purposes of determining the level of subsidy for equitable implementation of rates in the SPUG areas.***

**e. Ratification of Board Resolution No. 2017-56, [Referendum dated 20 December 2017] re: Designation of the President P. J. Benavidez as the NPC Representative to the PEMC Board.**

The Corporate Secretary informed the Committee that the subject resolution was already signed by eight members of the Board. He also said that the Board Chairman has some clarificatory questions regarding NPC's participation in the PEMC Board/WESM.

***BRC Action : The BRC endorsed the resolution for ratification of the NP Board.***

#### **OTHER MATTERS**

**f. Restructuring of Cagayan de Sulu Electric Cooperative's (CASELCO's) Overdue Power Accounts.**

The Corporate Secretary informed the Committee that CASELCO's restructuring agreement was previously submitted for consideration of the BRC. As a result however of the Board-approved policy on the interest rates, the restructuring period was lowered and under the existing Manual of Approvals, agreements lower than 10 years no longer require Board Approval. Nevertheless, the Management decided to present the agreement for the information and notation of the NP Board.

***BRC Action : The BRC took note of CASELCO's restructuring agreement and endorsed the same for the information of the NP Board.***

**g. Memorandum from the DOE Secretary, re: Legal Requirement for Memorandum of Agreements (MOAs) and Memorandum of Understandings (MOUs).**

The Corporate Secretary informed the BRC that the Memorandum of the DOE Secretary is included in the agenda of the Board Executive Committee Meeting scheduled on 19 January 2018.

***BRC Action : The BRC took note of the manifestation of the Corporate Secretary.***

- h.1 Letter of Atty. Felipe L. Gozon, Chairman of Catanduanes Power Generation, Inc. (CPGI) dated 08 December 2017 (re: Lease Agreement between NPC and FICELCO).**
- h.2 Reply of the NPC Management dated 20 December 2017.**
- h.3 Resolution No. 384-2017 of Sangguniang Panlalawigan, Province of Catanduanes, commending the NP Board and Executive Officers of NPC for protecting the interest of the Members-Consumers of the FICELCO.**

*(Dir. Angeles arrived)*

The Corporate Secretary informed the Committee that the above- indicated items shall be submitted for the information of the NP Board. Dir. R.V. Angeles commented that the letter of Atty. F.L. Gozon is hinting a possible graft/Ombudsman case against the Board to which Pres. P.J. Benavidez said that NPC is ready to defend its position on the matter.

Pres. P.J. Benavidez took the chance to inform and invite Board Members to witness the inauguration of the following completed projects: a.) Masbate Transmission Lines (Mainland Masbate) and the capacity addition program [operation of the power generating set(s)] in Ticao Island; and b.) Dinagat Island capacity addition project.

***BRC Action : The BRC took note of the above-indicated items including the invitation of the NPC President, for the information of the NP Board.***

- i. Management's compliance to NP Board instruction given on 19 December 2017, re: Comments on the Issues Raised in the 04 Dec. 2017 Letter of Basilan C&J Construction.(ref: Genset for Basilan DPP).
- j. Formal Notification of the Change/Modification made to NP Board Resolution No. 2017-55 dated 19 December, 2017, re: Award of Contract for the Supply, Delivery, Erection/Installation, Test and Commissioning of Balance of Plant for the Electrification of New Areas in Samar (in three schedules).

***BRC Action : The BRC took note of the above-indicated items for the information of the NP Board.***

- k. 2017 Accomplishment Report and 2018 NPC Performance Scorecard.

VP U.C. Mendiola Jr. apprised the BRC on the status of the 2017 performance targets. He also presented the proposed 2018 performance scorecard of NPC.

***BRC Action : The BRC issued the following instructions:***

- (1) Update the 2017 Scorecard Accomplishment Report for presentation in the next Board meeting; and***
- (2) Revisit the 2018 Performance Targets especially those that are lower than the 2017 Actual Accomplishment/2017 Targets.***

- I. Validation Result of the CY 2016 Performance Scorecard of NPC.
- m. 2017 NPC Performance Scorecard – Indicative Rating.

***BRC Action : The BRC took note of the above-indicated items for the information of the NP Board.***

- n. Policy Guidelines for Procurement/Lease of Gensets.

In compliance with the previous instruction of the NP Board, VP U.C. Mendiola Jr., presented the proposed policy on the procurement or leasing of generating sets in the SPUG areas.

***BRC Action : The BRC instructed the Management to:***

- (1) Provide the Board Members (especially Asec. Epimaco V. Densing III of DILG) copy of the Power Development Plan submitted by NPC to DOE; and***
- (2) Present the 2018 program/plan for genset acquisition or lease for the consideration of the Board. The Market study/needs assessment should likewise be presented.***
- (3) During the [first quarter] of every year, the Management has to present the annual Program/Plan prior to the start of procurement activities.***

#### **IV. Adjournment**

The meeting was adjourned at 11:11 AM.

#### **V. BRC Members/Representatives Present**

- a. Dir. Danielle Marie S. Rieza-Culangen**  
Secondary Alternate of the DOF  
Secretary BRC Chairperson
- b. President Pio J. Benavidez**  
Member – NPC



**SALIENT POINT**  
**BOARD REVIEW COMMITTEE MEETING**  
**18 JANUARY 2018**

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- c. **Asec. Epimaco V. Densing III**  
Alternate of the **DILG** Secretary
- d. **Exec. Dir. Raul V. Angeles**  
Alternate of the **DTI** Secretary
- e. **Dir. Lorenzo C. Drapete**  
Alternate of the **DBM Secretary**
- f. **Dir. Asterio P. Saliot**  
Alternate Representative of Usec. A. T. Cayanan, **DA**
- g. **Mr. Emmanuel C. Talag**  
Observer/Representative-**DOE**
- h. **Ms. Marie Christine G. Danao/  
Mr. Armando M. Ramirez III**  
Observers/Representatives of  
**Usec. R. G. Tungpalan, NEDA**
- i. **Atty. Patrick Mabbagu**  
Corporate Secretary

Respectfully submitted,

  
**Atty. PATRICK MABBAGU**

[For the Board Review Committee]