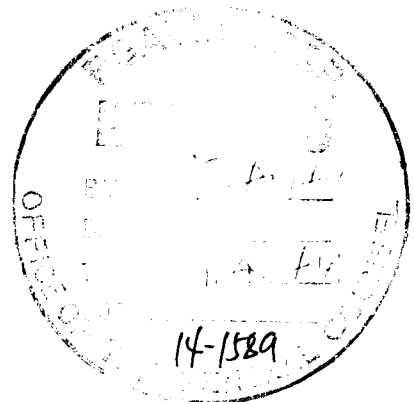


Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City

IN THE MATTER OF THE
PETITION FOR THE
AVAILMENT OF THE
NATIONAL POWER
CORPORATION'S STRANDED
CONTRACT COSTS PORTION
OF THE UNIVERSAL CHARGE
FOR CALENDAR YEAR 2013
AND TRUE-UP ADJUSTMENTS
FOR THE NATIONAL POWER
CORPORATION'S STRANDED
CONTRACT COSTS PORTION
OF THE UNIVERSAL CHARGE
FOR CALENDAR YEARS 2007-
2010



ERC CASE NO. 2014-111 RC

**POWER SECTOR ASSETS AND
LIABILITIES MANAGEMENT
CORPORATION (PSALM),
Petitioner.**

x ----- x

DOCKETED
Date: AUG 12 2014
[Signature]

ORDER

On July 30, 2014, the Power Sector Assets and Liabilities Management Corporation (PSALM) filed a petition for the availment of the National Power Corporation's (NPC) Stranded Contract Costs (SCC) portion of the Universal Charge (UC) for Calendar Year 2013 (CY2013) and the true-up adjustments of the SCC portion of the UC for CYs 2007-2010.

In the said petition, PSALM alleged, among others, the following:

1. The instant petition is pursuant to Republic Act No. 9136 (R. A. No. 9136) or the Electric Power Industry Reform Act of 2001 (EPIRA), its Implementing Rules and Regulations (IRR) and the Amended Rules for Recovery of NPC Stranded Contract Costs and Stranded Debts Portion of the Universal Charge (Amended Rules for Recovery) adopted by the Commission in its Resolution No. 02-2011 dated 7 February 2011;

2. Under Article II of the Amended Rules for Recovery, true-up adjustments of the UC for NPC SCC and Stranded Debts (SD) for subsequent years¹ shall be submitted to the Commission on or before the 15th of March every year thereafter. True-up adjustments shall be done on an annual basis to be initiated by it through submission of the Variance Analysis Report (VAR) certified by an Independent Third Party auditor on or before the 15th day of March of every year;
3. Under Article IV, Section 9 of the Amended Rules for Recovery, it shall file the petition for availments from the UC for NPC's SCC in accordance with Section 4 (e), Rule 3 of the IRR and the Commission's Rules of Practice and Procedure;
4. In its letter dated February 18, 2014, it requested for an extension of the deadline to file the true-up adjustment of the UC-SCC from March 15, 2014 to July 31, 2014, on the ground that the March 15 deadline is no longer feasible considering that its CY 2013 certified financial statements which serve as the bases in calculating the VAR will only be available by March 31, 2014. Furthermore, it stated that the Commission on Audit (COA) still needed to verify and validate the VAR before they can issue a certification, which certification is required to be submitted to the Commission in support of the true-up calculation. In a letter dated March 10, 2014, the Commission granted said request and directed it to file the true-up adjustment for UC-SCC petition on or before July 31, 2014, without further extension. Copies of the said letter request for extension and the approval of the Commission are attached to the instant petition;
5. Its principal mandate is to manage the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets, and IPP contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner. To attain its objectives, it shall, among others, [i]

¹ Article II, Amended Rules for Recovery

"In the first year of implementation of the recovery of NPC Stranded Contract Costs and Stranded Debt Components of the UC, the PSALM shall file with the ERC a petition for the establishment of and availment from the UC for NPC Stranded Contract Costs and Stranded Debts recovery share of the UC on or before the 15th of March 2011 for amounts for the year ending December 31, 2010 including previous stranded contract cost for the period CY 2007, CY 2008 and CY 2009. PSALM shall submit all pertinent documents to support the application for availment of the UC. These documents and other relevant information shall be the basis of the evaluation by ERC in determining PSALM's share from the UC."

calculate the amount of the stranded debts and stranded contract costs of NPC which shall form the basis for the Commission in the determination of the universal charge and [ii] liquidate the NPC stranded contract costs, utilizing the proceeds from sales and other property contributed to it, including the proceeds from the universal charge;

NPC's Stranded Contract Costs

6. SCC of NPC refers to the "excess of the contracted costs of electricity under eligible contracts over the actual selling price of the contracted energy output of such contracts in the market." Market as defined in the Amended Rules for Recovery refers to the "Wholesale Electricity Spot Market (WESM) where electricity traded includes, but is not limited, to Spot Sales, Transition Supply Contracts (TSCs), bilateral contracts, One Day Power Sale (ODPS), Default Wholesale Supplier (DWS) service, and Ancillary Services." To be eligible for recovery under the UC, such contracts shall have been approved by the then Energy Regulatory Board (ERB) as of December 31, 2000;
7. For purposes of the UC-SCC calculation, Independent Power Producer (IPP) Contracts of NPC eligible for recovery under the UC-SCC (Eligible IPP Contracts) shall refer to "generation capacities developed under the Build-Operate-Transfer scheme and any such generation asset whose construction was not financed by NPC but whose output is bought by NPC under Purchase Power Agreements (PPAs), Energy Conversion Agreements (ECAs) or any other similar contractual relationship. The IPP Contracts shall also include Rehabilitate Operate Lease (ROL) and Rehabilitate Operate Maintain types of IPP Contracts."² In accordance with Section 32 of the EPIRA, only contracts duly approved by the then Energy Regulatory Board (ERB) as of December 31, 2000 shall be entitled for recovery through the UC-SCC;
8. On December 26, 2010, the commercial operation of the WESM in the Visayas Grid and its integration with the Luzon Grid commenced³;

² Article III, Amended Rules for the Recovery of UC SCC and SD

³ DOE Department Circular No. 2010-11-0012

9. Based on the above definition and for the purpose of this filing, the following are the Eligible IPP Contracts, which are eligible for recovery under UC-SCC:
 - a. Benguet Mini-Hydros (Ampohaw and Bakun);
 - b. Pagbilao I & II;
 - c. Sual I & II; and
 - d. Unified Leyte (Leyte A and B);

10. The annual UC-SCC shall be computed based on the difference between the Gross Annual Contract Costs (GACCs) and combined amounts derived from the Revenues from the Sale of Contracted Energy of Eligible IPP Contracts (Revenues) and the Privatization proceeds of the Eligible IPP Contracts (Privatization Proceeds or PP)⁴;

Gross Annual Contract Costs

11. For purposes of this filing, the Gross Annual Contract Costs (GACC) is composed of capacity fees, fixed operating and maintenance fee (FOM)–other power supply (OPS), other plant OPEX, variable fees - OPS when purchased power cost varies with volume of energy and energy purchased from the WESM;

12. For CY 2013, the GACC amounted to a total of PhP30,895.23 Million with details as follows:

| GACC Components (in PhP) | Benguet Mini-Hydros | Unified Leyte | Pagbilao | Sual | TOTAL |
|---|--------------------------------|-------------------------|--------------------------|--------------------------|--------------------------|
| Capacity Fees | - | - | 8,138,882,353.76 | 8,037,982,653.82 | 16,176,865,007.58 |
| Fixed O&M- Other Power Supply | - | 9,753,657,816.12 | 1,414,172,017.52 | 1,400,417,048.15 | 12,568,246,881.79 |
| Other OPEX – Plant | 1,775,840.68 | 74,772,831.42 | 73,530,069.08 | 137,315,452.17 | 287,394,193.35 |
| Sub-Total: Fixed Fees | 1,775,840.68 | 9,828,430,647.54 | 9,626,584,440.36 | 9,575,715,154.14 | 29,032,506,082.72 |
| Variable - Other Power Supply | 648,568,201.49 | - | 587,080,876.03 | 559,917,366.74 | 1,795,566,444.26 |
| Energy Purchased from PEMC (to meet TSC) | 11,860,418.53 | 54,655,253.50 | - | - | 66,515,672.03 |
| Energy Purchased from PEMC (Station Use) | 16,504.86 | 623,928.72 | - | - | 640,433.58 |
| Sub-Total: Variable Fees | 660,445,124.87 | 55,279,182.23 | 587,080,876.03 | 559,917,366.74 | 1,862,722,549.87 |
| TOTAL GACC | 662,220,965.55 | 9,883,709,829.77 | 10,213,665,316.39 | 10,135,632,520.88 | 30,895,228,632.59 |

⁴ Article IV, Section 6 in relation to Sections 4 and 5, Ibid.

**Revenues From the Sale of Contracted Energy of
Eligible IPP Contracts**

13. It should be noted that cost of energy purchased from Philippine Electricity Marketing Corporation (PEMC) does not include the downward adjustment for November and December 2013 issued by PEMC in 2014 as a result of market suspension during the Malampaya natural gas pipeline shutdown, which was directed by the Commission in its Order dated March 3, 2014 in ERC Case No. 2014-021 MC entitled "*In the Matter of the Prices in the (Wholesale Electricity Spot Market (WESM) for the Supply Months of November and December 2013 and the Exercise by the Commission of its Regulatory Powers to Intervene and Direct the Imposition of Regulated Prices therein without prejudice to the Ongoing Investigation on the Allegation of Anti-Competitive Behavior and Possible Abuse of Market Power by some WESM Participants*";
14. For Benguet Mini-Hydros and Unified Leyte, components of GACC were lifted from the Results of Operation of Eligible IPPs (ROO). For eligible IPP plants under IPP Administrators (IPPA) namely Sual and Pagbilao, components of GACC were sourced from the monthly IPP payment vouchers and Schedule of Other OPEX of Plants under IPPA;

**Revenues From the Sale of Contracted Energy of
Eligible IPP Contracts**

15. For purposes of this filing, the RSCE refers to the following sources of revenue: (i) Sales in WESM, including net settlement surplus (NSS); and (ii) Sales under Transition Supply Contracts (TSC), including adjustments namely purchased power cost adjustments (PPCA) and foreign-exchange related cost adjustments (FxA), and penalties imposed to customers which drew power in excess of contracted level of energy;
16. For CY 2013, the RSCE amounted to a total of PhP12,939.05 Million with details as follows:

| RSCE Components (in PhP) | Benguet Mini-Hydros | Unified Leyte | TOTAL |
|--------------------------|-----------------------|--------------------------|--------------------------|
| Sales in WESM | 61,851,590.38 | 3,526,666,071.62 | 3,588,517,662.00 |
| Sales in TSC | 179,517,373.61 | 9,171,009,968.93 | 9,350,527,342.55 |
| TOTAL RSCE | 241,368,963.99 | 12,697,676,040.55 | 12,939,045,004.55 |

Revenues from the Sale of Contracted Energy

17. It should be noted that revenues generated by sales in WESM of Benguet Mini-Hydros and Unified Leyte, particularly for the months of November and December 2013, were based on the original WESM billings, which do not reflect the downward adjustment pursuant to the Order of the Commission dated March 3, 2014 in ERC Case No. 2014-021 MC mentioned above. In the event the adjusted WESM bills for November and December 2013 issued by PEMC are used as bases, revenues from sales in the WESM for Benguet Mini-Hydros and Unified Leyte will decrease by PhP29,087,896.54;
18. Components of RSCE were lifted from the Net Utility Revenue portion of the ROO. RSCE excludes Power Act Reduction (PAR) and Prompt Payment Discount (PPD) adjustment which have been disallowed for recovery by the Commission in its Decision dated January 28, 2013 in ERC Case No. 2011-091 RC. FxA was based on Total FxA Revenue and allocated per plant based on TSC energy sales. Copies of the Schedule of FxA Adjustment for the period 2013 and Schedule of FxA Adjustment for Eligible IPP Contracts are attached to the instant petition;

Proceeds from Privatization of Eligible IPP Contracts

19. For CY 2013, PP amounted to a total of PhP13,877.94 Million. Included under PP are cash inflows arising from an Assumption of Obligation scheme of the eligible IPP contracts namely monthly payments and generation payments of Pagbilao and Sual IPP Administrators, as follows:

| Privatization Proceeds Components (in PhP) | Pagbilao | Sual | Total |
|--|-------------------------|-------------------------|--------------------------|
| Monthly Payments of IPP Administrator | 6,092,355,338.39 | 6,640,311,798.25 | 12,732,667,136.64 |
| Generation Payments | 586,423,702.43 | 558,847,761.55 | 1,145,271,463.98 |
| TOTAL PP | 6,678,779,040.82 | 7,199,159,559.80 | 13,877,938,600.62 |

20. Copies of the Collection of IPPAA Monthly Payments, Summary of IPPA Billings – Energy Fee, and Summary of IPPA Billings – Generation Payment (PhP Equivalent) are attached to the petition;

NPC's Stranded Contract Costs

21. Based on the foregoing premises, the aggregate UC-SCC for CY 2013 amounts to PhP4,078.24 computed as the difference between the GACC, on one hand, and combined amounts derived from the RSCE and the PP on the other, with details as follows:

| 2013 UC-SCC (in PhP) | Benguet Mini-Hydros | Unified Leyte | Pagbilao | Sual | TOTAL |
|-------------------------|-----------------------|---------------------------|-------------------------|-------------------------|-------------------------|
| GACC | 662,220,965.55 | 9,883,709,829.77 | 10,213,665,316.39 | 10,135,632,520.88 | 30,895,228,632.59 |
| Less: RSCE | 241,368,963.99 | 12,697,676,040.55 | - | - | 12,939,045,004.55 |
| Less: PP | - | - | 6,678,779,040.82 | 7,199,159,559.80 | 13,877,938,600.62 |
| SCC | 420,852,001.56 | (2,813,966,210.78) | 3,534,886,275.57 | 2,936,472,961.08 | 4,078,245,027.43 |

22. Consistent with the Decision of the Commission in ERC Case No. 2011-091 RC wherein it used four (4) years of actual electricity sales based on the Department of Energy's (DOE) Power Development Plan (PDP) in determining the four (4) year 2007-2010 UC-SCC rate, the UC-SCC rate for CY 2013 SCC by one (1) year Electricity Sales Forecast for CY 2015 based on the PDP (2013-2030). The calculated SCC rate is PhP0.0531/kWh with details as follows:

| UC-SCC For CY 2013 (in PhP) | Forecasted Energy Sales (GWh) | UC-SCC Rate (PhP/kWh) |
|-----------------------------|-------------------------------|-----------------------|
| 4,078,245,027.43 | 76,855 | 0.0531 |

Under-Recovery of UC-SCC For CYs 2007-2010

23. Under Article VIII, Section 2 of the Amended Rules for Recovery, the VAR to be submitted by the Petitioner to the Honorable Commission for the SCC recovery shall contain, at the minimum, the following:
 - a. The Variance analysis that would show a positive or negative Quantity Variance (QV), which refers to the difference between the energy sales used in determining the Commission-approved level of NPC SCC in PhP/kWh (billing determinant) and the actual energy (kWh) sales to end-users; and
 - b. The over or under recovery for the stranded contract costs which shall be calculated by multiplying the QV by the PhP/kWh SCC approved by the Commission;
24. In the Commission's Decision dated January 28, 2013 in ERC Case No. 2011-091 RC covering CYs 2007-2010 UC-SCC, it was authorized to recover the Total SCC amounting to PhP53.851 Billion translated to PhP0.1938/kWh for the Luzon, Visayas, and Mindanao Grids, to be collected from the consumers starting March 2013 billing period;
25. In its Petition for UC-SCC True-up Adjustments for CYs 2011 and 2012 docketed as ERC Case No. 2013-160 RC, it reported that the total remittance made by collecting entities of the UC to it pertaining to the PhP0.1938/kWh ERC-approved UC-SCC amounted to PhP1,859,256,657.29 out of the PhP53,851,000,000.00 approved CYs 2007-2010 SCC, covering the period April 1, 2013 to June 17, 2013. This resulted to a Quantity Variance of 9,593.90 GWh and translated to an under-recovery of PhP51,991,743,342.71. This was reported in the VAR for the UC-SCC for CYs 2007-2010, certified by the COA, the Third Party auditor, and submitted to the Honorable Commission to support the true-up application;
26. From June 18, 2013 to December 31, 2013, total remittance made by collecting entities of the UC to it pertaining to the UC-SCC amounted to PhP 5,909,546,643.07 equivalent to 30,493.02 GWh energy sales;

27. Taking off from the QV and corresponding SCC recovery as of June 17, 2013, the under-recovery for the CYs 2007-2010 SCC as of December 31, 2013 is PhP46,082,196,699.64, calculated by multiplying the quantity variance of 237,788.08 GWh (rounded off) by the PhP0.1938/kWh SCC rate approved by the Commission, details of which are shown below:

| Particulars | Quantity (GWh) | Amount (in PhP) |
|--|-------------------|--------------------------|
| Billing determinant and Level of Stranded Contract Cost pursuant to the ERC Decision ¹ | 277,875.00 | 53,851,000,000.00 |
| Less: Energy Sales Billed/Remitted covering 1 April to 17 June 2013 Remittance Period ² (PhP1,859,256,657.29/PhP0.1938/kWh) | 9,593.90 | 1,859,256,657.29 |
| Quantity Variance and corresponding Under Recovery as of 17 June 2013 ² | 268,281.10 | 51,991,743,342.71 |
| Less: Energy Sales Billed/Remitted covering 18 June to 31 December 2013 Remittance Period (PhP5,909,546,643.07/ PhP0.1938/kWh) | 30,493.02 | 5,909,546,643.07 |
| Quantity Variance/Under Recovery | 237,788.08 | 46,082,196,699.64 |

Quantity Variance and Under Recovery as of 31 December 2013
 (CYs 2007-2010 UC-SCC)

¹ ERC Decision on Case No. 2011-091 RC dated 28 January 2013

² As certified by COA in its Independent Auditor's Report dated 29 July 2013

³ Per PSALM's UCAD Remittance Report

A copy of the Variance Analysis Report for the UC-SCC for CYs 2007-2010 as of December 31, 2013, certified by the COA, the Third Party Auditor, is attached to the instant petition;

28. In compliance with Section 4(e) of Rule 3 of the EPIRA-IRR and Commission's Resolution No. 38-2006, a copy of the instant Petition (including Annexes) was furnished the Sangguniang Panlungsod of Makati City. The Petition (excluding Annexes) was also published in a newspaper of general circulation;

Allegations In Support of the Issuance of Provisional Authority

29. The instant petition covers the (SCC) for CY 2013. The amount, if collected, would enable it to recover SCC, which was funded through loans/borrowings, and to service its maturing loan obligations. Provisional approval of the SCC will also keep it from resorting to refinancing to service its maturing loan obligations, thus reducing, if not totally eliminating, additional borrowing costs;

30. Pursuant to the its Rules of Practice and Procedures, the Commission may exercise its discretion by granting provisional authority or interim relief prior to a final decision;
31. It is understood that the interim relief sought by it, that may be granted by the Commission, shall be subject to adjustments and other conditions that the Commission may impose after hearing and final determination of the Commission; and
32. It prays that the Commission approves the following:
 - a. The calculated UC-SCC for the year 2013 amount to PhP4,078,245,027.43, equivalent to PhP0.0531/kWh covering a one (1)-year recovery period; and
 - b. The provisional authority allowing to charge and collect the computed UC-SCC or such amount determined by the Commission.

Finding the said petition to be sufficient in form and in substance with the required fees having been paid, the same is hereby set for hearing on the following dates and venues:

| Date | Proceedings | Venue |
|---|--|--|
| September 16, 2014 (Tuesday) at two o'clock in the afternoon (2:00 P.M.) | Jurisdictional Hearing and Expository Presentation | ERC Hearing Room, 15 th Floor, Pacific Center Building, San Miguel Avenue, Pasig City |
| October 2, 2014 (Thursday) at two o'clock in the afternoon (2:00 P.M.) | Pre-Trial Conference and Evidentiary Hearing | Miguel Avenue, Pasig City |

PSALM is hereby directed to cause the publication of the attached Notice of Public Hearing, at its 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 date of the scheduled initial hearing. It is also directed to inform the consumers, by any other means available and appropriate, of the filing of the instant petition, its reasons therefor, and of the scheduled hearing thereon.

Let copies of the petition, 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 Mayor of Makati City, and all Provincial Governors for the appropriate posting thereof on their respective bulletin boards.

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

On the date of the initial hearing and pre-trial conference, PSALM must submit to the Commission its written Compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidences of the actual posting and publication of the Notice of Public Hearing consisting of certifications issued to that effect, signed by the afore-mentioned Mayor 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 said Notice of Public Hearing were published together with the complete issues of the said newspapers, and such other proofs of compliance with the requirements of the Commission.

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 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, PSALM must also be prepared to make an expository presentation of its petition, aided by whatever communication medium that it 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 petition is all about and the reasons and justifications being cited in support of the same.

SO ORDERED.

Pasig City, August 4, 2014.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ZENAIDA G. CRUZ-DUCUT
Chairperson

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Copy Furnished:

1. **Atty. Federico P. Quevedo**
Atty. Cecilio B. Gellada, Jr.
Atty. Caroline V. Balo-Atencia
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2. **Office of the Solicitor General**
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3. **Commission on Audit**
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4. **Senate Committee on Energy**
GSIS Building, Roxas Boulevard
Pasay City 1307
5. **House Committee on Energy**
Batasan Hills, Quezon City 1126
6. All DUs
7. **The City Mayor**
Makati City
8. **All Provincial Governors**