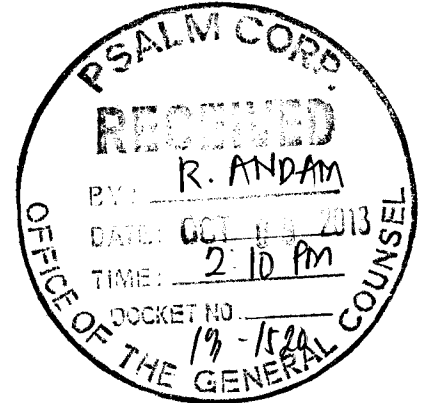


Republic of the Philippines  
ENERGY REGULATORY COMMISSION  
San Miguel Avenue, Pasig City

IN THE MATTER OF THE  
PETITION FOR THE TRUE-UP  
ADJUSTMENTS FOR THE  
NATIONAL POWER  
CORPORATION'S STRANDED  
CONTRACT COSTS PORTION  
OF THE UNIVERSAL CHARGE  
FOR CALENDAR YEARS 2011  
AND 2012



ERC CASE NO. 2013-160 RC

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

X ----- X

D O C K E T E D  
Date: OCT 09 2013  
By: *M*

ORDER

On July 31, 2013, the Power Sector Assets and Liabilities Management Corporation (PSALM) filed a petition for the true-up adjustments for the National Power Corporation's (NPC) Stranded Contract Costs (SCC) portion of the Universal Charge (UC) for Calendar Years (CY) 2011 and 2012.

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 years<sup>1</sup> shall be submitted to the Commission on or before the 15<sup>th</sup> 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 15<sup>th</sup> day of March of every year;
3. On March 6, 2012, it sought clarification from the Commission whether it has to file petitions/true-up adjustments for the recovery of NPC's SCC for 2011 and SD for 2012 pending resolution of ERC Case Nos. 2011-091 RC and 2011-092 RC. On March 13, 2012, the Commission clarified that it need not file the VAR and consequently, the True-up adjustment pending resolution of ERC Case No. 2011-091 RC considering that the VAR calculation depends primarily on the result of said ERC Case No. 2011-091 RC. However, it was directed to submit a report on the recoverable SCC for 2011 on or before June 30, 2012. The copies of the said request for clarification and the corresponding reply of the Commission are attached to the instant petition;
4. On July 3, 2012, it requested for an additional period of time within which to submit the report on the recoverable UC-SCC for 2011 on the ground that it was still in the process of finalizing the data in calculating the updated UC-SCC. Said request was granted by the Commission in a letter dated August 2, 2012, giving thirty (30) days from receipt of the same within which to submit the said data. It received a copy of the said letter on August 13, 2012;
5. On September 11, 2012, it submitted a Report on the Recoverable SCC for Calendar Year 2011 and the update of the SD as of December 31, 2011. The Commission acknowledged receipt of the said Reports on September 21, 2012;

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<sup>1</sup> 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 15<sup>th</sup> 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."

6. On January 28, 2013, the Commission issued a Decision in ERC Case No. 2011-091 RC, approving the petition for recovery of NPC's UC-SCC for Calendar Years 2007 to 2010, with modification. It was authorized to recover UC-SCC amounting to the Total Stranded Contract Cost of PhP53.851 Billion at the rate of PhP0.1938/kWh from the Luzon, Visayas, and Mindanao Grids;
7. On March 7, 2013, it requested the Commission that it be given until June 30, 2013 within which to file the True-up adjustments for SCC and SD. On May 28, 2013, it also requested for a further extension until July 31, 2013 to file the True-up adjustments. The said request was granted by the Commission on June 7, 2013. Hence, the filing of the instant petition;
8. 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<sup>2</sup>. To attain its objectives, it shall, among others, [i] calculate the amount of the stranded debts and stranded contract costs of NPC which shall form the basis for the Commission to determine 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;
9. 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."<sup>3</sup> 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;

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<sup>2</sup> Sec. 50, EPIRA

<sup>3</sup> Article III, Amended Rules for the Recovery of UC SCC and SD

10. On December 26, 2010, the commercial operation of the WESM in the Visayas Grid and its integration with the Luzon Grid commenced<sup>4</sup>;
11. 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);
12. 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)<sup>5</sup>;

**Gross Annual Contract Costs**

13. 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;
14. For CYs 2011 and 2012, the GACC amounted to a total of PhP62,740.64 Million with details as follows:

GACC Component (in PhP M)	2011	2012	TOTAL
Capacity Fees	16,167.41	15,737.08	<b>31,904.49</b>
Fixed O&M - Other Power Supply	14,415.88	14,110.04	<b>28,525.93</b>
Other OPEX –Plant	116.38	164.03	<b>280.41</b>
<b>Sub-Total: Fixed Fees</b>	<b>30,699.67</b>	<b>30,011.15</b>	<b>60,710.83</b>
Variable - Other Power Supply	687.64	695.91	<b>1,383.54</b>
Energy Purchased from PEMC	595.71	50.56	<b>646.27</b>
<b>Sub-Total: Variable Fees</b>	<b>1,283.35</b>	<b>746.47</b>	<b>2,029.82</b>
<b>TOTAL</b>	<b>31,983.02</b>	<b>30,757.62</b>	<b>62,740.64</b>

<sup>4</sup> DOE Department Circular No. 2010-11-0012

<sup>5</sup> Article IV, Section 6 in relation to Sections 4 and 5, Ibid.

15. Details of the GACC on a per-plant basis for CYs 2011 and 2012 are shown below:

**CY 2011**

<b>GACC Component (in Php M)</b>	<b>Benguet Mini- Hydros</b>	<b>Unified Leyte</b>	<b>Pagbilao</b>	<b>Sual</b>	<b>TOTAL</b>
Capacity Fees	-	-	8,132.63	8,034.79	16,167.41
Fixed O&M - Other Power Supply	-	11,644.97	1,397.21	1,373.70	14,415.88
Other OPEX –Plant	1.83	31.81	30.41	52.33	116.38
<b>Sub-Total: Fixed Fees</b>	<b>1.83</b>	<b>11,676.78</b>	<b>9,560.25</b>	<b>9,460.81</b>	<b>30,699.67</b>
Variable - Other Power Supply	687.64	-	-	-	687.64
Energy Purchased from PEMC	104.40	491.31	-	-	595.71
<b>Sub-Total: Variable Fees</b>	<b>792.04</b>	<b>491.31</b>	<b>-</b>	<b>-</b>	<b>1,283.35</b>
<b>TOTAL</b>	<b>793.87</b>	<b>12,168.09</b>	<b>9,560.25</b>	<b>9,460.81</b>	<b>31,983.02</b>

**CY 2012**

<b>GACC Component (in Php M)</b>	<b>Benguet Mini- Hydros</b>	<b>Unified Leyte</b>	<b>Pagbilao</b>	<b>Sual</b>	<b>TOTAL</b>
Capacity Fees	-	-	7,904.64	7,832.44	15,737.08
Fixed O&M -Other Power Supply	-	11,389.47	1,366.27	1,354.30	14,110.04
Other OPEX –Plant	1.37	66.44	37.53	58.69	164.03
<b>Sub-Total: Fixed Fees</b>	<b>1.37</b>	<b>11,455.91</b>	<b>9,308.44</b>	<b>9,245.43</b>	<b>30,011.15</b>
Variable - Other Power Supply	695.91	-	-	-	695.91
Energy Purchased from PEMC	24.02	26.54	-	-	50.56
<b>Sub-Total:Variable Fees</b>	<b>719.92</b>	<b>26.54</b>	<b>-</b>	<b>-</b>	<b>746.47</b>
<b>TOTAL</b>	<b>721.29</b>	<b>11,482.46</b>	<b>9,308.44</b>	<b>9,245.43</b>	<b>30,757.62</b>

For Benguet Mini Hydros and Unified Leyte, components of the GACC were lifted from the Results of Operation (ROO). For IPP plants under IPP Administration (IPPA), components of GACC were sourced from the monthly IPP payment vouchers and ROO, which indicates the other plant operating expenses of Sual and Pagbilao;

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

16. The Revenues from the Sale of Contracted Energy of Eligible IPP Contracts (RSCE) refers to the following sources of revenue: (i) Sales in WESM, including revenue adjustments such as net settlement surplus (NSS), bilateral contract quantity (BCQ) adjustment, price substitution adjustment (PSA), and trading amount for line rental (TALR); (ii) Sales under Transition Supply Contracts (TSC), including adjustments such as fuel, purchased power, and foreign-exchange related cost adjustments (FxA), and penalty imposed to customers which drew power in excess of contracted level of energy; and (iii) Sales from provision of Ancillary Services;
17. For CYs 2011 and 2012, the RSCE amounted to a total of PhP31,611.47 Million with details as follows:

<b>RSCE Component (in Php M)</b>	<b>2011</b>	<b>2012</b>	<b>TOTAL</b>
Sales in WESM	3,531.89	6,883.92	10,415.81
Sales in TSC	11,509.69	9,346.83	20,856.53
Ancillary Services	298.35	40.78	339.13
<b>TOTAL</b>	<b>15,339.94</b>	<b>16,271.53</b>	<b>31,611.47</b>

18. A summary of RSCE on a per-plant basis for CYs 2011 and 2012 are as follows:

**CY 2011 RSCE Per Plant**

<b>RSCE Component (in Php M)</b>	<b>Benguet Mini-Hydros</b>	<b>Unified Leyte</b>	<b>TOTAL</b>
<b>Sales in WESM</b>	<b>65.27</b>	<b>3,466.63</b>	<b>3,531.89</b>
<b>Sales in TSC</b>	<b>417.31</b>	<b>11,092.38</b>	<b>11,509.69</b>
TSC Sales	391.93	10,602.54	10,994.46
FPPCA	10.85	273.89	284.74
FxA	14.32	135.42	149.73
Penalties Adjustment	0.22	80.54	80.76
<b>Ancillary Services</b>	<b>-</b>	<b>298.35</b>	<b>298.35</b>
<b>TOTAL</b>	<b>482.58</b>	<b>14,857.36</b>	<b>15,339.94</b>

**CY 2012 RSCE Per Plant**

RSCE Component (in Php M)	Benguet Mini-Hydros	Unified Leyte	TOTAL
<b>Sales in WESM</b>	<b>226.39</b>	<b>6,657.53</b>	<b>6,883.92</b>
<b>Sales in TSC</b>	<b>172.28</b>	<b>9,174.56</b>	<b>9,346.83</b>
TSC Sales	160.46	8,718.15	8,878.61
FPPCA	4.38	328.64	333.02
FxA	6.41	72.67	79.08
Penalties Adjustment	1.02	55.10	56.12
<b>Ancillary Services</b>	<b>-</b>	<b>40.78</b>	<b>40.78</b>
<b>TOTAL</b>	<b>398.67</b>	<b>15,872.87</b>	<b>16,271.53</b>

Components of the RSCE were obtained from the ROO. FxA Revenue, which is part of the Sales in TSC, was based on per grid FxA Revenue and allocated per plant based on TSC energy sales. Consistent with the Decision of the Commission in ERC Case No. 2011-091 RC, the RSCE excludes the Power Act Reduction (PAR) and Prompt Payment Discount (PPD) adjustment which have been disallowed for recovery under the UC-SCC;

**Proceeds from Privatization of Eligible IPP Contracts**

19. For CYs 2011 and 2012, Proceeds from Privatization of Eligible IPP Contracts (PP) amounted to a total of PhP 13,444.10 Million. Included under PP are the monthly payments of Pagbilao and Sual IPP Administrators, as well as the assignment fee for Benguet Mini-Hydros as follows:

PP Component (in Php M)	2011	2012	TOTAL
Pagbilao	989.31	2,302.74	3,292.05
Sual	2,921.82	7,229.79	10,151.61
Benguet Mini-Hydros	0.44	-	0.44
<b>TOTAL</b>	<b>3,911.56</b>	<b>9,532.53</b>	<b>13,444.10</b>

**NPC's Stranded Contract Costs**

20. Based on the foregoing premises, the aggregate UC-SCC for CYs 2011 and 2012 computed as the difference between the GACC and combined amounts derived from the RSCE and the PP amount to PhP17,685.08 Million, computed as follows:

SCC	UNIT	2011	2012	TOTAL
GACC	PhP M	31,983.02	30,757.62	62,740.64
less: RSCE	PhP M	15,339.94	16,271.53	31,611.47
less: PP	PhP M	3,911.56	9,532.53	13,444.10
<b>SCC</b>	<b>PhP M</b>	<b>12,731.52</b>	<b>4,953.56</b>	<b>17,685.08</b>

21. 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 Power Development Plan (PDP) in determining the four (4) year 2007-2010 UC-SCC rate, the UC-SCC rate for CYs 2011 and 2012 SCC was derived by dividing the UC-SCC amount of PhP 17,685.08 Million by the two (2) year Electricity Sales Forecast based on the PDP (2012-2030) equivalent to 138,837.40 GWh, representing energy sales for 2014 and 2015. The calculated SCC rate is PhP0.1274/kWh with details as follows:

SCC	UNIT	UNIT
Amount	Php M	17,685.08
Energy Sales	GWh	138,837.40
Rate	Php/kWh	0.1274

**Variance Analysis Report for CYs 2007-2010**

22. In its Decision dated January 28, 2013 in ERC Case No. 2011-091 RC, the Commission approved the UC-SCC for CYs 2007-2010 in the amount of PhP53,851 Million, equivalent to PhP0.1938/kWh, using 277,875 GWh as billing determinant. The Commission directed all distribution utilities (DUs) and the National Grid Corporation of the Philippines (NGCP) to collect from the consumers the approved UC-SCC starting March 2013 billing period. Pursuant to Section 34 of Republic Act No. 9136, collections by the distribution utilities and TRANSCO (now NGCP) shall be remitted to PSALM Corporation on or before the 15<sup>th</sup> of the succeeding month;
23. As of June 17, 2013, PSALM has collected PhP1,859,256,657.29 from the remittances of DUs and NGCP;



24. Under Section 2, Article VIII of the Amended Rules for Recovery, the VAR to be submitted to the Commission for UC-SCC recovery shall contain, at the minimum, a variance analysis that would show a positive or negative Quantity Variance (QV), which refers to the difference between the billing determinant used in determining the approved level of NPC SCC in PhP/kWh and the actual kWh sales to end-users and the over or under recovery for the SCC which shall be calculated by multiplying the QV by the PhP/kWh SCC approved by the Commission:
25. Based on the above-mentioned provision, the equivalent energy sales of the amount remitted to PSALM was derived by dividing the actual remittance amount of PhP1,859.26 Million by the approved rate of PhP0.1938/kWh. The calculated energy sales is 9,593.90 GWh. The QV, which is the difference between the billing determinant used in determining the approved level of NPC SCC in PhP/kWh (277,875 GWh) and the derived energy sales based on actual remittance amount (9,593.90 GWh), is 268,281.10 GWh;
26. Based on the amount remitted by the DUs and NGCP as of June 17, 2013, there is an under-recovery of UC-SCC for CYs 2007-2010 SCC amounting to PhP51,991.74 Million, calculated by multiplying the QV of 268,281.10 GWh by the PhP0.1938 /kWh Commission-approved SCC rate as shown in the table below:

VAR for CY 2007-2010 SCC	Amount	Energy Sales	Rate
	PhP M	GWh	PhP/kWh
Approved Level of Stranded Contract Cost <sup>1/</sup>	53,851.00	277,875.00	0.1938
less: Remittance as of 17 June 2013 <sup>2/</sup>	1,859.26	9,593.90	0.1938
<b>Under-recovery <sup>3/</sup></b>	<b>51,991.74</b>	<b>268,281.10</b>	<b>0.1938</b>

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

*2/ Per PSALM Universal Charge Administration Department Remittance Report*

*3/ Quantity Variance (QV) is 268,281.10 GWh. Under-recovery is derived by multiplying the QV by the Php 0.1938/kWh rate.*

27. 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 instant petition (excluding Annexes) was also published in a newspaper of general circulation;

**Allegations In Support of the Issuance of Provisional Authority**

28. The instant petition covers the (SCC) for CYs 2011 and 2012. The aggregate 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;
29. 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;
30. 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
31. It prays that the Commission approves the following:
  - a. The recalculated aggregate UC-SCC for the years 2011-2012 amount to PhP17,685.08 Million, equivalent to PhP0.1274/kWh; 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
<b>November 11, 2013</b> at two o'clock in the afternoon (2:00 P.M.)	Jurisdictional Hearing and Expository Presentation	ERC Hearing Room, 15 <sup>th</sup> Floor, Pacific Center Building, San Miguel Avenue, Pasig City
<b>November 18, 2013</b> 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 evidence 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 application is all about and the reasons and justifications being cited in support of the same.

**SO ORDERED.**

Pasig City, October 7, 2013.

FOR AND BY AUTHORITY  
OF THE COMMISSION:

  
**ZENAIDA G. CRUZ-DUCUT**  
Chairperson *gmd 4*

Copy Furnished:

1. **Atty. Maria Luz L. Caminero**  
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3. **Commission on Audit**  
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1121 Quezon City
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**