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

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

JUL 21 2017
CAH 4:21

ERC CASE NO. 2013-160 RC

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

DOCKETED
Date: JUL 21 2017
By:

ERC CASE NO. 2014-111 RC

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION (PSALM),

Petitioner.

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DECISION

Before the Commission for resolution are the Petitions for the Availment of the National Power Corporation's (NPC) Stranded Contract Costs Portion of the Universal Charge (UC) for Calendar Years (CY) 2011 to 2013 (Petition).

On 06 February 2007, the Commission issued ERC Resolution No. 04, Series of 2007, "A Resolution Adopting Rules for Recovery of NPC Stranded Contract Costs (SCC) and Stranded Debts (SD) Portion of the Universal Charge".

Thereafter, on 07 February 2011, the Commission issued Resolution No. 2, Series of 2011 adopting the "Amended Rules for the Recovery of NPC Stranded Contract Costs and Stranded Debts Portion of the Universal Charge". The Rules required that the Power Sector Assets and Liabilities Management Corporation (PSALM) shall file the Universal Charge- Stranded Contract Cost (UC-SCC) on or before 05 March 2011.

Subsequently, PSALM filed its Petitions for the true-up adjustments under the Rules for Recovery of NPC Stranded Contract Costs and Stranded Debts Portion of the Universal Charge, as shown in the table below:

Table 1. PSALM's UC-SCC Applications.

ERC Case Number	Calendar Year Covered	Date of Application
2013-160 RC	2011-2012	31 July 2013
2014-111 RC	2007-2010 & 2013	30 July 2014

The foregoing Applications were set for initial hearing by the Commission on the dates set forth in the table below:

Table 2. Date of Initial Hearing.

ERC Case Number	Date of Hearing
2013-160 RC	11 November 2013
2014-111 RC	16 September 2014

In the course of the proceedings of each case, the Petitioner submitted documents showing its compliance with the publication and posting requirements as ordered by the Commission. The Commission verified the Petitioner's compliance with the raid jurisdictional requirements, all of which were marked as shown in the table below:

Table 3. PSALM's Compliance with the Jurisdictional Requirements.

ERC Case Number	Exhibits
2013-160 RC	"L" to "S", inclusive
2014-111 RC	"E" to "GG-24", inclusive

Thus, by virtue of the foregoing submission, the Commission acquired jurisdiction over the instant *Petition*.

Subsequently, PSALM submitted its Formal Offer of Evidence (FOE) on the dates shown in the table below:

Table 4. PSALM's Submission of its Formal Offer of Evidence.

ERC Case Number	Date of FOE Submission
2013-160 RC	27 August 2015
2014-111 RC	27 August 2015

On 16 December 2016, the Commission issued an Order admitting the evidence contained in the Formal Offer of Evidence of the Petition and submitting the instant cases for resolution.

ISSUE

The issue to be resolved in the instant case is whether PSALM is authorized to recover the Stranded Contract Costs portion of the Universal Charge for CYs 2011-2013.

COMMISSION'S RULING

The Commission, on 17 January 2017, authorized PSALM to recover NPC's SCC. However, due to supervening events[1], the Decision could no longer be promulgated without undergoing reconfirmation by the Commission *En Banc*. Thus, the Commission resolved to reconfirm the same on 06 July 2017.

DISCUSSION

Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA), provides the legal basis for the Commission's determination of the UC-SCC, to wit:

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[1] The Chairman was placed on preventive suspension as per Order of the Office of the President (OP-DC Case No. 17-D-094) dated 2 May 2017 and received on 04 May 2017.

> SEC. 32. *NPC Stranded Debt and Contract Cost Recovery.* – Stranded debt of NPC shall refer to any unpaid financial obligations of NPC.
>
> Stranded contract costs of NPC shall refer to the excess of the contracted cost of electricity under eligible IPP contracts of NPC over the actual selling price of the contracted energy output of such contracts in the market. Such contracts shall have been approved by the ERB as of December 31, 2000.
>
> The national government shall directly assume a portion of the financial obligations of NPC in an amount not to exceed Two hundred billion pesos (P200,000,000,000,00).
>
> The ERC shall verify the reasonable amounts and determine the manner and duration for the full recovery of stranded debt and stranded contract costs as defined herein: *Provided,* That the duration for such recovery shall not be shorter than fifteen (15) years nor longer than twenty-five (25) years. The ERC shall, at the end of the first year of the implementation of stranded cost recovery and every year thereafter, conducts a review to determine whether there is under-recovery or over-recovery and adjust (tune-up) the level of stranded cost recovery charge accordingly. Any amount to be included for stranded cost recovery shall be reflected as a separate item in the consumer billing statement.
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> xxx
>
> SEC. 34. *Universal Charge.* – Within one (1) year from the effectivity of this Act, a universal charge to be determined, fixed and approved by the ERC, shall be imposed on all electricity end-users for the following purposes:
>
> (a) Payment for the stranded debts in excess of the amount assumed by the National Government and stranded contract costs of NPC and as well as qualified stranded contract costs of distribution utilities resulting from the restructuring of the industry;
>
> xxx

Moreover, Section 4(b)(ii) of Rule 17 of the Implementing Rules and Regulations (IRR) of the EPIRA provides that the Commission is mandated to verify the reasonable amounts of claims petitioned by PSALM and to determine the manner and duration by which full recovery of SD and SCC of NPC is attained.

PSALM's UC-SCC Petitions

PSALM's Petitions proposed an NPC's Stranded Contract Cost of PhP31,763.32 Million covering Calendar Years 2011 up to 2013, or equivalent to PhP0.1805/kWh.

The following table shows the proposed SCC and the equivalent UC-SCC Rate:

YEAR	2011	2012	2013	Total
Gross Annual Contract Cost	31,983.02	30,757.62	30,895.23	93,635.87
Revenue from the Sale of Contracted Energy for Eligible IPP Contracts	15,339.94	16,271.53	12,939.05	44,550.52
Privatization of Eligible IPP Contracts	3,911.56	9,532.54	13,877.94	27,322.03
Stranded Contract Costs (in Million PhP)	12,731.53	4,953.55	4,078.25	21,763.32
SCC Rate (in PhP/kWh)	0.0917	0.0357	0.0531	0.1805

PSALM also proposed the above Stranded Contract Cost to be recovered in three (3) years.

NPC Stranded Contract Costs

As defined under the EPIRA, Stranded Contract Costs of NPC pertains to the "excess of the contracted cost of electricity under eligible contracts over the actual selling price of the contracted energy output of such contracts in the market"[2]. It shall be the difference between the Gross Annual Contract Costs and the annual revenue of the eligible NPC's Independent Power Producers (IPPs).

The eligible IPP Contracts of NPC eligible for recovery under the UC-SCC 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 (ROM) types of IPP Contracts.

Based on the above definition and for the purpose of the Commission's evaluation of the instant Petitions, the following are the Eligible IPP Contracts for the Luzon Grid which are eligible for recovery under UC-SCC:

a. Benguet Mini-Hydros (Ampohaw and Bakun);

b. Pagbilao I and II;

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[2] Section 32 (2nd Paragraph), EPIRA.

c. Sual I and II; and

d. Unified Leyte (Leyte A and B)

The process in the determination of the Stranded Contract Cost shall be governed by the "Amended Rules for the Recovery NPC Stranded Contract Costs and Stranded Debts Portion of the Universal Charge" (UC-SCC Rules).

The Commission, in the evaluation of the Petitions at hand, calculated the following stranded contract cost based on the full NPC cost and on the following formula as provided in the UC-SCC Rules:

$$UCSCCR = \frac{GACC - RSCE - PP}{Actual\ System\ End\ Users\ Sale}$$

where:

1. <u>UCSCCR</u> = Universal Charge- SCC (UC-SCC) rate, in PhP/kWh

2. <u>GACC</u> = Gross Annual Contract Costs of Eligible IPPs

3. <u>RSCE</u> = Revenues from the Sale of Contracted Energy of Eligible IPPs

4. <u>PP</u> = Privatization of Eligible IPP Contracts

A. <u>Gross Annual Contract Costs (GACC)</u>

The following are the allowable cost eligible for recovery as stranded contract cost:

a. Total unavoidable fixed fees and the variable fees the amount of which varies depending on the total kWh actually generated, excluding the costs of eligible IPP contracts that have been approved by the Commission for refinancing, if any.

b. Cost of fuel consumption by NPC under its existing ECAs.

c. Amortization payments including principal and interest payments of eligible IPP contracts incurred by NPC to finance the buy-out and/or buy-down of eligible IPP contracts as approved by the Commission pursuant to Section 4 of Rule 17 of the IRR, if any;

d. The depreciation of the plant assets under the ROM, ROL and other similar contractual relationships; and

e. Other costs and expenses related to the buy-out and/or buy-down of IPP contracts.

PSALM submitted the actual aggregate eligible contract cost obligations of NPC amounting to PhP93,635.87 Million for the periods covering CY 2011, CY 2012, and CY 2013, composed of the following components:

GACC Components (in PhP Million)	CY2011	CY2012	CY2013	Total
Capacity Fees	16,167.41	15,737.08	16,176.87	48,081.36
Fixed O&M- Other Power Supply	14,415.88	14,110.04	12,568.25	41,094.17
Other OPEX – Plant	116.38	164.03	287.39	567.80
Sub-Total: Fixed Fees	**30,699.67**	**30,011.15**	**29,032.51**	**89,743.33**
Variable - Other Power Supply	687.64	695.91	1,795.57	3,179.12
Energy Purchased from PEMC (to meet TSC)	595.71	50.56	67.16	713.43
Sub-Total: Variable Fees	**1,283.35**	**746.47**	**1,862.72**	**3,892.54**
TOTAL GACC	**31,983.02**	**30,757.62**	**30,895.23**	**93,635.87**

Upon evaluation of the documents submitted by PSALM, the Commission finds that PSALM based the above gross annual contract cost in the NPC/PSALM Audited Results of Operations (ROO) except on the capacity fee payment. The submitted ROO includes detailed account of all other components of the GACCs per plant such as Fixed O & M – Other Power Supply, Variable Fee - Other Power Supply, Other Operational Expenditure (OPEX), Cost of Fuel Consumption, and Depreciation of Plant Assets.

The Commission, likewise, has utilized the cost per eligible IPP plant reflected in the audited ROO in "as is basis" plus the capacity fee payment approved under the adjustment mechanism of NPC.

B. Revenues from the Sale of Contracted Energy (RSCE)

PSALM/NPC sources for revenue shall come from the privatization proceeds of eligible IPP Contracts and revenues from the sale of contracted energy of eligible IPPs.

As provided under the UC-SCC Rules, revenue sales refer to the following:

a. Sales of the contracted energy of eligible IPP contracts in the Wholesale Electricity Spot Market (WESM);

b. Sales of the contracted energy of eligible IPP Contracts under the terms and conditions of the Transition Supply Contracts (TSCs) duly approved by the Commission including corresponding revenues generated from all adjustments and indexation formulae such as but not limited to Generation Rate Adjustment Mechanism (GRAM), Incremental Currency Exchange Rate Adjustment (ICERA) and the Automatic Recovery of Monthly Fuel and Purchased Power Costs and Foreign Exchange Related Costs;

c. Sales of the contracted energy of eligible IPP contracts from the One Day Power Sales (ODPS) scheme and the Default Wholesale Supplier (DWS) arrangement;

d. Sales of the contracted energy of eligible IPP contracts from the provision of Ancillary Services; and

e. Sales of the contracted energy of eligible IPP contracts from other market enhancement program/s that may be offered by NPC and the IPPs.

PSALM submitted the actual aggregate revenue of the eligible plants amounting to PhP44,550.52 Million for the periods covering CY 2011, CY 2012, and CY 2013, composed of the following components:

RSCE Components (in PhP Million)	CY2011	CY2012	CY2013	Total
Sales in WESM	**3,531.89**	**6,883.92**	**3,588.52**	**14,004.33**
Sales in TSC	**11,509.69**	**9,346.83**	**9,350.53**	**30,207.05**
TSC Sales	10,994.46	8,878.61	8,856.01	28,729.08
PPCA	284.74	333.02	410.93	1,028.69
FxA	149.73	79.08	26.65	255.46
Penalties Adjustment	80.76	56.12	56.94	193.82
Sales from Ancillary Service	**298.35**	**40.78**	-	**339.13**
TOTAL GACC	**15,339.93**	**16,271.53**	**12,939.05**	**44,550.51**

The above RSCE is composed of sales in WESM, sales under TSCs and penalties imposed to customers who drew power in excess of contracted level of energy of Bakun Mini-hydro, Ampohaw Mini-hydro and Unified Leyte.

Likewise, consistent with the Decision dated 28 January 2013 (Decision) of the Commission in ERC Case No. 2011-091 RC[3], the RSCE excludes the Power Act Reduction (PAR) and Prompt Payment Discount (PPD) adjustment which have been disallowed for recovery under the UC-SCC.

Moreover, the Commission made the following adjustments on the submitted revenue of the eligible IPPs of PSALM:

1. PSALM included revenues from the monthly Automatic Cost Recovery Mechanism (ACRM) which include: (1) the Purchased Power Cost (PPC) Adjustments, which is extracted from ROO; and (2) foreign exchange adjustments (FxA) was based on Total FxA Revenue, both of which are allocated per plant based on TSC energy sales.

   The Commission compared the same to other submission of PSALM, particularly in its Compliance under ERC Case No. 2013-195 RC[4], wherein PSALM submitted the breakdown of its 1st to 5th ACRM true-up Petitions as to eligible and non-eligible plants.

   Notably, the allocation of the PPC and FxA billed thru the monthly automatic adjustment as submitted in the said Compliance are lower than the amount reflected in its Petitions. The Commission used the PPC and FxA revenues

[3] Entitled, "Petition for the Recovery of National Power Corporations Stranded Contract Costs Portion of the Universal Charge, with Prayer for Provisional Authority".
[4] Entitled, "Petition for True-Up Adjustments for the National Power Corporations Stranded Debts Portion of the Universal Charge for the Luzon, Visayas and Mindanao Grids for Calendar Years 2011 and 2012, with Prayer for the Issuance of Provisional Authority (PA)".

as reflected in its Compliance which results to higher SCC, as shown below:

CYs 2011-2013 (in PhP Million)	Per ROO	Per ACRM allocation	Difference
FPPCA	1,028.70	952.54	76.16
FxA	255.46	53.02	202.44
TOTAL	**1,284.16**	**1,005.55**	**278.61**

PSALM alleged that the difference is due to the allocation factor used in assigning the PPC and FxA amounts between eligible and non-eligible plants.

2. Consistent with the Decision of the Commission in ERC Case No. 2011-091 RC[5], the RSCE includes the actual adjustments during the period, i.e. GRAM, ICERA and the automatic cost adjustment, as well as the pending applications.

In its aforementioned *Decision*, the Commission stated, to wit:

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1. The proposed amounts include only the approved GRAM, ICERA and the automatic cost adjustments excluding the actual adjustments excluding the actual adjustment during the subject period. The Commission believes that there should be a proper matching of cost and revenue earned. Considering that the cost of such revenue is included in the GACC, the total adjustment should be included in the revenue including those pending ICERA/GRAM cases; and

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Thus, consistent with the above *Decision*, the Commission included the true-up adjustments by virtue of the Automatic Cost Recovery Mechanism (ACRM) for CYs 2011 to 2013 of eligible plants in the revenue including those still pending with the Commission for approval.

From the foregoing, the Commission computed the adjusted revenue of NPC as follows:

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[5] Ibid.

RSCE Components (in PhP Million)	CY2011	CY2012	CY2013	Total
Sales in WESM	**3,531.89**	**6,883.92**	**3,588.52**	**14,004.33**
TSC Sales	10,994.46	8,878.61	8,856.01	28,729.08
FPPCA	283.93	255.27	413.34	952.54
FxA	10.57	10.57	31.88	53.02
Penalties Adjustment	80.76	56.12	56.94	193.82
Sub-Total: Sales in TSC	**11,369.71**	**9,200.56**	**9,358.17**	**29,928.45**
Sales from Ancillary Service	**298.35**	**40.78**	**-**	**339.13**
Other Revenue (ACRM True-up Adjustments)	**4,877.65**	**2,097.83**	**2,188.59**	**9,164.07**
TOTAL RSCE	**20,077.60**	**18,223.10**	**15,135.28**	**53,435.98**

C. Proceeds from Privatization of Eligible IPPs (PP)

The following eligible IPP Contracts were sold to the winning bidders pursuant to the Privatization Guidelines provided under Section 4, Rule 23 of the EPIRA-IRR, or transferred to local government units (LGU), as the case may be:

PLANT	WINNING BIDDER	TURNOVER DATE
SUAL	San Miguel Energy Corporation	06 November 2009
PAGBILAO	Therma Luzon Inc.	1 October 2009

The Privatization Proceeds and/or Cash Inflow from the disposition of eligible IPP Contracts amounts to PhP27,322 Million which pertain to the disposition of Sual and Pagbilao, as well as the assignment fee for Benguet Mini-Hydros as follows:

Privatization Proceeds Components (in PhP Million)	CY2011	CY2012	CY2013	Total
Pagbilao	989.31	2,302.74	6,678.78	9,970.83
Sual	2,921.82	7,229.79	7,199.16	17,350.77
Benguet Mini Hydros	0.44	-	-	0.44
TOTAL PP	**3,911.57**	**9,532.53**	**13,877.94**	**27,322.04**

D. The Derivation of the UC-SCC

Based on the foregoing, the total annual UC-SCC for the period 2011 to 2013 computed as the difference between the GACCs and combined amounts derived from the Revenues and the Privatization Proceeds amount to PhP 12,877 Million, as follows:

RSCE Components (in PhP Million)	CY2011	CY2012	CY2013	Total
Gross Annual Contract Cost	**31,983.02**	**30,757.62**	**30,895.23**	**93,635.87**
Less:				
Revenue from Sale of Contracted Energy	20,077.60	18,223.10	15,135.28	53,435.98
Privatization Proceeds	3,911.57	9,532.53	13,877.94	27,322.04
STRANDED CONTRACT COST	**7,993.85**	**3,001.99**	**1,882.01**	**12,877.85**

From the above table, the Commission computed a stranded contract cost of PhP12,877 Million.

E. PSALM Application vis-à-vis Commission's Calculation and Rate Impact

The Commission allows PSALM a ten (10) month recovery period at the existing UC-SCC rate of **PhP0.1938/kWh** (as approved by the Commission under ERC Case No. 2011-091 RC). There would be no rate increase/decrease in the UC-SCC rate as the collection of the existing UC-SCC rate shall only be extended for another 10 months starting July 2017 billing period. Likewise, it will result to a shorter recovery period of the approved SCC amount. This is to mitigate the impact of the cost recovery to the end users and to give PSALM due compensation for its services within a reasonable period.

WHEREFORE, the foregoing premises considered, the Petitions filed by Power Sector Assets and Liabilities Management Corporation (PSALM) for the availment of the National Power Corporation's Stranded Contract Costs Portion of the Universal Charge for Calendar Years 2011, 2012 and 2013 are hereby **APPROVED** and subject to the following UC-SCC:

Stranded Cost	UC-SCC Rate	Recovery Period
PhP12.878 Billion	PhP0.1938/kWh	10 months

Accordingly, all Distribution Utilities (DUs) and National Grid Corporation of the Philippines (NGCP) are directed to continue to collect from the consumers the above UC-SCC charge starting July 2017 Billing period (June 26 to July 25, 2017 billing period).

SO ORDERED.

Pasig City, 06 July 2017.

JOSE VICENTE B. SALAZAR*
Chairman and CEO

ALFREDO J. NON
Commissioner

GLORIA VICTORIA C. YAP-TARUC
Commissioner

JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner

GERONIMO D. STA. ANA
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LS: MVM/LSP/APV

ROS: CM/AMDB/AJMO/ECBD

* The Chairman was placed on preventive suspension as per Order of the Office of the President (OP-DC Case No. 17-D-094) dated 2 May 2017 and received on 04 May 2017.

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