

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

PSALM CORP.	
OFFICE OF THE GENERAL COUNSEL	
RECEIVED	
BY: <u>Amre</u>	
DATE: <u>JUL 22 2011</u>	
TIME: <u>(PAA) 10:22</u>	
CONTROL NO. <u>11-1779</u>	

**IN THE MATTER OF THE PETITION
FOR THE RECOVERY OF NATIONAL
POWER CORPORATION'S
STRANDED CONTRACT COSTS
PORTION OF THE UNIVERSAL
CHARGE, WITH PRAYER FOR A
PROVISIONAL AUTHORITY**

ERC CASE NO. 2011-091 RC

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

Petitioner.

x ----- x

D O C K E T E D
Date: JUL 21 2011
By: [Signature]

ORDER

On June 28, 2011, the Power Sector Assets and Liabilities Management Corporation (PSALM) filed a petition for the recovery of the National Power Corporation's (NPC) Stranded Contract Costs (SCC) of the Universal Charge (UC), with prayer for a provisional authority.

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

1. In the first year of implementation of the recovery of NPC's Stranded Contract Costs (SCC) and SD as components of the UC, it shall file with the Commission a petition for the establishment of and availment from the UC for NPC's SCC and SD recovery share of the UC on or before March 15, 2011 for amounts for the year ending December 31, 2010 including previous stranded cost for the period CY 2007, CY 2008 and CY 2009.¹ On March 2, 2011, it requested for an extension to file the petition for the recovery of SD since the certified financial statements for the UC-SD calculation were not yet released. Said request was granted by the Commission in a letter dated March 9, 2011, allowing it to file the petition for the recovery of the SD not later than June 30, 2011;

¹ Article II, first paragraph, Amended Rules for Recovery

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2. 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 SCC in an optimal manner (Sec. 50, EPIRA). To attain its objectives, it shall, among others, [i] calculate the amount of the SD and SCC of NPC which shall form the basis for the determination of the UC and [ii] liquidate the NPC SCC, utilizing the proceeds from sales and other property contributed to it, including the proceeds from the UC (Sec. 51, EPIRA);
3. SCC of NPC refers 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". The term "Market" as defined in the Amended Rules for Recovery refers to the "Wholesale Electricity Spot Market (WESM) where electricity traded includes but not limited to Spot Sales, Transition Supply Contracts (TSCs), Bilateral Contracts, One Day Power Sale (ODPS), Default Wholesale Supplier (DWS) service, and Ancillary Services".² To be eligible for recovery under the UC, such contracts must have been approved by the then Energy Regulatory Board (ERB, now Commission) as of December 31, 2000³;
4. For purposes of the SCC calculation, Independent Power Producer (IPP) contracts of NPC eligible for recovery under the 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."⁴ In accordance with Section 32 of Republic Act No. 9136 (R.A. 9136), only contracts duly approved by the ERB as of December 31, 2000 shall be entitled for recovery through the UC-SCC;
5. Based on the above definition and for the purpose of this filing, the following are the Eligible IPP Contracts for the Luzon Grid (where WESM operates), which are eligible for recovery under UC-SCC:
 - a. Bauang Bunker FDPP;
 - b. Benguet Mini-Hydro (Ampohaw and Bakun);
 - c. Leyte B;
 - d. Limay A&B Bataan CCGT;
 - e. Pagbilao I & II;
 - f. Subic Enron; and
 - g. Sual I & II;

² Article I, Section 2, Ibid.

³ (Sec. 4 [uu], EPIRA).

⁴ Article III, Amended Rules for the Recovery of UC SCC and SD

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6. Pursuant to Article IV, Section 2 of the Amended Rules for Recovery, it submitted a list of all the currently effective Eligible IPP Contracts as of January 1, 2010;
7. The annual UC-SCC shall be computed as 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)⁵;
8. As of December 31, 2010, the actual aggregate eligible contract cost obligations of NPC amounted to PhP178,236 Million for the period covering CY 2007, CY2008, CY2009 and CY2010⁶, comprising of the following components⁷:

GROSS ANNUAL CONTRACT COSTS		2007	2008	2009	2010	TOTAL
a.	Total Unavoidable Fixed Fees and Variable Fees	34,956	32,496	34,193	22,677	124,322
b.	Cost of Fuel Consumption	13,699	20,189	16,849	1,169	51,907
c.	Amortization Payments to finance buy-out and/or buy-down of IPP Contracts	-	-	-	-	-
d.	Depreciation of the Plant Assets	1,003	1,004	-	-	2,007
e.	Other Costs and Expenses related to the Buy-out and/or Buy-down of IPP Contracts	-	-	-	-	-
Actual Aggregate Eligible Contract Cost Obligations (in Million PhP)		49,659	53,688	51,042	23,846	178,236

9. The Revenues from the Sale of Contracted Energy of Eligible IPP Contracts amounted to PhP98,956 Million, which are composed of the following⁸:

REVENUES FROM THE SALE OF CONTRACTED ENERGY OF ELIGIBLE IPPs		2007	2008	2009	2010	TOTAL
a.	Sales of the contracted energy of eligible IPP Contracts in the Wholesale Electricity Spot Market (WESM);	9,217	5,472	148	2,981	17,819
b.	Sales of the contracted energy of eligible IPP Contracts under the terms and conditions of the Transition Supply Contracts including all adjustments and indexation formulae (i.e. GRAM, ICERA, FPPCA, FxA)	20,395	29,613	23,838	2,443	76,290
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	(4)	(2,754)	(360)	(77)	(3,196)
d.	Sales of the contracted energy of eligible IPP Contracts from the provision of Ancillary Services	4,955	917	2,171	-	8,043
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	-	-	-	-	-
Total Revenues from the Sale of Contracted Energy of Eligible IPP Contracts (in Million PhP)		34,563	33,248	25,798	5,347	98,956

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

⁶ Article II, Ibid.

⁷ Article IV, Section 3 pars. (a), (b), (c), (d), and (e), Ibid.

⁸ Article IV, Section 4, pars (a), (b), (c), (d), and (e), Ibid.

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10. The (a) Sales of the contracted energy of Eligible IPP Contracts in the WESM for the years 2008 and 2009 (referred to as "PEMC-PSALM" and "PEMC-NPC" in Annexes "E-Net Utility Revenue-2007" and "E-Net Utility Revenue-2008" of the instant petition), (b) Sales of the Contracted energy of Eligible IPP Contracts under the terms and conditions of the TSC (referred to as "NPC-Regular and/or Utility Operating Income" in Annexes "E-Net Utility Revenue-2007", "E- Net Utility Revenue-2008", "E- Net Utility Revenue-2009", and "E- Net Utility Revenue-2010" of the instant petition) duly approved by the Commission including the corresponding revenues generated from all adjustments and indexation formulae such as Generation Rate Adjustment Mechanism (GRAM), Incremental Cost Exchange Rate Adjustment (ICERA), Fuel and Purchase Power Cost Adjustment (FPPCA) and Foreign Exchange Related Cost Adjustment (FxA) for the years 2007, 2008, 2009 and 2010, and (c) Sales of the contracted energy of Eligible IPP Contracts from the ODPS scheme and the DWS arrangement; schemes for the years 2007, 2008, 2009 and 2010, were calculated per plant using the figures in the Breakdown of Revenue and/or Net Utility Revenue of the Luzon Grid, and applying an energy generation ratio (the percentage of the energy generation by the plants covered by Eligible IPP Contracts from the ROO over the total energy generation by all Luzon plants for the respective years) on the said figures. For this purpose, the following percentages/ratios were used in deriving the Revenues mentioned above:

PLANTS	PERCENTAGE OF ENERGY GENERATED			
	2007	2008	2009	2010
a. Bauang Bunker FDPP	1.45%	0.50%	0.08%	2.99%
Benguet Mini-Hydro				
b. (Ampohaw and Bakun)	0.46%	0.49%	0.59%	1.72%
c. Leyte B	4.43%	6.12%	3.38%	3.78%
d. Limay	2.33%	1.90%	0.00%	0.00%
e. Pagbilao I & II	11.17%	11.15%	9.22%	0.00%
f. Sual I & II	11.64%	15.06%	15.60%	0.00%
g. Subic Enron	0.54%	0.33%	0.01%	0.00%
i. All Others	67.98%	64.45%	71.12%	91.51%
TOTAL	100%	100%	100%	100%

Source: ROO for the respective years.

11. For Revenues generated from adjustments from GRAM for the years 2007 and 2008, and ICERA for the years 2007, 2008 and 2009, only those with the Commission's approval in ERC Case Nos. 2008 -042 RC, 2008-053 RC and 2008-063 RC under the 10th GRAM, 11th GRAM and 12th GRAM applications, respectively; and ERC Case Nos. 2008-043 RC, 2008-054 RC, 2008-064 RC, 2009-031 RC, 2009-055 RC and 2010-002 RC under the 9th ICERA, 10th ICERA, 11th ICERA, 12th ICERA, 13th ICERA and 14th ICERA applications, respectively; were included in the UC-SCC Calculation. Pending the resolution of its Motion for Clarification concerning the Decision of the Commission on the 9th to 14th ICERA Decision dated November 15, 2010 on the breakdown of the approved DAA for the

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12th ICERA, 13th ICERA and 14th ICERA, it used the ICERA DAA amounts as applied for these periods;

12. On the other hand, the revenues from the GRAM and ICERA applications under ERC Case Nos. 2009-032 RC, 2009-056 RC, 2010-003 RC, 2010-068 RC, 2010-073 RC, 2010-067 RC and 2010-074 RC covering the 13th GRAM, 14th GRAM, 15th GRAM, 16th GRAM, 17th GRAM, 15th ICERA and 16th ICERA respectively, that are still pending with the Commission were not included in the calculation of the Revenues. It is submitted that adjustments would be made in the UC-SCC calculation after the Commission's resolution of its Motion for Clarification and the Decisions in the pending GRAM and ICERA applications;
13. For the Revenues generated from GRAM for years 2007 and 2008; ICERA for years 2007-2009; and Automatic Recovery of Monthly Fuel and Purchased Power Costs and Foreign Exchange Related Costs (ACRM) for the year 2010; such as (i) FPPCA (reflected as "Fuel Cost Adjustment Income" in "E-Net Utility Revenue -2010") and (ii) FxA), from monthly power bills;
14. For Revenues from the sales of the contracted energy of eligible IPP contracts for the provision of Ancillary Services (AS) for the years 2007 and 2008, the same are calculated per plant using the AS of the Luzon Grid revenue in the "E-Net Utility Revenue -2007" and "E-Net Utility Revenue -2008" and applying an AS ratio (percentage of the volume of AS provided by the plants covered by Eligible IPP Contracts over the volume of AS by all Luzon plants) for the respective years. Considering that there is no existing contract between NPC and TRANSOC regarding the procurement of AS prior to March 2008, the AS volume used for the year 2007 is based on the summarized daily AS schedule prepared by the Operations Planning Division of Luzon System Operations and for the year 2008 the AS volume used is based on the March 2008 to December 2008 actual AS volume per plant as provided by NPC-Accounts Management Division;
15. The following Eligible IPP Contracts were sold to the winning bidders pursuant to its mandate under Section 4, Rule 23 of the EPIRA- IRR, or transferred to local government units (LGU):

PLANT	WINNING BIDDER/LGU	TURNOVER DATE
SUBIC	Subic Bay Metropolitan Authority (SMBA)	February 23, 2009
BAUANG	Province of La Union	July 26, 2010
LIMAY	San Miguel Energy Corporation	January 18, 2010
SUAL	San Miguel Energy Corporation	November 6, 2009
PAGBILAO	Therma Luzon Inc.	October 1, 2009

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16. In compliance with Article IV, Section 5 of the Amended Rules for Recovery, it submitted the following documents as part of the instant petition: a) Proofs of turnover to the concerned LGU for Subic and Bauang; b) the Asset Purchase Agreement (APA) for Limay; and c) The Administration Agreements (AA) for Sual and Pagbilao. Considering that the AAs contain confidentiality clauses, it requested that the said documents be treated as confidential in nature by the Commission;
17. The Privatization Proceeds and/or Cash Inflow from the disposition of Eligible IPP Contracts amounted to PhP4,982 Million which pertain to the disposition of Limay, Sual and Pagbilao for 2010, as shown below:

PRIVATIZATION OF ELIGIBLE IPP CONTRACTS		2009	2010				TOTAL
		SUBIC	BAUANG	LIMAY	PAGBILAO	SUAL	
a.	Up-front proceeds from the sale of the eligible IPP contract	-	-	719	-	-	719
b.	Cash inflow arising from an Assumption of Obligation scheme of the Eligible IPP contract, if applicable.	-	-	-	1,004	3,259	4,263
Total Proceeds from the privatization of eligible IPP contracts (in Million PhP)							4,982

In support the above computation, it submitted the Report on GENCO Proceeds for CY 2010 and IPPA Administrator Monthly Payments. Considering that the payments of Limay privatization proceeds are denominated in United States Dollars, the amounts are converted to Peso using the BSP reference rate at the date of deposit and/or fund transfer. Considering likewise this documents are attached to the AAs of Sual and Pagbilao which contain confidentiality clauses, it moves that the said documents be likewise treated as confidential in nature by the Commission;

18. Based on the foregoing premises, the total annual UC-SCC for the period 2007 to 2010 computed as the difference between the GACCs and combined amounts derived from the Revenues and the Privatization Proceeds amounted to PhP74,298 Million, computed as follows:

YEAR	2007	2008	2009	2010	TOTAL
Gross Annual Contract Cost	49,659	53,688	51,042	23,846	178,236
Revenue from the Sale of Contracted Capacity	34,563	33,248	25,798	5,347	98,956
Privatization of Eligible IPP Contracts	-	-	-	4,982	4,982
Stranded Contract Costs (in Million PhP)	15,097	20,440	25,244	13,517	74,298

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19. In compliance of with Article 4, Section 7 of the Amended Rules for Recovery, it submitted the hourly allocation by NPC of its generation output for each power plant, including NPC-owned and IPP contracted generating units showing the Metered Quantity ("MQ) and Bilateral Contract Quantities (BCQ) which includes the declared amount for its TSC, DWS and ODPS. The difference between the MQ and BCQ is the generation output for WESM or Spot Sales. Considering that these data contained information on their trading strategies, the disclosure of which to the general public would weaken their competitiveness in the Market. Thus, it prays that the same be treated by the Commission as confidential in nature;
20. Following the annual UC-SCC as computed above, the UC-SCC in PhP/kWh for end-users with or without self-generating facilities in all grids shall be PhP0.3666/ kWh computed as follows⁹:

YEAR	2007-2010
Stranded Contract Costs (in Million Php)	74,298
Actual System End User Sales (in GWh)	202,686
Stranded Contract Costs (in Php/ kWh)	0.3666

Shown below is the Actual System End User Sales for the years 2007 to 2010:

Actual System End User Sales (GWh)	2007	2008	2009	2010	TOTAL
Electric Cooperative (EC'S)	10,593	10,992	11,768	12,852	46,205
Private Investors Owned Utilities (PIOU's)	32,353	33,097	33,853	37,080	136,382
Non-utilities/Directly Connected	4,806	5,113	4,935	5,244	20,099
Actual System End User Sales (GWh)	47,751	49,202	50,557	55,176	202,686

21. Considering the impact of the UC-SCC to the end-users, it is willing to spread the recovery period into a period that the Commission may deem fair and reasonable under the circumstances. For a fifteen (15)-year recovery period, the amount of UC-SCC for the years 2007 to 2010 is equivalent to PhP0.0600/kWh. This is computed by dividing the SCC of PhP74,298 Million by the projected energy sales from the years 2011 to 2026 of 1,237,664 GWh;
22. The instant petition covers the SCC from the years 2007 to 2010. The aggregate amount if collected would lessen additional loans to be incurred by it in complying with the Eligible IPP Contracts; and

⁹ Article IV, Section 8, Ibid.

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23. It prays that:

- a. The Commission considers the documents submitted as full compliance with the ERC Resolution No. 02, Series of 2011;
- b. Annexes "F-1-Sual", "F-1-Pagbilao", "F-3", and "G" of the petition be treated as confidential in nature;
- c. After due notice and hearing, the Commission approves the following:
 1. The calculated aggregate UC-SCC for the years 2007 to 2010 amounting to PhP74,298 Million equivalent to PhP0.3666/kWh; and
 2. Issuance of a provisional authority allowing it to charge and collect the computed UC-SCC or such amount as 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
August 23, 2011 at two o'clock in the afternoon (2:00 P.M.)	Jurisdictional Hearing, Expository Presentation and Pre-Trial Conference	ERC Hearing Room, 15 th Floor, Pacific Center Building, San Miguel Avenue, Pasig City.
September 6, 2011 at two o'clock in the afternoon (2:00 P.M.)	Evidentiary Hearing	

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.

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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 Mayors of Makati City, Cebu City and Davao City and the Provincial Governors of Cebu and Davao 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 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 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.

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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.

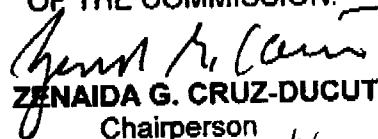
Failure PSALM to submit the required Pre-Trial Brief and Judicial Affidavits of their witnesses within the prescribed period shall be a ground for cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from said date of cancellation.

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 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 same.

SO ORDERED.

Pasig City, July 18, 2011.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ZENAIDA G. CRUZ-DUCUT
Chairperson

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Copy Furnished:

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