

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

PSALM CORP.	
OFFICE OF THE GENERAL COUNSEL	
RECEIVED	
BY: <u> Arua </u>	
DATE: <u> JUL 22 2011 </u>	
TIME: <u> 10:22 </u>	
CONTROL NO. <u> 11-17799 </u>	

**IN THE MATTER OF THE PETITION
FOR THE RECOVERY OF NATIONAL
POWER CORPORATION'S
STRANDED DEBTS PORTION OF
THE UNIVERSAL CHARGE FOR THE
LUZON, VISAYAS AND MINDANAO
GRIDS, WITH PRAYER OF THE
ISSUANCE OF PROVISIONAL
AUTHORITY**

ERC CASE NO. 2011-092 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: W

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 Debts (SD) of the Universal Charge (UC) for the Luzon, Visayas and Mindanao Grids.

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. Its responsibility to calculate the amount of the SD of NPC that can be recovered through the UC, subject to the review and approval by the Commission.² The recovery of NPC SD through the UC shall be uniform to all the end-users.³
4. SD refer to "any unpaid financial obligations of NPC which have not been liquidated by the proceeds from the sales and privatization of NPC assets"⁴;
5. Its Balance Sheet as of December 31, 2010 shows the total outstanding financial obligations (sum of the current portion and non-current portion of the long term liabilities) amounting to Php307,049,501,895.00 and the total BOT lease obligations (sum of the current portion and non-current portion of the BOT lease obligations) amounting to Php394,225,810,948.00;
6. The complete inventory of financial obligations in accordance with Section 2, Article V of the Amended Rules for Recovery, including a detailed account of all financial instruments and associated borrowing costs and other relevant information as required by the said Rules were submitted to the Commission as part of the instant petition;
7. NPC's SD shall be equivalent to the Gross Debt Service (GDS) as determined from Section 3 net of the amount calculated from Sections 4 and 5 of Article V and Sections 3 and 4 of Article VII of the Amended Rules of Recovery.⁵ Hence:

² Article V, Amended Rules for Recovery

³ Section 1, Article V, *ibid*

⁴ Sec. 4 (vv) and Sec. 52 of EPIRA, and Rule 4 (hhhh) of the IRR.

⁵ Section 6, Article V, Amended Rules for Recovery

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NPC's Stranded Debts (in Million Pesos)

GDS⁶	PhP 539,915.37
Less:	
• Total Projected Cash Flow from Privatization ⁷ (PP)	PhP 473,836.21
• National Government Absorption ⁸ (NGA)	0.00
• From Projected Cash Flow from NPC's Operation ⁹ (PO)	1,060.12
	474,896.33
NPC's STRANDED DEBTS	PhP 65,019.05

8. In computing for the GDS¹⁰, only the following financial obligations were included from the inventory of financial obligations submitted as part of the instant petition, to wit:

GDS (in Million Pesos)

i.) NPC's outstanding financial obligations as of the effectivity of the EPIRA;	PhP 254,599.31
ii.) New loans contracted by NPC after effectivity of the EPIRA;	84,198.97
iii.) Loans incurred by PSALM on behalf of the NPC; and	201,117.09
iv.) Loans contracted by TRANSCO prior to its privatization	0
TOTAL	PhP 539,915.37

9. For purposes of SD filing, financial obligations excludes¹¹: i) all loan pertaining to National Power Corporation-Small Power Utilities Group (NPC-SPUG)¹²; ii) loans contracted by the National Transmission Corporation's (TRANSCO) concessionaire; iii) loans incurred by it in behalf of TRANSCO's concessionaire; iv) Capacity Fees (and other costs) related to Eligible Independent Power Producer (IPP) contracts; v) all other loans incurred by PSALM; and vi) all financial obligations assumed by the National Government;

⁶ Section 2 and 3, *ibid*

⁷ Section 4 (a), *ibid*

⁸ Section 5, *ibid*

⁹ Section 4 (b), *ibid*

¹⁰ Section 2, *ibid*

¹¹ Section 2, Article V of *Internal Rules for Recovery*

¹² NPC-SPUG debt service shall be included in the application for the U.C-Missionary Electrification by NPC

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10. The projected privatization proceeds from 2011 onwards to be subtracted against the GDS include the total projected proceeds from the privatization of non-eligible IPP contracts comprising of the monthly payments as bid by the winning IPP Administrator, amounting to PhP223,100,387,664.75 and projected proceeds from concession of the operations of the transmission system comprising of both principal and interest, amounting to PhP250,735,817,472.75;
11. The projected proceeds from the privatization of non-eligible IPP contracts refer to the proceeds as indicated in the Administration Agreements (AA) between PSALM and IPP Administrators of Non-eligible IPPs. The AA contains confidentiality clause that prohibits it from disclosing the provisions of the agreement to third party without the consent of the concerned IPP Administrators;
12. The agreement contains schedules which are used for pricing the energy output when the IPP Administrators are trading in the supply market. Disclosure of these information would necessarily reveal the IPP Administrators' anticipated economic and corporate strategy in trading the output energy, ultimately exposing them to unfair competition in an open market. To recall, the Commission declared December 26, 2011 as the Open Access Date to mark the commencement of the full operations of competitive retail electricity market in Luzon and Visayas. Sight must not be lost that the objective of competition in an open market to lower energy cost redounds to the benefit of the end-consumers;
13. It requested that said Administration Agreements should be treated confidential pursuant to Rule 4 of the Commission's Rules of Practice and Procedures;
14. The financial obligations of NPC assumed by the National Government in 2004 amounting to PhP200 Billion were already excluded in the GDS for purposes of computing the SD;
15. The Projected Cash Flow from NPC'S Operation (PO) includes projected collection of Capacity Fees of non-eligible IPP contracts through other rate adjustment mechanisms for the period January 2011 to December 2011 amounting to PhP2,107,274,459.34;
16. The PO also includes Projected Net Cash Flow from Operating and Investing activities of NPC (excluding SPUG and PSALM) based on the sum of the Operations and Maintenance Agreement (OMA) budget for CY 2011(NPC Operations) and TRANSCO's Projected annual Operations Expense for CY 2011 and projected Generation Payment Proceeds of sold non-eligible IPPs, amounting to (PhP 1,047,153,387.47);

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17. It submitted the projected collection of Capacity Fees (Automatic Cost Recovery Mechanism [ACRM]) of non-eligible IPP contracts through other rate adjustment mechanisms (i.e. ACRM) based on the actual billings for the months of January 2011 to April 2011 and projected collection and billings of Capacity Fees of non-eligible IPP contracts through other rate adjustment mechanisms (ACRM) for the months of May 2011 to December 2011;
18. The May 2011 to December 2011 projected collection of Capacity Fees (ACRM) is computed based on the average actual monthly ACRM billings from January 2011 to April 2011 (i.e the total ACRM billings for the period January 2011 to April 2011 divided by four (4) months to get the average ACRM billing and collection per month). The resulting number is assumed to be the monthly ACRM collection for May 2011 to December 2011;
19. The total projected monthly ACRM collection, less the estimated collection of capacity fees from eligible IPP contract, comprises the collection of Capacity Fees of non-eligible IPP contracts through other rate adjustment mechanisms, as referred to in Section 4(b)(i) of the said Amended Rules;
20. The Projected Net Cash Flows from Operating and Investing Activities of NPC represents the total of projected cash inflows from NPC's operation and projected generation payments proceeds of sold non-eligible IPPs amounting to PhP79,504,222,359.13. Also represented in the Projected Net Cash Flows from Operating and Investing Activities of NPC are the total of projected cash outflows composed of projected disbursements from NPC operations, net of Capacity Fees of ineligible IPP Contracts and Disbursements from Eligible IPP contracts in Luzon, NPC's capital expenditures and TRANSCO's operating expenditures amounting to PhP 80,551,375,746.60;
21. Based on the foregoing computations, the UC-SD in PhP/kWh for end-users with or without self-generating facilities in all grids shall be PhP0.0313/ kWh computed as follows:

$$UCSDR = \left\{ \frac{GDS - PP - NGA}{\sum_{i=1}^n \text{Projected Energy Sales}_i} \right\} - \left\{ \frac{PO}{\text{Projected Sales}_i} \right\}$$

$$UCSDR = \left\{ \frac{\text{PhP}(539.92 - 473.84 - 0)\text{Billion}}{1.355 \text{ Twh}} \right\} - \left\{ \frac{\text{PhP}1.060 \text{ Billion}}{60.703 \text{ Twh}} \right\}$$

$$UCSDR = \left\{ \frac{\text{PhP}66.08 \text{ Billion}}{1.355 \text{ Twh}} \right\} - \left\{ \frac{\text{PhP}1.060 \text{ Billion}}{60.703 \text{ Twh}} \right\}$$

$$UCSDR = \frac{\text{PhP}0.0488_{\text{for period 2011-2024}}}{\text{kWh}} - \frac{\text{PhP}0.0175_{\text{for 2011}}}{\text{kWh}}$$

UCSDR = PhP0.0313/kWh

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22. The total system electricity sales used in the UC-SD calculation was based on the Department of Energy (DOE) Energy Sales Forecast for Philippine Development Plan (PDP). The calculated NPC's SD pursuant to Section 6, Article V of the said Amended Rules was divided by the total forecasted system electricity sales as defined in Section 7 of Article V of the same Rules;
23. The petition covers the SD as of December 31, 2010. The aggregate amount if collected would lessen additional loans to be incurred by it on behalf of the NPC and to service maturing debt obligations ;
24. Pursuant to the Rules of Practice and Procedures, the Commission may exercise its discretion of granting a provisional authority or interim relief prior to a decision;
25. It is understood that the interim relief sought by it shall be subject to adjustments and other conditions that the Commission may impose after hearing and its final determination;
26. It prays that:
 - a. The Commission considers the submission of the following documents as full compliance with the ERC Resolution No. 02, Series of 2011:
 1. Inventory of Financial Obligations; and
 2. Inventory of Financial Instruments Assumed by the National Government;
 - b. The Administration Agreement be treated as confidential; and
 - c. After due notice and hearing, the Commission approves the following:
 1. The UC-SD calculated in the year 2011 for Luzon, Visayas and Mindanao grids amounting to PhP65,019.05 Million, translated to PhP0.0313/kWh; and
 2. A provisional authority be issued allowing it to charge and collect the computed UC SD 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:

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Date	Proceedings	Venue
August 22, 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 5, 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.

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 the 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.

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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.

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.

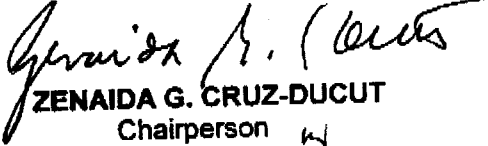
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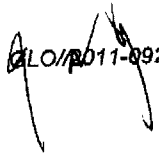
As part of the pre-trial conference, PSALM must also be prepared to make an expository presentation of its petition, aided by whatever communication medium that they may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned 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


ALO/P/2011-092 RC Initial Ord

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Copy Furnished:

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