



IN THE MATTER OF THE APPLICATION
FOR THE APPROVAL OF THE REVISED
BASIC GENERATION RATES FOR
LUZON, VISAYAS AND MINDANAO
GRIDS WITH PRAYER FOR
PROVISIONAL AUTHORITY

ERC CASE NO. 2008-030 RC

NATIONAL POWER CORPORATION
(NPC) AND POWER SECTOR ASSETS
AND LIABILITIES MANAGEMENT
CORPORATION (PSALM),

Applicants.

x ----- x

D O C K E T E D
Date: DEC 22 2008
By: [Signature]

DECISION

Before the Commission for resolution is the application filed by the National Power Corporation (NPC) on June 8, 2008 for the approval of the revised basic generation rates for Luzon, Visayas and Mindanao Grids, with prayer for provisional authority, which the Power Sector Assets and Liabilities Management Corporation (PSALM) subsequently adopted as its own application.

In the said application, NPC alleged, among others, that:

1. It (NPC) is mandated under its Charter to undertake the development of hydroelectric generation of power and the production of electricity from nuclear, geothermal and other sources of energy in order to attain, among others, the objective of providing adequate and reasonable price of electric power nationwide;
2. It is filing the instant application in its capacity as the owner of record of all the existing generation assets and energy, and also as implementing agency for the unbundled generation rates as approved by the Commission in its Orders dated September 6 and

du

[Signature]

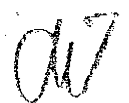
[Signature]

[Signature]

[Signature]

20, 2002 under ERC Case No. 2001-901 and the ERC approved revised generation charges dated September 3, 2004 and April 13, 2005 in ERC Case No. 2004-178;

3. On June 22, 2004, it filed an application for the approval of the revised Return on Rate Base (RORB) and Time-of-Use (TOU)-based generation charges for the Luzon, Visayas and Mindanao Grids, based on CY 2002 audited financial statements. The application was docketed as ERC Case No. 2004-178. On September 3, 2004, the Commission issued an Order provisionally approving an adjustment in its average generation rate per grid and authorizing it to implement the TOU rates subject to an irrevocable option of the customers either to avail or not to avail of the approved TOU Rates Schedules. On April 13, 2005, the Commission issued a Decision approving the final levels of its average rate per grid as well as the final TOU Rates Schedules that shall be implemented on a mandatory basis to all customers;
4. In the same Decision, the Commission mandated it to, among others, apply periodically for a rate adjustment to consider sale of assets, change in load profile and plant stacking;
5. Pursuant to Section 47 of Republic Act No. 9136 (Electric Power Industry Reform Act of 2001 or EPIRA), PSALM proceeded to dispose its generation assets. As of this filing, PSALM has already sold/privatized a number of its generation assets representing more than forty percent (40%) of its available generating capacity;
6. It seeks the approval of the instant application for new Generation Rates to reflect the impact of the sale, transfer and disposal of its generation assets. It, likewise, included in the instant application a proposal for the approval of revised generation rates to incorporate the impact of the further sale, transfer and disposal by PSALM of the other remaining generation assets;
7. Its calculations took off from the Commission's approved revenue requirements in its Decision dated April 13, 2005 comprising of the allowable fuel and independent power producer (IPP) costs during CY 2004 and all other allowable fixed generation costs as well as energy sales in CY 2002 including the authorized eight percent (8%) RORB based on allowable CY 2002 rate base. Shown below are the components of the approved revenue requirements:



Revenue Requirement Component	In PHP '000		
	LUZON	VISAYAS	MINDANAO
Fuel	33,798,268	5,365,637	3,829,794
Purchased Power	16,828,283	3,830,953	4,670,404
Payroll	972,698	290,319	369,074
O & M (excluding Fuel, PP & Payroll)	1,483,434	165,908	482,758
Gain/Loss on FOREX Fluctuation	0	0	0
Depreciation Expenses	6,685,273	624,565	1,039,172
Actual Payments of Capacity Fees	36,698,415	0	268,003
Power Barge Operating Costs	0	143,500	0
Total	96,466,371	10,420,82	10,659,205
Return on Rate Base (RORB)	9,810,788	847,545	2,174,832
Gross Revenue Requirement	106,277,159	11,268,427	12,834,037
Less: Ancillary Services Revenues	(12,084,559)	(682,787)	(1,054,057)
ODPS Revenues	(3,595,031)	(665,023)	(48,935)
Net Revenue Requirement	90,597,569	9,920,617	11,731,045
Energy Sales, MWh	23,250,328	3,435,91	5,578,231
Average Generation Rate, P/kWh	3.8966	2.8879	2.1030

8. It calculated the revised revenue requirement with due consideration to the removal of the expense, rate base and other revenue requirement components relative to the sale, transfer and disposal of its generation assets/power plants in the Luzon Grid as shown in the table below. Adjustments were made with due consideration of the Commission's approval ratio for each affected revenue requirement component. It determined that the privatization of these power plants would require an immediate adjustment in the existing Luzon Grid average generation rate of PhP3.8966/kWh in order for it to be able to reasonably recover the operating expenses of the remaining power plants under its control and/or ownership as well as attain a reasonable return on rate base as authorized by the ERC. Its calculations revealed that its average generation rate in the Luzon Grid should be initially adjusted to PhP4.2651/kWh or an increase of PhP0.3685/kWh due to the impact of privatization of the following power plants:

Additional NPC Generation Assets/Power Plants Sold

NAME OF PLANT	RATED CAPACITY MW	LOCATION
Pantabangan-Masiway Hydroelectric Power Plant	112	Nueva Ecija
Magat Hydroelectric Power Plant	360	Isabela
Masinloc Coal-Fired Thermal Power Plant	600	Zambales

9. It proposes to adopt a revised TOU Rates Schedule for Luzon Grid to replace the TOU Rates Schedule approved by the Commission in its Decision dated April 13, 2005 (ERC Case No. 2004-178). In

deriving the revised TOU hourly rates contained in the proposed revised TOU Rates Schedule, it simply added the required PhP/kWh adjustment of PhP0.3685/kWh to the twenty four (24) hourly TOU rates under both the Monday to Saturday and Sunday/Holidays Rates Schedules;

10. Although other NPC generation assets/plants were already sold and transferred to their new owners prior to the sale of the power plants (particularly Tolomo, Agusan, Barit, Cawayan and Loboc Hydroelectric Power Plants), it did not consider the sale of the said power plants in this instant application for the following reasons: 1) the Commission has already imputed the impact of the sale of these power plants in the approval of the existing generation rates in the Luzon Grid and 2) The impact of the sale of these small hydro plants is very minimal to affect the average generation rate;
11. Several other NPC generation assets/power plants are likewise part of PSALM's Privatization Schedule. However, the sale of these power plants would not affect the existing generation rates considering that the same did not form part of the approved revenue requirements having been decommissioned and thus, non-operational during the test period covered by the approved revenue requirements. The table below contains a list of power plants that are currently decommissioned but are scheduled for privatization within the next two (2) to three (3) years:

List of Decommissioned Plants for Privatization

PLANT	Unit	Date Decommissioned
LUZON GRID		
Bataan Oil-Fired-Thermal PP	1	1/1/2000
Bataan Oil-Fired-Thermal PP	2	2/1/1999
Manila Thermal PP	1	1/1/2000
Manila Thermal PP	2	1/1/2000
Sucac Thermal PP	1	4/1/2000
Sucac Thermal PP	2	1/1/2000
Sucac Thermal PP	3	1/1/2000
Sucac Thermal PP	4	1/1/2000
VISAYAS GRID		
Cebu Diesel Power Plant II	1	5/1/1997
Cebu Diesel Power Plant II	2	11/1/1997
Cebu Diesel Power Plant II	3	11/1/1997
MINDANAO GRID		
General Santos Diesel Plant	1	4/1/1998
General Santos Diesel Plant	2	4/1/1998
General Santos Diesel Plant	3	4/1/1998
Aplaya Diesel Power Plant	1	10/7/1996
Aplaya Diesel Power Plant	2	10/7/1996
Aplaya Diesel Power Plant	3	3/1/1996
Aplaya Diesel Power Plant	4	3/1/1996
Aplaya Diesel Power Plant	5	3/1/1996
Aplaya Diesel Power Plant	6	3/1/1996
Aplaya Diesel Power Plant	7	3/1/1996
Aplaya Diesel Power Plant	8	3/1/1996

dw

3

[Signature]

[Signature]

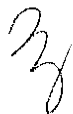
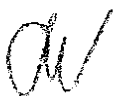
[Signature]

12. It, likewise, calculated the required adjustments in the average generation rates brought about by the planned sale, transfer and disposal of other NPC generation assets/power plants over the next 2-3 years;
13. In PSALM's GenCo Privatization Targets and Indicative Privatization Schedule, there were indicative bidding dates as well as closing dates or ownership transfer dates to the supposed winning bidders starting from the second half of CY2008 to as far as two (2) to three (3) years ahead. In the instant application, it is likewise seeking for the approval of revised TOU Rates Schedules to be determined using the similar add/deduct approach/methodology in the adjustment of the hourly TOU Rates by the required increase/decrease in the average generation rates of the particular grid affected by the sale. However, it proposes that the revision of the applicable TOU Rates Schedules shall be made on a quarterly basis and that it be authorized to implement the amended TOU Rates Schedules reflective of the impact of a sale, transfer and disposal of its generation assets/power plants within the quarter. The prevailing TOU Rates Schedule shall remain until such time that an NPC power plant or plants, as the case maybe, are sold, transferred and disposed by PSALM;
14. As an example, a revised TOU Rates Schedule for Luzon Grid shall have to be implemented by April 2008 upon provisional approval by the Commission to reflect the impact of the sale of its generation assets/power plants up to Masinloc Coal-Fired Thermal Power Plant. Again, a revised TOU Rates Schedule by July 2008 to reflect the impact of the sale of additional plants namely Calaca Coal-Fired Thermal Power Plant, Ambuklao and Binga Hydro Power Plants assuming PSALM's Privatization Schedule shall materialize as planned;
15. Moreover, as the pending applications for the allowable recovery of the remaining IPP contracts for Malaya Thermal Power Plant, Caliraya-Botocan-Kalayaan Hydro Power Plants, Naga Thermal/Diesel/Gas Turbine Power Plants and Mindanao Coal-Fired Thermal Power Plant are approved by the Commission, it also requests that these be included as part of its prevailing basic rate. These applications are docketed as ERC Cases No. 2005-32RC, 2007-159RC, 2005-31RC and 2001-811, respectively;
16. It proposes that the approved rate for recovery for any of the Luzon Grid IPP plant stated above shall be multiplied by the energy delivered by the same IPP plant in CY2004 to get the required amount of adjustment in the Purchased Power and Capacity and Infrastructure Fees components of the revenue requirement corresponding to the prevailing Luzon Grid Generation Rate. As regards Mindanao Coal-Fired Thermal Power Plant, the amount of adjustment in revenue requirement for Mindanao Grid shall be based on the recoverable rate as approved by the Commission and the actual energy delivered by the IPP plant based on the most recent twelve (12) months operation. The adjusted revenue requirement shall then be the basis for determining the new

average generation rate and the resulting adjustment in PhP/kWh shall likewise be applied uniformly to the prevailing hourly TOU generation rates to come up with a new TOU Rates Schedule. This is the same methodology in adjusting the prevailing TOU Rates Schedules being proposed by it relative to the privatization of its power plants;

17. The filing of the instant application is without prejudice to the filing of a flat rate as basic generation charge;
18. It prays that the Commission approves the following after due notice and hearing:
 - a. The required adjustment to its Average Generation Rates for each plant privatized;
 - b. The automatic implementation in the succeeding quarter of the proposed adjusted TOU Rates or such approved adjustments corresponding to its generation assets/power plants in Luzon, Visayas and Mindanao Grids privatized during the indicated previous quarter;
 - c. The methodology for deriving the revised TOU Rates Schedules; and
 - d. The adjustment of the prevailing basic generation and its corresponding TOU Rates Schedule once the application for recovery of the costs for the remaining IPP contracts (Malaya Thermal Power Plant, Caliraya-Botocan-Kalayaan Hydro Power Plants, Naga Thermal/Diesel/Gas Turbine Power Plants and Mindanao Coal-Fired Power Plant) are approved by the Commission; and
19. It further prays that a provisional authority be issued allowing NPC, during the pendency of this case, to immediately implement the proposed adjustment on its basic generation rate with its corresponding TOU Schedule for the Luzon Grid including the cost recovery of the remaining IPP contracts upon their approval.

NPC and PSALM based their application on CY 2002 and 2004 or the test year adopted in ERC Case No. 2004-178 (RORB-TOU application). They calculated the proposed revenue requirement by deducting from the approved revenue requirement in their previous RORB-TOU application, the expense, rate base, kWh sales and other revenue requirement components relative to the sale, transfer and disposal of the NPC's generation assets/power plants in the Luzon, Visayas and Mindanao Grids.



After a review of the evidence presented by NPC and PSALM and the arguments of intervenors relative to the appropriate and applicable test year period, the Commission finds that NPC and PSALM should have used the CY 2007 as the test year since it is the most reflective of the current costs. The assumptions and calculations on NPC's revenue requirements and proposed basic generation rate using CY 2002 and CY 2004 as test years were significantly different with CY 2007. If the adjustment in generation rates sought for was intended to reflect the impact of the sale, transfer and disposal of NPC's generation assets as a result of the privatization, then the test year 2007, which is the most recent and most reflective of its current assets and costs, should have been used.

While NPC and PSALM have submitted various documents and data in support of their application, said submissions cannot be given any probative value for not being reflective of NPC's true cost, and, as far as the CY 2007 data they submitted, for being irrelevant and inadmissible considering the application to be based on CY 2002 and 2004 test years. Substantial evidence is required in administrative proceedings to support a decision rendered by the administrative tribunal. In *Cabalen Management Co., Inc., vs. Jesus P. Quiambao*¹, the Supreme Court held that:

"In *IBM Philippines, Inc. v. NLRC*, this Court clarified that the liberality in administrative procedure "does not go so far as to justify orders without a basis in evidence having rational probative value." And in *Uichico v. National Labor Relations Commission*, it held:

. . . It is true that administrative and quasi-judicial bodies like the NLRC are not bound by technical rules of procedure in the adjudication of cases. However, this procedural rule should not be construed as a license to disregard certain fundamental evidentiary rules. While the rules of evidence prevailing in courts of law or equity are not controlling in the proceedings before the NLRC, the

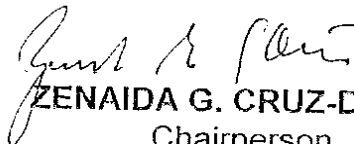
¹ G.R. No. 169494, March 14, 2007

evidence presented before it must at least have a modicum of admissibility for it to be given some probative value. (Emphasis and underscoring supplied)"

WHEREFORE, the foregoing premises considered, the application filed by the National Power Corporation (NPC) and the Power Sector Assets and Liabilities Management Corporation (PSALM) for the approval of the revised basic generation rates for Luzon Grid is hereby **DISMISSED**.

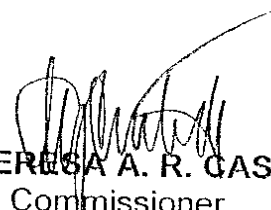
SO ORDERED.


Pasig City, December 15, 2008.


ZENAIDA G. CRUZ-DUCUT
Chairperson


RAUF A. TAN
Commissioner


ALEJANDRO Z. BARIN
Commissioner


MARIA TERESA A. R. CASTAÑEDA
Commissioner


JOSE C. REYES
Commissioner

Copy furnished:

1. Atty. Melchor P. Ridulme
Atty. Comie P. Doromal
Atty. Gordon SY Montojo
Counsel for Applicant
National Power Corporation
Quezon Avenue and BIR Road
Diliman, Quezon City
2. Office of the Solicitor General (OSG)
134 Amorsolo Street, Legaspi Village,
Makati City, Metro Manila
3. Commission on Audit (COA)
Commonwealth Avenue,
Quezon City, Metro Manila
4. Senate Committee on Energy
GSIS Bldg., Roxas Blvd., Pasay City
Metro Manila
5. House Committee on Energy
Batasan Hills, Quezon City, Metro Manila
6. Office of the City Mayor
Quezon City
7. Office of the City Mayor
Davao City
8. Office of the City Mayor
Davao City
9. Office of the City Mayor
Cebu City
10. Atty. Maria Luz L. Caminero
General Counsel
Power Sector Assets and Liabilities Management Corporation
7th Floor, Bankmer Building
6756 Ia Avenue, Makati City
11. Atty. Jose Ronald V. Valles
Atty. Romel L. Yap
Counsel for Intervenor
Manila Electric Company
7th Floor, Lopez Building
Ortigas Avenue, Pasig City
12. Puyat Jacinto & Santos
Counsel for Masinloc Power Co. Ltd.
12/F Manilabank Building
6772 Ayala Avenue
Makati City
13. Mr. Pete Ilagan
NASECORE
No. 10, 680 Quirino Avenue, Bayside Court Compound
1700bo, Parafiaque City
14. Engr. Robert Mallillin
151 EDSA
Brgy. Wack-Wack
Mandaluyong City
15. Hon. Ana Theresia Hontiveros-Baraquel
House of Representatives
Batasan Hills, Quezon City