

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



IN THE MATTER OF THE APPLICATION  
FOR THE RECOVERY OF THE  
INCREMENTAL COSTS ON FOREIGN  
CURRENCY EXCHANGE RATE  
FLUCTUATIONS UNDER THE  
INCREMENTAL CURRENCY EXCHANGE  
RATE ADJUSTMENT WITH PRAYER  
FOR PROVISIONAL AUTHORITY

ERC CASE NO. 2008-032 RC

NATIONAL POWER CORPORATION (NPC),  
Applicant.

x-----x

**D O C K E T E D**  
Date: **JAN 14 2009**  
By: \_\_\_\_\_

**DECISION**

Before the Commission for resolution is the application filed by the National Power Corporation (NPC) on June 3, 2008 for the recovery of its incremental costs on foreign currency exchange rate fluctuations under the Incremental Currency Exchange Rate Adjustment (ICERA), with prayer for provisional authority.

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

1. In its Order dated February 24, 2003 in ERC Case No. 2003-44, the Commission issued and adopted the Implementing Rules for the ICERA providing, among others, the required mechanisms for the recovery/(refund) of the deferred incremental costs/(savings) on foreign currency exchange rate fluctuations and carrying charges;
2. The application covers the billing period July 2006 to December 2006. It has complied with the ICERA's monthly reportorial requirements in support of the calculated allowable costs covering the test period;
3. It seeks to recover/(refund) the Deferred Accounting Adjustments (DAAs), the gain/(loss) from the foreign exchange fluctuations in the settlement of Debt Service and Operation Expenses (OPEX) and the difference in the actual and billed, through the generation charge, amortization of Capacity and Infrastructure Fees for Build-Operate-Transfer (BOT) Plants, and corresponding carrying charges for the billing period July 2006 to

December 2006 for the Luzon, Visayas and Mindanao grids, including the estimated balance and carrying charges;

4. Pursuant to the Commission's directive in its Order dated November 23, 2005 (approval of 4<sup>th</sup> ICERA DAA), the proposed 8<sup>th</sup> ICERA DAA charges are calculated on a per grid basis;
5. Consistent with its previous ICERA applications, the Base Exchange Rates used in the calculation of the 8<sup>th</sup> ICERA DAA for OPEX is adjusted to the average figures of CY 2002 as compared with those from CY 2000 or from PhP44.0494/US\$1 to PhP51.6036/US\$1 and PhP0.4096/JP¥ 1 to PhP0.4128/JP¥1. However, Base Exchange Rates for Debt Service are maintained at the CY 2000 level, pending resolution on its "Supplemental Motion for Clarification" filed on May 31, 2006 seeking clarification on the disallowance of the loss on FOREX fluctuations in the Decision on RORB-TOU application (ERC Case No. 2004-178). Resolution of said motion shall provide it with a better understanding of the Commission's intention particularly on the appropriate Base Exchange Rate/Price of Debt Service;
6. The calculation of DAA balances and carrying charges are broken down into: a) not subject to Reformed Value Added Tax (RVAT); and b) subject to RVAT due to the implementation of RVAT from November 1, 2005 consistent with Republic Act No. 9337 and ERC Resolution No. 20;
7. The calculation for the recovery/(refund) of costs on Actual Capacity and Infrastructure Fees for Bakun Hydroelectric Power Plant and San Roque Multi-purpose Project is up to the authorized recoverable rate of PhP3.8299/kWh contained in the Commission's Order on the 5<sup>th</sup> ICERA;
8. To align the nature of the adjustment to the appropriate mechanism, it also proposes to the Commission to transfer the recovery/(refund) of DAAs under the Capacity and Infrastructure Fee component, which is based on the Commission's Order dated April 14, 2004 and June 9, 2004 under ERC Case Nos. 2003-574 and 2004-122, respectively, from ICERA adjustment to the Gram Adjustment Mechanism;
9. The proposed 8<sup>th</sup> ICERA DAA charges shall be billed on top of the existing RORB-TOU-based generation charge. Pursuant to the Implementing Rules of the ICERA, it proposes to recover the following deferred FOREX adjustments and the corresponding carrying charges based on the BSP-established 91-day Treasury Bill rates plus 3%, through the proposed 9<sup>th</sup> ICERA DAA charges for Luzon, Visayas and Mindanao grids for the period January 2007 to April 2008. The table below shows the summary of the total deferred cost on ICERA and its breakdown (subject/not subject to RVAT) while the other table shows the allowable carrying charge interest rates under the instant application:

**Total Deferred Cost on ICERA, in PhP**

	<b>Luzon</b>	<b>Visayas</b>	<b>Mindanao</b>	<b>Phils.</b>
<b>TOTAL</b>	<u>(2,531,198,240)</u>	<u>389,098,251</u>	<u>(14,018,872)</u>	<u>(2,156,118,861)</u>
Subject to RVAT	(2,437,348,976)	410,726	(199,617,860)	(2,635,556,111)
Not Subject to RVAT	(93,849,264)	388,687,525	185,598,988	480,437,249

Allowable Carrying Charge Interest Rates

Test/Billing Months	Prevailing 91-day T-Bill Rate	Authorized Allowance	Allowable Rate
July 2006	6.076%	3%	9.076%
August 2006	5.403%	3%	8.403%
September 2006	5.444%	3%	8.444%
October 2006	5.469%	3%	8.469%
November 2006	4.837%	3%	7.837%
December 2006	5.153%	3%	8.153%

10. The application seeks to obtain the approval for the recovery/(refund) of the total deferred FOREX fluctuation costs and the balance of previously approved ICERA DAAs through the imposition of the proposed ICERA DAA charges in Php/kWh as follows:

	Luzon	Visayas	Mindanao
ICERA DAA Charges, Php/kWh	(0.0207)	0.0279	(0.0165)

11. The proposed ICERA DAA is fair and reasonable as it allows the recovery of deferred costs consistent with the principles of a free and competitive electricity market as provided under R.A. No. 9136;
12. It seeks the approval to recover the above-mentioned deferred costs over the following recovery periods:

	LUZON	VISAYAS	MINDANAO
Recovery Period, in months			
Debt Service & OPEX	60	10	24
Capacity Fees	60	30	10

13. It prays that the proposed DAA charges of (Php0.0207)/kWh for Luzon grid, Php0.0279/kWh for Visayas grid and (Php0.0165)/kWh for Mindanao grid be approved or provisionally approved by the Commission.

Having found the said application sufficient in form and in substance with the required fees having been paid, an Order and a Notice of Public Hearing, both dated June 11, 2008, were issued setting the application for initial hearing, pre-trial conference and expository presentation on July 17, 2008.

The Office of the Solicitor General (OSG), the Commission on Audit (COA) and the Committees on Energy of both Houses of Congress were furnished with copies of the Order and the Notice of Public Hearing and were requested to have their respective duly authorized representatives present at the aforesaid initial hearing.

Likewise, the Office of the Mayor of Quezon City was furnished with copies of the Order and the Notice of Public Hearing for the appropriate posting thereof on its bulletin board.

In the same Order, NPC was provisionally authorized to recover/(refund) the DAA for the Luzon, Visayas and Mindanao grids within the corresponding recovery periods as shown by the table below, starting from its May 26, 2008 to June 25, 2008 billing period or until such time that the full amount shall have been recovered/(refunded) or until the next application for the recovery of Incremental Fuel and IPP cost is recomputed and approved by the Commission, whichever comes earlier:

GRIDS	DAA (PhP/kWh)		Total DAA (PhP/kWh)	RECOVERY PERIOD (in Months)	
	VATable @ 12%	NONVATable		VATable	NONVATable
LUZON	(0.1967)	0.0147	(0.1820)	6	6
VISAYAS	(0.0001)	0.0278	0.0279	10	30
MINDANAO	0.0522	0.0480	0.0042	6	6

On June 27, 2008, NPC filed its "Consolidated Urgent Motion for Clarification" seeking clarification on the following issues:

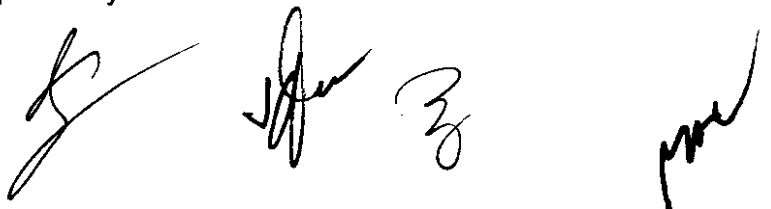
1. The limitation of carrying charge from July 2006 to December 2006 only;

2. The restoration of the original recovery/(refund) period for Luzon as prayed for in the instant application since it had already projected its operation based on such original period. The shortened period in the provisional authority may have detrimental impact on its finances and operations and to some extent, the national economy;
3. Implementation of the Commission's Order dated June 11, 2008 in the succeeding billing period of June 26, 2008 to July 25, 2008;
4. Its responsibility to recover/(refund) the DAA for the Transition Supply Contracts (TSCs) assigned to the buyers of its assets within the prescribed period and making the necessary adjustment on the Value Added Tax (VAT); and
5. The rules to comply with regard to its applications for GRAM and ICERA considering the amendment of Section 4 (e), Rule 3 of the EPIRA IRR.

Relative thereto, on July 17, 2008, the Masinloc Power Partners Co., Ltd. (MPPCL) filed its "Consolidated Motion for Clarification" praying that the Commission issue an Order: a) resolving with dispatch its concerns considering that the provisional approval authorized NPC to make the appropriate recovery/(refund) starting from its May 26, 2008 to June 25, 2008 billing period; b) directing NPC to issue the appropriate invoices for the refund/recovery to its customers, including the customers under the assigned TSCs and for its customers during the test period that have subsequently transferred to a new generation company for the supply of electricity; and c) directing NPC affected customers to go directly to NPC to claim the refund or pay for any under-recovery.

In the meantime, the Commission noted the submissions made by the parties:

1. The "Pre-trial Brief (and Compliance with Jurisdictional Requirements)" filed by NPC on July 11, 2008;
2. The "Petition for Intervention" filed by MPPCL on July 11, 2008;
3. The "Pre-trial Brief" filed by NPC on July 11, 2008; and
4. The "Petition for Intervention with Entry of Appearance", "Pre-Trial Brief" and "Comment" filed by the Manila Electric Company (MERALCO) on July 14, 2008 and August 1, 2008, respectively.

The image shows four handwritten signatures in black ink, arranged horizontally. From left to right, they appear to be: a stylized signature, a signature that looks like 'J. Garcia', a signature that looks like 'E. Garcia', and a signature that looks like 'M. Garcia'. There is also a partial signature on the far left edge of the page.

During the July 17, 2008 initial hearing, the following entered their appearances:

- a) Atty. Julieta Estamo, as counsel for NPC; b) Attys. Luther D. Ramos and Cheryl Len M. Valenzuela, as counsel for MPPCL; and c) Attys. Hazel Rose B. See and Irish Mae V. Rodriguez, as counsel for MERALCO.

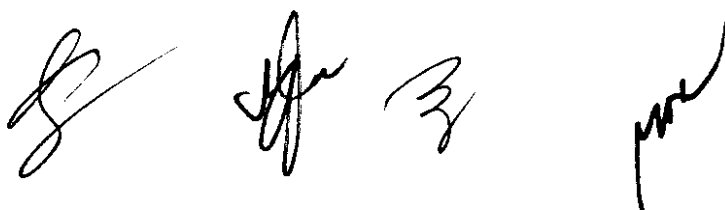
At the said hearing, NPC presented its proofs of compliance with the Commission's posting and publication of notice requirements, which were duly marked as Exhibits "A" to "N", inclusive. Thereafter, it made an expository presentation of its application. It then manifested that it filed a "Consolidated Urgent Motion for Clarification". MPPCL also manifested that it filed a "Consolidated Motion for Clarification".

On July 22, 2008, MPPCL filed its "Reply/Comment (to NPC's Consolidated Urgent Motion for Clarification)".

On August 15, 2008, the Commission issued an Order resolving the said consolidated motions for clarification filed by NPC and MPPCL to the effect, among others, that NPC, and not the successor generation company, shall be accountable for any recovery or (refund) to the following customers:

- a) Any NPC customer that was assigned to a successor generation company after the Test Period; and  
b) Any previous NPC customer that has shifted from NPC to another generation company after the Test Period.

At the continuation of the hearing on September 9, 2008, the Commission conducted a pre-trial hearing where the parties stipulated on facts and issues relative to



the instant application. The following are the results of the stipulations reached by the parties:

**I. Stipulation of Facts**

- a. Pursuant to the Commission's Decision in ERC Case No. 2003-044, NPC is required to file a Deferred Generation Cost Accounting application every three (3) months;
- b. Any Deferred Cost Accounting application must be filed not later than thirty (30) days after the adjustment date;
- c. NPC's application pertains to the period covering July 2006 to December 2006 test period; and
- d. MPPCL is the purchaser of the 600 MW Coal-Fired Thermal Power Plant from NPC or the Power Sector Assets and Liabilities Management Corporation (PSALM) and the assignee of the TSC entered into between NPC and its customers.

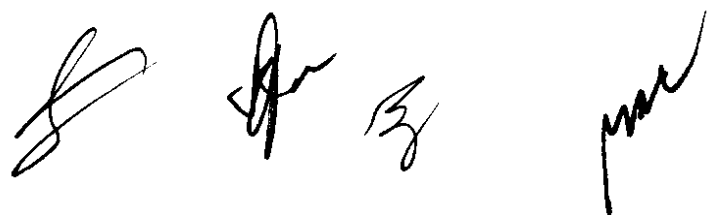
**II. Issues to be Resolved**

**NPC**

1. Whether or not NPC is entitled to recover/(refund) its 8<sup>th</sup> ICERA DAAs .

**MERALCO**

1. Whether or not the DAAs are applied to NPC's customers under the WESM;
2. Whether or not NPC has fully complied with all of the Commission's monthly reportorial requirements in support of the calculated allowable costs covering the test period beginning July 2006 to December 2006.
3. Whether or not NPC's proposal to transfer the recovery/(refund) of DAAs under the Capacity and Infrastructure Fee component from the ICERA adjustment to the GRAM adjustment mechanism is reasonable and justifiable.
4. Whether or not the proposed DAA charges of PhP0.0207/kWh for the Luzon Grid, PhP0.0279/kWh for the Visayas Grid and PhP0.0165/kWh for the Mindanao Grid are in accordance with the Implementing Rules for the Recovery of ICERA.
5. Whether or not the proposed recovery of incremental costs on foreign currency exchange rate fluctuations under ICERA is fair and reasonable.
6. Whether or not the proposed recovery period for Luzon, Visayas and Mindanao to recover the deferred costs is appropriate.



Thereafter, NPC presented its lone witness, Ms. Ma. Anabel Versoza, its Tariff Division Manager, who testified in support of the application. In the course of her testimony, a document was presented and marked as Exhibit "Y".

The direct examination having been terminated, MPPCL and MERALCO moved to defer their cross-examinations to give them time to study the affidavit of the said witness. Said motion was granted.

On September 19, 2008, NPC filed a "Supplemental Affidavit" of Ms. Versoza.

During the September 23, 2008 hearing, NPC recalled its witness, Ms. Versoza, who identified various documents in support of the application. In the course thereof, additional documents were presented and marked as exhibits.

Upon termination of the direct examination, MPPCL and MERALCO conducted their respective cross-examinations on the said witness. Thereafter, NPC was directed to submit its formal offer of evidence.

On October 13, 2008, MPPCL filed its "Comment (on NPC Manifestation)".

On November 24, 2008, an Order was issued directing NPC to continue to collect/(refund) the amount previously authorized by the Commission in its Order dated June 11, 2008.

On November 26, 2008, NPC filed its "Formal Offer of Evidence" while on November 28, 2008, it filed an "Ex-Parte Motion to Admit". Acting thereon, the



Commission finds NPC's formal offer of evidence relevant and material in the final resolution of this case.

## DISCUSSION

In the evaluation of the instant application, the Commission considered the following factors: a) Relevant Test Period; b) Base FOREX Rates for the Debts Service and OPEX; and c) Calculation of the total ICERA DAA.

### A. Relevant Test Period

In calculating the proposed ICERA DAA, the Commission adopted July 2006 to December 2006 as the applicable test period.

### B. Base FOREX Rates

In the calculation of the DAA for OPEX, the Commission used the average exchange rate for 2002 of the Bangko Sentral ng Pilipinas (BSP) Base Exchange FOREX Rates. The US Dollar to Peso rate was at PhP51.6036/US\$1 while the Yen to Peso rate was at PhP0.4128/JPY1.

On the other hand, in the calculation of the DAA for Debt Service, the Commission used the Base Exchange FOREX Rates at CY 2000 levels where the US Dollar to Peso rate was at PhP44.0494/US\$1 while the Yen to Peso rate was at PhP0.4096/JPY1.



**C. Calculation of the total ICERA DAA**

ICERA is a cost recovery mechanism that should have a zero impact on the utility's income and any under or (over) recovery on the actual deferred costs should be carried forward in the next ICERA filing. On the other hand, the DAA is a component of the ICERA which is intended to recover/(refund) the deferred cost from currency exchange adjustment.

Based on the submitted documents, the Commission extended the recovery period which included the amount collected/refunded until April 2008.

Shown below is the Commission's computation of ICERA DAA for Luzon, Visayas and Mindanao grids:

	Luzon	Visayas	Mindanao
VATABLE (12%)	(2,141,646,900.76)	490,140.03	(212,813,438.86)
NON-VATABLE	160,006,784.61	427,311,547.43	195,893,345.85
<b>TOTAL</b>	<b>(1,981,640,116.15)</b>	<b>427,801,687.46</b>	<b>(16,920,093.01)</b>

Based on the foregoing, the Commission computed the total ICERA DAA including the recovery period and the breakdown of the deferred costs which are subject and not subject to RVAT pursuant to R.A. 9337 and ERC Resolution No. 20, Series of 2005, to wit:

GRIDS	DAA (PhP/kWh)		Total DAA (PhP/kWh)	RECOVERY PERIOD (in Months)	
	VATable @ 12%	NONVATable		VATable	NONVATable
<b>LUZON</b>	(0.1967)	0.0147	(0.1820)	6	6
<b>VISAYAS</b>	0.0001	0.0278	0.0279	10	30
<b>MINDANAO</b>	(0.0522)	0.0480	(0.0042)	6	6

**DAA to WESM Purchases**

It must be noted that NPC's computation of the DAA includes the WESM sales. In its Resolution No. 30, Series of 2006 (Resolution Clarifying and Providing Guidance on Certain Regulatory Issues Upon Commencement of Commercial Operation of the Philippine Wholesale Electricity Spot Market), the Commission directed that all volume traded in the WESM should include the DAA and ICERA previously authorized for NPC. Thus, NPC should be liable to refund to all its customers the DAA since the same was collected in its WESM sales whenever there is a positive/collect DAA approved by the Commission.

**WHEREFORE**, the foregoing premises considered, the provisional authority granted to the National Power Corporation (NPC) on June 11, 2008 for the recovery of its incremental costs on foreign currency exchange rate fluctuations under the Incremental Currency Exchange Rate Adjustment (ICERA) is hereby made **PERMANENT**.

GRIDS	DAA (PhP/kWh)		Total DAA (PhP/kWh)	RECOVERY PERIOD (in Months)	
	VATable @ 12%	NONVATable		VATable	NONVATable
LUZON	(0.1967)	0.0147	(0.1820)	6	6
VISAYAS	0.0001	0.0278	0.0279	10	30
MINDANAO	(0.0522)	0.0480	(0.0042)	6	6

Considering the relevant test period for the subject GRAM DAA and the closing dates of its Assets Purchase Agreement (APA), NPC should still be held accountable for any recovery or refund to the following customers:

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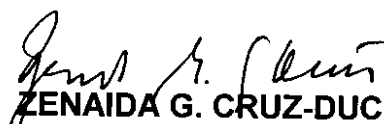
- a) Any NPC customer that was assigned to a successor generation company after the Test Period; and
- b) Any previous NPC customer that has shifted from NPC to another generation company after the Test Period.

The successor generation company (SGC) should provide assistance to NPC in implementing the collect/(refund) of the aforesaid DAA and act as a billing agent for NPC. For its part, NPC shall pay SGC, within thirty (30) days from receipt of the SGC billing, the amount of refund while the latter shall collect/(refund) the amount of ICERA DAA to the TSC customers. In any case, the TSC customers are entitled to a rate the same with NPC's effective rate consistent with the TSC's assignability clause.

The SGC shall be entitled to carrying charge equivalent to 91-day T-Bill rates plus 300 points, as adopted in the GRAM, in the event NPC failed to pay within the prescribed period.

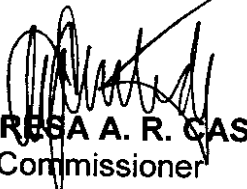
SO ORDERED.


Pasig City, December 15, 2008.

  
**ZENAIDA G. CRUZ-DUCUT**  
Chairperson

  
**RAUF A. TAN**  
Commissioner

  
**ALEJANDRO Z. BARIN**  
Commissioner

  
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