

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



IN THE MATTER OF THE APPLICATION
FOR THE APPROVAL OF THE
TRANSITION SUPPLY CONTRACTS
(TSCs) ENTERED INTO WITH
DISTRIBUTION UTILITIES (DUs)
LOCATED IN THE VISAYAS GRID WITH
PRAYER FOR THE ISSUANCE OF
PROVISIONAL AUTHORITY

ERC CASE NO. 2008-034 RC

NATIONAL POWER CORPORATION
(NPC),

Applicant.

x ----- x

D O C K E T E D

Date: NOV 06 2008

By: _____

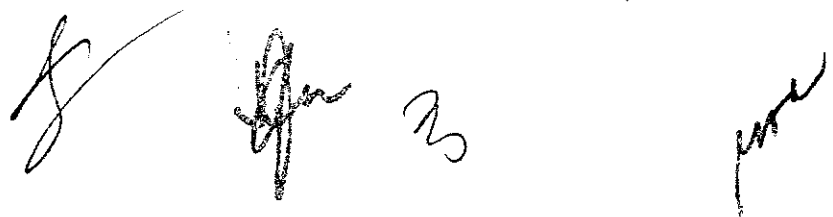
DECISION

Before the Commission for resolution is the application filed by the National Power Corporation (NPC) on June 13, 2008 for the approval of the Transition Supply Contracts (TSCs) entered into with the Distribution Utilities (DUs) located in the Visayas Grid, with prayer for provisional authority.

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

1. Pursuant to Section 5, Article III of the Commission's *Guidelines for the Recovery of Costs for the Generation Component of the Distribution Utilities' Rates*, it filed the instant application for the approval of TSCs duly negotiated and executed with the DUs located in the Visayas Grid;
2. On July 7, 2005, the Commission issued Resolution No. 08, Series of 2005, approving and adopting the template for the TSC. On August 9, 2005, said template was amended by the Commission in its Resolution No. 15, Series of 2005;
3. In the Commission's Order dated April 10, 2006, it was directed to publish its application for the approval of the duly negotiated TSCs/Contracts for the Supply of Electric Energy (CSEEs) with the DUs on a per grid basis;

4. On June 2, 2006, it filed an application for approval of duly negotiated TSCs/CSEEs with the different DUs in the Visayas Grid consisting of thirty one (31) contracts, which were all approved by the Commission in its Decision dated October 19, 2006;
5. In compliance with the directive/order of the Commission, it submits for approval the duly negotiated TSCs/CSEEs with the following DUs in the Visayas Grid as of the period December 2006 to December 2007:
 - a. Capiz Electric Coop., Inc. (CAPELCO)
 - b. Guimaras Electric Coop. Inc. (GUIMELCO)
 - c. Iloilo I Electric Coop., Inc. (ILECO I)
 - d. Iloilo III Electric Coop., Inc. (ILECO III)
 - e. Leyte II Electric Coop., Inc. (LEYECO II)
 - f. Leyte V Electric Coop. (LEYECO V)
 - g. Panay Electric Company, Inc. (PECO)
 - h. Samar I Electric Coop., Inc. (SAMELCO I)
6. The said TSCs/CSEEs were executed using the template approved by the Commission under Resolution No. 08, Series of 2005, as amended by Resolution No. 15, Series of 2005;
7. Except for the contract of PECO, all the other TSCs/CSEEs subject of the instant application are mere renewals of the previous ERC-approved contracts;
8. The subject TSCs/CSEEs provide, among others, the following terms and conditions:
 - a. Contract Energy - The Contract Energy shall not be changed by either party except in cases as provided for in the contract.
 - b. Buy-out – The Customer shall be entitled to a reduction in its Contract Energy only upon written application to Supplier and payment of the corresponding buy-out fee at least sixty (60) days prior to the effectivity of the buy-out.
 - c. Security Deposit - The Security Deposit shall be equivalent to 100% of the average monthly power bill during the first year of the Contract and shall be updated annually.
 - d. Assignability – The Supplier may assign or transfer part or all of its rights and obligations in the supply of Contract Energy provided that prior written notice is given to Customer thirty (30) days before the actual transfer.
 - e. Basic Energy Charge - The ERC-approved generation rates and other charges exclusive of penalties, bonuses, shall be applied to the Customer's contracted monthly or hourly energy consumption.



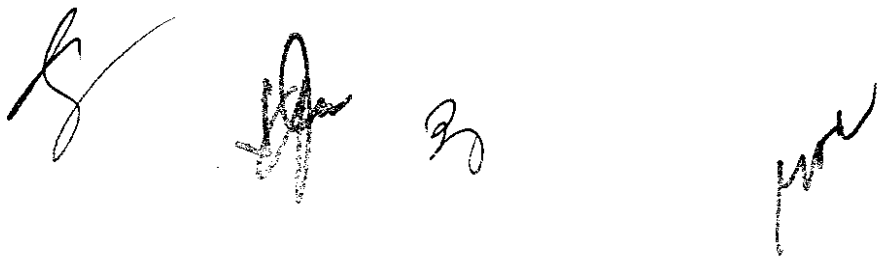
ERC Approved Rates, PhP/kWh: (Inclusive of approved adjustments as of March 2008):

VISAYAS GRID

Rate Component	₱ /kWh
Average Generation Rate	2.8879
FBHCC	0.0177
Deferred Accounting Adjustment (DAA)*	
8 th GRAM	(0.1013)
7 th ICERA	0.0000
TOTAL	2.8043
*subject to change pursuant to an ERC approval	

- f. Bandwidth - For consumption higher than one hundred twenty percent (120%) of the contracted level prior to commercial operation of the WESM, the basic energy charge to be applied shall be the prevailing ERC approved rate and other adjustments plus twenty percent (20%) of such rate for the incremental increase beyond the one hundred twenty percent (120%) of Contract Energy.
 - g. Maintenance Service Adjustment – The Customer may avail of the service adjustment during the scheduled maintenance of its facilities, not to exceed two (2) billing periods in one year. The minimum charge on the energy consumption shall be fifty percent (50%) of the Contract Energy.
 - h. Overdue Account - In the event that a power bill remains unpaid within five (5) days after its due date, Supplier has the option to call on or draw against the Security Deposit as provided for under Section 5 (Security Deposit) of the Contract.
 - i. Contract Termination - Either party will have the right to terminate the Contract upon failure of the other to perform its obligation under the Contract.
9. It prayed that the negotiated TSCs/CSEEs with the various DUs in Visayas Grid be approved by the Commission and that a provisional authority be issued authorizing it to implement the subject TSCs.

Having found 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 18, 2008, were issued setting the case for hearing on July 23, 2008 at the ERC Hearing Room, 15th Floor, Pacific Center Building, San Miguel Avenue, Pasig City.



NPC was 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 was also directed to inform the consumers, by any other means available and appropriate, of the filing of the instant application, its reasons therefor, and of the scheduled hearing thereon.


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.

On July 18, 2008, NPC filed its "Pre-Trial Brief".

During the July 23, 2008 hearing of this case, only NPC appeared. No intervenor/oppositor appeared nor was there any intervention/opposition registered.

At the said hearing, NPC submitted its proofs of compliance with the Commission's posting and publication of notice requirements. Thereafter, it made an expository presentation of its application. Subsequently, it presented its



lone witness, Mr. Salvador Sarmiento, Officer-In-Charge of the Marketing and Commercial Operations Department, who testified in support of the application. In the course thereof, additional documents were presented and marked as Exhibits "FF" to "OO", inclusive.

The direct examination having been terminated, the Commission directed NPC to file its formal offer of evidence within ten (10) days from the said date of hearing. In compliance therewith, on July 30, 2008, NPC filed its "Formal Offer with Urgent Motion for Issuance of Provisional Authority" which was admitted for being material and relevant in the resolution of this application.

DISCUSSION

Section 67 of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001 or EPIRA"; mandates NPC to file with the Commission for its approval the Transition Supply Contracts (TSCs) duly negotiated with the DUs concerning the terms and conditions of supply and a corresponding schedule of rates.

On March 25, 2004, the Commission approved and promulgated the "*Guidelines for the Recovery of Cost for the Generation Component of the Distribution Utilities' Rates*" which contained, among other things, the following directives:

1. For NPC to file, for the approval of the Commission, the Supplemental Agreements on existing power supply contracts with DUs;
2. For NPC to offer TSCs to all DUs in each region, subject to availability of generation capacity and eligible energy, and to file, for the approval of the Commission, all duly negotiated and executed TSCs with any DU; and



3. For NPC and the National Transmission Corporation (TRANSCO) to jointly file, for each region, an initial Regional TSC Availability Record to be certified by the Department of Energy (DOE).

On July 7, 2005, the Commission issued Resolution No. 08, Series 2005 entitled "*Adopting Template for the TSC*" approving the adoption of a template for the TSCs and allowing NPC from time to time to file, for approval of the Commission, any negotiated TSC/SA with its customers.

On August 9, 2005, the Commission issued Resolution No.15, Series of 2005, entitled "*In the Matter of Amending the Template for the TSC*" amending for the purpose, Resolution No. 08, Series of 2005.

On July 12, 2006, the Commission issued Resolution No. 33, Series of 2006, which clarified, among others, that the approved TSC Template would merely serve as a guide for the NPC and the DUs. Considering the TSC's distinct and transitory nature as a bilateral power supply contract, on July 18, 2006, the Commission promulgated Resolution No. 37, Series of 2006, which adopted and clarified the manner by which the TSCs are to be treated.

In its evaluation, the Commission considered all the pertinent Rules and Regulations and the necessary Guidelines in the implementation of the TSCs taking into account that under the EPIRA, the TSCs are to be dealt with separately from the provisions on bilateral power supply contracts and their terms should not extend beyond one (1) year from the introduction of Open Access.

Thus, the Commission adopted, as a matter of policy, that the TSCs are to be treated as special contracts and shall not be considered as bilateral power

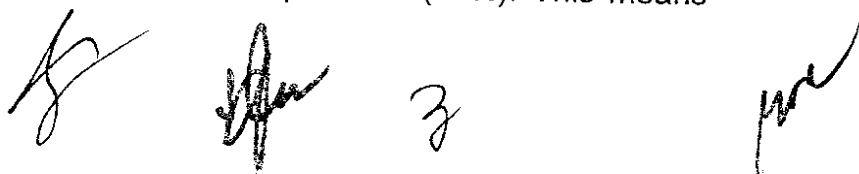
The bottom of the page features four handwritten signatures or initials in black ink. From left to right, they appear to be: a stylized signature, a signature that looks like 'A', a set of initials 'Z', and a signature that looks like 'M'. There is also a small mark resembling a checkmark or a short signature to the right of the 'Z' initials.

supply contracts for purposes of monitoring compliance with Section 45 (c) of the EPIRA. The said provision states that no distribution utility shall source more than ninety percent (90%) of its total demand from bilateral power supply contracts for the first five (5) years from the establishment of the Wholesale Electricity Spot Market (WESM). For the said period, the monitoring of the total demand shall not include power requirements being sourced from the TSCs.

Correspondingly, the Commission deems that the terms of the TSCs should be limited only to one (1) year from the introduction of Open Access regardless of stipulations by the parties to the contrary. This means that the contracts shall cease to exist as TSCs beyond such period of time.

On the other hand, the DU may, with the concurrence of the NPC, opt to file an application for approval of its TSC as a regular bilateral power supply contract subject to review by the Commission. Said application must be filed with the Commission at least six (6) months prior to the expiration of the term of the TSC. The Commission is cognizant that entering into TSCs would reduce the DUs' exposure to price volatilities in the WESM.

Relative thereto, the Commission adopted the "*Rules on the Default Wholesale Supply (DWS) Arrangements*" to address the pricing of supply imbalances in the WESM given that not all DUs are registered as direct members in the market. The Commission declared that the supply imbalance shall be equivalent to actual consumptions beyond one hundred twenty percent (120%) of the levels under the TSC or such other level as determined by the Commission. The Commission, likewise, determined that the price to be imposed on the DWS transactions shall be the NPC Grid Rate or the WESM Ex-Post Nodal Energy Price, whichever is higher, plus a premium of ten per cent (10%). This means



that, instead of a surcharge, a customer has to pay a premium of ten percent (10%) over the approved grid rate or the spot market nodal price, whichever is higher, for any consumption of the DUs in excess of what is covered by the TSC. However, the Rules on the DWS Arrangement shall only apply when the WESM becomes operational in Visayas.

With respect to the submissions of NPC, the Commission found the following provision on GUIMELCO's TSC irrelevant and thus, should be deleted:

"The Customer holds NPC free and harmless from any liability or damage which may consequently arise in the event that the Energy Regulatory Commission or any other appropriate authority resolves or determines that the direct connection of the Customer with NPC is not necessary."

The table below shows the contract duration of the applicant DUs in the Visayas Grid:

VISAYAS GRID	Contract Duration
Capiz Electric Cooperative, Inc. (CAPELCO)	Dec. 26, 2007 - Dec. 25, 2008
Guimaras Electric Cooperative, Inc. (GUIMELCO)	Dec. 26, 2006 - Dec. 25, 2012
Iloilo I Electric Cooperative, Inc. (ILECO I)	July 26, 2007 - Dec. 25, 2009
Iloilo III Electric Cooperative, Inc. (ILECO III)	Dec. 26, 2007 - Dec. 25, 2010
Leyte II Electric Cooperative, Inc. (LEYECO II)	Dec. 26, 2007 - June 25, 2008
Leyte V Electric Cooperative, Inc. (LEYECO V)	Dec. 26, 2006 - Dec. 25, 2008
Panay Electric Company, Inc. (PECO)	June 26, 2007 - June 25, 2010
Samar I Electric Cooperative, Inc. (SAMELCO I)	Dec. 26, 2007 - Dec.25, 2008


Handwritten signatures and initials at the bottom of the page, including a large signature on the left, a signature in the middle, a stylized 'Z' or '3' in the center-right, and a signature on the far right.

After a careful and thorough evaluation of the instant application, the Commission finds the provisions of the subject TSCs entered into by NPC with the DUs in the Visayas Grid consistent with the Commission's approved template as embodied in Resolution No. 15, Series of 2005.

WHEREFORE, the foregoing premises considered, the application filed by the National Power Corporation (NPC) for the approval of the Transition Supply Contracts entered into with the Distribution Utilities (DUs) in the Visayas Grid is hereby **APPROVED**.

SO ORDERED.


Pasig City, September 22, 2008.


ZENAIDA G. CRUZ-DUCUT
Chairperson


RAUF A. TAN
Commissioner


ALEJANDRO Z. BARIN
Commissioner

(On Official Travel)
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. Capiz Electric Coop., Inc. (CAPELCO)
8. Guimaras Electric Coop. Inc. (GUIMELCO)
9. Iloilo I Electric Coop., Inc. (ILECO I)
10. Iloilo III Electric Coop., Inc. (ILECO III)
11. Leyte II Electric Coop., Inc. (LEYECO II)
12. Leyte V Electric Coop. (LEYECO V)
13. Panay Electric Company, Inc. (PECO)
14. Samar I Electric Coop., Inc. (SAMELCO I)