

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 LUZON GRID WITH  
PRAYER FOR THE ISSUANCE OF  
PROVISIONAL AUTHORITY

ERC CASE NO. 2008-035 RC

NATIONAL POWER CORPORATION  
(NPC),

Applicant.

x ----- x

**DOCKETED**  
Date: NOV 6 2008  
By: [Signature]

**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) it entered into with the Distribution Utilities (DUs) located in the Luzon 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 the TSCs duly negotiated and executed with the DUs located in the Luzon 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 an 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;

[Signatures]

4. On June 2, 2006, it filed an application for approval of duly negotiated TSCs/CSEEs with the different DUs in the Luzon Grid and thereafter, filed a Supplemental Application on August 22, 2006 with a total of fifty six (56) contracts, which were all approved by the Commission in its Decision dated February 6, 2007;
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 Luzon Grid as of June 2006 to December 2007:
  - a. Albay Electric Cooperative, Inc. (ALECO)
  - b. Batangas I Electric Cooperative, Inc. (BATELEC I)
  - c. Batangas II Electric Cooperative, Inc. (BATELEC II)
  - d. Cabanatuan Electric Cooperative, Inc. (CELCOR)
  - e. Camarines Norte Electric Cooperative, Inc. (CANORECO)
  - f. Camarines Sur I Electric Cooperative, Inc. (CASURECO I)
  - g. Camarines Sur II Electric Cooperative, Inc. (CASURECO II)
  - h. Camarines Sur III Electric Cooperative, Inc. (CASURECO III)
  - i. Camarines Sur IV Electric Cooperative, Inc. (CASURECO IV)
  - j. Coccochem Agro-Industrial Park, Inc. (CAIP)
  - k. La Union Electric Company, Inc. (LUECO)
  - l. Pangasinan III Electric Cooperative, Inc. (PANELCO III)
  - m. Quezon I Electric Cooperative, Inc. (QUEZELCO I)
  - n. Quezon II Electric Cooperative, Inc. (QUEZELCO II)
  - o. Sorsogon I Electric Cooperative, Inc. (SORECO I)
  - p. Sorsogon II Electric Cooperative, Inc. (SORECO II)
  - q. Zambales I Electric Cooperative, Inc. (ZAMECO I)
  - r. Zambales II Electric Cooperative, Inc. (ZAMECO II)
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 CASURECO IV, all the other TSCs/CSEEs subject of the instant application are merely renewal 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 - 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, ₱/kWh: (Inclusive of approved adjustments as of March 2008):

**LUZON GRID**

Rate Component	₱ /kWh
Average Generation Rate	4.0753
FBHCC	0.0245
Deferred Accounting Adjustment (DAA)*	
8 <sup>th</sup> GRAM	(0.0315)
7 <sup>th</sup> ICERA	(0.2427)
<b>TOTAL</b>	<b>3.8256</b>
*subject to change pursuant to an ERC approval	

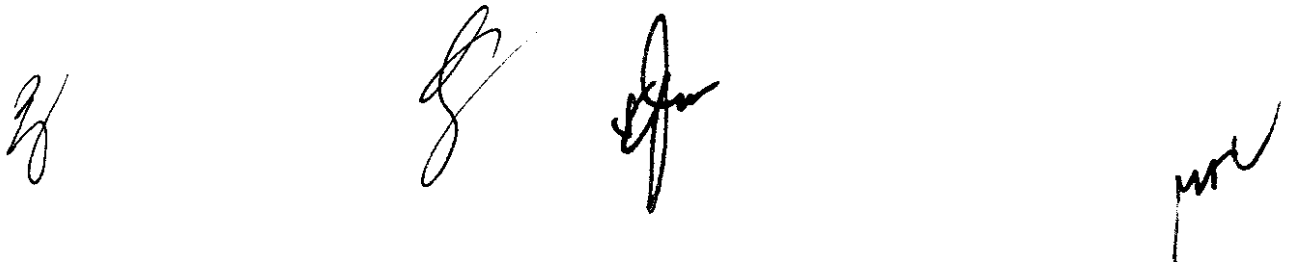
- f. Bandwidth - For consumption higher than one hundred twenty percent (120%) of the contracted level, prior to commercial operation of the WESM, the basic energy charge to be applied shall be the prevailing ERC approved rate and other adjustments plus twenty percent (20%) of such rate for the incremental increase beyond the one hundred twenty percent (120%) of Contract Energy.
- g. Maintenance Service Adjustment - 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, the 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 Luzon 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, 15<sup>th</sup> 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, the Masinloc Power Partners Co., Ltd. (MPPCL) filed its "Petition for Intervention" praying that it be allowed to intervene and participate in the proceedings of this case.

On even date, NPC filed its "Pre-Trial Brief".

During the July 23, 2008 hearing of this case, NPC as well as MPPCL appeared.

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 "TT" to "MMM", 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. MPPCL was given the same period within which to file its comment thereon. 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.



On August 14, 2008, MPCCL filed a "Manifestation" stating that it has no further comments to the formal offer of evidence filed by NPC.

### 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 TSCs duly negotiated with the DUs concerning the terms and conditions of power supply and the 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 others 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 of 2005, entitled "*Adopting Template for the TSC*" which provided a template for the TSCs and directed NPC 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 contract 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 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 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.



For energy consumptions covered by the contracted levels until one hundred twenty percent (120%) thereof, the price to be imposed shall be the Basic Energy Charge (BEC) or the prevailing ERC-approved rates plus other charges, exclusive of penalties as stated in the TSC.

Thus, for DUs that are indirect members of the WESM consuming beyond one hundred twenty percent (120%) of their contract levels, the BEC to be imposed shall be the ERC-approved DWS rate.

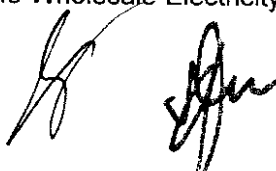
On the other hand, the DUs that are direct members of the WESM shall be charged with the ERC-approved generation rates plus other charges, exclusive of penalties and bonuses, for any consumption within 100% of their contract levels and the prevailing WESM generation rates for the consumption beyond 100% of their contract levels. However, pursuant to Resolution No. 12, Series of 2008, issued by the Commission on August 11, 2008<sup>1</sup> and until the lifting thereof, the WESM generation charges shall be applied for consumption beyond 120% of their contract levels.

The DU/Customer shall pay the minimum charge based on its Contract Energy per billing period using the BEC, subject to deductions and adjustments if it has not fully taken or failed to consume the Contract Energy.

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

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<sup>1</sup> A Resolution Suspending the Implementation of Section 3.5, Article 3, of the Rules for the Default Wholesale Supply Arrangements in the Wholesale Electricity Spot Market (WESM) in the Luzon Grid, as Amended.



<b>Luzon Grid</b>	<b>Contract Duration</b>
Albay Electric Cooperative, Inc. (ALECO)	Dec. 26, 2006 - Dec. 25, 2011
Batangas I Electric Cooperative, Inc. (BATELEC I)	Dec. 26, 2006 - Dec. 25, 2010
Batangas II Electric Cooperative, Inc. (BATELEC II)	Dec. 26, 2006 - Dec. 25, 2011
Cabanatuan Electric Corporation (CELCOR)	June 26, 2007 - Dec. 25, 2008
Camarines Norte Electric Cooperative, Inc. (CANORECO)	Dec. 26, 2006 - Dec. 25, 2011
Camarines Sur I Electric Cooperative, Inc. (CASURECO I)	Dec. 26, 2006 - Dec. 25, 2011
Camarines Sur II Electric Cooperative, Inc. (CASURECO II)	Dec. 26, 2007 - Dec. 25, 2008
Camarines Sur III Electric Cooperative, Inc. (CASURECO III)	Dec. 26, 2006 - Dec. 25, 2011
Camarines Sur IV Electric Cooperative, Inc. (CASURECO IV)	June 26, 2006 - June 25, 2009
Cocochem-Agro-Industrial Park, Inc. (CAIP)	July 26, 2007 - July 25, 2010
La Union Electric Company, Inc. (LUECO)	June 26, 2007 - June 25, 2008
Pangasinan III Electric Cooperative, Inc. (PANELCO III)	Sept. 26, 2007 - Sept. 25, 2008
Quezon I Electric Cooperative, Inc. (QUEZELCO I)	Dec. 26, 2006 - Dec. 25, 2011
Quezon II Electric Cooperative, Inc. (QUEZELCO II)	Dec. 26, 2006 - Dec. 25, 2011
Sorsogon I Electric Cooperative, Inc. (SORECO I)	Dec. 26, 2007 - Dec. 25, 2008
Sorsogon II Electric Cooperative, Inc. (SORECO II)	Dec. 26, 2007 - Dec. 25, 2008
Zambales I Electric Cooperative, Inc. (ZAMECO I)	Dec. 26, 2007 - Dec. 25, 2008
Zambales II Electric Cooperative, Inc. (ZAMECO II)	Feb. 26, 2008 - Feb. 25, 2009

Based on the submissions of NPC, the Commission found the following provision on ALECO and CASURECO I's TSC irrelevant and thus, should be deleted:

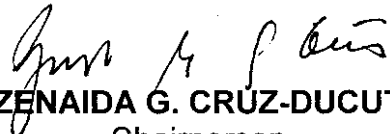
"The Customer holds NPC free and harmless from any liability or damage which may consequently arise in the event that the Energy Regulatory Commission or any other appropriate authority resolves or determines that the direct connection of the Customer with NPC is not necessary."

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 Luzon 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 Luzon Grid is hereby **APPROVED**.

SO ORDERED.

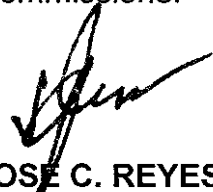
Pasig City, September 22, 2008.

  
**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

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Metro Manila
5. House Committee on Energy  
Batasan Hills, Quezon City, Metro Manila
6. Office of the City Mayor  
Quezon City
7. Albay Electric Coop., Inc. (ALECO)
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