

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



IN THE MATTER OF THE  
APPLICATION FOR AUTHORITY TO  
RECOVER UNDER – RECOVERIES IN  
THE GENERATION RATE, WITH  
PRAYER FOR PROVISIONAL  
AUTHORITY

(IN THE MATTER OF THE  
APPLICATION FOR PRIOR  
VERIFICATION OF OTHER  
GENERATION RATES  
ADJUSTMENTS UNDER SECTION 3,  
ARTICLE IV OF THE GUIDELINES  
FOR THE AUTOMATIC ADJUSTMENT  
OF GENERATION RATES AND  
SYSTEM LOSS RATES BY  
DISTRIBUTION UTILITIES, WITH  
PRAYER FOR PROVISIONAL  
AUTHORITY)

ERC CASE NO. 2008- 038 RC

PANAY ELECTRIC COMPANY, INC.  
(PECO) AND PANAY POWER  
CORPORATION (PPC),

Applicants.

X-----X

**D O C K E T E D**

Date: JUN 02 2008

By: [Signature]

**DECISION**

Before the Commission for resolution is an application for prior verification of other generation rates adjustments under Section 3, Article IV of the Guidelines for the Automatic Adjustment of Generation Rates and System Loss Rates by Distribution Utilities, with prayer for provisional authority filed by Panay Electric Company, Inc. (PECO) and Panay Power Corporation (PPC) on July 3, 2008. After going over the allegations, the Commission deems it more appropriate to consider the application as one for authority to recover under – recoveries in the generation rate, with prayer for provisional authority.

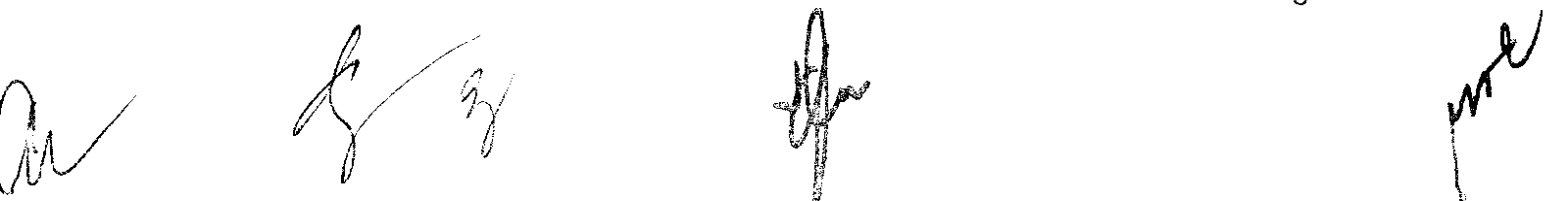
Having found said application sufficient in form and in substance with the required fees having been paid, an Order and a Notice of Public Hearing, both dated July 8, 2008, were issued setting the same for hearing on July 29 and 30, 2008.

In the same Order, PPC and PECO were directed to cause the publication of the Notice of Public Hearing, at their 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.

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 attached Notice of Public Hearing and were requested to have their respective duly authorized representatives present at the aforesaid initial hearing.

During the July 29, 2008 initial hearing at the Iloilo Provincial Capitol Conference Hall, the following entered their appearances: 1) Attys. Norberto Manjares, Jr. and Norberto Manjares III, as counsel for PECO and PPC; and 2) Atty. Romeo Gerochi and Atty. Edgardo Gil, as counsel for the Freedom from Debt Coalition (FDC) – Iloilo Chapter and Katulong ng Bayan.

At the said hearing, Atty. Gerochi filed his "Opposition to the Petition". The Commission provisionally considered Atty. Gerochi and Atty. Gil as Interveners subject, however, to the filing of the appropriate petitions to formalize their intervention, within five (5) days from the date of the said initial hearing.



Thereafter, PECO and PPC presented their proofs of compliance with the Commission's posting and publication of notice requirements which were duly marked as Exhibits "A" to "G", inclusive.

The Commission directed PECO, PPC and the Interveners to file their respective "Memoranda" within ten (10) days from the date of the initial hearing relative to the motion for suspension of the proceedings raised by Atty. Gerochi.

Atty. Gerochi moved for the dismissal or denial of the instant application on the ground that the cause of action is already barred by the principle of law of the case and in view of the alleged existence of a prejudicial question/issue re: the finality of the Decision of the Commission in PECO's rate unbundling application and the Resolution of the Court of Appeals (CA) in C.A. – G.R. SP. No. 89828. The said Decision precludes the re-litigation of the same issue on the generation rate to be charged by PECO to its consumers in view of the principle of law of the case. The Commission deferred the proceedings pending the resolution of the said motion.

On August 7, 2008, in compliance with the directive of the Commission during the hearing held on July 29, 2008, Atty. Gerochi filed his "Opposition to the Petition" which was similar to the "Opposition to the Petition" he previously filed.

On August 8, 2008, PECO and PPC filed their "Legal Memorandum" while on August 11, 2008, Atty. Gerochi filed his "Memorandum".



Subsequently, on August 19, 2008, PECO and PPC filed their "Comment (Ad Cautelam) to Memorandum with Motion to Expunge".

On January 14, 2009, the Commission issued an Order denying the motion to dismiss or suspend the proceedings filed by Atty. Gerochi as well as the "Motion to Expunge Atty. Gerochi's Memorandum from the Records" filed by PPC and PECO. In the same Order, Atty. Gerochi was allowed to intervene while Atty. Gil was recognized merely as an oppositor.

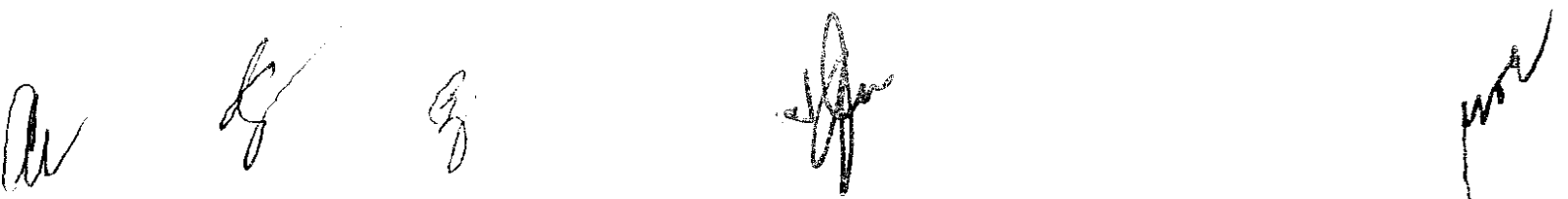
At the continuation of the hearing on February 3, 2009, a pre-trial conference was conducted among PECO, PPC and Atty. Gerochi. Thereafter, PPC and PECO presented their witness, Engr. Randy S. Pastolero, PECO's Special Assistant to the President and Chief Executive Officer (CEO), who testified on the following: 1) the source of PECO's power for the period August 2005 to December 14, 2005; and 2) for the consumption period August 2005 to December 14, 2005, it was not possible for PECO to get power from sources other than PPC. In the course of his direct examination, various documents were presented and marked as Exhibits "H", "H-1" and "M". Atty. Gerochi cross-examined the said witness and moved for a continuance of his cross-examination upon the submission of the required documents.

In the meantime, PPC and PECO presented another witness, Mr. Niel V. Parcon, PECO's Accounting Department Head, who testified on the following: 1) the rates authorized to be charged by PECO; 2) the generation rate charged by PECO to its consumers for the period August 2005 to December 14, 2005; and 3) the receipt by PECO of PPC's invoices for the payment of power sold by PPC

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to PECO. In the course of his direct examination, his Judicial Affidavit was marked as Exhibits "I" to "I-1" and the twenty (20) sample bills of PECO to its different customer classes covering the period August 2005 to December 14, 2005 were presented and marked as Exhibits "K" to "K-19", inclusive, to prove that the generation rate charged by PECO to its consumers was PhP3.7491/kWh and in accordance with the Commission's Decision in its rate unbundling application. Atty. Gerochi cross-examined the said witness while the Commission propounded clarificatory questions.

PPC and PECO then presented their next witness, Mr. Jaime T. Azurin, the Senior Vice President for Commercial and Finance of Global Business Power Corporation which holds one hundred percent (100%) interest in Claredon Towers Holdings, Inc., the parent company of PPC, who testified on the following: 1) the total amount of under-recoveries in generation rate sought to be recovered by PPC; 2) the effects on PPC of the failure of PECO to pay in full the amount of electricity fee for the period August 2005 to December 14, 2005; and 3) the reason for PPC's continued generation of power notwithstanding its inability to recover its true costs. In the course of his direct examination, his Judicial Affidavit was marked as Exhibits "J" to "J-1". The Invoices/Calculations issued by PPC to PECO for the period August 2005 to December 14, 2005 were also presented and marked as Exhibits "L" to "L-4", inclusive, to prove that the billings of PPC to PECO were higher than the approved generation rate of PECO while the Invoices of Pilipinas Shell to PPC covering the period August 2005 to December 14, 2005 were presented and marked as Exhibits "O" to "O-36", inclusive, to show the fuel deliveries made by Pilipinas Shell to PPC for the said period. Atty. Gerochi cross-examined the said witness and examined the various documents presented by PPC and PECO. Thereafter, the Commission propounded clarificatory questions.

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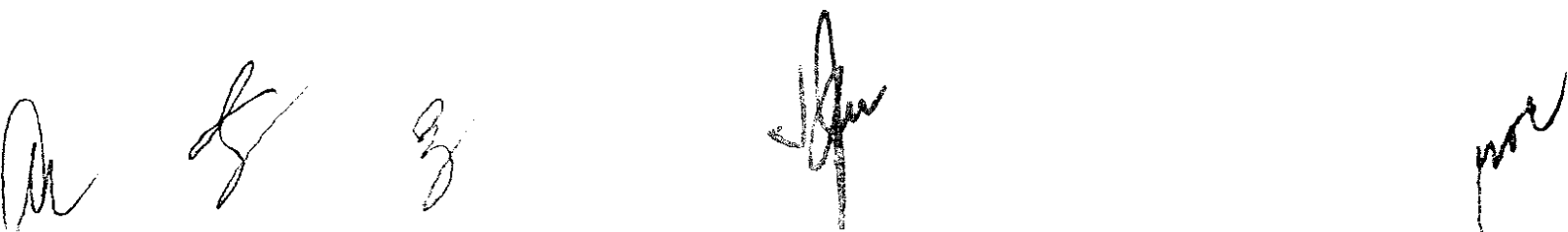
PPC and PECO presented their last witness, Mr. Edgar Capati, the Commercial Account Manager for Western Visayas of Pilipinas Shell Corporation, who testified on the following: 1) the deliveries of fuel to PPC for the period covered in the instant application; 2) the identification of Invoices issued by Shell to PPC and their settlement agreement; and 3) the total amount owed by PPC to Shell. Atty. Gerochi cross-examined the said witness and moved for a continuance of his cross-examination upon the submission of the required documents. Thereafter, the Commission propounded clarificatory questions.

On February 11, 2009, Attys. Amanda R. Abrera-Bengson and Martin John S. Yasay filed an "Entry of Appearance" in the instant case as collaborating counsel of Attys. Manjares, Jr. and Manjares III for PPC.

Subsequently, on February 13, 2009, PPC and PECO filed a "Compliance and Manifestation" and a "Memorandum" in compliance with the directive of the Commission relative to their motion for the issuance of a provisional authority.

On February 18, 2009, PPC filed its "Compliance".

During the March 10, 2009 hearing, Atty. Gerochi manifested that he would no longer continue with his cross-examination of PPC's witnesses. He, likewise, waived his right to present a witness. The Commission directed PPC and PECO to file their formal offer of evidence and memorandum, within ten (10) days from the date of the said hearing. Atty. Gerochi was given five (5) days from receipt thereof within which to file his comment thereon and his own memorandum.

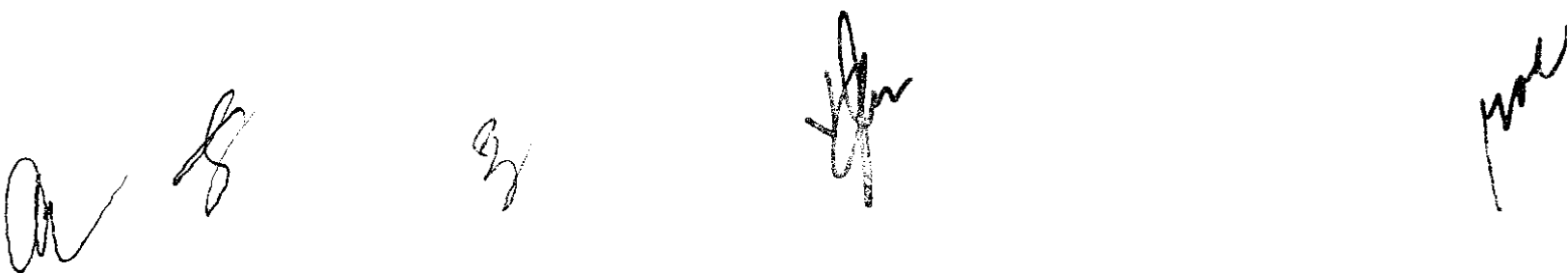


On March 31, 2009, PPC and PECO filed their "Formal Offer of Exhibits" and "Memorandum" which are hereby admitted for being relevant and material to the resolution of this application. To date, Atty. Gerochi has not yet filed his comment on the "Formal Offer of Exhibits" of PPC and PECO and his memorandum despite receipt thereof and the lapse of the prescribed period. Thus, the Commission considered the instant application submitted for resolution.

## DISCUSSION

PECO and PPC filed the joint application for authority to recover the under-recoveries in the generation rate for the period August 2005 to December 15, 2005 amounting to Four Hundred Sixty-Eight Million Four Hundred Eighty-Nine Thousand Three Hundred Twenty Pesos and Fifty Centavos (PhP468,489,320.50) in sixty (60) equal monthly installments at an interest rate of twelve percent (12%) per annum.

In their application, they invoked *Article 1(c) of the Guidelines for the Automatic Adjustment of Generation Rates and System Loss Rates by the Distribution Utilities (DUs)*, as basis to recover under-recoveries in generation rate. The said Guidelines ensure the full recovery of all allowable generation costs and other costs associated with the System Loss Caps in an efficient and timely manner to enable DUs to operate viably and promote efficiency.

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The breakdown of PECO and PPC's proposed under-recoveries in generation rate to be recovered is shown in the table below:

Period Covered	Total Billings (PhP)	Net Total Payments (PhP)	Prompt Payment Discount (PhP)	Under-Recoveries (PhP)
Nov.2004 -June 2005	26,828,811.74	-	-	26,828,811.74
Unbundling				
August 2005	223,587,160.61	216,556,070.49	3,581,628.93	3,449,461.19
September 2005	229,213,692.62	113,307,697.79	3,504,361.79	112,401,633.04
October 2005	260,390,831.29	120,397,407.51	3,723,631.16	136,269,792.62
November 2005	263,233,326.54	127,068,938.38	3,929,967.16	132,234,421.00
Dec. 1-15, 2005	131,117,565.55	68,428,676.06	5,383,688.58	57,305,200.81
<b>Total</b>	<b>1,134,371,388.35</b>	<b>645,758,790.22</b>	<b>20,123,277.62</b>	<b>468,489,320.50</b>

PECO and PPC sought to recover the generation costs that have accrued but have not been actually paid in full. Such under-recoveries or unpaid generation costs were incurred by PPC as a result of the discrepancy between the amount billed by PPC to PECO and the amount charged by PECO to its consumers pursuant to the Commission's Decision in its rate unbundling application. In the said Decision, it was stated that *"provided in the event that PPC rate is no longer competitive with other bulk producers, the parties agreed to conduct mutual discussion to resolve or minimize PPC's competitiveness. Both parties failed to submit its re-negotiated PPA. Hence, the Commission calculated PECO's Generation Cost based on the most recent NPC rate in the amount of PhP3.7491/kWh, computed as follows":*

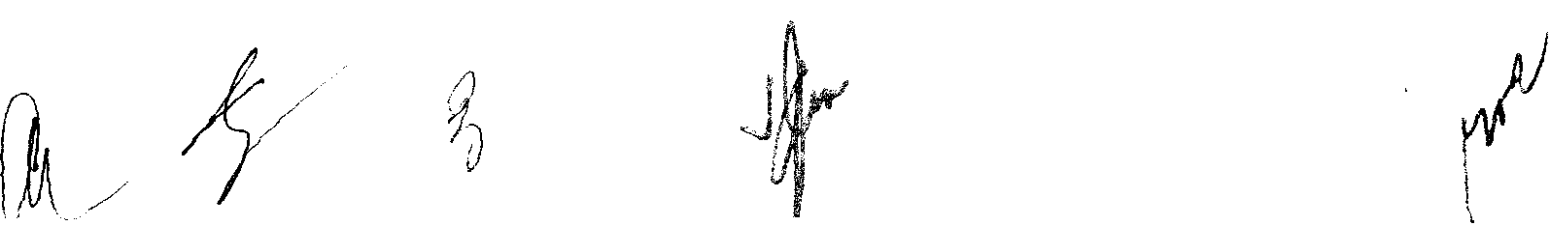
Generation Charge (PhP/kWh)	2.2907
Franchise and Benefits to Host Communities	0.0177
<b>Net FPCA</b>	<b>0.3100</b>
ICERA	0.2207
Total Generation Charge	2.8391
Transmission Charge	0.9100
<b>NPC rate per kWh</b>	<b>3.7491</b>

The said Decision became final and executory after the lapse of fifteen (15) days from notice of the judgment with no Petition for Review on Certiorari having been filed with the Supreme Court. Hence, in August 2005, PECO began billing its consumers at the NPC rate of PhP3.7491/kWh until December 15, 2005 when the provisional authority was issued in ERC Case No. 2005-043 RC. This was verified in the consumer bill that was submitted to the Commission as part of PECO's monthly compliance.

The pegging of PECO's generation charge to NPC rates, however, does not necessarily mean that PECO can only charge the amount of PhP3.7491/kWh to its consumers. Such pegging was for purposes only of determining the base generation charge of PECO in relation to its unbundled rates but is still subject to adjustments as may be allowed by the Commission. The instant application was filed precisely to seek the Commission's approval for such adjustment in PECO's generation charge.

Considering that the amended Power Purchase Agreement (PPA) between PECO and PPC was reviewed by the Commission and was approved with modification on June 27, 2006, particularly, the provisions on the base rates as well as the adjustment in the Consumer Price Index (CPI), the same was used in the determination of the allowable generation cost.

PECO paid PPC only the amount it collected from the consumers which, based on the Invoices issued by PPC to PECO, was allegedly not even enough to cover the fuel costs incurred in the generation of electricity and for the operating and maintenance (O&M) expenses. The difference between the NPC

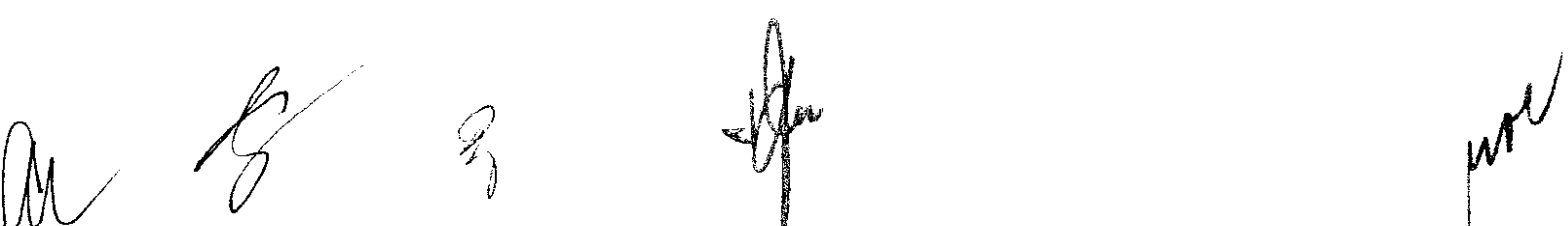
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rate and PPC's true cost of generation accumulated to PhP468,489,320.50 for the period August 2005 to December 15, 2005.

PPC claimed that the under-recoveries in the generation charge of PECO impaired its cash flow and financial status. Thus, it was forced to seek financial assistance in the form of loans from various financial institutions in order to pay Pilipinas Shell for the fuel it utilized and therefore, it incurred additional costs in the form of interest payments to its creditors. The fuel suppliers imposed upon it interests for the delay in the payment of fuel deliveries. The total interest expenses incurred by PPC representing interest payments to creditors as well as interests in the form of penalties imposed by the fuel supplier amounted to PhP97,780,941.53.

PECO and PPC submitted to the Commission only the Invoices of the energy delivered for the period August 2005 to December 15, 2005 and the acknowledgement receipts issued by PPC for the partial payments made by PECO.

The allowable generation cost was computed using the approved formula in the Amended PPA per Commission's Order dated June 27, 2006. Comparing the allowable generation cost of PhP427,170,555.97 and the under-recoveries being sought by PECO and PPC in the amount of PhP468,489,320.50, a difference of PhP41,318,764.54 resulted.

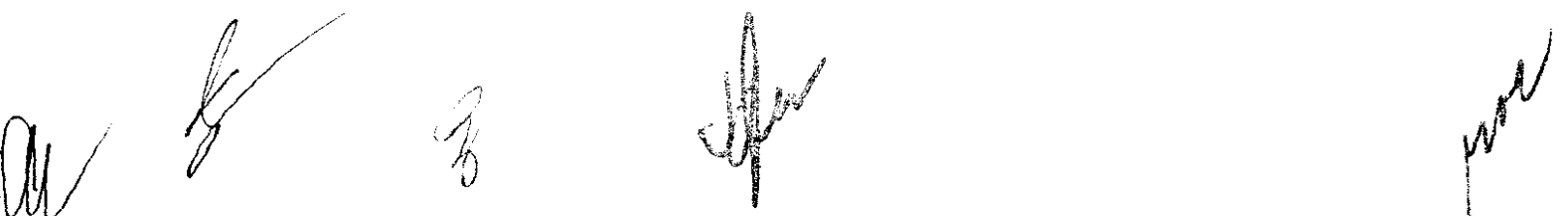


PECO and PPC included the amount of PhP26,828,811.74 as part of the under-recoveries, representing the alleged uncollected generation cost for the period November 2004 to June 2005. Considering, however, that this period was already covered by the confirmed Purchased Power Adjustment (PPA) from November 1998 to July 2005, such amount shall be disallowed.

PECO and PPC also proposed to recover interest charges for its under-recoveries at a rate of twelve percent (12 %) per annum to compensate PPC for the interests it incurred on the various loans from financial institutions and the interests imposed by Pilipinas Shell for the delayed payment of the fuel deliveries. However, said interest charges should not be borne by the consumers considering that there was a delay on their part to comply with the directives of the then Energy Regulatory Board (ERB). The consequence of such delay which is attributable to them should be borne solely by them. Thus, the interest charges in the under-recoveries shall not be included.

With the foregoing disallowances, the under-recoveries in the generation cost covering the period August 2005 to December 15, 2005 amounted to **PhP400, 341,744.22**, equivalent to **PhP0.2391/kWh** using the latest five (5) year kWh sales from 2004 to 2008.

The computation of the under-recoveries using the approved formula in the Amended PPA is shown below:



Period Covered	Allowable Generation Cost (PhP)	Net Total Payments (PhP)	Prompt Payment Discount (PhP)	Under-Recoveries (PhP)
Nov. 2004 - June 2005	26,828,811.74	-	-	-
Unbundling				
Aug 2005	220,276,427.78	216,556,070.49	3,581,628.93	138,728.36
Sept 2005	227,041,650.36	113,307,697.79	3,504,361.79	110,229,590.78
Oct 2005	249,574,115.09	120,397,407.51	3,723,631.16	125,453,076.42
Nov 2005	246,756,477.43	127,068,938.38	3,929,967.16	115,757,571.89
Dec. 1-15, 2005	122,575,141.41	68,428,676.06	5,383,688.58	48,762,776.77
<b>Total</b>	<b>1,093,052,623.81</b>	<b>645,758,790.22</b>	<b>20,123,277.62</b>	<b>400,341,744.22</b>

**WHEREFORE**, the foregoing premises considered, the application filed by Panay Electric Company, Inc. (PECO) and Panay Power Corporation, Inc. (PPC) for authority to recover under-recoveries in the generation rate, with prayer for provisional authority, is hereby **APPROVED** with modification.

Accordingly, PECO and PPC are hereby authorized to recover the under-recoveries in the generation cost for the period August 2005 to December 15, 2005 amounting to Four Hundred Million Three Hundred Forty-One Thousand Seven Hundred Forty-Four and 22/100 Pesos (PhP400,341,744.22) equivalent to PhP0.2391/kWh, effective the next billing cycle from receipt hereof until the total under-recoveries shall have been fully collected.

Relative thereto, PECO is hereby directed to:

- (a) Submit, within ten (10) days from its initial implementation, a sworn statement indicating its compliance with the instant Decision;

- (b) Reflect the Generation Charge to be collected as a separate item in the bill using the phrase "Previous Months Adjustment on Generation Cost";
- (c) Maintain a separate account for the proceeds of the under-recoveries collected from its consumers and earmark the same for payment to PPC; and
- (d) Accomplish and submit a report, in accordance with the attached prescribed format, on or before the 20<sup>th</sup> day of the month until the amount of the under-recoveries shall have been fully collected.

**SO ORDERED.**

Pasig City, May 4, 2009.

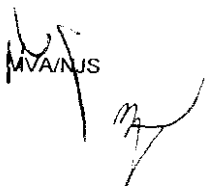
  
**ZENAIDA G. CRUZ-DUCUT**  
Chairperson

  
**RAUF A. TAN**  
Commissioner

  
**ALEJANDRO Z. BARIN**  
Commissioner

  
**MARIA TERESA A.R. CASTAÑEDA**  
Commissioner

  
**JOSE C. REYES**  
Commissioner

  
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9. **House of Representatives Committee on Energy**  
Batasan Hills, Quezon City 1126
10. **The City Mayor**  
City of Iloilo, Panay

GENERATION CHARGE COLLECT

Distribution Utility Name: PANAY ELECTRIC CO., INC. (PECO)  
 ERC Case No.: 2008-038RC  
 Order Date: May 4, 2009  
 Total Amount to be Collected: PhP400,341,744.22  
 Rate per kWh (PhP/kWh): PhP0.2391/kWh

GENERATION CHARGE  
 Amount of Collect  
 For the Period Covering \_\_\_\_\_

Month	kWh Sold <sup>1</sup>	Amount Refunded/(Collected)	Balance in Amount
<b>Beginning Balance</b>			400,341,744.22
Jan-09			
Feb-09			
Mar-09			
Apr-09			
May-09			
Jun-09			
Jul-09			
Aug-09			
Sep-09			
Oct-09			
Nov-09			
Dec-09			
<b>TOTAL</b>			
<b>Ending Balance</b>			0.00

Prepared by:

Certified True and Correct:

Name and Position

Name and Position

