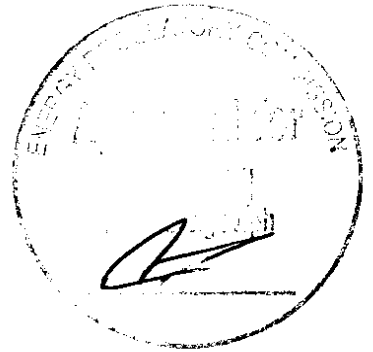


Republic of the Philippines  
**ENERGY REGULATORY COMMISSION**  
 San Miguel Avenue, Pasig City



**IN RE: PETITION FOR APPROVAL OF THE POWER SUPPLY AGREEMENT (PSA) AND THE NEW POWER PROVIDER-TRUE COST GENERATION RATE (NPP-TCGR), WITH PRAYER FOR PROVISIONAL AUTHORITY**

**ERC CASE NO. 2009-025 RC**

**PALAWAN ELECTRIC COOPERATIVE, INC. (PALECO) and DELTA P, INC. (DELTA P),**

**Petitioners.**

X-----X

**DOCKETED**

Date: **MAR 09 2010**

By: \_\_\_\_\_

**ORDER**

Before this Commission for resolution is the "Motion for Reconsideration" filed on December 2, 2009 by Delta P, Incorporated (DELTA P) praying for the reconsideration of the Decision dated November 9, 2009 and specifically for the Commission to:

1. Approve the following rates:

**Base Rate for the Reconsideration**

Particulars	Base Rates Applied for (PhP/kWh)	Base Rates for Reconsideration (PhP/kWh)	Variance (PhP/kWh)
Fixed <sup>1</sup>	1.4686	1.4332	(0.0354)
Forex O&M <sup>2</sup>	1.1756	1.1458	(0.0298)
Peso O&M <sup>3</sup>	1.6276	1.4462	(0.1814)
Fuel & Lube Oil <sup>4</sup>	10.0888	9.7642	(0.3246)
<b>Total</b>	<b>14.3606</b>	<b>13.7894</b>	<b>(0.5712)</b>

<sup>1</sup> Applicable only on the NEE; Beyond NEE, Fixed Rate shall be PhP0.0000/kWh

<sup>2</sup> Base Cost Indices: FOREX of PhP73.00/Euro and Euro CPI of 109.22

<sup>3</sup> Base Cost Index: Philippine CPI of 159.90

<sup>4</sup> Base Cost Indices: HFO Price of PhP33.5175/liter and Consumption Rate of 0.2742 liter/kWh; LFO Price of PhP51.5625/liter and Consumption Rate of 0.0052 liter/kWh; and LO Price of PhP80.4150/liter and Consumption Rate of 0.0038 liter/kWh;

2. Modify conditions "b" and "c" of page 50 of the Decision to read as follows:

"b. The **Fixed** Fee shall not be subject to indexation for the duration of the **PSA**;"

"c. The cumulative energy delivered within each Contract Year exceeding the fifty-five (55) million kWh shall not be charged the Fixed Fee;" and

3. Clarify and modify condition "e" of page 50 of the Decision to read as follows:

"e. The Fuel and Lube Oil Fees shall be based on the following guaranteed consumption rates:

- [i] 0.2742 liter/kWh for HFO,
- [ii] 0.0052 liter/kWh for LFO, and
- [iii] 0.0038 liter/kWh for LO,

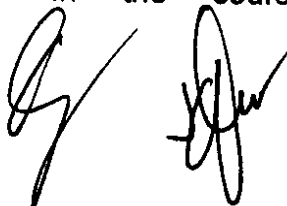
and shall adjust only in accordance to changes in the following base delivered fuel and lube oil prices:

- [i] P33.5175/liter for HFO,
- [ii] P51.5625/liter for LFO, and
- [iii] P80.4150/liter for LO."

On even date, the Commission issued an Order directing Palawan Power Generation, Incorporated (PPGI), Happy Link Company (HAPPY LINK), National Power Corporation-Small Power Utilities Group (NPC-SPUG), Palawan Chamber of Commerce and Industry (PCCI), Palawan Consumers Association and the City Government of Puerto Princesa to submit their respective comments on the said motion within ten (10) days from receipt thereof.

In the same Order, the Commission set the said motion for hearing on December 14, 2009.

During the December 14, 2009 hearing, DELTA P recalled its witness, Mr. Walden H. Tantuico, its President, who testified in support of the allegations in the said motion. In the course thereof, the instant motion, the

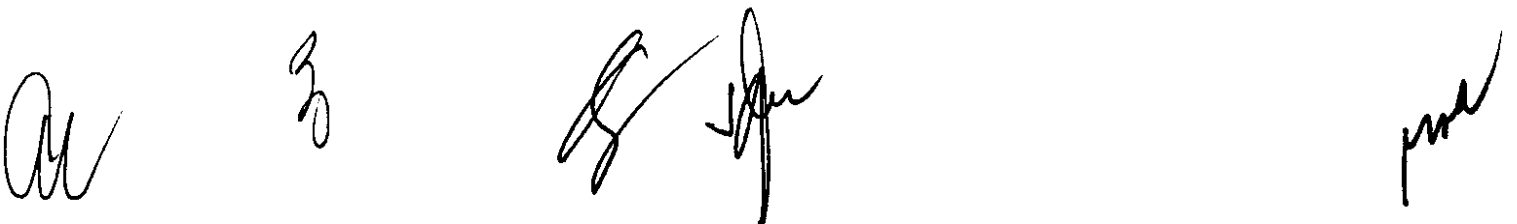


signature of Mr. Tantuico appearing on page 35 thereof and the attached Secretary's Certificate, were offered as evidence and duly marked as Exhibits "A", "A-1" and "A-2", respectively.

PPGI manifested that it only received a copy of the Decision on December 9, 2009. Pursuant to the Commission's Rules of Practice and Procedure, it has a period of fifteen (15) days from receipt within which to file its comment on the motion. It then moved that DELTA P's witness be recalled for cross-examination. On the other hand, HAPPY LINK moved that it be given a period of ten (10) days within which to file its comment on the said motion. For NPC-SPUG, it acknowledged receipt of the Decision on December 5, 2009. While it is not an intervenor in the present case, it manifested to file its comment within five (5) days from said date of hearing. DELTA P interposed its opposition on the foregoing motions.

Acting thereon, the Commission directed PPGI to file its comment on or before December 19, 2009 while HAPPY LINK and NPC-SPUG were given a period of ten (10) days and five (5) days, respectively, from the said date of hearing within which to file their comments incorporating all their positions on the instant motion.

PCCI manifested that it received a copy of the Decision on December 6, 2009. Instead of cross-examining the witnesses, it opted to propound clarificatory questions and presented several documents to substantiate its arguments.

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On December 21, 2009, PPGI filed its "Comment/Opposition to DELTA P's Motion for Reconsideration with Urgent Motion for the Commission to Resolve Issues Raised in PPGI's Petition for Intervention".

On January 4, 2010, NPC-SPUG filed its "Comment to Motion for Reconsideration".

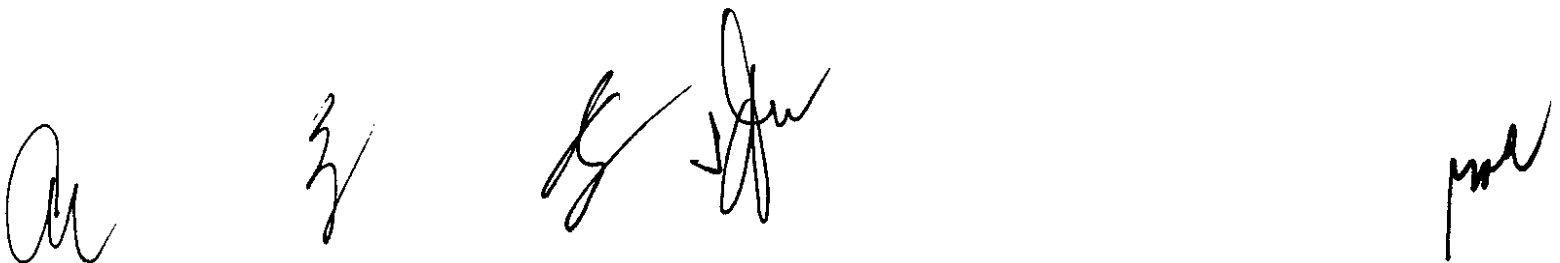
On January 20, 2010, PPGI filed its "Supplement to the Comment/Opposition to DELTA P's Motion for Reconsideration with Urgent Motion for the Commission to Resolve Issues Raised in PPGI's Petition for Intervention".

## DISCUSSION

### 1. Fixed Fee

In the assailed Decision, the Capital Cost Recovery or Fixed Fee was computed based on the net book value of the existing Property Plant and Equipment (PPE) as of the cut-off date of April 3, 2009 (end of the Contract of Lease and Services between NPC and DELTA P) and DELTA P's adjusted rehabilitation expense or a total capital cost to be recovered of PhP401,727,391.76.

PCCI argued that DELTA P is already earning capital recovery from consumers based on the PhP412 Million investment despite the fact that as of April 3, 2009, it had only invested PhP180 Million to acquire the plant with no investment having been made for its rehabilitation.

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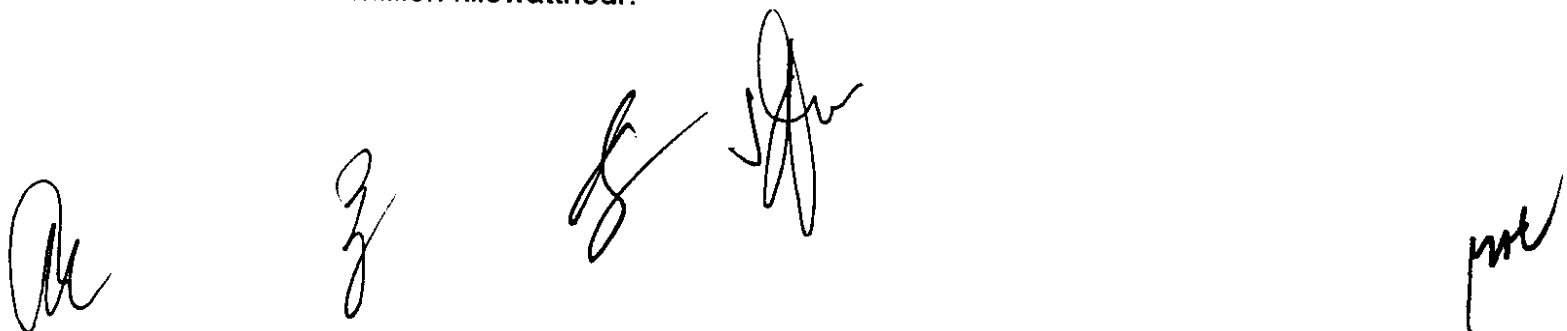
In consideration of the issues raised by PCCI, the Transition Cost was computed similar to the treatment of Construction Work-In-Progress (CWIP) under the performance-based rate setting (PBR) methodology. Said computation is consistent with the Commission's policy that only the actual sunk cost or capital expenditures shall be considered in the computation of the Fixed Fee.

The computation of the Fixed Fee was similar to the Cash-Flow Method which was based on the approved project cost of PhP401,727,391.76 as provided in the questioned Decision. The progress of the on-going rehabilitation project and the corresponding amount expended and still to be expended as detailed in Delta P's submitted schedule were considered in the computation of the Fixed Fee using the annuity method spread over the cooperation period of ten (10) years and a pre-tax WACC of 14.6% . The resulting Fixed Fee is PhP1.2975/kWh.

As of report date, DELTA P's rehabilitation work is an ongoing project. Out of the total projected rehabilitation cost in the amount of PhP232,219,305.00, approximately fifty-nine percent (59%) or PhP137,621,626.00 is either expended or issued for purchase order. Based on the submitted details of rehabilitation cost estimates as of December 31, 2009, the rehabilitation project is still pending subject to the approval of the final True Cost Generation Rate (TCGR).

**2. Operating and Maintenance Fee (O&M) Fee**

The O&M Fee was recomputed based on DELTA P's submitted Financial Model, adopting a consistent figure for its billing determinant of 55 million kilowatthour.



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**2.1 Forex O&M Fee**

**2.1.1 Insurance**

One of the components of DELTA P's Forex O&M Fee is the insurance of its plant with a premium of US\$227,385.00 per year for ten (10) years. The said premium, including documentary stamps, twelve percent (12%) value-added tax (VAT), brokers fee and other charges, was converted into pesos using a PhP45.00/US\$ conversion factor.

The Commission adjusted the foreign exchange conversion at PhP44.4746/US\$ by using the 2008 period average as per Table 26 of the Bangko Sentral ng Pilipinas (BSP) Cross Rates and adjusted it further using US CPI of 215.3030 year to date 2008 period average.

**2.1.2 Supplies and Materials**

The cost of supplies and materials reflected in the Financial Model used by DELTA P was adopted and was converted to Euro denomination at the rate of PhP73.00/€ to determine the Euro denominated cost of supplies and materials per Preventive Maintenance Schedule (PMS) running hours as reflected in the model. The resultant Euro cost was then reconverted to Peso using the rate of PhP65.1686/€ period average conversion factor for year to date 2008 as reflected in BSP's Table 26 Cross Rates of the Peso and adjusted for Euro CPI using 108.5575 year to date 2008 period average.



The recomputed Forex O&M is as follows:

Forex O&M Component	Amount (PhP)	Adjustment on Forex and O&M (PhP)	Adjusted Forex O&M (PhP)	Billing Determinant	Adjusted O&M Rate (PhP/kWh)
Insurance	102,323,000.00	2,983,801.23	99,339,198.77	550,000,000	0.1806 <sup>1</sup>
Supplies and Materials	544,243,000.00	31,146,304.25	513,096,695.75	550,000,000	0.9329 <sup>2</sup>
<b>Total</b>	<b>646,566,000.00</b>	<b>34,130,105.48</b>	-		<b>1.1135</b>

- 1 Eighty-four percent (84%) is subject to escalation with a base Euro Forex of PhP65.1686 year to date 2008 average and Euro Consumer Price Index (CPI) of 108.5575 year to date 2008 average
- 2 Sixteen percent (16%) is subject to escalation with a base US Forex of PhP44.4746 year to date 2008 average and US CPI of 215.3030 year to date 2008 average

## 2.2 Peso O&M Fee

Inasmuch as the projection under the submitted Financial Model was utilized, the Commission deems it prudent to review the same and determine the necessary components of the Peso O&M Fee. The Commission finds that an additional amount of PhP31,145,600.00 should be disallowed from the Peso O&M Fee. These are:

- a. **Labor and Burden (Loan).** The amount of PhP945,600.00 was disallowed as this is similar to an imprest account which is being replenished by the payment of obligation;
- b. **Outside Services (Other Inventory Cost).** The amount of PhP5,000,000.00 was disallowed because DELTA P has allocated a separate budget for Supplies and Materials-Foreign and Local (which included technical service consumables, other consumables, rotating spares, corrective parts, among others), Office Supplies, Gas and Oil as part of the General Expenses and Bunker, Light Fuel and Lube Oil in its Energy Fee. These expenses fully cover the Inventory Requirements of the plant both for operation and administrative purposes; and
- c. **Outside Services (Other Contractual Repairs-Technical and Other Professional Fees).** The amounts of PhP24,000,000.00 and PhP1,200,000.00 representing Other Contractual Repairs-Technical and Other Professional Fees, respectively, were disallowed because DELTA P has separate provision for the Outside Services in terms of Safety Programs and Services, Environmental Programs Services, Plant Repairs and Maintenance Services, Transmission Line Repairs Services,

Audit and Legal Services, that are on top of the salaries and expenses of its existing manpower complement. The Commission finds the provision of Outside Services-Others to be both unjust and unreasonable.

The recomputed Peso O&M is as follows:

Total Peso O&M Expenses (PhP)	895,173,000.00
Less:	
Approved Disallowance in the Decision dated November 9, 2009 (PhP)	99,750,000.00
Additional Disallowance (PhP)	31,145,600.00
<b>Adjusted Peso O&amp;M Expenses (PhP)</b>	<b>764,277,400.00</b>
<b>Billing Determinant (kWh)</b>	<b>550,000,000</b>
<b>Peso O&amp;M Fee (PhP/kWh)</b>	<b>1.3896<sup>1</sup></b>

<sup>1</sup> Subject to Philippine CPI adjustment-All Income Household of 155 year to date 2008 Average

Thus, the total computed O&M Fee amounted to PhP2.5031/kWh broken down as follows:

Forex O&M Fee (PhP/kWh)	1.1135
Peso O&M Fee (PhP/kWh)	1.3896
<b>TOTAL (PhP/kWh)</b>	<b>2.5031</b>

### 3. Fuel Fee

The computation of Fuel Fee considers two (2) major components: the fuel consumption rate and the price. The Commission used the Heavy Fuel Oil (HFO) consumption rate of 0.2174 liters/kWh obtained from Wartsila, the original equipment manufacturer, which corresponds to a new engine similar to DELTA P's equipment. This initial consumption rate for Heavy Fuel Oil may be adjusted depending on the results of a capacity/fuel consumption test run to be conducted by an independent third party, but in no case shall exceed 0.2742 liters/kWh.

The Commission adopted the same base fuel prices used by DELTA P in its Financial Model as follows:

Heavy Fuel Oil (HFO)	PhP33.5175/liter
Light Fuel Oil (LFO)	PhP51.5625/liter
Lube Oil (LO)	PhP80.4150/liter

**WHEREFORE**, the foregoing premises considered, the "Motion for Reconsideration" filed on December 2, 2009 by Delta P, Incorporated (DELTA P) is hereby **GRANTED WITH MODIFICATION** and subject to the following conditions:

- a. The approved base rate shall be PhP11.9523/kWh, broken down as follows:

Particulars	Base Rate (PhP/kWh)
Fixed Fee	1.2975 <sup>1</sup>
O&M Fee	
Foreign Base Fee	1.1135 <sup>2,3</sup>
Peso Base Fee	1.3896 <sup>4</sup>
Fuel Oil Base Fee <sup>5,6</sup>	8.1517
<b>Total Fee</b>	<b>11.9523</b>

- <sup>1</sup> Fixed Fee, DELTA P to submit actual total project cost of rehabilitation, three (3) months after the completion of the rehabilitation
- <sup>2</sup> Eighty-four percent (84%) is subjected to escalation with a base Euro Forex of PhP65.1686 year to date 2008 average and Euro Consumer Price Index (CPI) of 108.5575 year to date 2008 average
- <sup>3</sup> Sixteen percent (16%) is subjected to escalation with a base US Forex of PhP44.4746 year to date 2008 average and US CPI of 215.3030 year to date 2008 average
- <sup>4</sup> Subject to Philippine CPI adjustment-All Income Household of 155 year to date 2008 Average
- <sup>5</sup> Fuel cost shall be a pass through cost but limited to a fuel efficiency rate as indicated above or actual, whichever is lower
- <sup>6</sup> Subject to adjustment using Means of Platt Singapore (MOPS) for Heavy Fuel Oil and Light Fuel Oil, and ICIS LOR for SN500 or actual purchase cost

- b. The Fixed Fee shall not be charged on the cumulative energy delivered within each contract year exceeding fifty-five million (55,000,000) kilowatt-hour (kWh);

- c. The Fuel Cost shall be a pass-through cost but limited to an initial consumption rate of 0.2174 liters/kWh for Heavy Fuel Oil (HFO), 0.0052 liters/kWh for Light Fuel Oil (LFO) and 0.0038 liters/kWh for Lube Oil (LO) or actual fuel consumption rate, whichever is lower. This

initial HFO consumption rate may be adjusted depending on the results of a capacity/fuel consumption test run to be conducted by an independent third party or the National Power Corporation-Small Power Utilities Group (NPC-SPUG), but in no case shall it exceed 0.2742 liters/kWh; and

- d. The approved New Power Provider-True Cost Generation Rate (NPP-TCGR) shall retroact to April 3, 2009.

Relative thereto, DELTA P is hereby **DIRECTED** to submit its actual total project cost for rehabilitation, within three (3) months from its completion.

**SO ORDERED.**

Pasig City, March 8, 2010.

  
**ZENAIDA G. CRUZ-DUCUT**  
Chairperson *quater* 3-9/10

  
**RAUF A. TAN**  
Commissioner

  
**ALEJANDRO Z. BARIN**  
Commissioner

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

  
**JOSE C. REYES**  
Commissioner

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