

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

**IN THE MATTER OF THE PETITION FOR
THE AVAILMENT FROM THE
UNIVERSAL CHARGE THE
ENVIRONMENTAL SHARE/CHARGE
FOR THE REHABILITATION AND
MANAGEMENT OF WATERSHED
AREAS**

ERC Case No. 2002-194

NATIONAL POWER CORPORATION
Petitioner.

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D E C I S I O N

Before this Commission for resolution is the petition filed on May 7, 2002 by petitioner National Power Corporation (NPC) for the approval of its availment of the amount of ₱119,488,847.59 equivalent to ₱0.0025/kWh from the Special Trust Fund managed by the Power Sector Assets and Liabilities Management Corporation (PSALM) representing the Environmental Charge in the Universal Charge (UC) for the rehabilitation and management of watershed areas.

Having found said petition sufficient in form and substance with the required fees having been paid, an Order and a Notice of Public Hearing both dated June 19, 2002 were issued setting the same for hearing on August 5, 2002.

In the same Order, NPC was directed to cause the publication of the Notice of Public Hearing, at its own expense, twice (2x) for two (2) successive weeks in two (2) newspapers of general circulation in the country, the last date of publication to be made not later than two (2) weeks before the scheduled date of the initial hearing.

The Office of the Solicitor General (OSG), the Commission on Audit (COA), the Department of Energy, the PSALM 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.

At the initial hearing on August 5, 2002, Atty. Henry P. Alog entered his appearance as counsel for NPC. No oppositor appeared nor was there an opposition registered herein.

At the said hearing, NPC submitted proof of compliance with the Commission's publication of notice requirements, duly marked as Exhibits "A" to "G", inclusive. Thereafter, NPC presented Mr. Gregory F. Paredes, applicant's Acting Manager of its Watershed Management Department (WMD), as its sole witness, who testified on the documents submitted in support of the instant application and on the various development plans adopted by NPC for its watershed rehabilitation program. In the course of his testimony, additional

documents were presented and identified by reference which were duly marked as Exhibits “H” to “I” inclusive. After the direct examination of said witness, the Commission propounded clarificatory questions. Thereafter, NPC rested its case.

On February 26, 2003, NPC submitted its “Formal Offer of Evidence”.

I. SUMMARY OF NPC’s PETITION

The National Power Corporation (NPC), a government owned and controlled corporation created and existing by virtue of Republic Act No. 6395 as amended, is mandated and authorized to undertake the development of hydroelectric generation of power, geothermal and other sources of energy.

As a complement thereof, NPC, under Section 3(n) of the same charter, exercises complete jurisdiction and control over the watersheds surrounding the reservoirs of plants and/or projects constructed or proposed to be constructed by NPC.

Rule 18 Section 2 (v) of the Implementing Rules and Regulation (IRR) of R.A. 9136 provides for an Environmental Charge of PhP 0.0025 per kWh sales to be used for rehabilitation and management of watershed areas.

NPC submitted its proposed watershed management program, referred to as the Watershed Management Plan, for universal levy funding for CY 2002, as

the basis for its availment from the environmental charge component for the rehabilitation and management of its watershed areas.

The recommended Watershed Management Plan for the NPC – managed watershed reservations was approved and confirmed by the National Power Board on May 29, 2002 as per Resolution No. 2002-73.

Said programs cover eleven (11) watershed reservations, seven (7) of which are under NPC's jurisdiction and control by virtue of Executive Order 224 (E.O. 224), namely: Upper Agno, San Roque, Angat, Caliraya-Lumot, Makiling-Banahaw, Buhi-Barit, and Tiwi while the other four (4) are under co-managership arrangement with other government instrumentalities, namely: Magat, Pantabangan, Lake Lanao-Agus and Pulangi.

Based on the submissions of NPC to the Commission, costs for the development and maintenance of the 11 watershed areas under NPC's jurisdiction for the years 1998 and 1999 were only PhP10.2 million and PhP10.5 million, respectively. However, program costs increased, although not considerably, to PhP14.3 million in 2000 and approximately PhP20 million in 2001.

Given the unique characteristics of the reservation areas, petitioner has developed a distinct and individualized watershed management plan for each of the watersheds.

To support operational hydro and geothermal based power plants, NPC proposes to adopt the following development plan and strategies based on its subsequent submission dated August 15, 2002, listed in order of priority, to wit:

1. Watershed Database Updating & Purchase of Tools and Equipment
2. Reforestation
3. Forest Protection and Conservation
4. Watershed Rehabilitation
5. Agroforestry
6. Extension & Community Development
7. Fishery Resources/Reservoir Management
8. Non-Timber Forest Resources Management
9. Silvicultural Treatment (ANR)
10. Research and Development

I.A. WATERSHED MANAGEMENT PLAN FOR NPC-MANAGED WATERSHED RESERVATIONS

The prime objective of the Watershed Development Plan is to maintain the productive condition of NPC – managed watershed reservations for sustained power generation. The plan seeks to:

1. Maintain the capability of all NPC – managed watersheds in supporting the generation of electricity from water-based power plants;
2. Regulate watershed land use activities and control the exploitation of forest products and aquatic resources;
3. Improve and uplift the socio-economic condition of watershed inhabitants/forest occupants and encourage or sustain their participation in watershed management protection; and

4. Sufficiently generate income from agricultural plantations to partially subsidize the cost of watershed development and management operations.

I.B. CURRENT STATE OF NPC-MANAGED WATERSHED RESERVATIONS

The following problems and issues are significantly plaguing NPC-managed watershed areas:

- a) Abusive land use practices such as shifting cultivation, upland farming, illegal timber/forest product harvesting and mining;
- b) Proliferation of squatters/illegal occupancy, fish cages, resorts, quarrying activities and forest fires;
- c) Uncontrolled land use conversion;
- d) Existence of fake titles;
- e) Apathy/indifference of watershed inhabitants toward the importance of watersheds;
- f) Severe soil erosion; and
- g) Increasing population in the uplands.

I.C. PROPOSED DEVELOPMENT PLAN AND STRATEGIES

In its Watershed Development Program, NPC proposed to undertake the following programs/strategies, to wit:

I.C.1. Watershed Database Updating, Acquisition & Purchase of Equipment

Inventory of watershed resources, like flora and fauna, timber resources, wildlife and fish cages in reservoir shall be conducted and/or updated.

The Socio-economic profile of watershed inhabitants, if any, shall be conducted periodically. Census of kaingeros and squatters shall be undertaken and areas occupied by them shall be delineated.

The use of state-of-the-art techniques in inventory like the Geographic Information System (GIS), Remote Sensing and the Global Positioning System (GPS) shall be adopted.

I.C.2. Reforestation

Reforestation shall be undertaken in all open/denuded, brushland and degraded areas of the watershed. The objective is to arrest and minimize soil erosion and/or stabilize the soil and improve forest condition/water yield. Areas within the immediate vicinities of the reservoir or areas surrounding the rims of reservoirs shall be given top priority in reforestation.

The reforestation program shall be undertaken both by outsourcing these jobs to families or corporate entities and also by administration. The three (3)-year development scheme shall be adopted; one (1)-year plantation establishment and two (2)-year maintenance and protection.

I.C.3. Forest Protection and Conservation

Protection of the watershed from all types of forest destruction is a primary concern of NPC. Cooperation and proper coordination among NPC, DENR field personnel, LGUs and other agencies shall be ensured to successfully implement this strategy.

Forest destruction caused by man (such as timber poaching, kaingin making, fuelwood and minor forest products) shall be checked and monitored through regular patrolling by forest guards and the establishment of checkpoints. Destruction caused by seasonal grass and brush fires, pest and diseases shall be addressed and monitored. Fire protection shall be undertaken through firelines, construction of fire towers and the establishment of firebreaks or greenbelts. Aerial reconnaissance shall also be resorted to.

I.C.4. Watershed Rehabilitation

Critically degraded areas of the watersheds shall be rehabilitated, stabilized and adequately maintained either through vegetative or structural means. Vegetative measures that will be applied are the use of vetiver grass, wattling and fascines. Structural erosion control methods to be applied are the use of rip-raps, checkdams, gabions and rubble masonry. These will be constructed on priority areas near the slopes upstream of important tributaries, road banks, stream banks and other geologically hazardous areas.

I.C.5. Agroforestry

Agroforestry, the practice of raising woody perennials in conjunction with agricultural crops and/or livestock in a variety of spatial and temporal arrangements, shall be encouraged. This is to ensure the sustainability and stability of the upland farming system. Priority areas shall be those with moderately sloping to gently rolling areas of the watershed.

I.C.6. Extension and Community Development

The program intends to increase or enhance public awareness regarding the importance of the watershed and its resources including their protection, management and development

I.C.7. Fishery Resources/Reservoir Management

Productivity of aquatic/fishery resources in watersheds with reservoirs shall be maintained and improved.

I.C.8. Non-Timber Forest Resource Management and Utilization

The project will involve the establishment and management of non-timber forest resources to improve and enhance their current stocks and increase yield and production.

I.C.9. Silvicultural Treatment (ANR)

This will involve intervention to improve forest stands. Open and sparsely forested sites of the watershed shall be rehabilitated through Assisted Natural Regeneration (ANR).

I.C.10. Research and Development

Strong research and development programs based on identified problems and issues requiring both immediate and long term solutions shall be undertaken.

NPC avers that the above mentioned proposed development plans and strategies are undeniably the most appropriate solutions for the identified problems and issues currently afflicting the NPC managed watershed reservations. These plans and programs are in accordance with the sound watershed management plan wherein the biophysical, social and economic factors are integrated to ensure that the project will be technically correct.

Problems such as deforestation and removal of natural vegetation, over-exploitation of forest resources for domestic use and commercial scale, inappropriate land use and upland shifting cultivation and unregulated land conversion could be resolved or minimized through the implementation of the appropriate plans and strategies to be funded by the proposed universal charge.

I.D. PROPOSED LEVY FUND ALLOCATION FOR CY 2002

In its subsequent submission dated August 15, 2002, NPC made changes/corrections in the plan, specifically in the budget. The revised overall

costs for all the proposed projects amounted to ₱115,000,953.00 as compared to ₱119,999,999.00 as previously submitted, to wit:

Watershed Area	Total Costs (PhP)
Upper Agno	16,227,269.98
San Roque	11,404,517.20
Angat	10,824,000.00
Caliraya	12,065,914.80
Makiling-Banahaw	7,782,515.24
Buhi-Barit	7,958,373.00
Tiwi	7,174,560.50
Magat	3,779,390.08
Pantabangan	4,507,282.20
Lake-Lanao-Agus	9,903,565.00
Pulangi	9,903,565.00
Head Office-WMD	13,470,000.00
Grand Total	115,000,953.00

NPC noted that in the past, adequate funds for watershed operations has always been a constraint. There would be greater assurance that the proposed plans and strategies will resolve and/or minimize the problems and issues because sufficient funds will be allocated to properly and successfully implement various plans and programs based on specific schedules.

I.E. Universal Levy Fund Projections

At NPC's system energy sales forecast for year 2002, which is approximately 477,953.539 GWh or 47,795,539,000,000 kWh, it estimates the Environmental Fund Component of the Universal Charge for the watershed areas to be ₱ 119,488,847.50.

II. COMMISSION DISCUSSIONS AND CONCLUSIONS

II.A. Determination of the Environmental Charge

As mandated under Section 34 (d) of RA 9136, an environmental charge equivalent to one-fourth of one centavo per kilowatt-hour (₱ 0.0025/kWh) shall be imposed on all electricity end-users. The fund to be generated from the charge shall accrue to an environmental fund to be used solely for watershed rehabilitation and management. Said fund shall be managed by NPC under existing arrangements.

For CY 2002 NPC projected the nationwide sales to be approximately 47,795 GWH resulting to a projected amount of about P119,488,847.50 available for the Environmental Fund Component of the Universal Charge. The Commission used the actual 2002 sales of 34,062 GWH inflated with the 2003 growth rate forecast in estimating the expected amount to be generated from the environmental charge for the year 2003. Based on a forecast growth rate of 7.95%, the Commission projects that approximately ₱91,924,822.50 would be collected for the Environmental Charge component of the Universal Charge.

II.B. Development Plans and Strategies

The Commission, after due review, assessment, and consideration of the National Power Corporation (NPC) Watershed Rehabilitation Budget reduces the approved avilment from the Universal Charge for 2003 from **₱115,000,952.80** to **₱69,921,041.32** (say, **₱ 70 Million**). Below is the approved budget per watershed area.

National Power Corporation

Watershed Management Department

SUMMARY OF COSTS FOR THE PROPOSED UNIVERSAL LEVY FUNDING (CY 2002)

Priority NO.	ACTIVITY TITLE	SUMMARY OF COSTS (CY 2002) / WATERSHED AREA TEAM												TOTAL
		UPPER AGNO	SAN ROQUE	ANGAT	CALIRAYA	MAK-BAN	BUHI-BARIT	TIWI	MAGAT	PANTABANGAN	LAKE-LANAO/AGUS	PULANGUI	WMD H.O.	
P1.	WATERSHED DATABASE UPDATING, ACQUISITION and PURCHASE OF TOOLS and EQUIPMENT	259,658.00		77,897.40	2,759,658.00	2,259,658.00							9,159,745.50	14,516,616.90
P2.	REFORESTATION	4,310,537.00	4,963,039.50	891,610.20	1,091,610.20	1,786,017.00	931,610.20	911,610.00	1,686,017.00	1,686,017.00	1,486,017.00	1,486,017.00	—	21,230,102.10
P3.	FOREST PROTECTION and CONSERVATION	—	325,452.00	380,000.00	120,000.00	399,200.00	60,000.00	60,000.00	60,000.00	60,000.00	—	—	—	1,464,652.00
P4.	WATERSHED REHABILITATION	803,250.00	1,989,844.00	350,800.00	448,800.00	—	2,220,000.00	3,779,000.00	—	158,000.00	—	—	—	9,749,694.00
P5.	AGROFORESTRY	—	44,579.92	—	—	—	1,102,820.60	551,410.30	111,449.80	630,183.20	2,363,187.00	2,363,187.00	—	7,166,817.82
P6.	EXTENSION and COMMUNITY DEVELOPMENT	209,250.00	—	669,790.00	1,337,302.50	689,679.62	943,825.00	1,137,350.00	118,300.00	155,375.00	340,820.00	340,820.00	—	5,942,512.12
P7.	FISHERY RESOURCES and RESERVOIR MANAGEMENT	—	—	—	600,000.00	—	500,000.00	—	—	—	—	—	—	1,100,000.00
P8.	NON-TIMBER RESOURCES MANAGEMENT	507,664.60	105,065.84	—	—	—	—	—	105,065.84	—	—	—	—	717,796.28
P9.	SILVICULTURAL TREATMENT (ANR)	1,794,952.10	—	1,237,898.00	—	—	—	—	—	—	—	—	—	3,032,850.10
P10.	RESEARCH and DEVELOPMENT	—	—	—	—	—	—	—	—	—	—	—	4,000,000.00	4,000,000.00
P11.	LEGAL COST	—	—	—	—	—	—	—	—	—	—	—	1,000,000.00	1,000,000.00
	subtotal	7,885,311.70	7,427,981.26	3,607,995.60	6,357,370.70	5,134,554.62	5,758,255.80	6,439,370.30	2,080,832.64	2,689,575.20	4,190,024.00	4,190,024.00	14,159,745.50	
GRAND TOTAL														69,921,041.32

The reduced budget was arrived at in close coordination and consultation with the NPC Watershed Management Department (NPC-WMD). While the Commission supports the objectives and general program of actions of NPC-WMD, the projects originally proposed were evaluated if reasonable, justifiable and implementable.

The Watershed Database, comprises 13% of the total budget. Indirect costs which accounts for 15% of the budget includes capital expenditures (various equipments, tools, etc), research & development, and legal costs. Capital expenditures originally budgeted over ₱10 Million were reduced to ₱5 million. Research and Development budget also decreased. Of the 5 studies originally proposed at ₱1 Million per study, only 2 studies at ₱ 1 Million each were retained, plus a provision of 1 impact study for ERC to determine the performance of the program. The cost to employ two (2) lawyers and other legal costs totaling ₱ 1 Million were also included in the proposed budget, in recognition of the need to retain the services of lawyers to strengthen the enforcement capabilities of NPC-WMD.

Direct programs, which comprise 72% of the whole budget, cover reforestation, forest protection & conservation, watershed rehabilitation, agroforestry, extension & community development, fishery resources & reservoir management, non-timber resources management, and Silvicultural Treatment (assisted natural regeneration). The proposed budget for reforestation and

community development projects was reduced by approximately ₱35 Million. Although these are important projects of the NPC Watershed Management Division (NPC-WMD), there are other considerations in evaluating their proposed budget. One consideration is the availability of open areas to plant trees as some of these open areas are occupied by squatters. Another is the seasonality of planting which limits their program for planting trees and vegetation.

The Commission is hopeful that with this approved budget representing a 253% increase from NPC-WMD's 2001 level of expenditures of ₱19.8 million, NPC-WMD will be able to effectively carry out the mandate set by R. A. No. 9136 which is to rehabilitate and manage the watershed areas/reserves under its jurisdiction.

As provided for under R.A. No. 9136 and its Implementing Rules and Regulations, the Universal Charge, including its environmental charge component of one-fourth of one centavo per kilowatt-hour (₱ 0.0025/kWh), shall be collected by the Distribution Utilities and TRANSCO. The term "Distribution Utilities" as defined under the law applies to an entity that owns, operates or controls one or more Distribution Systems such as but not limited to: a) Electric Cooperatives; b) Privately-Owned Distribution Utilities; c) Local Government Unit Owned-and-Operated Distribution Systems; d) Entities duly authorized to operate within the Economic Zones; and f) Other duly

authorized entities engaged in the Distribution of Electricity. Said collections are, in turn, to be remitted to PSALM.

Pursuant thereto, PSALM, as the administrator of the funds generated from the Universal Charge should, among other things, promulgate procedures and guidelines governing the remittance to and disbursements of funds from the Universal Charge. The Commission notes that to date, no such procedures and guidelines have been approved by the Commission.

DISPOSITION

WHEREFORE, the foregoing premises considered, applicant National Power Corporation (NPC) is hereby authorized to draw up to ₱ 70 Million from PSALM for its 2003 Watershed Rehabilitation Budget subject to the availability of funds for the Environmental Fund Component of the Universal Charge. The utilization of availments from the Environmental Fund shall be solely for ERC approved project/programs for the rehabilitation and management of watershed areas proposed for CY 2002 for implementation in CY 2003;

The first availment by the NPC from PSALM of the share in the Universal Charge of the Environmental Charge for the rehabilitation and management of watershed areas shall not be earlier than forty five (45) days from the effectivity of the Procedures and Guidelines promulgated by PSALM;

Accordingly, NPC is hereby directed to submit an Annual Accomplishment Report of the projects/programs undertaken and the corresponding costs incurred on a per program and watershed area basis within thirty (30) days after the end of the calendar year. In the event of over- or under-recovery/availment by NPC from the Environmental Fund component of the Universal Charge, true-up adjustments shall be made in accordance with the Implementing Rules and Regulations of R.A. No. 9136, pending the promulgation by the Commission of the appropriate rules and procedures.

Relative thereto, the TRANSCO and Distribution Utilities are hereby authorized to collect from the end-users, the amount of ₱0.0025 per kilowatt-hour on a monthly basis reflected as a separate item on the bill, subject to the following conditions:

- a) The first collection of the Environmental Fund component of the Universal Charge shall be made on the immediate billing cycle after the effectivity of this Decision;
- b) Any end-user or self-generation entity not connected to a Distribution Utility (DU) shall remit its corresponding Environmental Fund component of the Universal Charge directly to TRANSCO, effective on the billing cycle after the effectivity of this Decision, which shall be remitted to PSALM on or before the 15th day of the succeeding month.
- c) In case of a self-generation facility, it shall not be covered by the imposition of the Universal Charge within the period of four (4)

years from its imposition, provided that such self generating facilities shall have first registered with the ERC and PSALM; and

d) Collections by the DUs shall be remitted to the PSALM on or before the 15th day of the succeeding month it collected the Environmental Fund Component of the Universal Charge from the end-users;

In the meantime, as administrator of the Universal Charge, the PSALM is directed to submit to this Commission, for approval, the procedures and guidelines that shall govern all remittances to and disbursements from the STF and a quarterly report on remittances and disbursements against the fund. Pending the approval of the aforesaid procedures and guidelines, PSALM is directed to submit to the Commission a monthly report on the remittances and disbursements from the fund.

SO ORDERED.

Pasig City, April 2, 2003

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Acting Chairman

(Sgd) MARY ANNE B. COLAYCO
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(On Official Business)
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