

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

**IN THE MATTER OF THE APPLICATION
OF THE NATIONAL GRID
CORPORATION OF THE PHILIPPINES
FOR THE APPROVAL OF FORCE
MAJEURE (FM) EVENT REGULATED
FM PASS THROUGH FOR THE
SABOTAGE IN MINDANAO IN
ACCORDANCE WITH THE RULES FOR
SETTING TRANSMISSION WHEELING
RATES, WITH PRAYER FOR
PROVISIONAL AUTHORITY,**

ERC CASE NO. 161RC

**NATIONAL GRID CORPORATION OF
THE PHILIPPINES (NGCP),
Applicant.**

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APPLICATION

Applicant **NATIONAL GRID CORPORATION OF THE PHILIPPINES**
(NGCP), by counsel, respectfully states:

Nature of the Application

1. The present Application is filed by NGCP pursuant to and by virtue of Section 10.1.1, Article X of the Rules for Setting Transmission Wheeling Rates (RTWR), seeking this Honorable Commission's approval to charge its customers for expenditures incurred (FM Pass Through Amount) for the rehabilitation/repair of transmission assets in Mindanao caused by the bombing and sabotage by lawless elements.

The Applicant

2. Applicant NGCP is a corporation created and existing under the laws of the Philippines, with principal office address at Quezon Avenue corner BIR Road, Diliman, Quezon City. It is the corporate vehicle of the consortium which

was awarded the concession to assume the power transmission functions of the National Transmission Corporation (TRANSCO) through public bidding pursuant to Republic Act No. 9136. It may be served with orders, notices and other legal processes through the undersigned counsel.

3. NGCP holds a franchise under Republic Act No. 9511 to construct, install, finance, manage, improve, expand, operate, maintain, rehabilitate, repair and refurbish the present nationwide transmission system of the Republic of the Philippines.

4. Under the Concession Agreement among NGCP, the Power Sector Assets and Liabilities Management Corporation (PSALM), and TRANSCO, which took effect on 15 January 2009, PSALM granted NGCP, on an exclusive basis, the rights and responsibilities (1) to construct, install, finance, manage, improve, expand, operate, maintain, rehabilitate, repair, refurbish and replace the Transmission Assets; (2) to bill and collect from Transmission Customers for its own account such charges as the Regulated Entity may lawfully demand; and, (3) shall take over and operate the whole of TRANSCO's regulated transmission business as a going concern and shall, as between TRANSCO and itself, be the sole representative of the Regulated Entity before this Honorable Commission.

5. Under the Concession Agreement, NGCP is mandated to provide open and non-discriminatory access to its transmission system to all electricity users and accordingly, assesses and collects transmission charges subject to the approval of this Honorable Commission.

Compliance with Pre-Filing Requirements

6. In compliance with Section 2 (a) of the Honorable Commission's Rules of Practice and Procedure (ERC Rules), NGCP furnished the legislative body

of the local government unit where it principally operates a copy of the Application with all its Annexes and accompanying documents. A copy of the proof of such service is attached hereto as **Annex "A."**

7. Further, in accordance with Section 2 (b) of the ERC Rules, NGCP caused the publication of the entire Application, excluding its Annexes, in a newspaper of national circulation. Copies of the newspaper and the corresponding affidavit of publication are attached hereto as **Annexes "B" and "B-1."**

Statement of Facts

I. Tower No. 52

Agus 2 – Kibawe 138kV Line
Bubong, Lanao del Sur

8. On or about 16 November 2008, Tower No. 52, which is part of the Agus 2-Kibawe 138kV line at Bubong Lanao del Sur, toppled due to heavy pilferage and cutting of lattices with a steel saw by unidentified lawless elements. Hence, Tower No. 52 was completely destroyed.

9. On 16 February 2009, NGCP filed a verified Notice of Force Majeure Event within the period prescribed in the Transmission Wheeling Rates Guidelines (amended as the RTWR, which took effect on 22 September 2009), as condition precedent for a claim of Force Majeure Pass Through Amount. The pertinent portion of the said Notice states:

"On or about 16 November 2008, Tower No. 52 (Agus 2-Kibawe, 138 kV Line, situated in Bubong Lanao del Sur) of the National Transmission Corporation (TransCo) collapsed due to the removal of its bolts and lattices by lawless elements. To date, photos of the extent of the damage have not yet been taken and repair of the tower has not yet been performed since the location is forested and is classified as "high risk" by the military due to the alleged presence of insurgents in the area. At this moment, the National Grid Corporation of the Philippines (NGCP), the Concessionaire of TransCo, is still waiting for the Armed Forces of the Philippines to extend its assistance."

A copy of the said Notice, with its annexes, is attached hereto as **Annexes “C” to “C-1.”**

10. As of 10 June 2009, the erection of the new tower to replace the toppled Tower No. 52 was completed. Hauling of materials needed for reconductoring works started on 12 October 2009. It is estimated that the energization of the new tower will be completed by the end of November 2009. Pictures of the tower when it was destroyed are hereto attached as **Annexes “D” to “D-1,”** and pictures of the tower when it was erected are attached as **Annex “E”.**

II. Tower No. 31
Abaga – Agus 2 138kV Line
Pantar, Lanao del Norte

11. On or about 29 December 2008, Tower No. 31, which is part of the Abaga – Agus 2 138kV line found in Pantar, Lanao del Norte, was bombed by lawless elements, resulting in the total destruction of the tower.

12. Thus, on 2 March 2009, NGCP filed the corresponding verified Notice of Force Majeure Event. The Notice states:

“On or about 29 Decemer 2008, Tower No. 31 (Abaga-Agus 2, 138 kV Line, located at Pantar, Lanao del Norte) of the National Transmission Corporation (TRANSCO), was sabotaged and/or bombed by lawless elements. Repair of the damage thereof was made and completed sometime in January 2009.”

A copy of the said Notice, with its annexes, is attached hereto as **Annexes “F” to “F-2.”**

13. As a result of the destruction of Tower No. 31, Emergency Restoration Systems (ERS) were used on 5 January 2009 to temporarily restore power transmission services. ERS are segmented steel structures that may be

easily hauled and assembled to enable the transmission of power while the transmission operator repairs/ rehabilitates the damaged tower.

14. The new tower was completed on 24 January 2009. Pictures of the tower when it collapsed and after it was reconstructed are attached hereto as **Annexes “G” to “G-2” and “H” to “H-2,”** respectively.

15. In view of the aforementioned Force Majeure Events, there arose the need to immediately program or realign capital expenditure (CAPEX) projects that will bring back the necessary service, and permanently restore the damaged transmission assets.

16. The restoration and rehabilitation activities of the damaged towers have been completed.

Computation of Force Majeure Event Pass-Through Cost

17. Under the RTWR, NGCP is allowed to recover costs that it incurred for the repair of damage sustained by its transmission facilities as a result of a Force Majeure Event, as defined in the Section 1.3 Article I of the RTWR. Moreover, Section 10.1.1 of the RTWR provides:

“If a Force Majeure Event occurs, the Regulated Entity may seek the ERC’s approval to charge Customers, in addition to the maximum amounts that the Regulated Entity is otherwise permitted to charge Customers for Regulated Transmission Services pursuant to Articles III, IV or V (as applicable), an amount (FM Pass Through Amount) that is not greater than the Eligible FM Pass Through Amount (as calculated by the Regulated Entity) in respect of that Force Majeure Event as at the date of the Force Majeure Event Claim (if any) given to the ERC pursuant to Section 10.2 in respect of that Force Majeure Event.”

18. Notably, the transmission facilities damaged as a result of the Force Majeure Events form part of the Mindanao grid. Consequently, on the basic

principle that there should be no cross-subsidy, the actual and programmed costs incurred for the incidents are specifically identified for Mindanao. The costs approved by this Honorable Commission for recovery shall be recovered from NGCP's customers in Mindanao.

19. The CAPEX that NGCP actually incurred to complete the towers' rehabilitation amounts to PHP2,849,968.64. The details of the Work Order Charges and the relevant pages of the Subsidiary Ledger are attached hereto as **Annexes "I" to "I-3."**

20. Summaries of the two schedules of capital expenditures are set out in Tables 1 and 2.

Table 1: Schedule of Capital Expenditures, Real PhP, thousands

| FM Event | ACTUAL AS OF December 2008 | ESTIMATED AS OF DEC. 2009 | ESTIMATED EXPENDITURES IN 2009 | TOTAL EXPENDITURES 2008 + 2009 |
|------------------------|----------------------------|---------------------------|--------------------------------|--------------------------------|
| <u>Mindanao</u> | <u>1,901.8</u> | <u>2,849.97</u> | <u>948.2</u> | <u>2,849.97</u> |
| <u>TOTAL</u> | <u>1,901.8</u> | <u>2,849.97</u> | <u>948.2</u> | <u>2,849.97</u> |

Table 2: Schedule of Capital Expenditures, Nominal PhP, Thousands

| FM Event | ACTUAL AS OF December 2008 | ESTIMATED AS OF DEC. 2009 | ESTIMATED EXPENDITURES IN 2009 | TOTAL EXPENDITURES 2008 + 2009 |
|------------------------|----------------------------|---------------------------|--------------------------------|--------------------------------|
| <u>Mindanao</u> | <u>2,254</u> | <u>3,509.45</u> | <u>1,255.44</u> | <u>3,509.45</u> |
| <u>TOTAL</u> | <u>2,254</u> | <u>3,509.45</u> | <u>1,255.44</u> | <u>3,509.45</u> |

The above nominal values were computed using the inflation indexation factors¹ provided in the Final Determination dated 13 June 2006 of 1.1852, 1.2314 and 1.2844 for 2008, 2009 and 2010, respectively.

21. Using the building block approach of determining the Annual

¹ Inflation indexation factors adopted by the ERC in determining the nominal values of TRANSCO's CAPEX, Final Determination – MODEL on 2nd Regulatory Period Application

Revenue Requirement (ARR) as shown in Table 3 below, NGCP proposes to pass-through the FME Claim as additional network charges in Mindanao (summarized in Table 4) starting the Regulatory Year 2010, or until such time that the amounts incurred are fully recovered.

Table 3. In Thousand PhP , unless otherwise stated, Nominal

| Particulars | 2009 | 2010 |
|---------------------|----------|-----------|
| Return on Capital | 630.77 | 897.93 |
| Return of Capital | 70.19 | 73.21 |
| ARR | 700.96 | 971.14 |
| Forecast MW | 15,696.8 | 16,655.61 |
| P/kW – Pass Through | 0.0447 | 0.0538 |
| Forecast GWh | 7,345.9 | 7,542.45 |
| P/kWh | 0.0001 | 0.0001 |

Table 4: Proposed Recovery for 2009 and 2010

| | 2009 Pesos/kilowatt | 2010 Pesos/kilowatt | Pesos/kilowatt 2009 and 2010 combined |
|-----------------|------------------------|------------------------|--|
| Mindanao | 0.0447 | 0.0538 | 0.1030 |

22. The following assumptions were used in the computation of the ARR:

- a. The Return on Capital was determined by applying the approved Regulatory WACC of 15.87% for the Second Regulatory Period of the 2009 CAPEX and on the average of rolled forward asset base for 2010.
- b. As regards the Return of Capital, the depreciation was calculated using the assets' lives approved by the Honorable Commission in the Final Determination for the Second Regulatory Period.
- c. Depreciation for 2009 and 2010 is equivalent to the annual depreciation on actual CAPEX.
- d. The P/kW and P/kWh values were determined using the demand and energy data used in NGCP's application for the 2010 Maximum Allowable Revenue.

23. In accordance with Article 10.2.5 of the RTWR, the Force Majeure Threshold Amount (FMTA) is determined using the following formula:

$$FMTA_t = 0.02PhP/kWh \times (CPI_{t-1}/CPI_{2002})$$

Where: CPI_{t-1} has the same meaning as in Section 3.3.2 of the RTWR
 CPI_{2002} is the sum of the CPIs for the quarters ending on 31 December 2001, March 2002, June 2002, and September 2002

24. The applicable CPI values and the computation of the FMTA are provided in the following table:

Table 5: Force Majeure Threshold Amount (FMTA)

| CPI _{t-1} | | | CPI ₂₀₀₂ | | |
|--------------------|--------------|-------|---------------------|--------------|-------|
| Dec 2008 | CPI Q4, 2007 | 156.7 | Dec 2001 | CPI Q4, 2001 | 164.3 |
| Mar 2009 | CPI Q1, 2008 | 158.1 | Mar 2002 | CPI Q1, 2002 | 165.2 |
| June 2009 | CPI Q2, 2008 | 159.8 | June 2002 | CPI Q2, 2002 | 166.3 |
| Sept 2009 | CPI Q3, 2008 | 160.8 | Sept 2002 | CPI Q3, 2002 | 167.9 |

Hence, FMTA is equal to 0.02 multiplied by 635.4 divided by 663.7 or 0.01915 PhP/kWh.

25. In sum, NGCP proposes to recover the FME Claims during the twelve (12) month billing period starting 26 December 2009 to 25 December 2010. The FME Claims (sum of 2009 and 2010 as expressed in peso/kilowatt-hour equivalent) does not breach the FMTA as shown in the following:

Table 6: FME Claims Against FMTA

| In Pesos/Kilowatt-Hour Equivalent | | | |
|-----------------------------------|-----------|---------------------------|-------------------------|
| FME | FME Claim | FMTA For Mindanao Grid | Remarks |
| Sabotage | 0.0001 | 0.01915 | Did not breach the FMTA |

26. The assets maintained and operated by the NGCP are owned by TRANSCO, who is co-assured with the National Power Corporation's (NPC) Industrial All Risk (IAR) insurance policy with the Government Service Insurance

System (GSIS). It must be noted, however, that the damaged towers are not covered by the said policy.

27. The FME Claims proposed herein were designed and developed in accordance with the provisions of the RTWR, its Reset Issues Paper, and the pertinent issuances of this Honorable Commission, and sets forth fair and reasonable transmission rates that will serve the public interest and convenience, and are geared towards the efficient utilization of transmission facilities. The cost to rehabilitate the damage facilities will ultimately redound to the best interest and benefit of the consuming public in terms of continuous, reliable and efficient power supply as mandated by Republic Act No. 9136.

Allegations in Support of the Application for Provisional Authority

28. The timely implementation of the rate changes will allow the equal or even allocation of the increases or decreases in tariffs from the initial implementation of the recovery of the cost. Should the rates increase, a delay in the proposed implementation will bring about the significant and equal delay in the recovery of cost.

29. Furthermore, the timely implementation of the rate changes will reduce, if not eliminate, the risk of spending legitimate cost, which if foreseen would have been considered in the previous Regulatory Reset Application.

30. The occurrence of the aforementioned force majeure events required capital infusion, the recovery of which should be allowed in order to avoid placing financial strain on the transmission system operator, and to allow it to continuously provide the necessary transmission service to the grid customers.

Prayer

WHEREFORE, it is most respectfully prayed of this Honorable Commission to:

1. **Declare** that the incidents of sabotage, destroying Tower Nos. 52 and 31 in Mindanao as Force Majeure Events in the purview of the RTWR;

3. **Approve** the expenditures incurred for the rehabilitation/repair of the damaged transmission facilities and to declare that the same are prudent and documented;

4. **Approve** the proposed pass-through amount representing return on and of capital expenditure associated with the emergency responses and the repair and rehabilitation of facilities damaged due to the said events;

5. **Grant** a provisional authority to implement and bill the FME Pass-Through Amount effective the billing month 26 December 2009 to 25 December 2010 to the Mindanao customers; and

6. **Exclude** the proposed Pass-Through Amount from the side constraint calculation in the years 2009 and 2010.

NGCP prays for other relief deemed just and equitable under the premises.

Quezon City for Pasig City, 9 November 2009.

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