

**RULES FOR THE RECOVERY OF DEFERRED ACCOUNTING
ADJUSTMENT FOR FUEL AND PURCHASED POWER COSTS BY
NATIONAL POWER CORPORATION (NPC) AND NPC SMALL
POWER UTILITIES GROUP (NPC-SPUG)**

Pursuant to Section 43 (f) of the Republic Act No. 9136 or the Act and Rule 3, Section 4 of its Implementing Rules and Regulations, the Energy Regulatory Commission (ERC) hereby adopts and promulgates these Rules to establish the process for the Recovery of Deferred Accounting Adjustment for Fuel and Purchased Power Costs by the National Power Corporation (NPC) and NPC Small Power Utilities Group (NPC-SPUG).

ARTICLE I

GENERAL PROVISIONS

These Rules shall have the following objectives:

- a) To ensure the full recovery of all allowable fuel and purchased power costs of NPC and NPC-SPUG;
- b) To ensure transparent and reasonable prices of electric power service in a regime of free and fair competition and to achieve greater operational and economic efficiency;
- c) To protect the public interest as it is affected by the rates and services of NPC and NPC-SPUG; and
- d) To help maintain the security, reliability, and quality of the supply of electric power.

ARTICLE II

SCOPE AND DEFINITION OF TERMS

Section 1. Scope – These Rules shall apply to:

- a) National Power Corporation (NPC); and
- b) NPC Small Power Utilities Group (NPC-SPUG).

Section 2. Definition of Terms As used in these Rules, the following terms shall have the following respective meanings:

“Act” shall refer to Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001”.

“Allowable Fuel Cost” shall refer to the absolute amount in pesos of fuel cost for the billing month subject to heat rate caps approved by the ERC. This includes Bunker, Diesel, Coal, Natural Gas and other fuel types. Steam cost shall form part of the allowable fuel cost but shall not be subjected to any heat rate cap.

“Allowable Purchased Power Cost” shall refer to the absolute amount in pesos of purchased power cost for eligible Independent Power Producer (IPP) Supply Contracts during the test month. For the grids where WESM is operational, this excludes costs incurred which output is sold for Spot Sales, ODPS, Ancillary Services and DWS arrangements, power supply contracts that have not been approved yet by the ERC and purchased power costs incurred that are eligible for stranded contract costs recovery.

“Ancillary Services” shall refer to those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the transmission system in accordance with good utility practice and the Grid Code.

“Build-Operate-Own (BOO) Agreement” shall refer to the contractual agreement whereby a project proponent is authorized to finance, construct, own, operate and maintain the power plant and proponent is allowed to recover its investment and operating and maintenance cost plus a reasonable return thereon.

“Build-Operate-Transfer (BOT) Agreement” shall refer to the contractual agreement whereby the private sector builds a power plant and operate it for the specific period (enough to recover capital/operating cost with reasonable return on investment) and thereafter transfers to NPC the ownership of the plant.

“Build-Rehabilitate-Operate-Transfer (BROT) Agreement” shall refer to an agreement entered into by and between the NPC and private corporation (Generator) for the development of an existing NPC power facility to support and maintain the country’s rapid economic growth. The generator undertakes the rehabilitation and operation of the power facility and thereafter transfers its ownership to NPC after the cooperation period.

“Capacity and Infrastructure Fees” shall refer to the monthly fees paid by NPC to its IPP Proponents/Operators throughout the cooperation period or contract

term for the recovery of the IPP's costs/investment for the construction of power plant, including its related infrastructure facilities necessary for the operation of the plant and the IPP's fixed expenses/costs for the operation and maintenance of the power plant and infrastructures. This shall also refer to the sum of Capital Recovery Fees, Operating Expenses, Infrastructure Fees and Service Fees.

"Default Wholesale Supply (DWS) Agreements" shall refer to the arrangements entered into for the supply of electricity to cover supply imbalances of Customers in the WESM.

"Deferred Accounting Adjustment" or "DAA" shall refer to the component of the generation rate calculated in accordance with Section 2, Article III of these Rules, intended to recover the deferred allowable fuel and purchased power costs.

"Heat Rate Caps" shall refer to the latest heat rate caps approved by the ERC.

"Eligible Independent Power Producers (IPP) Supply Contracts" shall mean power supply agreements entered into by NPC with IPPs under the Build-Operate-Own (BOO), Build-Operate-Transfer (BOT), Build-Rehabilitate-Operate-Transfer (BROT), Build-Transfer-Operate (BTO), Power Purchase (PPA), Energy Conversion (ECA), Rehabilitate-Operate-Lease (ROL) and Rehabilitate-Operate-Maintain-Manage (ROMM) Agreements prior to the enactment of RA No. 7638 or the Department of Energy Law and those agreements entered into after the enactment of RA No. 7638 but were duly approved by the then ERB or the ERC for inclusion in rate calculations.

"Energy Conversion Agreement" shall refer to the contractual agreement, whether in a BOT, BOO, ROL, ROM, and similar arrangements, wherein NPC, at its own costs, is obliged to purchase and deliver the fuel to IPPs. In return, the IPP are obliged to convert such fuel to generate electricity. The electricity produced is solely supplied to and purchased by NPC for subsequent sale to its customers.

"Energy Regulatory Board or "ERB" shall refer to the independent, quasi-judicial regulatory agency created under Executive Order No. 172.

"Energy Regulatory Commission" or "ERC" shall refer to the independent quasi-judicial regulatory body created under Section 38 of the Act.

"Energy Sales" shall refer to the amount of electricity in kWh consumed by the customers based on valid contract for the sale of electricity.

"ERC Rules of Practice and Procedure" shall refer to the Rules promulgated by the ERC on June 22, 2006 governing the proceedings before it.

“Generation Rate Adjustment Mechanism or “GRAM” shall refer to the adjustment mechanism intended to balance the need for timely recoveries of costs by the utilities.

“Ineligible Independent Power Producers (IPP) Supply Contracts” shall refer to power supply agreements entered into by the NPC with the IPPs, which were not duly approved by the then Energy Regulatory Board or by the ERC.

“National Power Corporation” or “NPC” shall refer to the government corporation created under Republic Act No. 6395, as amended.

“One Day Power Sales” or “ODPS” shall refer to the program whose objective is to sell the unutilized generating capacity of NPC to its customers with self-generation for specific hours or time blocks of a day on a day-to-day basis at competitive prices.

“Power Purchased Agreement” shall refer to a type of contract whereby NPC purchases power from IPP-built and operated plants. Under this contract, NPC does not provide the fuel for the operation of the plant.

“Power Sector Assets and Liabilities Management Corporation” or “PSALM” shall refer to the government corporation created under Section 49 of the Act.

“Rehabilitate-Operate-Lease (ROL) Agreement” shall refer to the contractual agreement whereby the private company uses its own financial resources to repair and upgrade the plant to prolong its economic life, improve operational flexibility, recover lost capacity and enhance efficiency. The ROL operator pays NPC a lease rental for the use of the plant during the cooperation period. NPC, on the other hand, guarantees to purchase the energy generated by the plant.

“Rehabilitate-Operate-Maintain-Manage (ROMM) Agreement” shall refer to the contractual agreement whereby a project proponent puts in the needed investment to either replace or repair aging or inefficient NPC equipment, and thereafter operates and maintains the plant for a period usually for 15 years. NPC in turn purchases the power generated by the plant. This scheme applies to the existing plants of NPC which need massive rehabilitation to be able to operate at its rated capacity.

“Small Power Utilities Group” or “SPUG” shall refer to the functional unit of NPC created to pursue Missionary Electrification function.

“Spot Sales” shall refer to the energy sold in the Spot Market.

“Stranded Contract Cost of NPC” shall refer to the excess of the contracted cost of electricity under eligible contracts of NPC over the actual selling price of

the contracted energy output of such contracts in the market. Such contracts shall have been approved by the ERB as of December 31, 2000.

“Transition Supply Contract” or “TSC” shall refer to a contract duly negotiated by NPC with a Distribution Utility pursuant to Section 67 of the Act.

“Wholesale Electricity Spot Market” or “WESM” shall refer to the market where trading of electricity is made, established pursuant to Section 30 of the Act.

ARTICLE III

DEFERRED ACCOUNTING ADJUSTMENT FOR NPC/PSALM

Section 1. Allowable Deferred Fuel and Purchased Power Costs – The Allowable Deferred Fuel and Purchased Power Costs shall be calculated based on the following formula:

$$\text{ADFPPC} = \text{DFC} + \text{DPPC}$$

Where:

ADFPPC = Allowable Deferred Fuel and Purchased Power Cost

DFC = Deferred Fuel Costs calculated as follows:

$$\text{DFC} = \text{AFC} - \text{FCB}$$

AFC = Allowable Fuel Costs incurred by NPC. The AFC excludes fuel costs incurred for electricity sold for Spot Sales, ODPS, Ancillary Services and DWS arrangement and fuel costs incurred by plants/contracts that are eligible for stranded contract costs recovery.

FCB = Fuel Cost Billed to TSC sales, excluding TSC Sales coming from plants/contracts whose costs are eligible for stranded contract costs recovery

DPPC = Deferred Purchased Power Costs calculated as follows:

$$\text{DPPC} = \text{APPC} - \text{PPCB}$$

APPC = Allowable Purchased Power Costs incurred by NPC excluding payments for Capacity and Infrastructure Fees for Build-Operate-Transfer (BOT) contracts. The APPC excludes costs for electricity sold for Spot Sales, ODPS, Ancillary Services and DWS arrangements, ineligible power supply contracts and purchased power costs incurred that are eligible for stranded contract costs recovery.

PPCB = Purchased Power Costs Billed to TSC Sales, excluding TSC Sales coming from power plants whose costs are eligible for stranded contract costs recovery.

Section 2. Deferred Accounting Adjustment – The Deferred Accounting Adjustment shall be calculated based on the following formula:

$$DAA_t = \frac{ADFPPC + DAA_{t-1}}{T}$$

Where:

DAA_t = New Deferred Accounting Adjustment

ADFPPC = Allowable Deferred Fuel and Purchased Power Costs computed in accordance with the preceding section.

DAA_{t-1} = Remaining Balance of DAA coming from the previous applications excluding the DAA duly approved by the ERC for recovery/refund and/or pending ERC approval prior to the effectivity of these Rules and those still to be filed by NPC under the GRAM as provided in Article VI of these Rules

T = The total projected energy sales for the immediate succeeding year

Section 3. Billing – The DAA_t shall be billed by NPC and PSALM only to sales corresponding to TSC transactions.

ARTICLE IV

DEFERRED ACCOUNTING ADJUSTMENT FOR NPC-SPUG

Section 1. Allowable Deferred Fuel and Purchased Power Costs – The Allowable Deferred Fuel and Purchased Power Costs shall be calculated based on the following formula:

$$\mathbf{ADFPPC = DFC + DPPC}$$

Where:

ADFPPC = Allowable Deferred Fuel and Purchased Power Cost

DFC = Deferred Fuel Costs calculated as follows:

$$\mathbf{AFC - FCB}$$

AFC = Allowable Fuel Costs incurred by NPC-SPUG

FCB = Fuel Cost Billed by NPC-SPUG to its customers

DPPC = Deferred Purchased Power Costs calculated as follows:

$$\mathbf{APPC - PPCB}$$

APPC = Allowable Purchased Power Costs incurred by NPC-SPUG

PPCB = Purchased Power Costs Billed by NPC-SPUG to its customers

Section 2. Deferred Accounting Adjustment – The Deferred Accounting Adjustment shall be calculated based on the following formula:

$$\mathbf{DAA_t = \frac{ADFPPC + DAA_{t-1}}{T}}$$

Where:

DAA_t = New Deferred Accounting Adjustment

AFPPC = Allowable Deferred Fuel and Purchased Power Costs computed in accordance with the preceding section

DAA_{t-1} = Remaining Balance of DAA coming from the previous applications excluding the DAA duly approved by the ERC for recovery/refund and/or pending ERC approval prior to the effectivity of these Rules and those still to be filed by NPC-SPUG under GRAM as provided in Article VI of these Rules.

T = The total projected energy sales for the immediate succeeding year

Section 3. Billing – The DAA_t shall be billed by NPC-SPUG to all its customers.

ARTICLE V

FILING AND REPORTORIAL REQUIREMENTS

Section 1. Filing – The filings for recovery of the DAAs shall be governed by the following rules:

1. For the major grids, the application shall be filed by NPC and for the SPUG areas, the application shall be filed by NPC-SPUG.
2. For the major grids, the applications shall be grid specific, but need not be filed simultaneously. As for the SPUG areas, the application shall cover all areas, but such areas shall be segregated to reflect the adjustments for each..
3. NPC/PSALM and NPC-SPUG shall file for the recovery/refund of under/over recovery on fuel and purchased power cost as determined under Article III hereof. The filing shall be done on an annual basis.
4. The applicant/s shall comply with Section 4 (e), Rule 3 of the IRR of the Act and Rule 6 of the ERC Rules of Practice and Procedure.
5. The applications shall not be accepted until the quarterly reportorial requirements in the succeeding section have been fully complied with by the applicant/s.

Section 2. Quarterly Reportorial Requirements – The following are the Reportorial/Data Requirements, which shall be deemed part of the supporting documents of the applications referred to in the preceding Section. NPC and NPC-SPUG shall submit these information and documents to the ERC on or before the 20th day of the month following the immediately preceding quarter:

1. A report containing all transactions and calculations affecting the deferred accounts which should include any other information or data required by the ERC for the previous quarter;
2. Cost of all energy purchased for the previous quarter (categorized as either costs for TSC Sales, Spot Sales, ODPS, DWS, Ancillary), indicating the number of kilowatt-hours purchased and the cost for each supplier;
3. Cost of all fuel consumed for the previous quarter (categorized as either costs for TSC Sales, Spot Sales, ODPS, DWS, Ancillary), indicating:
 - a. the number of kilowatt-hours generated and the cost of fuel consumed; and
 - b. allowable cost of fuel consumed based on the heat rate caps approved by the ERC;
4. For the major grids, revenues billed by NPC (categorized as either sales for TSC, Spot, ODPS, DWS, and Ancillary Services) for the previous quarter;
5. For the SPUG areas, total revenues billed by NPC-SPUG for the previous quarter; and
6. Such other information as may be required by the ERC.

Section 3. Provisional Approval – Upon filing of the application, the ERC may, upon motion, issue a Provisional Authority (PA) based on the allegations in the application, the supporting documents attached thereto, as well as the submissions in compliance to the quarterly reportorial requirements and on such comments or pleadings filed by any interested party within thirty (30) days from receipt of a copy of the application by the local legislative body of the local government unit where applicant principally operates or from the publication thereof, as the case may be.

ARTICLE VI

FINAL FILING UNDER THE GENERATION RATE ADJUSTMENT MECHANISM

Section 1. Final Filing under GRAM – NPC and NPC-SPUG shall file their respective final applications under the GRAM within sixty (60) days following the

effectivity of these Rules. The application shall contain an allegation regarding all the previous adjustments allowed pursuant to the Implementing Rules for the GRAM and a prayer for confirmation of all such adjustments made, from the unbundling of NPC's rates until the month prior to the effectivity of these Rules.

ARTICLE VII

FINAL PROVISIONS

Section 1. Exception Clause – Where good cause appears, the ERC may allow an exception from any provisions of these Rules, if such exception is found to be in the public interest and is not contrary to law or any other related rules and regulations.

Section 2. Separability Clause – If for any reason, any part or section of these Rules is declared unconstitutional or invalid, the other parts or sections hereof which are not affected thereby shall continue to be in full force and effect.

Section 3. Repealing Clause – All rules and guidelines, or portions thereof, issued by the ERC that are inconsistent with these Rules are hereby repealed or modified accordingly.

Section 4. Effectivity – These Rules shall take effect fifteen (15) days following its publication in a newspaper of general circulation.

Pasig City, May ____, 2007.

RODOLFO B. ALBANO, JR.
Chairman

RAUF A. TAN
Commissioner

ALEJANDRO Z. BARIN
Commissioner

MARIA TERESA A.R. CASTAÑEDA
Commissioner

JOSE C. REYES
Commissioner