

ANNEX “B”

“2nd DRAFT”

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

Pursuant to Section 43 (f) of Republic Act No. 9136 and Rule 3, Section 4 of its Implementing Rules and Regulations (IRR), 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 and Incremental Foreign Currency Exchange Rate 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*”.

“**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 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 for the development of an existing NPC power facility wherein the private corporation 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) Arrangements**” 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 components of the generation rate calculated in accordance with Section 2, Article III and Section 2, Article V of this Rules, intended to recover the deferred allowable fuel and purchased power costs *and deferred allowable costs on incremental currency exchange rate*.

“**Heat Rate Caps**” shall refer to the latest heat rate caps approved by the ERC.

“**Eligible Independent Power Producers (IPP) Supply Contracts for DAA Recovery**” shall mean the 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 Agreement (PPA), Energy Conversion Agreement (ECA), Rehabilitate-Operate-Lease (ROL) and Rehabilitate-Operate-Maintain-Manage (ROMM) prior to the enactment of Republic Act No. 7638 or the Department of Energy (DOE) Law and those agreements entered into after its enactment 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 IPPs are obliged to convert such fuel to generate electricity to be 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, as amended.

“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 a 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.

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

“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 of 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 its Missionary Electrification function.

“Special Sale Arrangements” shall refer to the arrangements entered into with the distribution utilities like the Customer Choice Program (CCP) and Special Rate for Ecozones.

“**Spot Sales**” shall refer to the energy sold in the Wholesale Electricity Spot Market (WESM).

“**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.

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

“**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 ON FUEL AND PURCHASED POWER COSTS OF NPC

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

$$ADFPPC = DFC + DPPC + DFCI$$

Where:

ADFPPC = Allowable Deferred Fuel and Purchased Power Cost

DFC = Deferred Fuel Costs calculated as follows:

$$AFC - FCB$$

AFC = Allowable Fuel Costs shall refer to the amount in pesos of fuel cost for the *pertinent test period* 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 subject to any heat rate cap. The AFC excludes fuel costs incurred for electricity sold for Spot Sales, ODPS, Ancillary Services, DWS arrangements, and other special sale arrangements and fuel costs incurred for plants/contracts that are eligible for stranded contract costs recovery.

FCB = shall be the amount in pesos of fuel equivalent to the fuel cost component of the ERC approved rate (in PhP/kWh) multiplied by the corresponding energy sales from

Transition Supply Contracts (TSCs) and other forms of supply for the *pertinent test period*, excluding fuel recovery from Spot sales, TSC sales coming from power plants whose costs are eligible for stranded contract costs recovery, ODPS, Ancillary Service, DWS arrangements and other special sale arrangements.

DPPC = Deferred Purchased Power Costs, calculated as follows:

$$APPC - PPCB$$

APPC = shall refer to the amount in pesos of purchased power cost for eligible Independent Power Producer (IPP) Supply Contracts during the *pertinent test period*. For the grids where WESM is operational, this excludes costs incurred for output sold for Spot Sales, ODPS, Ancillary Services, DWS arrangements and other special sale arrangements, power supply contracts that have not been approved *for recovery* by the ERC and purchased power costs incurred that are eligible for stranded contract costs recovery.

PPCB = shall mean the amount of Purchased Power Cost equivalent to the Purchased Power Cost Component of the ERC approved rate (in PhP/kWh) multiplied by the corresponding energy sales from TSC and other forms of supply contract/agreements for the *pertinent test period* excluding costs incurred from SPOT sales, TSC sales coming from power plants whose costs are eligible for stranded contract costs recovery, ODPS, ancillary Services, DWS arrangement and other special sale arrangements.

DFCI = Deferred FOREX on Foreign denominated currency Capacity and Infrastructure Fees for approved BOT Contracts, calculated as follows:

$$ACIF_{BOT} - BCIF_{BOT}$$

ACIF_{BOT} = Actual Capacity and Infrastructure Fees of approved BOT Contracts, *expressed in Philippine Pesos*, paid by NPC, excluding costs for electricity sold for Spot Sales, ODPS, Ancillary Services DWS arrangements, and other special sale arrangements and costs eligible for stranded contract costs recovery.

BCIF_{BOT} = Base Capacity and Infrastructure fees of approved BOT Contracts, included in the basic generation rate of NPC, billed to TSC Sales, except TSC Sales coming from power plants whose costs are eligible for stranded contract costs recovery.

Section 2. Deferred Accounting Adjustment on Fuel and Purchased Power Costs – The Deferred Accounting Adjustment shall be calculated based on the following formula:

$$DAA_{FPPC} = \frac{ADFPPC + DAA_{FPPCt-1}}{T_{tsc}}$$

Where:

- DAA_{FPPC}** = New Deferred Accounting Adjustment on Fuel and Purchased Power Costs.
- AFPPC** = Allowable Deferred Fuel and Purchased Power Costs computed in accordance with the preceding section.
- DAA_{t-1}** = Remaining Balance of DAA resulting from the previous applications excluding the DAA incurred by NPC prior to the commercial operation of the WESM and duly approved by the ERC for recovery/refund and/or pending ERC approval.
- T_{tsc}** = The total projected TSC sales for the immediately succeeding year.

Section 3. Billing – The **DAA_{FPPC}** shall be billed by NPC only to sales corresponding to TSC transactions.

ARTICLE IV

DEFERRED ACCOUNTING ADJUSTMENT ON FUEL AND PURCHASED POWER COSTS 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:

$$ADFPPC = DFC + DPPC$$

Where:

- ADFPPC** = Allowable Deferred Fuel and Purchased Power Cost.
- DFC** = Deferred Fuel Costs calculated as follows:

AFC – FCB

AFC = Allowable Fuel Costs shall refer to the amount in pesos of fuel cost for the *pertinent test period* subject to heat rate caps approved by the ERC. This includes Bunker, Diesel, Coal, Natural Gas and other fuel types. Steam Costs shall form part of the allowable fuel cost but shall not be subject to any heat rate cap.

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

DPPC = Deferred Purchased Power Costs calculated as follows:

APPC – PPCB

APPC = Allowable Purchased Power Costs shall refer to the amount in pesos of purchased power cost for eligible Independent Power Producers (IPP) Supply Contracts during the *pertinent test period* incurred by NPC-SPUG.

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

Section 2. Deferred Accounting Adjustment on Fuel and Purchased Power Costs – The Deferred Accounting Adjustment shall be calculated based on the following formula:

$$DAA_{FPPC} = \frac{ADFPPC + DAA_{FPPCt-1}}{T}$$

Where:

DAA_{FPPC} = New Deferred Accounting Adjustment on Fuel and Purchased Power Costs.

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

DAA_{FPPC t-1} = Remaining Balance of DAA resulting 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 the GRAM as provided in Article VI of these Rules.

T = The total projected energy sales for the immediately succeeding year.

Section 3. Billing – The **DAA_{FPPC}** shall be billed by NPC-SPUG to all its customers.

ARTICLE V

DEFERRED ACCOUNTING ADJUSTMENT ON INCREMENTAL CURRENCY EXCHANGE RATE FOR NPC & NPC SPUG

Section 1. Allowable Deferred Costs on Incremental Currency Exchange Rate – The allowable deferred costs on incremental exchange rate shall be calculated based on the following formula:

$$ADICER = DFDS + DFOPEX$$

Where:

ADICER = Allowable Deferred Costs on Incremental Currency Exchange Rate.

DFDS = Deferred FOREX on Debt Service calculated as follows:

$$(AFOREX_{ds} - BFOREX_{ds}) \times DS$$

AFOREX_{ds} = Applicable actual U.S. Dollar to Philippine Peso and/or Japanese Yen to Philippine Peso Exchange Rate on transaction date.

BFOREX_{ds} = Applicable base U.S. Dollar to Philippine Peso and/or Japanese Yen to Philippine Peso Exchange Rate as approved by the ERC.

DS = Amount of principal foreign denominated obligation paid by NPC.

DFOPEX = Deferred FOREX on foreign currency denominated operating expense calculated as follows:

$$(AFOREX_{opex} - BFOREX_{opex}) \times OPEX$$

AFOREX_{opex} = Applicable actual U.S. Dollar to Philippine Peso Exchange Rate on transaction date.

BFOREX_{opex} = Applicable base U.S. Dollar to Philippine Peso Exchange Rate as approved by the ERC.

OPEX = Amount of foreign currency B denominated OPEX paid by NPC.

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

$$DAA_{ICER} = \frac{ADICER + DAA_{ICERt-1}}{T}$$

Where:

- DAA_{ICER}** = New Deferred Accounting Adjustment on Incremental Currency Exchange Rate.
- ADICER** = Allowable Deferred Costs on Incremental Currency Exchange Rate computed in accordance with the preceding section.
- DAA_{ICER t-1}** = Remaining Balance of DAA resulting from the previous applications excluding the DAA incurred by NPC prior to the commercial operation of the WESM and duly approved by the ERC for recovery/refund and/or pending ERC approval. *For NPC-SPUG, it is the remaining balance of DAA resulting 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 ICERA as provided in Article VI of these Rules.*
- T** = For NPC, it is the total projected TSC sales for the immediate succeeding year. For NPC-SPUG, it is the total projected energy sales for the immediately succeeding year.

Section 3. Billing – For NPC, the **DAA_{ICER}** shall be billed to sales corresponding to TSC transactions. For NPC-SPUG, *the DAA_{ICER}* shall be billed to all *its* customers.

ARTICLE VI

FILING

Section 1. Filing Schedule – The application for recovery of the DAAs shall be filed with the ERC as follows:

1. For all unfiled and unverified DAAs prior to the effectivity of these Rules:

DATE OF FILING	NPC MAJOR GRIDS	NPC-SPUG GEOGRAPHICAL LOCATION	TEST PERIOD OF APPLICATION
Not later than October 6, 2008	LUZON	LUZON	All unfiled and unverified deferred costs until March 30, 2008.
Not later than January 5, 2009	VISAYAS	VISAYAS	All unfiled and unverified deferred costs until June 30, 2008.
Not later than April 6, 2009	MINDANAO	MINDANAO	All unfiled and unverified deferred costs until Sept. 30, 2008.

2. Subsequent filings shall be done on an annual basis in accordance with the timelines provided herein:

DATE OF FILING	NPC MAJOR GRIDS	NPC-SPUG GEOGRAPHICAL LOCATION	TEST PERIOD OF APPLICATION
Not later than the first Monday of October of the current year	LUZON	LUZON	April 1 of the previous year to March 30 of the current year.
Not later than the first Monday of January of the current year	VISAYAS	VISAYAS	July 1 of the previous year to June 30 of the current year.
Not later than the first Monday of April of the current year	MINDANAO	MINDANAO	October 1 of previous year to September 30 of the current year.

Section 2. Filing Requirements - The applicant 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.

Section 3. Hearings - The hearings of applications for the Visayas and Mindanao Grids may be held in the ERC Field Offices or such other venues as may be determined by the ERC

Section 4. Documentary Requirements - The required supporting documents shall be submitted together with the annual filing/application as indicated in the proposed rules.

4.1 For Fuel and Purchased Power Costs:

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 year**;
2. Cost of all energy purchased for the **previous year** (categorized as either costs for TSC Sales, Spot Sales, ODPS, DWS, Ancillary and other special sale arrangements), indicating the number of kilowatt-hours purchased and the cost for each supplier;
3. Cost of all fuel consumed for the previous year (categorized as either costs for TSC Sales, Spot Sales, ODPS, DWS, Ancillary and other special sale arrangements), 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, Ancillary Services and special sale arrangements) for the **previous year**;
5. For the SPUG areas, total revenues billed by NPC-SPUG for **the previous year**, and
6. Such other information as may be required by the ERC.

4.2 For Incremental Foreign Currency Exchange

1. Report showing its actual computation of currency exchange related adjustments;
2. Data pertaining to: (a) amount to be recovered through currency exchange related adjustments; (b) actual sales for the billing period; (c) revenue derived from said adjustment per Grid; and (d) total revenue derived per Grid;
3. Supporting documents to be attached to all submissions;
4. List of foreign related operating expenses; and
5. Debt service payments segregating principal and interest portion.

Section 5. Provisional Approval – Upon filing of the application, the ERC may, motu proprio, or 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 documentary requirements on such comments or pleadings filed 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 VII

FINAL PROVISIONS

Section 1. Exception Clause – Where good cause appears, the ERC may allow an exemption from any provisions of these Rules, if such 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 8, 2008.

RODOLFO B. ALBANO, JR.
Chairman

RAUF A. TAN
Commissioner

ALEJANDRO Z. BARIN
Commissioner

MARIA TERESA A.R. CASTAÑEDA
Commissioner

JOSE C. REYES
Commissioner

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