

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



IN THE MATTER OF THE
PETITION FOR THE
AMENDMENT OF ERC
RESOLUTION NO. 18, SERIES
OF 2011 OR THE
RESOLUTION ADOPTING THE
RULES AND PROCEDURES
GOVERNING THE
UTILIZATION AND
DISBURSEMENT OF THE
UNIVERSAL CHARGE -
ENVIRONMENTAL CHARGE

ERC CASE NO. 2014-007 RM

NATIONAL COMMISSION ON
INDIGENOUS PEOPLES (NCIP),
FOUNDATION FOR THE
PHILIPPINE ENVIRONMENT
(FPE) AND BUKIDNON
HIGAONON TRIBAL
ASSOCIATION (BUHITA),
Petitioners.

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DOCKETED
Date: MAY 26 2015

ORDER

On December 23, 2014, the National Commission on Indigenous Peoples (NCIP), Foundation for the Philippine Environment (FPE) and Bukidnon Higaonon Tribal Association (BUHITA) filed a petition for the amendment of Resolution No. 18, Series of 2011, entitled "Resolution Adopting the Rules and Procedures Governing the Utilization and Disbursement of the Universal Charge-Environmental Charge".

In the said petition, NCIP, FPE and BUHITA alleged, among others, the following:

1. NCIP is a government instrumentality existing by virtue of the laws of the Republic of the Philippines with office address at N. De la Merced Building, corner West Avenue,

Quezon City. It is represented by its Chairperson, Atty. Leonor T. Oralde-Quintayo;

2. FPE is a domestic, non-government organization existing by virtue of the laws of the Republic of the Philippines with office address at 77 Matahimik Street, Teacher's Village, Diliman, Quezon City. It is represented by its CEO/Chairperson, and the undersigned, Atty. Rose-Liza Eisma-Osorio. FPE was established as a dynamic, relevant, and growing organization leading actions in biodiversity conservation and sustainable development toward healthy ecosystems and resilient communities. A copy of its Certificate of Registration and Board Resolution authorizing the filing of the instant petition are attached to the petition as Annexes "B" and "B-1", respectively;
3. BUHITA is a domestic, people's organization duly organized and/or accredited by the Securities and Exchange Commission (SEC) and existing by virtue of the laws of the Republic of the Philippines with office address at Dampog Residence, Sta Cruz St., Sumpung, 8700, Malaybalay City. It is represented by its Chairperson, Datu Apolonio Timbangan. BUHITA was organized among fourteen (14) indigenous Higaonon communities covering the unified BUHITA ancestral domain with a total land area of 36,547 hectares. A copy of its Certificate of Registration and resolution authorizing the filing of the instant petition are attached to the petition as Annexes "C" and "C-1", respectively;
4. The instant petition was filed pursuant to Rule 21, Section 2, of the Commission's Rules of Practice and Procedure;
5. On June 27, 2011, the Commission issued Resolution No. 18, Series of 2011, entitled the "Resolution Adopting the Rules and Regulations Governing the Utilization and Disbursement of Universal Charge-Environmental Charge or UC-EC;
6. On November 11, 2013, a round table discussion between the petitioners and the Commission was held to present the Policy Brief on Universal Charge-Environmental Charge (UC-EC) that seeks to amend Resolution No. 18, Series of 2011 based on the following reasons:
 - 6.1. The current definition of host communities is limiting the distribution of the preferential benefits only to

Local Government Units (LGUs) (from barangay to regional) close to the energy-generating facilities, and does not include indigenous cultural communities/indigenous peoples (ICCs/IPs) directly hosting the facilities within their ancestral lands and/or domains; and

- 6.2. The lack of a watershed perspective – i.e. recognizing both surrounding upland and lowland territories as part of the same ecosystem – in present regulation is also preventing upstream communities protecting the headwaters and downstream communities near the point of the last scheme of water utilization in the watershed from receiving their rightful share of financial benefits. A copy of the said Policy Brief on UC-EC dated October 17, 2013 is attached to the petition as Annex “E”;
7. On March 4, 2014, they led a “National Consultation on Energy Regulation (“ER”) 1-94 and UC-EC: Redefining Benefits and Revenue Sharing Mechanisms to Host Communities for Sustainable Watershed Management” to discuss and propose reforms in the regulatory framework on the funds generated pursuant to ER 1-94, as amended and UC-EC provisions of the Republic Act No. 9136 (R.A. 9136). A copy of “A Call for Urgent Policy Action in Response to Existing Exclusionary Provisions of the EPIRA” is attached to the petition as Annex “F”;
8. On June 22, 2014, they formally presented before the Commission their proposed regulations on Resolution No. 18, Series 2011. In summary, they raised the following challenges on the current regulatory guidelines:
 - 8.1. The current guidelines on UC-EC lacks enabling mechanism for ICCs/IPs to access from these revenues, hence, it is imperative to enhance the same as that will enable more inclusionary administrative guidelines that address the due benefits of ICCs/IPs residing within energy-generating watershed locales;
 - 8.1.1. Priority given to ICCs/IPs protecting watersheds and headwaters within their ancestral lands and/or domains as target host communities are in accordance with the Indigenous Peoples

Rights Act (IPRA), or Republic Act No. 8371 (R.A. 8371) and its implementing Rules and Regulations (IRR), specifically Rule III, Part II, Section 2(a), which provides:

“The ICCs/IPs have the right to benefit from the utilization, extraction, use and development of lands and natural resources within their ancestral domains and to be compensated for any social and/or environmental costs of such activities.”

In this regard, it is essential to amend Article I, Section 2 of Resolution No. 18, Series 2011 to include a definition of Host Communities, in this wise:

“Host Communities shall be construed to mean not only the local government units but also upstream indigenous cultural communities/indigenous peoples protecting the headwaters and downstream communities where the water is utilized by hydro/geothermal power plant. Preferential treatment shall be given to indigenous cultural communities/indigenous peoples who are owners of the ancestral domains within which the headwaters are found as target host communities.”

- 8.2. Despite the provision in Article II, Section 1 of Resolution No. 18, Series 2011, which states that UC-EC shall be used solely for watershed areas supporting generating power plants, the procedures for the availment of UC-EC under Section 2 of the same Article should be amended to enable the filing of such petitions by ICCs/IPs together with the National Power Corporation (NPC) with the projects for watershed rehabilitation and management proposed by the latter to be included in the proposed watershed management plans of NPC. Similarly, after the approval of such plans by the Commission, it will direct the Power Sector Assets and Liabilities Management Corporation (PSALM) to release the funds to NPC with a special proviso to allocate specific funds for projects of ICCs/IPs.

In this wise, Article II, Section 2 (a) should be amended, as follows:

“Section 2 (a) NPC shall submit its petition for availment of the environmental charges attaching thereto an annual operations plan consisting of programs and projects specified in Section 1 of Article II and the mode of procurement as mentioned under Section 4 of Article II of these Rules on or before March 15 of every year to ERC. All proposed programs and projects contained in the said plan shall be recommended by the concerned Watershed Area Team, in close coordination with other groups and agencies subject to further review and evaluation by the Head Office – WMD. PROVIDED, THAT IN AREAS WHERE INDIGENOUS CULTURAL COMMUNITIES/INDIGENOUS PEOPLES (ICCs/IPs) ARE HOSTING ENERGY GENERATING FACILITIES IN THEIR ANCESTRAL LAND AND/OR DOMAIN OR HOST COMMUNITIES WITHIN THE SAID WATERSHED AREA, THE NPC SHALL TAKE INTO ACCOUNT THE HOST COMMUNITY'S ADSDPP, OR IN THE ABSENCE OF ONE, SUCH ICCs/IPs SHALL PROPOSE PROJECTS FOR WATERSHED REHABILITATION AND MANAGEMENT TO BE INCLUDED IN THE PROPOSED WATERSHED MANAGEMENT PLANS OF NPC. PROVIDED, FURTHER, THAT AFTER THE APPROVAL OF SUCH PLANS BY ERC, IT WILL DIRECT THE PSALM TO RELEASE THE FUNDS TO NPC WITH A SPECIAL PROVISIO TO ALLOCATE SPECIFIC FUNDS FOR PROJECTS OF ICCs/IPs.”

In light of the foregoing, the Diagram for the availment of UC-EC attached in Annex “G” of the petition is proposed;

- 8.3. The current guidelines under Resolution No. 18, Series 2011 purportedly requires NPC under Article II, Section 2 (b) thereof to present a copy of their petition for availment of environmental charge to the

LGU where it principally operates. This then implies that the “Host Communities” for NPC watershed projects to be funded by UC-EC is solely to be implemented with LGUs and does not enable access by ICCs/IPs hosting such energy generating facility within their ancestral lands and/or domain. In light of the foregoing, Article II, Section 2 (b) should be amended, as follows:

“Section 2 (b) (1). Petitioner must furnish a copy of the petition to the Legislative Body of the LGU (sic) of the City or municipality, where it principally operates. A COPY OF SUCH PETITION SHALL LIKEWISE BE FURNISHED TO THE INDIGENOUS CULTURAL COMMUNITIES/INDIGENOUS PEOPLES, THROUGH THE NATIONAL COMMISSION ON INDIGENOUS PEOPLES (NCIP), WHERE SUCH WATERSHED PROJECTS ARE PRINCIPALLY IMPLEMENTED.”;

8.4. In Section 4 of Article II of Resolution No. 18, Series of 2011, NPC may choose as the following modes of procurement in implementing the approved projects: Peoples Organization, Family Contract Reforestation, Individual Tribal Member Cooperator Contract Reforestation, among others. This necessarily implies that only individuals from ICCs/IPs may avail of such projects, hence, there is a need to amend Section 4 of Article II of Resolution No. 18, Series of 2011 based on the following reasons:

8.4.1 The guidelines for the utilization of UC-EC for watershed management should consider the entire watershed, including downstream and upstream communities, as the basic planning and management unit, hence, ICCs/IPs living in or near downstream and upstream communities shall be entitled to avail of such projects. Thus, an additional item is proposed, which will include contracts for reforestation and other watershed projects with ICCs/IPs;

8.4.2 For projects undertaken by administration through direct hiring of laborers or through “pakyaw” labor as provided in Section 4 (e) and

(f), respectively, the same must apply only to emergency cases and on a case-to-case basis by virtue of Appendix 5 (The Guidelines on Implementation of Infrastructure Projects Undertaken by the AFP Corps of Engineers) of Republic Act No. 9184 (R.A. 9184);

8.4.3 For projects undertaken by People's Organization, Family Contract Reforestation, Individual Tree Grower Contract Reforestation as provided in Section 4 (d), (g), (h), and (i), respectively, it must be stressed that these items are not found in the provisions of R.A. 9184 and its corresponding appendices. Hence, a revision of the said section is proposed to indicate therein the specific basis for the indicated items, and to include a separate provision to include these in projects not covered by R.A. 9184;

Thus, based on these reasons, Article II, Section 4 shall be amended, as follows:

"Section 4. In implementing the projects approved by the ERC, NPC may choose any or a combination of the following modes of procurement, WITH DUE CONSIDERATION OF THE WATERSHED, INCLUDING DOWNSTREAM AND UPSTREAM COMMUNITIES, AS THE BASIC PLANNING AND MANAGEMENT UNIT, provided however that the chosen procurement is in accordance with Republic Act No. 9184 (RA 9184) or the Government Procurement Act of 2003:

- a) Public Bidding*
- b) Agency to Agency*
- c) Alternative Mode of Procurement*
 - 1. Limited Source Bidding*
 - 2. Direct Contracting*
 - 3. Shopping*
 - 4. Negotiated Procurement*

d) *By Administration through direct hiring of Laborers ONLY TO EMERGENCY CASES AND ON A CASE-TO-CASE BASIS*

e) *By Administration through Pakyaw Labor ONLY TO EMERGENCY CASES AND ON A CASE-TO-CASE BASIS*

f) *CONTRACT FOR REFORESTATION AND OTHER WATERSHED PROJECTS WITH ICCs/IPs.,*

AND, INCLUDING THOSE NOT COVERED BY RA 9184, IN PARTICULAR,

g) *People's Organization*

h) *Family Contract Reforestation*

i) *Individual Tree Grower Contract Reforestation."*

- 8.5. To provide clear guidelines on regular monitoring and evaluation as an essential tool to improve field-level watershed management interventions and ensure effective management of the watershed. Article III, Section 4, Paragraph 4 shall be amended to incorporate the need to constitute an independent monitoring and evaluation body, composed primarily of ERC and PSALM together with NPC and other groups and agencies, to monitor and evaluate the project, including its impacts on a regular (bi-annual) basis with their findings presented to concerned stakeholders within the watershed on an annual basis. Hence, Article III, Section 4, Paragraph 4 shall be amended, as follows:

"Section 4. Flexibility in the use of funds under the UC-EC.

x x x

The programs and projects undertaken under these Rules shall be subject to monitoring and audit by the ERC and

PSALM. IN THIS REGARD, THESE AGENCIES, TOGETHER WITH NPC, NCIP, AND OTHER GROUPS FROM THE CIVIL SOCIETY AND PRIVATE SECTOR, SHALL CONSTITUTE AN INDEPENDENT MONITORING AND EVALUATION BODY TO MONITOR AND EVALUATE THE PROJECT, INCLUDING ITS IMPACTS. THE BODY SHALL CONDUCT A REGULAR (BI-ANNUAL) MONITORING OF ONGOING UC-EC WATERSHED PROJECTS. FINDINGS SHALL BE PRESENTED TO CONCERNED STAKEHOLDERS WITHIN THE WATERSHED ON AN ANNUAL BASIS.

IF THE PROJECTS ARE LOCATED IN ICCs/IPs AREAS, THE NCIP MUST BE INCLUDED AS A MEMBER OF THE MONITORING AND AUDIT BODY."

9. They adopted the arguments in its Policy Brief dated October 17, 2013 and its proposed regulations as stated above, as grounds for the approval of the instant petition. A copy of a Proposed Resolution to amend Resolution No. 18, Series of 2011 is attached to the petition as Annex "H"; and
10. They pray that the Commission amend pertinent provisions of Resolution No. 18, Series of 2011 and to incorporate such provisions as may be necessary or convenient to integrate inclusionary guidelines that address due benefits to ICCs/IPs hosting energy generating facilities in their ancestral lands and/or domains.

Finding the said petition sufficient in form and in substance with the required fees having been paid, the same is hereby set for initial hearing on **June 15, 2015 (Monday) at two o'clock in the afternoon (2:00 P.M.) at the ERC Hearing Room, 15th Floor, Pacific Center Building, San Miguel Avenue, Pasig City.**

NCIP, FPE and BUHITA are hereby directed to cause the publication of the attached Notice of Proposed Rule-Making, at their own expense, once (1x) in a newspaper of general circulation in the Philippines, with the date of the publication to be made not later than ten (10) days before the date of the scheduled hearing. It is also directed to inform all distribution utilities (DUs), by any other means

available and appropriate, of the filing of the instant petition and the scheduled hearing thereon.

Let copies of the petition, this Order, and the attached Notice of Proposed Rule-Making be furnished all concerned electric cooperatives, the Office of the Solicitor General (OSG), the Commission on Audit (COA) and the Committees on Energy of both Houses of Congress. They are hereby requested, if they so desire, to send their duly authorized representatives at the scheduled hearing.

NCIP, FPE and BUHITA are directed to furnish NPC, within three (3) days from receipt hereof, and all those making requests therefor with copies of the petition and its attachments, subject to reimbursement of reasonable photocopying costs. NPC is hereby directed to file its comment on the instant petition within ten (10) days from receipt of the petition and its annexes.

On the date of the public hearing, NCIP, FPE and BUHITA must submit to the Commission their written Compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidence on the publication of the Notice of Proposed Rule-Making consisting of an affidavit of the Editor or Business Manager of the newspaper where the said Notice of Proposed Rule-Making was published together with the complete issue of the said newspaper, and such other proofs of compliance with the requirements of the Commission.

NCIP, FPE and BUHITA should be guided by Rule 21 of the Commission's Rules of Practice and Procedure.

SO ORDERED.

Pasig City, May 18, 2015.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ZENAIDA G. CRUZ-DUCUT
Chairperson

Copy Furnished:

1. **Hon. Leonor T. Oralde-Quintayo**
Chairperson
National Commission on Indigenous Peoples (NCIP)
N. De la Merced Building, corner West Avenue, Quezon City

2. **Atty. Rose-Liza Eisma-Osorio**
Foundation for the Philippine Environment (FPE)
77 Matahimik Street, Teacher's Village, Diliman, Quezon City

Bukidnon Higaonon Tribal Association (BUHITA)
Dampog Residence, Sta Cruz St., Sumpung,
Malaybalay City

3. **Office of the Solicitor General**
134 Amorsolo Street, Legaspi Village
Makati City, Metro Manila

4. **Commission on Audit**
Commonwealth Avenue
Quezon City, Metro Manila

5. **Senate Committee on Energy**
GSIS Bldg., Roxas Blvd., Pasay City
Metro Manila

6. **House Committee on Energy**
Batasan Hills, Quirino City, Metro Manila

7. **All Distribution Utilities**