

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 BOMBING / SABOTAGE INCIDENTS IN MINDANAO AND LUZON, AND LIGHTNING / THUNDER INCIDENT IN LUZON IN ACCORDANCE WITH THE RULES FOR SETTING TRANSMISSION WHEELING RATES, WITH PRAYER FOR PROVISIONAL AUTHORITY

ERC CASE NO. 2018-100 RC

NATIONAL GRID CORPORATION OF THE PHILIPPINES,
Applicant.
X-----X

D O C K E T E D
Date: NOV 15 / 2018
By: [Signature]

ORDER

On 2 October 2018, Applicant National Grid Corporation of the Philippines (NGCP) filed an *Application* dated 14 September 2018, seeking the Commission's approval of its force majeure event (Regulated FM Pass-Through) for the bombing/sabotage incidents in Mindanao and Luzon, and the lightning/thunder incident in Luzon, with prayer for issuance of provisional authority.

In the said *Application*, NGCP alleged, among others, the following:

1. It is a corporation created and existing under the laws of the Republic of the Philippines, with principal office address at NGCP Building, Quezon Avenue corner B.I.R Road, Diliman,

Quezon City. It is the concessionaire that operates and maintains the nationwide transmission system pursuant to Section 21 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA).¹

2. Under Republic Act No. 9511,² NGCP was granted a franchise to construct, install, finance, manage, improve, expand, operate, maintain, rehabilitate, repair and refurbish the present nationwide transmission system of the Republic of the Philippines.
3. Pursuant to Section 10.1.1 of Resolution No. 21, Series of 2001,³ NGCP is allowed to recover the cost incurred for the repair, restoration, rehabilitation of its transmission assets and other related facilities damaged as a result of a force majeure event (FME), as defined in Article I of RTWR.

**Allegations on Bombing /
Sabotage Incident in
Mindanao as FME**

4. On 3 October 2017, Tower No. 106 of the Kibawe-Tacurong/Sultan Kudarat 138 kV line, located at Barangay Manarapan, Carmen, Cotabato, was bombed causing the complete collapse of the tower. Due to its force, the bombing caused damage to NGCP's transmission assets and other related facilities in Mindanao. A copy of the Memorandum dated 4 October 2017, issued by the Chief of Police of Carmen, Cotabato is attached and made integral part of the Application.
5. In compliance with Article X of the RTWR, NGCP filed an FME Notice dated 18 December 2017, duly stamped "Received" by the Commission.

**Allegations on Bombing /
Sabotage Incident in
Luzon as FME**

6. On 10 October 2017, fully-armed men entered the premises of HEDCOR-Sabangan Substation at Sitio Lukong, Otucan Norte, Bauko, Mountain Province, and installed and

¹ Republic Act No. 9136 entitled, "An Act Ordaining Reforms in the Electric Power Industry Amending for the Purpose Certain Laws and for Other Purposes"

² Republic Act No. 9511 entitled "An Act Granting the National Grid Corporation of the Philippines a Franchise to Engage in the Business of Conveying or Transmitting Electricity Through High Voltage Back-bone System or Interconnected Transmission Lines, Substations and Related Facilities, and for Other Purposes"

³ Resolution No. 21, Series of 2001 entitled, "Rules for Setting Transmission Wheeling Rates (RTWR)"

detonated improvised explosive devices at the control room. This resulted in damage to the facilities, including NGCP's transmission assets and related facilities, as well as power outage in the whole of Mountain Province and nearby areas. A copy of the Memorandum dated 11 October 2017 issued by the Chief of Police of Bauko, Mountain Province is attached and made integral part of the Application.

7. In compliance with Article X of the RTWR, NGCP filed an FME Notice dated 18 December 2017, duly stamped "Received" by the Commission, a copy of which is attached to the Application as Annex "D." The Commission acknowledged receipt of the FME Notice in its Letter dated 4 January 2018.

**Allegations on Lightning
Incident in Luzon as FME**

8. On 14 November 2017, heavy rains with frequent intense lightning and thunder were observed at the La Trinidad Substation in Benguet Province, followed by an explosion. As a result, NGCP's transmission assets and other related facilities were damaged. A copy of the Certification dated 17 November 2017, issued by the Punong Barangay of Beckel, La Trinidad, Benguet is attached and made integral part of the Application.
9. In compliance with Article X of the RTWR, NGCP filed an FME Notice dated 5 January 2018, duly stamped "Received" by the Commission. Likewise, the Commission acknowledged receipt of the FME Notice in its Letter dated 5 February 2018.

FME Claim

10. Immediately after the devastation caused by the foregoing incidents, NGCP started the repair, restoration and rehabilitation of its damaged transmission assets and other related facilities in order to restore transmission service to its customers and the public. As a result, NGCP incurred additional costs for the repair, restoration and rehabilitation of the said damaged transmission assets.
11. Under Section 1.3(a) of the RTWR, an FME is defined as a "typhoon, storm, tropical depression, flood, drought, volcanic eruption, earthquake, tidal wave or landslide; or an act of public enemy, war (declared or undeclared), sabotage, blockade, revolution, riot, insurrection, civil commotion or any violent or threatening actions."

12. Based on the Memoranda issued by the Chief of Police of Carmen, Cotabato and the Chief of Police of Bauko, Mountain Province, respectively dated 4 October 2017 and 11 October 2017, and the Certification issued by the Punong Barangay of Beckel, La Trinidad, Benguet dated 17 November 2017, the unexpected and disruptive bombing/sabotage incidents in Mindanao and Luzon, as well as the lightning/thunder incident in Luzon (subject force majeure events) occurred, thus, falling within the definition of an FME in accordance with Section 1.3 of the RTWR.
13. Pursuant to Section 10.1.1 of the RTWR, NGCP is allowed to recover the cost it incurred in the repair, restoration, and rehabilitation of its transmission assets and other related facilities damaged by the subject force majeure events through an FM Pass-Through Amount.
14. Within three (3) months after the occurrence of the subject force majeure events, NGCP filed before the Commission FME Notices for the bombing/sabotage incident in Mindanao and Luzon on 18 December 2017, and the FME Notice for the lightning/thunder incident in Luzon on 5 January 2018 pursuant to Sections 10.2.1 and 10.2.2 of the RTWR.
15. Thereafter, within twelve (12) months after the occurrence of the subject force majeure events, NGCP filed the instant FME Application, in accordance with Sections 10.2.1 and 10.2.3 of the RTWR.

FM Pass-Through Amount Computation

16. NGCP has not recovered from its Industrial All-Risk (IAR) Insurance Policy procured from the Government Service Insurance System (GSIS) for the year 2017, the cost that it incurred in the repair, restoration, and rehabilitation of the transmission assets and other related facilities damaged by the subject force majeure events, considering that the affected assets are not covered by the IAR, the total cost of damage being below the One (1) Million US Dollars deductible amount. Thus, it is but proper for NGCP to file the instant FME Application to recover the cost it incurred for the repair, restoration and rehabilitation of its transmission assets and other related facilities damaged by the subject force majeure events pursuant to the RTWR.
17. The total cost NGCP incurred for the repair, restoration and rehabilitation of its transmission assets and other related facilities damaged by the subject force majeure events is

Three Million Four Hundred Sixteen Thousand Seven Hundred Twelve Pesos and 11/100(PhP3,416,712.11). Further, the recoverable values of the assets destroyed (Net Fixed Asset Value) is Four Million Three Hundred Thirty-One Thousand Eighty-Nine Pesos and 77/100 (PhP4,331,089.77). The breakdown of the expenses is shown in the table below:

FME	CAPEX* (PhP)	NFAV (PhP)	TOTAL (PhP)
Bombing/Sabotage in Mindanao	1,110,772.77	1,064,576.04	2,175,348.81
Bombing/Sabotage in Luzon	175,613.87	2,016,309.38	2,191,923.25
Lightning/Thunder in Luzon	2,130,325.47	1,250,204.35	3,380,529.82
Total	3,416,712.11	4,331,089.77	7,747,801.88

** Capital Expenditures: Inclusive of VAT, exclusive of Permit Fees*

18. NGCP proposes the FM Pass-Through Amounts, in PhP/kW-month, as additional network charges starting November 2018 billing month until December 2020 for, or until such time that the amounts incurred are fully recovered, computed as shown in the table below:

LUZON	2018	2019	2020
PhP/kW-mo.	0.08	0.01	0.02
PhP/kWh	0.00016	0.00003	0.00003
MINDANAO			
PhP/kW-mo.	0.16	0.03	0.03
PhP/kWh	0.0003	0.0001	0.0001

Note: PhP/kWh in this table is only the equivalent PhP/kWh of the FME Pass-Through amounts in PhP/kW-mo. used to determine paragraph 21 of this Application.

19. NGCP proposes the FM Pass-Through Amounts for the years 2018 to 2020 to allow the recovery of the expenditures incurred by NGCP relative to the subject force majeure events.
20. The proposed FM Pass-Through Amounts can be recovered pursuant to Section 10.1.1 of the RTWR, wherein NGCP is allowed to recover the cost incurred for the repair, restoration, and rehabilitation of damage sustained by its transmission assets and other related facilities as a result of a force majeure event. A copy of the FM Pass-Through Amount Computation is attached and made integral part of this Application.

21. Further, the FM Pass-Through Amounts in this Application do not breach the Force Majeure Threshold Amount (FMTA) of PhPo.0357/kWh in accordance with the RTWR. A copy of the FMTA Computation is attached and made integral part of this Application.
22. Also, NGCP considered the NFAV of the transmission assets and other related facilities damaged by the subject force majeure events given that NGCP would have normally fully recovered the return of capital on said assets for the duration of their economic lives had these assets not been damaged or destroyed by the subject force majeure events.

**JUSTIFICATION FOR THE ISSUANCE OF
PROVISIONAL AUTHORITY**

23. NGCP moves for the issuance of provisional approval for the immediate recovery of the FM Pass-Through Amounts pursuant to Section 3, Rule 14 of the 2006 ERC Rules of Practice and Procedure.
24. NGCP needs to immediately recover the actual expenses incurred for the repair, restoration and rehabilitation of the damaged transmission assets and other related facilities. It must be emphasized that the rehabilitation of the assets damaged by the subject force majeure events required capital infusion, the recovery of which should be allowed immediately in order to avoid any financial strain in the operation of NGCP and to allow the continuous provision of transmission service to the grid customers.
25. In addition, the timely implementation of the FM Pass-Through Amounts will allow the equal or even spread of the increases or decreases in tariffs from the initial implementation of the recovery of the cost.
26. A copy of the Judicial Affidavit of Agnes F. Dela Cruz, Head, Tariff Design and Billing Management Division, Revenue and Regulatory Affairs, in support of the instant Application, is attached and made integral part of the Application.
27. NGCP prays of this Commission to, after due notice and hearing:
 - a. Declare the bombing/sabotage incidents in Mindanao and Luzon, as well as the lightning/thunder incident in Luzon as force majeure events (FME);

- b. Grant provisional approval to implement and bill the FM Pass-Through Amounts to Mindanao and Luzon customers starting November 2018 billing month to December 2020 billing month or until such time that the amount incurred is fully recovered;

LUZON	2018	2019	2020
PhP/kW-mo.	0.08	0.01	0.02
PhP/kWh	0.00016	0.00003	0.00003
MINDANAO			
PhP/kW-mo.	0.16	0.03	0.03
PhP/kWh	0.0003	0.0001	0.0001

- c. Approve the FME CAPEX amounting to Three Million Four Hundred Sixteen Thousand Seven Hundred Twelve Pesos and 11/100 (PhP3,416,712.11) incurred by NGCP for the repair, restoration, and rehabilitation of the damaged transmission assets and other related facilities due to the subject force majeure events;
- d. Approve the proposed FM Pass-Through Amount to be collected from the Mindanao and Luzon customers starting November 2018 billing month to December 2020 billing month or until such time that the amount incurred is fully recovered, as follows:

LUZON	2018	2019	2020
PhP/kW-mo.	0.08	0.01	0.02
PhP/kWh	0.00016	0.00003	0.00003
MINDANAO			
PhP/kW-mo.	0.16	0.03	0.03
PhP/kWh	0.0003	0.0001	0.0001

- e. Approve and allow the recovery of the Net Fixed Asset Value of the transmission assets and other related facilities damaged by the subject force majeure events amounting to Four Million Three Hundred Thirty One Thousand Eighty-Nine Pesos and 77/100 (PhP4,331,089.77) given that it would have been fully recovered by NGCP if these transmission assets and other related facilities have not been damaged or destroyed by the subject force majeure events; and
- f. Exclude the proposed Pass-Through Amounts from the side constraint calculation.

Finding the said *Application* to be sufficient in form and substance, with the required fees having been paid, the same is hereby set for determination of compliance with the jurisdictional requirements, expository presentation, pre-trial conference, and presentation of evidence on the following dates and venues:

Date and Time	Venue	Particulars
LUZON		
15 January 2019 (Tuesday) at nine o'clock in the morning (9:00 A.M.)	ERC Hearing Room, 15 th Floor, Pacific Center Building, San Miguel Avenue, Pasig City	Jurisdictional and Expository Presentation
MINDANAO		
16 January 2019 (Wednesday) at nine o'clock in the morning (9:00 A.M.)	ERC Mindanao Field Office (MFO), Mezzanine Floor, Mintrade Building, Monteverde Avenue cor. Sales Street, Davao City	Expository Presentation and Pre-Trial Conference
LUZON		
24 January 2019 (Thursday) at nine o'clock in the morning (9:00 A.M.)	ERC Hearing Room, 15 th Floor, Pacific Center Building, San Miguel Avenue, Pasig City	Pre-trial Conference and Evidentiary Hearing

Accordingly, NGCP is hereby directed to:

- 1) Cause the publication of the attached Notice of Public Hearing in two (2) newspapers of nationwide circulation in the Philippines at its own expense, twice (2x) within two (2) successive weeks, the dates of publication not being less than seven (7) days apart and the date of the last publication to be made not later than ten (10) days before the date of the scheduled initial hearing;
- 2) Furnish with copies of this Order and the attached Notice of Public Hearing the Offices of the Provincial Governors, Mayors, and Local Government Unit (LGU) legislative bodies where NGCP principally operates, including its regional offices, for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within the franchise area of the filing of the *Application*, its reasons therefor, and of the scheduled hearings thereon, by any other means available and appropriate;

- 4) Furnish with copies of this Order and the attached Notice of Public Hearing, 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; and
- 5) Furnish with copies of the *Application* and its attachments all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing, NGCP must submit to the Commission its written compliance with the aforementioned jurisdictional requirements attaching therewith, methodically arranged and duly marked the following:

- 1) The evidence of publication of the attached Notice of Public Hearing consisting of affidavits of the Editors or Business Managers of the newspapers where the said Notice of Public Hearing were published, and the complete issues of the said newspapers;
- 2) The evidence of actual posting of this Order and the attached Notice of Public Hearing, consisting of certifications issued to that effect, signed by the Provincial Governors, Mayors, and LGU legislative bodies or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by NGCP to inform the consumers within the affected areas of the filing of the *Application*, its reasons therefor, and of the scheduled hearing thereon;
- 4) The evidence of receipt of copies of this Order and the attached Notice of Public Hearing by the OSG, the COA, and the Committees on Energy of both Houses of Congress;
- 5) The evidence of receipt of copies of the *Application* and its attachments by all those making requests therefor, if any; and
- 6) Such other proofs of compliance with the requirements of the Commission.

NGCP and all interested parties are also required to submit, at least five (5) days before the date of initial hearing and pre-trial conference, their respective Pre-trial Briefs containing, among others:

- 1) A summary of admitted facts and proposed stipulation of facts;
- 2) The issues to be tried or resolved;
- 3) The documents or exhibits to be presented, stating the purposes and proposed markings therefore; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-trial Brief.

Failure of NGCP to comply with the above requirements within the prescribed period shall be a ground for cancellation of the scheduled hearing, and the resetting of which shall be six (6) months from the said date of cancellation.

NGCP must also be prepared to make an expository presentation of the instant *Application*, aided by whatever communication medium that it may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties, what the *Application* is all about and the reasons and justifications being cited in support thereof.

SO ORDERED.

Pasig City, 12 November 2018.

FOR AND BY AUTHORITY
OF THE COMMISSION:


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner


LS: MFD/ARG/GLO

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COPY FURNISHED:

1. Atty. Luis Manuel U. Bugayong, Atty. Mark Anthony S. Actub and
Atty. Faye Josephine R. Miguel-Rañola
Counsel for Applicant NGCP
Office of the General Counsel
National Grid Corporation of the Philippines
NGCP Building, Quezon Avenue corner
BIR Road, Diliman, Quezon City
2. National Grid Corporation of the Philippines
NGCP Building, Quezon Avenue corner
BIR Road, Diliman, Quezon City
3. NGCP North Luzon Regional Office
Poro Pt., San Fernando, La Union
4. NGCP South Luzon Regional Office
Barangay San Vicente, Biñan City, Laguna
5. NGCP Visayas Regional Office
Tamaban, Cebu City, Cebu
6. NGCP Mindanao Regional Office
Iligan City, Lanao del Norte
7. Office of the Solicitor General (OSG)
134 Amorsolo Street, Legaspi Village, Makati City
8. Commission on Audit (COA)
Commonwealth Avenue, Quezon City 1121
9. Senate Committee on Energy
GSIS Building, Roxas Boulevard, Pasay City 1307
10. House Committee on Energy
Batasan Hills, Quezon City 1126
11. Office of the City Mayor
City of Quezon
12. Office of the Local Government (LGU) legislative body
City of Quezon
13. Office of the Provincial Governor
Province of La Union
14. Office of the Local Government (LGU) legislative body
Province of La Union
15. Office of the City Mayor
City of San Fernando, La Union
16. Office of the Local Government (LGU) legislative body
City of San Fernando, La Union
17. Office of the Provincial Governor
Province of Cebu
18. Office of the Local Government (LGU) legislative body
Province of Cebu
19. Office of the City Mayor
City of Cebu
20. Office of the Local Government (LGU) legislative body
City of Cebu
21. Office of the Provincial Governor
Province of Lanao del Norte

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22. Office of the Local Government (LGU) legislative body
Province of Lanao del Norte
23. Office of the City Mayor
City of Iligan, Lanao del Norte
24. Office of the Local Government (LGU) legislative body
City of Iligan, Lanao del Norte
25. Regulatory Operations Service (ROS)
Energy Regulatory Commission
17th Floor, Pacific Center, San Miguel Avenue, Pasig City