

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



**IN THE MATTER OF THE
PETITION FOR THE APPROVAL
OF THE RECOVERY FROM THE
UNIVERSAL CHARGE OF THE
SHORTFALL IN THE
MISSIONARY ELECTRIFICATION
SUBSIDY FOR CY 2013 AND
THE CORRESPONDING
ADJUSTMENT OF THE
UNIVERSAL CHARGE FOR
MISSIONARY ELECTRIFICATION
(UCME), WITH PRAYER FOR A
PROVISIONAL AUTHORITY**

ERC CASE NO. 2014-089 RC

**NATIONAL POWER
CORPORATION (NPC),
Petitioner.
X-----X**

DOCKETED
Date: JUL 11 2014
By: *[Signature]*

ORDER

On June 20, 2014, the National Power Corporation (NPC) filed a petition for the approval of the recovery from the Universal Charge (UC) of the shortfall in the Missionary Electrification Subsidy (ME Subsidy) for Calendar Year (CY) 2013 and the corresponding adjustment of the Universal Charge for Missionary Electrification (UCME), with prayer for the issuance of a provisional authority.

In the said petition, NPC alleged, among others, that:

1. Pursuant to Section 70 of Republic Act No. 9136 (R.A. 9136), otherwise known as the Electric Power Industry Reform Act (EPIRA) of 2001, it shall remain as a National Government owned and controlled corporation to perform the missionary electrification function through its Small Power Utilities Group (SPUG) and shall be responsible for providing power generation and its associated power delivery systems in areas that are not connected to the transmission system;

2. It filed the instant petition in its capacity as the implementing agency for missionary electrification which function shall be funded from the revenue from sales in missionary areas and from the UC to be collected from all electricity end-users as determined by the Commission and in line with Section 2 (a) of the Implementing Rules and Regulations (IRR) of Republic Act No. 9136 (R.A. 9136);
3. Pursuant to Section 4 of Republic Act No. 6395 (R.A. 6395), as amended, and Executive Order No. 86¹, issued by virtue of the authority granted to the President of the Republic of the Philippines under Republic Act No. 7684 (R.A. 7684)², it is duly authorized to charge twelve percent (12%) return on its rate base composed of the sum of its net assets in operation plus two (2) months operating capital;
4. The Commission approved and issued Resolution No. 21 Series of 2011, entitled "Amended Guidelines for the Setting and Approval of Electricity Generation Rates and Subsidies for Missionary Electrification Areas", which provides the guidelines for the setting and approval of electricity generation rates and subsidies for missionary electrification areas and for the fixing of and availment of subsidies for missionary electrification areas as well as the cash incentives for the Renewable Energy (RE) Developers for missionary electrification from the UCME;
5. The said Resolution allows it and the New Power Providers (NPPs) to recover the NPP True Cost of Generation Rate (TCGR) as approved by the Commission. In cases where the NPP TCGR is higher than the Subsidized Approved Generation Rate (SAGR), they shall be allowed to recover the difference between the NPP TCGR and the SAGR from the UCME³. Further, in the same Resolution, it is provided that if the reconciliation results in a deficiency, as confirmed by the Commission, it shall be entitled to an increase in the UCME to cover the shortfall caused by several factors as therein specified (*i.e.* adjustments due to Generation Rate Adjustment Mechanism [GRAM] and Incremental Currency Exchange Rate Adjustment [ICERA], adjustments in the NPP TCGR and other analogous cases)⁴;

¹ "Fixing the Rate of Return on Rate Base of the National Power Corporation at twelve percent (12%) of the Rate Base as Defined in Section 4 of Republic Act No. 6395, as Amended"

² "Electric Power Crises Act of 1993"

³ Article II Section 4

⁴ Article V, Section 2 (c)

6. The Commission likewise issued Resolution No. 22, Series of 2006⁵ on May 3, 2006 which mandates NPC to file a quarterly application, if necessary, to recover any shortfall in the UCME caused by factors such as collection shortfall, adjustments in the Full Cost Recovery Rate (FCRR) and other analogous cases⁶. Also, it is provided therein that "if the reconciliation results in the deficiency, it shall be entitled to file an application with the Commission for an increase in the UCME to cover the shortfall⁷;

ABSTRACT OF THE PROPOSED RECOVERY OF THE SHORTFALL IN THE UCME SUBSIDY

7. **Reconciliation of Actual UCME.** Based on CY 2013 test period, it utilized in its calculation the following documents:
- a. Certified CY 2013 Financial Statements;
 - b. Actual Results of Operation; and
 - c. The actual disbursements of UCME to NPPs and Qualified Third Party (QTP);
8. **Total UC-ME Shortfall.** Based on the foregoing documents and as a result of the calculations made, the total shortfall that it proposes to recover from the UCME is equivalent to monthly rate of **PhP0.0769/kWh** based on the twelve (12) - month recovery period as summarized below:

Particulars	NPC (a)	NPP (b)	Total (a+b)
Actual Expenses	6,760,536,461.83	2,456,904,266.25	9,217,440,728.08
RORB	1,111,463,701.21	-	1,111,463,701.21
Total Revenue Requirement	7,872,000,163.04	2,456,904,266.25	10,328,904,429.29
Less: Revenue from Sales	2,103,132,830.75	-	2,103,132,830.75
Required Revenue from UCME	5,768,867,332.29	2,456,904,266.25	8,225,771,598.54
CY 2013 Actual UCME Revenue (Basic)	2,403,699,750.00	359,316,910.00	2,763,016,660.00
UCME SHORTFALL, in PhP	3,365,167,582.29	2,097,587,356.25	5,462,754,938.54
Rate Impact, PhP/kWh	0.0474	0.0295	0.0769
Projected Energy Sales, MWh (August 2014 to July 2015)			71,038,394.12

9. In the reconciliation, the resulting shortfall in the revenue from UCME was calculated based on the following formula:

⁵ Rules for the Regulation of the Qualified Third Parties Performing Missionary Electrification in Areas Declared Unviable by the Department of Energy

⁶ Article IV, Section 3 (b)

⁷ Article IV Section 3 (d)

UCME True-Up Shortfall/(Surplus) = Total UC-ME Requirement – Approved UC-ME

Where:

Total UCME Requirement = (NPC Revenue Requirement – Revenue from Sales) + (NPP Subsidy and QTP Subsidy)

10. The total revenue considered was based on the amount granted and accrued from the UCME as well as from the revenue from sales based on approved SAGR. All the allowable expenses incurred by it as well as total subsidy paid to NPPs and QTP were likewise considered;
11. In the calculation of its revenue requirement, the following accounts and actual costs were considered:
 - a. Actual Fuel Costs;
 - b. Other Operating Expenses, which includes Personal Services and Maintenance and Other Operating Expense;
 - c. Depreciation;
 - d. The foreign exchange fluctuation on debt servicing;
 - d. Rate Base as of December 2013; and
 - e. Revenues from SAGR;
12. The amount of NPPs and QTP subsidies considered were based on the actual disbursements and payment made consistent with the UC-Settlement Agreement (SA) between NPC and respective power providers taking into account their respective Commission-approved Power Supply Agreements (PSAs);
13. The Average Energy Sales Forecast under the Department of Energy's (DOE) Power Development Plan (PDP) from August 2014 to July 2015 was utilized to determine the proposed UCME true-up charges in PhP/kWh;
14. The following documents were submitted in support of the proposed recovery of shortfall in the UCME:
 - a. NPC Board Secretary's Certificate issued on June 13, 2014;
 - b. Summary of shortfall and adjustment calculation;
 - c. NPC Results of Operations (ROO);

- d. Discussion on revenue requirement and rate base components;
- e. Summary of UCME Subsidy Fees paid to NPPs and QTP;
- f. Summary of actual UCME received from PSALM; and
- g. Projected Philippines energy sales;

**RATE IMPLICATIONS OF THE
PROPOSED RECOVERY OF UC-ME SHORTFALL**

- 15. Under the foregoing premises, the recovery of PhP5,462,754,938.54 or an equivalent monthly rate impact of PhP0.0769/kWh is proposed to be collected from the nationwide electricity end-consumers within the period of twelve (12) months and be charged over and above the existing UCME rate;
- 16. The recovery of shortfall within one (1) year or twelve months would be reasonable and timely in order for it to augment its financial requirements and to provide up to date recovery and adjustment of the ensuing years' subsidy requirements;
- 17. The costs proposed for recovery are merely reimbursement of actual expenses made for CY 2013 and though recovery scheme is deferred in nature, there are no carrying charges calculated and proposed thereon;

**ALLEGATIONS IN SUPPORT OF THE PRAYER FOR
PROVISIONAL AUTHORITY**

- 18. The recovery of only portion of its costs of generation from the SAGR, which is being charged to its off-grid customers, is not reflective of its revenue requirement. This revenue from the said sales represents only 47% if compared to actual fuel costs incurred in 2013, to wit:

Particulars	Amount	Percentage
Actual Fuel Costs	4,469,595,265.68	100%
Average, PhP/kWh	11.1783	
Actual Revenue from Sales	2,103,132,830.75	47%
Average, PhP/kWh	5.2599	
Difference	2,366,462,434.93	53%
PhP/kWh	5.9184	

Actual Energy Sales, kWh

399,846,204.35

19. The amount proposed for recovery is already an incurred cost of it and within the reasonable cost of servicing the consumers in the missionary areas considering the nature of operation and the level of demand in the off-grid areas;
20. An additional funding through the approval of the instant petition will ensure an uninterrupted electricity supply as this would fully augment its funding requirements, NPPs and QTP. Given the increasing demand for energy and in line with the government thrust of economic development in the off-grid areas, availability of funding thru the UCME especially for fuel requirements will enable it and NPPs/QTP to optimize the use of available plant capacity;
21. Further, based on the projected requirements for CY 2015, it is expected to incur deficit in its funding source if there will be no additional revenue that can be sourced and recovered from the UCME thru the instant petition and from the pending true-up petitions for CY 2012. The following scenarios are expected to happen affecting its financial and operational capability:
 - a. Deficit of PhP6.364 Billion by the end of December 2014;
 - b. The required volume of fuel contracted based on the Certified Budget Inclusion (CBI) issued by it which will not be drawn from supplier due to lack of guaranteed funds and fuel suppliers will likely stop delivery;
 - c. Its inability to pay NPPs and QTP up to end of CY 2014 will result to the payment of interest charges considering the delay in the payment of subsidy that will in turn be charged to the UCME;
 - d. Reduction in operating hours of power plants for the remaining months or plant shutdown; and

- e. NPPs may stop operation due to non-payment of subsidy, which not only pose negative impact specifically to prospective NPP/QTP as well as RE Developers but would also create an impression against NPC in particular and that of the government's thrust of encouraging private sector participation in the off-grid areas in general;
22. It was allowed by the Department of Budget and Management (DBM) to augment only its Corporate Budget if it can source guaranteed funding through the approval of additional rates. The approval therefore of the instant petition will enable it to support and meet its projected budgetary requirements for CY 2014 and CY 2015 especially its funding requirement for fuel and subsidy to NPP/QTP;
23. Despite the approved CY 2010 UCME true-up under ERC Case No. 2012-046 RC of the PhP2,256,750,319.78 of which half is supposed to be recovered in 2014 including the approved CY 2011 UCME True-Up under ERC Case No. 2012-085 of PhP4,650,702,389.76, it will incur bigger cash deficit in 2015 if a replacement source of funds would not be guaranteed. Thus, the immediate approval by the Commission is vital, as this will ensure sustainability of NPC's operation in missionary areas;
24. It already paid more than the allocated amount of PhP359 Million in the approved UCME for CY 2013 to NPPs and QTP and thus, it is just prudent that it be allowed to immediately recover these incurred costs to support its requirements for other missionary areas;
25. To enable it to continue its mandate, operate viably and support its present operations in the off-grid areas, as well to prevent the repeat of shortage of fuel and the consequent reduction of operating hours, there is an urgent need for the issuance of a provisional authority to ensure sufficient funding for its operation and that of NPPs and QTP;
26. The issuance of a provisional authority is allowed under Section 3 Rule 14 of the Rules of Practice and Procedure. Likewise, the authority of the Commission to issue a provisional authority is confirmed by the Supreme Court in the case of Freedom from Debt Coalition, et. al. vs. ERC, et. al., G.R. No. 161113 (June 15, 2004), when it held that

“the power to approve provisional rate increases is included among the powers transferred to the ERC by virtue of Section 44 since the grant of that authority is not inconsistent with the EPIRA; rather, it is in full harmony with the thrust of the law which is to strengthen the ERC as the new regulatory body.”

27. It is thus imploring the kind consideration of the Commission and prays that a provisional authority be granted for the implementation of the proposed UCME adjustment and allows to recover the shortfalls in the UCME pursuant to Resolution No. 21, Series of 2011 and Resolution No. 22, Series of 2006, with the corresponding adjustment in the UC-ME, pending the hearing on the merits;

COMPLIANCE WITH PRE-FILING REQUIREMENTS

28. In compliance with Rule 6 of the Commission Rules of Practice and Procedure, it has furnished the legislative bodies of each of the local government units where it principally operates, a copy of the instant petition including all its annexes and accompanying documents;
29. It caused the publication of the petition in its entirety in the newspaper of general circulation and copies of the newspaper and corresponding affidavit of publication were attached to the instant petition as annexes;

PRAYER

30. It prays that pending the hearing on the merits, an Order be issued: (a) granting provisional authority for the recovery from the UCME of the CY 2013 shortfall in the UCME of PhP5,462,754,938.54 based on the equivalent rate of PhP0.0769/kWh; and (b) thereafter, directing PSALM to remit monthly to NPC the actual UCME collected from all electricity end-consumers; and
31. After hearing on the merits, a Decision be rendered: (a) approving the recovery from the UCME of the CY 2012 shortfall in the UCME of PhP5,462,754,938.54 based on equivalent rate of PhP0.0769/kWh; and (b) directing PSALM to remit monthly to NPC the actual UCME collected from all electricity end-consumers.

Finding the said petition to be sufficient in form and substance with the required fees having been paid, the same is hereby set for jurisdictional hearing, expository presentation, pre-trial conference and evidentiary hearing on the following dates and venues:

Date and Time	Venue	Particulars
Luzon		
August 14, 2014 (Thursday) at ten o'clock in the morning (10:00 A.M.)	ERC Hearing Room, 15 th Floor, Pacific Center Building, San Miguel Avenue, Pasig City	Jurisdictional, Expository Presentation, Pre-Trial Conference and Evidentiary Hearing
Visayas		
August 20, 2014 (Wednesday) at nine o'clock in the morning (9:00 A.M.)	Holiday Plaza Hotel, F. Ramos Street, Cebu City	Expository Presentation, Pre-Trial Conference and Evidentiary Hearing
Mindanao		
August 29, 2014 (Friday) at nine o'clock in the morning (9:00 A.M.)	Energy Regulatory Commission – Mindanao Field Office (ERC-MFO), Mezzanine Floor, Mintrade Building, Monteverde Avenue corner Sales Street, Davao City	Expository Presentation, Pre-Trial Conference and Evidentiary Hearing

NPC is hereby directed to cause the publication of the attached Notice of Public Hearing, at its own expense, twice (2x) for two (2) successive weeks in two (2) newspapers of general circulation in the Philippines, with the date of the last publication to be made not later than ten (10) days before the scheduled date of initial hearing. It is also directed to inform the consumers within the SPUG areas, by any other means available and appropriate, of the filing of the instant application, its reasons therefor, and of the scheduled hearing thereon.

Let copies of the application, this Order, and the attached Notice of Public Hearing be furnished 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.

Likewise, let copies of this Order and the attached Notice of Public Hearing be furnished the Offices of the Mayors of Quezon City, the Municipalities, Cities and the Provincial Governors where NPC-SPUG principally operates for the appropriate posting thereof on their respective bulletin boards.

NPC is hereby directed to furnish all those making requests therefor with copies of the petition and its attachments, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing and pre-trial conference, NPC must submit to the Commission their written Compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidences on the actual posting and publication of the Notice of Public Hearing consisting of certifications issued to that effect, signed by the afore-mentioned Governors and Mayors or their duly authorized representatives, bearing the seals of their offices, and the affidavits of the Editors or Business Managers of the newspapers where the said Notice of Public Hearing were published together with the complete issues of the said newspapers, and such other proofs of compliance with the requirements of the Commission.

NPC and all interested parties are directed 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:

- (a) A summary of admitted facts and proposed stipulation of facts;
- (b) The issues to be tried or resolved;
- (c) The documents or exhibits to be presented, stating the purposes thereof and proposed markings therefore; and
- (d) The number and names of the witnesses, with their written testimonies in an individual affidavit form, to be attached to the Pre-Trial Brief.

Failure of NPC to submit the required Pre-Trial Brief and Judicial Affidavits of its witnesses 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 said date of cancellation.

As part of the pre-trial conference, NPC must also be prepared to make an expository presentation of its petition, 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 of the approval prayed for.

SO ORDERED.

Pasig City, July 7, 2014.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ZENAIDA G. CRUZ-DUCUT
Chairperson

Copy Furnished:

1. **Attys. MELCHOR P. RIDULME, WILFREDO J. COLLADO, FRITZ BON-BON A. SOMYDEN and MAY ROSE C. PINTOR**
Counsels for Applicant NPC-SPUG
Office of the General Counsel
National Power Corporation
Quezon Avenue cor. BIR Road
Diliman, Quezon City, Metro Manila
Tel. No. 02-921-9670
2. **The Office of the Solicitor General**
134 Amorsolo Street, Legaspi Village, Makati City
Metro Manila
3. **The Commission on Audit**
Commonwealth Avenue
Quezon City 1121
4. **The Senate Committee on Energy**
GSIS Building, Roxas Boulevard
Pasay City 1307
5. **The House Committee on Energy**
Batasan Hills, Quezon City 1126
6. **National Electrification Administration (NEA)**
Quezon Avenue, Quezon City
Metro Manila
7. **The General Manager**
Philippine Rural Electric Cooperatives Association (PHILRECA)
4TH Floor, Casman Building
372 Quezon Avenue, Quezon City
Metro Manila
8. **Ms. Edith Bueno**
Administrator
National Electrification Administration
ODFC Building, 1050 Quezon Avenue
Quezon City, Metro Manila
9. **All Electric Cooperatives**
10. **The Provincial Governor**
Province of Ilocos Sur
11. **The Provincial Governor**
Province of Ilocos Norte
12. **The Provincial Governor**
Province of Cagayan
13. **The Provincial Governor**
Province of Isabela
14. **The Provincial Governor**
Province of Nueva Viscaya
15. **The Provincial Governor**
Province of Abra

16. **The Provincial Governor**
Province of Benguet
17. **The Provincial Governor**
Province of Ifugao
18. **The Provincial Governor**
Province of Kalinga Apayao
19. **The Provincial Governor**
Mountain Province
20. **The Provincial Governor**
Province of Aurora
21. **The Provincial Governor**
Province of Tarlac
22. **The Provincial Governor**
Province of Nueva Ecija
23. **The Provincial Governor**
Province of Pampanga
24. **The Provincial Governor**
Province of Bataan
25. **The Provincial Governor**
Province of Zambales
26. **The Provincial Governor**
Province of Laguna
27. **The Provincial Governor**
Province of Batangas
28. **The Provincial Governor**
Province of Quezon
29. **The Provincial Governor**
Province of Occidental Mindoro
30. **The Provincial Governor**
Province of Oriental Mindoro
31. **The Provincial Governor**
Province of Marinduque
32. **The Provincial Governor**
Province of Romblon
33. **The Provincial Governor**
Province of Palawan
34. **The Provincial Governor**
Province of Camarines Sur
35. **The Provincial Governor**
Province of Camarines Norte
36. **The Provincial Governor**
Province of Albay

- 37. The Provincial Governor**
Province of Sorsogon
- 38. The Provincial Governor**
Province of Aklan
- 39. The Provincial Governor**
Province of Antique
- 40. The Provincial Governor**
Province of Capiz
- 41. The Provincial Governor**
Province of Iloilo
- 42. The Provincial Governor**
Province of Bacolod
- 43. The Provincial Governor**
Province of Negros Occidental
- 44. The Provincial Governor**
Province of Negros Oriental
- 45. The Provincial Governor**
Province of Cebu
- 46. The Provincial Governor**
Province of Leyte
- 47. The Provincial Governor**
Province of Samar
- 48. The Provincial Governor**
Province of Zamboanga del Norte
- 49. The Provincial Governor**
Province of Zamboanga del Sur
- 50. The Provincial Governor**
Province of Davao Oriental
- 51. The Provincial Governor**
Province of Davao del Sur
- 52. The Provincial Governor**
Province of Davao del Norte
- 53. The Provincial Governor**
Province of Misamis Occidental
- 54. The Provincial Governor**
Province of Misamis Oriental
- 55. The Provincial Governor**
Province of Bukidnon
- 56. The Provincial Governor**
Province of Lanao del Norte
- 57. The Provincial Governor**
Province of North Cotabato

- 58. The Provincial Governor**
Province of South Cotabato
- 59. The Provincial Governor**
Province of Sultan Kudarat
- 60. The Provincial Governor**
Province of Agusan del Norte
- 61. The Provincial Governor**
Province of Agusan del Sur
- 62. The Provincial Governor**
Province of Surigao del Norte
- 63. The Provincial Governor**
Province of Surigao del Sur