

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City



**IN THE MATTER OF THE
PETITION FOR THE
AVAILMENT OF THE
ENVIRONMENTAL
CHARGE/SHARE FROM THE
UNIVERSAL CHARGE FOR THE
REHABILITATION AND
MANAGEMENT OF
WATERSHED AREAS (PLAN 18)**

ERC CASE NO. 2022-013 RC

**NATIONAL POWER
CORPORATION,**
Petitioner.
X-----X

Promulgated:
April 18, 2022

ORDER

On 14 March 2022, National Power Corporation (NPC) filed a *Petition* dated 17 February 2022, seeking the Commission's approval of the availment of the Environmental Charge/share from the Universal Charge (UC-EC) for the rehabilitation and management of watershed areas (Plan 18).

The pertinent allegations of the *Petition* are hereunder quoted as follows:

1. NPC is a government owned-and-controlled corporation created and existing under and by virtue of Republic Act No. 6935, as amended (NPC Charter), with principal office address at NPC Office Building Complex, Quezon Avenue Corner BIR Road, Diliman, Quezon City, where it may be served with notices and other processes of this Honorable Commission;
2. Under the NPC Charter, particularly Section 3, paragraph (N), NPC is vested with the power to exercise complete jurisdiction and control over watersheds surrounding the reservoir of plants and/or projects it constructed;
3. To further strengthen NPC's jurisdiction and control over watersheds, Executive Order (EO) No. 224 was issued on 16 July 1987, wherein NPC was granted complete jurisdiction, control and rehabilitation function over the following

watershed areas and reservations: (a) Upper Agno Watershed Reservation as covered by Proclamation No. 548; (b) Angat Watershed Reservation as covered by Proclamation Nos. 505 and 599; (c) Caliraya-Lumot Watershed Reservation as covered by Proclamation No. 573; (d) Makiling-Banahaw Geothermal Reservations as covered by Proclamation No. 1111; (e) Buhi-Barit Watershed as covered by Proclamation No. 573; (f) Tiwi Geothermal Reservation as covered by Presidential Proclamation No. 739;

4. Accordingly, NPC became responsible for the management, protection, development, and rehabilitation of the aforementioned watershed areas, including but not limited to the following: (a) Enforcement of forestry laws, rules and regulations governing the Integrated Management of Watershed Reservation under Ministry Order No. 83-01-13, Series of 1982; (b) Identification of areas which required immediate rehabilitation and development; (c) Preparation of plans and programs using the integrated multiple use concept of Watershed Management for the maximum utilization of Watershed resources; (d) Formulation and/or implementation of measures to prevent denudation of forest cover and siltation of existing reservoirs; (e) Public education and information drive to create awareness among the populace about the importance of forest resources and watershed areas; (f) Promotion of the development and conservation of existing vegetative cover; (g) Formulation of plans and development programs for resettlement and relocation; (h) Coordination with government agencies/instrumentalities, academic institutions, Local Government Units (LGUs), Indigenous Peoples (IPs)/Indigenous Cultural Communities (ICCs), as well as religious and civil groups in undertaking forest conservation and rehabilitation measures in watershed areas; (i) Afforestation, reforestation and implementations of physical rehabilitation measures in critically denuded watershed areas; (j) Development, maintenance and management of free farms within adequately vegetative watershed for the production of transmission line poles;
5. NPC's jurisdiction and control over watersheds was again recognized and reiterated in Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA), and its Implementing Rules and Regulations (IRR), particularly Section 6 (c), Rule 23 of the IRR, by mandating NPC to continue being responsible for watershed rehabilitation and management;
6. Under the EPIRA, NPC is entitled to the Environmental Charge (EC) equivalent to one-fourth of one centavo per kilowatt-hour sales (P 0.0025/kWh), which forms part of the Universal Charge (UC). This environmental fund is intended solely for watershed rehabilitation and management and is being managed by NPC under existing arrangements. In order to avail said EC, NPC is required to file with this Honorable

Commission a petition for the availment of the UC-EC in relation to the proposed watershed rehabilitation and management projects on or before March 15 of every year;

7. In support of this petition, NPC hereby submits its proposed operations plan for Calendar Year 2022 (hereinafter referred to as "Plan 18") for the availment of the UC-EC for the rehabilitation and management of the watersheds. (Attached as Annex "A" is the Executive Summary of Plan 18 which forms an integral part hereof);
8. Plan 18 was crafted in order to strengthen and intensify NPC's undertakings to address the issue of uncontrolled deforestation, especially in watershed areas. For the past 20 years (2002-2022), NPC continues to embark on non-stop greening initiatives in various watershed areas that gained acceptance and encouraged cooperation from stakeholders. In line with the Greening Program of the National Government, NPC's Watershed Management Department (WMD) and its Watershed Area Teams (WATs) are committed to reforest idle/open and denuded areas and promote the use of indigenous species (Rainforestation) in its greening projects. Alongside with the greening programs, WMD intends to raise planting stocks to be distributed to qualified beneficiaries that are willing and able to plant trees in their respective communities;
9. Plan 18 is composed of programs and projects specified in Section 1, Article II of the Rules and Procedures Governing the Utilization and Disbursement of UC-EC (Rules), with the proposed modes of procurement, namely: (1) Watershed Protection and Law Enforcement; (2) Watershed Rehabilitation; (3) Watershed Resource Development; (4) Infrastructure; (5) Administrative and Project Operations and/or Supervision; (6) Equipment Acquisition; and, (7) Sustainability and Third-Party Evaluation. These programs and projects, which were recommended by the concerned WAT, were reviewed and evaluated by the Head Office-WMD. (Attached as Annexes "C" to "L", which form an integral part hereof, are the proposed plans of the WATs assigned in Angat, Buhi-Barit, Caliraya-Lumot, Lake-Lanao Agus River, Mak-Ban, Pulangi, San Roque, Tiwi, Upper Agno and the WMD-Head Office);
10. Plan 18 covers the six (6) watershed areas and reservations over which NPC has complete jurisdiction and control by virtue of EO 224; San Roque Watershed (Lower Agno) which is managed by NPC for San Roque Multi-Purpose Project by virtue of PD 2320; Lake Lanao-Agus River and Pulangi Watershed Area which are covered by a Memorandum of Agreement between NPC and the Department of Environment and Natural Resources (DENR);
11. Plan 18, which was crafted with reference to the previous proposed plans submitted to this Honorable Commission, also

forms part of, and is premised on the NP Board approved Integrated Watershed Master Plan for the nine (9) watershed areas managed by NPC:

12. Aside from maintaining the objectives of the previous proposed plans, Plan 18 seeks to: (a) attain the rehabilitation, through vegetative measures, of 1,156 hectares of open and denuded areas; (b) contribute to climate change mitigation through the sequestration of carbon equivalent to 3,472 tons/year (Lasco, R.D. and Pulhin, F.B., 2003); (c) reduce sedimentation and soil erosion inside NPC's reforestation areas of at least 644.80 tons/year (Saplaco, S.R., 1981); (d) increase biodiversity in terms of species richness and flora and fauna population through conservation and ecotourism programs; (e) strengthen and sustain the protection and conservation of the watershed areas through community participation; and (f) employ individuals from the local community;
13. Plan 18 complies with ERC Case Res. No. 18 Series of 2011, which requires it to conduct consultation with the Local Government Units (LGUs) and Local Government Agencies (LGAs) where projects will be situated. Reference was made to the environmental projects of the LGUs and LGAs to avoid duplication in funding. Concerns of stakeholders were brought to the attention of concerned WAT personnel and served as guides in packaging Plan 18. This helped ensure support from the LGUs and the local communities;
14. In order to attain the objectives of Plan 18, NPC needs to avail and utilize the funds from the UC-EC amounting to THREE HUNDRED THIRTY-FIVE MILLION, FIVE HUNDRED FORTY-EIGHT THOUSAND NINETEEN PESOS AND THIRTY-THREE CENTAVOS (PhP335,548,019.33), as shown in the Consolidated Financial Summary attached as Annex "B", which forms an integral part hereof. This amount was computed based on existing rules and regulations prescribed for government projects;
15. In compliance with Section 2 (b), Article II of the Rules, NPC furnished a copy of this petition to the Sangguniang Panlungsod and the Office of the City Mayor of Quezon City, where NPC principally operates, and published it in a newspaper of general Circulation. (Attached as Annexes "M" and "N", which form an integral part hereof, are proofs of service and publication of this petition).

WHEREFORE, premises considered, NPC prays that this petition be APPROVED by this Honorable Commission.

OTHER RELIEFS and REMEDIES, which in law or equity may be deemed just and equitable under the premises, are likewise prayed for.

Finding the said *Petition* to be sufficient in form with the required fees having been paid, the Commission hereby sets the same for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on the following dates and online platform for the conduct thereof, pursuant to Resolution No. 09, Series of 2020¹ dated 24 September 2020 and Resolution No. 01, Series of 2021 dated 17 December 2020 (ERC Revised Rules of Practice and Procedure):²

Date	Platform	Activity
17 May 2022 (Tuesday) at two o'clock in the afternoon (2:00 P.M.)	Microsoft Teams	Determination of compliance with the jurisdictional requirements and expository presentation for Luzon, Visayas and Mindanao Stakeholders
24 May 2022 (Tuesday) at two o'clock in the afternoon (2:00 P.M.)	Microsoft Teams	Pre-trial Conference and presentation of evidence
31 May 2022 (Tuesday) at two o'clock in the afternoon (2:00 P.M.)	Microsoft Teams	Presentation of evidence
07 June 2022 (Tuesday) at two o'clock in the afternoon (2:00 P.M.)	Microsoft Teams	Presentation of evidence

RELATIVE THERETO, NPC is hereby directed to:

- 1) Cause the publication of the attached *Notice of Virtual 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;

¹ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.

² A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.

- 2) Furnish with copies of this *Order* and the attached *Notice of Virtual Hearing* the Offices of the Provincial Governor, the City and Municipal Mayors, and the Local Government Unit (LGU) legislative bodies within the affected watershed areas, and the City Mayor and LGU legislative body of Quezon City for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within the affected area, by any other means available and appropriate, of the filing of the *Petition* its reasons therefor, and of the scheduled hearing thereon;
- 4) Furnish with copies of this *Order* and the attached *Notice of Virtual 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 and attend the scheduled hearings scheduled hearing; and
- 5) Furnish with copies of the *Petition* and its attachments all those making requests therefor, subject to the resolution of the prayer for confidential treatment of information, if any, and reimbursement of reasonable photocopying costs.³

Within five (5) calendar days prior to the date of the initial virtual hearing, NPC must submit to the Commission via electronic mail (e-mail) at docket@erc.ph, copy furnish the Legal Service through legal@erc.ph, the scanned copies of 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 Virtual Hearing* consisting of affidavit of the Editors or Business Managers of the newspapers where the said *Notice of Virtual Hearing* was published, and the complete issues of the said newspapers;
- 2) The evidence of actual posting of this *Order* and the attached *Notice of Virtual Hearing* consisting of certifications issued to that effect, signed by the aforementioned Governors, Mayors and LGU legislative

³ For the e-mail address of the petitioner, please see page 10.

bodies or their duly authorized representatives, bearing the seals of their offices;

- 3) The evidence of other means employed by NPC to inform the consumers within the affected area of the filing of the *Petition*, its reasons therefor, and of the scheduled hearings thereon;
- 4) The evidence of receipt of copies of this *Order* and the attached *Notice of Virtual 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 *Petition* and its attachments by all those making requests therefor, if any; and
- 6) Such other proof of compliance with the requirements of the Commission.

Moreover, NPC is hereby required to post on its bulletin boards, the scanned copies of the foregoing jurisdictional requirements, together with the newspaper publications and certifications issued by the concerned Office of the Provincial Governors, City and Municipal Mayors and Local Legislative Bodies, and to submit proof of its posting thereof.

NPC and all interested parties are also required to submit via e-mail at docket@erc.ph, copy furnish the Legal Service through legal@erc.ph, at least five (5) calendar days before the date of the scheduled virtual 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 therefor, which should also be attached to the Pre-trial Brief; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-trial Brief.

NPC must ensure that all the documents or exhibits proposed to be presented have already been duly submitted to the Commission at least five (5) calendar days before the date of the scheduled initial virtual hearing and Pre-trial Conference pursuant to the preceding paragraph.

Failure of NPC 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.

NPC must also be prepared to make an expository presentation of the instant *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, the nature of the *Petition* with relevant information and pertinent details substantiating the reasons and justifications being cited in support thereof.

NPC is hereby directed to file a copy of its Expository Presentation via e-mail at doCKET@erc.ph, copy furnish the Legal Service through legal@erc.ph, at least five (5) calendar days prior to the scheduled virtual hearing. NPC shall also be required, upon the request of any stakeholder, to provide an advance copy of its expository presentation, at least five (5) calendar days prior to the scheduled virtual hearing.

Any interested stakeholder may submit its comments and/or clarifications at least one (1) calendar day prior to the scheduled virtual hearing, via e-mail at doCKET@erc.ph, copy furnish the Legal Service through legal@erc.ph. The Commission shall give priority to the stakeholders who have duly submitted their respective comments and/or clarifications, to discuss the same and propound questions during the course of the expository presentation.

NPC is hereby directed to submit, either through personal service, registered or ordinary mail/private courier, one (1) set of the original or certified true hard/printed copy/ies of its Jurisdictional Compliance, Expository Presentation, Pre-trial Brief, and Judicial Affidavit/s of witness/es, within five (5) working days from the date that the same were electronically submitted, as reflected in the acknowledgment receipt e-mail sent by the Commission. Similarly, all interested parties who filed their *Petition* for Intervention or Opposition are required to submit the hard/printed copy thereof within the same period through any of the available modes of service.

Finally, NPC, including its authorized representative/s and witness/es, are hereby directed to provide the Commission, thru legal.virtualhearings@erc.ph, with their respective e-mail addresses upon receipt of this *Order*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearing.

SO ORDERED.

Pasig City, 28 March 2022.

FOR AND BY AUTHORITY
OF THE COMMISSION:



AGNES VST DEVANADERA
Chairperson and CEO


LS: KJP/LSP/MCCG

ERC

Office of the Chairperson



AVSTD-2022-04-510-0042

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Copy Furnished:

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10. Office of the Mayor
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11. Office of the LGU legislative body
San Jose Del Monte, Bulacan
12. Office of the Mayor
Norzagaray, Bulacan
13. Office of the LGU legislative body
Norzagaray, Bulacan
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Dona Remedios Trinidad, Bulacan
15. Office of the LGU legislative body
Dona Remedios Trinidad, Bulacan
16. Office of the Governor
Province of Ifugao
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Province of Ifugao
18. Office of the Governor
Province of Isabela
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 26. Office of the Governor
Province of Nueva Ecija
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Carranglan, Nueva Ecija
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 32. Office of the Governor
Province of Pangasinan
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 34. Office of the Mayor
San Nicolas, Pangasinan
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Province of Benguet
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 40. Office of the Mayor
Atok, Benguet
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199. Office of the LGU legislative body
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- 224. Office of the Mayor
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- 225. Office of the LGU legislative body
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- 226. Office of the Governor
Province of Rizal
- 227. Office of the LGU legislative body
Province of Rizal
- 228. National Commission on Indigenous People (NCIP)
2nd Floor N. dela Merced Building, Cor. West and
Quezon Avenues, Quezon City
- 229. Foundation for the Philippine Environment (FPE)
77 Matahimik Street, Teacher's Village,
Diliman, Quezon City 1101
- 230. Bukidnon Higaonon Tribal Association (BUHITA)
Dampog Residence Sta. Cruz St. Sumpong,
Malaybalay City, Bukidnon
- 231. Regulatory Operations Service
17th Floor Pacific Center, San Miguel Avenue, Pasig City
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