

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



**IN THE MATTER OF THE
APPLICATION FOR THE
APPROVAL OF
CONNECTION CHARGES
AND RESIDUAL
SUBTRANSMISSION
CHARGES FOR CALENDAR
YEARS 2014 AND 2015 ON
SUBTRANSMISSION
ASSETS OF THE NATIONAL
GRID CORPORATION OF
THE PHILIPPINES, WITH
PRAYER FOR PROVISIONAL
AUTHORITY,**

ERC CASE NO. 2017-100 RC

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

D O C K E T E D
Date: JUN 11 2018
By: _____

NOTICE OF PUBLIC HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 26 October 2017, the National Grid Corporation of the Philippines (NGCP) filed an *Application* dated 11 October 2017 for the approval of the connection charges and residual subtransmission charges for calendar years 2014 and 2015 on the subtransmission assets of NGCP, with prayer for provisional authority.

NGCP alleged the following in its *Application*:

1. NGCP is a corporation created and existing under the laws of the Philippines, with principal office address at NGCP Building, Quezon Avenue corner BIR Road, Diliman, Quezon City, where it may be served with notices, orders, resolutions and other issuances of this Honorable Commission through its Office of the General Counsel. It is the concessionaire which assumed

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the power transmission functions of the National Transmission Corporation (TRANSCO) pursuant to Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA).¹

2. NGCP holds a franchise under Republic Act No. 9511² to engage in the business of conveying or transmitting electricity through high-voltage back-bone system of interconnected transmission lines, substations and related facilities, and for other purposes. The franchise also includes the conduct of activities necessary to support the safe and reliable operation of the transmission system.
3. On 15 January 2009, NGCP assumed the transmission functions of TRANSCO to operate, manage and maintain the nationwide electrical grid, as well as the operation and maintenance of the subtransmission assets until their disposal to qualified distribution utilities.
4. Section 19, in relation to Section 43 (f) of the EPIRA provides that Transmission Charges shall be filed with and approved by the ERC and that the latter shall establish and enforce a methodology for setting transmission wheeling rates.
5. Aligned with this, the Open Access Transmission Services Rules (OATS Rules) was approved by this Honorable Commission on December 2006. The OATS Rules prescribe for, among others, the methodology for calculating the appropriate level of Connection Charges ("CC") and Residual Subtransmission Charges ("RSTC") to recover the reasonable costs incurred in providing subtransmission services referred to in Section 1.6.3 of the Rules for Setting Transmission Wheeling Rates (RTWR).
6. The OATS Rules further provide that the CC shall be paid by Generation Customers on new Connection Assets and payable by Load Customers on existing and new Connection Assets;³ while RSTC is payable by Load Customers and by Generation Customers when they are accepting services from the Transmission Provider as if they were Load Customers.⁴
7. While the OATS Rules provide that the CC/RSTC will come into effect on the same date as the new tariff rates resulting from the Maximum Allowable Revenue approved by the ERC,⁵ NGCP's applications for implementaon of the proposed CC/RSTC for

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 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 of Interconnected Transmission Lines, Substations and Related Facilities, and for other Purposes."

³ OATS Rules, Module F(AIV)1.2

⁴ *Ibid*, Module F(AIV)5.2

⁵ *Ibid*, Module F(AIV)1.3

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calendar years 2010, 2011, 2012 and 2013 are all pending resolution by this Honorable Commission.

8. Thus, NGCP currently charges the 2009 CC/RSTC level approved by the Honorable Commission in its decision dated 06 July 2011 in ERC Case Nos. 2008-066RC and 2009-153 RC.
9. NGCP is aware that under Module F(AIV)1.5 of the OATS Rules, the CC/RSTC shall be updated annually. However, in its letters to the Honorable Commission dated 16 October 2013 and 08 October 2014, NGCP requested for the deferment of the filing of the CY 2014 and CY 2015 CC/RSTC to prioritize the submission by NGCP of several documents pursuant to the orders of the Commission in the pending CC/RSTC cases.
10. Nonetheless, NGCP hereby submits the proposed CC/RSTC for CYs 2014, a summary of which is attached as Annex "A," and CC/RSTC for CY2015, a summary of which is attached as Annex "B." The total CC/RSTC to be collected from Luzon, Visayas, and Mindanao are shown in the table below:

	CY2014	CY2015
LUZON	1,105,750,762.92	1,025,736,240.48
MERALCO	265,915,501.80	249,199,072.80
VISAYAS	555,163,356.72	500,863,193.76
MINDANAO	770,021,551.08	736,428,505.32
TOTAL PHILIPPINES	2,696,851,172.52	2,512,227,012.36

**Exclusive of Franchise Tax*

I. FORMULAE USED IN THE COMPUTATION OF CYS 2014 and 2015 CC/RSTC.

11. In the computation of the CC, NGCP used the formula provided in Clause F(AIV)3.2 of the Revised OATS Rules, as follows:

$$\frac{[\text{ODRC}_i \times \text{WACC}] + D_i + O_i + T_i + R_i}{12}$$

Where:

- ODRC_i** = is the Optimised Depreciated Replacement Cost of the Connection Asset or Residual Subtransmission Asset as determined under F(AIV)4.1, subject to Rule B20 of the OATS Rules;
- WACC** = is the Weighted Average Cost of Capital as determined under F(AIV)4.2;
- D_i** = is the depreciation cost of the Connection Asset for the current year, as determined under F(AIV)4.1(c);

- O_i = is the operational and maintenance cost attributable to the Connection Asset for the current year, as determined under F(AIV)4.3;
- T_i = is the corporate tax expense attributable to the Connection Asset for the current year, as determined under F(AIV)4.4; and
- R_i = is the short-fall, or surplus, in the CC collected for that Connection Asset in the previous year, increased by an amount to reflect the time value of money calculated using the Weighted Average Cost of Capital as determined under F(AIV)4.2. If R is a surplus, it shall be expressed as a negative.

12. In the computation of the RSTC, NGCP used the formula provided in Clause F(AIV)7.2 of the OATS Rules, as follows:

$$\frac{[\text{ODRC}_s \times \text{WACC}] + D_s + O_s + T_s + R_s}{12}$$

Where:

- ODRC_s = is the Optimised Depreciated Replacement Cost of the Residual Subtransmission Asset as determined under F(AIV) 8.1, subject to Rule B 20 of the OATS Rules;
- WACC = is the Weighted Average Cost of Capital as determined under F(AIV) 8.2 of the OATS Rules;
- D_s = is the depreciation cost of the Connection Asset or Residual Subtransmission Asset for the current year, as determined under F(AIV) 8.1 (c) of the OATS Rules;
- O_s = is the operational and maintenance cost attributable to the Connection Asset or Residual Subtransmission Asset for the current year, as determined under F(AIV)8.3 of the OATS Rules;
- T_s = is the corporate tax expense attributable to the Subtransmission Asset for the current year, as determined under F(AIV) 8.4 of the OATS Rules; and
- R_s = is the short-fall, or surplus, in the RSTC collected for the Residual Subtransmission Asset in the previous year, increased by an amount to reflect the time value of money calculated using the Weighted Average Cost of Capital as determined under F(AIV)8.2 of the

OATS Rules. If R is a surplus, it shall be expressed as a negative.

13. For sub-transmission assets used by two (2) or more Transmission Customers, NGCP adopted the formula in Clause F(AIV)7.3 of the Revised OATS Rules, as follows:

$$\frac{BD_i}{\Sigma BD_i}$$

Where:

BD_i = the Generator Billing Determinant as determined under F(AI)2.2, F(AI)2.3 & F(AI)2.4 or the Load Billing Determinant as determined under F(AI)3.2, F(AI)3.3 & F(AI)3.4 as the case may be, for the Transmission Customer at the relevant Connection Point

ΣBD_i = the sum of the Billing Determinants of all Transmission Customers at the relevant Connection Point.

II. FACTORS, PARAMETERS AND VALUES USED IN THE COMPUTATION OF THE PROPOSED CY2014 and CY2015 CC/RSTC.

14. In the computation of the proposed CC/RSTC, NGCP applied the following parameters:
- a. **Asset Composition.** NGCP included all sub-transmission assets, including new assets commissioned and in operation as of 31 December 2012 and 31 December 2013 in the proposed CY 2014 and 2015 CC/RSTC, respectively, and excluded sub-transmission assets which were divested by TRANSCO to qualified distribution utilities as of said. A copy of a document entitled "*Sub-Transmission Assets Sale Per Region*" is hereto attached as **Annex "C."**
 - b. **Asset Classification.** NGCP classified the assets based on the Valuation Report of Sinclair Knight Merz (SKM) adopted by the Honorable Commission in NGCP's Third Regulatory Period Final Determination dated 22 November 2010 (NGCP's Final Determination). NGCP was also guided by ERC Resolution No. 4 Series of 2013 entitled "A Resolution Amending Resolution No. 26 Series of 2011" extending the deadline for the divestment of RSTAs until 31 December 2015. Lastly, NGCP applied the decisions of the Honorable Commission in several cases involving the reclassification of assets to transmission. Tables showing the list of assets

reclassified as transmission assets pursuant to the ERC decisions is attached as **Annex “D” to “D-5”**

- c. **Asset Values.** NGCP adopted the SKM 2008 Optimized Depreciated Replacement Cost (ODRC) values rolled-forward to 2014 and 2015 in computing the CY2014 and 2015 CCRSTC, respectively.
- d. **ERC Approved Weighted Average Cost of Capital (“WACC”).** The Honorable Commission approved a WACC of 15.04% as provided in Section 6.2.1 of NGCP’s FD.⁶
- e. **Depreciation.** The depreciation was computed based on the prescribed asset life provided by SKM in its 2008 Asset Valuation.
- f. **ERC Approved Operating and Maintenance Expenditure (OPEX).** The ERC approved OPEX allocated for 2014 CC/RSTC is PhP 959.19Mn and PhP932.79Mn for 2015 CC/RSTC.
- g. **Actual Taxes.** Real Property Taxes paid in CY2014 amounting to PhP0.185M was used in the computation of CY2014 CCRSTC, while Real Property Taxes paid in CY2015 amounting to PhP0.238M was used in the computation of CY2015 CCRSTC.
- h. **Billing Determinant (kW).** Actual billing determinants (BDD) in kW-month and Billing Determinant Energy in kWh for CY 2012 and 2013 were used to allocate the cost of shared assets for CY2014 and 2015, respectively.

III. Collection of Deferred CC/RSTC for Disposed/ Sold Sub-transmission Assets.

- 15. It will be recalled that the approved CC/RSTC of TRANSCO for CY 20077 was billed only in January 2008, hence, there is a one (1) year lag in the collection of CC/RSTC.
- 16. As a result of the 1 year lag, any change or modification to the subtransmission assets, including, but not limited to, asset disposals, new connections to the subtransmission assets, increases or decreases in demand and others related factors, will be considered in the computation of CC/RSTC only after the lapse of at least one (1) year from their occurrence.
- 17. In cases of sale, there are uncollected deferred CC/RSTC since the amount is not included in the purchase price of the sale.

⁶ Page 94 of the Final Determination dated 22 November 2010.

⁷ ERC Decision dated 07 December 2007 in ERC Case No. 2007-007RC

18. Thus, NGCP should be allowed to continue billing and collecting the deferred CC/RSTC for disposed subtransmission assets until such time that the deferred CC/RSTC has been fully recovered.

**IV. INCLUSION OF 3%
FRANCHISE TAX IN THE
PROPOSED CYS 2014 AND
2015 CC/RSTC.**

19. The OATS Rules provide for the pricing formula on how to recover the reasonable cost incurred by NGCP in providing efficient sub-transmission services to its customers.
20. One of the components of the formulae provided in Clauses F(AIV) 3.28 and 7.29 is the "tax expense." These formulae were used by TRANSCO in the CY2007 and CY2008 CC/RSTC Applications, where it applied for, among others, the recovery of corporate income tax in the amounts of PhP885.7Mn and PhP1,130.00Mn, respectively.
21. However, NGCP is exempted from paying corporate income tax. Instead, NGCP is required under R.A. 9511 to pay a Franchise Tax equivalent to three percent (3%) of all gross receipts derived from its operation under said franchise. The 3% Franchise Tax shall be in lieu of income tax and any and all taxes.
22. Thus, the Honorable Commission, in NGCP's Final Determination, allowed the recovery of NGCP's Franchise Tax on its regulated services, i.e., Power Delivery Charge, System Operator Charge, and Metering Services Charges through a surcharge on its customer invoices, to wit:

"The MAR in the Final Determination does not include the 3% national franchise tax that NGCP must now pay in accordance with RA 9511. As this tax is levied on total revenue rather than income, **the ERC has decided that this should be recovered through a surcharge on its customer invoices.** However, it does provide for the recovery of costs related to the residual subtransmission assets that will be transferred to the RAB at the beginning of the third regulatory period, in accordance with ERC Resolution No 1, Series of 2009."¹⁰ (Emphasis supplied)

⁸ *Supra*, Note 3, Module F(AIV)3.2.

⁹ Module F(AIV)7.1 Calculating the Residual Sub-transmission Charge.

¹⁰ Page 2, *Supra* Note 5.

23. It can be gleaned from the foregoing that the Honorable Commission considered the Franchise Tax as a pass through cost. This is bolstered by the issuance of ERC Resolution No. 07 Series of 2011, 11 wherein the Honorable Commission recognized that NGCP's franchise tax is considered to be a pass through cost on the part of the distribution utility. Hence, the ERC approved the inclusion of the 3% national franchise tax billed by NGCP as part of a distribution utility's total monthly transmission cost in the Transmission Rate Adjustment Mechanism formula.
24. Thus, it is respectfully submitted that NGCP should be allowed to impose a 3% Franchise Tax computed based on the gross receipts from CC/RSTC, through a surcharge on its customer invoices.
25. Upon approval, the Franchise Tax shall be reflected as a separate line item in the Power Bill.
26. In view of all the foregoing, it is respectfully submitted that the proposed CY2014 and CY2015 CC/RSTC were designed and developed in accordance with the provisions of the RTWR, OATS Rules and pertinent ERC Resolutions. It sets forth fair and reasonable rates that will serve the public interest and convenience, and signal the efficient utilization of subtransmission facilities that will ultimately redound to the best interest and benefit of the consuming public.

V. OVER/UNDER RECOVERIES THAT MAY HAVE RESULTED FROM THE DIFFERENCE IN THE ACTUAL CHARGES COLLECTED VS. THE PROPOSED CY2014 AND 2015 CC/RSTC.

27. The OATS Rules provide that the CC/RSTC will come into effect on the same date as the new tariff rates resulting from the Maximum Allowable Revenue approved by the ERC.¹¹ Hence, the proposed 2014 CC/RSTC should have been collected beginning the billing period January 2015 until December 2015; while the proposed 2015 CC/RSTC should have been collected beginning the billing period January 2016 until December 2016.
28. As mentioned earlier, this is not the case since NGCP currently charges the 2009 CC/RSTC level approved by the Honorable Commission. However, the 2009 CC/RSTC has not captured

¹¹ A Resolution Allowing the Distribution Utilities to Include in their Monthly Transmission Cost the National Grid Corporation of the Philippines' National Franchise Tax Billing.

¹² *Supra*, Note 4.

changes, modifications, asset disposals, new connections, increases or decreases in demand, and others related factors since December 2008¹³, the base year of the 2009 CC/RSTC.

29. Considering all the changes, modifications, or additions to the asset base, and divested assets which should have been excluded thereto, there will necessarily be over or under recoveries as a result of the difference in the 2009 CC/RSTC level that was actually collected for CY2015 and CY2016 vis-à-vis NGCP's proposed CY2014 and CY2015 CC/RSTC.
30. Hence, in order to correct the level of charges being collected from the transmission customers, NGCP respectfully submits that, in addition to the proposed monthly CC/RSTC, NGCP should be allowed to recover under-recoveries as a result of the difference in the actual collection and the proposed charges. Corollary, NGCP shall refund any over recovery from the difference in the said collections.

**VI. ALLEGATIONS IN SUPPORT
OF THE APPLICATION FOR
PROVISIONAL
AUTHORITY/ INTERIM
RELIEF**

31. All the foregoing allegations are re-pleaded herein by way of reference in support of NGCP's prayer for the issuance of a Provisional Authority.
32. The OATS Rules, under Clause F(AIV)1.3, states that the CC/RSTC will come into effect on the same date as the new tariff rates resulting from the final determination by this Honorable Commission of the MAR for the Third Regulatory Period take effect.
33. Further, Clause 6.2.1 (f) of the RTWR, provides that once the Honorable Commission is satisfied that the proposed rates comply with the RTWR and OATS Rules, then NGCP must implement those rates with effect from 26 December of the Calculation Year.
34. In this Application, the latest CC/RSTC level that most accurately reflect the current asset composition for each customer is the asset base used for the proposed CY2015 CC/RSTC.
35. Considering that the proposed rates were all computed in accordance with the provisions of the RTWR and OATS Rules, it is respectfully submitted that NGCP should be allowed to immediately implement the CY 2015 CC/RSTC.

¹³ Page 21, Decision dated 06 July 2011 in ERC Case No. 2009-153 RC

36. The issuance of a provisional authority will allow NGCP to timely recover its expenditures for services already rendered to the Transmission Customers.
37. Presently, NGCP charges the approved CY2009 CC/RSTC. The timely implementation of the proposed CY 2015 CC/RSTC will reduce, if not eliminate, the risk of under-recovery or over-recovery.
38. Thus, NGCP respectfully prays that it be given the provisional authority to implement the CY 2015 CC/RSTC commencing the billing month of January 2018.
39. In support of these allegations, NGCP submits a copy of the Judicial Affidavit of Ms. Agnes F. Dela Cruz, Head of the Tariff Design and Billing Management Division of the Revenue and Regulatory Affairs Department, a copy of which is hereto attached as Annex "E."

PRAYER

WHEREFORE, NGCP most respectfully prays that this Honorable Commission:

1. **ISSUE a Provisional Authority** to implement and commence the billing and collection of the proposed CY 2015 CC/RSTC beginning the billing month of January 2018.
2. **APPROVE** the recovery of the computed CY 2014 and 2015 CC/RSTC provided in this application from all Transmission Customers.
3. **ALLOW** NGCP to bill and collect under-recoveries resulting from the difference in the actual collection made by NGCP for CY 2015 and 2016 vis-à-vis the proposed CY2014 and 2015 CC/RSTC which should have been collected for the years CY2015 and 2016; and **DIRECT** NGCP to refund any over-recovery arising from such difference.
4. **ALLOW** NGCP to bill and collect the deferred CC/RSTC for disposed sub-transmission assets;
5. **ALLOW** NGCP to impose a 3% Franchise Tax on CC/RSTC to be reflected as a separate line item in the Power Bill.

Applicant prays for other relief deemed just and equitable under the premises.

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The Commission has set the *Application* for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on the following dates:

DATE	TIME	VENUE	PARTICULARS
16 July 2018 (Monday)	Two o'clock in the afternoon (2:00 P.M.)	ERC Hearing Room, 15 th Floor, Pacific Center Building, San Miguel Avenue, Pasig City	Jurisdictional and Expository Hearing
18 July 2018 (Wednesday)	Ten Thirty in the morning (10:30 A.M.)	ERC Visayas Field Office, St. Mary's Drive, Banilad, Cebu City	Expository Presentation for Visayas Stakeholders
25 July 2018 (Wednesday)	Ten Thirty in the morning (10:30 A.M.)	ERC Mindanao Field Office, Mintrade Bldg., Monteverde Ave., cor. Sales St., Davao City	Expository Presentation for Mindanao Stakeholders
31 July 2018 (Tuesday)	Two o'clock in the afternoon (2:00 P.M.)	ERC Hearing Room, 15 th Floor, Pacific Center Building, San Miguel Avenue, Pasig City	Pre-Trial Conference and Evidentiary Hearing

All persons who have an interest in the subject matter of the instant case may become a party by filing with the Commission a verified Petition to Intervene at least five (5) days prior to the initial hearing and subject to the requirements under Rule 9 of the 2006 Rules of Practice and Procedure, indicating therein the docket number and title of the case and stating the following:

- i. The petitioner's name and address;
- ii. The nature of petitioner's interest in the subject matter of the proceeding and the way and manner in which such

interest is affected by the issues involved in the proceeding;
and

iii. A statement of the relief desired.

All other persons who may want their views known to the Commission with respect to the subject matter of the case may file their Opposition or Comment thereon at any stage of the proceeding before Applicant rests its case, subject to the requirements under Rule 9 of the 2006 Rules of Practice and Procedure. No particular form of Opposition or Comment is required, but the document, letter, or writing should contain the following:

- 1) The name and address of such person;
- 2) A concise statement of the Opposition or Comment; and
- 3) The grounds relied upon.

All such persons who wish to have a copy of the *Application* may request from Applicant that they be furnished with the same, prior to the date of the initial hearing. Applicant is hereby directed to furnish all those making such request with copies of the *Application* and its attachments, subject to the reimbursement of reasonable photocopying costs. Any such person may likewise examine the *Application* and other pertinent records filed with the Commission during the standard office hours.

WITNESS, the Honorable Chairperson and CEO, **AGNES VST DEVANADERA**, and the Honorable Commissioners, **ALFREDO J. NON**, **GLORIA VICTORIA C. YAP-TARUC**, and **GERONIMO D. STA. ANA**, Energy Regulatory Commission, this 6th day of June 2018 in Pasig City.


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Oversight Commissioner for Legal