

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



**IN THE MATTER OF THE  
PETITION FOR FULL  
RECOVERY FOR APPROVED  
COSTS IN ERC CASE NO. 2011-  
030 RC THROUGH RE-  
COMPUTATION OF APPROVED  
RATE**

**CATANDUANES POWER  
GENERATION, INC. (CPGI),  
*Petitioner***

***-versus-***

**ERC CASE NO. 2019-001 DR**

**FIRST CATANDUANES  
ELECTRIC COOPERATIVE,  
INC. (FICELCO) AND  
NATIONAL POWER  
CORPORATION (NPC),  
*Respondents.***

**Promulgated:  
MAR 13 2019**

**X-----X**

**NOTICE OF PUBLIC HEARING**

**TO ALL INTERESTED PARTIES:**

Notice is hereby given that on 15 February 2019, Catanduanes Power Generation, Inc. (CPGI) filed a *Petition for Full Recovery of Approved Costs in ERC Case No. 2011-030 RC through Re-computation of Approved Rate* against First Catanduanes Electric Cooperative, Inc. (FICELCO) and National Power Corporation (NPC).

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

**I. THE PARTIES**

1. Petitioner CPGI is a corporation duly organized and existing under the laws of the Republic of the Philippines, with office

address at Unit 1507, 15/F, 88 Corporate Center, Valera corner Sedeño Streets, Salcedo Village, Makati City;

2. Respondent First Catanduanes Electric Cooperative, Inc. (FICELCO) is a non-stock, non-profit electric cooperative organized and existing under the laws of the Republic of the Philippines, with principal office located at Marinawa, Bato, Catanduanes. It holds an exclusive franchise to operate an electric light and power service in the Province of Catanduanes, a National Power Corporation-Small Power Utilities Group (NPC-SPUG) area, particularly in the Municipalities of Bagamanoc, Baras, Bato, Caramoan, Gigmoto, Pandan, Panganiban, San Andres, San Miguel, Viga and Virac;
3. Respondent National Power Corporation (NPC) is a government corporation created under Republic Act No. 6395, as amended, with office address at NPC Power Complex, Quezon Avenue corner BIR Road, Diliman, Quezon City. Under Section 70 of the Electric Power Industry Reform Act (EPIRA), the NPC shall remain as the National Government-owned and -controlled corporation to perform the missionary electrification function through the Small Power Utilities Group (SPUG);
4. Copies of pleadings and motions filed, as well as orders and other issuances by the Honorable Commission may be served on Petitioner CPGI through the undersigned Firm at its address indicated below, and on Respondents FICELCO and NPC at their respective addresses as herein provided;

## **II. NATURE OF THE CASE**

5. This *Petition*, which seeks to recover in full the costs approved by the Honorable Commission in its *Decision* in ERC Case No. 2011-030 RC, to which, CPGI is entitled but was prevented by herein Respondents FICELCO and NPC to recover, is being filed pursuant to Section 25 of the EPIRA providing that retail rates shall be subject to regulation by the Honorable Commission based on the *principle of full recovery of prudent and reasonable economic costs incurred*, among other relevant and applicable laws and rules;

## **III. STATEMENT OF FACTS**

6. CPGI and FICELCO have an existing 10-year Electricity Supply Agreement (ESA) approved by the Honorable Commission in its *Decision* dated 03 July 2012 in ERC Case No. 2011-030 RC. A copy of the *Decision* is herewith attached as Annex "A" to form an integral part hereof;
7. Under the ESA, CPGI shall implement Phase 1 of the project, which pertains to the delivery of power from NPC's 3.6 MW

**ERC CASE NO. 2019-001 DR**  
**NOTICE OF PUBLIC HEARING/ 05 MARCH 2019**  
**PAGE 3 OF 12**

---

Marinawa Diesel Power Plant (MDPP). NPC leased the MDPP to FICELCO, while the latter subleased the same to CPGI, consistent with DOE Circular No. 2004-01-001. Considering that the MDPP was then inoperable, the sublease agreement included CPGI's completion, uprating, upgrading, periodic repair and overhaul of the MDPP to support full service operation, at CPGI's own expense and risk, and at no cost to the NPC on a rehabilitate, operate and maintenance basis. A copy of the lease agreement between NPC and FICELCO is herewith attached as Annex "B", while a copy of the lease agreement between FICELCO and CPGI is herewith attached as Annex "B-1", to form integral parts hereof;

8. Accordingly, in approving a reasonable Capacity Fee for the project, the Honorable Commission took into account CPGI's expenses for the lease and rehabilitation of the MDPP. The Honorable Commission approved a Total Project Cost of PhP40,000,000.00 and a Cost of Equity of 16.44% in arriving at the Capacity Fee of PhP0.5471/kWh<sup>1</sup>;
9. The Honorable Commission also considered and approved an economic life of ten (10) years, which corresponds to the ESA's 10-year term<sup>2</sup>;
10. While both the lease/sublease agreements and the ESA have a term of 10 years, the ESA commenced on the date of its approval by the Honorable Commission, or on 09 May 2011 upon the ERC's grant of a provisional authority. On the other hand, the lease/sublease agreements became effective earlier on 18 October 2007 upon its signing. As such, the lease expired in October 2017, or four (4) years ahead of the ESA in May 2021;
11. Since the obligation of CPGI under the ESA, as well as its approval, was confined to the leased MDPP, it was necessary to seek extension of the lease to synchronize with the expiration of the ESA. The synchronization of the lease and the ESA is consistent with the government's policy on private sector participation in SPUG areas. In a Memorandum dated 27 October 2016, copy is herewith attached as Annex "C", the Department of Energy (DOE) stated that:

*"Consistent with the Private Sector Participation (PSP) Program on power generation in SPUG-serviced areas as prescribed in Department Circular No. 2004-01-001, **the lease and sub-lease agreements with the certain ECs and NPPs in Catanduanes, Oriental Mindoro and Palawan must be amended and enhanced to synchronize***

---

<sup>1</sup> Pages 23-27, Decision in ERC Case No. 2011-030 RC dated 03 July 2012;

<sup>2</sup> *Ibid.*, Pages 23-26, 29

*with the cooperation period of the Energy Supply Agreement (ESA) or Power Supply Agreement (PSA). Those NPPs have been legitimized by undergoing a Competitive Selection Process that has been certified by the Department of Energy and their choice to lease SPUG's assets is their business strategy to realize privatization of the generation function of SPUG.* [Emphasis supplied.]

12. Synchronizing the terms of the lease and the ESA has been the original intention of the parties since negotiations for the lease extension began in 2013. At that time, the only contention was finding the most feasible and efficient means by which synchronization may be implemented due to FICELCO's concerns on taxes and other administrative matters being a party to both the lease and sub-lease agreements. Copies of communications among NPC, FICELCO and CPGI showing the foregoing are herewith attached as Annexes "D" to "D-5";
13. While initially, the NPC had no objection to the lease extension, by December 2016, however, the NPC no longer wanted to extend the lease. It first pointed to *alleged* reliability issues of the MDPP, and from there, raised *varying reasons*, including *alleged* necessity of a new Competitive Selection Process (CSP) due to another supplier's interest to participate in the privatization of the said NPC asset, and concerns on *alleged* adverse audit observations from the Commission on Audit (COA);
14. Meanwhile, to explain the government's policy relevant to NPC's concerns, the DOE made the following clarifications in another Memorandum dated 27 April 2017, a copy is herewith attached as Annex "E":
  - a. NPPs, having undergone the CSP, are qualified to lease or purchase NPC-SPUG assets during the cooperation period of the PSA based on DOE Circular 2004-01-001<sup>3</sup>, Section 4 (b) (iii). While NPC believes that it needs to conduct a separate bidding in divesting assets under COA Circulars 86-264 and 89-296, in the context of streamlining privatization of NPC SPUG assets, it may also be interpreted that the privatization of the generation function of the NPC includes inherently the option to lease or purchase said assets;
  - b. A direct negotiation with an NPP, as provided in item V.2.b. of COA Circular 89-296 states that a "*negotiation may be conducted singly on a one-on-*

---

<sup>3</sup> Prescribing the Rules and Procedures for Private Sector Participation in Existing NPC-SPUG Areas Pursuant to Rule 13 of the Implementing Rules and Regulations of the EPIRA;

*one basis with a view of ensuring that the government gets the best price.” This will not only provide a convenient means to reduce the subsidy allocated to NPC-SPUG but will also help address the observed gaps between unsynchronized lease agreements among NPC, DU and NPP that may have adverse effect on the continuity of power supply if not properly dealt with;*

- c. Based on Section 4.5 (c) of the 2016 Revised Implementing Rules and Regulations of Republic Act No. 9184<sup>4</sup>, lease of government-owned property as lessor for private use are not considered as procurement activities. [Emphasis ours.]
15. The DOE’s policy clarifications were issued upon the request of the NPC. Even so, the NPC did not heed the same and remained steadfast in not extending the lease. In a letter dated 02 October 2017, the NPC maintained that the extension of the lease agreement is not feasible given the “assurance of no curtailment of power”. A copy of the NPC’s letter is herewith attached as Annex “F” to form an integral part hereof;
16. In a letter to the NPC dated 16 October 2017, CPGI requested that the NPC re-evaluate its position due to **adverse** consequences if CPGI will cease operating the MDPP, including:
- 16.1 The loss of the largest base load supplier in the Province causing a huge power deficiency will result in massive brownouts;
- 16.2 Immediately after lease expiration on 17 October 2017, the MDPP will be rendered useless and no other party can operate it since CPGI exclusively holds the Certificate of Compliance (COC) covering the plant;
- 16.3 The Honorable Commission already approved CPGI’s ESA bearing a low generation rate. A shift to a new power provider when there is no assurance that its generation cost will be as competitively priced as CPGI’s, unnecessarily exposes electricity consumers to higher power costs.

A copy of CPGI’s letter is herewith attached and made an integral part hereof as Annex “G”;

17. Meanwhile, on 20 October 2017, FICELCO wrote CPGI that it will no longer dispatch power from CPGI in compliance with the NPC’s directive. A copy of FICELCO’s letter is

---

<sup>4</sup> Government Procurement Reform Act (GPRA);

herewith attached as Annex "H" to form an integral part hereof;

18. Thus, CPGI was constrained to stop operating the MDPP, while the MDPP remained in its possession. Nonetheless, CPGI did not relent in seeking an extension of the lease agreement and sent several letters to request the NPC's reconsideration, more so, **because in the months that FICELCO has not dispatched CPGI, the Province of Catanduanes has suffered longer power interruptions due to insufficient power supply**, contrary to NPC's assurance of no power shortage, and as CPGI has predicted would happen if it ceased operating the MDPP. Copies of CPGI's letters of reconsideration to the NPC dated 08 December 2017 and 28 January 2018 are herewith attached as Annexes "I" and "J", respectively;
19. Pending response from the NPC, on 25 May 2018, FICELCO demanded that CPGI vacate and turn-over the MDPP on even date. **This was in clear violation of FICELCO's obligation under the ESA to provide necessary assistance and reasonable support to CPGI in ensuring its compliance with its own obligations under the ESA.** The NPC, then, took possession of the MDPP on the same day. A copy of FICELCO's letter is herewith attached as Annex "K";
20. Finally, in a letter dated 14 June 2018, the NPC informed CPGI that it is maintaining the non-extension of the lease. A copy of NPC's letter is herewith attached to form an integral part hereof as Annex "L";
21. **Thereafter, CPGI learned that NPC allowed the extension of the lease of its assets in Oriental Mindoro. This clearly negates the existence of any valid ground for non-extension of the lease, such that the NPC's refusal to extend the MDPP lease in Catanduanes, not only disregards the policy guidance of the DOE on the matter, but is a blatant act of bad faith towards CPGI;**
22. In the end, due to FICELCO's failure to ensure the extension of the lease and NPC's unreasonable refusal in bad faith to extend the lease, CPGI has been prevented from operating the MDPP beginning **20 October 2017**, with four more years remaining in the ESA;
23. The NPC now operates the MDPP, inarguably benefitting from the rehabilitation works undertaken by CPGI, but at the expense of the continued implementation of CPGI's ESA with FICELCO. CPGI, on the other hand, is left unable to completely recover its expenses therefor, particularly the full amount of the approved Total Project Cost of PhP40 Million including a reasonable return thereon at 16.44% Cost of Equity as approved by the Honorable Commission. Due to

the abrupt cessation of CPGI's operations, it had to contend with financial challenges related to idle manpower. In addition, CPGI had to obtain interest-bearing advances from an affiliate to avoid default in the repayment of its credit line with a local bank, which was mainly used for fuel purchases and other operating expenses, among others;

#### **IV. DISCUSSION**

##### **CPGI MUST BE ALLOWED TO FULLY RECOVER THE COSTS APPROVED BY THE HONORABLE COMMISSION FOR A SUPPOSED 10-YEAR ESA.**

24. Capacity Fee (CF) is designed to recover the generator's cost of investment over the economic life of the plant, together with a reasonable rate of return on capital based on the ERC-approved Cost of Equity;
25. In the ESA Application (ERC Case No. 2011-030 RC), CPGI has submitted and proven the costs it incurred in implementing several phases of rehabilitating the leased MDPP, which as reflected in its Audited Financial Statements, amounted to a total of PhP55.8 Million. Nonetheless, the Honorable Commission approved only CPGI's initial allocation of PhP40 Million since its additional project cost of PhP15 Million, while subsequently incurred, did not form part CPGI's proposed asset base and rate derivation<sup>5</sup>;
26. Using the Honorable Commission's approved Cost of Equity at 16.44%, at the end of the 10-year term of the ESA, CPGI is also expected to have earned a reasonable return out of its investment in making the MDPP operational again, from the rundown condition it was in when CPGI took possession in 2007;
27. CPGI has been very resolute in seeking the extension of the lease, not only because its obligation to deliver power to FICELCO is confined to the operation of the MDPP, but because the Capacity Fee approved by the Honorable Commission pertained only to CPGI's investments in the MDPP, to be recovered over the 10-year life of the ESA;
28. **However, despite CPGI's serious efforts to continue leasing the MDPP, the NPC's *unjust refusal* to extend the lease while merely on the 6<sup>th</sup> year of ESA implementation, effectively prevented CPGI from recovering ERC-approved costs, not to mention other adverse financial consequences in relation to**

---

<sup>5</sup> Page 24, Decision in ERC Case No. 2011-030 RC (Annex "A" hereof);

**idle manpower and repayment of CPGI's credit line with a local bank, among others;**

29. **It is only just and equitable that CPGI is allowed to fully recover the ERC-approved costs. CPGI most respectfully prays for a re-computation of the approved Capacity Fee to take into account six (6) years of actual ESA implementation, instead of the 10-year ESA term that was cut short, to be recovered from Respondent FICELCO to the extent of the Subsidized Approved Generation Rate (SAGR) and from Respondent NPC, as to the difference between the SAGR and True Cost Generation Rate (TCGR) in the form of missionary electrification subsidy pursuant to the parties' Subsidy Agreement;**
30. Accordingly, to recover the approved Total Project Cost of PhP40,000,000.00 and to realize the approved Cost of Equity of 16.44% within 6 years, the re-computed Capacity Fee is submitted to be **PhPo.7137/kWh**. This translates to a difference of PhPo.1666/kWh from the approved PhPo.5471/kWh for a 10-year ESA. Details of the re-computation is herewith attached to form an integral part hereof as Annex "M";
31. Applying the proposed re-computed Capacity Fee to CPGI's energy from 2011 to 2017, CPGI prays that it be allowed to recover PhP32,752,808.00 to account for the difference between the re-computed rate of PhPo.7137/kWh and the approved PhPo.5471/kWh. A detailed computation of the same is herewith attached as Annex "M-1";
32. In determining a generation rate for the ESA, the Honorable Commission undertook a thorough evaluation of submitted cost components, ensuring a reasonable price of electricity for consumers, while allowing the generator the recovery of just and reasonable costs and a reasonable return to operate viably, as mandated under the EPIRA<sup>6</sup>;
33. It must be pointed out that CPGI has made every effort to seek an extension of the lease agreement, but the NPC unjustly refused, even if it allowed the IPP in Oriental Mindoro to *continue* operating NPC-leased assets after its lease term. It did not help that FICELCO has stopped dispatching CPGI. CPGI now comes to the Honorable Commission to seek its aid in ensuring that its *Decision*, which it issued after careful scrutiny, validation and approval of the ESA and the TCGR indicated therein, is faithfully implemented;
34. In the interest of justice, CPGI petitions the Honorable Commission to allow its full recovery of ERC-approved costs through a re-computation of the Capacity Fee, or through

---

<sup>6</sup> Section 43 (f);



any other alternative remedy as the Honorable Commission may deem appropriate under the circumstances for the faithful implementation of its *Decision* in ERC Case No. 2011-030 RC;

35. On another note, CPGI has also not yet fully recovered allowable charges for standby capacity or for available energy that CPGI was constrained not to deliver due to priority dispatch accorded by FICELCO for hydropower, which enjoys must-dispatch status under existing laws. Under the PSA, FICELCO agreed to give priority dispatch to renewable energy based on economic order of merit. This was upheld in the Honorable Commission's *Decision*, allowing payment of standby capacity to be charged by CPGI based on its approved Capacity Fee and Fixed O&M Fee, but in no case shall be in excess of the contracted energy (kWh);
36. Nonetheless, the NPC has unjustly refused to settle CPGI's billings for standby capacity for several billing periods between 26 April 2011 until 25 October 2017, despite fully knowing that CPGI cannot recover from FICELCO beyond the SAGR. Further, when CPGI was required to be on standby to give way to FICELCO's hydropower sources with a more economical rate, this resulted in savings for NPC, at the expense of CPGI. NPC's undue refusal to pay recoverable charges to CPGI deprived the latter of the cost of its money, so much so that CPGI is also constrained to pray for the payment of legal interest, resulting in the amount of PhP8,021,557.75. A detailed computation thereof is herewith attached as "Annex M-2";
37. These are just and equitable remedies, which CPGI is constrained to seek, *pro hac vice*.

**V. COMPLIANCE WITH PRE-FILING REQUIREMENTS**

38. Under *Rule 3, Section 4 of the EPIRA-IRR*, an application or petition for rate adjustment or for any relief affecting the consumers must be accompanied with an acknowledgment of receipt of a copy thereof by the LGU Legislative Body of the locality where the application or petitioner principally operates together with the certification of the notice of publication thereof in a newspaper of general circulation in the same locality;
39. Considering that herein *Petition* seeks as a remedy the re-computation of a component of the generation rate to allow full recovery of ERC-approved costs in ERC Case No. 2011-030 RC, hence, may have an effect on electricity consumers, Petitioner CPGI hereby manifests its compliance with the EPIRA-IRR, to be established by the following:
  - 39.1 Certification/Affidavit of Service to prove service on the Legislative Bodies of Makati City, Province of

Catanduanes, and Municipality of Bato, Catanduanes of a copy of herein *Petition* with annexes, to be appended as Annexes “N”, “N-1”, and “N-2”, respectively;

- 39.2 Notarized Affidavit of Publication to prove that herein *Petition* was published in a newspaper of general circulation in the locality where Petitioner principally operates, to be appended herein as Annex “O”; and
- 39.3 Complete newspaper issue where the *Petition* was published, to be appended herein as Annex “O-1”, and the relevant page thereof where the *Petition* appears, as Annex “O-2”.

### **PRAYER**

WHEREFORE, premises considered, it is most respectfully prayed for of this Honorable Commission that herein *Petition for Full Recovery of Approved Costs* be **DULY GRANTED** and that a Decision be rendered:

- (a) For the **RE-COMPUTATION** of the approved Capacity Fee to be PhP0.7137/kWh to recover the approved Total Project Cost and realize the approved Cost of Equity, within 6 years of actual ESA implementation;
- (b) For the **PAYMENT** by Respondents FICELCO and NPC of the amount of PhP32,752,808.00 representing the difference between the re-computed Capacity Fee of PhP0.7137/kWh and the approved PhP0.5471/kWh, thereby allowing CPGI the full recovery of ERC-approved costs in ERC Case No. 2011-030 RC; and
- (c) For the **PAYMENT** by Respondent NPC of legal interest for unjust withholding of standby capacity charges beyond the SAGR, for available energy that CPGI was constrained not to deliver due to priority dispatch accorded for hydropower, in the amount of PhP8,021,557.75.

Other reliefs, just and equitable under the foregoing premises are, likewise, most respectfully prayed for.

The Commission has set the *Petition* for determination of compliance with the jurisdictional requirements, expository presentation, pre-trial conference, and presentation of evidence on **23 May 2019 (Thursday) at ten o'clock in the morning (10:00 A.M.) at the FICELCO's Principal Office at Marinawa, Bato, Catanduanes.**

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:

- 1) The petitioner's name and address;
- 2) 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
- 3) 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 Petitioner 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 *Petition* may request from CPGI that it be furnished with the same, prior to the date of the initial hearing. CPGI is hereby directed to furnish all those making such request with copies of the *Petition* and its attachments, subject to the reimbursement of reasonable photocopying costs. Any such person may likewise examine the *Petition* and other pertinent records filed with the Commission during the standard office hours.

*(This space is intentionally left blank.)*

**WITNESS**, the Honorable Chairperson and CEO **AGNES VST DEVANADERA** and the Honorable Commissioners **ALEXIS M. LUMBATAN**, **CATHERINE P. MACEDA** and **PAUL CHRISTIAN M. CERVANTES**, Energy Regulatory Commission, this 05th day of March 2019 in Pasig City.

  
**JOSEFINA PATRICIA A. MAGPALE-ASIRIT**

*Commissioner*

  
LS: MFD/ARC/GLO