

Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, 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, WITH
PRAYER FOR PROVISIONAL
AUTHORITY**

ERC CASE No. 2009-016 RC

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

X-----X

D O C K E T E D
Date: MAY 31, 2018
By: WA

ORDER

Before the Commission for resolution is the *Manifestation with Request for Modification in the Utilization of the Approved Budget for the Protection of the Angat Watershed* (Manifestation) filed on 23 September 2015 by the National Power Corporation (NPC).

In the said *Manifestation*, NPC alleged, among others:

1. In its Motion for Extension of Time dated 1 April 2015, NPC manifested that it has yet to receive any response or confirmation from Metropolitan Waterworks and Sewerage System (MWSS) as to the status of the MOA on the deployment of SCAA for Angat Watershed required by the Commission in its 8 July 2013 Decision, despite several communications made. Hence, NPC was constrained to request for an additional 6 months, or until 28 September 2015 within which to file the required MOA;
2. On 7 July 2015, MWSS finally informed NPC of its position regarding the proposed MOA. In its letter dated 7 July 2015, MWSS said that it cannot join the proposed recruitment, training and deployment of armed SCAA volunteers for the protection of the Angat and Ipo Watersheds as they are not comfortable in financing the procurement

of and providing firearms and ammunition to civilians, albeit to be trained and will be operating under the responsible AFP units in Angat Watershed;

3. For this reason NPC is constrained to look for an option to comply still with the directive of the Commission for NPC to submit an agreement with AFP which will attain similar goal and objectives of protecting the Angat Watershed;
4. Section 4, Article III of the UC-EC Rules allows flexibility in the use of funds under the UC-EC for the approved projects, if there is a change of site/location, change of strategy in the implementation, change of design and/or specification for structural measures, reclassification of activities;
5. In accordance with the abovementioned rule, NPC respectfully submits its proposed new strategy (Annex "A") in implementing the approved budget for the protection of the Angat Watershed;
6. Under this new strategy, NPC will enter an agreement with the Philippine Army (PA) Unit stationed in the area to have a dedicated PA team assigned to team up with our existing Angat Watershed Area Team (AWAT) unit in protecting the Angat Watershed Reservation. The PA unit will be stationed in Angat and will accompany NPC's Forest Guards in the conduct of forest patrols and checkpoints. The military unit will provide security for our forest patrol teams when they are deployed to far-flung and high security risk areas;
7. Additional contractual Forest Guards will also be hired to augment the existing number of regular Forest Guards of AWAT. This augmentation together with the PA unit will allow AWAT to deploy simultaneous patrol teams in different locations thereby cover a much wider area than before; and
8. This proposed new strategy covers the same budget and same watershed area in order to attain same objective.

ISSUE

The issue for the Commission's resolution is whether or not NPC should be allowed to modify the utilization of the approved budget for the protection of the Angat Watershed.

COMMISSION'S RULING

The Commission grants NPC's Request for Modification in the Utilization of the Approved Budget for the Protection of the Angat Watershed.

DISCUSSION

On July 8, 2013 the Commission issued its *Decision* resolving the instant *Petition*. The dispositive portion reads as follows:

WHEREFORE, the foregoing premises considered, the petition for the availment of the Environmental Charge/Share from the Universal Charge (UC) for the rehabilitation and management of watershed areas filed by the National Power Corporation (NPC) is hereby **APPROVED with Modifications**.

In connection therewith, PSALM is hereby authorized to release the amount of **Two Hundred Thirteen Million Two Hundred Twenty One Thousand Three Hundred Fifty-Six and 15/100 Pesos (PhP213,221,356.15)** to fund the NPC's Plan 6 Watershed Management Program. The disbursement and utilization of the said approved budget should be in accordance with the "Rules and Procedures Governing the Utilization and Disbursement of the Universal Charge-Environmental Charge (UC-EC)".

Accordingly, NPC is directed to comply with the following:

- a) Submit, within forty-five (45) days from receipt hereof, a Project Implementation Plan (PIP) containing timelines of the project implementation;
- b) Submit, every six (6) months thereafter, a status or progress report of the approved project based on the PIP which shall include the actual cost and other supporting documents; and
- c) Submit, within fifteen (15) days from receipt hereof, the Memorandum of Agreement (MOA) it executed with Armed Forces of the Philippines (AFP) relative Angat Military-Special CAFGU Auxiliary (SCAA)

The Commission shall defer consideration of the Supplemental Petition filed by NPC for its failure to file its offer of evidence.

The table below shows the breakdown of the budget approved by the Commission in the *Decision*:

	Watershed Area	Per Decision
1	Angat	27,295,766.90
2	Buhi-Barit	14,790,385.85
3	Caliraya-Lumot	13,781,884.09
4	Lake Lanao-Agus	18,606,466.88
5	Magat	8,344,550.98
6	Makban	12,407,689.69
7	Pantabangan	13,395,067.87
8	Pulangi	19,409,618.29
9	San Roque	15,477,104.50
10	Tiwi	23,634,719.79
11	Upper Agno	42,074,625.31

12	Head Office	4,003,476.00
	Total	213,221,356.15

In the same *Decision*, the Commission made a computation on the cost of rehabilitation and management of the Angat Watershed Area, to wit:

Angat Watershed

Proposed Amount	-	PhP	27,795,766.90
Disallowance	-	PhP	<u>500,000.00</u>
Recommended Amount	-	PhP	27,295,766.90

The main challenge posted on the Angat Watershed Area Team (AWAT) extends to the protection the forest area against all forms of forest and environmental destruction, rehabilitation of open and logged-over areas, and management and development of the Buffer Zone area that is greatly disturbed by human exploitation.

For the Plan 6, the proposed programs did not only focus on watershed protection but also watershed rehabilitation and developmental activities. About 67% of Angat Watershed Area's proposed budget is earmarked for rehabilitation programs which included vegetative measures, buffer zone development/management and production of indigenous species. The rest of the budget is allocated to the acquisition of tools and equipment, infrastructure construction and project monitoring, evaluation, audit and documentation, all of which are deemed necessary for the watershed and therefore allowed.

However, the Commission disallowed an amount of PhP500,000.00 allocated for repairs and maintenance of tools and equipment. NPC did not provide a detailed justification for this amount.

NPC was directed to submit an executed copy of the Memorandum of Agreement (MOA) for the Military Assistance/Special Citizens Armed Forces Geographical Unit Active Auxiliary (SCAA) to the Commission as well as other documentary requirements in relation to disbursements from this budget.

Under Section 4, Article III of ERC Resolution 18, Series of 2011, flexibility in the use of funds shall be allowed under certain circumstances such as reclassification of activities of a particular project. It further provides:

xxx

All requests for modification in the utilization of the UC-EC shall be accompanied by sufficient justifications and shall be limited to such types of projects which were included in the Plan previously approved by the ERC.

Approval of the requests for flexibility shall be in accordance with the existing NPC Manual of Approval pertaining to the nature and the amount of the project to be implemented.

xxx

The Commission finds that NPC's *Manifestation* to change its strategy in the implementation of its watershed protection is allowed under the Commission's Rules. NPC has to change its method due to reasons beyond its control. Although the proposed SCAA project is no longer feasible to enforce, the necessity to implement watershed protection still exists. Hence, NPC proposed for the program's modification into a Joint NPC-AFP Strategic Forest Protection for Angat Watershed. Petitioner also submitted its funding breakdown, the total of which is still equivalent to that of the approved amount of PhP4,500,000.00.

The Commission takes note that NPC, as a government and a regulated entity in charge of the watershed management, may choose any or a combination of the following modes of procurement:

- a) Public Bidding;
- b) Agency to Agency;
- c) Alternative Mode of Procurement;
- d) Limited Source Bidding;
- e) Direct Contracting;
- f) Shopping;
- g) Negotiated Procurement;
- h) People's Organization;
- i) By Administration Through Direct Hiring of Laborers;
- j) By Administration Through Pakyaw Labor;
- k) Family Contract Reforestation;
- l) Individual Tree Grower Contract Reforestation; and
- m) Individual Tribal Member Cooperator Contract Reforestation.

Nevertheless, the mode of procurement selected by NPC shall be in accordance with Republic Act No. 9184 (R.A. 9184) or the Government Procurement Reform Act of 2003.

Moreover, for monitoring purposes, the books on the utilization and disbursements of the fund shall be opened for audit as may be required by the Commission. The books shall be audited by a third party and/or the Commission on Audit (COA), as the state auditor of public funds. All these audits shall generate an Audit Report which is for submission to the Commission.

The Commission also notes that any approval for the availment of the subsidy from the UC-EC fund for watershed management creates no additional rate impact to the end-users. Unlike the other types of Universal Charge, the UC-EC rate is already provided in the law. Section 34, Paragraph (d) of the EPIRA states that an environmental charge equivalent to one-fourth of one centavo per kilowatt hour (PhPo.0025/kWh) shall accrue to the environment charge to be used solely for watershed rehabilitation and management. Hence, UC-EC rate is fixed by law and it is currently being collected from end-users.

WHEREFORE, the foregoing premises considered, National Power Corporation's (NPC) request under its *Manifestation with Request for Modification in the Utilization of the Approved Budget for the Protection of the Angat Watershed* is hereby **GRANTED**.

(This space is intentionally left blank.)

ACCORDINGLY, NPC is hereby directed to submit the following within forty-five (45) days from receipt of the *Order*:

1. Memorandum of Agreement (MOA) with the Philippine Army;
2. Certification that the requests for flexibility is in accordance with the existing NPC Manual of Approval pertaining to the nature and the amount of the project to be implemented. (as required under the Rules);
3. Revised Project Implementation Plan (PIP) for the project containing at least the timelines of the project implementation; and
4. Every 6 months thereafter, a status or progress report of the approved project based on the submitted PIP including the actual cost associated with it and the corresponding supporting documents (to be included in the regular status report)

SO ORDERED.

Pasig City, 22 August 2017.


JOSE VICENTE B. SALAZAR*

Chairman and CEO



ALFREDO J. NON
Commissioner


GLORIA VICTORIA C. YAP-TARUC
Commissioner


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner


GERONIMO D. STA. ANA
Commissioner


ROS:AMDB/AJMO/FGED


LS: CRC/LSP/APV

*The Chairman was placed on preventive suspension as per Order of the Office of the President (OP-DC Case No. 17-D-094) dated 02 May 2017 and received on 04 May 2017.

ERC CASE NO. 2009-016 RC
ORDER/22 August 2017
Page 8 of 8

Copy furnished:

1. Atty. Melchor Ridulme
Atty. Mark Anthony S. Actub
Atty. DiwaRafael B. Bontuyan
Counsel for Petitioner National Power Corporation
NPC Office Building Complex, Quezon Avenue cor. BIR Road, Diliman, Quezon City
2. National Power Corporation (NPC)
Petitioner
NPC Office Building Complex, Quezon Avenue cor. BIR Road, Diliman, Quezon City
3. Office of the Solicitor General
134 Amorsolo Street, Legaspi Village, Makati City
4. Commission on Audit
Commonwealth Avenue, Quezon City
5. Senate Committee on Energy
GSIS building, Roxas Blvd., Pasay City
6. House Committee on Energy
Batasan Hills, Quezon City
7. Atty. Ranulfo Ocampo
President
Philippine Electric Plant Owners Association (PEPOA)
8th Floor, Strata 100 Building
Emerald Avenue, Ortigas Center, Pasig City
8. The General Manager
Philippine Rural Electric Cooperatives Association (PHILRECA)
4TH Floor, Casman Building
372 Quezon Avenue, Quezon City
Metro Manila
9. National Electrification Administration (NEA)
ODFC Building, 1050 Quezon Avenue
Quezon City, Metro Manila
10. All Distribution Utilities (DUs)
11. Office of the City Mayor
Quezon City
12. Office of the Sangguniang Panglungsod
Quezon City
13. Hon. Roy A. Cimatú
Department of Environment and Natural Resources
Visayas Avenue, Quezon City
14. Office of the Governor
Province of Quirino
15. Office of the Sangguniang Panlalawigan
Province of Quirino
16. Manila Electric Company
7th Floor, Lopez Building, Ortigas Avenue, Barangay Ugong, Pasig City