

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



**IN THE MATTER OF THE
APPLICATION FOR THE
APPROVAL OF FORCE
MAJEURE EVENT
REGULATED FM PASS-
THROUGH FOR TYPHOON
NINA IN LUZON, IN
ACCORDANCE WITH THE
RULES FOR SETTING
TRANSMISSION WHEELING
RATES, WITH PRAYER FOR
PROVISIONAL AUTHORITY**

ERC CASE NO. 2017-116 RC

**NATIONAL GRID
CORPORATION OF THE
PHILIPPINES (NGCP),**

Applicant.

X -----X

D O C K E T E D
Date: JUN 11 2018
By: *[Signature]*

O R D E R

On 22 December 2017, the National Grid Corporation of the Philippines (NGCP) filed an Application to seek the Commission's approval of its claim for Force Majeure Event (FME) due to Typhoon Nina in Luzon through an FM Pass-Through amount, with prayer for the issuance of a provisional authority.

In its Application, NGCP alleged the following:

1. NGCP is a corporation created and existing under the laws of the Republic of the Philippines, with principal office address at NGCP Building, Quezon Avenue corner BIR Road, Diliman, Quezon City. It is the concessionaire which assumed the power transmission functions of the National Transmission Corporation (TRANSCO) pursuant to Republic Act No. (RA) 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA).¹

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. Under RA 9511,² NGCP was granted a franchise to construct, install, finance, manage, improve, expand, operate, maintain, rehabilitate, repair and refurbish the present nationwide transmission system of the Republic of the Philippines.
3. On 15 January 2009, NGCP assumed the transmission functions of TRANSCO, including the operation, management and maintenance of the nationwide electrical grid.

STATEMENT OF FACTS

4. From 23 to 27 December 2016, Typhoon Nina was inside the Philippine Area of Responsibility (PAR) with maximum winds of 185 kilometers per hour (kph) and gustiness of 225 kph. Due to heavy rains and gusty winds, NGCP's transmission assets and other related facilities in Luzon were damaged causing widespread power interruption over the area. A copy of the Certification dated 22 March 2017 issued by the Philippine Atmospheric, Geophysical and Astronomical Services Administration (PAGASA) is attached hereto as **Annex "A."**
5. In compliance with Article X of the Rules for the Setting of Transmission Wheeling Rates (RTWR), NGCP filed with this Honorable Commission a Force Majeure Event (FME) Notice dated 15 March 2017, copy is attached hereto as **Annex "B,"** receipt of which was acknowledged by the Honorable Commission in its letter dated 29 March 2017, copy is attached hereto as **Annex "C."**
6. Immediately after the devastation of Typhoon Nina in Luzon, NGCP started the repair, restoration and rehabilitation of its damaged transmission assets and other related facilities in order to restore transmission service to its customers and the public. As a result, NGCP incurred additional costs for the repair, restoration and rehabilitation of the said damaged transmission assets.

FORCE MAJEURE EVENT CLAIM

7. Under Section 1.3(a) of the RTWR, an FME is defined as a "**typhoon**, storm, tropical depression, flood, drought, volcanic eruption, earthquake, tidal wave or landslide; or an act of public enemy, war (declared or undeclared), sabotage, blockade, revolution, riot, insurrection, civil commotion or any violent or threatening actions."
8. Nina was categorized by PAGASA as a "Typhoon" in its Certification dated 22 March 2017, thus, falling within the

² Republic Act No. 9511 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 or Interconnected Transmission Lines, Substations and Related Facilities, and for Other Purposes".

definition of an FME in accordance with Section 1.3 of the RTWR.

9. Pursuant to Section 10.1.1 of the RTWR, NGCP is allowed to recover the cost it incurred in the repair, restoration, and rehabilitation of its transmission assets and other related facilities damaged by Typhoon Nina in Luzon through an FM Pass-Through Amount.
10. Within three (3) months after the occurrence of Typhoon Nina, NGCP filed before the Honorable Commission FME Notice dated 15 March 2017, pursuant to Sections 10.2.1 and 10.2.2 of the RTWR.
11. Thereafter, within twelve (12) months after the occurrence of the FME Typhoon Nina in Luzon, NGCP hereby files the instant FME Application, in accordance with Sections 10.2.1 and 10.2.3 of the RTWR.

FM PASS-THROUGH AMOUNT COMPUTATION

12. It must be noted that NGCP has not recovered from its Industrial All-Risk (IAR) Insurance Policy procured from the Government Service Insurance System (GSIS) for the year 2016 the cost NGCP incurred in the repair, restoration and rehabilitation of the transmission assets and other related facilities damaged by the FME Typhoon Nina, considering that the affected assets are located beyond the 1,000 meters radius from the nearest substation perimeter fence, and that the total cost of damage is below the One (1) Million US Dollars deductible amount. Thus, it is but proper for NGCP to file the instant FME Claim Application to recover the cost it incurred for the repair, restoration and rehabilitation of its transmission assets and other related facilities damaged by the FME Typhoon Nina in Luzon pursuant to the RTWR.
13. The cost NGCP incurred as additional FME Capital Expenditure (CAPEX) for the repair, restoration and rehabilitation of its transmission assets and other related facilities damaged by Typhoon Nina in Luzon is **One Hundred Thirty-Four Million Four Hundred Two Thousand Eight Hundred Eighty-Four Pesos (PhP134,402,884.00)**.
14. Further, the recoverable value or the Net Fixed Asset Value (NFAV) of the assets destroyed by Typhoon Nina in Luzon is **One Hundred Ninety-Three Million One Hundred Fourteen Thousand Three Hundred Eighty Pesos (PhP193,114,380.00)**.
15. NGCP proposes the FM Pass-Through Amounts, in P/kW-month, as additional network charges starting January 2018 billing month until December 2020 for Luzon, or until such time that the amounts incurred are fully recovered, computed as shown in the tables below:

Luzon	2018	2019	2020
P/kW-mo.	0.83	0.86	0.90
P/kWh	0.0016	0.0016	0.0017

16. NGCP proposes the FM Pass-Through Amounts for the years 2018 to 2020 to allow the recovery of the CAPEX incurred relative to the FME Typhoon Nina, pending the reset process for the Transmission Services for the Fourth Regulatory Period.
17. Considering that FM Pass-Through Amounts are not included in NGCP's Final Determination for any regulatory period, the proposed FM Pass-Through Amounts can be recovered pursuant to Section 10.1.1 of the RTWR where NGCP is allowed to recover the cost incurred for the repair, restoration, and rehabilitation of damage sustained by its transmission assets and other related facilities as a result of an FME. A copy of the FM Pass-Through Amount Computation is hereto attached as **Annex "D."**
18. Further, the FM Pass-Through Amounts in this Application do not breach the Force Majeure Threshold Amount (FMTA) of PhPo.0357/kWh in accordance with the RTWR. A copy of the FMTA Computation is hereto attached as **Annex "E."**
19. Also, NGCP considered the NFAV of the transmission assets and other related facilities damaged by the FME Typhoon Nina in Luzon given that NGCP would have normally fully recovered the return of capital on said assets for the duration of their economic lives had these assets not been damaged or destroyed by said FME.

**JUSTIFICATION FOR THE ISSUANCE OF
PROVISIONAL AUTHORITY**

20. NGCP respectfully moves for the issuance of a provisional approval for the immediate recovery of the FM Pass-Through Amounts pursuant to Section 3, Rule 14 of the ERC Rules of Practice and Procedure.
21. NGCP needs to immediately recover the actual expenses incurred for the repair, restoration and rehabilitation of the damaged transmission assets and other related facilities. It must be emphasized that the rehabilitation of the assets damaged by the FME Typhoon Nina in Luzon required capital infusion, the recovery of which should be allowed immediately in order to avoid any financial strain in the operation of NGCP and to allow the continuous provision of transmission service to the grid customers.
22. In addition, the timely implementation of the FM Pass-Through Amounts will allow the equal or even spread of the increases or decreases in tariffs from the initial implementation of the recovery of the cost.

23. A copy of the Judicial Affidavit of Agnes F. Dela Cruz, Head, Tariff Design and Billing Management Division, Revenue and Regulatory Affairs, in support of the instant Application, is hereto attached as **Annex “F.”**

PRAYER

WHEREFORE, it is most respectfully prayed of this Honorable Commission to:

1. **DECLARE** Typhoon Nina in Luzon as Force Majeure Events (FME);
2. Immediately **GRANT Provisional Approval** to implement and bill the following FM Pass-Through Amounts starting January 2018 billing month to December 2020 for Luzon, or until such time that the amounts incurred are fully recovered:

Luzon	2018	2019	2020
P/kW-mo.	0.83	0.86	0.90
P/kWh	0.0016	0.0016	0.0017

3. **APPROVE** the FME CAPEX amounting to **One Hundred Thirty-Four Million Four Hundred Two Thousand Eight Hundred Eighty-Four Pesos (PhP134,402,884.00)** incurred by NGCP for the repair, restoration and rehabilitation of the damaged transmission assets and other related facilities due to FME Typhoon Nina in Luzon;
4. **APPROVE**, after due notice and hearing, the proposed FM Pass-Through Amounts to be collected from the Luzon customers starting January 2018 billing month or until such time that the amounts incurred are fully recovered, as follows:

Luzon	2018	2019	2020
P/kW-mo.	0.83	0.86	0.90
P/kWh	0.0016	0.0016	0.0017

5. **APPROVE** and **ALLOW** the recovery of the Net Fixed Asset Value of the transmission assets and other related facilities damaged by the FME Typhoon Nina in Luzon amounting to **One Hundred Ninety-Three Million One Hundred Fourteen Thousand Three Hundred Eighty Pesos (PhP193,114,380.00)**, given that it would have been fully recovered by NGCP if these transmission assets and other related facilities have not been damaged or destroyed by the said FME; and
6. **EXCLUDE** the proposed Pass-Through Amounts from the side constraint calculation.

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

Finding the said Application to be sufficient in substance with the required fees having been paid, the same is hereby set for determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and evidentiary hearing on **31 July 2018 (Tuesday), at ten o'clock in the morning (10:00 A.M.), at the ERC Hearing Room, 15th Floor, Pacific Center Building, San Miguel Avenue, Pasig City.**

Accordingly, NGCP is hereby directed to:

- 1) Cause the publication of the attached Notice of Public 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;
- 2) Furnish with copies of this Order and the attached Notice of Public Hearing the Offices of the Provincial Governors, the City Mayors, and the Local Government Unit (LGU) legislative bodies where NGCP principally operates, including its regional offices, for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform of the filing of the Application, its reasons therefor, and of the scheduled hearing thereon, the consumers within the affected area, by any other means available and appropriate;
- 4) Furnish with copies of this Order and the attached Notice of Public 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 at the scheduled hearing; and
- 5) Furnish with copies of the Application and its attachments all those making requests therefor, subject to reimbursement of reasonable photocopying costs.

On the date of the initial hearing, Applicant must submit to the Commission 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 Public Hearing consisting of affidavits of the Editors or Business Managers of the newspapers where the said Notice of Public 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 Public Hearing consisting of certifications issued to that effect, signed by the aforementioned Governor, Mayors, and LGU legislative bodies or their duly authorized representatives, bearing the seals of their offices;
- 3) The evidence of other means employed by Applicant to inform of the filing of the Application, its reasons therefore, and of the scheduled hearing thereon, the consumers within the affected area;
- 4) The evidence of receipt of copies of this Order and the attached Notice of Public Hearing by the Office of the Solicitor General (OSG), the Commission on Audit (COA), and the Committees on Energy of both Houses of Congress;
- 5) The evidence of receipt of copies of the Application and its attachments by all those making requests therefor, if any; and
- 6) Such other proofs of compliance with the requirements of the Commission.

Applicant and all interested parties are also required 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 Applicant 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.

NGCP must also be prepared to make an expository presentation of the instant Application, 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 thereof.

SO ORDERED.

Pasig City, 29 May 2018.

**FOR AND BY AUTHORITY
OF THE COMMISSION:**


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Oversight Commissioner for Legal Service

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Copy furnished:

1. Atty. Luis Manuel Bugayong
Counsel for NGCP
NGCP Bldg., Quezon Ave., cor. BIR Rd.,
Diliman, Quezon City
2. Office of the Solicitor General
134 Amorsolo Street, Legaspi Village, Makati City
3. Commission on Audit
Commonwealth Ave., Quezon City
4. The Senate Committee on Energy
GSIS Building, Roxas Boulevard, Pasay City
5. The House Committee on Energy
Batasan Hills, Quezon City

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6. Office of the City Mayor
Iligan City
7. Office of the LGU legislative body
Iligan City
8. Office of the City Mayor
Cebu City
9. Office of the LGU legislative body
Cebu City
10. Office of the City Mayor
Quezon City
11. Office of the LGU legislative body
Quezon City
12. Office of the Governor
Province of Lanao del Norte
13. Office of the LGU legislative body
Province of Lanao del Norte
14. Office of the Governor
Province of Cebu
15. Office of the LGU legislative body
Province of Cebu
16. National Transmission Corp.
Quezon Avenue corner BIR Road, Diliman, Quezon City
17. Power Sector Assets and Liabilities Management Corp.
7/F, Bankmer Building
6756 Ayala Ave., Makati City
18. National Grid Corporation of the Philippines (NGCP)
Quezon Avenue corner BIR Road, Diliman, Quezon City
19. Regulatory Operations Service
ERC
17/F Pacific Center Bldg., San Miguel Ave.
Ortigas, Pasig City