

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



IN THE MATTER OF THE
APPLICATION FOR THE
APPROVAL OF FORCE MAJEURE
(FM) EVENT REGULATED FM
PASS THROUGH FOR TYPHOON
AGATON IN MINDANAO IN
ACCORDANCE WITH THE RULES
FOR SETTING TRANSMISSION
WHEELING RATES, WITH
PRAYER FOR PROVISIONAL
AUTHORITY

ERC CASE NO. 2015-005 RC

NATIONAL GRID CORPORATION
FOR THE PHILIPPINES, (NGCP),
Applicant.

X-----X

DOCKETED
Date: JUN 11 2015
[Signature]

ORDER

On January 14, 2015, the National Grid Corporation of the Philippines (NGCP) filed an application for the approval of the force majeure event regulated FM pass through for Typhoon Agaton in Mindanao in accordance with the Rules for Setting Transmission Wheeling Rates (RTWR), with prayer for provisional authority.

In the said application, NGCP alleged, among others, the following:

1. It 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. It is the corporate vehicle of the consortium which was awarded the concession to assume the power transmission functions of the National Transmission Corporation (TRANSCO) pursuant to Republic Act No. 9136 (R.A. 9136), otherwise known as the Electric Power Industry Reform Act of 2001 or the EPIRA;

2. It was also granted a franchise under Republic Act 9511 (NGCP 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 January 15, 2009, it assumed transmission functions of TRANSCO including the operation, management and maintenance of the nationwide electric grid;
4. Pursuant to Section 10.1.1 of the RTWR, it is allowed to recover the cost incurred in the restoration, rehabilitation, repair of damage sustained by its transmission assets and other related facilities as a result of a force majeure event (FME), as defined in Article I of the RTWR;

THE FORCE MAJEURE EVENT (TYPHOON AGATON)

5. On January 17, 2014, Typhoon Agaton entered the Philippine Area of Responsibility with maximum winds of 35 kph and gustiness of 50 kph. Due to its intensity and heavy rainfall, its transmission assets and other related facilities in the Mindanao area were damaged. Attached to the application as Annex "A" is a copy of the Certification dated April 1, 2014 issued by the Philippine Atmospheric, Geophysical and Astronomical Services Administration (PAGASA);
6. It filed before the Commission a Notice of Force Majeure Event (Typhoon Agaton) on March 28, 2014, attached to the application as Annex "B";

7. The Commission issued a letter dated May 8, 2014 acknowledging receipt of its FME Notice regarding Typhoon Agaton;
8. Immediately after the calamity, repair and restoration and rehabilitation of its damaged transmission assets and other related works were undertaken in order to continue serving its customers;
9. The cost of additional Capital Expenditure (CAPEX) it incurred to complete the repair, restoration and rehabilitation of its transmission assets and other related facilities including the recoverable values of the assets destroyed amounted to PhP6,958,428.26;
10. The Details of Activities of FME Typhoon Agaton in Mindanao is attached to the application as Annex "D";
11. The damaged transmission assets and other related facilities are not covered by TRANSCO and the Power Sector Assets and Liabilities Management Corporation's (PSALM) Industrial All Risk (IAR) Insurance Policy with the Government Service Insurance System (GSIS) for the year 2014 and is therefore not compensable. Copy of the Certification in support of such allegation is attached to the application as Annex "E";
12. There is a need to realign its CAPEX projects to recover the cost incurred for the repair, restoration, and rehabilitation of the damaged transmission assets and other related facilities subject of this application;

**COMPUTATION OF FM EVENT PASS-THROUGH
AMOUNT**

13. It proposes the FM pass-through amount, in P/kW-month, as additional network charges in Mindanao starting the billing period of February 2015 to December 2020, or until such time that the amount incurred is fully recovered, computed as follows:

Grid	2015	2016	2017	2018	2019	2020
Mindanao	0.18	0.04	0.04	0.04	0.04	0.04

14. It proposes the FM pass-through amounts for the years 2016 to 2020 to allow the recovery of the CAPEX incurred relative to the FME Typhoon Agaton should there be a delay in the reset process for the Transmission Services for the Fourth (4th) Regulatory Period (RP);
15. Although the FME claim is not included in its 3rd Regulatory Reset Application, the same can be recovered during the 3rd Regulatory Period pursuant to Section 10.1.1 of the RTWR where it is allowed to recover the cost incurred for the restoration, repair and rehabilitation of damage sustained by its transmission assets and other related facilities as a result of the FME. Copy of the FME Claim Computation is attached to the application as Annex "F";
16. The FME Claim does not breach the Force Majeure Threshold Amount (FMTA). Copy of the FMTA Computation is attached to the application as Annex "G";
17. It considered the Net Fixed Asset Value of the transmission assets and other related facilities damaged by the FME Typhoon Agaton in the calculation of the FM Pass-Through Amount given that it would have normally fully recovered the return of capital on said assets for the duration of its economic lives had these assets not been damaged or destroyed by the FME Typhoon Agaton;

Allegation in Support of the Prayer for Provisional Approval

18. It moves for the issuance of a provisional approval for the immediate recovery of the FME claim pursuant to Section 3, Rule 14 of the Commission's Rules of Practice and Procedure. It needs to immediately recover the actual expenses incurred for the rehabilitation of the damaged transmission assets and other related facilities. The occurrence of the aforementioned FME requires capital

infusion, the recovery of which should be allowed to avoid putting financial strain in the transmission provider, and to allow it to continuously provide the necessary transmission service to the grid customers;

19. The timely implementation of the pass-through amount will allow the equal or even spread of the increases or decreases in tariffs from the initial implementation of the recovery of the cost;
20. A copy of the Judicial Affidavit of Agnes F. Dela Cruz, Head, Tariff Design and Billing Management Division, Revenue and Regulatory Affairs of NGCP in support thereof is attached to the application as Annex "H"; and
21. In compliance with Rule 6 of the Commission's Rules of Practice and Procedure, the pre-filing requirements of the instant application are attached herewith as Annex "I";
22. It prays that the Commission:
 - a. Issue, immediately upon filing of the application, a provisional authority to implement and bill the FM Pass-Through Amounts to Mindanao customers starting February 2015 billing month to December 2020 or until such time that the amount incurred is fully recovered;
 - b. Declare the Typhoon Agaton as Force Majeure Event (FME);
 - c. Approve the CAPEX incurred for the repair, restoration, and rehabilitation of the damaged transmission assets and other related facilities due to Typhoon Agaton in Mindanao as FME;
 - d. Approve the proposed pass-through amount representing return on capital, return of capital and taxes associated with the emergency responses and the repair, restoration and rehabilitation of its transmission assets and other related facilities damaged by the FME Typhoon Agaton, as follows:

Grid	2015	2016	2017	2018	2019	2020
Mindanao	0.18	0.04	0.04	0.04	0.04	0.04

- e. Approve and allow the recovery of the Net Fixed Asset Value of the transmission assets and other related facilities damaged by Typhoon Agaton in Mindanao in the amount of One Million Six Hundred Eighty-One Thousand Fifty-Six and 18/100 Pesos (PhP1,681,056.18) as part of the FM Pass Through Amount given that the said amount would have been fully recovered by it if these transmission assets and other related facilities have not been damaged or destroyed by Typhoon Agaton as FME; and
- f. Exclude the proposed Pass-Through Amount from the side constraint calculation.

During the initial hearing on May 12, 2015, only NGCP appeared. No intervenor/oppositor appeared nor was there any intervention/opposition registered.

At the said hearing, NGCP presented proofs of its compliance with the Commission's posting and publication of notice requirements which were duly marked as Exhibits "A" to "S", inclusive. Counsel for NGCP moved that the expository presentation be conducted in Mindanao. Said motion was granted.

Relative thereto, the continuation of the hearing is hereby set anew for expository presentation, pre-trial conference and evidentiary hearing on **July 1, 2015 (Wednesday) at nine o'clock in the morning (9:00 A.M.) in the ERC, Mindanao Field Office, Mezzanine Floor, Mintrade Building, Monteverde corner Sales Sts., Davao City.**

NGCP is hereby directed to cause the publication of the attached Notice of Public Hearing, at its own expense, twice (2x) for two (2) successive weeks in two (2) newspapers of general circulation in the Philippines, with the date of the last publication to be made not later than ten (10) days before the date of the

scheduled hearing. It is also directed to inform the consumers within its franchise area, by any other means available and appropriate, of the filing of the instant application, its reasons therefor, and of the scheduled hearing thereon.

Let copies of the application, this Order and the attached Notice of Public Hearing be furnished 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.

Likewise, let copies of this Order and the attached Notice of Public Hearing be furnished the Office of the Mayor of Quezon City for the appropriate posting thereof on its bulletin board.

NGCP is hereby directed to furnish all those making requests therefor with copies of the application and its attachments, subject to reimbursement of reasonable photocopying costs.

On the date of the hearing, NGCP must submit to the Commission its written Compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidences on the actual posting and publication of the Notice of Public Hearing consisting of certifications issued to that effect, signed by the afore-mentioned Mayor or his duly authorized representative, bearing the seal of his office, and the affidavits of the Editors or Business Managers of the newspapers where the said Notice of Public Hearing were published together with the complete issues of the said newspapers, and such other proofs of compliance with the requirements of the Commission.

NGCP and all interested parties are directed to submit, at least five (5) days before the date of 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 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 NGCP to submit the required Pre-trial Brief and Judicial Affidavits of its witnesses 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 said date of cancellation.

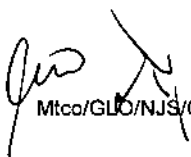
As part of the pre-trial conference, NGCP must also be prepared to make an expository presentation of its application, aided by whatever communication medium that it may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties, what the application is all about and the reasons and justifications being cited in support thereof.

SO ORDERED.

Pasig City, June 1, 2015.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ZENAIDA G. CRUZ-DUCUT
Chairperson *per y*



Copy Furnished:

1. **Attys. Luis Manuel U. Bugayong, Ronald Dylan P. Concepcion, Mark Anthony S. Actub, Raycell D. Baldovino and Ari Vergil P. Fabros**
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3. **THE COMMISSION ON AUDIT**
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4. **THE COMMITTEE ON ENERGY**
House of the Senate
GSIS Building, Roxas Blvd., Pasay City, Metro Manila
5. **THE COMMITTEE ON ENERGY**
House of Representatives
Batasan Hills, Quezon City, Metro Manila
6. **OFFICE OF THE CITY MAYOR**
Quezon City