

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



**IN THE MATTER OF THE
PETITION FOR THE
AVAILMENT OF
ENVIRONMENT
CHARGE/ SHARE FROM
THE UNIVERSAL
CHARGE FOR THE
REHABILITATION AND
MANAGEMENT OF
WATERSHED AREAS
(PLAN 15), WITH PRAYER
FOR PROVISIONAL
AUTHORITY**

ERC CASE NO. 2018-103 RC

**NATIONAL POWER
CORPORATION,**

Applicant.

X ----- X

D O C K E T E D

Date: JAN 11 2018

By: [Signature]

O R D E R

On 15 October 2018, National Power Corporation (NPC) filed an Application dated 11 October 2018, seeking the Commission's approval on the availment of environment charge/share from the Universal Charge (UC) for the rehabilitation and management of watershed areas (Plan 15), with prayer for provisional authority (Application).

In the said *Application*, NPC alleged the following:

1. It is a government owned-and-controlled corporation created and existing under and by virtue of Republic Act No. 6935, as amended (NPC Charter), with principal office address at NPC Office Building Complex, Quezon Avenue Corner BIR Road, Diliman, Quezon City;
2. Under its Charter, particularly Section 3, paragraph (N) thereof, it is vested with the power to exercise complete jurisdiction and control over watersheds surrounding the reservoir of plants and/or projects it constructed;

3. To further strengthen its jurisdiction and control over watersheds, Executive Order (EO) No. 224¹ was issued on 16 July 1987, wherein it was granted complete jurisdiction, control and rehabilitation over the following watershed areas and reservations: (1) Upper Agno Watershed as covered by Proclamation No. 548; (2) Angat Watershed Reservation as covered by Proclamation Nos. 505 and 599; (3) Caliraya-Lumot Watershed Reservation as covered by Proclamation No. 573; (4) Makiling-Banahaw Geothermal Reservations as covered by Proclamation No. 1111; (5) Buhi-Barit Watershed as covered by Proclamation No. 573; (6) Tiwi Geothermal Reservation as covered by Presidential Proclamation No. 739;
4. It's jurisdiction and control over watersheds was again recognized and reiterated in Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA) and its Implementing Rules and Regulations (IRR), particularly Section 6 (c), Rule 23 of the IRR, wherein it is mandated to continue to be responsible for watershed rehabilitation and management;
5. Under the EPIRA, NPC is entitled to the Environmental Charge (EC) equivalent to one-fourth of one centavo per kilowatt-hour sales (Php0.0025/kWh), which forms part of the Universal Charge (UC). This environmental fund is intended solely for watershed rehabilitation and management and is being managed by it under existing arrangements. In order to avail said EC, it is required to submit to the Commission a petition for availment of the UC-EC in relation to the proposed watershed rehabilitation and management projects on or before March 15 every year;
6. In support of the above *Application*, it submitted copies of the following documents, *to wit*:

| Annex | Nature of Document |
|--------------|---|
| "A" | Availment of the UC-EC for the rehabilitation and management of the watersheds; |
| "B" | Executive Summary of Plan 15 |
| "C" | Consolidated Financial proposal |
| "D" | Angat WAT Plan 15 |
| "E" | Buhi-Barit WAT Plan 15 |
| "F" | Caliraya-Lumot WAT 15 |

¹ "Vesting on the National Power Corporation the Complete Jurisdiction, Control and Regulation over Watershed Areas and Reservations Surrounding its Power Generating Plants and Properties of said Corporation"

| | |
|------------|------------------------------|
| “G” | Head Office Plan 15 |
| “H” | Lake Lanao WAT Plan 15 |
| “I” | Makiling-Banahaw WAT Plan 15 |
| “J” | Pulangi WAT Plan 15 |
| “K” | San Roque WAT Plan 15 |
| “L” | Tiwi WAT Plan 15 |
| “M” | Upper Agno WAT Plan 15 |

7. Plan 15 is crafted in order to intensify and strengthen its undertakings to address the issue on the uncontrolled deforestation especially in watershed areas. For the past 16 years (2002-2018), it has embarked on non-stop vegetative rehabilitation initiatives in its various watershed areas which have gained acceptance and cooperation by its stakeholders. In line with the Greening Program of the National Government, its Watershed Management Department (WMD) and its Watershed Area Teams (WAT) are committed to reforest idle / open and denuded areas and promote the use of indigenous species (Rainforestation) combined with fruit bearing trees in its Reforestation and Agroforestaion programs, WMD intends to raise planting stocks primarily to share and disperse to qualified beneficiaries to plant trees in their respective communities;

7.1. Plan 15 is composed of programs and projects specified in Section 1 of Article II of the Rules and Procedure Governing the Utilization and Disbursement of UC-EC (Rules) with the proposed modes of procurement in implementing the same. In particular, Plan 15 involves the following and projects: (1) Watershed Rehabilitation (Vegetative Measures, Project Evaluation, Project Sustainability, Project Operations and Regulation and Project Management); (2) Watershed Protection and Law Enforcement (Watershed Protection and Law Enforcement Program, Bantay Watershed Protection Program, Operationalization of Watershed Management Management Council, Program on Indigenous People, Project Management, Project Management, Project Operations and Regulation, Database Management and Acquisition and Maintenance of Tools and Equipment); and, (3) Resource Development (Livelihood Program and Planting Stocks Production for Dispersal). These programs and projects were recommended by concerned WATs. And the same were reviewed and evaluated by the Head Office – WMD. (Attached as Annexes “D” to “M” are the proposed plans of the WATs assigned in Angat,

Buhi-Barit, Caliraya-Lumot, Lake Lanao-Agus River, Mak-Ban, Pulangi, San Roque, Tiwi, Upper Agno River and the WMD-Head Office which forms an integral part hereof);

- 7.2. Plan 15 covers the six (6) watersheds over which it has complete jurisdiction and control by virtue of EO 224, San Roque Watershed (Lower Agno) which is being managed by NPC for San Roque Multi-Purpose Project by virtue of PD No. 2320, and Lake Lanao-Agus River and Pulangi Watershed Area which Petitioner has a Memorandum of Agreement with the Department of Environment and Natural Resources (DENR);
8. Plan 15 complies with ERC Case Res. Nos. 18 Series of 2011², which required it to conduct consultation with the Local Government Units (LGUs) and LGAs where projects will be situated. Reference is made with those of the environmental projects of the LGUs and LGAs so that no duplication in the funding of projects will occur. Concerns of the stakeholders are brought to the attention of concerned WAT and this serves as the latter's guide in the packaging of Plan 15. This also ensures the support of the LGUs and the local communities for the proposed projects;
9. In order to attain the objectives of Plan 15, it would need to avail and utilize the funds from the UC-EC amounting to a total of Two Hundred Thirty Nine Million Three Hundred Fifty Thousand Three Hundred Eighty Six & 41/100 Pesos (Php239,350,386.41), as shown in the Consolidated Financial Proposal (CFP) (from the 11 Watershed Area Teams and WMD-based Head Office). This was computed based on existing rules and regulations prescribed for government projects;
10. As of date, in compliance with Section 2 (b), Article II of the Rules, it furnished a copy of the *Application* to the Sangguniang Panlungsod and Office of the City Mayor of Quezon City where it principally operates, and publish the same in the newspaper of general circulation;

² "A Resolution Adopting the Rules and Procedures Governing the Utilization and Disbursement of the Universal Charge – Environmental Charge"

In support of this, it submitted the following documents, *to wit*:

| Annex | Nature of Document |
|--------------|---|
| “N” | Copy Furnished of the <i>Application</i> to the Sangguniang Panlungsod |
| “O” | Copy Furnished of the <i>Application</i> to the Office of the City Mayor of Quezon City |

11. NPC prayed for the Commission to:

- a) Grant the provisional authority for the availment of environment charge / share from the universal charge for the rehabilitation and management of watershed areas (plan 15);
- b) Decision be rendered approving the instant *Application*; and
- c) NPC likewise prayed for other equitable reliefs proper under the premises.

Finding the said *Application* to be sufficient in form and 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 presentation of evidence on the following dates and venues:

| DATE and TIME | VENUE | ACTIVITY |
|--|--|--|
| 21 February 2019 (Thursday) 9:00 A.M. | ERC Main Office 15 th Floor, Pacific Center Building, San Miguel Avenue, Pasig City | Jurisdictional and Expository Presentation |
| 28 February 2019 (Thursday) 1:00 P.M. | Villa Caceres Hotel Doña Jamora Hall, Magsaysay Ave., Naga City | Expository Presentation for South Luzon Stakeholders |
| 14 March 2019 (Thursday) 1:00 P.M. | Hiyas Convention Center Provincial Capitol, Malolos City, Bulacan | Expository Presentation for North Luzon Stakeholders |
| 4 April 2019 (Thursday) 9:00 A.M. | Xavier University (Ateneo de Cagayan) Mini Amphitheatre Corrales Ave., Cagayan De Oro City | Expository Presentation for Mindanao Stakeholders |

Accordingly, NPC 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 their 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 City Mayors and the Local Government Unit (LGU) legislative bodies within the affected franchise area for the appropriate posting thereof on their respective bulletin boards;
- 3) Inform the consumers within the affected franchise area of the filing of the *Application*, its reasons therefor, and of the scheduled hearing thereon, 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, NPC 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* were 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 Mayors and LGU

legislative bodies or their duly authorized representatives, bearing the seals of their offices;

- 3) The evidence of other means employed by NPC to inform the consumers within the affected franchise area of the filing of the *Application*, its reasons therefor, and of the scheduled hearing thereon;
- 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 proof of compliance with the requirements of the Commission.

NPC and all interested parties are also required to submit, at least five (5) days before the date of the initial hearing and Pre-trial Conference, their respective Pre-trial Briefs containing, among others:

- 1) A summary of admitted facts and proposed stipulation of facts;
- 2) The issues to be tried or resolved;
- 3) The documents or exhibits to be presented, stating the purposes and proposed markings therefor; and
- 4) The number and names of the witnesses, with their written testimonies in a Judicial Affidavit form attached to the Pre-trial Brief.

Failure of NPC 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.

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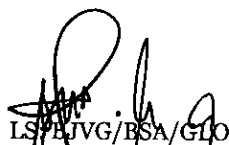
NPC must also be prepared to make an expository presentation of the instant *Application*, aided by whatever communication medium that it may deem appropriate for the purpose, in order to put in plain words and explain, for the benefit of the consumers and other concerned parties, the nature of the *Application* with relevant information and pertinent details substantiating the reasons and justifications being cited in support thereof.

SO ORDERED.

Pasig City, 7 January 2019.

FOR AND BY AUTHORITY
OF THE COMMISSION:


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner


LS/PLJVG/BSA/GLO

Copy Furnished:

1. **Atty. Melchor P. Redulme**
Office of the Legal Counsel
Special Attorney-OSG
134 Amorsolo Street, Legaspi Village
Makati City, Metro Manila
2. **National Power Corporation**
Applicant
NPC Office Building Complex,
Quezon Avenue corner BIR road
Diliman, Quezon City
3. **Office of the Solicitor General (OSG)**
134 Amorsolo Street, Legaspi Village
Makati City, Metro Manila
4. **Commission on Audit (COA)**
Commonwealth Avenue
Quezon City, Metro Manila
5. **Senate Committee on Energy**
GSIS Bldg. Roxas Blvd., Pasay City
Metro Manila
6. **House Committee on Energy**
Batasan Hills, Quezon City, Metro Manila

7. **Philippine Chamber of Commerce and Industry (PCCI)**
Campus Avenue corner Park Avenue,
McKinley Town Center, Fort Bonifacio, Taguig City
8. **Office of the City Mayor**
Quezon City
9. **Office of the LGU Legislative Body**
Quezon City
10. **Office of the City Mayor**
Naga City
11. **Office of the LGU Legislative Body**
Naga City
12. **Office of the Mayor**
Malolos, Bulacan
13. **Office of the LGU Legislative Body**
Malolos, Bulacan
14. **Office of the Mayor**
Cagayan de Oro City
15. **Office of the LGU Legislative Body**
Cagayan de Oro City
16. **Regulatory Operations Service (ROS)**
Energy Regulatory Commission
17th Floor, Pacific Center Building, San Miguel Avenue, Pasig City