

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



IN THE MATTER OF THE
APPLICATION FOR
RECOVERY OF INCREMENTAL
FUEL AND LUBRICANT COSTS
INCURRED FROM FEBRUARY
2011 AND MODIFICATION OF
THE FORMULA FOR
AUTOMATIC RECOVERY OF
FUEL AND LUBRICANT COSTS

ERC CASE NO. 2014-055 RC

COTABATO LIGHT AND
POWER COMPANY, INC.
(CLPC),

Applicant.

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DOCKETED
Date: JUN 16 2014
BY: [Signature]

ORDER

On May 5, 2014, Cotabato Light and Power Company, Inc. (CLPC) filed an application for recovery of incremental fuel and lubricant costs incurred from February 2011 and modification of the formula for automatic recovery of fuel and lubricant costs.

In the said application, CLPC alleged, among others, that:

1. CLPC is a private corporation duly organized and existing under the laws of the Republic of the Philippines, with principal business address in Aboitiz Corporate Center, Banilad, Cebu City. It holds the exclusive franchise to operate electric light and power distribution system in the City of Cotabato and part of the Municipalities of Datu Odin Sinsuat and Sultan Kudarat, all in the Province of Maguindanao;
2. On March 26, 2010, it filed an application for the recovery of fuel and lubricant costs incurred for the period August 2004 to March 14, 2010 and for the automatic recovery of

fuel and lubricant costs to be incurred subsequently.¹ On July 19, 2010, the Commission approved said application, thus:

“WHEREFORE, the foregoing premises considered, the application filed by Cotabato Light and Power Company, Inc. (CLPC) on March 26, 2010 for recovery of actual fuel and lubricant costs incurred for the period 2004-2010, and for automatic recovery of fuel and lubricant cost, with prayer for provisional authority, is hereby **APPROVED WITH MODIFICATION.**

x x x

The proposed formula for the automatic recovery of fuel and lubricant costs is likewise denied to avoid confusion with the AGRA confirmation. CLPC should instead file an application for the recovery of future fuel and lubricant costs.

SO ORDERED.”

3. On September 9, 2010, it filed a “*Motion for Partial Reconsideration*” of the foregoing Decision. On December 6, 2010, the Commission issued an Order holding, thus:

“WHEREFORE, the foregoing premises considered, the “*Motion for Partial Reconsideration*” filed by Cotabato Light and Power Company, Inc. (CLPC) on September 9, 2010 is hereby **PARTIALLY GRANTED.**

x x x

Further, CLPC is hereby authorized to recover its future fuel and lubricant costs using the following approved formula subject to confirmation:

$$FCA = \frac{(FC + LC)}{S}$$

Where:

FCA = Fuel Cost Adjustment for the current Month

FC = Fuel Cost for the previous month, subject to heat rate cap of 0.26 ltr/kWh or the actual heat rate, whichever is lower

¹ ERC Case No. 2010-023 RC captioned “*In the Matter of the Application for Recovery of Actual Fuel and Lubricant Costs Incurred for the Period 2004-2010, and for Automatic Recovery of Fuel and Lubricant Costs, With Prayer for Provisional Authority.*”

LC = *Lubricant Cost for the previous month, subject to heat rate cap of 0.00162 ltr/kWh or the actual heat rate, whichever is lower*

S = *kWh sales for the previous month*"

4. Inasmuch as the formula on the automatic recovery of fuel and lubricant costs commenced implementation only after January 2011 when the Order was released, there remained fuel and lubricant costs it incurred but unrecovered for the period March 15, 2010 to January 2011. Hence, it filed an application for the recovery of actual fuel and lubricant costs incurred for the said period,² which the Commission, in its Decision dated September 26, 2011 approved, as follows:

"WHEREFORE, the foregoing premises considered, the application filed by Cotabato Light and Power Company, Inc. (CLPC) for the recovery of its actual fuel and lubricant costs incurred for the period March 15, 2010 to January 2011 is hereby **APPROVED with MODIFICATION**.

Accordingly, CLPC is authorized to recover the fuel and lubricant costs (on top of the existing fuel recovery charge of Php0.0298/kWh) amounting to Php17,275,184.43, equivalent to Php0.1554/kWh, effective on the next billing cycle from receipt of this Decision until such time that the full amount shall have been recovered."

Incremental Fuel and Lubricant Costs

5. In its Order dated December 6, 2010 in ERC Case No. 2010-023 RC (the "Order"), the Commission prescribed a formula for the automatic recovery of its fuel and lubricant costs, which commenced implementation of the formula for the billing month February 2011;

² ERC Case No. 2011-068 RC captioned "In the Matter of the Application for Recovery of Actual Fuel and Lubricant Costs Incurred for the period March 15, 2010 to January 2011."

6. Under the formula, a heat rate cap of 0.26 liter/kWh or the actual heat rate, whichever is lower, is imposed on fuel costs, while a heat rate cap of 0.00162 liter/kWh or the actual heat rate, whichever is lower, is imposed on lubricant costs;
7. Unfortunately for it, implementation of the heat rate caps have since resulted in fuel and lubricant costs which, although actually and legitimately incurred, have continued to grow even as it has been unable to recover the same. With its recovery limited by the heat rate caps, it is forced to shoulder the remaining fuel and lubricant costs, thus, gravely affecting its financial viability;
8. As this burden continues to be made heavier by the constantly increasing prices of fuel and foreign currency, it seeks the authorization of the Commission to recover fuel and lubricant costs incurred from February 2011, which have remained unrecovered with the use of the automatic recovery formula. Thus, as of the period from February 2011 to December 2013,³ unrecovered costs amount to:

	February – December 2011 (PhP)	2012 (PhP)	2013 (PhP)	Total (PhP)
Unrecoverable Fuel Costs	154,700.40	889,961.09	1,087,293.74	2,131,955.23
Unrecoverable Lube Oil Costs	220,724.18	926,487.45	454,012.10	1,601,223.73
Total Unrecoverable Costs	375,424.58	1,816,448.54	1,541,305.84	3,733,178.96

9. Further, considering that the operation of the CLPC plant is on a continuing basis, it prays for the recovery of incremental fuel and lubricant costs still to be incurred, and resulting from the implementation of the automatic recovery formula following December 2013. Such recovery shall be subject to the modification of the automatic recovery formula, if approved by the Commission as hereinafter prayed for;

³ The detailed computation of the incremental fuel and lubricant costs from February 2011 to December 2013 is attached as Annex "A" hereof.

10. The incremental fuel and lubricant costs of Three Million Seven Hundred Thirty-Three Thousand One Hundred Seventy-Eight and 96/100 (PhP3,733,178.96), as well as those incurred following December 2013, represent actual costs it has incurred, and will incur, solely for fuel and lubricants, with the labor component not included from the amounts proposed to be recovered. These incremental fuel and lubricant costs are likewise not included in the computation of operation and maintenance costs in its performance-based rate application;
11. It proposes to recover the incremental fuel and lubricant costs over a period of twelve (12) months, with the incremental fuel and lubricant costs for February 2011 to December 2013 of **PhP3,733,178.96** translating to a monthly cost recovery of PhP0.0308/kWh, computed as follows:

$$\begin{aligned} \text{Estimated cost recovery} &= \frac{\text{PhP3,733,178.96}}{121,231,034 \text{ kWh}^*} \\ \text{rate per month} &= \underline{\underline{\text{PhP0.0308/kWh}}} \end{aligned}$$

**Actual energy sales of CLPC for 2013.*

12. The costs above-proposed are reasonable, just and fair under the premises given that they are actual and legitimate costs incurred in relation to the operation of its generating plant. These costs are evidently material and constitute a considerable drain on its finances inasmuch as they are incurred from day to day without any means of recovery other than through the instant application;
13. While it is aware of the rationale for setting the heat rate caps, the old age of the plant is an actual and immutable fact which has made meeting the caps unrealistic and greatly difficult for the plant. At a service life of fifty (50) years, more or less, a plant's performance and efficiency will surely erode - a circumstance impossible to change or improve unless substantial rehabilitation or overhaul or even replacement is undertaken. Simply put, it is an impossible situation for it to comply with heat rate caps that are apt to, or have been determined based on, younger and, definitely, more efficient plants;

14. Nevertheless, it has, as always, remained conscientious and diligent in handling and maintaining the plant in order that it can be called upon to serve its consumers particularly in periods of supply deficit in Mindanao. At the same time, it, bearing in mind its legal mandate to supply electricity in the least cost manner to its captive market (subject to the collection of retail rate duly approved by the ERC),⁴ continually ensures that the benefits derived from operating the plant far outweigh its costs;

15. It is in light of the foregoing, it requests the understanding of the Commission in respect of its difficult predicament *vis-à-vis* meeting the heat rate caps, by way of allowing it to recover the incremental fuel and lubricant costs incurred and paid over and above the caps;

Application of 0.34 liter/kWh in the Interruptible Load Program (ILP) Rules

16. Drawing from its difficult experience in the implementation of the heat rate caps set forth in the automatic recovery formula, it requests its amendment, thus:

$$FCA = \frac{(FC + LC)}{S}$$

Where:

FCA = Fuel Cost Adjustment for the current Month

FC = Fuel Cost for the previous month, subject to heat rate cap of 0.2634 ltr/kWh or the actual heat rate, whichever is lower

LC = Lubricant Cost for the previous month, subject to heat rate cap of 0.00162 ltr/kWh or the actual heat rate, whichever is lower

S = kWh sales for the previous month

⁴ Section 23 of Republic Act No. 9136

17. The proposed heat rate cap of 0.34 liter/kWh is the fuel consumption rate set by the Commission in Resolution No. 8, Series of 2013,⁵ which amended Resolution No. 8, Series of 2010,⁶ otherwise known as the "*Rules to Govern the Interruptible Load Program of Distribution Utilities*". This closely approximates the actual fuel consumption efficiency of the CLPC's plant which has become inefficient considering its old age, with most of its engines having been commissioned as far back as in the 1960s. With the inevitable wear and tear causing the plant to run at less than optimum, it is simply beyond its control to keep the plant's fuel consumption within the heat rate caps set out in the automatic recovery formula under the Order;

18. Considering the continuing power shortage in Mindanao, it has been compelled to run its plant notwithstanding that its continued operation has contributed to the further deterioration of the plant. In performing its responsibility of providing supply to end-users within its franchise area, however, it must bear the incremental costs of fuel and lubricants which cannot be recovered under the formula. With the Mindanao power situation not appearing to improve anytime in the near future, it cannot afford for its costs to accumulate without any hope of recovery. The impact on its financial viability is a serious burden which will adversely affect the quality of service it renders to its customers; and

19. It prays that, after trial on the merits, the Commission approve the following:
 - 19.1 Recovery of the amount of **PhP3,733,178.96** representing incremental fuel and lubricant costs incurred from February 2011 to December 31, 2013, for a period of twelve (12) months or an estimated monthly rate impact of PhP0.0308/kWh;

⁵ A Resolution Amending Article IV, Section 1 of the "*Rules to Govern the Interruptible Load Program of Distribution Utilities*".

⁶ "*A Resolution Adopting the Rules to Govern the Interruptible Load Program (ILP) of Distribution Utilities (DUs)*".

19.2 Recovery of incremental fuel and lubricant costs incurred following December 31, 2013, subject to any amendment of the automatic recovery formula; and

19.3 Amendment of the automatic recovery formula, thus:

$$FCA = \frac{(FC + LC)}{S}$$

Where:

FCA = Fuel Cost Adjustment for the current Month

FC = Fuel Cost for the previous month, subject to heat rate cap of 0.2634 ltr/kWh or the actual heat rate, whichever is lower

LC = Lubricant Cost for the previous month, subject to heat rate cap of 0.00162 ltr/kWh or the actual heat rate, whichever is lower

S = kWh sales for the previous month.

On June 4, 2014, CLPC filed a "*Motion to Reset Venue of Hearing on July 22, 2014*" praying that the venue of hearing be transferred from CLPC's Main Office, Sinsuat Avenue, Cotabato City to the Commission's Field Office in Davao City in view of the recent incidents of violence in and around the area of Cotabato City.

Finding the said "*Motion to Reset Venue of Hearing on July 22, 2014*" meritorious, the same is hereby **GRANTED**. Accordingly, the instant application is hereby set anew for jurisdictional hearing, expository presentation, pre-trial conference and evidentiary hearing on **July 22, 2014 (Tuesday) at two o'clock in the afternoon (2:00 P.M.) at the Energy Regulatory Commission–Mindanao Field**

**Office (ERC-MFO), Mezzanine Floor, Mintrade Building,
Monteverde Avenue corner Sales Street, Davao City.**

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

Likewise, let copies of this Order and the attached Notice of Public Hearing be furnished the Offices of the Governor of Maguindanao and the Mayors of the City/Municipalities within the franchise area of CLPC for the appropriate posting thereof on their respective bulletin boards.

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

On the date of the initial hearing, CLPC must submit to the Commission its written Compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidences of the actual posting and publication of the Notice of Public Hearing consisting of certifications issued to that effect, signed by the afore-mentioned Governor and Mayors or their duly authorized representatives, bearing the seals of their offices, and the affidavit of the Editors or Business Managers of the newspapers where 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.

CLPC and all interested parties are directed 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 CLPC 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, CLPC 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 9, 2014.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ZENAIDA G. CRUZ-DUCUT
Chairperson

Copy Furnished:

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9. **Office of the Provincial Governor**
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10. **Office of the City Mayor**
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12. **Office of the Municipal Mayor**
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