

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



**PETITION FOR THE
AVAILMENT OF THE
NATIONAL POWER
CORPORATION'S
STRANDED CONTRACT
COSTS PORTION OF THE
UNIVERSAL CHARGE FOR
CALENDAR YEAR 2016,
WITH PRAYER FOR
PROVISIONAL AUTHORITY,**

ERC CASE NO. 2017-066 RC

**POWER SECTOR ASSETS
AND LIABILITIES
MANAGEMENT
CORPORATION (PSALM),**
Petitioner.

X ----- X

DOCKETS
Date: JUL 26 2018
By: [Signature]

NOTICE OF PUBLIC HEARING

Notice is hereby given that on 06 July 2017, Power Sector Assets and Liabilities Management Corporation (PSALM) filed a *Petition* dated 22 June 2017 (Petition) seeking the Commission's approval for the availment of the National Power Corporation's stranded contract costs portion of the Universal Charge for calendar year 2016, with prayer for the issuance of provisional authority.

PSALM alleged the following in its *Petition*:

1. Petitioner is a government-owned and controlled corporation created by virtue of the EPIRA, with principal office address at 3/F National Transmission Corporation Building, Power Center, Quezon Avenue corner BIR Road, Diliman, Quezon City. It may be served with notices, orders, and other processes of the Honorable Commission through the undersigned counsel with office address at the Power Sector Assets and Liabilities Management Corporation, 3/F National Transmission Corporation Building, Power Center, Quezon Avenue corner BIR Road, Diliman, Quezon City.

2. The principal mandate of Petitioner is to manage the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets, and IPP contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner¹. To attain its objectives, Petitioner shall, among others, [i] calculate the amount of the stranded debts and stranded contract costs of NPC which shall form the basis for ERC in the determination of the universal charge and [ii] liquidate the NPC stranded contract costs, utilizing the proceeds from sales and other property contributed to it, including the proceeds from the universal charge².

IV.
NPC'S STRANDED CONTRACT COSTS

3. Stranded Contract Costs of NPC refer to the "excess of the contracted cost of electricity under eligible contracts over the actual selling price of the contracted energy output of such contracts in the market". Market as defined in the Amended Rules for Recovery refers to the "Wholesale Electricity Spot Market (WESM) where electricity traded includes, but is not limited to, Spot Sales, Transition Supply Contracts (TSCs), Bilateral Contracts, One Day Power Sale (ODPS), Default Wholesale Supplier (DWS) service, and Ancillary Services"³. To be eligible for recovery under the Universal Charge, such contracts shall have been approved by the Energy Regulatory Board (hereinafter, "ERB") as of 31 December 2000⁴.
4. For purposes of the UC-SCC calculation, Independent Power Producer (hereinafter, "IPP") Contracts of NPC eligible for recovery under the UC-SCC (hereinafter, "Eligible IPP Contracts") shall refer to "generation capacities developed under the Build-Operate-Transfer scheme and any such generation asset whose construction was not financed by NPC but whose output is bought by NPC under Purchase Power Agreements (PPAs), Energy Conversion Agreements (ECAs) or any other similar contractual relationship. The IPP Contracts shall also include Rehabilitate Operate Lease (ROL) and Rehabilitate Operate Maintain types of IPP Contracts"⁵. In accordance with Section 32 of the EPIRA, only contracts duly approved by the ERB as of 31 December 2000 shall be entitled for recovery through the UC-SCC.
5. On 26 December 2010, the commercial operation of the WESM in the Visayas Grid and its integration with the Luzon Grid commenced⁶.

¹ Sec. 50, EPIRA

² Sec. 51, EPIRA

³ Article I, Section 2, Amended Rules for Recovery

⁴ Sec. 4 [uu] and Sec. 32, EPIRA

⁵ Article III, Amended Rules for Recovery

⁶ DOE Department Circular No. 2010-11-0012

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6. Based on the above definition and for the purpose of this filing, the following are the Eligible IPP Contracts, which are eligible for recovery under UC-SCC:
 - a. Benguet Mini-Hydros (Ampohaw and Bakun);
 - b. Pagbilao I & II;
 - c. Sual I & II; and
 - d. Unified Leyte (Leyte A and B)
7. The annual UC-SCC shall be computed as the difference between the Gross Annual Contract Costs (hereinafter, "GACC") and combined amounts derived from the Revenues from the Sale of Contracted Energy of Eligible IPP Contracts (hereinafter, "RSCE") and the Privatization proceeds of the Eligible IPP Contracts (hereinafter, "PP").⁷

IV - A.
GROSS ANNUAL CONTRACT COSTS

8. For purposes of this filing, the GACC is composed of capacity fees, fixed operating and maintenance fee (FOM)-other power supply (OPS), other Operating Expenses (OPEX), variable fees - OPS (when purchased power cost varies with volume of energy), and energy purchased from the WESM (EPFW).
9. For CY 2016, the GACC amounted to a total of Php34,394.20 Million with details as follows:

GACC Components (in Php)	Benguet Mini-Hydros	Unified Leyte	Pagbilao	Sual	TOTAL
Capacity Fees	-	-	9,039,075,807.78	8,947,149,717.02	17,986,225,524.80
FOM-OPS	-	6,613,461,873.20	1,418,647,365.32	1,463,624,623.07	9,495,733,861.59
Other OPEX	909,776.20	46,343,835.88	75,811,861.04	136,332,926.40	259,398,399.52
Sub-Total: Fixed Fees	909,776.20	6,659,805,709.08	10,533,535,034.14	10,547,107,266.49	27,741,357,785.91
Variable – OPS	513,574,259.52	4,958,237,052.29	622,221,978.94	522,233,010.82	6,616,266,301.57
EPFW (to meet TSC)	36,575,684.16	-	-	-	36,575,684.16
EPFW (Station Use)	206.57	-	-	-	206.57
Sub-Total: Variable Fees	550,150,150.25	4,958,237,052.29	622,221,978.94	522,233,010.82	6,652,842,192.30
TOTAL	551,059,926.45	11,618,042,761.37	11,155,757,013.08	11,069,340,277.31	34,394,199,978.21

Table 1. Gross Annual Contract Costs

10. Components of GACC were lifted from the Operating Results (ROO) of Eligible IPPs, Summary of Fixed and Variable Costs of Eligible IPPs and Schedule of Other OPEX of Plants under IPP Administrator Agreement (IPPAA). Copies of the Operating Results of Eligible IPPs, Summary of Fixed and Variable Costs of Eligible IPPs and Schedule of Other OPEX of Eligible Plants under IPPAA are attached hereto and made

⁷ Article IV, Section 6 in relation to Sections 3, 4 and 5, Amended Rules for Recovery

integral parts hereof as Annexes "C" and "D" and "E", respectively.

IV- B.
REVENUES FROM THE SALE OF CONTRACTED ENERGY
OF ELIGIBLE IPP CONTRACTS

11. For purposes of this filing, the RSCE refers to the following sources of revenue: (i) Sales in WESM, including net settlement surplus (NSS); and (ii) Sales under Transition Supply Contracts (TSC), including adjustments, namely, fuel cost adjustment (FCA), purchased power cost adjustments (PPCA) and foreign exchange-related cost adjustments (FxA), and penalties imposed on customers which drew power lower than or in excess of contracted level of energy.
12. For CY 2016, the RSCE amounted to a total of PhP4,533.44 Million with details as follows:

RSCE Components (in PhP)	Benguet Mini-Hydros	Unified Leyte	TOTAL
Sales in WESM	21,595,521.51	3,845,206,121.26	3,866,801,642.77
Sales in TSC	588,522,934.29	78,113,265.07	666,636,199.36
TOTAL RSCE	610,118,455.80	3,923,319,386.33	4,533,437,842.13

Table 2. Revenues from the Sale of Contracted Energy

13. Components of RSCE were lifted from the Net Utility Revenue portion of the ROO of Eligible IPPs. RSCE excludes Power Act Reduction (PAR) and Prompt Payment Discount (PPD) adjustment which have been disallowed for recovery by the Honorable Commission in its Decision dated 28 January 2013 in ERC Case No. 2011-091 RC. FxA per plant was based on Total FxA Revenue per Grid allocated per plant based on per plant TSC energy sales. Copies of the Schedule of FxA for Eligible Plants and Schedule of FxA for the Period Ending 31 December 2016 are attached hereto and made integral parts hereof as Annexes "F" and "G", respectively.

IV - C.
PROCEEDS FROM PRIVATIZATION OF ELIGIBLE
IPP CONTRACTS

14. For CY 2016, PP amounted to a total of PhP26,174.57 Million. Included under PP are cash inflows arising from the IPPAA, namely, monthly payments (net of VAT) and energy fee/generation payments of Unified Leyte Strips, Pagbilao and Sual IPPAs, as follows:

Privatization Proceeds Components (in PhP)	Unified Leyte	Pagbilao	Sual	Total
Monthly Payments	-	6,567,306,493.98	9,180,507,536.41	15,747,814,030.39
Energy Fee/ Generation Payments	9,281,434,669.24	623,077,283.48	522,243,416.92	10,426,755,369.64
TOTAL	9,281,434,669.24	7,190,383,777.46	9,702,750,953.33	26,174,569,400.03

Table 3. Privatization Proceeds

15. For Pagbilao and Sual, Monthly Payments from its IPPAs which are Therma Luzon, Inc. and San Miguel Energy Corporation, respectively, were lifted from the Schedule of IPPAA Monthly Payment while Energy Fees are based on the Summary of IPPA Billings – Energy Fees. For Unified Leyte, Generation Payments from its IPPAs or the Strip Owners which are Aboitiz Energy Solutions, Inc., Filinvest Development Corp. Utilities, Inc., Good Friends Hydro Resources Corporation, Trans-Asia Oil and Energy Development Corporation, Unified Leyte Geothermal Energy, Inc., Vivant Energy Corporation and Waterfront Mactan Casino Hotel, Inc. were lifted from the Summary of IPPA Billings – UL Strips Generation Payments.
16. Copy of the Schedule of IPPAA Monthly Payment, net of VAT, for SCC is attached hereto and made an integral part hereof as Annex “H”, Schedule of IPPAA Monthly Payment received from Eligible IPPs as Annex “I” and Schedule of VAT on Privatization Proceeds that was shouldered by PSALM as “Annex J”. Copy of the Schedule of Summary of IPPAA Billings – UL Strips Generation Payment and Summary of IPPA Billings - Energy Fees are attached hereto as “Annex K” and “Annex L”, respectively.
17. The PP is net of VAT, consistent with the Bureau of Internal Revenue (BIR) Revenue Memorandum Circular No. 11-20128 which states, among others, that: “Considering that the sale of electricity is now subject to VAT, the real properties sold by PSALM are regarded as real properties used in the trade or business. While it is clear under the Tax Code of 1997 that such sale is not subject to income tax, there is no provision under the same Code that exempts it from VAT nor subject it to VAT at zero rate. xxx”.
18. And considering further, that the IPP Administration Agreements between PSALM and the IPP Administrators provide that, “xxx In the event that the Monthly Payments are determined with finality to be subject to value added tax, all applicable value added tax on such payments shall be for the account of PSALM...”, for purposes of SCC calculations, the IPP Administrator Monthly Payments received by PSALM were reduced by the VAT shouldered by PSALM.

V.

NPC’s STRANDED CONTRACT COSTS

19. Based on the foregoing, the SCC for CY 2016 amounts to PhP3,686.19 Million computed as the difference between the GACC, on one hand, and the combined amounts derived from the RSCE and PP, on the other, with details as follows:

⁸ Tax Consequences of Power Sector Assets and Liabilities Management Corporation (PSALM) Transactions

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2016 UC-SCC (in PhP)	Benguet Mini-Hydros	Unified Leyte	Pagbilao	Sual	TOTAL
GACC	551,059,926.45	11,618,042,761.37	11,155,757,013.08	11,069,340,277.31	34,394,199,978.21
Less: RSCE	610,118,455.80	3,923,319,386.33	-	-	4,533,437,842.13
Less: PP	-	9,281,434,669.24	7,190,383,777.46	9,702,750,953.33	26,174,569,400.03
SCC	(59,058,529.35)	(1,586,711,294.20)	3,965,373,235.62	1,366,589,323.98	3,686,192,736.05

Table 4. Details of Stranded Contract Cost

20. Consistent with the Honorable Commission's Decision in ERC Case No. 2011-091 RC mentioned above, wherein the Honorable Commission used four (4) years' forecast of electricity sales based on the Department of Energy's (DOE) Power Development Plan (PDP) in determining the four (4) year 2007-2010 UC-SCC rate, the UC-SCC rate for CY 2016 is derived by dividing the calculated CY 2016 SCC by one (1) year Electricity Sales Forecast for CY 2018 based on the PDP (2015-2030). The calculated SCC rate is PhPo.0429/kWh with details as follows:

UC-SCC For CY 2016 (in PhP)	Energy Sales Forecast (GWh)	UC-SCC Rate (PhP/kWh)
3,686,192,736.05	85,935.00	0.0429

Table 5. Stranded Contract Costs

21. A copy of the Electricity Sales Forecast, PDP (2015-2030) as sourced from the DOE is attached hereto and made an integral part hereof as **Annex "M"**.
22. In compliance with Section 4(e) of Rule 3 of the EPIRA-IRR and ERC Resolution No. 38-2006, a copy of the instant Petition (including Annexes) was furnished the Sangguniang Panlungsod of Quezon City. A copy of the Certification of Posting/Affidavit of Service is attached hereto and made an integral part hereof as **Annex "N"**. The Petition (excluding Annexes) was also published in a newspaper of general circulation. A copy of the Affidavit of Publication is attached hereto and made an integral part hereof as **Annex "O"**.

VI.
ALLEGATIONS IN SUPPORT OF
THE ISSUANCE OF PROVISIONAL AUTHORITY
(PA)

23. The instant petition covers the SCC for CY 2016. The amount, if collected, would enable Petitioner to recover SCC which can be used to service maturing loans and IPP obligations. Provisional approval of this SCC will also keep Petitioner from resorting to refinancing to service its maturing debts, thus reducing, if not totally eliminating, additional borrowing costs.
24. Pursuant to the Honorable Commission's Rules of Practice and Procedure, the Honorable Commission may exercise its

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The Commission has set the *Petition* for hearing on the following dates:

Date and Time	Venue	Particulars
LUZON		
16 August 2018 (Thursday) at ten o'clock in the morning (10:00 A.M.)	ERC Hearing Room, 15 th Floor, Pacific Center Building, San Miguel Avenue, Pasig Ciy	Jurisdictional and Expository Presentation
VISAYAS		
29 August 2018 (Wednesday) at two o'clock in the afternoon (02:00 P.M.)	Energy Regulatory Commission- Visayas Field Office (ERC-VFO), St. Mary's Drive, Banilad, Cebu City, Philippines	Expository Presentation
MINDANAO		
06 September 2018 (Thursday) at ten o'clock in the morning (10:00 A.M.)	Energy Regulatory Commission- Mindanao Field Office (ERC-MFO), Mezzanine Floor, Mintrade Building, Monteverde Avenue cor. Sales Street, Davao City	Expository Presentation
LUZON		
13 September 2018 (Thursday) at ten o'clock in the morning (10:00 A.M.)	ERC Hearing Room, 15 th Floor, Pacific Center Building, San Miguel Avenue, Pasig Ciy	Pre-trial Conference and Evidentiary Hearing

All persons who have an interest in the subject matter of the instant case may become a party by filing with the Commission a verified *Petition to Intervene* at least five (5) days prior to the initial hearing and subject to the requirements under Rule 9 of the 2006 ERC Rules of Practice and Procedure, indicating therein the docket number and title of the case and stating the following:

- i. The petitioner's name and address;
- ii. The nature of petitioner's interest in the subject matter of the proceeding and the way and manner in which such interest is affected by the issues involved in the proceeding; and
- iii. A statement of the relief desired.

discretion by granting provisional authority or interim relief prior to a final decision. Petitioner PSALM humbly seeks this Honorable Commission to grant the PA to enable Petitioner PSALM to immediately recover SCC and accumulate sufficient funds to service loan obligations that were incurred for the eligible IPP contracts. Early SCC recovery will likewise translate to substantial savings on borrowing costs, as PSALM need not resort to refinancing to service its eligible IPP obligations and maturing debts.

25. In support of the prayer for the issuance of Provisional Authority, the Affidavit of Ms. Luisa A. Esteban, Officer-in-Charge of the Finance Group, establishing certain facts and circumstances that would justify the Honorable Commission's exercise of discretion by granting provisional authority or interim relief prior to a final decision is attached hereto and made an integral part hereof as **Annex "P"**.
26. It is understood that the interim relief sought by Petitioner, that may be granted by the Commission, shall be subject to adjustments and other conditions that the Commission may impose after hearing and final determination of the Honorable Commission.

PRAYER

WHEREFORE, premises considered, Petitioner respectfully prays, after due notice and hearing, for the APPROVAL of the following:

1. The calculated UC-SCC for the calendar year 2016 amounts to PhP3,686,192,736.05, which is equivalent to PhPo.0429/kWh covering a one-year recovery period.
2. Provisional Authority allowing Petitioner to charge and collect the computed UC-SCC or such amount determined by the Honorable Commission.

Other reliefs just and equitable are likewise prayed for.

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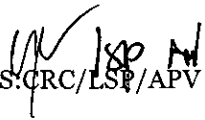
All other persons who may want their views known to the Commission with respect to the subject matter of the case may file their Opposition or Comment thereon at any stage of the proceeding before Petitioner rests its case, subject to the requirements under Rule 9 of the 2006 ERC Rules of Practice and Procedure. No particular form of Opposition or Comment is required, but the document, letter, or writing should contain the following:

- 1) The name and address of such person;
- 2) A concise statement of the Opposition or Comment; and
- 3) The grounds relied upon.

All such persons who wish to have a copy of the *Petition* may request from Petitioner that they be furnished with the same, prior to the date of the initial hearing. Petitioner is hereby directed to furnish all those making such request with copies of the *Petition* and its attachments, subject to the reimbursement of reasonable photocopying costs. Any such person may likewise examine the *Petition* and other pertinent records filed with the Commission during the standard office hours.

FOR AND BY THE AUTHORITY
OF THE COMMISSION:


AGNES VST DEVANADERA
Chairperson and CEO ✓


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